

# AN ACT

To amend sections 9.239, 9.55, 101.37, 101.39, 107.12, 109.57, 109.572, 109.71, 109.77, 109.86, 117.102, 121.02, 121.03, 121.32, 121.36, 121.37, 123.01, 124.11, 124.23, 124.241, 124.27, 124.38, 124.381, 125.602, 125.603, 126.32, 127.16, 135.801, 135.802, 135.803, 140.01, 140.03, 140.05, 145.012, 145.297, 154.17, 154.20, 173.03, 305.14, 307.10, 307.86, 309.10, 319.16, 325.19, 329.06, 1751.01, 1751.02, 2108.521, 2109.01, 2109.04, 2111.01, 2111.02, 2111.10, 2133.25, 2151.011, 2151.421, 2903.33, 2919.271, 2921.36, 2921.38, 2930.061, 2935.03, 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, 2967.22, 3109.18, 3301.07, 3301.15, 3301.52, 3301.53, 3301.55, 3301.57, 3301.58, 3304.231, 3313.65, 3313.715, 3314.022, 3314.99, 3317.01, 3317.02, 3317.024, 3317.03, 3317.032, 3317.05, 3317.051, 3317.052, 3317.07, 3317.15, 3317.20, 3319.22, 3319.99, 3323.01, 3323.02, 3323.021, 3323.03, 3323.04, 3323.05, 3323.07, 3323.09, 3323.091, 3323.12, 3323.141, 3323.142, 3323.31, 3326.99, 3501.01, 3701.78, 3701.93, 3701.932, 3701.933, 3705.36, 3721.01, 3721.14, 3722.01, 3727.01, 3735.58, 4109.06, 4115.32, 4141.29, 4511.21, 4511.75, 4723.071, 5101.35, 5101.46, 5101.611, 5103.02, 5103.13, 5104.08, 5107.24, 5111.042, 5111.151, 5111.202, 5111.203, 5111.211, 5111.251, 5111.291, 5111.65, 5111.677, 5111.709, 5111.87, 5111.871, 5111.872, 5111.873, 5111.874, 5111.875, 5111.876, 5111.8710, 5111.915, 5112.30, 5112.32, 5112.37, 5112.371, 5119.16, 5119.221, 5119.51, 5120.07,

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(5126.0218), 5126.0226 (5126.0219), 5126.0227  
(5126.0220), 5126.0228 (5126.0221), and 5126.0229  
(5126.0222); to enact sections 5123.014 and 5126.011; to  
repeal sections 5126.021, 5126.022, 5126.023, 5126.024,  
5126.025, 5126.026, and 5126.027 of the Revised Code;  
to amend Sections 209.60.40, 209.60.50, and 501.40 of  
H.B. 496 of the 127th General Assembly, to amend  
Section 201.60.30 of H.B. 496 of the 127th General  
Assembly, as subsequently amended, to amend Sections  
231.30.10, 231.30.20, and 253.10 of Am. Sub. H.B. 562  
of the 127th General Assembly, to amend Section  
231.20.30 of Am. Sub. H.B. 562 of the 127th General  
Assembly, as subsequently amended, and to amend  
Section 4 of Am. Sub. H.B. 516 of the 125th General  
Assembly, as subsequently amended, to change the name  
of the Department of Mental Retardation and  
Developmental Disabilities to the Department of  
Developmental Disabilities and the name of county  
boards of mental retardation and developmental  
disabilities to county boards of developmental  
disabilities, to make similar name changes for the Joint  
Council on Mental Retardation and Developmental  
Disabilities, the Mental Retardation and Developmental  
Disabilities Developmental Center Closure Commission,  
and certain state and county funds, and to repeal obsolete  
law regarding multi-county boards of mental retardation  
and developmental disabilities.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 9.239, 9.55, 101.37, 101.39, 107.12, 109.57, 109.572, 109.71, 109.77, 109.86, 117.102, 121.02, 121.03, 121.32, 121.36, 121.37, 123.01, 124.11, 124.23, 124.241, 124.27, 124.38, 124.381, 125.602, 125.603, 126.32, 127.16, 135.801, 135.802, 135.803, 140.01, 140.03, 140.05, 145.012, 145.297, 154.17, 154.20, 173.03, 305.14, 307.10, 307.86, 309.10, 319.16, 325.19, 329.06, 1751.01, 1751.02, 2108.521, 2109.01, 2109.04, 2111.01, 2111.02, 2111.10, 2133.25, 2151.011, 2151.421, 2903.33, 2919.271, 2921.36, 2921.38, 2930.061, 2935.03, 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, 2967.22, 3109.18, 3301.07, 3301.15, 3301.52, 3301.53, 3301.55, 3301.57, 3301.58, 3304.231, 3313.65, 3313.715, 3314.022, 3314.99, 3317.01, 3317.02, 3317.024, 3317.03, 3317.032, 3317.05, 3317.051, 3317.052, 3317.07, 3317.15, 3317.20, 3319.22, 3319.99, 3323.01, 3323.02, 3323.021, 3323.03, 3323.04, 3323.05, 3323.07, 3323.09, 3323.091, 3323.12, 3323.141, 3323.142, 3323.31, 3326.99, 3501.01, 3701.78, 3701.93, 3701.932, 3701.933, 3705.36, 3721.01, 3721.14, 3722.01, 3727.01, 3735.58, 4109.06, 4115.32, 4141.29, 4511.21, 4511.75, 4723.071, 5101.35, 5101.46, 5101.611, 5103.02, 5103.13, 5104.08, 5107.24, 5111.042, 5111.151, 5111.202, 5111.203, 5111.211, 5111.251, 5111.291, 5111.65, 5111.677, 5111.709, 5111.87, 5111.871, 5111.872, 5111.873, 5111.874, 5111.875, 5111.876, 5111.8710, 5111.915, 5112.30, 5112.32, 5112.37, 5112.371, 5119.16, 5119.221, 5119.51, 5120.07, 5120.135, 5121.01, 5121.02, 5121.03, 5121.04, 5121.05, 5121.051, 5121.06, 5121.061, 5121.07, 5121.08, 5121.09, 5121.10, 5121.11, 5121.12, 5123.01, 5123.012, 5123.02, 5123.021, 5123.03, 5123.031, 5123.032, 5123.033, 5123.04, 5123.042, 5123.043, 5123.044, 5123.046, 5123.047, 5123.048, 5123.049, 5123.0410, 5123.0411, 5123.0412, 5123.0413, 5123.0414, 5123.0415, 5123.0416, 5123.0417, 5123.05, 5123.051, 5123.06, 5123.07, 5123.08, 5123.081, 5123.082, 5123.083, 5123.09, 5123.091, 5123.092, 5123.093, 5123.10, 5123.11, 5123.12, 5123.122, 5123.13, 5123.14, 5123.15, 5123.16, 5123.161, 5123.162, 5123.163, 5123.164, 5123.166, 5123.167, 5123.168, 5123.169, 5123.17, 5123.171, 5123.172, 5123.18, 5123.181, 5123.19, 5123.191, 5123.194, 5123.195, 5123.196, 5123.198, 5123.21, 5123.211, 5123.22, 5123.221, 5123.23, 5123.24, 5123.25, 5123.26, 5123.27, 5123.28, 5123.29, 5123.30, 5123.31, 5123.33, 5123.34, 5123.35, 5123.351, 5123.352, 5123.36, 5123.37, 5123.371, 5123.372, 5123.373, 5123.374, 5123.375, 5123.38, 5123.40, 5123.41, 5123.42, 5123.421, 5123.43, 5123.44, 5123.45, 5123.451, 5123.47, 5123.50, 5123.51, 5123.52, 5123.53, 5123.54, 5123.541, 5123.542, 5123.55, 5123.56, 5123.57, 5123.58, 5123.59, 5123.60, 5123.601, 5123.602, 5123.604, 5123.61, 5123.611, 5123.612, 5123.613, 5123.614, 5123.63,

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Sec. 9.239. (A) There is hereby created the government contracting advisory council. The attorney general and auditor of state shall consult with the council on the performance of their rule-making functions under sections 9.237 and 9.238 of the Revised Code and shall consider any recommendations of the council. The director of job and family services

shall annually report to the council the cost methodology of the medicaid-funded services described in division (A)(3)(d) of section 9.231 of the Revised Code. The council shall consist of the following members or their designees:

- (1) The attorney general;
- (2) The auditor of state;
- (3) The director of administrative services;
- (4) The director of aging;
- (5) The director of alcohol and drug addiction services;
- (6) The director of budget and management;
- (7) The director of development;
- (8) The director of job and family services;
- (9) The director of mental health;
- (10) The director of ~~mental retardation~~ and developmental disabilities;
- (11) The director of rehabilitation and correction;
- (12) The administrator of workers' compensation;
- (13) The executive director of the county commissioners' association of Ohio;
- (14) The president of the Ohio grantmakers forum;
- (15) The president of the Ohio chamber of commerce;
- (16) The president of the Ohio state bar association;
- (17) The president of the Ohio society of certified public accountants;
- (18) The executive director of the Ohio association of nonprofit organizations;
- (19) The president of the Ohio united way;
- (20) One additional member appointed by the attorney general;
- (21) One additional member appointed by the auditor of state.

(B) If an agency or organization represented on the council ceases to exist in the form it has on ~~the effective date of this section~~ September 29, 2005, the successor agency or organization shall be represented in its place. If there is no successor agency or organization, or if it is not clear what agency or organization is the successor, the attorney general shall designate an agency or organization to be represented in place of the agency or organization originally represented on the council.

(C) The two members appointed to the council shall serve three-year terms. Original appointments shall be made not later than sixty days after ~~the effective date of this section~~ September 29, 2005. Vacancies on the council shall be filled in the same manner as the original appointment.

(D) The attorney general or the attorney general's designee shall be the chairperson of the council. The council shall meet at least once every two

years to review the rules adopted under sections 9.237 and 9.238 of the Revised Code and to make recommendations to the attorney general and auditor of state regarding the adoption, amendment, or repeal of those rules. The council shall also meet at other times as requested by the attorney general or auditor of state.

(E) Members of the council shall serve without compensation or reimbursement.

(F) The office of the attorney general shall provide necessary staff, facilities, supplies, and services to the council.

(G) Sections 101.82 to 101.87 of the Revised Code do not apply to the council.

Sec. 9.55. (A) As used in this section, "state agency" means the house of representatives, the senate, the governor, the secretary of state, the auditor of state, the treasurer of state, the attorney general, the department of job and family services, the department of commerce, the department of ~~mental retardation~~ and developmental disabilities, the department of education, the department of health, the department of aging, the governor's office of advocacy for disabled persons, and the civil rights commission.

(B) Each state agency shall install in its offices at least one teletypewriter designed to receive printed messages from and transmit printed messages to deaf or hearing-impaired persons.

Sec. 101.37. (A) There is hereby created the joint council on ~~mental retardation~~ and developmental disabilities. The joint council shall consist of three members of the house of representatives appointed by the speaker of the house of representatives, not more than two of whom shall be members of the same political party, three members of the senate appointed by the president of the senate, not more than two of whom shall be members of the same political party, and the director of ~~mental retardation~~ and developmental disabilities. At least one member of the joint council appointed by the speaker of the house of representatives and at least one member appointed by the president of the senate shall be a member of the house or senate committee with primary responsibility for appropriation issues and at least one member appointed by the speaker and at least one member appointed by the president shall be a member of the house or senate committee with primary responsibility for human services issues.

Members of the joint council shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties, provided that reimbursement for such expenses shall not exceed limits imposed upon the department of ~~mental retardation~~ and developmental disabilities by administrative rules regulating travel within this state.

Members shall receive no other compensation.

The joint council shall organize itself within fifteen days after the commencement of each regular session of the general assembly by electing a chairperson and vice-chairperson. The joint council may meet upon the call of the chairperson, the director, or on the request of any three members.

Members of the joint council who are appointed from the general assembly shall serve until the expiration of their terms in the general assembly. Any vacancies occurring among the general assembly members of the joint council shall be filled in the manner of the original appointment.

(B) The joint council shall do all of the following:

(1) Appoint the original members of the citizen's advisory council at any institution under the control of the department of ~~mental retardation and~~ developmental disabilities that is created after November 15, 1981;

(2) Make final determinations in any dispute between the director of ~~mental retardation and~~ developmental disabilities and a citizen's advisory council concerning the appointment of members to the citizen's advisory council, as provided for in section 5123.092 of the Revised Code;

(3) Receive reports from citizen's advisory councils on or before the thirty-first day of January of each year, as required by section 5123.093 of the Revised Code;

(4) Receive reports as appropriate concerning extenuating circumstances at institutions under the control of the department of ~~mental retardation and~~ developmental disabilities;

(5) Conduct reviews and make recommendations to the director of ~~mental retardation and~~ developmental disabilities with respect to any disputes between the department of ~~mental retardation and~~ developmental disabilities and entities that have entered into contracts with the department for the provision of protective services to individuals with mental retardation or developmental disabilities;

(6) Provide the director of ~~mental retardation and~~ developmental disabilities with advice on legislative and fiscal issues affecting the department of ~~mental retardation and~~ developmental disabilities, county boards of ~~mental retardation and~~ developmental disabilities, persons with mental retardation or developmental disabilities, and providers of services to persons with mental retardation or developmental disabilities and on related issues the director requests the joint council to address;

(7) On behalf of the director of ~~mental retardation and~~ developmental disabilities, advocate to the general assembly legislative issues about which the joint council has provided advice to the director.

(C) Reports and any correspondence received by the joint council shall

be deposited with the legislative service commission, which shall retain them for not less than three years after the date of deposit.

Sec. 101.39. (A) There is hereby created the joint legislative committee on health care oversight. The committee may review or study any matter related to the provision of health care services that it considers of significance to the citizens of this state, including the availability of health care, the quality of health care, the effectiveness and efficiency of managed care systems, and the operation of the medical assistance program established under Chapter 5111. of the Revised Code or other government health programs.

The department of job and family services, department of health, department of aging, department of mental health, department of ~~mental retardation~~ and developmental disabilities, department of alcohol and drug addiction services, and other state agencies shall cooperate with the committee in its study and review of health care issues. On request, the departments shall provide the committee with reports and other information sufficient for the committee to fulfill its duties.

The committee may issue recommendations as it determines appropriate. The recommendations may be made to the general assembly, state agencies, private industry, or any other entity.

(B) The committee shall consist of the following members of the general assembly: the chairperson of the senate's standing committee with primary responsibility for health legislation, the chairperson of the house of representatives' standing committee with primary responsibility for health legislation, four members of the house of representatives appointed by the speaker of the house of representatives, and four members of the senate appointed by the president of the senate. Not more than two members appointed by the speaker of the house of representatives and not more than two members appointed by the president of the senate may be of the same political party. Except in 1995, appointments shall be made not later than fifteen days after the commencement of the first regular session of each general assembly. The chairpersons of the standing committees with primary responsibility for health legislation shall serve as co-chairpersons of the committee.

Each member of the committee shall hold office during the general assembly in which the member is appointed and until a successor has been appointed, notwithstanding the adjournment sine die of the general assembly in which the member was appointed or the expiration of the member's term as a member of the general assembly. Any vacancies occurring among the members of the committee shall be filled in the manner of the original

appointment.

The committee shall meet at least quarterly and at the call of the co-chairpersons. The co-chairpersons shall determine the time, place, and agenda for each meeting of the committee.

The committee has the same powers as other standing or select committees of the general assembly. The committee may request assistance from the legislative service commission ~~and the legislative budget office of the legislative service commission.~~

Sec. 107.12. (A) As used in this section, "organization" means a faith-based or other organization that is exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended, and provides charitable services to needy residents of this state.

(B) There is hereby established within the office of the governor the governor's office of faith-based and community initiatives. The office shall:

(1) Serve as a clearinghouse of information on federal, state, and local funding for charitable services performed by organizations;

(2) Encourage organizations to seek public funding for their charitable services;

(3) Assist local, state, and federal agencies in coordinating their activities to secure maximum use of funds and efforts that benefit people receiving charitable services from organizations;

(4) Advise the governor, general assembly, and the advisory board of the governor's office of faith-based and community initiatives on the barriers that exist to collaboration between organizations and governmental entities and on ways to remove the barriers.

(C) The governor shall appoint an executive director and such other staff as may be necessary to manage the office and perform or oversee the performance of the duties of the office. Within sixty days after being appointed, and every twelve months thereafter, the executive director shall distribute to the advisory board and review with the board a strategic plan. The executive director shall report to the board at least quarterly on proposed initiatives and policies. A report shall include the condition of the budget and the finances of the office.

(D)(1) There is hereby created the advisory board of the governor's office of faith-based and community initiatives. The board shall consist of the following members:

(a) The directors of aging, alcohol and drug addiction services, rehabilitation and correction, health, job and family services, ~~mental retardation~~ and developmental disabilities, mental health, and youth

services, or their designees;

(b) The speaker of the house of representatives shall appoint to the board two members of the house of representatives, not more than one of whom shall be from the same political party and at least one of whom shall be from the legislative black caucus. The president of the senate shall appoint to the board two members of the senate, not more than one of whom shall be from the same political party.

(c) The governor, the speaker of the house of representatives, and the president of the senate shall each appoint to the board three representatives of the nonprofit, faith-based and other nonprofit community.

(2) Terms of the office shall be one year. Any vacancy that occurs on the board shall be filled in the same manner as the original appointment.

(3) Members of the board are not entitled to compensation, but the members appointed by the governor, the speaker of the house of representatives, and the president of the senate who are representatives of the nonprofit, faith-based and other nonprofit community shall be reimbursed for their actual and necessary expenses that are incurred in relation to board meetings.

(4) The board shall be presided over by a chairperson and a vice-chairperson, who shall be the members of the board who are also members of the house of representatives or the senate. Annually on the first day of January, the chairpersonship and vice-chairpersonship shall alternate between the members of the house of representatives and the senate.

(E) The board shall have the following duties:

(1) Provide direction, guidance, and oversight to the office;

(2) Assist in the dissemination of information about, and in the stimulation of public awareness of, the service programs supported by the office;

(3) Review the budget and finances of the office, proposed initiatives and policies, and the executive director's annual strategic plan at board meetings;

(4) Provide feedback for and proposed modifications of the executive director's strategic plan. Within forty-five days after submitting a strategic plan, the executive director shall contact each advisory board member to obtain feedback. With the approval of the advisory board chairperson, the executive director shall lead a strategic plan discussion at the first board meeting following the distribution of the strategic plan.

(5) Publish a report of its activities and accomplishments on or before the first day of August of each year, and deliver copies of the report to the governor, the speaker and minority leader of the house of representatives,

and the president and minority leader of the senate.

(F) No member of the board or organization that the member is affiliated or involved with is eligible to receive any grant that the office administers or assists in administering.

Sec. 109.57. (A)(1) The superintendent of the bureau of criminal identification and investigation shall procure from wherever procurable and file for record photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent of all persons who have been convicted of committing within this state a felony, any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or any misdemeanor described in division (A)(1)(a), (A)(8)(a), or (A)(10)(a) of section 109.572 of the Revised Code, of all children under eighteen years of age who have been adjudicated delinquent children for committing within this state an act that would be a felony or an offense of violence if committed by an adult or who have been convicted of or pleaded guilty to committing within this state a felony or an offense of violence, and of all well-known and habitual criminals. The person in charge of any county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution and the person in charge of any state institution having custody of a person suspected of having committed a felony, any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or any misdemeanor described in division (A)(1)(a), (A)(8)(a), or (A)(10)(a) of section 109.572 of the Revised Code or having custody of a child under eighteen years of age with respect to whom there is probable cause to believe that the child may have committed an act that would be a felony or an offense of violence if committed by an adult shall furnish such material to the superintendent of the bureau. Fingerprints, photographs, or other descriptive information of a child who is under eighteen years of age, has not been arrested or otherwise taken into custody for committing an act that would be a felony or an offense of violence who is not in any other category of child specified in this division, if committed by an adult, has not been adjudicated a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult, has not been convicted of or pleaded guilty to committing a felony or an offense of violence, and is not a child with respect to whom there is probable cause to believe that the child may have committed an act that would be a felony or an offense of violence if committed by an adult shall not be procured by the superintendent or furnished by any person in charge of any county, multicounty, municipal,

municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution, except as authorized in section 2151.313 of the Revised Code.

(2) Every clerk of a court of record in this state, other than the supreme court or a court of appeals, shall send to the superintendent of the bureau a weekly report containing a summary of each case involving a felony, involving any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, involving a misdemeanor described in division (A)(1)(a), (A)(8)(a), or (A)(10)(a) of section 109.572 of the Revised Code, or involving an adjudication in a case in which a child under eighteen years of age was alleged to be a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult. The clerk of the court of common pleas shall include in the report and summary the clerk sends under this division all information described in divisions (A)(2)(a) to (f) of this section regarding a case before the court of appeals that is served by that clerk. The summary shall be written on the standard forms furnished by the superintendent pursuant to division (B) of this section and shall include the following information:

(a) The incident tracking number contained on the standard forms furnished by the superintendent pursuant to division (B) of this section;

(b) The style and number of the case;

(c) The date of arrest, offense, summons, or arraignment;

(d) The date that the person was convicted of or pleaded guilty to the offense, adjudicated a delinquent child for committing the act that would be a felony or an offense of violence if committed by an adult, found not guilty of the offense, or found not to be a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult, the date of an entry dismissing the charge, an entry declaring a mistrial of the offense in which the person is discharged, an entry finding that the person or child is not competent to stand trial, or an entry of a nolle prosequi, or the date of any other determination that constitutes final resolution of the case;

(e) A statement of the original charge with the section of the Revised Code that was alleged to be violated;

(f) If the person or child was convicted, pleaded guilty, or was adjudicated a delinquent child, the sentence or terms of probation imposed or any other disposition of the offender or the delinquent child.

If the offense involved the disarming of a law enforcement officer or an attempt to disarm a law enforcement officer, the clerk shall clearly state that

fact in the summary, and the superintendent shall ensure that a clear statement of that fact is placed in the bureau's records.

(3) The superintendent shall cooperate with and assist sheriffs, chiefs of police, and other law enforcement officers in the establishment of a complete system of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on a charge of a felony, any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or a misdemeanor described in division (A)(1)(a), (A)(8)(a), or (A)(10)(a) of section 109.572 of the Revised Code and of all children under eighteen years of age arrested or otherwise taken into custody for committing an act that would be a felony or an offense of violence if committed by an adult. The superintendent also shall file for record the fingerprint impressions of all persons confined in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution for the violation of state laws and of all children under eighteen years of age who are confined in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution or in any facility for delinquent children for committing an act that would be a felony or an offense of violence if committed by an adult, and any other information that the superintendent may receive from law enforcement officials of the state and its political subdivisions.

(4) The superintendent shall carry out Chapter 2950. of the Revised Code with respect to the registration of persons who are convicted of or plead guilty to a sexually oriented offense or a child-victim oriented offense and with respect to all other duties imposed on the bureau under that chapter.

(5) The bureau shall perform centralized recordkeeping functions for criminal history records and services in this state for purposes of the national crime prevention and privacy compact set forth in section 109.571 of the Revised Code and is the criminal history record repository as defined in that section for purposes of that compact. The superintendent or the superintendent's designee is the compact officer for purposes of that compact and shall carry out the responsibilities of the compact officer specified in that compact.

(B) The superintendent shall prepare and furnish to every county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house,

alternative residential facility, or state correctional institution and to every clerk of a court in this state specified in division (A)(2) of this section standard forms for reporting the information required under division (A) of this section. The standard forms that the superintendent prepares pursuant to this division may be in a tangible format, in an electronic format, or in both tangible formats and electronic formats.

(C)(1) The superintendent may operate a center for electronic, automated, or other data processing for the storage and retrieval of information, data, and statistics pertaining to criminals and to children under eighteen years of age who are adjudicated delinquent children for committing an act that would be a felony or an offense of violence if committed by an adult, criminal activity, crime prevention, law enforcement, and criminal justice, and may establish and operate a statewide communications network to gather and disseminate information, data, and statistics for the use of law enforcement agencies and for other uses specified in this division. The superintendent may gather, store, retrieve, and disseminate information, data, and statistics that pertain to children who are under eighteen years of age and that are gathered pursuant to sections 109.57 to 109.61 of the Revised Code together with information, data, and statistics that pertain to adults and that are gathered pursuant to those sections.

(2) The superintendent or the superintendent's designee shall gather information of the nature described in division (C)(1) of this section that pertains to the offense and delinquency history of a person who has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense for inclusion in the state registry of sex offenders and child-victim offenders maintained pursuant to division (A)(1) of section 2950.13 of the Revised Code and in the internet database operated pursuant to division (A)(13) of that section and for possible inclusion in the internet database operated pursuant to division (A)(11) of that section.

(3) In addition to any other authorized use of information, data, and statistics of the nature described in division (C)(1) of this section, the superintendent or the superintendent's designee may provide and exchange the information, data, and statistics pursuant to the national crime prevention and privacy compact as described in division (A)(5) of this section.

(D) The information and materials furnished to the superintendent pursuant to division (A) of this section and information and materials furnished to any board or person under division (F) or (G) of this section are not public records under section 149.43 of the Revised Code. The

superintendent or the superintendent's designee shall gather and retain information so furnished under division (A) of this section that pertains to the offense and delinquency history of a person who has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense for the purposes described in division (C)(2) of this section.

(E) The attorney general shall adopt rules, in accordance with Chapter 119. of the Revised Code, setting forth the procedure by which a person may receive or release information gathered by the superintendent pursuant to division (A) of this section. A reasonable fee may be charged for this service. If a temporary employment service submits a request for a determination of whether a person the service plans to refer to an employment position has been convicted of or pleaded guilty to an offense listed in division (A)(1), (3), (4), (5), or (6) of section 109.572 of the Revised Code, the request shall be treated as a single request and only one fee shall be charged.

(F)(1) As used in division (F)(2) of this section, "head start agency" means an entity in this state that has been approved to be an agency for purposes of subchapter II of the "Community Economic Development Act," 95 Stat. 489 (1981), 42 U.S.C.A. 9831, as amended.

(2)(a) In addition to or in conjunction with any request that is required to be made under section 109.572, 2151.86, 3301.32, 3301.541, 3319.39, 3319.391, 3327.10, 3701.881, 5104.012, 5104.013, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code or that is made under section 3314.41, 3319.392, or 3326.25 of the Revised Code, the board of education of any school district; the director of ~~mental retardation and~~ developmental disabilities; any county board of ~~mental retardation and~~ developmental disabilities; any entity under contract with a county board of ~~mental retardation and~~ developmental disabilities; the chief administrator of any chartered nonpublic school; the chief administrator of any home health agency; the chief administrator of or person operating any child day-care center, type A family day-care home, or type B family day-care home licensed or certified under Chapter 5104. of the Revised Code; the administrator of any type C family day-care home certified pursuant to Section 1 of Sub. H.B. 62 of the 121st general assembly or Section 5 of Am. Sub. S.B. 160 of the 121st general assembly; the chief administrator of any head start agency; the executive director of a public children services agency; a private company described in section 3314.41, 3319.392, or 3326.25 of the Revised Code; or an employer described in division (J)(2) of section 3327.10 of the Revised Code may request that the superintendent of

the bureau investigate and determine, with respect to any individual who has applied for employment in any position after October 2, 1989, or any individual wishing to apply for employment with a board of education may request, with regard to the individual, whether the bureau has any information gathered under division (A) of this section that pertains to that individual. On receipt of the request, the superintendent shall determine whether that information exists and, upon request of the person, board, or entity requesting information, also shall request from the federal bureau of investigation any criminal records it has pertaining to that individual. The superintendent or the superintendent's designee also may request criminal history records from other states or the federal government pursuant to the national crime prevention and privacy compact set forth in section 109.571 of the Revised Code. Within thirty days of the date that the superintendent receives a request, the superintendent shall send to the board, entity, or person a report of any information that the superintendent determines exists, including information contained in records that have been sealed under section 2953.32 of the Revised Code, and, within thirty days of its receipt, shall send the board, entity, or person a report of any information received from the federal bureau of investigation, other than information the dissemination of which is prohibited by federal law.

(b) When a board of education is required to receive information under this section as a prerequisite to employment of an individual pursuant to section 3319.39 of the Revised Code, it may accept a certified copy of records that were issued by the bureau of criminal identification and investigation and that are presented by an individual applying for employment with the district in lieu of requesting that information itself. In such a case, the board shall accept the certified copy issued by the bureau in order to make a photocopy of it for that individual's employment application documents and shall return the certified copy to the individual. In a case of that nature, a district only shall accept a certified copy of records of that nature within one year after the date of their issuance by the bureau.

(3) The state board of education may request, with respect to any individual who has applied for employment after October 2, 1989, in any position with the state board or the department of education, any information that a school district board of education is authorized to request under division (F)(2) of this section, and the superintendent of the bureau shall proceed as if the request has been received from a school district board of education under division (F)(2) of this section.

(4) When the superintendent of the bureau receives a request for information under section 3319.291 of the Revised Code, the superintendent

shall proceed as if the request has been received from a school district board of education under division (F)(2) of this section.

(5) When a recipient of a classroom reading improvement grant paid under section 3301.86 of the Revised Code requests, with respect to any individual who applies to participate in providing any program or service funded in whole or in part by the grant, the information that a school district board of education is authorized to request under division (F)(2)(a) of this section, the superintendent of the bureau shall proceed as if the request has been received from a school district board of education under division (F)(2)(a) of this section.

(G) In addition to or in conjunction with any request that is required to be made under section 3701.881, 3712.09, 3721.121, or 3722.151 of the Revised Code with respect to an individual who has applied for employment in a position that involves providing direct care to an older adult, the chief administrator of a home health agency, hospice care program, home licensed under Chapter 3721. of the Revised Code, adult day-care program operated pursuant to rules adopted under section 3721.04 of the Revised Code, or adult care facility may request that the superintendent of the bureau investigate and determine, with respect to any individual who has applied after January 27, 1997, for employment in a position that does not involve providing direct care to an older adult, whether the bureau has any information gathered under division (A) of this section that pertains to that individual.

In addition to or in conjunction with any request that is required to be made under section 173.27 of the Revised Code with respect to an individual who has applied for employment in a position that involves providing ombudsperson services to residents of long-term care facilities or recipients of community-based long-term care services, the state long-term care ombudsperson, ombudsperson's designee, or director of health may request that the superintendent investigate and determine, with respect to any individual who has applied for employment in a position that does not involve providing such ombudsperson services, whether the bureau has any information gathered under division (A) of this section that pertains to that applicant.

In addition to or in conjunction with any request that is required to be made under section 173.394 of the Revised Code with respect to an individual who has applied for employment in a position that involves providing direct care to an individual, the chief administrator of a community-based long-term care agency may request that the superintendent investigate and determine, with respect to any individual

who has applied for employment in a position that does not involve providing direct care, whether the bureau has any information gathered under division (A) of this section that pertains to that applicant.

On receipt of a request under this division, the superintendent shall determine whether that information exists and, on request of the individual requesting information, shall also request from the federal bureau of investigation any criminal records it has pertaining to the applicant. The superintendent or the superintendent's designee also may request criminal history records from other states or the federal government pursuant to the national crime prevention and privacy compact set forth in section 109.571 of the Revised Code. Within thirty days of the date a request is received, the superintendent shall send to the requester a report of any information determined to exist, including information contained in records that have been sealed under section 2953.32 of the Revised Code, and, within thirty days of its receipt, shall send the requester a report of any information received from the federal bureau of investigation, other than information the dissemination of which is prohibited by federal law.

(H) Information obtained by a government entity or person under this section is confidential and shall not be released or disseminated.

(I) The superintendent may charge a reasonable fee for providing information or criminal records under division (F)(2) or (G) of this section.

(J) As used in this section, "sexually oriented offense" and "child-victim oriented offense" have the same meanings as in section 2950.01 of the Revised Code.

Sec. 109.572. (A)(1) Upon receipt of a request pursuant to section 121.08, 3301.32, 3301.541, or 3319.39 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05,

2925.06, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, or a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense;

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

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

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2903.341, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, or 3716.11 of the Revised Code;

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

(3) On receipt of a request pursuant to section 173.27, 173.394, 3712.09, 3721.121, or 3722.151 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint

impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check with respect to any person who has applied for employment in a position for which a criminal records check is required by those sections. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

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

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

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

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

possession offense;

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

(5) On receipt of a request pursuant to section 5111.032, 5111.033, or 5111.034 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.24, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.48, 2913.49, 2913.51, 2917.11, 2919.12, 2919.22, 2919.24, 2919.25, 2921.13, 2921.36, 2923.02, 2923.12, 2923.13, 2923.161, 2923.32, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.14, 2925.22, 2925.23, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date;

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

(6) On receipt of a request pursuant to section 3701.881 of the Revised Code with respect to an applicant for employment with a home health agency in a position that involves providing direct care to an older adult, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal

identification and investigation shall conduct a criminal records check. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

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

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

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

(8) On receipt of a request pursuant to section 2151.86 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 959.13, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.16, 2903.21, 2903.211, 2903.22, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.22, 2909.23, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12, 2913.49, 2917.01, 2917.02, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13,

2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2927.12, or 3716.11 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense, two or more OVI or OVUAC violations committed within the three years immediately preceding the submission of the application or petition that is the basis of the request, or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(8)(a) of this section.

(9) Upon receipt of a request pursuant to section 5104.012 or 5104.013 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.22, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2913.02, 2913.03, 2913.04, 2913.041, 2913.05, 2913.06, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.34, 2913.40, 2913.41, 2913.42, 2913.43, 2913.44, 2913.441, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2919.12, 2919.22, 2919.24, 2919.25, 2921.11, 2921.13, 2923.01, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense, a violation of section 2923.02 or

2923.03 of the Revised Code that relates to a crime specified in this division, or a second violation of section 4511.19 of the Revised Code within five years of the date of application for licensure or certification.

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in division (A)(9)(a) of this section.

(10) Upon receipt of a request pursuant to section 5153.111 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, or a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense;

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(10)(a) of this section.

(11) On receipt of a request for a criminal records check from an individual pursuant to section 4749.03 or 4749.06 of the Revised Code, accompanied by a completed copy of the form prescribed in division (C)(1) of this section and a set of fingerprint impressions obtained in a manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists indicating that the person who is the subject

of the request has been convicted of or pleaded guilty to a felony in this state or in any other state. If the individual indicates that a firearm will be carried in the course of business, the superintendent shall require information from the federal bureau of investigation as described in division (B)(2) of this section. The superintendent shall report the findings of the criminal records check and any information the federal bureau of investigation provides to the director of public safety.

(12) On receipt of a request pursuant to section 1321.37, 1322.03, 1322.031, or 4763.05 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check with respect to any person who has applied for a license, permit, or certification from the department of commerce or a division in the department. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following: a violation of section 2913.02, 2913.11, 2913.31, 2913.51, or 2925.03 of the Revised Code; any other criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities, as set forth in Chapters 2909., 2911., 2913., 2915., 2921., 2923., and 2925. of the Revised Code; or any existing or former law of this state, any other state, or the United States that is substantially equivalent to those offenses.

(13) On receipt of a request for a criminal records check from the treasurer of state under section 113.041 of the Revised Code or from an individual under section 4701.08, 4715.101, 4717.061, 4725.121, 4725.501, 4729.071, 4730.101, 4730.14, 4730.28, 4731.081, 4731.15, 4731.171, 4731.222, 4731.281, 4731.296, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 4755.70, 4757.101, 4759.061, 4760.032, 4760.06, 4761.051, 4762.031, 4762.06, or 4779.091 of the Revised Code, accompanied by a completed form prescribed under division (C)(1) of this section and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request has been convicted of or pleaded guilty to any criminal offense in

this state or any other state. The superintendent shall send the results of a check requested under section 113.041 of the Revised Code to the treasurer of state and shall send the results of a check requested under any of the other listed sections to the licensing board specified by the individual in the request.

(14) On receipt of a request pursuant to section 1121.23, 1155.03, 1163.05, 1315.141, 1733.47, or 1761.26 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any criminal offense under any existing or former law of this state, any other state, or the United States.

(15) Not later than thirty days after the date the superintendent receives a request of a type described in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), or (14) of this section, the completed form, and the fingerprint impressions, the superintendent shall send the person, board, or entity that made the request any information, other than information the dissemination of which is prohibited by federal law, the superintendent determines exists with respect to the person who is the subject of the request that indicates that the person previously has been convicted of or pleaded guilty to any offense listed or described in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), or (14) of this section, as appropriate. The superintendent shall send the person, board, or entity that made the request a copy of the list of offenses specified in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), or (14) 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 (6) of this section.

Not later than thirty days after the superintendent receives a request for a criminal records check pursuant to section 113.041 of the Revised Code, the completed form, and the fingerprint impressions, the superintendent shall send the treasurer of state any information, other than information the dissemination of which is prohibited by federal law, the superintendent determines exist 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 criminal offense in this state or any other state.

(B) The superintendent shall conduct any criminal records check requested under section 113.041, 121.08, 173.27, 173.394, 1121.23, 1155.03, 1163.05, 1315.141, 1322.03, 1322.031, 1733.47, 1761.26, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 4701.08, 4715.101, 4717.061, 4725.121, 4725.501, 4729.071, 4730.101, 4730.14, 4730.28, 4731.081, 4731.15, 4731.171, 4731.222, 4731.281, 4731.296, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 4749.03, 4749.06, 4755.70, 4757.101, 4759.061, 4760.032, 4760.06, 4761.051, 4762.031, 4762.06, 4763.05, 4779.091, 5104.012, 5104.013, 5111.032, 5111.033, 5111.034, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code as follows:

(1) The superintendent shall review or cause to be reviewed any relevant information gathered and compiled by the bureau under division (A) of section 109.57 of the Revised Code that relates to the person who is the subject of the request, including, if the criminal records check was requested under section 113.041, 121.08, 173.27, 173.394, 1121.23, 1155.03, 1163.05, 1315.141, 1321.37, 1322.03, 1322.031, 1733.47, 1761.26, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 4749.03, 4749.06, 4763.05, 5104.012, 5104.013, 5111.032, 5111.033, 5111.034, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code, any relevant information contained in records that have been sealed under section 2953.32 of the Revised Code;

(2) If the request received by the superintendent asks for information from the federal bureau of investigation, the superintendent shall request from the federal bureau of investigation any information it has with respect to the person who is the subject of the request, including fingerprint-based checks of national crime information databases as described in 42 U.S.C. 671 if the request is made pursuant to section 2151.86, 5104.012, or 5104.013 of the Revised Code or if any other Revised Code section requires fingerprint-based checks of that nature, and shall review or cause to be reviewed any information the superintendent receives from that bureau.

(3) The superintendent or the superintendent's designee may request criminal history records from other states or the federal government pursuant to the national crime prevention and privacy compact set forth in section 109.571 of the Revised Code.

(C)(1) The superintendent shall prescribe a form to obtain the information necessary to conduct a criminal records check from any person for whom a criminal records check is requested under section 113.041 of the

Revised Code or required by section 121.08, 173.27, 173.394, 1121.23, 1155.03, 1163.05, 1315.141, 1322.03, 1322.031, 1733.47, 1761.26, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 4701.08, 4715.101, 4717.061, 4725.121, 4725.501, 4729.071, 4730.101, 4730.14, 4730.28, 4731.081, 4731.15, 4731.171, 4731.222, 4731.281, 4731.296, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 4749.03, 4749.06, 4755.70, 4757.101, 4759.061, 4760.032, 4760.06, 4761.051, 4762.031, 4762.06, 4763.05, 4779.091, 5104.012, 5104.013, 5111.032, 5111.033, 5111.034, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code. The form that the superintendent prescribes pursuant to this division may be in a tangible format, in an electronic format, or in both tangible and electronic formats.

(2) The superintendent shall prescribe standard impression sheets to obtain the fingerprint impressions of any person for whom a criminal records check is requested under section 113.041 of the Revised Code or required by section 121.08, 173.27, 173.394, 1121.23, 1155.03, 1163.05, 1315.141, 1322.03, 1322.031, 1733.47, 1761.26, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 4701.08, 4715.101, 4717.061, 4725.121, 4725.501, 4729.071, 4730.101, 4730.14, 4730.28, 4731.081, 4731.15, 4731.171, 4731.222, 4731.281, 4731.296, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 4749.03, 4749.06, 4755.70, 4757.101, 4759.061, 4760.032, 4760.06, 4761.051, 4762.031, 4762.06, 4763.05, 4779.091, 5104.012, 5104.013, 5111.032, 5111.033, 5111.034, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code. Any person for whom a records check is requested under or 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 113.041, 121.08, 173.27, 173.394, 1121.23, 1155.03, 1163.05, 1315.141, 1322.03, 1322.031, 1733.47, 1761.26, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 4701.08, 4715.101, 4717.061, 4725.121, 4725.501, 4729.071, 4730.101, 4730.14, 4730.28, 4731.081, 4731.15, 4731.171, 4731.222, 4731.281,

4731.296, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 4749.03, 4749.06, 4755.70, 4757.101, 4759.061, 4760.032, 4760.06, 4761.051, 4762.031, 4762.06, 4763.05, 4779.091, 5104.012, 5104.013, 5111.032, 5111.033, 5111.034, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code. The person making a criminal records request under any of those sections 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. In the case of a request under section 1121.23, 1155.03, 1163.05, 1315.141, 1733.47, 1761.26, or 5111.032 of the Revised Code, the fee shall be paid in the manner specified in that section.

(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)(a) or (b), (A)(7), (A)(8)(a) or (b), (A)(9)(a) or (b), (A)(10)(a) or (b), (A)(12), or (A)(14) of this section, or that indicates that a person previously has been convicted of or pleaded guilty to any criminal offense in this state or any other state regarding a criminal records check of a type described in division (A)(13) of this section, and 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.

(4) "OVI or OVUAC violation" means a violation of section 4511.19 of the Revised Code or a violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to section 4511.19 of the Revised Code.

Sec. 109.71. There is hereby created in the office of the attorney general the Ohio peace officer training commission. The commission shall consist of nine members appointed by the governor with the advice and consent of the senate and selected as follows: one member representing the public; two members who are incumbent sheriffs; two members who are incumbent chiefs of police; one member from the bureau of criminal identification and investigation; one member from the state highway patrol; one member who is the special agent in charge of a field office of the federal bureau of investigation in this state; and one member from the department of education, trade and industrial education services, law enforcement training.

This section does not confer any arrest authority or any ability or authority to detain a person, write or issue any citation, or provide any disposition alternative, as granted under Chapter 2935. of the Revised Code.

As used in sections 109.71 to 109.801 of the Revised Code:

(A) "Peace officer" means:

(1) A deputy sheriff, marshal, deputy marshal, member of the organized police department of a township or municipal corporation, member of a township police district or joint township police district police force, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or township constable, who is commissioned and employed as a peace officer by a political subdivision of this state or by a metropolitan housing authority, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of this state, ordinances of a municipal corporation, resolutions of a township, or regulations of a board of county commissioners or board of township trustees, or any of those laws, ordinances, resolutions, or regulations;

(2) A police officer who is employed by a railroad company and appointed and commissioned by the secretary of state pursuant to sections 4973.17 to 4973.22 of the Revised Code;

(3) Employees of the department of taxation engaged in the enforcement of Chapter 5743. of the Revised Code and designated by the tax commissioner for peace officer training for purposes of the delegation of investigation powers under section 5743.45 of the Revised Code;

(4) An undercover drug agent;

(5) Enforcement agents of the department of public safety whom the director of public safety designates under section 5502.14 of the Revised Code;

(6) An employee of the department of natural resources who is a natural resources law enforcement staff officer designated pursuant to section 1501.013, a park officer designated pursuant to section 1541.10, a forest officer designated pursuant to section 1503.29, a preserve officer designated pursuant to section 1517.10, a wildlife officer designated pursuant to section 1531.13, or a state watercraft officer designated pursuant to section 1547.521 of the Revised Code;

(7) An employee of a park district who is designated pursuant to section 511.232 or 1545.13 of the Revised Code;

(8) An employee of a conservancy district who is designated pursuant to section 6101.75 of the Revised Code;

(9) A police officer who is employed by a hospital that employs and maintains its own proprietary police department or security department, and who is appointed and commissioned by the secretary of state pursuant to sections 4973.17 to 4973.22 of the Revised Code;

(10) Veterans' homes police officers designated under section 5907.02 of the Revised Code;

(11) A police officer who is employed by a qualified nonprofit corporation police department pursuant to section 1702.80 of the Revised Code;

(12) A state university law enforcement officer appointed under section 3345.04 of the Revised Code or a person serving as a state university law enforcement officer on a permanent basis on June 19, 1978, who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program;

(13) A special police officer employed by the department of mental health pursuant to section 5119.14 of the Revised Code or the department of ~~mental retardation~~ and developmental disabilities pursuant to section 5123.13 of the Revised Code;

(14) A member of a campus police department appointed under section 1713.50 of the Revised Code;

(15) A member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code;

(16) Investigators appointed by the auditor of state pursuant to section 117.091 of the Revised Code and engaged in the enforcement of Chapter

117. of the Revised Code;

(17) A special police officer designated by the superintendent of the state highway patrol pursuant to section 5503.09 of the Revised Code or a person who was serving as a special police officer pursuant to that section on a permanent basis on October 21, 1997, and who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program;

(18) A special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code or a person serving as a special police officer employed by a port authority on a permanent basis on May 17, 2000, who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program;

(19) A special police officer employed by a municipal corporation who has been awarded a certificate by the executive director of the Ohio peace officer training commission for satisfactory completion of an approved peace officer basic training program and who is employed on a permanent basis on or after March 19, 2003, at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended;

(20) A police officer who is employed by an owner or operator of an amusement park that has an average yearly attendance in excess of six hundred thousand guests and that employs and maintains its own proprietary police department or security department, and who is appointed and commissioned by a judge of the appropriate municipal court or county court pursuant to section 4973.17 of the Revised Code;

(21) A police officer who is employed by a bank, savings and loan association, savings bank, credit union, or association of banks, savings and loan associations, savings banks, or credit unions, who has been appointed and commissioned by the secretary of state pursuant to sections 4973.17 to 4973.22 of the Revised Code, and who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to

the person's satisfactory completion of a state, county, municipal, or department of natural resources peace officer basic training program;

(22) An investigator, as defined in section 109.541 of the Revised Code, of the bureau of criminal identification and investigation who is commissioned by the superintendent of the bureau as a special agent for the purpose of assisting law enforcement officers or providing emergency assistance to peace officers pursuant to authority granted under that section;

(23) A state fire marshal law enforcement officer appointed under section 3737.22 of the Revised Code or a person serving as a state fire marshal law enforcement officer on a permanent basis on or after July 1, 1982, who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program.

(B) "Undercover drug agent" has the same meaning as in division (B)(2) of section 109.79 of the Revised Code.

(C) "Crisis intervention training" means training in the use of interpersonal and communication skills to most effectively and sensitively interview victims of rape.

(D) "Missing children" has the same meaning as in section 2901.30 of the Revised Code.

Sec. 109.77. (A) As used in this section, "felony" has the same meaning as in section 109.511 of the Revised Code.

(B)(1) Notwithstanding any general, special, or local law or charter to the contrary, and except as otherwise provided in this section, no person shall receive an original appointment on a permanent basis as any of the following unless the person previously has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program:

(a) A peace officer of any county, township, municipal corporation, regional transit authority, or metropolitan housing authority;

(b) A natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer of the department of natural resources;

(c) An employee of a park district under section 511.232 or 1545.13 of the Revised Code;

(d) An employee of a conservancy district who is designated pursuant to section 6101.75 of the Revised Code;

(e) A state university law enforcement officer;

(f) A special police officer employed by the department of mental health pursuant to section 5119.14 of the Revised Code or the department of ~~mental retardation and~~ developmental disabilities pursuant to section 5123.13 of the Revised Code;

(g) An enforcement agent of the department of public safety whom the director of public safety designates under section 5502.14 of the Revised Code;

(h) A special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code;

(i) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended.

(2) Every person who is appointed on a temporary basis or for a probationary term or on other than a permanent basis as any of the following shall forfeit the appointed position unless the person previously has completed satisfactorily or, within the time prescribed by rules adopted by the attorney general pursuant to section 109.74 of the Revised Code, satisfactorily completes a state, county, municipal, or department of natural resources peace officer basic training program for temporary or probationary officers and is awarded a certificate by the director attesting to the satisfactory completion of the program:

(a) A peace officer of any county, township, municipal corporation, regional transit authority, or metropolitan housing authority;

(b) A natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer of the department of natural resources;

(c) An employee of a park district under section 511.232 or 1545.13 of the Revised Code;

(d) An employee of a conservancy district who is designated pursuant to section 6101.75 of the Revised Code;

(e) A special police officer employed by the department of mental health pursuant to section 5119.14 of the Revised Code or the department of ~~mental retardation and~~ developmental disabilities pursuant to section 5123.13 of the Revised Code;

(f) An enforcement agent of the department of public safety whom the

director of public safety designates under section 5502.14 of the Revised Code;

(g) A special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code;

(h) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended.

(3) For purposes of division (B) of this section, a state, county, municipal, or department of natural resources peace officer basic training program, regardless of whether the program is to be completed by peace officers appointed on a permanent or temporary, probationary, or other nonpermanent basis, shall include at least fifteen hours of training in the handling of the offense of domestic violence, other types of domestic violence-related offenses and incidents, and protection orders and consent agreements issued or approved under section 2919.26 or 3113.31 of the Revised Code and at least six hours of crisis intervention training. The requirement to complete fifteen hours of training in the handling of the offense of domestic violence, other types of domestic violence-related offenses and incidents, and protection orders and consent agreements issued or approved under section 2919.26 or 3113.31 of the Revised Code does not apply to any person serving as a peace officer on March 27, 1979, and the requirement to complete six hours of training in crisis intervention does not apply to any person serving as a peace officer on April 4, 1985. Any person who is serving as a peace officer on April 4, 1985, who terminates that employment after that date, and who subsequently is hired as a peace officer by the same or another law enforcement agency shall complete the six hours of training in crisis intervention within the time prescribed by rules adopted by the attorney general pursuant to section 109.742 of the Revised Code. No peace officer shall have employment as a peace officer terminated and then be reinstated with intent to circumvent this section.

(4) Division (B) of this section does not apply to any person serving on a permanent basis on March 28, 1985, as a park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer of the department of natural resources or as an employee of a park district under section 511.232 or 1545.13 of the Revised Code, to any person serving on a

permanent basis on March 6, 1986, as an employee of a conservancy district designated pursuant to section 6101.75 of the Revised Code, to any person serving on a permanent basis on January 10, 1991, as a preserve officer of the department of natural resources, to any person employed on a permanent basis on July 2, 1992, as a special police officer by the department of mental health pursuant to section 5119.14 of the Revised Code or by the department of ~~mental retardation and~~ developmental disabilities pursuant to section 5123.13 of the Revised Code, to any person serving on a permanent basis on May 17, 2000, as a special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, to any person serving on a permanent basis on ~~the effective date of this amendment~~ March 19, 2003, as a special police officer employed by a municipal corporation at a municipal airport or other municipal air navigation facility described in division (A)(19) of section 109.71 of the Revised Code, to any person serving on a permanent basis on June 19, 1978, as a state university law enforcement officer pursuant to section 3345.04 of the Revised Code and who, immediately prior to June 19, 1978, was serving as a special police officer designated under authority of that section, or to any person serving on a permanent basis on September 20, 1984, as a liquor control investigator, known after June 30, 1999, as an enforcement agent of the department of public safety, engaged in the enforcement of Chapters 4301. and 4303. of the Revised Code.

(5) Division (B) of this section does not apply to any person who is appointed as a regional transit authority police officer pursuant to division (Y) of section 306.35 of the Revised Code if, on or before July 1, 1996, the person has completed satisfactorily an approved state, county, municipal, or department of natural resources peace officer basic training program and has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of such an approved program and if, on July 1, 1996, the person is performing peace officer functions for a regional transit authority.

(C) No person, after September 20, 1984, shall receive an original appointment on a permanent basis as a veterans' home police officer designated under section 5907.02 of the Revised Code unless the person previously has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of an approved police officer basic training program. Every person who is appointed on a temporary basis or for a probationary term or on other than a permanent basis as a veterans' home police officer designated under section 5907.02 of the Revised Code shall forfeit that

position unless the person previously has completed satisfactorily or, within one year from the time of appointment, satisfactorily completes an approved police officer basic training program.

(D) No bailiff or deputy bailiff of a court of record of this state and no criminal investigator who is employed by the state public defender shall carry a firearm, as defined in section 2923.11 of the Revised Code, while on duty unless the bailiff, deputy bailiff, or criminal investigator has done or received one of the following:

(1) Has been awarded a certificate by the executive director of the Ohio peace officer training commission, which certificate attests to satisfactory completion of an approved state, county, or municipal basic training program for bailiffs and deputy bailiffs of courts of record and for criminal investigators employed by the state public defender that has been recommended by the Ohio peace officer training commission;

(2) Has successfully completed a firearms training program approved by the Ohio peace officer training commission prior to employment as a bailiff, deputy bailiff, or criminal investigator;

(3) Prior to June 6, 1986, was authorized to carry a firearm by the court that employed the bailiff or deputy bailiff or, in the case of a criminal investigator, by the state public defender and has received training in the use of firearms that the Ohio peace officer training commission determines is equivalent to the training that otherwise is required by division (D) of this section.

(E)(1) Before a person seeking a certificate completes an approved peace officer basic training program, the executive director of the Ohio peace officer training commission shall request the person to disclose, and the person shall disclose, any previous criminal conviction of or plea of guilty of that person to a felony.

(2) Before a person seeking a certificate completes an approved peace officer basic training program, the executive director shall request a criminal history records check on the person. The executive director shall submit the person's fingerprints to the bureau of criminal identification and investigation, which shall submit the fingerprints to the federal bureau of investigation for a national criminal history records check.

Upon receipt of the executive director's request, the bureau of criminal identification and investigation and the federal bureau of investigation shall conduct a criminal history records check on the person and, upon completion of the check, shall provide a copy of the criminal history records check to the executive director. The executive director shall not award any certificate prescribed in this section unless the executive director has

received a copy of the criminal history records check on the person to whom the certificate is to be awarded.

(3) The executive director of the commission shall not award a certificate prescribed in this section to a person who has been convicted of or has pleaded guilty to a felony or who fails to disclose any previous criminal conviction of or plea of guilty to a felony as required under division (E)(1) of this section.

(4) The executive director of the commission shall revoke the certificate awarded to a person as prescribed in this section, and that person shall forfeit all of the benefits derived from being certified as a peace officer under this section, if the person, before completion of an approved peace officer basic training program, failed to disclose any previous criminal conviction of or plea of guilty to a felony as required under division (E)(1) of this section.

(F)(1) Regardless of whether the person has been awarded the certificate or has been classified as a peace officer prior to, on, or after October 16, 1996, the executive director of the Ohio peace officer training commission shall revoke any certificate that has been awarded to a person as prescribed in this section if the person does either of the following:

(a) Pleads guilty to a felony committed on or after January 1, 1997;

(b) Pleads guilty to a misdemeanor committed on or after January 1, 1997, pursuant to a negotiated plea agreement as provided in division (D) of section 2929.43 of the Revised Code in which the person agrees to surrender the certificate awarded to the person under this section.

(2) The executive director of the commission shall suspend any certificate that has been awarded to a person as prescribed in this section if the person is convicted, after trial, of a felony committed on or after January 1, 1997. The executive director shall suspend the certificate pursuant to division (F)(2) of this section pending the outcome of an appeal by the person from that conviction to the highest court to which the appeal is taken or until the expiration of the period in which an appeal is required to be filed. If the person files an appeal that results in that person's acquittal of the felony or conviction of a misdemeanor, or in the dismissal of the felony charge against that person, the executive director shall reinstate the certificate awarded to the person under this section. If the person files an appeal from that person's conviction of the felony and the conviction is upheld by the highest court to which the appeal is taken or if the person does not file a timely appeal, the executive director shall revoke the certificate awarded to the person under this section.

(G)(1) If a person is awarded a certificate under this section and the

certificate is revoked pursuant to division (E)(4) or (F) of this section, the person shall not be eligible to receive, at any time, a certificate attesting to the person's satisfactory completion of a peace officer basic training program.

(2) The revocation or suspension of a certificate under division (E)(4) or (F) of this section shall be in accordance with Chapter 119. of the Revised Code.

(H)(1) A person who was employed as a peace officer of a county, township, or municipal corporation of the state on January 1, 1966, and who has completed at least sixteen years of full-time active service as such a peace officer may receive an original appointment on a permanent basis and serve as a peace officer of a county, township, or municipal corporation, or as a state university law enforcement officer, without complying with the requirements of division (B) of this section.

(2) Any person who held an appointment as a state highway trooper on January 1, 1966, may receive an original appointment on a permanent basis and serve as a peace officer of a county, township, or municipal corporation, or as a state university law enforcement officer, without complying with the requirements of division (B) of this section.

(I) No person who is appointed as a peace officer of a county, township, or municipal corporation on or after April 9, 1985, shall serve as a peace officer of that county, township, or municipal corporation unless the person has received training in the handling of missing children and child abuse and neglect cases from an approved state, county, township, or municipal police officer basic training program or receives the training within the time prescribed by rules adopted by the attorney general pursuant to section 109.741 of the Revised Code.

(J) No part of any approved state, county, or municipal basic training program for bailiffs and deputy bailiffs of courts of record and no part of any approved state, county, or municipal basic training program for criminal investigators employed by the state public defender shall be used as credit toward the completion by a peace officer of any part of the approved state, county, or municipal peace officer basic training program that the peace officer is required by this section to complete satisfactorily.

(K) This section does not apply to any member of the police department of a municipal corporation in an adjoining state serving in this state under a contract pursuant to section 737.04 of the Revised Code.

Sec. 109.86. (A) The attorney general shall investigate any activity the attorney general has reasonable cause to believe is in violation of section 2903.34 of the Revised Code. Upon written request of the governor, the

general assembly, the auditor of state, or the director of health, job and family services, aging, mental health, or ~~mental retardation and~~ developmental disabilities, the attorney general shall investigate any activity these persons believe is in violation of section 2903.34 of the Revised Code. If after an investigation the attorney general has probable cause to prosecute for the commission of a crime, the attorney general shall refer the evidence to the prosecuting attorney, director of law, or other similar chief legal officer having jurisdiction over the matter. If the prosecuting attorney decides to present the evidence to a grand jury, the prosecuting attorney shall notify the attorney general in writing of the decision within thirty days after referral of the matter and shall present the evidence prior to the discharge of the next regular grand jury. If the director of law or other chief legal officer decides to prosecute the case, the director or officer shall notify the attorney general in writing of the decision within thirty days and shall initiate prosecution within sixty days after the matter was referred to the director or officer.

(B) If the prosecuting attorney, director of law, or other chief legal officer fails to notify the attorney general or to present evidence or initiate prosecution in accordance with division (A) of this section, the attorney general may present the evidence to a regular grand jury drawn and impaneled pursuant to sections 2939.01 to 2939.24 of the Revised Code, or to a special grand jury drawn and impaneled pursuant to section 2939.17 of the Revised Code, or the attorney general may initiate and prosecute any action in any court or tribunal of competent jurisdiction in this state. The attorney general, and any assistant or special counsel designated by the attorney general, have all the powers of a prosecuting attorney, director of law, or other chief legal officer when proceeding under this section. Nothing in this section shall limit or prevent a prosecuting attorney, director of law, or other chief legal officer from investigating and prosecuting criminal activity committed against a resident or patient of a care facility.

Sec. 117.102. The auditor of state shall review the report of each school health and safety network inspection of a public school building and associated grounds submitted to the auditor of state under section 3701.932 of the Revised Code. The auditor of state may include references to any of the recommendations contained in the inspection report, as determined appropriate by the auditor of state, in any audit report of the school district, educational service center, county board of ~~mental retardation and~~ developmental disabilities, or community school controlling the inspected building and grounds.

As used in this section, "public school" has the same meaning as in

section 3701.93 of the Revised Code.

Sec. 121.02. The following administrative departments and their respective directors are hereby created:

(A) The office of budget and management, which shall be administered by the director of budget and management;

(B) The department of commerce, which shall be administered by the director of commerce;

(C) The department of administrative services, which shall be administered by the director of administrative services;

(D) The department of transportation, which shall be administered by the director of transportation;

(E) The department of agriculture, which shall be administered by the director of agriculture;

(F) The department of natural resources, which shall be administered by the director of natural resources;

(G) The department of health, which shall be administered by the director of health;

(H) The department of job and family services, which shall be administered by the director of job and family services;

(I) Until July 1, 1997, the department of liquor control, which shall be administered by the director of liquor control;

(J) The department of public safety, which shall be administered by the director of public safety;

(K) The department of mental health, which shall be administered by the director of mental health;

(L) The department of ~~mental retardation~~ and developmental disabilities, which shall be administered by the director of ~~mental retardation~~ and developmental disabilities;

(M) The department of insurance, which shall be administered by the superintendent of insurance as director thereof;

(N) The department of development, which shall be administered by the director of development;

(O) The department of youth services, which shall be administered by the director of youth services;

(P) The department of rehabilitation and correction, which shall be administered by the director of rehabilitation and correction;

(Q) The environmental protection agency, which shall be administered by the director of environmental protection;

(R) The department of aging, which shall be administered by the director of aging;

(S) The department of alcohol and drug addiction services, which shall be administered by the director of alcohol and drug addiction services;

(T) The department of veterans services, which shall be administered by the director of veterans services.

The director of each department shall exercise the powers and perform the duties vested by law in such department.

Sec. 121.03. The following administrative department heads shall be appointed by the governor, with the advice and consent of the senate, and shall hold their offices during the term of the appointing governor, and are subject to removal at the pleasure of the governor.

(A) The director of budget and management;

(B) The director of commerce;

(C) The director of transportation;

(D) The director of agriculture;

(E) The director of job and family services;

(F) Until July 1, 1997, the director of liquor control;

(G) The director of public safety;

(H) The superintendent of insurance;

(I) The director of development;

(J) The tax commissioner;

(K) The director of administrative services;

(L) The director of natural resources;

(M) The director of mental health;

(N) The director of ~~mental retardation and~~ developmental disabilities;

(O) The director of health;

(P) The director of youth services;

(Q) The director of rehabilitation and correction;

(R) The director of environmental protection;

(S) The director of aging;

(T) The director of alcohol and drug addiction services;

(U) The administrator of workers' compensation who meets the qualifications required under division (A) of section 4121.121 of the Revised Code;

(V) The director of veterans services who meets the qualifications required under section 5902.01 of the Revised Code.

Sec. 121.32. The commission on Hispanic-Latino affairs shall:

(A) Gather and disseminate information and conduct hearings, conferences, investigations, and special studies on problems and programs concerning Spanish-speaking people;

(B) Secure appropriate recognition of the accomplishments and

contributions of Spanish-speaking people to this state;

(C) Stimulate public awareness of the problems of Spanish-speaking people by conducting a program of public education;

(D) Develop, coordinate, and assist other public and private organizations that serve Spanish-speaking people, including the conducting of training programs for community leadership and service project staff;

(E) Advise the governor, general assembly, and state departments and agencies of the nature, magnitude, and priorities of the problems of Spanish-speaking people;

(F) Advise the governor, general assembly, and state departments and agencies on, and assist in the development and implementation of, comprehensive and coordinated policies, programs, and procedures focusing on the special problems and needs of Spanish-speaking people, especially in the fields of education, employment, energy, health, housing, welfare, and recreation;

(G) Propose new programs concerning Spanish-speaking people to public and private agencies and evaluate for such agencies existing programs or prospective legislation concerning Spanish-speaking people;

(H) Review and approve grants to be made from federal, state, or private funds which are administered or subcontracted by the office of Spanish-speaking affairs;

(I) Review and approve the annual report prepared by the office of Spanish-speaking affairs;

(J) Create an interagency council consisting of the following persons or their authorized representatives: one member of the senate appointed by the president of the senate; one member of the house of representatives appointed by the speaker of the house of representatives; the directors of administrative services, agriculture, education, development, health, highway safety, job and family services, liquor control, mental health, ~~mental retardation~~ and developmental disabilities, natural resources, rehabilitation and correction, youth services, transportation, environmental protection, and budget and management; the chairperson of the Ohio civil rights commission, the administrators of the bureau of workers' compensation and the rehabilitation services commission, and an additional member of the governor's cabinet appointed by the governor. The commission on Hispanic-Latino affairs, by rule, may designate other state officers or their representatives to be members of the council. The director of the commission shall be the chairperson of the council.

The interagency council shall provide and coordinate the exchange of information relative to the needs of Spanish-speaking people and promote

the delivery of state services to such people. The council shall meet at the call of the chairperson.

Sec. 121.36. (A) As used in this section, "home care dependent adult" means an individual who resides in a private home or other noninstitutional and unlicensed living arrangement, without the presence of a parent or guardian, but has health and safety needs that require the provision of regularly scheduled home care services to remain in the home or other living arrangement because one of the following is the case:

(1) The individual is at least twenty-one years of age but less than sixty years of age and has a physical disability or mental impairment.

(2) The individual is sixty years of age or older, regardless of whether the individual has a physical disability or mental impairment.

(B) Except as provided in division (D) of this section, the departments of ~~mental retardation and~~ developmental disabilities, aging, job and family services, and health shall each implement this section with respect to all contracts entered into by the department for the provision of home care services to home care dependent adults that are paid for in whole or in part with federal, state, or local funds. Except as provided in division (D) of this section, each department shall also require all public and private entities that receive money from or through the department to comply with this section when entering into contracts for the provision of home care services to home care dependent adults that are paid for in whole or in part with federal, state, or local funds. Such entities may include county boards of ~~mental retardation and~~ developmental disabilities, area agencies on aging, county departments of job and family services, and boards of health of city and general health districts.

(C) Beginning one year after ~~the effective date of this section~~ September 26, 2003, each contract subject to this section shall include terms requiring that the provider of home care services to home care dependent adults have a system in place that effectively monitors the delivery of the services by its employees. To be considered an effective monitoring system for purposes of the contract, the system established by a provider must include at least the following components:

(1) When providing home care services to home care dependent adults who have a mental impairment or life-threatening health condition, a mechanism to verify whether the provider's employees are present at the location where the services are to be provided and at the time the services are to be provided;

(2) When providing home care services to all other home care dependent adults, a system to verify at the end of each working day whether

the provider's employees have provided the services at the proper location and time;

(3) A protocol to be followed in scheduling a substitute employee when the monitoring system identifies that an employee has failed to provide home care services at the proper location and time, including standards for determining the length of time that may elapse without jeopardizing the health and safety of the home care dependent adult;

(4) Procedures for maintaining records of the information obtained through the monitoring system;

(5) Procedures for compiling annual reports of the information obtained through the monitoring system, including statistics on the rate at which home care services were provided at the proper location and time;

(6) Procedures for conducting random checks of the accuracy of the monitoring system. For purposes of conducting these checks, a random check is considered to be a check of not more than five per cent of the home care visits the provider's employees make to different home care dependent adults within a particular work shift.

(D) In implementing this section, the departments shall exempt providers of home care services who are self-employed providers with no other employees or are otherwise considered by the departments not to be agency providers. The departments shall conduct a study on how the exempted providers may be made subject to the requirement of effectively monitoring whether home care services are being provided and have been provided at the proper location and time. Not later than two years after ~~the effective date of this section~~ September 26, 2003, the departments shall prepare a report of their findings and recommendations. The report shall be submitted to the president of the senate and the speaker of the house of representatives.

(E) The departments of ~~mental retardation and~~ developmental disabilities, aging, job and family services, and health shall each adopt rules as necessary to implement this section. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

Sec. 121.37. (A)(1) There is hereby created the Ohio family and children first cabinet council. The council shall be composed of the superintendent of public instruction and the directors of youth services, job and family services, mental health, health, alcohol and drug addiction services, ~~mental retardation and~~ developmental disabilities, and budget and management. The chairperson of the council shall be the governor or the governor's designee and shall establish procedures for the council's internal control and management.

The purpose of the cabinet council is to help families seeking government services. This section shall not be interpreted or applied to usurp the role of parents, but solely to streamline and coordinate existing government services for families seeking assistance for their children.

(2) In seeking to fulfill its purpose, the council may do any of the following:

(a) Advise and make recommendations to the governor and general assembly regarding the provision of services to children;

(b) Advise and assess local governments on the coordination of service delivery to children;

(c) Hold meetings at such times and places as may be prescribed by the council's procedures and maintain records of the meetings, except that records identifying individual children are confidential and shall be disclosed only as provided by law;

(d) Develop programs and projects, including pilot projects, to encourage coordinated efforts at the state and local level to improve the state's social service delivery system;

(e) Enter into contracts with and administer grants to county family and children first councils, as well as other county or multicounty organizations to plan and coordinate service delivery between state agencies and local service providers for families and children;

(f) Enter into contracts with and apply for grants from federal agencies or private organizations;

(g) Enter into interagency agreements to encourage coordinated efforts at the state and local level to improve the state's social service delivery system. The agreements may include provisions regarding the receipt, transfer, and expenditure of funds;

(h) Identify public and private funding sources for services provided to alleged or adjudicated unruly children and children who are at risk of being alleged or adjudicated unruly children, including regulations governing access to and use of the services;

(i) Collect information provided by local communities regarding successful programs for prevention, intervention, and treatment of unruly behavior, including evaluations of the programs;

(j) Identify and disseminate publications regarding alleged or adjudicated unruly children and children who are at risk of being alleged or adjudicated unruly children and regarding programs serving those types of children;

(k) Maintain an inventory of strategic planning facilitators for use by government or nonprofit entities that serve alleged or adjudicated unruly

children or children who are at risk of being alleged or adjudicated unruly children.

(3) The cabinet council shall provide for the following:

(a) Reviews of service and treatment plans for children for which such reviews are requested;

(b) Assistance as the council determines to be necessary to meet the needs of children referred by county family and children first councils;

(c) Monitoring and supervision of a statewide, comprehensive, coordinated, multi-disciplinary, interagency system for infants and toddlers with developmental disabilities or delays and their families, as established pursuant to federal grants received and administered by the department of health for early intervention services under the "Individuals with Disabilities Education Act of 2004," 20 U.S.C.A. 1400, as amended.

(4) The cabinet council shall develop and implement the following:

(a) An interagency process to select the indicators that will be used to measure progress toward increasing child well-being in the state and to update the indicators on an annual basis. The indicators shall focus on expectant parents and newborns thriving; infants and toddlers thriving; children being ready for school; children and youth succeeding in school; youth choosing healthy behaviors; and youth successfully transitioning into adulthood.

(b) An interagency system to offer guidance and monitor progress toward increasing child well-being in the state and in each county;

(c) An annual plan that identifies state-level agency efforts taken to ensure progress towards increasing child well-being in the state.

On an annual basis, the cabinet council shall submit to the governor and the general assembly a report on the status of efforts to increase child well-being in the state. This report shall be made available to any other person on request.

(B)(1) Each board of county commissioners shall establish a county family and children first council. The board may invite any local public or private agency or group that funds, advocates, or provides services to children and families to have a representative become a permanent or temporary member of its county council. Each county council must include the following individuals:

(a) At least three individuals who are not employed by an agency represented on the council and whose families are or have received services from an agency represented on the council or another county's council. Where possible, the number of members representing families shall be equal to twenty per cent of the council's membership.

(b) The director of the board of alcohol, drug addiction, and mental health services that serves the county, or, in the case of a county that has a board of alcohol and drug addiction services and a community mental health board, the directors of both boards. If a board of alcohol, drug addiction, and mental health services covers more than one county, the director may designate a person to participate on the county's council.

(c) The health commissioner, or the commissioner's designee, of the board of health of each city and general health district in the county. If the county has two or more health districts, the health commissioner membership may be limited to the commissioners of the two districts with the largest populations.

(d) The director of the county department of job and family services;

(e) The executive director of the public children services agency;

(f) The superintendent of the county board of ~~mental retardation and~~ developmental disabilities;

(g) The superintendent of the city, exempted village, or local school district with the largest number of pupils residing in the county, as determined by the department of education, which shall notify each board of county commissioners of its determination at least biennially;

(h) A school superintendent representing all other school districts with territory in the county, as designated at a biennial meeting of the superintendents of those districts;

(i) A representative of the municipal corporation with the largest population in the county;

(j) The president of the board of county commissioners or an individual designated by the board;

(k) A representative of the regional office of the department of youth services;

(l) A representative of the county's head start agencies, as defined in section 3301.32 of the Revised Code;

(m) A representative of the county's early intervention collaborative established pursuant to the federal early intervention program operated under the "Individuals with Disabilities Education Act of 2004";

(n) A representative of a local nonprofit entity that funds, advocates, or provides services to children and families.

Notwithstanding any other provision of law, the public members of a county council are not prohibited from serving on the council and making decisions regarding the duties of the council, including those involving the funding of joint projects and those outlined in the county's service coordination mechanism implemented pursuant to division (C) of this

section.

The cabinet council shall establish a state appeals process to resolve disputes among the members of a county council concerning whether reasonable responsibilities as members are being shared. The appeals process may be accessed only by a majority vote of the council members who are required to serve on the council. Upon appeal, the cabinet council may order that state funds for services to children and families be redirected to a county's board of county commissioners.

The county's juvenile court judge senior in service or another judge of the juvenile court designated by the administrative judge or, where there is no administrative judge, by the judge senior in service shall serve as the judicial advisor to the county family and children first council. The judge may advise the county council on the court's utilization of resources, services, or programs provided by the entities represented by the members of the county council and how those resources, services, or programs assist the court in its administration of justice. Service of a judge as a judicial advisor pursuant to this section is a judicial function.

(2) The purpose of the county council is to streamline and coordinate existing government services for families seeking services for their children. In seeking to fulfill its purpose, a county council shall provide for the following:

(a) Referrals to the cabinet council of those children for whom the county council cannot provide adequate services;

(b) Development and implementation of a process that annually evaluates and prioritizes services, fills service gaps where possible, and invents new approaches to achieve better results for families and children;

(c) Participation in the development of a countywide, comprehensive, coordinated, multi-disciplinary, interagency system for infants and toddlers with developmental disabilities or delays and their families, as established pursuant to federal grants received and administered by the department of health for early intervention services under the "Individuals with Disabilities Education Act of 2004";

(d) Maintenance of an accountability system to monitor the county council's progress in achieving results for families and children;

(e) Establishment of a mechanism to ensure ongoing input from a broad representation of families who are receiving services within the county system.

(3) A county council shall develop and implement the following:

(a) An interagency process to establish local indicators and monitor the county's progress toward increasing child well-being in the county;

(b) An interagency process to identify local priorities to increase child well-being. The local priorities shall focus on expectant parents and newborns thriving; infants and toddlers thriving; children being ready for school; children and youth succeeding in school; youth choosing healthy behaviors; and youth successfully transitioning into adulthood and take into account the indicators established by the cabinet council under division (A)(4)(a) of this section.

(c) An annual plan that identifies the county's interagency efforts to increase child well-being in the county.

On an annual basis, the county council shall submit a report on the status of efforts by the county to increase child well-being in the county to the county's board of county commissioners and the cabinet council. This report shall be made available to any other person on request.

(4)(a) Except as provided in division (B)(4)(b) of this section, a county council shall comply with the policies, procedures, and activities prescribed by the rules or interagency agreements of a state department participating on the cabinet council whenever the county council performs a function subject to those rules or agreements.

(b) On application of a county council, the cabinet council may grant an exemption from any rules or interagency agreements of a state department participating on the council if an exemption is necessary for the council to implement an alternative program or approach for service delivery to families and children. The application shall describe the proposed program or approach and specify the rules or interagency agreements from which an exemption is necessary. The cabinet council shall approve or disapprove the application in accordance with standards and procedures it shall adopt. If an application is approved, the exemption is effective only while the program or approach is being implemented, including a reasonable period during which the program or approach is being evaluated for effectiveness.

(5)(a) Each county council shall designate an administrative agent for the council from among the following public entities: the board of alcohol, drug addiction, and mental health services, including a board of alcohol and drug addiction or a community mental health board if the county is served by separate boards; the board of county commissioners; any board of health of the county's city and general health districts; the county department of job and family services; the county agency responsible for the administration of children services pursuant to section 5153.15 of the Revised Code; the county board of ~~mental retardation and~~ developmental disabilities; any of the county's boards of education or governing boards of educational service centers; or the county's juvenile court. Any of the foregoing public entities,

other than the board of county commissioners, may decline to serve as the council's administrative agent.

A county council's administrative agent shall serve as the council's appointing authority for any employees of the council. The council shall file an annual budget with its administrative agent, with copies filed with the county auditor and with the board of county commissioners, unless the board is serving as the council's administrative agent. The council's administrative agent shall ensure that all expenditures are handled in accordance with policies, procedures, and activities prescribed by state departments in rules or interagency agreements that are applicable to the council's functions.

The administrative agent of a county council shall send notice of a member's absence if a member listed in division (B)(1) of this section has been absent from either three consecutive meetings of the county council or a county council subcommittee, or from one-quarter of such meetings in a calendar year, whichever is less. The notice shall be sent to the board of county commissioners that establishes the county council and, for the members listed in divisions (B)(1)(b), (c), (e), and (l) of this section, to the governing board overseeing the respective entity; for the member listed in division (B)(1)(f) of this section, to the county board of ~~mental retardation~~ ~~and~~ developmental disabilities that employs the superintendent; for a member listed in division (B)(1)(g) or (h) of this section, to the school board that employs the superintendent; for the member listed in division (B)(1)(i) of this section, to the mayor of the municipal corporation; for the member listed in division (B)(1)(k) of this section, to the director of youth services; and for the member listed in division (B)(1)(n), to that member's board of trustees.

The administrative agent for a county council may do any of the following on behalf of the council:

(i) Enter into agreements or administer contracts with public or private entities to fulfill specific council business. Such agreements and contracts are exempt from the competitive bidding requirements of section 307.86 of the Revised Code if they have been approved by the county council and they are for the purchase of family and child welfare or child protection services or other social or job and family services for families and children. The approval of the county council is not required to exempt agreements or contracts entered into under section 5139.34, 5139.41, or 5139.43 of the Revised Code from the competitive bidding requirements of section 307.86 of the Revised Code.

(ii) As determined by the council, provide financial stipends,

reimbursements, or both, to family representatives for expenses related to council activity;

(iii) Receive by gift, grant, devise, or bequest any moneys, lands, or other property for the purposes for which the council is established. The agent shall hold, apply, and dispose of the moneys, lands, or other property according to the terms of the gift, grant, devise, or bequest. Any interest or earnings shall be treated in the same manner and are subject to the same terms as the gift, grant, devise, or bequest from which it accrues.

(b)(i) If the county council designates the board of county commissioners as its administrative agent, the board may, by resolution, delegate any of its powers and duties as administrative agent to an executive committee the board establishes from the membership of the county council. The board shall name to the executive committee at least the individuals described in divisions (B)(1)(b) to (h) of this section and may appoint the president of the board or another individual as the chair of the executive committee. The executive committee must include at least one family county council representative who does not have a family member employed by an agency represented on the council.

(ii) The executive committee may, with the approval of the board, hire an executive director to assist the county council in administering its powers and duties. The executive director shall serve in the unclassified civil service at the pleasure of the executive committee. The executive director may, with the approval of the executive committee, hire other employees as necessary to properly conduct the county council's business.

(iii) The board may require the executive committee to submit an annual budget to the board for approval and may amend or repeal the resolution that delegated to the executive committee its authority as the county council's administrative agent.

(6) Two or more county councils may enter into an agreement to administer their county councils jointly by creating a regional family and children first council. A regional council possesses the same duties and authority possessed by a county council, except that the duties and authority apply regionally rather than to individual counties. Prior to entering into an agreement to create a regional council, the members of each county council to be part of the regional council shall meet to determine whether all or part of the members of each county council will serve as members of the regional council.

(7) A board of county commissioners may approve a resolution by a majority vote of the board's members that requires the county council to submit a statement to the board each time the council proposes to enter into

an agreement, adopt a plan, or make a decision, other than a decision pursuant to section 121.38 of the Revised Code, that requires the expenditure of funds for two or more families. The statement shall describe the proposed agreement, plan, or decision.

Not later than fifteen days after the board receives the statement, it shall, by resolution approved by a majority of its members, approve or disapprove the agreement, plan, or decision. Failure of the board to pass a resolution during that time period shall be considered approval of the agreement, plan, or decision.

An agreement, plan, or decision for which a statement is required to be submitted to the board shall be implemented only if it is approved by the board.

(C) Each county shall develop a county service coordination mechanism. The county service coordination mechanism shall serve as the guiding document for coordination of services in the county. For children who also receive services under the help me grow program, the service coordination mechanism shall be consistent with rules adopted by the department of health under section 3701.61 of the Revised Code. All family service coordination plans shall be developed in accordance with the county service coordination mechanism. The mechanism shall be developed and approved with the participation of the county entities representing child welfare; mental retardation and developmental disabilities; alcohol, drug addiction, and mental health services; health; juvenile judges; education; the county family and children first council; and the county early intervention collaborative established pursuant to the federal early intervention program operated under the "Individuals with Disabilities Education Act of 2004." The county shall establish an implementation schedule for the mechanism. The cabinet council may monitor the implementation and administration of each county's service coordination mechanism.

Each mechanism shall include all of the following:

(1) A procedure for an agency, including a juvenile court, or a family voluntarily seeking service coordination, to refer the child and family to the county council for service coordination in accordance with the mechanism;

(2) A procedure ensuring that a family and all appropriate staff from involved agencies, including a representative from the appropriate school district, are notified of and invited to participate in all family service coordination plan meetings;

(3) A procedure that permits a family to initiate a meeting to develop or review the family's service coordination plan and allows the family to invite a family advocate, mentor, or support person of the family's choice to

participate in any such meeting;

(4) A procedure for ensuring that a family service coordination plan meeting is conducted for each child who receives service coordination under the mechanism and for whom an emergency out-of-home placement has been made or for whom a nonemergency out-of-home placement is being considered. The meeting shall be conducted within ten days of an emergency out-of-home placement. The meeting shall be conducted before a nonemergency out-of-home placement. The family service coordination plan shall outline how the county council members will jointly pay for services, where applicable, and provide services in the least restrictive environment.

(5) A procedure for monitoring the progress and tracking the outcomes of each service coordination plan requested in the county including monitoring and tracking children in out-of-home placements to assure continued progress, appropriateness of placement, and continuity of care after discharge from placement with appropriate arrangements for housing, treatment, and education.

(6) A procedure for protecting the confidentiality of all personal family information disclosed during service coordination meetings or contained in the comprehensive family service coordination plan.

(7) A procedure for assessing the needs and strengths of any child or family that has been referred to the council for service coordination, including a child whose parent or custodian is voluntarily seeking services, and for ensuring that parents and custodians are afforded the opportunity to participate;

(8) A procedure for development of a family service coordination plan described in division (D) of this section;

(9) A local dispute resolution process to serve as the process that must be used first to resolve disputes among the agencies represented on the county council concerning the provision of services to children, including children who are abused, neglected, dependent, unruly, alleged unruly, or delinquent children and under the jurisdiction of the juvenile court and children whose parents or custodians are voluntarily seeking services. The local dispute resolution process shall comply with sections 121.38, 121.381, and 121.382 of the Revised Code. The local dispute resolution process shall be used to resolve disputes between a child's parents or custodians and the county council regarding service coordination. The county council shall inform the parents or custodians of their right to use the dispute resolution process. Parents or custodians shall use existing local agency grievance procedures to address disputes not involving service coordination. The

dispute resolution process is in addition to and does not replace other rights or procedures that parents or custodians may have under other sections of the Revised Code.

The cabinet council shall adopt rules in accordance with Chapter 119. of the Revised Code establishing an administrative review process to address problems that arise concerning the operation of a local dispute resolution process.

Nothing in division (C)(4) of this section shall be interpreted as overriding or affecting decisions of a juvenile court regarding an out-of-home placement, long-term placement, or emergency out-of-home placement.

(D) Each county shall develop a family service coordination plan that does all of the following:

(1) Designates service responsibilities among the various state and local agencies that provide services to children and their families, including children who are abused, neglected, dependent, unruly, or delinquent children and under the jurisdiction of the juvenile court and children whose parents or custodians are voluntarily seeking services;

(2) Designates an individual, approved by the family, to track the progress of the family service coordination plan, schedule reviews as necessary, and facilitate the family service coordination plan meeting process;

(3) Ensures that assistance and services to be provided are responsive to the strengths and needs of the family, as well as the family's culture, race, and ethnic group, by allowing the family to offer information and suggestions and participate in decisions. Identified assistance and services shall be provided in the least restrictive environment possible.

(4) Includes a process for dealing with a child who is alleged to be an unruly child. The process shall include methods to divert the child from the juvenile court system;

(5) Includes timelines for completion of goals specified in the plan with regular reviews scheduled to monitor progress toward those goals;

(6) Includes a plan for dealing with short-term crisis situations and safety concerns.

(E)(1) The process provided for under division (D)(4) of this section may include, but is not limited to, the following:

(a) Designation of the person or agency to conduct the assessment of the child and the child's family as described in division (C)(7) of this section and designation of the instrument or instruments to be used to conduct the assessment;

(b) An emphasis on the personal responsibilities of the child and the parental responsibilities of the parents, guardian, or custodian of the child;

(c) Involvement of local law enforcement agencies and officials.

(2) The method to divert a child from the juvenile court system that must be included in the service coordination process may include, but is not limited to, the following:

(a) The preparation of a complaint under section 2151.27 of the Revised Code alleging that the child is an unruly child and notifying the child and the parents, guardian, or custodian that the complaint has been prepared to encourage the child and the parents, guardian, or custodian to comply with other methods to divert the child from the juvenile court system;

(b) Conducting a meeting with the child, the parents, guardian, or custodian, and other interested parties to determine the appropriate methods to divert the child from the juvenile court system;

(c) A method to provide to the child and the child's family a short-term respite from a short-term crisis situation involving a confrontation between the child and the parents, guardian, or custodian;

(d) A program to provide a mentor to the child or the parents, guardian, or custodian;

(e) A program to provide parenting education to the parents, guardian, or custodian;

(f) An alternative school program for children who are truant from school, repeatedly disruptive in school, or suspended or expelled from school;

(g) Other appropriate measures, including, but not limited to, any alternative methods to divert a child from the juvenile court system that are identified by the Ohio family and children first cabinet council.

(F) Each county may review and revise the service coordination process described in division (D) of this section based on the availability of funds under Title IV-A of the "Social Security Act," 110 Stat. 2113 (1996), 42 U.S.C.A. 601, as amended, or to the extent resources are available from any other federal, state, or local funds.

Sec. 123.01. (A) The department of administrative services, in addition to those powers enumerated in Chapters 124. and 125. of the Revised Code and provided elsewhere by law, shall exercise the following powers:

(1) To prepare, or contract to be prepared, by licensed engineers or architects, surveys, general and detailed plans, specifications, bills of materials, and estimates of cost for any projects, improvements, or public buildings to be constructed by state agencies that may be authorized by legislative appropriations or any other funds made available therefor,

provided that the construction of the projects, improvements, or public buildings is a statutory duty of the department. This section does not require the independent employment of an architect or engineer as provided by section 153.01 of the Revised Code in the cases to which that section applies nor affect or alter the existing powers of the director of transportation.

(2) To have general supervision over the construction of any projects, improvements, or public buildings constructed for a state agency and over the inspection of materials previous to their incorporation into those projects, improvements, or buildings;

(3) To make contracts for and supervise the construction of any projects and improvements or the construction and repair of buildings under the control of a state agency, except contracts for the repair of buildings under the management and control of the departments of public safety, job and family services, mental health, ~~mental retardation~~ and developmental disabilities, rehabilitation and correction, and youth services, the bureau of workers' compensation, the rehabilitation services commission, and boards of trustees of educational and benevolent institutions and except contracts for the construction of projects that do not require the issuance of a building permit or the issuance of a certificate of occupancy and that are necessary to remediate conditions at a hazardous waste facility, solid waste facility, or other location at which the director of environmental protection has reason to believe there is a substantial threat to public health or safety or the environment. These contracts shall be made and entered into by the directors of public safety, job and family services, mental health, ~~mental retardation~~ and developmental disabilities, rehabilitation and correction, and youth services, the administrator of workers' compensation, the rehabilitation services commission, the boards of trustees of such institutions, and the director of environmental protection, respectively. All such contracts may be in whole or in part on unit price basis of maximum estimated cost, with payment computed and made upon actual quantities or units.

(4) To prepare and suggest comprehensive plans for the development of grounds and buildings under the control of a state agency;

(5) To acquire, by purchase, gift, devise, lease, or grant, all real estate required by a state agency, in the exercise of which power the department may exercise the power of eminent domain, in the manner provided by sections 163.01 to 163.22 of the Revised Code;

(6) To make and provide all plans, specifications, and models for the construction and perfection of all systems of sewerage, drainage, and plumbing for the state in connection with buildings and grounds under the control of a state agency;

(7) To erect, supervise, and maintain all public monuments and memorials erected by the state, except where the supervision and maintenance is otherwise provided by law;

(8) To procure, by lease, storage accommodations for a state agency;

(9) To lease or grant easements or licenses for unproductive and unused lands or other property under the control of a state agency. Such leases, easements, or licenses shall be granted for a period not to exceed fifteen years and shall be executed for the state by the director of administrative services and the governor and shall be approved as to form by the attorney general, provided that leases, easements, or licenses may be granted to any county, township, municipal corporation, port authority, water or sewer district, school district, library district, health district, park district, soil and water conservation district, conservancy district, or other political subdivision or taxing district, or any agency of the United States government, for the exclusive use of that agency, political subdivision, or taxing district, without any right of sublease or assignment, for a period not to exceed fifteen years, and provided that the director shall grant leases, easements, or licenses of university land for periods not to exceed twenty-five years for purposes approved by the respective university's board of trustees wherein the uses are compatible with the uses and needs of the university and may grant leases of university land for periods not to exceed forty years for purposes approved by the respective university's board of trustees pursuant to section 123.77 of the Revised Code.

(10) To lease office space in buildings for the use of a state agency;

(11) To have general supervision and care of the storerooms, offices, and buildings leased for the use of a state agency;

(12) To exercise general custodial care of all real property of the state;

(13) To assign and group together state offices in any city in the state and to establish, in cooperation with the state agencies involved, rules governing space requirements for office or storage use;

(14) To lease for a period not to exceed forty years, pursuant to a contract providing for the construction thereof under a lease-purchase plan, buildings, structures, and other improvements for any public purpose, and, in conjunction therewith, to grant leases, easements, or licenses for lands under the control of a state agency for a period not to exceed forty years. The lease-purchase plan shall provide that at the end of the lease period, the buildings, structures, and related improvements, together with the land on which they are situated, shall become the property of the state without cost.

(a) Whenever any building, structure, or other improvement is to be so leased by a state agency, the department shall retain either basic plans,

specifications, bills of materials, and estimates of cost with sufficient detail to afford bidders all needed information or, alternatively, all of the following plans, details, bills of materials, and specifications:

(i) Full and accurate plans suitable for the use of mechanics and other builders in the improvement;

(ii) Details to scale and full sized, so drawn and represented as to be easily understood;

(iii) Accurate bills showing the exact quantity of different kinds of material necessary to the construction;

(iv) Definite and complete specifications of the work to be performed, together with such directions as will enable a competent mechanic or other builder to carry them out and afford bidders all needed information;

(v) A full and accurate estimate of each item of expense and of the aggregate cost thereof.

(b) The department shall give public notice, in such newspaper, in such form, and with such phraseology as the director of administrative services prescribes, published once each week for four consecutive weeks, of the time when and place where bids will be received for entering into an agreement to lease to a state agency a building, structure, or other improvement. The last publication shall be at least eight days preceding the day for opening the bids. The bids shall contain the terms upon which the builder would propose to lease the building, structure, or other improvement to the state agency. The form of the bid approved by the department shall be used, and a bid is invalid and shall not be considered unless that form is used without change, alteration, or addition. Before submitting bids pursuant to this section, any builder shall comply with Chapter 153. of the Revised Code.

(c) On the day and at the place named for receiving bids for entering into lease agreements with a state agency, the director of administrative services shall open the bids and shall publicly proceed immediately to tabulate the bids upon duplicate sheets. No lease agreement shall be entered into until the bureau of workers' compensation has certified that the person to be awarded the lease agreement has complied with Chapter 4123. of the Revised Code, until, if the builder submitting the lowest and best bid is a foreign corporation, the secretary of state has certified that the corporation is authorized to do business in this state, until, if the builder submitting the lowest and best bid is a person nonresident of this state, the person has filed with the secretary of state a power of attorney designating the secretary of state as its agent for the purpose of accepting service of summons in any action brought under Chapter 4123. of the Revised Code, and until the

agreement is submitted to the attorney general and the attorney general's approval is certified thereon. Within thirty days after the day on which the bids are received, the department shall investigate the bids received and shall determine that the bureau and the secretary of state have made the certifications required by this section of the builder who has submitted the lowest and best bid. Within ten days of the completion of the investigation of the bids, the department shall award the lease agreement to the builder who has submitted the lowest and best bid and who has been certified by the bureau and secretary of state as required by this section. If bidding for the lease agreement has been conducted upon the basis of basic plans, specifications, bills of materials, and estimates of costs, upon the award to the builder the department, or the builder with the approval of the department, shall appoint an architect or engineer licensed in this state to prepare such further detailed plans, specifications, and bills of materials as are required to construct the building, structure, or improvement. The department shall adopt such rules as are necessary to give effect to this section. The department may reject any bid. Where there is reason to believe there is collusion or combination among bidders, the bids of those concerned therein shall be rejected.

(15) To acquire by purchase, gift, devise, or grant and to transfer, lease, or otherwise dispose of all real property required to assist in the development of a conversion facility as defined in section 5709.30 of the Revised Code as that section existed before its repeal by Amended Substitute House Bill 95 of the 125th general assembly;

(16) To lease for a period not to exceed forty years, notwithstanding any other division of this section, the state-owned property located at 408-450 East Town Street, Columbus, Ohio, formerly the state school for the deaf, to a developer in accordance with this section. "Developer," as used in this section, has the same meaning as in section 123.77 of the Revised Code.

Such a lease shall be for the purpose of development of the land for use by senior citizens by constructing, altering, renovating, repairing, expanding, and improving the site as it existed on June 25, 1982. A developer desiring to lease the land shall prepare for submission to the department a plan for development. Plans shall include provisions for roads, sewers, water lines, waste disposal, water supply, and similar matters to meet the requirements of state and local laws. The plans shall also include provision for protection of the property by insurance or otherwise, and plans for financing the development, and shall set forth details of the developer's financial responsibility.

The department may employ, as employees or consultants, persons

needed to assist in reviewing the development plans. Those persons may include attorneys, financial experts, engineers, and other necessary experts. The department shall review the development plans and may enter into a lease if it finds all of the following:

(a) The best interests of the state will be promoted by entering into a lease with the developer;

(b) The development plans are satisfactory;

(c) The developer has established the developer's financial responsibility and satisfactory plans for financing the development.

The lease shall contain a provision that construction or renovation of the buildings, roads, structures, and other necessary facilities shall begin within one year after the date of the lease and shall proceed according to a schedule agreed to between the department and the developer or the lease will be terminated. The lease shall contain such conditions and stipulations as the director considers necessary to preserve the best interest of the state. Moneys received by the state pursuant to this lease shall be paid into the general revenue fund. The lease shall provide that at the end of the lease period the buildings, structures, and related improvements shall become the property of the state without cost.

(17) To lease to any person any tract of land owned by the state and under the control of the department, or any part of such a tract, for the purpose of drilling for or the pooling of oil or gas. Such a lease shall be granted for a period not exceeding forty years, with the full power to contract for, determine the conditions governing, and specify the amount the state shall receive for the purposes specified in the lease, and shall be prepared as in other cases.

(18) To manage the use of space owned and controlled by the department, including space in property under the jurisdiction of the Ohio building authority, by doing all of the following:

(a) Biennially implementing, by state agency location, a census of agency employees assigned space;

(b) Periodically in the discretion of the director of administrative services:

(i) Requiring each state agency to categorize the use of space allotted to the agency between office space, common areas, storage space, and other uses, and to report its findings to the department;

(ii) Creating and updating a master space utilization plan for all space allotted to state agencies. The plan shall incorporate space utilization metrics.

(iii) Conducting a cost-benefit analysis to determine the effectiveness of

state-owned buildings;

(iv) Assessing the alternatives associated with consolidating the commercial leases for buildings located in Columbus.

(c) Commissioning a comprehensive space utilization and capacity study in order to determine the feasibility of consolidating existing commercially leased space used by state agencies into a new state-owned facility.

(B) This section and section 125.02 of the Revised Code shall not interfere with any of the following:

(1) The power of the adjutant general to purchase military supplies, or with the custody of the adjutant general of property leased, purchased, or constructed by the state and used for military purposes, or with the functions of the adjutant general as director of state armories;

(2) The power of the director of transportation in acquiring rights-of-way for the state highway system, or the leasing of lands for division or resident district offices, or the leasing of lands or buildings required in the maintenance operations of the department of transportation, or the purchase of real property for garage sites or division or resident district offices, or in preparing plans and specifications for and constructing such buildings as the director may require in the administration of the department;

(3) The power of the director of public safety and the registrar of motor vehicles to purchase or lease real property and buildings to be used solely as locations to which a deputy registrar is assigned pursuant to division (B) of section 4507.011 of the Revised Code and from which the deputy registrar is to conduct the deputy registrar's business, the power of the director of public safety to purchase or lease real property and buildings to be used as locations for division or district offices as required in the maintenance of operations of the department of public safety, and the power of the superintendent of the state highway patrol in the purchase or leasing of real property and buildings needed by the patrol, to negotiate the sale of real property owned by the patrol, to rent or lease real property owned or leased by the patrol, and to make or cause to be made repairs to all property owned or under the control of the patrol;

(4) The power of the division of liquor control in the leasing or purchasing of retail outlets and warehouse facilities for the use of the division;

(5) The power of the director of development to enter into leases of real property, buildings, and office space to be used solely as locations for the state's foreign offices to carry out the purposes of section 122.05 of the

Revised Code;

(6) The power of the director of environmental protection to enter into environmental covenants, to grant and accept easements, or to sell property pursuant to division (G) of section 3745.01 of the Revised Code.

(C) Purchases for, and the custody and repair of, buildings under the management and control of the capitol square review and advisory board, the rehabilitation services commission, the bureau of workers' compensation, or the departments of public safety, job and family services, mental health, ~~mental retardation and~~ developmental disabilities, and rehabilitation and correction, and buildings of educational and benevolent institutions under the management and control of boards of trustees, are not subject to the control and jurisdiction of the department of administrative services.

(D) Any instrument by which real property is acquired pursuant to this section shall identify the agency of the state that has the use and benefit of the real property as specified in section 5301.012 of the Revised Code.

Sec. 124.11. The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts of the state shall be divided into the unclassified service and the classified service.

(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter:

(1) All officers elected by popular vote or persons appointed to fill vacancies in those offices;

(2) All election officers as defined in section 3501.01 of the Revised Code;

(3)(a) The members of all boards and commissions, and heads of principal departments, boards, and commissions appointed by the governor or by and with the governor's consent;

(b) The heads of all departments appointed by a board of county commissioners;

(c) The members of all boards and commissions and all heads of departments appointed by the mayor, or, if there is no mayor, such other similar chief appointing authority of any city or city school district;

Except as otherwise provided in division (A)(17) or (C) of this section, this chapter does not exempt the chiefs of police departments and chiefs of fire departments of cities or civil service townships from the competitive classified service.

(4) The members of county or district licensing boards or commissions

and boards of revision, and not more than five deputy county auditors;

(5) All officers and employees elected or appointed by either or both branches of the general assembly, and employees of the city legislative authority engaged in legislative duties;

(6) All commissioned, warrant, and noncommissioned officers and enlisted persons in the Ohio organized militia, including military appointees in the adjutant general's department;

(7)(a) All presidents, business managers, administrative officers, superintendents, assistant superintendents, principals, deans, assistant deans, instructors, teachers, and such employees as are engaged in educational or research duties connected with the public school system, colleges, and universities, as determined by the governing body of the public school system, colleges, and universities;

(b) The library staff of any library in the state supported wholly or in part at public expense.

(8) Four clerical and administrative support employees for each of the elective state officers, four clerical and administrative support employees for each board of county commissioners and one such employee for each county commissioner, and four clerical and administrative support employees for other elective officers and each of the principal appointive executive officers, boards, or commissions, except for civil service commissions, that are authorized to appoint such clerical and administrative support employees;

(9) The deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency and those persons employed by and directly responsible to elected county officials or a county administrator and holding a fiduciary or administrative relationship to such elected county officials or county administrator, and the employees of such county officials whose fitness would be impracticable to determine by competitive examination, provided that division (A)(9) of this section shall not affect those persons in county employment in the classified service as of September 19, 1961. Nothing in division (A)(9) of this section applies to any position in a county department of job and family services created pursuant to Chapter 329. of the Revised Code.

(10) Bailiffs, constables, official stenographers, and commissioners of courts of record, deputies of clerks of the courts of common pleas who supervise or who handle public moneys or secured documents, and such officers and employees of courts of record and such deputies of clerks of the courts of common pleas as the director of administrative services finds it

impracticable to determine their fitness by competitive examination;

(11) Assistants to the attorney general, special counsel appointed or employed by the attorney general, assistants to county prosecuting attorneys, and assistants to city directors of law;

(12) Such teachers and employees in the agricultural experiment stations; such students in normal schools, colleges, and universities of the state who are employed by the state or a political subdivision of the state in student or intern classifications; and such unskilled labor positions as the director of administrative services or any municipal civil service commission may find it impracticable to include in the competitive classified service; provided such exemptions shall be by order of the commission or the director, duly entered on the record of the commission or the director with the reasons for each such exemption;

(13) Any physician or dentist who is a full-time employee of the department of mental health, the department of ~~mental retardation and~~ developmental disabilities, or an institution under the jurisdiction of either department; and physicians who are in residency programs at the institutions;

(14) Up to twenty positions at each institution under the jurisdiction of the department of mental health or the department of ~~mental retardation and~~ developmental disabilities that the department director determines to be primarily administrative or managerial; and up to fifteen positions in any division of either department, excluding administrative assistants to the director and division chiefs, which are within the immediate staff of a division chief and which the director determines to be primarily and distinctively administrative and managerial;

(15) Noncitizens of the United States employed by the state, or its counties or cities, as physicians or nurses who are duly licensed to practice their respective professions under the laws of this state, or medical assistants, in mental or chronic disease hospitals, or institutions;

(16) Employees of the governor's office;

(17) Fire chiefs and chiefs of police in civil service townships appointed by boards of township trustees under section 505.38 or 505.49 of the Revised Code;

(18) Executive directors, deputy directors, and program directors employed by boards of alcohol, drug addiction, and mental health services under Chapter 340. of the Revised Code, and secretaries of the executive directors, deputy directors, and program directors;

(19) Superintendents, and management employees as defined in section 5126.20 of the Revised Code, of county boards of ~~mental retardation and~~

developmental disabilities;

(20) Physicians, nurses, and other employees of a county hospital who are appointed pursuant to sections 339.03 and 339.06 of the Revised Code;

(21) The executive director of the state medical board, who is appointed pursuant to division (B) of section 4731.05 of the Revised Code;

(22) County directors of job and family services as provided in section 329.02 of the Revised Code and administrators appointed under section 329.021 of the Revised Code;

(23) A director of economic development who is hired pursuant to division (A) of section 307.07 of the Revised Code;

(24) Chiefs of construction and compliance, of operations and maintenance, and of licensing and certification in the division of industrial compliance in the department of commerce;

(25) The executive director of a county transit system appointed under division (A) of section 306.04 of the Revised Code;

(26) Up to five positions at each of the administrative departments listed in section 121.02 of the Revised Code and at the department of taxation, department of the adjutant general, department of education, Ohio board of regents, bureau of workers' compensation, industrial commission, state lottery commission, and public utilities commission of Ohio that the head of that administrative department or of that other state agency determines to be involved in policy development and implementation. The head of the administrative department or other state agency shall set the compensation for employees in these positions at a rate that is not less than the minimum compensation specified in pay range 41 but not more than the maximum compensation specified in pay range 44 of salary schedule E-2 in section 124.152 of the Revised Code. The authority to establish positions in the unclassified service under division (A)(26) of this section is in addition to and does not limit any other authority that an administrative department or state agency has under the Revised Code to establish positions, appoint employees, or set compensation.

(27) Employees of the department of agriculture employed under section 901.09 of the Revised Code;

(28) For cities, counties, civil service townships, city health districts, general health districts, and city school districts, the deputies and assistants of elective or principal executive officers authorized to act for and in the place of their principals or holding a fiduciary relation to their principals;

(29) Employees who receive intermittent or temporary appointments under division (B) of section 124.30 of the Revised Code;

(30) Employees appointed to administrative staff positions for which an

appointing authority is given specific statutory authority to set compensation;

(31) Employees appointed to highway patrol cadet or highway patrol cadet candidate classifications;

(32) Employees placed in the unclassified service by another section of the Revised Code.

(B) The classified service shall comprise all persons in the employ of the state and the several counties, cities, city health districts, general health districts, and city school districts of the state, not specifically included in the unclassified service. Upon the creation by the board of trustees of a civil service township civil service commission, the classified service shall also comprise, except as otherwise provided in division (A)(17) or (C) of this section, all persons in the employ of a civil service township police or fire department having ten or more full-time paid employees. The classified service consists of two classes, which shall be designated as the competitive class and the unskilled labor class.

(1) The competitive class shall include all positions and employments in the state and the counties, cities, city health districts, general health districts, and city school districts of the state, and, upon the creation by the board of trustees of a civil service township of a township civil service commission, all positions in a civil service township police or fire department having ten or more full-time paid employees, for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appointments shall be made to, or employment shall be given in, all positions in the competitive class that are not filled by promotion, reinstatement, transfer, or reduction, as provided in this chapter, and the rules of the director of administrative services, by appointment from those certified to the appointing officer in accordance with this chapter.

(2) The unskilled labor class shall include ordinary unskilled laborers. Vacancies in the labor class for positions in service of the state shall be filled by appointment from lists of applicants registered by the director. Vacancies in the labor class for all other positions shall be filled by appointment from lists of applicants registered by a commission. The director or the commission, as applicable, by rule, shall require an applicant for registration in the labor class to furnish evidence or take tests as the director or commission considers proper with respect to age, residence, physical condition, ability to labor, honesty, sobriety, industry, capacity, and experience in the work or employment for which application is made. Laborers who fulfill the requirements shall be placed on the eligible list for the kind of labor or employment sought, and preference shall be given in

employment in accordance with the rating received from that evidence or in those tests. Upon the request of an appointing officer, stating the kind of labor needed, the pay and probable length of employment, and the number to be employed, the director or commission, as applicable, shall certify from the highest on the list double the number to be employed; from this number, the appointing officer shall appoint the number actually needed for the particular work. If more than one applicant receives the same rating, priority in time of application shall determine the order in which their names shall be certified for appointment.

(C) A municipal or civil service township civil service commission may place volunteer firefighters who are paid on a fee-for-service basis in either the classified or the unclassified civil service.

(D) This division does not apply to persons in the unclassified service who have the right to resume positions in the classified service under sections 4121.121, 5119.071, 5120.38, 5120.381, 5120.382, 5123.08, 5139.02, and 5501.19 of the Revised Code.

An appointing authority whose employees are paid directly by warrant of the director of budget and management may appoint a person who holds a certified position in the classified service within the appointing authority's agency to a position in the unclassified service within that agency. A person appointed pursuant to this division to a position in the unclassified service shall retain the right to resume the position and status held by the person in the classified service immediately prior to the person's appointment to the position in the unclassified service, regardless of the number of positions the person held in the unclassified service. An employee's right to resume a position in the classified service may only be exercised when an appointing authority demotes the employee to a pay range lower than the employee's current pay range or revokes the employee's appointment to the unclassified service. An employee forfeits the right to resume a position in the classified service when the employee is removed from the position in the unclassified service due to incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of this chapter or the rules of the director of administrative services, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. An employee also forfeits the right to resume a position in the classified service upon transfer to a different agency.

Reinstatement to a position in the classified service shall be to a position substantially equal to that position in the classified service held previously, as certified by the director of administrative services. If the position the

person previously held in the classified service has been placed in the unclassified service or is otherwise unavailable, the person shall be appointed to a position in the classified service within the appointing authority's agency that the director of administrative services certifies is comparable in compensation to the position the person previously held in the classified service. Service in the position in the unclassified service shall be counted as service in the position in the classified service held by the person immediately prior to the person's appointment to the position in the unclassified service. When a person is reinstated to a position in the classified service as provided in this division, the person is entitled to all rights, status, and benefits accruing to the position in the classified service during the person's time of service in the position in the unclassified service.

Sec. 124.23. (A) All applicants for positions and places in the classified service shall be subject to examination, except for applicants for positions as professional or certified service and paraprofessional employees of county boards of ~~mental retardation and~~ developmental disabilities, who shall be hired in the manner provided in section 124.241 of the Revised Code.

(B) Any examination administered under this section shall be public and be open to all citizens of the United States and those persons who have legally declared their intentions of becoming United States citizens, within certain limitations to be determined by the director of administrative services as to citizenship, age, experience, education, health, habit, and moral character. Any person who has completed service in the uniformed services, who has been honorably discharged from the uniformed services or transferred to the reserve with evidence of satisfactory service, and who is a resident of this state and any member of the national guard or a reserve component of the armed forces of the United States who has completed more than one hundred eighty days of active duty service pursuant to an executive order of the president of the United States or an act of the congress of the United States may file with the director a certificate of service or honorable discharge, and, upon this filing, the person shall receive additional credit of twenty per cent of the person's total grade given in the regular examination in which the person receives a passing grade.

As used in this division, "service in the uniformed services" and "uniformed services" have the same meanings as in the "Uniformed Services Employment and Reemployment Rights Act of 1994," 108 Stat. 3149, 38 U.S.C.A. 4303.

(C) An examination may include an evaluation of such factors as education, training, capacity, knowledge, manual dexterity, and physical or psychological fitness. An examination shall consist of one or more tests in

any combination. Tests may be written, oral, physical, demonstration of skill, or an evaluation of training and experiences and shall be designed to fairly test the relative capacity of the persons examined to discharge the particular duties of the position for which appointment is sought. Tests may include structured interviews, assessment centers, work simulations, examinations of knowledge, skills, and abilities, and any other acceptable testing methods. If minimum or maximum requirements are established for any examination, they shall be specified in the examination announcement.

(D) The director of administrative services shall have control of all examinations, except as otherwise provided in sections 124.01 to 124.64 of the Revised Code. No questions in any examination shall relate to political or religious opinions or affiliations. No credit for seniority, efficiency, or any other reason shall be added to an applicant's examination grade unless the applicant achieves at least the minimum passing grade on the examination without counting that extra credit.

(E) Except as otherwise provided in sections 124.01 to 124.64 of the Revised Code, the director of administrative services shall give reasonable notice of the time, place, and general scope of every competitive examination for appointment to a position in the civil service. The director shall send written, printed, or electronic notices of every examination to be conducted in the state classified service to each agency of the type the director of job and family services specifies and, in the case of a county in which no such agency is located, to the clerk of the court of common pleas of that county and to the clerk of each city located within that county. Those notices shall be posted in conspicuous public places in the designated agencies or the courthouse, and city hall of the cities, of the counties in which no designated agency is located for at least two weeks preceding any examination involved, and in a conspicuous place in the office of the director of administrative services for at least two weeks preceding any examination involved. In case of examinations limited by the director to a district, county, city, or department, the director shall provide by rule for adequate publicity of an examination in the district, county, city, or department within which competition is permitted.

Sec. 124.241. As used in this section, "professional employee" has the same meaning as in section 5126.20 of the Revised Code and "registered service employee" means a service employee, as defined in section 5126.20 of the Revised Code, who is registered under section 5126.25 of the Revised Code.

County boards of ~~mental retardation and~~ developmental disabilities may hire professional employees and registered service employees in the

classified service on the basis of the candidates' qualifications rather than on the basis of the results of an examination administered by the director of administrative services pursuant to section 124.23 of the Revised Code.

Sec. 124.27. (A) The head of a department, office, or institution, in which a position in the classified service is to be filled, shall notify the director of administrative services of the fact, and the director shall, except as otherwise provided in this section and sections 124.30 and 124.31 of the Revised Code, certify to the appointing authority the names and addresses of the ten candidates standing highest on the eligible list for the class or grade to which the position belongs, except that the director may certify less than ten names if ten names are not available. When less than ten names are certified to an appointing authority, appointment from that list shall not be mandatory. When a position in the classified service in the department of mental health or the department of ~~mental retardation and~~ developmental disabilities is to be filled, the director of administrative services shall make such certification to the appointing authority within seven working days of the date the eligible list is requested.

(B) The appointing authority shall notify the director of a position in the classified service to be filled, and the appointing authority shall fill the vacant position by appointment of one of the ten persons certified by the director. If more than one position is to be filled, the director may certify a group of names from the eligible list, and the appointing authority shall appoint in the following manner: beginning at the top of the list, each time a selection is made, it must be from one of the first ten candidates remaining on the list who is willing to accept consideration for the position. If an eligible list becomes exhausted, and until a new list can be created, or when no eligible list for a position exists, names may be certified from eligible lists most appropriate for the group or class in which the position to be filled is classified. A person who is certified from an eligible list more than three times to the same appointing authority for the same or similar positions may be omitted from future certification to that appointing authority, provided that certification for a temporary appointment shall not be counted as one of those certifications. Every person who qualifies for veteran's preference under section 124.23 of the Revised Code, who is a resident of this state, and whose name is on the eligible list for a position shall be entitled to preference in original appointments to any such competitive position in the civil service of the state and its civil divisions over all other persons eligible for those appointments and standing on the relevant eligible list with a rating equal to that of the person qualifying for veteran's preference. Appointments to all positions in the classified service, that are not filled by promotion,

transfer, or reduction, as provided in sections 124.01 to 124.64 of the Revised Code and the rules of the director prescribed under those sections, shall be made only from those persons whose names are certified to the appointing authority, and no employment, except as provided in those sections, shall be otherwise given in the classified service of this state or any political subdivision of the state.

(C) All original and promotional appointments, including appointments made pursuant to section 124.30 of the Revised Code, shall be for a probationary period, not less than sixty days nor more than one year, to be fixed by the rules of the director, except as provided in section 124.231 of the Revised Code, and except for original appointments to a police department as a police officer or to a fire department as a firefighter which shall be for a probationary period of one year. No appointment or promotion is final until the appointee has satisfactorily served the probationary period. If the service of the probationary employee is unsatisfactory, the employee may be removed or reduced at any time during the probationary period. If the appointing authority decides to remove a probationary employee in the service of the state, the appointing authority shall communicate to the director the reason for that decision. A probationary employee duly removed or reduced in position for unsatisfactory service does not have the right to appeal the removal or reduction under section 124.34 of the Revised Code.

Sec. 124.38. Each of the following shall be entitled for each completed eighty hours of service to sick leave of four and six-tenths hours with pay:

(A) Employees in the various offices of the county, municipal, and civil service township service, other than superintendents and management employees, as defined in section 5126.20 of the Revised Code, of county boards of ~~mental retardation and~~ developmental disabilities;

(B) Employees of any state college or university;

(C) Employees of any board of education for whom sick leave is not provided by section 3319.141 of the Revised Code.

Employees may use sick leave, upon approval of the responsible administrative officer of the employing unit, for absence due to personal illness, pregnancy, injury, exposure to contagious disease that could be communicated to other employees, and illness, injury, or death in the employee's immediate family. Unused sick leave shall be cumulative without limit. When sick leave is used, it shall be deducted from the employee's credit on the basis of one hour for every one hour of absence from previously scheduled work.

The previously accumulated sick leave of an employee who has been separated from the public service shall be placed to the employee's credit

upon the employee's re-employment in the public service, provided that the re-employment takes place within ten years of the date on which the employee was last terminated from public service. This ten-year period shall be tolled for any period during which the employee holds elective public office, whether by election or by appointment.

An employee who transfers from one public agency to another shall be credited with the unused balance of the employee's accumulated sick leave up to the maximum of the sick leave accumulation permitted in the public agency to which the employee transfers.

The appointing authorities of the various offices of the county service may permit all or any part of a person's accrued but unused sick leave acquired during service with any regional council of government established in accordance with Chapter 167. of the Revised Code to be credited to the employee upon a transfer as if the employee were transferring from one public agency to another under this section.

The appointing authority of each employing unit shall require an employee to furnish a satisfactory written, signed statement to justify the use of sick leave. If medical attention is required, a certificate stating the nature of the illness from a licensed physician shall be required to justify the use of sick leave. Falsification of either a written, signed statement or a physician's certificate shall be grounds for disciplinary action, including dismissal.

This section does not interfere with existing unused sick leave credit in any agency of government where attendance records are maintained and credit has been given employees for unused sick leave.

Notwithstanding this section or any other section of the Revised Code, any appointing authority of a county office, department, commission, board, or body may, upon notification to the board of county commissioners, establish alternative schedules of sick leave for employees of the appointing authority for whom the state employment relations board has not established an appropriate bargaining unit pursuant to section 4117.06 of the Revised Code, as long as the alternative schedules are not inconsistent with the provisions of at least one collective bargaining agreement covering other employees of that appointing authority, if such a collective bargaining agreement exists. If no such collective bargaining agreement exists, an appointing authority may, upon notification to the board of county commissioners, establish an alternative schedule of sick leave for its employees that does not diminish the sick leave benefits granted by this section.

Sec. 124.381. Each employee of the department of rehabilitation and correction, the department of mental health, the department of ~~mental~~

~~retardation and~~ developmental disabilities, the Ohio veteran's home agency, or the Ohio schools for the deaf and blind, and each employee of the department of youth services as established in division (A) of section 124.14 of the Revised Code who suffers bodily injury inflicted by an inmate, patient, client, youth, or student in the facilities of these agencies during the time the employee is lawfully carrying out the assigned duties of the employee's position shall be paid the employee's total rate of pay during the period the employee is disabled as a result of that injury, but in no case to exceed one hundred twenty work days, in lieu of workers' compensation. Pay made according to this section shall not be charged to the employee's accumulation of sick leave credit.

The director of administrative services shall adopt rules for the administration of the occupational injury leave program. The rules shall include, but not be limited to, provisions for determining a disability, for filing a claim for leave under this section, and for allowing or denying claims for the leave.

During the time an employee is receiving injury compensation as provided in this section, the employee shall be exempt from the accumulation of vacation leave credit under section 124.134 of the Revised Code but shall continue to receive sick leave credit and personal leave credit under sections 124.382 and 124.386 of the Revised Code.

In any case when an employee's disability, as covered by this section, extends beyond one hundred twenty work days, the employee shall immediately become subject to sections 124.382 and 124.385 of the Revised Code regarding sick leave and disability leave benefits.

An appointing authority may apply to the director of administrative services to grant injury leave in accordance with this section to law enforcement personnel employed by the agency.

Sec. 125.602. (A) The department of ~~mental retardation and~~ developmental disabilities, the department of mental health, the department of job and family services, the rehabilitation services commission, and any other state or governmental agency or community rehabilitation program responsible for the provision of rehabilitation and vocational educational services to persons with work-limiting disabilities may, through written agreement, cooperate in providing resources to the department of administrative services for the operation of the office of procurement from community rehabilitation programs. These resources may include, but are not limited to, leadership and assistance in dealing with the societal aspects of meeting the needs of persons with work-limiting disabilities.

(B) The office and all governmental entities that administer

socioeconomic programs may enter into contractual agreements, cooperative working relationships, or other arrangements that are necessary for effective coordination and realization of the objectives of these entities.

Sec. 125.603. (A) The office of procurement from community rehabilitation programs shall do the following in addition to other duties specified in sections 125.60 to 125.6012 of the Revised Code:

(1) Establish, maintain, and periodically update a procurement list of approved supplies and services available from qualified nonprofit agencies;

(2) Monitor the procurement practices of government ordering offices to ensure compliance with sections 125.60 to 125.6012 of the Revised Code;

(3) In cooperation with qualified nonprofit agencies, government ordering offices, the department of ~~mental retardation and~~ developmental disabilities, the department of mental health, the department of job and family services, and the rehabilitation services commission, develop and recommend to the director of administrative services rules the director shall adopt in accordance with Chapter 119. of the Revised Code for the effective and efficient administration of sections 125.60 to 125.6012 of the Revised Code;

(4) Prepare a report of its activities by the last day of December of each year. The report shall be posted electronically on the office's web site.

(B) The office of procurement from community rehabilitation programs may enter into contractual agreements and establish pilot programs to further the objectives of sections 125.60 to 125.6012 of the Revised Code.

Sec. 126.32. (A) Any officer of any state agency may authorize reimbursement for travel, including the costs of transportation, for lodging, and for meals to any person who is interviewing for a position that is classified in pay range 13 or above in schedule E-1 or schedule E-1 for step seven only, or is classified in schedule E-2, of section 124.152 of the Revised Code.

(B) If a person is appointed to a position listed in section 121.03 of the Revised Code, to the position of chairperson of the industrial commission, adjutant general, chancellor of the Ohio board of regents, superintendent of public instruction, chairperson of the public utilities commission of Ohio, or director of the state lottery commission, to a position holding a fiduciary relationship to the governor, to a position of an appointing authority of the department of mental health, ~~mental retardation and~~ developmental disabilities, or rehabilitation and correction, to a position of superintendent in the department of youth services, or to a position under section 122.05 of the Revised Code, and if that appointment requires a permanent change of residence, the appropriate state agency may reimburse the person for the

person's actual and necessary expenses, including the cost of in-transit storage of household goods and personal effects, of moving the person and members of the person's immediate family residing in the person's household, and of moving their household goods and personal effects, to the person's new location.

Until that person moves the person's permanent residence to the new location, but not for a period that exceeds thirty consecutive days, the state agency may reimburse the person for the person's temporary living expenses at the new location that the person has incurred on behalf of the person and members of the person's immediate family residing in the person's household. In addition, the state agency may reimburse that person for the person's travel expenses between the new location and the person's former residence during this period for a maximum number of trips specified by rule of the director of budget and management, but the state agency shall not reimburse the person for travel expenses incurred for those trips by members of the person's immediate family. With the prior written approval of the director, the maximum thirty-day period for temporary living expenses may be extended for a person appointed to a position under section 122.05 of the Revised Code.

The director of development may reimburse a person appointed to a position under section 122.05 of the Revised Code for the person's actual and necessary expenses of moving the person and members of the person's immediate family residing in the person's household back to the United States and may reimburse a person appointed to such a position for the cost of storage of household goods and personal effects of the person and the person's immediate family while the person is serving outside the United States, if the person's office outside the United States is the person's primary job location.

(C) All reimbursement under division (A) or (B) of this section shall be made in the manner, and at rates that do not exceed those, provided by rule of the director of budget and management in accordance with section 111.15 of the Revised Code. Reimbursements may be made under division (B) of this section directly to the persons who incurred the expenses or directly to the providers of goods or services the persons receive, as determined by the director of budget and management.

Sec. 127.16. (A) Upon the request of either a state agency or the director of budget and management and after the controlling board determines that an emergency or a sufficient economic reason exists, the controlling board may approve the making of a purchase without competitive selection as provided in division (B) of this section.

(B) Except as otherwise provided in this section, no state agency, using money that has been appropriated to it directly, shall:

(1) Make any purchase from a particular supplier, that would amount to fifty thousand dollars or more when combined with both the amount of all disbursements to the supplier during the fiscal year for purchases made by the agency and the amount of all outstanding encumbrances for purchases made by the agency from the supplier, unless the purchase is made by competitive selection or with the approval of the controlling board;

(2) Lease real estate from a particular supplier, if the lease would amount to seventy-five thousand dollars or more when combined with both the amount of all disbursements to the supplier during the fiscal year for real estate leases made by the agency and the amount of all outstanding encumbrances for real estate leases made by the agency from the supplier, unless the lease is made by competitive selection or with the approval of the controlling board.

(C) Any person who authorizes a purchase in violation of division (B) of this section shall be liable to the state for any state funds spent on the purchase, and the attorney general shall collect the amount from the person.

(D) Nothing in division (B) of this section shall be construed as:

(1) A limitation upon the authority of the director of transportation as granted in sections 5501.17, 5517.02, and 5525.14 of the Revised Code;

(2) Applying to medicaid provider agreements under Chapter 5111. of the Revised Code or payments or provider agreements under the disability medical assistance program established under Chapter 5115. of the Revised Code;

(3) Applying to the purchase of examinations from a sole supplier by a state licensing board under Title XLVII of the Revised Code;

(4) Applying to entertainment contracts for the Ohio state fair entered into by the Ohio expositions commission, provided that the controlling board has given its approval to the commission to enter into such contracts and has approved a total budget amount for such contracts as agreed upon by commission action, and that the commission causes to be kept itemized records of the amounts of money spent under each contract and annually files those records with the clerk of the house of representatives and the clerk of the senate following the close of the fair;

(5) Limiting the authority of the chief of the division of mineral resources management to contract for reclamation work with an operator mining adjacent land as provided in section 1513.27 of the Revised Code;

(6) Applying to investment transactions and procedures of any state agency, except that the agency shall file with the board the name of any

person with whom the agency contracts to make, broker, service, or otherwise manage its investments, as well as the commission, rate, or schedule of charges of such person with respect to any investment transactions to be undertaken on behalf of the agency. The filing shall be in a form and at such times as the board considers appropriate.

(7) Applying to purchases made with money for the per cent for arts program established by section 3379.10 of the Revised Code;

(8) Applying to purchases made by the rehabilitation services commission of services, or supplies, that are provided to persons with disabilities, or to purchases made by the commission in connection with the eligibility determinations it makes for applicants of programs administered by the social security administration;

(9) Applying to payments by the department of job and family services under section 5111.13 of the Revised Code for group health plan premiums, deductibles, coinsurance, and other cost-sharing expenses;

(10) Applying to any agency of the legislative branch of the state government;

(11) Applying to agreements or contracts entered into under section 5101.11, 5101.20, 5101.201, 5101.21, or 5101.214 of the Revised Code;

(12) Applying to purchases of services by the adult parole authority under section 2967.14 of the Revised Code or by the department of youth services under section 5139.08 of the Revised Code;

(13) Applying to dues or fees paid for membership in an organization or association;

(14) Applying to purchases of utility services pursuant to section 9.30 of the Revised Code;

(15) Applying to purchases made in accordance with rules adopted by the department of administrative services of motor vehicle, aviation, or watercraft fuel, or emergency repairs of such vehicles;

(16) Applying to purchases of tickets for passenger air transportation;

(17) Applying to purchases necessary to provide public notifications required by law or to provide notifications of job openings;

(18) Applying to the judicial branch of state government;

(19) Applying to purchases of liquor for resale by the division of liquor control;

(20) Applying to purchases of motor courier and freight services made in accordance with department of administrative services rules;

(21) Applying to purchases from the United States postal service and purchases of stamps and postal meter replenishment from vendors at rates established by the United States postal service;

(22) Applying to purchases of books, periodicals, pamphlets, newspapers, maintenance subscriptions, and other published materials;

(23) Applying to purchases from other state agencies, including state-assisted institutions of higher education;

(24) Limiting the authority of the director of environmental protection to enter into contracts under division (D) of section 3745.14 of the Revised Code to conduct compliance reviews, as defined in division (A) of that section;

(25) Applying to purchases from a qualified nonprofit agency pursuant to sections 125.60 to 125.6012 or 4115.31 to 4115.35 of the Revised Code;

(26) Applying to payments by the department of job and family services to the United States department of health and human services for printing and mailing notices pertaining to the tax refund offset program of the internal revenue service of the United States department of the treasury;

(27) Applying to contracts entered into by the department of ~~mental retardation~~ and developmental disabilities under section 5123.18 of the Revised Code;

(28) Applying to payments made by the department of mental health under a physician recruitment program authorized by section 5119.101 of the Revised Code;

(29) Applying to contracts entered into with persons by the director of commerce for unclaimed funds collection and remittance efforts as provided in division (F) of section 169.03 of the Revised Code. The director shall keep an itemized accounting of unclaimed funds collected by those persons and amounts paid to them for their services.

(30) Applying to purchases made by a state institution of higher education in accordance with the terms of a contract between the vendor and an inter-university purchasing group comprised of purchasing officers of state institutions of higher education;

(31) Applying to the department of job and family services' purchases of health assistance services under the children's health insurance program part I provided for under section 5101.50 of the Revised Code, the children's health insurance program part II provided for under section 5101.51 of the Revised Code, or the children's health insurance program part III provided for under section 5101.52 of the Revised Code, or the children's buy-in program provided for under sections 5101.5211 to 5101.5216 of the Revised Code;

(32) Applying to payments by the attorney general from the reparations fund to hospitals and other emergency medical facilities for performing medical examinations to collect physical evidence pursuant to section

2907.28 of the Revised Code;

(33) Applying to contracts with a contracting authority or administrative receiver under division (B) of section 5126.056 of the Revised Code;

(34) Applying to reimbursements paid to the United States department of veterans affairs for pharmaceutical and patient supply purchases made on behalf of the Ohio veterans' home agency;

(35) Applying to agreements entered into with terminal distributors of dangerous drugs under section 173.79 of the Revised Code;

(36) Applying to payments by the superintendent of the bureau of criminal identification and investigation to the federal bureau of investigation for criminal records checks pursuant to section 109.572 of the Revised Code.

(E) When determining whether a state agency has reached the cumulative purchase thresholds established in divisions (B)(1) and (2) of this section, all of the following purchases by such agency shall not be considered:

(1) Purchases made through competitive selection or with controlling board approval;

(2) Purchases listed in division (D) of this section;

(3) For the purposes of the threshold of division (B)(1) of this section only, leases of real estate.

(F) As used in this section, "competitive selection," "purchase," "supplies," and "services" have the same meanings as in section 125.01 of the Revised Code.

Sec. 135.801. (A) As used in sections 135.801 to 135.803 of the Revised Code, "eligible lending institution," "eligible organization," "investing authority," "residential facility," and "residential facility linked deposit program" have the same meanings as in section 5126.51 of the Revised Code.

(B) The board of county commissioners may adopt a resolution implementing a residential facility linked deposit program under sections 5126.51 to 5126.62 of the Revised Code if it finds each of the following:

(1) The county board of ~~mental retardation~~ and developmental disabilities has adopted a resolution under section 5126.49 of the Revised Code.

(2) There is a shortage of residential facilities in the county for individuals with mental retardation or developmental disabilities.

(3) Eligible organizations, otherwise willing and able to develop residential facilities in the county, have been unable to do so because of high interest rates.

(4) Placement of residential facility linked deposits will assist in financing the development of residential facilities in the county that otherwise would not be developed because of high interest rates.

(5) Public moneys of the county are available for purposes of the residential facility linked deposit program.

(6) At least one eligible lending institution has an office located within the territorial limits of the county into which the board may deposit the public moneys of the county.

Sec. 135.802. The board of county commissioners shall include each of the following in a resolution implementing a residential facility linked deposit program under sections 5126.51 to 5126.62 of the Revised Code:

(A) Specific findings of fact justifying implementation of the residential facility linked deposit program in the county;

(B) Guidelines to be followed by the county board of ~~mental retardation and~~ developmental disabilities in establishing standards under section 5126.49 of the Revised Code for approving applications for linked deposit loans;

(C) Instructions to the county's investing authority as necessary for the placement and monitoring of, and for reporting with regard to, residential facility linked deposits under sections 5126.59 to 5126.61 of the Revised Code;

(D) Any information the board requires an applicant for a residential facility linked deposit loan to provide to the county board of ~~mental retardation and~~ developmental disabilities that would not otherwise be provided to that board by the applicant pursuant to sections 5126.51 to 5126.62 of the Revised Code.

The board shall transmit a certified copy of the resolution to the county board of ~~mental retardation and~~ developmental disabilities and the county's investing authority, unless the board is itself that authority.

Sec. 135.803. On receiving a resolution from the county board of ~~mental retardation and~~ developmental disabilities approving under section 5126.55 of the Revised Code development of a proposed residential facility, the board of county commissioners shall determine whether public moneys of the county are available for a residential facility linked deposit and shall certify to the county board of ~~mental retardation and~~ developmental disabilities either that public moneys are available or that public moneys are not available. If public moneys are not available the certification shall indicate the date, if any, on which the board of county commissioners anticipates that public moneys will be available.

Sec. 140.01. As used in this chapter:

(A) "Hospital agency" means any public hospital agency or any nonprofit hospital agency.

(B) "Public hospital agency" means any county, board of county hospital trustees established pursuant to section 339.02 of the Revised Code, county hospital commission established pursuant to section 339.14 of the Revised Code, municipal corporation, new community authority organized under Chapter 349. of the Revised Code, joint township hospital district, state or municipal university or college operating or authorized to operate a hospital facility, or the state.

(C) "Nonprofit hospital agency" means a corporation or association not for profit, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, that has authority to own or operate a hospital facility or provides or is to provide services to one or more other hospital agencies.

(D) "Governing body" means, in the case of a county, the board of county commissioners or other legislative body; in the case of a board of county hospital trustees, the board; in the case of a county hospital commission, the commission; in the case of a municipal corporation, the council or other legislative authority; in the case of a new community authority, its board of trustees; in the case of a joint township hospital district, the joint township district hospital board; in the case of a state or municipal university or college, its board of trustees or board of directors; in the case of a nonprofit hospital agency, the board of trustees or other body having general management of the agency; and, in the case of the state, the director of development or the Ohio higher educational facility commission.

(E) "Hospital facilities" means buildings, structures and other improvements, additions thereto and extensions thereof, furnishings, equipment, and real estate and interests in real estate, used or to be used for or in connection with one or more hospitals, emergency, intensive, intermediate, extended, long-term, or self-care facilities, diagnostic and treatment and out-patient facilities, facilities related to programs for home health services, clinics, laboratories, public health centers, research facilities, and rehabilitation facilities, for or pertaining to diagnosis, treatment, care, or rehabilitation of sick, ill, injured, infirm, impaired, disabled, or handicapped persons, or the prevention, detection, and control of disease, and also includes education, training, and food service facilities for health professions personnel, housing facilities for such personnel and their families, and parking and service facilities in connection with any of the foregoing; and includes any one, part of, or any combination of the foregoing; and further includes site improvements, utilities, machinery,

facilities, furnishings, and any separate or connected buildings, structures, improvements, sites, utilities, facilities, or equipment to be used in, or in connection with the operation or maintenance of, or supplementing or otherwise related to the services or facilities to be provided by, any one or more of such hospital facilities.

(F) "Costs of hospital facilities" means the costs of acquiring hospital facilities or interests in hospital facilities, including membership interests in nonprofit hospital agencies, costs of constructing hospital facilities, costs of improving one or more hospital facilities, including reconstructing, rehabilitating, remodeling, renovating, and enlarging, costs of equipping and furnishing such facilities, and all financing costs pertaining thereto, including, without limitation thereto, costs of engineering, architectural, and other professional services, designs, plans, specifications and surveys, and estimates of cost, costs of tests and inspections, the costs of any indemnity or surety bonds and premiums on insurance, all related direct or allocable administrative expenses pertaining thereto, fees and expenses of trustees, depositories, and paying agents for the obligations, cost of issuance of the obligations and financing charges and fees and expenses of financial advisors, attorneys, accountants, consultants and rating services in connection therewith, capitalized interest on the obligations, amounts necessary to establish reserves as required by the bond proceedings, the reimbursement of all moneys advanced or applied by the hospital agency or others or borrowed from others for the payment of any item or items of costs of such facilities, and all other expenses necessary or incident to planning or determining feasibility or practicability with respect to such facilities, and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, rehabilitation, remodeling, renovation, enlargement, improvement, equipment, and furnishing of such facilities, the financing thereof, and the placing of the same in use and operation, including any one, part of, or combination of such classes of costs and expenses, and means the costs of refinancing obligations issued by, or reimbursement of money advanced by, nonprofit hospital agencies or others the proceeds of which were used for the payment of costs of hospital facilities, if the governing body of the public hospital agency determines that the refinancing or reimbursement advances the purposes of this chapter, whether or not the refinancing or reimbursement is in conjunction with the acquisition or construction of additional hospital facilities.

(G) "Hospital receipts" means all moneys received by or on behalf of a hospital agency from or in connection with the ownership, operation, acquisition, construction, improvement, equipping, or financing of any

hospital facilities, including, without limitation thereto, any rentals and other moneys received from the lease, sale, or other disposition of hospital facilities, and any gifts, grants, interest subsidies, or other moneys received under any federal program for assistance in financing the costs of hospital facilities, and any other gifts, grants, and donations, and receipts therefrom, available for financing the costs of hospital facilities.

(H) "Obligations" means bonds, notes, or other evidences of indebtedness or obligation, including interest coupons pertaining thereto, issued or issuable by a public hospital agency to pay costs of hospital facilities.

(I) "Bond service charges" means principal, interest, and call premium, if any, required to be paid on obligations.

(J) "Bond proceedings" means one or more ordinances, resolutions, trust agreements, indentures, and other agreements or documents, and amendments and supplements to the foregoing, or any combination thereof, authorizing or providing for the terms, including any variable interest rates, and conditions applicable to, or providing for the security of, obligations and the provisions contained in such obligations.

(K) "Nursing home" has the same meaning as in division (A)(1) of section 5701.13 of the Revised Code.

(L) "Residential care facility" has the same meaning as in division (A)(2) of section 5701.13 of the Revised Code.

(M) "Adult care facility" has the same meaning as in division (A)(3) of section 5701.13 of the Revised Code.

(N) "Independent living facility" means any self-care facility or other housing facility designed or used as a residence for elderly persons. An "independent living facility" does not include a residential facility, or that part of a residential facility, that is any of the following:

(1) A hospital required to be certified by section 3727.02 of the Revised Code;

(2) A nursing home or residential care facility;

(3) An adult care facility;

(4) A hospice licensed under section 3712.04 of the Revised Code;

(5) A residential facility for the mentally ill licensed by the department of mental health under section 5119.22 of the Revised Code;

(6) A facility licensed to provide methadone treatment under section 3793.11 of the Revised Code;

(7) A facility certified as an alcohol and drug addiction program under section 3793.06 of the Revised Code;

(8) A residential facility licensed under section 5123.19 of the Revised

Code or a facility providing services under a contract with the department of ~~mental retardation and~~ developmental disabilities under section 5123.18 of the Revised Code;

(9) A residential facility used as part of a hospital to provide housing for staff of the hospital or students pursuing a course of study at the hospital.

Sec. 140.03. (A) Two or more hospital agencies may enter into agreements for the acquisition, construction, reconstruction, rehabilitation, remodeling, renovating, enlarging, equipping, and furnishing of hospital facilities, or the management, operation, occupancy, use, maintenance, and repair of hospital facilities, or for participation in programs, projects, activities, and services useful to, connected with, supplementing, or otherwise related to the services provided by, or the operation of, hospital facilities operated by one or more participating hospital agencies, including any combination of such purposes, all in such manner as to promote the public purpose stated in section 140.02 of the Revised Code. A city health district; general health district; board of alcohol, drug addiction, and mental health services; county board of ~~mental retardation and~~ developmental disabilities; the department of mental health; the department of ~~mental retardation and~~ developmental disabilities; or any public body engaged in the education or training of health professions personnel may join in any such agreement for purposes related to its authority under laws applicable to it, and as such a participant shall be considered a public hospital agency or hospital agency for the purposes of this section.

(B) An agreement entered into under authority of this section shall, where appropriate, provide for:

(1) The manner in which the title to the hospital facilities, including the sites and interest in real estate pertaining thereto, is to be held, transferred, or disposed of;

(2) Unless provided for by lease pursuant to section 140.05 of the Revised Code, the method by which such hospital facilities are to be acquired, constructed, or otherwise improved and by which they shall be managed, occupied, maintained, and repaired, including the designation of one of the hospital agencies to have charge of the details of acquisition, construction, or improvement pursuant to the contracting procedures prescribed under the law applicable to one of the participating public hospital agencies;

(3) The management or administration of any such programs, projects, activities, or services, which may include management or administration by one of said hospital agencies or a board or agency thereof;

(4) Annual, or more frequent, reports to the participating hospital

agencies as to the revenues and receipts pertaining to the subject of the agreement, the expenditures thereof, the status and application of other funds contributed under such agreement, and such other matters as may be specified by or pursuant to such agreement;

(5) The manner of apportionment or sharing of costs of hospital facilities, any other applicable costs of management, operation, maintenance, and repair of hospital facilities, and costs for the programs, projects, activities, and services forming the subject of the agreement, which apportionment or sharing may be prescribed in fixed amounts, or determined by ratios, formulas, or otherwise, and paid as service charges, rentals, or in such other manner as provided in the agreement, and may include amounts sufficient to meet the bond service charges and other payments and deposits required under the bond proceedings for obligations issued to pay costs of hospital facilities. A hospital agency may commit itself to make such payments at least for so long as any such obligations are outstanding. In the apportionment, different classes of costs or expenses may be apportioned to one or more, all or less than all, of the participating hospital agencies as determined under such agreement.

(C) An agreement entered into under authority of this section may provide for:

(1) An orderly process for making determinations or advising as to planning, execution, implementation, and operation, which may include designating one of the hospital agencies, or a board thereof, for any of such purposes, provisions for a committee, board, or commission, and for representation thereon, or as may otherwise be provided;

(2) Securing necessary personnel, including participation of personnel from the respective hospital agencies;

(3) Standards or conditions for the admission or participation of patients and physicians;

(4) Conditions for admittance of other hospital agencies to participation under the agreement;

(5) Fixing or establishing the method of determining charges to be made for particular services;

(6) The manner of amending, supplementing, terminating, or withdrawal or removal of any party from, the agreement, and the term of the agreement, or an indefinite term;

(7) Designation of the applicants for or recipients of any federal, state, or other aid, assistance, or loans available by reason of any activities conducted under the agreement;

(8) Designation of one or more of the participating hospital agencies to

maintain, prepare, and submit, on behalf of all parties to the agreement, any or all records and reports with regard to the activities conducted under the agreement;

(9) Any incidental use of the hospital facilities, or services thereof, by participating public hospital agencies for any of their lawful purposes, which incidental use does not impair the character of the facilities as hospital facilities for any purpose of this chapter;

(10) Such other matters as the parties thereto may agree upon for the purposes of division (A) of this section.

(D) For the purpose of paying or contributing its share under an agreement made under this section, a public hospital agency may:

(1) Expend any moneys from its general fund, and from any other funds not otherwise restricted by law, but including funds for permanent improvements of hospital facilities of such public hospital agency where the contribution is to be made toward the costs of hospital facilities under the agreement, and including funds derived from levies for, or receipts available for, operating expenses of hospital facilities or services of such public hospital agency where the contribution or payment is to be made toward operating expenses of the hospital facilities or services under the agreement or for the services provided thereby;

(2) Issue obligations under Chapter 133. or section 140.06, 339.14, 339.15, 513.12, or 3345.12 of the Revised Code, or Section 3 of Article XVIII, Ohio Constitution, if applicable to such public hospital agency, to pay costs of hospital facilities, or issue obligations under any other provision of law authorizing such public hospital agency to issue obligations for any costs of hospital facilities;

(3) Levy taxes under Chapter 5705. or section 513.13 or 3709.29 of the Revised Code, if applicable to such public hospital agency, provided that the purpose of such levy may include the provision of funds for either or both permanent improvements and current expenses if required for the contribution or payment of such hospital agency under such agreement, and each such public hospital agency may issue notes in anticipation of any such levy, pursuant to the procedures provided in section 5705.191 of the Revised Code if the levy is solely for current expenses, and in section 5705.193 of the Revised Code if the levy is all or in part for permanent improvements;

(4) Contribute real and personal property or interest therein without necessity for competitive bidding or public auction on disposition of such property.

(E) Any funds provided by public hospital agencies that are parties to an agreement entered into under this section shall be transferred to and placed

in a separate fund or funds of such participating public hospital agency as is designated under the agreement. The funds shall be applied for the purposes provided in such agreement and are subject to audit. Pursuant to any determinations to be made under such agreement, the funds shall be deposited, invested, and disbursed under the provisions of law applicable to the public hospital agency in whose custody the funds are held. This division is subject to the provisions of any applicable bond proceedings under section 133.08, 140.06, 339.15, or 3345.12 of the Revised Code or Section 3 of Article XVIII, Ohio Constitution. The records and reports of such public hospital agency under Chapter 117. of the Revised Code and sections 3702.51 to 3702.62 of the Revised Code, with respect to the funds shall be sufficient without necessity for reports thereon by the other public hospital agencies participating under such agreement.

(F)(1) Prior to its entry into any such agreement, the public hospital agency must determine, and set forth in a resolution or ordinance, that the contribution to be made by it under such agreement will be fair consideration for value and benefit to be derived by it under such agreement and that the agreement will promote the public purpose stated in section 140.02 of the Revised Code.

(2) If the agreement is with a board of county commissioners, board of county hospital trustees, or county hospital commission and is an initial agreement for the acquisition or operation of a county hospital operated by a board of county hospital trustees under section 339.06 of the Revised Code, the governing body of the public hospital agency shall submit the agreement, accompanied by the resolution or ordinance, to the board of county commissioners for review pursuant to section 339.091 of the Revised Code. The agreement may be entered into only if the board of county commissioners adopts a resolution under that section. The requirements of division (F)(2) of this section do not apply to the agreement if one or more hospitals classified as general hospitals by the public health council under section 3701.07 of the Revised Code are operating in the same county as the county hospital.

Sec. 140.05. (A)(1) A public hospital agency may lease any hospital facility to one or more hospital agencies for use as a hospital facility, or to one or more city or general health districts; boards of alcohol, drug addiction, and mental health services; county boards of ~~mental retardation~~ and developmental disabilities; the department of mental health; or the department of ~~mental retardation~~ and developmental disabilities, for uses which they are authorized to make thereof under the laws applicable to them, or any combination of them, and they may lease such facilities to or

from a hospital agency for such uses, upon such terms and conditions as are agreed upon by the parties. Such lease may be for a term of fifty years or less and may provide for an option of the lessee to renew for a term of fifty years or less, as therein set forth. Prior to entering into such lease, the governing body of any public hospital agency granting such lease must determine, and set forth in a resolution or ordinance, that such lease will promote the public purpose stated in section 140.02 of the Revised Code and that the lessor public hospital agency will be duly benefited thereby.

(2) If the lease is with a board of county commissioners, board of county hospital trustees, or county hospital commission and is an agreement for the initial lease of a county hospital operated by a board of county hospital trustees under section 339.06 of the Revised Code, the governing body of the public hospital agency shall submit the agreement, accompanied by the resolution or ordinance, to the board of county commissioners for review pursuant to section 339.091 of the Revised Code. The agreement may be entered into only if the board of county commissioners adopts a resolution under that section. The requirements of division (A)(2) of this section do not apply to the lease if one or more hospitals classified as general hospitals by the public health council under section 3701.07 of the Revised Code are operating in the same county as the county hospital.

(B) Any lease entered into pursuant to this section shall provide that in the event that the lessee fails faithfully and efficiently to administer, maintain, and operate such leased facilities as hospital facilities, or fails to provide the services thereof without regard to race, creed, color, or national origin, or fails to require that any hospital agency using such facilities or the services thereof shall not discriminate by reason of race, creed, color, or national origin, after an opportunity to be heard upon written charges, said lease may be terminated at the time, in the manner and with consequences therein provided. If any such lease does not contain terms to the effect provided in this division, it shall nevertheless be deemed to contain such terms which shall be implemented as determined by the governing body of the lessor.

(C) Such lease may provide for rentals commencing at any time agreed upon, or advance rental, and continuing for such period therein provided, notwithstanding and without diminution, rebate, or setoff by reason of time of availability of the hospital facility for use, delays in construction, failure of completion, damage or destruction of the hospital facilities, or for any other reason.

(D) Such lease may provide for the sale or transfer of title of the leased facilities pursuant to an option to purchase, lease-purchase, or installment

purchase upon terms therein provided or to be determined as therein provided, which may include provision for the continued use thereof as a hospital facility for some reasonable period, taking into account efficient useful life and other factors, as is provided therein.

(E) Such lease may be entered as part of or in connection with an agreement pursuant to section 140.03 of the Revised Code. Any hospital facilities which are the subject of an agreement entered into under section 140.03 of the Revised Code may be leased pursuant to this section.

(F) If land acquired by a public hospital agency for a hospital facility is adjacent to an existing hospital facility owned by another hospital agency, the public hospital agency may, in connection with such acquisition or the leasing of such land and hospital facilities thereon to one or more hospital agencies, enter into an agreement with the hospital agency which owns such adjacent hospital facility for the use of common walls in the construction, operation, or maintenance of hospital facilities of the public hospital agency. For the purpose of construction, operation, or maintenance of hospital facilities, a public hospital agency may acquire by purchase, gift, lease, lease with option to purchase, lease-purchase, or installment purchase, easement deed, or other agreement, real estate and interests in real estate, including rights to use space over, under or upon real property owned by others, and support, access, common wall, and other rights in connection therewith. Any public hospital agency or other political subdivision or any public agency, board, commission, institution, body, or instrumentality may grant such real estate, interests, or rights to any hospital agency upon such terms as are agreed upon without necessity for competitive bidding or public auction.

Sec. 145.012. (A) "Public employee," as defined in division (A) of section 145.01 of the Revised Code, does not include any person:

(1) Who is employed by a private, temporary-help service and performs services under the direction of a public employer or is employed on a contractual basis as an independent contractor under a personal service contract with a public employer;

(2) Who is an emergency employee serving on a temporary basis in case of fire, snow, earthquake, flood, or other similar emergency;

(3) Who is employed in a program established pursuant to the "Job Training Partnership Act," 96 Stat. 1322 (1982), 29 U.S.C.A. 1501;

(4) Who is an appointed member of either the motor vehicle salvage dealers board or the motor vehicle dealer's board whose rate and method of payment are determined pursuant to division (J) of section 124.15 of the Revised Code;

(5) Who is employed as an election worker and paid less than five

hundred dollars per calendar year for that service;

(6) Who is employed as a firefighter in a position requiring satisfactory completion of a firefighter training course approved under former section 3303.07 or section 4765.55 of the Revised Code or conducted under section 3737.33 of the Revised Code except for the following:

(a) Any firefighter who has elected under section 145.013 of the Revised Code to remain a contributing member of the public employees retirement system;

(b) Any firefighter who was eligible to transfer from the public employees retirement system to the Ohio police and fire pension fund under section 742.51 or 742.515 of the Revised Code and did not elect to transfer;

(c) Any firefighter who has elected under section 742.516 of the Revised Code to transfer from the Ohio police and fire pension fund to the public employees retirement system.

(7) Who is a member of the board of health of a city or general health district, which pursuant to sections 3709.051 and 3709.07 of the Revised Code includes a combined health district, and whose compensation for attendance at meetings of the board is set forth in division (B) of section 3709.02 or division (B) of section 3709.05 of the Revised Code, as appropriate;

(8) Who participates in an alternative retirement plan established under Chapter 3305. of the Revised Code;

(9) Who is a member of the board of directors of a sanitary district established under Chapter 6115. of the Revised Code.

(B) No inmate of a correctional institution operated by the department of rehabilitation and correction, no patient in a hospital for the mentally ill or criminally insane operated by the department of mental health, no resident in an institution for the mentally retarded operated by the department of ~~mental retardation and~~ developmental disabilities, no resident admitted as a patient of a veterans' home operated under Chapter 5907. of the Revised Code, and no resident of a county home shall be considered as a public employee for the purpose of establishing membership or calculating service credit or benefits under this chapter. Nothing in this division shall be construed to affect any service credit attained by any person who was a public employee before becoming an inmate, patient, or resident at any institution listed in this division, or the payment of any benefit for which such a person or such a person's beneficiaries otherwise would be eligible.

Sec. 145.297. (A) As used in this section, "employing unit" means:

(1) A municipal corporation, agency of a municipal corporation designated by the legislative authority, park district, conservancy district,

sanitary district, health district, township, department of a township designated by the board of township trustees, metropolitan housing authority, public library, county law library, union cemetery, joint hospital, or other political subdivision or unit of local government.

(2) With respect to state employees, any entity of the state including any department, agency, institution of higher education, board, bureau, commission, council, office, or administrative body or any part of such entity that is designated by the entity as an employing unit.

(3)(a) With respect to employees of a board of alcohol, drug addiction, and mental health services, that board.

(b) With respect to employees of a county board of ~~mental retardation~~ and developmental disabilities, that board.

(c) With respect to other county employees, the county or any county agency designated by the board of county commissioners.

(4) In the case of an employee whose employing unit is in question, the employing unit is the unit through whose payroll the employee is paid.

(B) An employing unit may establish a retirement incentive plan for its eligible employees. In the case of a county or county agency, decisions on whether to establish a retirement incentive plan for any employees other than employees of a board of alcohol, drug addiction, and mental health services or county board of ~~mental retardation~~ and developmental disabilities and on the terms of the plan shall be made by the board of county commissioners. In the case of a municipal corporation or an agency of a municipal corporation, decisions on whether to establish a retirement incentive plan and on the terms of the plan shall be made by the legislative authority.

All terms of a retirement incentive plan shall be in writing.

A retirement incentive plan shall provide for purchase by the employing unit of service credit for eligible employees who elect to participate in the plan and for payment by the employing unit of the entire cost of the service credit purchased.

Every retirement incentive plan shall remain in effect for at least one year. The employing unit shall give employees at least thirty days' notice before terminating the plan.

Every retirement incentive plan shall include provisions for the timely and impartial resolution of grievances and disputes arising under the plan.

No employing unit shall have more than one retirement incentive plan in effect at any time.

(C) Any classified or unclassified employee of the employing unit who is a member of the public employees retirement system shall be eligible to

participate in the retirement incentive plan established by the employee's employing unit if the employee meets the following criteria:

(1) The employee is not any of the following:

(a) An elected official;

(b) A member of a board or commission;

(c) A person elected to serve a term of fixed length;

(d) A person appointed to serve a term of fixed length, other than a person appointed and employed by the person's employing unit.

(2) The employee is or will be eligible to retire under section 145.32, 145.34, 145.37, or division (A) of section 145.33 of the Revised Code on or before the date of termination of the retirement incentive plan. Service credit to be purchased for the employee under the retirement incentive plan shall be included in making such determination.

(3) The employee agrees to retire under section 145.32, 145.34, 145.37, or division (A) of section 145.33 of the Revised Code within ninety days after receiving notice from the public employees retirement system that service credit has been purchased for the employee under this section.

Participation in the plan shall be available to all eligible employees except that the employing unit may limit the number of participants in the plan to a specified percentage of its employees who are members of the public employees retirement system on the date the plan goes into effect. The percentage shall not be less than five per cent of such employees. If participation is limited, employees with more total service credit have the right to elect to participate before employees with less total service credit. In the case of employees with the same total service credit, employees with a greater length of service with the employing unit have the right to elect to participate before employees with less service with the employing unit. Employees with less than eighteen months of service with the employing unit have the right to elect to participate only after all other eligible employees have been given the opportunity to elect to participate. For the purpose of determining which employees may participate in a plan, total service credit includes service credit purchased by the employee under this chapter after the date on which the plan is established.

A retirement incentive plan that limits participation may provide that an employee who does not notify the employing unit of the employee's decision to participate in the plan within a specified period of time will lose priority to participate in the plan ahead of other employees with less seniority. The time given to an employee to elect to participate ahead of other employees shall not be less than thirty days after the employee receives written notice that the employee may participate in the plan.

(D) A retirement incentive plan shall provide for purchase of the same amount of service credit for each participating employee, except that the employer may not purchase more service credit for any employee than the lesser of the following:

- (1) Five years of service credit;
- (2) An amount of service credit equal to one-fifth of the total service credited to the participant under this chapter, exclusive of service credit purchased under this section.

For each year of service credit purchased under this section, the employing unit shall pay an amount equal to the additional liability resulting from the purchase of that year of service credit, as determined by an actuary employed by the public employees retirement board.

(E) Upon the election by an eligible employee to participate in the retirement incentive plan, the employee and the employing unit shall agree upon a date for payment or contracting for payment in installments to the public employees retirement system of the cost of the service credit to be purchased. The employing unit shall submit to the public employees retirement system a written request for a determination of the cost of the service credit, and within forty-five days after receiving the request, the board shall give the employing unit written notice of the cost.

The employing unit shall pay or contract to pay in installments the cost of the service credit to be purchased to the public employees retirement system on the date agreed to by the employee and the employing unit. The payment shall be made in accordance with rules adopted by the public employees retirement board. The rules may provide for payment in installments and for crediting the purchased credit to the employee's account upon the employer's contracting to pay the cost in installments. The board shall notify the member when the member is credited with service purchased under this section. If the employee does not retire within ninety days after receiving notice that the employee has been credited with the purchased service credit, the system shall refund to the employing unit the amount paid for the service credit.

No payment made to the public employees retirement system under this section shall affect any payment required by section 145.48 of the Revised Code.

(F) For the purpose of determining whether the cost of a retirement incentive plan established by a county or county agency under this section is an allowable cost for the purpose of federal funding for any year, the cost shall be considered abnormal or mass severance pay only if fifteen per cent or more of the county or county agency's employees participate in the plan

in that year.

Nothing in this division shall relieve a county or county agency from seeking federal approval for any early retirement incentive plan that uses federal dollars in accordance with federal law.

Sec. 154.17. The departments of administrative services, mental health, ~~mental retardation and~~ developmental disabilities, rehabilitation and correction, and natural resources, the Ohio board of regents, institutions of higher education, and other state officers and state agencies shall cooperate with the commission in providing services and information requested by the commission for purposes of Chapter 154. of the Revised Code, and the commission may make mutually satisfactory arrangements therefor and may thereunder designate any governmental agency for the management or performance of particular functions of the commission, other than the authorization and issuance of obligations provided for in Chapter 154. of the Revised Code, pursuant to which designation, upon acceptance thereof by that governmental agency, that function may be carried out with the full force and effect as if performed by the commission. Any such designation shall be made only by formal action or written agreement of the commission. In the management of capital facilities or performance of other functions with respect thereto, a governmental agency may exercise all powers which it has under law with respect to other similar facilities under its jurisdiction.

Contracts relating to capital facilities shall be made in accordance with the law pertaining to the governmental agency designated under authority of this section to perform such contracting function, and in any other case shall be made in accordance with Chapter 153. of the Revised Code, for which purpose the commission shall be considered the owner, provided that the commission may assign the function of owner to the department of administrative services or other governmental agency as it determines. The commission may acquire by assignment from any governmental agency contracts which are not completed and which involve acquiring, constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, improving, equipping, or furnishing capital facilities, provided that such governmental agency has complied with the procedures prescribed by laws for its letting of such contract.

No contract shall be let or assignment thereof accepted under this section involving performance in accordance with plans and specifications until such plans and specifications have been submitted to and approved by the governmental agency to have responsibility for the management of the capital facilities provided for in such plans and specifications, which

approval shall be considered to be given if no approval or disapproval is communicated in writing to the commission or its designee for such purpose within sixty days following such submission of plans and specifications. Approval by such governmental agency of changes in plans and specifications is not required if the director of administrative services or the designee of the commission for such purpose shall certify that such changes do not substantially change the location, character, or extent of such capital facilities.

Sec. 154.20. (A) Subject to authorization by the general assembly under section 154.02 of the Revised Code, the issuing authority may issue obligations pursuant to this chapter to pay costs of capital facilities for mental hygiene and retardation, including housing for mental hygiene and retardation patients.

(B) Any capital facilities for mental hygiene or retardation, including housing for mental hygiene and retardation patients, may be leased by the commission to the department of mental health, the department of ~~mental retardation and~~ developmental disabilities, or the department of alcohol and drug addiction services, and other agreements may be made by the commission and any one or more of these departments with respect to the use or purchase of such capital facilities or, subject to the approval of the director of the department, the commission may lease such capital facilities to, and make or provide for other agreements with respect to the use or purchase thereof with, any governmental agency having authority under law to operate such capital facilities, and the director of the department may sublease such capital facilities to, and make other agreements with respect to the use or purchase thereof with, any such governmental agency, which may include provisions for transmittal to the mental health bond service trust fund created under division (E) of this section, by such governmental agency or by a nonprofit corporation providing mental hygiene and retardation services for or under contract with or the supervision of that governmental agency, of receipts of that agency or nonprofit corporation from charges for the treatment or care of mental hygiene and retardation patients, all upon such terms and conditions as the parties may agree upon and pursuant to this chapter, notwithstanding any other provision of law affecting the leasing, acquisition, or disposition of capital facilities by the parties.

(C) For purposes of this section, "available receipts" means all receipts of the state from charges for the treatment or care of mental hygiene and retardation patients, including support payments received under Chapter 5121. of the Revised Code and moneys required to be transmitted to the

mental health bond service trust fund pursuant to subleases and other agreements between any of the departments and another governmental agency pursuant to division (B) of this section as the subleases and other agreements may be further implemented for internal planning, budgeting, and accounting purposes pursuant to rules adopted by the director of mental health, director of ~~mental retardation~~ and developmental disabilities, or director of alcohol and drug addiction services, any revenues or receipts derived by the commission from the operation, leasing, or other disposition of capital facilities financed under this section, the proceeds of obligations issued under this section and sections 154.11 and 154.12 of the Revised Code, and also means any gifts, grants, donations, and pledges, and receipts therefrom, available for the payment of bond service charges on such obligations. The issuing authority may pledge all, or such portion as that authority determines, of the available receipts to the payment of bond service charges on obligations issued under this section and under sections 154.11 and 154.12 of the Revised Code and for the establishment and maintenance of any reserves, as provided in the bond proceedings, and make other provisions therein with respect to such available receipts as authorized by this chapter, which provisions shall be controlling notwithstanding any other provision of law pertaining thereto.

(D) The issuing authority may covenant in the bond proceedings that the state and state agencies shall, so long as any obligations issued under this section are outstanding, cause to be charged and collected charges for the treatment or care of mental hygiene and retardation patients sufficient in amount to provide for the payment of bond service charges on such obligations and for the establishment and maintenance of any reserves, as provided in the bond proceedings, and such covenants shall be controlling notwithstanding any other provision of law pertaining to such charges.

(E) There is hereby created the mental health bond service trust fund, which shall be in the custody of the treasurer of state but shall be separate and apart from and not a part of the state treasury. All moneys received by or on account of the commission or issuing authority or state agencies and required by the applicable bond proceedings to be deposited, transferred, or credited to the fund, and all other moneys transferred or allocated to or received for the purposes of the fund, shall be deposited with the treasurer of state and credited to such fund, subject to applicable provisions of the bond proceedings, but without necessity for any act of appropriation. The mental health bond service trust fund is a trust fund and is hereby pledged to the payment of bond service charges on the obligations issued pursuant to this section and sections 154.11 and 154.12 of the Revised Code to the extent

provided in the applicable bond proceedings, and payment thereof from such fund shall be made or provided for by the treasurer of state in accordance with such bond proceedings without necessity for any act of appropriation.

(F) There is hereby created in the state treasury the mental health facilities improvement fund. Subject to the bond proceedings therefor, all of the proceeds of the sale of obligations pursuant to this section shall be credited to the fund, except that any accrued interest shall be credited to the mental health bond service fund. The mental health facilities improvement fund may also be comprised of gifts, grants, appropriated moneys, and other sums and securities received to the credit of such fund. The fund shall be applied only to the following purposes:

(1) Paying costs of capital facilities for mental hygiene and retardation, including housing for mental hygiene and retardation patients, under the jurisdiction of the department of mental health, department of ~~mental retardation~~ and developmental disabilities, or department of alcohol and drug addiction services;

(2) Participating in capital facilities for mental hygiene and retardation, including housing for mental hygiene and retardation patients, with the federal government, municipal corporations, counties, or other governmental agencies, or a nonprofit corporation specifically chartered to provide a mental health or mental retardation service when such service fulfills a public purpose, which participation may be by grants or contributions to them for such capital facilities. Except as provided in division (G) of this section, the nonprofit corporation may act in concert with a limited partnership or a limited liability company eligible to participate in the nonprofit set-aside described in section 42(h)(5) of the "Internal Revenue Code of 1986," 100 Stat. 2198, 26 U.S.C. 42, and the Ohio housing finance agency's housing tax credit program for the purpose of making use of low-income housing tax credits in support of housing for mental hygiene and retardation patients.

(G) A nonprofit corporation providing a mental retardation service must obtain written approval from the director of ~~mental retardation~~ and developmental disabilities before acting in concert with a limited partnership or limited liability company as described in division (F)(2) of this section. However, the director may issue one blanket approval for all such nonprofit corporations.

(H) This section is to be applied with other applicable provisions of this chapter.

Sec. 173.03. (A) There is hereby created the Ohio advisory council for the aging, which shall consist of twelve members to be appointed by the

governor with the advice and consent of the senate. Two ex officio members of the council shall be members of the house of representatives appointed by the speaker of the house of representatives and shall be members of two different political parties. Two ex officio members of the council shall be members of the senate appointed by the president of the senate and shall be members of two different political parties. The directors of mental health, ~~mental retardation and~~ developmental disabilities, health, and job and family services, or their designees, shall serve as ex officio members of the council. The council shall carry out its role as defined under the "Older Americans Act of 1965," 79 Stat. 219, 42 U.S.C. 3001, as amended.

At the first meeting of the council, and annually thereafter, the members shall select one of their members to serve as chairperson and one of their members to serve as vice-chairperson.

(B) Members of the council shall be appointed for a term of three years, except that for the first appointment members of the Ohio commission on aging who were serving on the commission immediately prior to July 26, 1984, shall become members of the council for the remainder of their unexpired terms. Thereafter, appointment to the council shall be for a three-year term by the governor. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the term. Any member may continue in office subsequent to the expiration date of the member's term until a successor takes office and shall be compensated for the period served between the expiration of the member's term and the beginning of the successor's term.

(C) Membership of the council shall represent all areas of Ohio and shall be as follows:

(1) A majority of members of the council shall have attained the age of sixty and have a knowledge of and continuing interest in the affairs and welfare of the older citizens of Ohio. The fields of business, labor, health, law, and human services shall be represented in the membership.

(2) No more than seven members shall be of the same political party.

(D) Any member of the council may be removed from office by the governor for neglect of duty, misconduct, or malfeasance in office after being informed in writing of the charges and afforded an opportunity for a hearing. Two consecutive unexcused absences from regularly scheduled meetings constitute neglect of duty.

(E) Members of the council shall be compensated at the rate of fifty

dollars for each day actually employed in the discharge of official duties but not to exceed two thousand dollars per year and in addition shall be allowed actual and necessary expenses.

(F) Council members are not limited as to the number of terms they may serve.

(G) Council members shall not be interested directly or indirectly in any contract awarded by the department of aging.

Sec. 305.14. (A) The court of common pleas, upon the application of the prosecuting attorney and the board of county commissioners, may authorize the board to employ legal counsel to assist the prosecuting attorney, the board, or any other county officer in any matter of public business coming before such board or officer, and in the prosecution or defense of any action or proceeding in which such board or officer is a party or has an interest, in its official capacity.

(B) The board of county commissioners may also employ legal counsel, as provided in section 309.09 of the Revised Code, to represent it in any matter of public business coming before such board, and in the prosecution or defense of any action or proceeding in which such board is a party or has an interest, in its official capacity.

(C) Notwithstanding division (A) of this section and except as provided in division (D) of this section, a county board of ~~mental retardation and~~ developmental disabilities or a public children services agency may, without the authorization of the court of common pleas, employ legal counsel to advise it or to represent it or any of its members or employees in any matter of public business coming before the board or agency or in the prosecution or defense of any action or proceeding in which the board or agency in its official capacity, or a board or agency member or employee in the member's or employee's official capacity, is a party or has an interest.

(D)(1) In any legal proceeding in which the prosecuting attorney is fully able to perform the prosecuting attorney's statutory duty to represent the county board of ~~mental retardation and~~ developmental disabilities or public children services agency without conflict of interest, the board or agency shall employ other counsel only with the written consent of the prosecuting attorney. In any legal proceeding in which the prosecuting attorney is unable, for any reason, to represent the board or agency, the prosecuting attorney shall so notify the board or agency, and, except as provided in division (D)(2) of this section, the board or agency may then employ counsel for the proceeding without further permission from any authority.

(2) A public children services agency that receives money from the county general revenue fund must obtain the permission of the board of

county commissioners of the county served by the agency before employing counsel under division (C) of this section.

Sec. 307.10. (A) No sale of real property, or lease of real property used or to be used for the purpose of airports, landing fields, or air navigational facilities, or parts thereof, as provided by section 307.09 of the Revised Code shall be made unless it is authorized by a resolution adopted by a majority of the board of county commissioners. When a sale of real property as provided by section 307.09 of the Revised Code is authorized, the board may either deed the property to the highest responsible bidder, after advertisement once a week for four consecutive weeks in a newspaper of general circulation in the county or offer the real property for sale at a public auction, after giving at least thirty days' notice of the auction by publication in a newspaper of general circulation in the county. The board may reject any and all bids. The board may, as it considers best, sell real property pursuant to this section as an entire tract or in parcels. The board, by resolution adopted by a majority of the board, may lease real property, in accordance with division (A) of section 307.09 of the Revised Code, without advertising for bids.

(B) The board, by resolution, may transfer real property in fee simple belonging to the county and not needed for public use to the United States government, to the state or any department or agency thereof, to municipal corporations or other political subdivisions of the state, to the county board of ~~mental retardation and~~ developmental disabilities, or to a county land reutilization corporation organized under Chapter 1724. of the Revised Code for public purposes upon the terms and in the manner that it may determine to be in the best interests of the county, without advertising for bids. The board shall execute a deed or other proper instrument when such a transfer is approved.

(C) The board, by resolution adopted by a majority of the board, may grant leases, rights, or easements to the United States government, to the state or any department or agency thereof, or to municipal corporations and other political subdivisions of the state, or to privately owned electric light and power companies, natural gas companies, or telephone or telegraph companies for purposes of rendering their several public utilities services, in accordance with division (B) of section 307.09 of the Revised Code, without advertising for bids. When such grant of lease, right, or easement is authorized, a deed or other proper instrument therefor shall be executed by the board.

Sec. 307.86. Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any

product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser, by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of twenty-five thousand dollars, except as otherwise provided in division (D) of section 713.23 and in sections 9.48, 125.04, 125.60 to 125.6012, 307.022, 307.041, 307.861, 339.05, 340.03, 340.033, 4115.31 to 4115.35, 5119.16, 5513.01, 5543.19, 5713.01, and 6137.05 of the Revised Code, shall be obtained through competitive bidding. However, competitive bidding is not required when any of the following applies:

(A) The board of county commissioners, by a unanimous vote of its members, makes a determination that a real and present emergency exists, and that determination and the reasons for it are entered in the minutes of the proceedings of the board, when either of the following applies:

(1) The estimated cost is less than fifty thousand dollars.

(2) There is actual physical disaster to structures, radio communications equipment, or computers.

For purposes of this division, "unanimous vote" means all three members of a board of county commissioners when all three members are present, or two members of the board if only two members, constituting a quorum, are present.

Whenever a contract of purchase, lease, or construction is exempted from competitive bidding under division (A)(1) of this section because the estimated cost is less than fifty thousand dollars, but the estimated cost is twenty-five thousand dollars or more, the county or contracting authority shall solicit informal estimates from no fewer than three persons who could perform the contract, before awarding the contract. With regard to each such contract, the county or contracting authority shall maintain a record of such estimates, including the name of each person from whom an estimate is solicited. The county or contracting authority shall maintain the record for the longer of at least one year after the contract is awarded or the amount of time the federal government requires.

(B)(1) The purchase consists of supplies or a replacement or supplemental part or parts for a product or equipment owned or leased by the county, and the only source of supply for the supplies, part, or parts is limited to a single supplier.

(2) The purchase consists of services related to information technology, such as programming services, that are proprietary or limited to a single source.

(C) The purchase is from the federal government, the state, another county or contracting authority of another county, or a board of education, township, or municipal corporation.

(D) The purchase is made by a county department of job and family services under section 329.04 of the Revised Code and consists of family services duties or workforce development activities or is made by a county board of ~~mental retardation and~~ developmental disabilities under section 5126.05 of the Revised Code and consists of program services, such as direct and ancillary client services, child care, case management services, residential services, and family resource services.

(E) The purchase consists of criminal justice services, social services programs, family services, or workforce development activities by the board of county commissioners from nonprofit corporations or associations under programs funded by the federal government or by state grants.

(F) The purchase consists of any form of an insurance policy or contract authorized to be issued under Title XXXIX of the Revised Code or any form of health care plan authorized to be issued under Chapter 1751. of the Revised Code, or any combination of such policies, contracts, plans, or services that the contracting authority is authorized to purchase, and the contracting authority does all of the following:

(1) Determines that compliance with the requirements of this section would increase, rather than decrease, the cost of the purchase;

(2) Requests issuers of the policies, contracts, plans, or services to submit proposals to the contracting authority, in a form prescribed by the contracting authority, setting forth the coverage and cost of the policies, contracts, plans, or services as the contracting authority desires to purchase;

(3) Negotiates with the issuers for the purpose of purchasing the policies, contracts, plans, or services at the best and lowest price reasonably possible.

(G) The purchase consists of computer hardware, software, or consulting services that are necessary to implement a computerized case management automation project administered by the Ohio prosecuting attorneys association and funded by a grant from the federal government.

(H) Child care services are purchased for provision to county employees.

(I)(1) Property, including land, buildings, and other real property, is leased for offices, storage, parking, or other purposes, and all of the following apply:

(a) The contracting authority is authorized by the Revised Code to lease the property.

(b) The contracting authority develops requests for proposals for leasing the property, specifying the criteria that will be considered prior to leasing the property, including the desired size and geographic location of the property.

(c) The contracting authority receives responses from prospective lessors with property meeting the criteria specified in the requests for proposals by giving notice in a manner substantially similar to the procedures established for giving notice under section 307.87 of the Revised Code.

(d) The contracting authority negotiates with the prospective lessors to obtain a lease at the best and lowest price reasonably possible considering the fair market value of the property and any relocation and operational costs that may be incurred during the period the lease is in effect.

(2) The contracting authority may use the services of a real estate appraiser to obtain advice, consultations, or other recommendations regarding the lease of property under this division.

(J) The purchase is made pursuant to section 5139.34 or sections 5139.41 to 5139.46 of the Revised Code and is of programs or services that provide case management, treatment, or prevention services to any felony or misdemeanor delinquent, unruly youth, or status offender under the supervision of the juvenile court, including, but not limited to, community residential care, day treatment, services to children in their home, or electronic monitoring.

(K) The purchase is made by a public children services agency pursuant to section 307.92 or 5153.16 of the Revised Code and consists of family services, programs, or ancillary services that provide case management, prevention, or treatment services for children at risk of being or alleged to be abused, neglected, or dependent children.

(L) The purchase is to obtain the services of emergency medical service organizations under a contract made by the board of county commissioners pursuant to section 307.05 of the Revised Code with a joint emergency medical services district.

(M) The county contracting authority determines that the use of competitive sealed proposals would be advantageous to the county and the contracting authority complies with section 307.862 of the Revised Code.

Any issuer of policies, contracts, plans, or services listed in division (F) of this section and any prospective lessor under division (I) of this section may have the issuer's or prospective lessor's name and address, or the name and address of an agent, placed on a special notification list to be kept by the contracting authority, by sending the contracting authority that name and

address. The contracting authority shall send notice to all persons listed on the special notification list. Notices shall state the deadline and place for submitting proposals. The contracting authority shall mail the notices at least six weeks prior to the deadline set by the contracting authority for submitting proposals. Every five years the contracting authority may review this list and remove any person from the list after mailing the person notification of that action.

Any contracting authority that negotiates a contract under division (F) of this section shall request proposals and negotiate with issuers in accordance with that division at least every three years from the date of the signing of such a contract, unless the parties agree upon terms for extensions or renewals of the contract. Such extension or renewal periods shall not exceed six years from the date the initial contract is signed.

Any real estate appraiser employed pursuant to division (I) of this section shall disclose any fees or compensation received from any source in connection with that employment.

Sec. 309.10. Sections 309.08 and 309.09 of the Revised Code do not prevent a school board from employing counsel to represent it, but when counsel is employed, the counsel shall be paid by the school board from the school fund. Sections 309.08 and 309.09 of the Revised Code do not prevent a county board of ~~mental retardation and~~ developmental disabilities from employing counsel to represent it, but that counsel shall be employed in accordance with division (C) of section 305.14 and paid in accordance with division (A)(7) of section 5126.05 of the Revised Code.

Sections 309.08 and 309.09 of the Revised Code do not prevent a board of county hospital trustees from employing counsel with the approval of the county commissioners to bring legal action for the collection of delinquent accounts of the hospital, but when counsel is employed, the counsel shall be paid from the hospital's funds. Sections 309.08 and 309.09 of the Revised Code do not prevent a board of library trustees from employing counsel to represent it, but when counsel is employed, the counsel shall be paid from the library's funds. Sections 309.08 and 309.09 of the Revised Code do not prevent the appointment and employment of assistants, clerks, and stenographers to assist the prosecuting attorney as provided in sections 309.01 to 309.16 of the Revised Code, or the appointment by the court of common pleas or the court of appeals of an attorney to assist the prosecuting attorney in the trial of a criminal cause pending in that court, or the board of county commissioners from paying for those services.

Sec. 319.16. The county auditor shall issue warrants, including electronic warrants authorizing direct deposit for payment of county

obligations in accordance with division (F) of section 9.37 of the Revised Code, on the county treasurer for all moneys payable from the county treasury, upon presentation of the proper order or voucher and evidentiary matter for the moneys, and keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose, and on what fund. The auditor shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal, including a county board of mental health or county board of ~~mental retardation and~~ developmental disabilities, so authorized by law. If the auditor questions the validity of an expenditure that is within available appropriations and for which a proper order or voucher and evidentiary matter is presented, the auditor shall notify the board, officer, or tribunal who presented the voucher. If the board, officer, or tribunal determines that the expenditure is valid and the auditor continues to refuse to issue the appropriate warrant on the county treasury, a writ of mandamus may be sought. The court shall issue a writ of mandamus for issuance of the warrant if the court determines that the claim is valid.

Evidentiary matter includes original invoices, receipts, bills and checks, and legible copies of contracts.

Sec. 325.19. (A)(1) The granting of vacation leave under division (A)(1) of this section is subject to divisions (A)(2) and (3) of this section. Each full-time employee in the several offices and departments of the county service, including full-time hourly rate employees, after service of one year with the county or any political subdivision of the state, shall have earned and will be due upon the attainment of the first year of employment, and annually thereafter, eighty hours of vacation leave with full pay. One year of service shall be computed on the basis of twenty-six biweekly pay periods. A full-time county employee with eight or more years of service with the county or any political subdivision of the state shall have earned and is entitled to one hundred twenty hours of vacation leave with full pay. A full-time county employee with fifteen or more years of service with the county or any political subdivision of the state shall have earned and is entitled to one hundred sixty hours of vacation leave with full pay. A full-time county employee with twenty-five years of service with the county or any political subdivision of the state shall have earned and is entitled to two hundred hours of vacation leave with full pay. Such vacation leave shall accrue to the employee at the rate of three and one-tenth hours each biweekly period for those entitled to eighty hours per year; four and six-tenths hours each biweekly period for those entitled to one hundred

twenty hours per year; six and two-tenths hours each biweekly period for those entitled to one hundred sixty hours per year; and seven and seven-tenths hours each biweekly period for those entitled to two hundred hours per year.

The appointing authorities of the offices and departments of the county service may permit all or any part of a person's prior service with any regional council of government established in accordance with Chapter 167. of the Revised Code to be considered service with the county or a political subdivision of the state for the purpose of determining years of service under this division.

(2) Full-time employees granted vacation leave under division (A)(1) of this section who render any standard of service other than forty hours per week as described in division (J) of this section and who are in active pay status in a biweekly pay period, shall accrue a number of hours of vacation leave during each such pay period that bears the same ratio to the number of hours specified in division (A)(1) of this section as their number of hours which are accepted as full-time in active pay status, excluding overtime hours, bears to eighty hours.

(3) Full-time employees granted vacation leave under division (A)(1) of this section who are in active pay status in a biweekly pay period for less than eighty hours or the number of hours of service otherwise accepted as full-time by their employing office or department shall accrue a number of hours of vacation leave during that pay period that bears the same ratio to the number of hours specified in division (A)(1) of this section as their number of hours in active pay status, excluding overtime hours, bears to eighty or the number of hours of service accepted as full-time, whichever is applicable.

(B) A board of county commissioners, by resolution, may grant vacation leave with full pay to part-time county employees. A part-time county employee shall be eligible for vacation leave with full pay upon the attainment of the first year of employment, and annually thereafter. The ratio between the hours worked and the vacation hours awarded to a part-time employee shall be the same as the ratio between the hours worked and the vacation hours earned by a full-time employee as provided for in this section.

(C) Days specified as holidays in section 124.19 of the Revised Code shall not be charged to an employee's vacation leave. Vacation leave shall be taken by the employee during the year in which it accrued and prior to the next recurrence of the anniversary date of the employee's employment, provided that the appointing authority may, in special and meritorious cases,

permit such employee to accumulate and carry over the employee's vacation leave to the following year. No vacation leave shall be carried over for more than three years. An employee is entitled to compensation, at the employee's current rate of pay, for the prorated portion of any earned but unused vacation leave for the current year to the employee's credit at time of separation, and in addition shall be compensated for any unused vacation leave accrued to the employee's credit, with the permission of the appointing authority, for the three years immediately preceding the last anniversary date of employment.

(D)(1) In addition to vacation leave, a full-time county employee is entitled to eight hours of holiday pay for New Year's day, Martin Luther King day, Washington-Lincoln day, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, and Christmas day, of each year. Except as provided in division (D)(2) of this section, holidays shall occur on the days specified in section 1.14 of the Revised Code. If any of those holidays fall on Saturday, the Friday immediately preceding shall be observed as the holiday. If any of those holidays fall on Sunday, the Monday immediately succeeding shall be observed as the holiday. If an employee's work schedule is other than Monday through Friday, the employee is entitled to holiday pay for holidays observed on the employee's day off regardless of the day of the week on which they are observed.

(2)(a) When a classified employee of a county board of ~~mental retardation~~ and developmental disabilities works at a site maintained by a government entity other than the board, such as a public school, the board may adjust the employee's holiday schedule to conform to the schedule adopted by the government entity. Under an adjusted holiday schedule, an employee shall receive the number of hours of holiday pay granted under division (D)(1) of this section.

(b) Pursuant to division (J)(6) of section 339.06 of the Revised Code, a county hospital may observe Martin Luther King day, Washington-Lincoln day, Columbus day, and Veterans' day on days other than those specified in section 1.14 of the Revised Code.

(E) In the case of the death of a county employee, the unused vacation leave and unpaid overtime to the credit of the employee shall be paid in accordance with section 2113.04 of the Revised Code, or to the employee's estate.

(F) Notwithstanding this section or any other section of the Revised Code, any appointing authority of a county office, department, commission, board, or body may, upon notification to the board of county

commissioners, establish alternative schedules of vacation leave and holidays for employees of the appointing authority for whom the state employment relations board has not established an appropriate bargaining unit pursuant to section 4117.06 of the Revised Code, as long as the alternative schedules are not inconsistent with the provisions of at least one collective bargaining agreement covering other employees of that appointing authority, if such an agreement exists. If no such collective bargaining agreement exists, an appointing authority, upon notification to the board of county commissioners, may establish an alternative schedule of vacation leave and holidays for its employees that does not diminish the vacation leave and holiday benefits granted by this section.

(G) The employees of a county children services board that establishes vacation benefits under section 5153.12 of the Revised Code are exempt from division (A) of this section.

(H) The provisions of this section do not apply to superintendents and management employees of county boards of ~~mental retardation and~~ developmental disabilities.

(I) Division (A) of this section does not apply to an employee of a county board of ~~mental retardation and~~ developmental disabilities who works at, or provides transportation services to pupils of, a special education program provided by the county board pursuant to division (A)(4) of section 5126.05 of the Revised Code, if the employee's employment is based on a school year and the employee is not subject to a contract with the county board that provides for division (A) of this section to apply to the employee.

(J) As used in this section:

(1) "Full-time employee" means an employee whose regular hours of service for a county total forty hours per week, or who renders any other standard of service accepted as full-time by an office, department, or agency of county service.

(2) "Part-time employee" means an employee whose regular hours of service for a county total less than forty hours per week, or who renders any other standard of service accepted as part-time by an office, department, or agency of county service, and whose hours of county service total at least five hundred twenty hours annually.

(3) "Management employee" has the same meaning as in section 5126.20 of the Revised Code.

Sec. 329.06. (A) Except as provided in division (C) of this section and section 6301.08 of the Revised Code, the board of county commissioners shall establish a county family services planning committee. The board shall appoint a member to represent the county department of job and family

services; an employee in the classified civil service of the county department of job and family services, if there are any such employees; and a member to represent the public. The board shall appoint other individuals to the committee in such a manner that the committee's membership is broadly representative of the groups of individuals and the public and private entities that have an interest in the family services provided in the county. The board shall make appointments in a manner that reflects the ethnic and racial composition of the county. The following groups and entities may be represented on the committee:

- (1) Consumers of family services;
- (2) The public children services agency;
- (3) The child support enforcement agency;
- (4) The county family and children first council;
- (5) Public and private colleges and universities;
- (6) Public entities that provide family services, including boards of health, boards of education, the county board of ~~mental retardation and~~ developmental disabilities, and the board of alcohol, drug addiction, and mental health services that serves the county;
- (7) Private nonprofit and for-profit entities that provide family services in the county or that advocate for consumers of family services in the county, including entities that provide services to or advocate for victims of domestic violence;
- (8) Labor organizations;
- (9) Any other group or entity that has an interest in the family services provided in the county, including groups or entities that represent any of the county's business, urban, and rural sectors.

(B) The county family services planning committee shall do all of the following:

- (1) Serve as an advisory body to the board of county commissioners with regard to the family services provided in the county, including assistance under Chapters 5107. and 5108. of the Revised Code, publicly funded child care under Chapter 5104. of the Revised Code, and social services provided under section 5101.46 of the Revised Code;
- (2) At least once a year, review and analyze the county department of job and family services' implementation of the programs established under Chapters 5107. and 5108. of the Revised Code. In its review, the committee shall use information available to it to examine all of the following:
  - (a) Return of assistance groups to participation in either program after ceasing to participate;
  - (b) Teen pregnancy rates among the programs' participants;

(c) The other types of assistance the programs' participants receive, including medical assistance under Chapter 5111. of the Revised Code, publicly funded child care under Chapter 5104. of the Revised Code, food stamp benefits under section 5101.54 of the Revised Code, and energy assistance under Chapter 5117. of the Revised Code;

(d) Other issues the committee considers appropriate.

The committee shall make recommendations to the board of county commissioners and county department of job and family services regarding the committee's findings.

(3) Conduct public hearings on proposed county profiles for the provision of social services under section 5101.46 of the Revised Code;

(4) At the request of the board, make recommendations and provide assistance regarding the family services provided in the county;

(5) At any other time the committee considers appropriate, consult with the board and make recommendations regarding the family services provided in the county. The committee's recommendations may address the following:

(a) Implementation and administration of family service programs;

(b) Use of federal, state, and local funds available for family service programs;

(c) Establishment of goals to be achieved by family service programs;

(d) Evaluation of the outcomes of family service programs;

(e) Any other matter the board considers relevant to the provision of family services.

(C) If there is a committee in existence in a county on October 1, 1997, that the board of county commissioners determines is capable of fulfilling the responsibilities of a county family services planning committee, the board may designate the committee as the county's family services planning committee and the committee shall serve in that capacity.

Sec. 1751.01. As used in this chapter:

(A)(1) "Basic health care services" means the following services when medically necessary:

(a) Physician's services, except when such services are supplemental under division (B) of this section;

(b) Inpatient hospital services;

(c) Outpatient medical services;

(d) Emergency health services;

(e) Urgent care services;

(f) Diagnostic laboratory services and diagnostic and therapeutic radiologic services;

(g) Diagnostic and treatment services, other than prescription drug services, for biologically based mental illnesses;

(h) Preventive health care services, including, but not limited to, voluntary family planning services, infertility services, periodic physical examinations, prenatal obstetrical care, and well-child care;

(i) Routine patient care for patients enrolled in an eligible cancer clinical trial pursuant to section 3923.80 of the Revised Code.

"Basic health care services" does not include experimental procedures.

Except as provided by divisions (A)(2) and (3) of this section in connection with the offering of coverage for diagnostic and treatment services for biologically based mental illnesses, a health insuring corporation shall not offer coverage for a health care service, defined as a basic health care service by this division, unless it offers coverage for all listed basic health care services. However, this requirement does not apply to the coverage of beneficiaries enrolled in medicare pursuant to a medicare contract, or to the coverage of beneficiaries enrolled in the federal employee health benefits program pursuant to 5 U.S.C.A. 8905, or to the coverage of medicaid recipients, or to the coverage of participants of the children's buy-in program, or to the coverage of beneficiaries under any federal health care program regulated by a federal regulatory body, or to the coverage of beneficiaries under any contract covering officers or employees of the state that has been entered into by the department of administrative services.

(2) A health insuring corporation may offer coverage for diagnostic and treatment services for biologically based mental illnesses without offering coverage for all other basic health care services. A health insuring corporation may offer coverage for diagnostic and treatment services for biologically based mental illnesses alone or in combination with one or more supplemental health care services. However, a health insuring corporation that offers coverage for any other basic health care service shall offer coverage for diagnostic and treatment services for biologically based mental illnesses in combination with the offer of coverage for all other listed basic health care services.

(3) A health insuring corporation that offers coverage for basic health care services is not required to offer coverage for diagnostic and treatment services for biologically based mental illnesses in combination with the offer of coverage for all other listed basic health care services if all of the following apply:

(a) The health insuring corporation submits documentation certified by an independent member of the American academy of actuaries to the superintendent of insurance showing that incurred claims for diagnostic and

treatment services for biologically based mental illnesses for a period of at least six months independently caused the health insuring corporation's costs for claims and administrative expenses for the coverage of basic health care services to increase by more than one per cent per year.

(b) The health insuring corporation submits a signed letter from an independent member of the American academy of actuaries to the superintendent of insurance opining that the increase in costs described in division (A)(3)(a) of this section could reasonably justify an increase of more than one per cent in the annual premiums or rates charged by the health insuring corporation for the coverage of basic health care services.

(c) The superintendent of insurance makes the following determinations from the documentation and opinion submitted pursuant to divisions (A)(3)(a) and (b) of this section:

(i) Incurred claims for diagnostic and treatment services for biologically based mental illnesses for a period of at least six months independently caused the health insuring corporation's costs for claims and administrative expenses for the coverage of basic health care services to increase by more than one per cent per year.

(ii) The increase in costs reasonably justifies an increase of more than one per cent in the annual premiums or rates charged by the health insuring corporation for the coverage of basic health care services.

Any determination made by the superintendent under this division is subject to Chapter 119. of the Revised Code.

(B)(1) "Supplemental health care services" means any health care services other than basic health care services that a health insuring corporation may offer, alone or in combination with either basic health care services or other supplemental health care services, and includes:

- (a) Services of facilities for intermediate or long-term care, or both;
- (b) Dental care services;
- (c) Vision care and optometric services including lenses and frames;
- (d) Podiatric care or foot care services;
- (e) Mental health services, excluding diagnostic and treatment services for biologically based mental illnesses;
- (f) Short-term outpatient evaluative and crisis-intervention mental health services;
- (g) Medical or psychological treatment and referral services for alcohol and drug abuse or addiction;
- (h) Home health services;
- (i) Prescription drug services;
- (j) Nursing services;

(k) Services of a dietitian licensed under Chapter 4759. of the Revised Code;

(l) Physical therapy services;

(m) Chiropractic services;

(n) Any other category of services approved by the superintendent of insurance.

(2) If a health insuring corporation offers prescription drug services under this division, the coverage shall include prescription drug services for the treatment of biologically based mental illnesses on the same terms and conditions as other physical diseases and disorders.

(C) "Specialty health care services" means one of the supplemental health care services listed in division (B) of this section, when provided by a health insuring corporation on an outpatient-only basis and not in combination with other supplemental health care services.

(D) "Biologically based mental illnesses" means schizophrenia, schizoaffective disorder, major depressive disorder, bipolar disorder, paranoia and other psychotic disorders, obsessive-compulsive disorder, and panic disorder, as these terms are defined in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American psychiatric association.

(E) "Children's buy-in program" has the same meaning as in section 5101.5211 of the Revised Code.

(F) "Closed panel plan" means a health care plan that requires enrollees to use participating providers.

(G) "Compensation" means remuneration for the provision of health care services, determined on other than a fee-for-service or discounted-fee-for-service basis.

(H) "Contractual periodic prepayment" means the formula for determining the premium rate for all subscribers of a health insuring corporation.

(I) "Corporation" means a corporation formed under Chapter 1701. or 1702. of the Revised Code or the similar laws of another state.

(J) "Emergency health services" means those health care services that must be available on a seven-days-per-week, twenty-four-hours-per-day basis in order to prevent jeopardy to an enrollee's health status that would occur if such services were not received as soon as possible, and includes, where appropriate, provisions for transportation and indemnity payments or service agreements for out-of-area coverage.

(K) "Enrollee" means any natural person who is entitled to receive health care benefits provided by a health insuring corporation.

(L) "Evidence of coverage" means any certificate, agreement, policy, or contract issued to a subscriber that sets out the coverage and other rights to which such person is entitled under a health care plan.

(M) "Health care facility" means any facility, except a health care practitioner's office, that provides preventive, diagnostic, therapeutic, acute convalescent, rehabilitation, mental health, mental retardation, intermediate care, or skilled nursing services.

(N) "Health care services" means basic, supplemental, and specialty health care services.

(O) "Health delivery network" means any group of providers or health care facilities, or both, or any representative thereof, that have entered into an agreement to offer health care services in a panel rather than on an individual basis.

(P) "Health insuring corporation" means a corporation, as defined in division (I) of this section, that, pursuant to a policy, contract, certificate, or agreement, pays for, reimburses, or provides, delivers, arranges for, or otherwise makes available, basic health care services, supplemental health care services, or specialty health care services, or a combination of basic health care services and either supplemental health care services or specialty health care services, through either an open panel plan or a closed panel plan.

"Health insuring corporation" does not include a limited liability company formed pursuant to Chapter 1705. of the Revised Code, an insurer licensed under Title XXXIX of the Revised Code if that insurer offers only open panel plans under which all providers and health care facilities participating receive their compensation directly from the insurer, a corporation formed by or on behalf of a political subdivision or a department, office, or institution of the state, or a public entity formed by or on behalf of a board of county commissioners, a county board of ~~mental retardation~~ and developmental disabilities, an alcohol and drug addiction services board, a board of alcohol, drug addiction, and mental health services, or a community mental health board, as those terms are used in Chapters 340. and 5126. of the Revised Code. Except as provided by division (D) of section 1751.02 of the Revised Code, or as otherwise provided by law, no board, commission, agency, or other entity under the control of a political subdivision may accept insurance risk in providing for health care services. However, nothing in this division shall be construed as prohibiting such entities from purchasing the services of a health insuring corporation or a third-party administrator licensed under Chapter 3959. of the Revised Code.

(Q) "Intermediary organization" means a health delivery network or other entity that contracts with licensed health insuring corporations or self-insured employers, or both, to provide health care services, and that enters into contractual arrangements with other entities for the provision of health care services for the purpose of fulfilling the terms of its contracts with the health insuring corporations and self-insured employers.

(R) "Intermediate care" means residential care above the level of room and board for patients who require personal assistance and health-related services, but who do not require skilled nursing care.

(S) "Medicaid" has the same meaning as in section 5111.01 of the Revised Code.

(T) "Medical record" means the personal information that relates to an individual's physical or mental condition, medical history, or medical treatment.

(U) "Medicare" means the program established under Title XVIII of the "Social Security Act" 49 Stat. 620 (1935), 42 U.S.C. 1395, as amended.

(V)(1) "Open panel plan" means a health care plan that provides incentives for enrollees to use participating providers and that also allows enrollees to use providers that are not participating providers.

(2) No health insuring corporation may offer an open panel plan, unless the health insuring corporation is also licensed as an insurer under Title XXXIX of the Revised Code, the health insuring corporation, on June 4, 1997, holds a certificate of authority or license to operate under Chapter 1736. or 1740. of the Revised Code, or an insurer licensed under Title XXXIX of the Revised Code is responsible for the out-of-network risk as evidenced by both an evidence of coverage filing under section 1751.11 of the Revised Code and a policy and certificate filing under section 3923.02 of the Revised Code.

(W) "Panel" means a group of providers or health care facilities that have joined together to deliver health care services through a contractual arrangement with a health insuring corporation, employer group, or other payor.

(X) "Person" has the same meaning as in section 1.59 of the Revised Code, and, unless the context otherwise requires, includes any insurance company holding a certificate of authority under Title XXXIX of the Revised Code, any subsidiary and affiliate of an insurance company, and any government agency.

(Y) "Premium rate" means any set fee regularly paid by a subscriber to a health insuring corporation. A "premium rate" does not include a one-time membership fee, an annual administrative fee, or a nominal access fee, paid

to a managed health care system under which the recipient of health care services remains solely responsible for any charges accessed for those services by the provider or health care facility.

(Z) "Primary care provider" means a provider that is designated by a health insuring corporation to supervise, coordinate, or provide initial care or continuing care to an enrollee, and that may be required by the health insuring corporation to initiate a referral for specialty care and to maintain supervision of the health care services rendered to the enrollee.

(AA) "Provider" means any natural person or partnership of natural persons who are licensed, certified, accredited, or otherwise authorized in this state to furnish health care services, or any professional association organized under Chapter 1785. of the Revised Code, provided that nothing in this chapter or other provisions of law shall be construed to preclude a health insuring corporation, health care practitioner, or organized health care group associated with a health insuring corporation from employing certified nurse practitioners, certified nurse anesthetists, clinical nurse specialists, certified nurse midwives, dietitians, physician assistants, dental assistants, dental hygienists, optometric technicians, or other allied health personnel who are licensed, certified, accredited, or otherwise authorized in this state to furnish health care services.

(BB) "Provider sponsored organization" means a corporation, as defined in division (I) of this section, that is at least eighty per cent owned or controlled by one or more hospitals, as defined in section 3727.01 of the Revised Code, or one or more physicians licensed to practice medicine or surgery or osteopathic medicine and surgery under Chapter 4731. of the Revised Code, or any combination of such physicians and hospitals. Such control is presumed to exist if at least eighty per cent of the voting rights or governance rights of a provider sponsored organization are directly or indirectly owned, controlled, or otherwise held by any combination of the physicians and hospitals described in this division.

(CC) "Solicitation document" means the written materials provided to prospective subscribers or enrollees, or both, and used for advertising and marketing to induce enrollment in the health care plans of a health insuring corporation.

(DD) "Subscriber" means a person who is responsible for making payments to a health insuring corporation for participation in a health care plan, or an enrollee whose employment or other status is the basis of eligibility for enrollment in a health insuring corporation.

(EE) "Urgent care services" means those health care services that are appropriately provided for an unforeseen condition of a kind that usually

requires medical attention without delay but that does not pose a threat to the life, limb, or permanent health of the injured or ill person, and may include such health care services provided out of the health insuring corporation's approved service area pursuant to indemnity payments or service agreements.

Sec. 1751.02. (A) Notwithstanding any law in this state to the contrary, any corporation, as defined in section 1751.01 of the Revised Code, may apply to the superintendent of insurance for a certificate of authority to establish and operate a health insuring corporation. If the corporation applying for a certificate of authority is a foreign corporation domiciled in a state without laws similar to those of this chapter, the corporation must form a domestic corporation to apply for, obtain, and maintain a certificate of authority under this chapter.

(B) No person shall establish, operate, or perform the services of a health insuring corporation in this state without obtaining a certificate of authority under this chapter.

(C) Except as provided by division (D) of this section, no political subdivision or department, office, or institution of this state, or corporation formed by or on behalf of any political subdivision or department, office, or institution of this state, shall establish, operate, or perform the services of a health insuring corporation. Nothing in this section shall be construed to preclude a board of county commissioners, a county board of ~~mental retardation~~ and developmental disabilities, an alcohol and drug addiction services board, a board of alcohol, drug addiction, and mental health services, or a community mental health board, or a public entity formed by or on behalf of any of these boards, from using managed care techniques in carrying out the board's or public entity's duties pursuant to the requirements of Chapters 307., 329., 340., and 5126. of the Revised Code. However, no such board or public entity may operate so as to compete in the private sector with health insuring corporations holding certificates of authority under this chapter.

(D) A corporation formed by or on behalf of a publicly owned, operated, or funded hospital or health care facility may apply to the superintendent for a certificate of authority under division (A) of this section to establish and operate a health insuring corporation.

(E) A health insuring corporation shall operate in this state in compliance with this chapter and Chapter 1753. of the Revised Code, and with sections 3702.51 to 3702.62 of the Revised Code, and shall operate in conformity with its filings with the superintendent under this chapter, including filings made pursuant to sections 1751.03, 1751.11, 1751.12, and

1751.31 of the Revised Code.

(F) An insurer licensed under Title XXXIX of the Revised Code need not obtain a certificate of authority as a health insuring corporation to offer an open panel plan as long as the providers and health care facilities participating in the open panel plan receive their compensation directly from the insurer. If the providers and health care facilities participating in the open panel plan receive their compensation from any person other than the insurer, or if the insurer offers a closed panel plan, the insurer must obtain a certificate of authority as a health insuring corporation.

(G) An intermediary organization need not obtain a certificate of authority as a health insuring corporation, regardless of the method of reimbursement to the intermediary organization, as long as a health insuring corporation or a self-insured employer maintains the ultimate responsibility to assure delivery of all health care services required by the contract between the health insuring corporation and the subscriber and the laws of this state or between the self-insured employer and its employees.

Nothing in this section shall be construed to require any health care facility, provider, health delivery network, or intermediary organization that contracts with a health insuring corporation or self-insured employer, regardless of the method of reimbursement to the health care facility, provider, health delivery network, or intermediary organization, to obtain a certificate of authority as a health insuring corporation under this chapter, unless otherwise provided, in the case of contracts with a self-insured employer, by operation of the "Employee Retirement Income Security Act of 1974," 88 Stat. 829, 29 U.S.C.A. 1001, as amended.

(H) Any health delivery network doing business in this state, including any health delivery network that is functioning as an intermediary organization doing business in this state, that is not required to obtain a certificate of authority under this chapter shall certify to the superintendent annually, not later than the first day of July, and shall provide a statement signed by the highest ranking official which includes the following information:

(1) The health delivery network's full name and the address of its principal place of business;

(2) A statement that the health delivery network is not required to obtain a certificate of authority under this chapter to conduct its business.

(I) The superintendent shall not issue a certificate of authority to a health insuring corporation that is a provider sponsored organization unless all health care plans to be offered by the health insuring corporation provide basic health care services. Substantially all of the physicians and hospitals

with ownership or control of the provider sponsored organization, as defined in section 1751.01 of the Revised Code, shall also be participating providers for the provision of basic health care services for health care plans offered by the provider sponsored organization. If a health insuring corporation that is a provider sponsored organization offers health care plans that do not provide basic health care services, the health insuring corporation shall be deemed, for purposes of section 1751.35 of the Revised Code, to have failed to substantially comply with this chapter.

Except as specifically provided in this division and in division (A) of section 1751.28 of the Revised Code, the provisions of this chapter shall apply to all health insuring corporations that are provider sponsored organizations in the same manner that these provisions apply to all health insuring corporations that are not provider sponsored organizations.

(J) Nothing in this section shall be construed to apply to any multiple employer welfare arrangement operating pursuant to Chapter 1739. of the Revised Code.

(K) Any person who violates division (B) of this section, and any health delivery network that fails to comply with division (H) of this section, is subject to the penalties set forth in section 1751.45 of the Revised Code.

Sec. 2108.521. (A) 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.

(B) Upon the filing of a petition under division (A) of this section, the court may conduct, but is not required to conduct, a hearing on the petition. The court may determine whether to grant the petition without a hearing. The department or board, and all other interested parties, may submit information and statements to the court that are relevant to the petition, and, if the court conducts a hearing, may present evidence and testimony at the hearing. The court shall order the requested autopsy or post-mortem examination if it finds that, under the circumstances, the department or board has demonstrated a need for the autopsy or post-mortem examination. The court shall order an autopsy or post-mortem examination in the circumstances specified in this division regardless of whether any consent

has been given, or has been given and withdrawn, under section 2108.50 of the Revised Code, and regardless of whether any information was presented to the coroner pursuant to section 313.131 of the Revised Code or to the court under this section regarding an autopsy being contrary to the deceased person's religious beliefs.

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

Sec. 2109.01. "Fiduciary," as used in Chapters 2101. to 2131. of the Revised Code, means any person, other than an assignee or trustee for an insolvent debtor or a guardian under sections 5905.01 to 5905.19 of the Revised Code, appointed by and accountable to the probate court and acting in a fiduciary capacity for any person, or charged with duties in relation to any property, interest, trust, or estate for the benefit of another; and includes an agency under contract with the department of ~~mental retardation and~~ developmental disabilities for the provision of protective service under sections 5123.55 to 5123.59 of the Revised Code, appointed by and accountable to the probate court as guardian or trustee with respect to mentally retarded or developmentally disabled persons.

Sec. 2109.04. (A)(1) Unless otherwise provided by law, every fiduciary, prior to the issuance of ~~his~~ the fiduciary's letters as provided by section 2109.02 of the Revised Code, shall file in the probate court in which the letters are to be issued a bond with a penal sum in such amount as may be fixed by the court, but in no event less than double the probable value of the personal estate and of the annual real estate rentals which will come into such person's hands as a fiduciary. The bond of a fiduciary shall be in a form approved by the court and signed by two or more personal sureties or by one or more corporate sureties approved by the court. It shall be conditioned that the fiduciary faithfully and honestly will discharge the duties devolving upon ~~him~~ the person as fiduciary, and shall be conditioned further as may be provided by law.

(2) Except as otherwise provided in this division, if the instrument creating the trust dispenses with the giving of a bond, the court shall appoint a fiduciary without bond, unless the court is of the opinion that the interest of the trust demands it. If the court is of that opinion, it may require bond to

be given in any amount it fixes. If a parent nominates a guardian for ~~his~~ the parent's child in a will and provides in the will that the guardian may serve without giving bond, the court may appoint the guardian without bond or require the guardian to give bond in accordance with division (A)(1) of this section.

(3) A guardian of the person only does not have to give bond unless, for good cause shown, the court considers a bond to be necessary. When a bond is required of a guardian of the person only, it shall be determined and filed in accordance with division (A)(1) of this section. This division does not apply to a guardian of the person only nominated in a parent's will if the will provides that the guardian may serve without giving bond.

(4) When the probable value of the personal estate and of the annual real estate rentals that will come into the guardian's hands as a fiduciary is less than ten thousand dollars, the court may waive or reduce a bond required by division (A)(1) of this section.

(B) When an executive director who is responsible for the administration of children services in the county is appointed as trustee of the estate of a ward pursuant to section 5153.18 of the Revised Code and has furnished bond under section 5153.13 of the Revised Code, or when an agency under contract with the department of ~~mental retardation and~~ developmental disabilities for the provision of protective service under sections 5123.55 to 5123.59 of the Revised Code is appointed as trustee of the estate of a ward under such sections and any employees of the agency having custody or control of funds or property of such a ward have furnished bond under section 5123.59 of the Revised Code, the court may dispense with the giving of a bond.

(C) When letters are granted without bond, at any later period on its own motion or upon the application of any party interested, the court may require bond to be given in such amount as may be fixed by the court. On failure to give such bond, the defaulting fiduciary shall be removed.

No instrument authorizing a fiduciary whom it names to serve without bond shall be construed to relieve a successor fiduciary from the necessity of giving bond, unless the instrument clearly evidences such intention.

The court by which a fiduciary is appointed may reduce the amount of the bond of such fiduciary at any time for good cause shown.

When two or more persons are appointed as joint fiduciaries, the court may take a separate bond from each or a joint bond from all.

Sec. 2111.01. As used in Chapters 2101. to 2131. of the Revised Code:

(A) "Guardian," other than a guardian under sections 5905.01 to 5905.19 of the Revised Code, means any person, association, or corporation

appointed by the probate court to have the care and management of the person, the estate, or both of an incompetent or minor. When applicable, "guardian" includes, but is not limited to, a limited guardian, an interim guardian, a standby guardian, and an emergency guardian appointed pursuant to division (B) of section 2111.02 of the Revised Code. "Guardian" also includes an agency under contract with the department of ~~mental retardation and~~ developmental disabilities for the provision of protective service under sections 5123.55 to 5123.59 of the Revised Code when appointed by the probate court to have the care and management of the person of an incompetent.

(B) "Ward" means any person for whom a guardian is acting or for whom the probate court is acting pursuant to section 2111.50 of the Revised Code.

(C) "Resident guardian" means a guardian appointed by a probate court to have the care and management of property in this state that belongs to a nonresident ward.

(D) "Incompetent" means any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide, or any person confined to a correctional institution within this state.

(E) "Next of kin" means any person who would be entitled to inherit from a ward under Chapter 2105. of the Revised Code if the ward dies intestate.

(F) "Conservator" means a conservator appointed by the probate court in an order of conservatorship issued pursuant to section 2111.021 of the Revised Code.

(G) "Parent" means a natural parent or adoptive parent of a minor child whose parental rights and responsibilities have not been terminated by a juvenile court or another court.

Sec. 2111.02. (A) When found necessary, the probate court on its own motion or on application by any interested party shall appoint, subject to divisions (C) and (D) of this section and to section 2109.21 and division (B) of section 2111.121 of the Revised Code, a guardian of the person, the estate, or both, of a minor or incompetent, provided the person for whom the guardian is to be appointed is a resident of the county or has a legal settlement in the county and, except in the case of a minor, has had the opportunity to have the assistance of counsel in the proceeding for the appointment of such guardian. An interested party includes, but is not

limited to, a person nominated in a durable power of attorney as described in division (D) of section 1337.09 of the Revised Code or in a writing as described in division (A) of section 2111.121 of the Revised Code.

Except when the guardian of an incompetent is an agency under contract with the department of ~~mental retardation and~~ developmental disabilities for the provision of protective services under sections 5123.55 to 5123.59 of the Revised Code, the guardian of an incompetent, by virtue of such appointment, shall be the guardian of the minor children of the guardian's ward, unless the court appoints some other person as their guardian.

When the primary purpose of the appointment of a guardian is, or was, the collection, disbursement, or administration of moneys awarded by the veterans administration to the ward, or assets derived from such moneys, no court costs shall be charged in the proceeding for the appointment or in any subsequent proceedings made in pursuance of the appointment, unless the value of the estate, including the moneys then due under the veterans administration award, exceeds one thousand five hundred dollars.

(B)(1) If the probate court finds it to be in the best interest of an incompetent or minor, it may appoint pursuant to divisions (A) and (C) of this section, on its own motion or on application by an interested party, a limited guardian with specific limited powers. The sections of the Revised Code, rules, and procedures governing guardianships apply to a limited guardian, except that the order of appointment and letters of authority of a limited guardian shall state the reasons for, and specify the limited powers of, the guardian. The court may appoint a limited guardian for a definite or indefinite period. An incompetent or minor for whom a limited guardian has been appointed retains all of the incompetent's or minor's rights in all areas not affected by the court order appointing the limited guardian.

(2) If a guardian appointed pursuant to division (A) of this section is temporarily or permanently removed or resigns, and if the welfare of the ward requires immediate action, at any time after the removal or resignation, the probate court may appoint, ex parte and with or without notice to the ward or interested parties, an interim guardian for a maximum period of fifteen days. If the court appoints the interim guardian ex parte or without notice to the ward, the court, at its first opportunity, shall enter upon its journal with specificity the reason for acting ex parte or without notice, and, as soon as possible, shall serve upon the ward a copy of the order appointing the interim guardian. For good cause shown, after notice to the ward and interested parties and after hearing, the court may extend an interim guardianship for a specified period, but not to exceed an additional thirty days.

(3) If a minor or incompetent has not been placed under a guardianship pursuant to division (A) of this section and if an emergency exists, and if it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of the minor or incompetent, at any time after it receives notice of the emergency, the court, ex parte, may issue any order that it considers necessary to prevent injury to the person or estate of the minor or incompetent, or may appoint an emergency guardian for a maximum period of seventy-two hours. A written copy of any order issued by a court under this division shall be served upon the incompetent or minor as soon as possible after its issuance. Failure to serve such an order after its issuance or prior to the taking of any action under its authority does not invalidate the order or the actions taken. The powers of an emergency guardian shall be specified in the letters of appointment, and shall be limited to those powers that are necessary to prevent injury to the person or estate of the minor or incompetent. If the court acts ex parte or without notice to the minor or incompetent, the court, at its first opportunity, shall enter upon its journal a record of the case and, with specificity, the reason for acting ex parte or without notice. For good cause shown, after notice to the minor or incompetent and interested parties, and after hearing, the court may extend an emergency guardianship for a specified period, but not to exceed an additional thirty days.

(C) Prior to the appointment of a guardian or limited guardian under division (A) or (B)(1) of this section, the court shall conduct a hearing on the matter of the appointment. The hearing shall be conducted in accordance with all of the following:

(1) The proposed guardian or limited guardian shall appear at the hearing and, if appointed, shall swear under oath that the proposed guardian or limited guardian has made and will continue to make diligent efforts to file a true inventory in accordance with section 2111.14 of the Revised Code and find and report all assets belonging to the estate of the ward and that the proposed guardian or limited guardian faithfully and completely will fulfill the other duties of guardian, including the filing of timely and accurate reports and accountings;

(2) If the hearing is conducted by a referee, the procedures set forth in Civil Rule 53 shall be followed;

(3) If the hearing concerns the appointment of a guardian or limited guardian for an alleged incompetent, the burden of proving incompetency shall be by clear and convincing evidence;

(4) Upon request of the applicant, the alleged incompetent for whom the appointment is sought or the alleged incompetent's counsel, or any

interested party, a recording or record of the hearing shall be made;

(5) Evidence of a less restrictive alternative to guardianship may be introduced, and when introduced, shall be considered by the court;

(6) The court may deny a guardianship based upon a finding that a less restrictive alternative to guardianship exists;

(7) If the hearing concerns the appointment of a guardian or limited guardian for an alleged incompetent, the alleged incompetent has all of the following rights:

(a) The right to be represented by independent counsel of ~~his~~ the alleged incompetent's choice;

(b) The right to have a friend or family member of ~~his~~ the alleged incompetent's choice present;

(c) The right to have evidence of an independent expert evaluation introduced;

(d) If the alleged incompetent is indigent, upon ~~his~~ the alleged incompetent's request:

(i) The right to have counsel and an independent expert evaluator appointed at court expense;

(ii) If the guardianship, limited guardianship, or standby guardianship decision is appealed, the right to have counsel appointed and necessary transcripts for appeal prepared at court expense.

(D)(1) When a person has been nominated to be a guardian of the estate of a minor in or pursuant to a durable power of attorney as described in division (D) of section 1337.09 of the Revised Code or a writing as described in division (A) of section 2111.121 of the Revised Code, the person nominated has preference in appointment over a person selected by the minor. A person who has been nominated to be a guardian of the person of a minor in or pursuant to a durable power of attorney or writing of that nature does not have preference in appointment over a person selected by the minor, but the probate court may appoint the person named in the durable power of attorney or the writing, the person selected by the minor, or another person as guardian of the person of the minor.

(2) A person nominated as a guardian of an incompetent adult child pursuant to section 1337.09 or 2111.121 of the Revised Code shall have preference in appointment over a person applying to be guardian if the person nominated is competent, suitable, and willing to accept the appointment, and if the incompetent adult child does not have a spouse or an adult child and has not designated a guardian prior to the court finding the adult child incompetent.

Sec. 2111.10. As used in this section, "mentally retarded person" and

"developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

Any appointment of a corporation as guardian shall apply to the estate only and not to the person, except that a nonprofit corporation organized under the laws of this state and entitled to tax exempt status under section 501(a) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended, that has a contract with the department of ~~mental retardation~~ and developmental disabilities to provide protective services may be appointed as a guardian of the person of a mentally retarded or developmentally disabled person and may serve as guardian pursuant to sections 5123.55 to 5123.59 of the Revised Code.

Sec. 2133.25. (A) The department of health, by rule adopted pursuant to Chapter 119. of the Revised Code, shall adopt a standardized method of procedure for the withholding of CPR by physicians, emergency medical services personnel, and health care facilities in accordance with sections 2133.21 to 2133.26 of the Revised Code. The standardized method shall specify criteria for determining when a do-not-resuscitate order issued by a physician is current. The standardized method so adopted shall be the "do-not-resuscitate protocol" for purposes of sections 2133.21 to 2133.26 of the Revised Code. The department also shall approve one or more standard forms of DNR identification to be used throughout this state.

(B) The department of health shall adopt rules in accordance with Chapter 119. of the Revised Code for the administration of sections 2133.21 to 2133.26 of the Revised Code.

(C) The department of health shall appoint an advisory committee to advise the department in the development of rules under this section. The advisory committee shall include, but shall not be limited to, representatives of each of the following organizations:

- (1) The association for hospitals and health systems (OHA);
- (2) The Ohio state medical association;
- (3) The Ohio chapter of the American college of emergency physicians;
- (4) The Ohio hospice organization;
- (5) The Ohio council for home care;
- (6) The Ohio health care association;
- (7) The Ohio ambulance association;
- (8) The Ohio medical directors association;
- (9) The Ohio association of emergency medical services;
- (10) The bioethics network of Ohio;
- (11) The Ohio nurses association;
- (12) The Ohio academy of nursing homes;

- (13) The Ohio association of professional firefighters;
- (14) The department of ~~mental retardation and~~ developmental disabilities;
- (15) The Ohio osteopathic association;
- (16) The association of Ohio philanthropic homes, housing and services for the aging;
- (17) The catholic conference of Ohio;
- (18) The department of aging;
- (19) The department of mental health;
- (20) The Ohio private residential association;
- (21) The northern Ohio fire fighters association.

Sec. 2151.011. (A) As used in the Revised Code:

(1) "Juvenile court" means whichever of the following is applicable that has jurisdiction under this chapter and Chapter 2152. of the Revised Code:

(a) The division of the court of common pleas specified in section 2101.022 or 2301.03 of the Revised Code as having jurisdiction under this chapter and Chapter 2152. of the Revised Code or as being the juvenile division or the juvenile division combined with one or more other divisions;

(b) The juvenile court of Cuyahoga county or Hamilton county that is separately and independently created by section 2151.08 or Chapter 2153. of the Revised Code and that has jurisdiction under this chapter and Chapter 2152. of the Revised Code;

(c) If division (A)(1)(a) or (b) of this section does not apply, the probate division of the court of common pleas.

(2) "Juvenile judge" means a judge of a court having jurisdiction under this chapter.

(3) "Private child placing agency" means any association, as defined in section 5103.02 of the Revised Code, that is certified under section 5103.03 of the Revised Code to accept temporary, permanent, or legal custody of children and place the children for either foster care or adoption.

(4) "Private noncustodial agency" means any person, organization, association, or society certified by the department of job and family services that does not accept temporary or permanent legal custody of children, that is privately operated in this state, and that does one or more of the following:

- (a) Receives and cares for children for two or more consecutive weeks;
- (b) Participates in the placement of children in certified foster homes;
- (c) Provides adoption services in conjunction with a public children services agency or private child placing agency.

(B) As used in this chapter:

(1) "Adequate parental care" means the provision by a child's parent or parents, guardian, or custodian of adequate food, clothing, and shelter to ensure the child's health and physical safety and the provision by a child's parent or parents of specialized services warranted by the child's physical or mental needs.

(2) "Adult" means an individual who is eighteen years of age or older.

(3) "Agreement for temporary custody" means a voluntary agreement authorized by section 5103.15 of the Revised Code that transfers the temporary custody of a child to a public children services agency or a private child placing agency.

(4) "Certified foster home" means a foster home, as defined in section 5103.02 of the Revised Code, certified under section 5103.03 of the Revised Code.

(5) "Child" means a person who is under eighteen years of age, except that the juvenile court has jurisdiction over any person who is adjudicated an unruly child prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated an unruly child shall be deemed a "child" until the person attains twenty-one years of age.

(6) "Child day camp," "child care," "child day-care center," "part-time child day-care center," "type A family day-care home," "certified type B family day-care home," "type B home," "administrator of a child day-care center," "administrator of a type A family day-care home," "in-home aide," and "authorized provider" have the same meanings as in section 5104.01 of the Revised Code.

(7) "Child care provider" means an individual who is a child-care staff member or administrator of a child day-care center, a type A family day-care home, or a type B family day-care home, or an in-home aide or an individual who is licensed, is regulated, is approved, operates under the direction of, or otherwise is certified by the department of job and family services, department of ~~mental retardation and~~ developmental disabilities, or the early childhood programs of the department of education.

(8) "Chronic truant" has the same meaning as in section 2152.02 of the Revised Code.

(9) "Commit" means to vest custody as ordered by the court.

(10) "Counseling" includes both of the following:

(a) General counseling services performed by a public children services agency or shelter for victims of domestic violence to assist a child, a child's parents, and a child's siblings in alleviating identified problems that may cause or have caused the child to be an abused, neglected, or dependent

child.

(b) Psychiatric or psychological therapeutic counseling services provided to correct or alleviate any mental or emotional illness or disorder and performed by a licensed psychiatrist, licensed psychologist, or a person licensed under Chapter 4757. of the Revised Code to engage in social work or professional counseling.

(11) "Custodian" means a person who has legal custody of a child or a public children services agency or private child placing agency that has permanent, temporary, or legal custody of a child.

(12) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(13) "Detention" means the temporary care of children pending court adjudication or disposition, or execution of a court order, in a public or private facility designed to physically restrict the movement and activities of children.

(14) "Developmental disability" has the same meaning as in section 5123.01 of the Revised Code.

(15) "Foster caregiver" has the same meaning as in section 5103.02 of the Revised Code.

(16) "Guardian" means a person, association, or corporation that is granted authority by a probate court pursuant to Chapter 2111. of the Revised Code to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights of the child's parents.

(17) "Habitual truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for five or more consecutive school days, seven or more school days in one school month, or twelve or more school days in a school year.

(18) "Juvenile traffic offender" has the same meaning as in section 2152.02 of the Revised Code.

(19) "Legal custody" means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

(20) A "legitimate excuse for absence from the public school the child is

supposed to attend" includes, but is not limited to, any of the following:

(a) The fact that the child in question has enrolled in and is attending another public or nonpublic school in this or another state;

(b) The fact that the child in question is excused from attendance at school for any of the reasons specified in section 3321.04 of the Revised Code;

(c) The fact that the child in question has received an age and schooling certificate in accordance with section 3331.01 of the Revised Code.

(21) "Mental illness" and "mentally ill person subject to hospitalization by court order" have the same meanings as in section 5122.01 of the Revised Code.

(22) "Mental injury" means any behavioral, cognitive, emotional, or mental disorder in a child caused by an act or omission that is described in section 2919.22 of the Revised Code and is committed by the parent or other person responsible for the child's care.

(23) "Mentally retarded person" has the same meaning as in section 5123.01 of the Revised Code.

(24) "Nonsecure care, supervision, or training" means care, supervision, or training of a child in a facility that does not confine or prevent movement of the child within the facility or from the facility.

(25) "Of compulsory school age" has the same meaning as in section 3321.01 of the Revised Code.

(26) "Organization" means any institution, public, semipublic, or private, and any private association, society, or agency located or operating in the state, incorporated or unincorporated, having among its functions the furnishing of protective services or care for children, or the placement of children in certified foster homes or elsewhere.

(27) "Out-of-home care" means detention facilities, shelter facilities, certified children's crisis care facilities, certified foster homes, placement in a prospective adoptive home prior to the issuance of a final decree of adoption, organizations, certified organizations, child day-care centers, type A family day-care homes, child care provided by type B family day-care home providers and by in-home aides, group home providers, group homes, institutions, state institutions, residential facilities, residential care facilities, residential camps, day camps, public schools, chartered nonpublic schools, educational service centers, hospitals, and medical clinics that are responsible for the care, physical custody, or control of children.

(28) "Out-of-home care child abuse" means any of the following when committed by a person responsible for the care of a child in out-of-home care:

(a) Engaging in sexual activity with a child in the person's care;  
(b) Denial to a child, as a means of punishment, of proper or necessary subsistence, education, medical care, or other care necessary for a child's health;

(c) Use of restraint procedures on a child that cause injury or pain;

(d) Administration of prescription drugs or psychotropic medication to the child without the written approval and ongoing supervision of a licensed physician;

(e) Commission of any act, other than by accidental means, that results in any injury to or death of the child in out-of-home care or commission of any act by accidental means that results in an injury to or death of a child in out-of-home care and that is at variance with the history given of the injury or death.

(29) "Out-of-home care child neglect" means any of the following when committed by a person responsible for the care of a child in out-of-home care:

(a) Failure to provide reasonable supervision according to the standards of care appropriate to the age, mental and physical condition, or other special needs of the child;

(b) Failure to provide reasonable supervision according to the standards of care appropriate to the age, mental and physical condition, or other special needs of the child, that results in sexual or physical abuse of the child by any person;

(c) Failure to develop a process for all of the following:

(i) Administration of prescription drugs or psychotropic drugs for the child;

(ii) Assuring that the instructions of the licensed physician who prescribed a drug for the child are followed;

(iii) Reporting to the licensed physician who prescribed the drug all unfavorable or dangerous side effects from the use of the drug.

(d) Failure to provide proper or necessary subsistence, education, medical care, or other individualized care necessary for the health or well-being of the child;

(e) Confinement of the child to a locked room without monitoring by staff;

(f) Failure to provide ongoing security for all prescription and nonprescription medication;

(g) Isolation of a child for a period of time when there is substantial risk that the isolation, if continued, will impair or retard the mental health or physical well-being of the child.

(30) "Permanent custody" means a legal status that vests in a public children services agency or a private child placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of all parental rights, privileges, and obligations, including all residual rights and obligations.

(31) "Permanent surrender" means the act of the parents or, if a child has only one parent, of the parent of a child, by a voluntary agreement authorized by section 5103.15 of the Revised Code, to transfer the permanent custody of the child to a public children services agency or a private child placing agency.

(32) "Person" means an individual, association, corporation, or partnership and the state or any of its political subdivisions, departments, or agencies.

(33) "Person responsible for a child's care in out-of-home care" means any of the following:

(a) Any foster caregiver, in-home aide, or provider;

(b) Any administrator, employee, or agent of any of the following: a public or private detention facility; shelter facility; certified children's crisis care facility; organization; certified organization; child day-care center; type A family day-care home; certified type B family day-care home; group home; institution; state institution; residential facility; residential care facility; residential camp; day camp; school district; community school; chartered nonpublic school; educational service center; hospital; or medical clinic;

(c) Any person who supervises or coaches children as part of an extracurricular activity sponsored by a school district, public school, or chartered nonpublic school;

(d) Any other person who performs a similar function with respect to, or has a similar relationship to, children.

(34) "Physically impaired" means having one or more of the following conditions that substantially limit one or more of an individual's major life activities, including self-care, receptive and expressive language, learning, mobility, and self-direction:

(a) A substantial impairment of vision, speech, or hearing;

(b) A congenital orthopedic impairment;

(c) An orthopedic impairment caused by disease, rheumatic fever or any other similar chronic or acute health problem, or amputation or another similar cause.

(35) "Placement for adoption" means the arrangement by a public children services agency or a private child placing agency with a person for

the care and adoption by that person of a child of whom the agency has permanent custody.

(36) "Placement in foster care" means the arrangement by a public children services agency or a private child placing agency for the out-of-home care of a child of whom the agency has temporary custody or permanent custody.

(37) "Planned permanent living arrangement" means an order of a juvenile court pursuant to which both of the following apply:

(a) The court gives legal custody of a child to a public children services agency or a private child placing agency without the termination of parental rights.

(b) The order permits the agency to make an appropriate placement of the child and to enter into a written agreement with a foster care provider or with another person or agency with whom the child is placed.

(38) "Practice of social work" and "practice of professional counseling" have the same meanings as in section 4757.01 of the Revised Code.

(39) "Sanction, service, or condition" means a sanction, service, or condition created by court order following an adjudication that a child is an unruly child that is described in division (A)(4) of section 2152.19 of the Revised Code.

(40) "Protective supervision" means an order of disposition pursuant to which the court permits an abused, neglected, dependent, or unruly child to remain in the custody of the child's parents, guardian, or custodian and stay in the child's home, subject to any conditions and limitations upon the child, the child's parents, guardian, or custodian, or any other person that the court prescribes, including supervision as directed by the court for the protection of the child.

(41) "Psychiatrist" has the same meaning as in section 5122.01 of the Revised Code.

(42) "Psychologist" has the same meaning as in section 4732.01 of the Revised Code.

(43) "Residential camp" means a program in which the care, physical custody, or control of children is accepted overnight for recreational or recreational and educational purposes.

(44) "Residential care facility" means an institution, residence, or facility that is licensed by the department of mental health under section 5119.22 of the Revised Code and that provides care for a child.

(45) "Residential facility" means a home or facility that is licensed by the department of ~~mental retardation and~~ developmental disabilities under section 5123.19 of the Revised Code and in which a child with a

developmental disability resides.

(46) "Residual parental rights, privileges, and responsibilities" means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including, but not necessarily limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

(47) "School day" means the school day established by the state board of education pursuant to section 3313.48 of the Revised Code.

(48) "School month" and "school year" have the same meanings as in section 3313.62 of the Revised Code.

(49) "Secure correctional facility" means a facility under the direction of the department of youth services that is designed to physically restrict the movement and activities of children and used for the placement of children after adjudication and disposition.

(50) "Sexual activity" has the same meaning as in section 2907.01 of the Revised Code.

(51) "Shelter" means the temporary care of children in physically unrestricted facilities pending court adjudication or disposition.

(52) "Shelter for victims of domestic violence" has the same meaning as in section 3113.33 of the Revised Code.

(53) "Temporary custody" means legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement.

(C) For the purposes of this chapter, a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.

Sec. 2151.421. (A)(1)(a) No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as provided in section

5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section 5120.173 of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Division (A)(1)(a) of this section applies to any person who is an attorney; physician, including a hospital intern or resident; dentist; podiatrist; practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code; registered nurse; licensed practical nurse; visiting nurse; other health care professional; licensed psychologist; licensed school psychologist; independent marriage and family therapist or marriage and family therapist; speech pathologist or audiologist; coroner; administrator or employee of a child day-care center; administrator or employee of a residential camp or child day camp; administrator or employee of a certified child care agency or other public or private children services agency; school teacher; school employee; school authority; person engaged in social work or the practice of professional counseling; agent of a county humane society; person, other than a cleric, rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; employee of a county department of job and family services who is a professional and who works with children and families; superintendent, board member, or employee of a county board of ~~mental-retardation~~ developmental disabilities; investigative agent contracted with by a county board of ~~mental-retardation~~ developmental disabilities; employee of the department of ~~mental-retardation~~ developmental disabilities; employee of a facility or home that provides respite care in accordance with section 5123.171 of the Revised Code; employee of a home health agency; employee of an entity that provides homemaker services; a person performing the duties of an assessor pursuant to Chapter 3107. or 5103. of the Revised Code; or third party employed by a public children services agency to assist in providing child or family related services.

(2) Except as provided in division (A)(3) of this section, an attorney or a physician is not required to make a report pursuant to division (A)(1) of this section concerning any communication the attorney or physician receives from a client or patient in an attorney-client or physician-patient relationship, if, in accordance with division (A) or (B) of section 2317.02 of the Revised Code, the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding.

(3) The client or patient in an attorney-client or physician-patient

relationship described in division (A)(2) of this section is deemed to have waived any testimonial privilege under division (A) or (B) of section 2317.02 of the Revised Code with respect to any communication the attorney or physician receives from the client or patient in that attorney-client or physician-patient relationship, and the attorney or physician shall make a report pursuant to division (A)(1) of this section with respect to that communication, if all of the following apply:

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

(b) The attorney or physician knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar position to suspect, as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient.

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

(4)(a) No cleric and no person, other than a volunteer, designated by any church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith who is acting in an official or professional capacity, who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, and who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that another cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith caused, or poses the threat of causing, the wound, injury, disability, or condition that reasonably indicates abuse or neglect shall fail to immediately report that knowledge or reasonable cause to believe to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is

occurring or has occurred. In the circumstances described in section 5120.173 of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Except as provided in division (A)(4)(c) of this section, a cleric is not required to make a report pursuant to division (A)(4)(a) of this section concerning any communication the cleric receives from a penitent in a cleric-penitent relationship, if, in accordance with division (C) of section 2317.02 of the Revised Code, the cleric could not testify with respect to that communication in a civil or criminal proceeding.

(c) The penitent in a cleric-penitent relationship described in division (A)(4)(b) of this section is deemed to have waived any testimonial privilege under division (C) of section 2317.02 of the Revised Code with respect to any communication the cleric receives from the penitent in that cleric-penitent relationship, and the cleric shall make a report pursuant to division (A)(4)(a) of this section with respect to that communication, if all of the following apply:

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

(ii) The cleric knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, as a result of the communication or any observations made during that communication, the penitent has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the penitent.

(iii) The abuse or neglect does not arise out of the penitent's attempt to have an abortion performed upon a child under eighteen years of age or upon a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code.

(d) Divisions (A)(4)(a) and (c) of this section do not apply in a cleric-penitent relationship when the disclosure of any communication the cleric receives from the penitent is in violation of the sacred trust.

(e) As used in divisions (A)(1) and (4) of this section, "cleric" and "sacred trust" have the same meanings as in section 2317.02 of the Revised Code.

(B) Anyone who knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar circumstances to suspect, that a child under eighteen years of age or a mentally retarded,

developmentally disabled, or physically impaired person under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child may report or cause reports to be made of that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the public children services agency or to a municipal or county peace officer. In the circumstances described in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the entity specified in that section.

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

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

(2) The child's age and the nature and extent of the child's injuries, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist, including any evidence of previous injuries, abuse, or neglect;

(3) Any other information that might be helpful in establishing the cause of the injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist.

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

(D) As used in this division, "children's advocacy center" and "sexual abuse of a child" have the same meanings as in section 2151.425 of the Revised Code.

(1) When a municipal or county peace officer receives a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, upon receipt of the report, the municipal or county peace officer who receives the report shall refer the report to the

appropriate public children services agency.

(2) When a public children services agency receives a report pursuant to this division or division (A) or (B) of this section, upon receipt of the report, the public children services agency shall do both of the following:

(a) Comply with section 2151.422 of the Revised Code;

(b) If the county served by the agency is also served by a children's advocacy center and the report alleges sexual abuse of a child or another type of abuse of a child that is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, comply regarding the report with the protocol and procedures for referrals and investigations, with the coordinating activities, and with the authority or responsibility for performing or providing functions, activities, and services stipulated in the interagency agreement entered into under section 2151.428 of the Revised Code relative to that center.

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

(F)(1) Except as provided in section 2151.422 of the Revised Code or in an interagency agreement entered into under section 2151.428 of the Revised Code that applies to the particular report, the public children services agency shall investigate, within twenty-four hours, each report of child abuse or child neglect that is known or reasonably suspected or believed to have occurred and of a threat of child abuse or child neglect that is known or reasonably suspected or believed to exist that is referred to it under this section to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible. The investigation shall be made in cooperation with the law enforcement agency and in accordance with the memorandum of understanding prepared under division (J) of this section. A representative of the public children services agency shall, at the time of initial contact with the person subject to the investigation, inform the person of the specific complaints or allegations made against the person. The information shall be given in a manner that is consistent with division (H)(1) of this section and protects the rights of the

person making the report under this section.

A failure to make the investigation in accordance with the memorandum is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from the report or the suppression of any evidence obtained as a result of the report and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person. The public children services agency shall report each case to the uniform statewide automated child welfare information system that the department of job and family services shall maintain in accordance with section 5101.13 of the Revised Code. The public children services agency shall submit a report of its investigation, in writing, to the law enforcement agency.

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

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

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

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

(H)(1) Except as provided in divisions (H)(4) and (N) of this section, a

report made under this section is confidential. The information provided in a report made pursuant to this section and the name of the person who made the report shall not be released for use, and shall not be used, as evidence in any civil action or proceeding brought against the person who made the report. Nothing in this division shall preclude the use of reports of other incidents of known or suspected abuse or neglect in a civil action or proceeding brought pursuant to division (M) of this section against a person who is alleged to have violated division (A)(1) of this section, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker of the report is not the defendant or an agent or employee of the defendant, has been redacted. In a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure.

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

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

(4) If a report is made pursuant to division (A) or (B) of this section and the child who is the subject of the report dies for any reason at any time after the report is made, but before the child attains eighteen years of age, the public children services agency or municipal or county peace officer to which the report was made or referred, on the request of the child fatality review board, shall submit a summary sheet of information providing a summary of the report to the review board of the county in which the deceased child resided at the time of death. On the request of the review board, the agency or peace officer may, at its discretion, make the report available to the review board. If the county served by the public children services agency is also served by a children's advocacy center and the report of alleged sexual abuse of a child or another type of abuse of a child is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, the agency or center shall perform the duties and functions specified in this division in accordance with the interagency agreement entered into under section 2151.428 of the Revised Code relative to that advocacy center.

(5) A public children services agency shall advise a person alleged to have inflicted abuse or neglect on a child who is the subject of a report made

pursuant to this section, including a report alleging sexual abuse of a child or another type of abuse of a child referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, in writing of the disposition of the investigation. The agency shall not provide to the person any information that identifies the person who made the report, statements of witnesses, or police or other investigative reports.

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

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

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

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

(c) The county peace officer;

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

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

(f) The prosecuting attorney of the county;

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

(h) The county humane society;

(i) If the public children services agency participated in the execution of a memorandum of understanding under section 2151.426 of the Revised Code establishing a children's advocacy center, each participating member of the children's advocacy center established by the memorandum.

(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 rights or any grounds for appeal or post-conviction relief to any person.

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

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

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

(4) If a public children services agency participated in the execution of a memorandum of understanding under section 2151.426 of the Revised Code establishing a children's advocacy center, the agency shall incorporate the contents of that memorandum in the memorandum prepared pursuant to this section.

(5) The clerk of the court of common pleas in the county may sign the memorandum of understanding prepared under division (J)(1) of this section. If the clerk signs the memorandum of understanding, the clerk shall execute all relevant responsibilities as required of officials specified in the memorandum.

(K)(1) Except as provided in division (K)(4) of this section, a person who is required to make a report pursuant to division (A) of this section may make a reasonable number of requests of the public children services agency that receives or is referred the report, or of the children's advocacy center that is referred the report if the report is referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, to be provided with the following information:

(a) Whether the agency or center has initiated an investigation of the report;

(b) Whether the agency or center is continuing to investigate the report;

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

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

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

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

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

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

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

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

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

necessary to protect children from child abuse and child neglect.

(M) Whoever violates division (A) of this section is liable for compensatory and exemplary damages to the child who would have been the subject of the report that was not made. A person who brings a civil action or proceeding pursuant to this division against a person who is alleged to have violated division (A)(1) of this section may use in the action or proceeding reports of other incidents of known or suspected abuse or neglect, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker is not the defendant or an agent or employee of the defendant, has been redacted.

(N)(1) As used in this division:

(a) "Out-of-home care" includes a nonchartered nonpublic school if the alleged child abuse or child neglect, or alleged threat of child abuse or child neglect, described in a report received by a public children services agency allegedly occurred in or involved the nonchartered nonpublic school and the alleged perpetrator named in the report holds a certificate, permit, or license issued by the state board of education under section 3301.071 or Chapter 3319. of the Revised Code.

(b) "Administrator, director, or other chief administrative officer" means the superintendent of the school district if the out-of-home care entity subject to a report made pursuant to this section is a school operated by the district.

(2) No later than the end of the day following the day on which a public children services agency receives a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall provide written notice of the allegations contained in and the person named as the alleged perpetrator in the report to the administrator, director, or other chief administrative officer of the out-of-home care entity that is the subject of the report unless the administrator, director, or other chief administrative officer is named as an alleged perpetrator in the report. If the administrator, director, or other chief administrative officer of an out-of-home care entity is named as an alleged perpetrator in a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved the out-of-home care entity, the agency shall provide the written notice to the owner or governing board of the out-of-home care entity that is the subject of the report. The agency shall not provide witness statements or police or other investigative reports.

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

Sec. 2903.33. As used in sections 2903.33 to 2903.36 of the Revised Code:

(A) "Care facility" means any of the following:

(1) Any "home" as defined in section 3721.10 or 5111.20 of the Revised Code;

(2) Any "residential facility" as defined in section 5123.19 of the Revised Code;

(3) Any institution or facility operated or provided by the department of mental health or by the department of ~~mental retardation and~~ developmental disabilities pursuant to sections 5119.02 and 5123.03 of the Revised Code;

(4) Any "residential facility" as defined in section 5119.22 of the Revised Code;

(5) Any unit of any hospital, as defined in section 3701.01 of the Revised Code, that provides the same services as a nursing home, as defined in section 3721.01 of the Revised Code;

(6) Any institution, residence, or facility that provides, for a period of more than twenty-four hours, whether for a consideration or not, accommodations to one individual or two unrelated individuals who are dependent upon the services of others;

(7) Any "adult care facility" as defined in section 3722.01 of the Revised Code;

(8) Any adult foster home certified by the department of aging or its designee under section 173.36 of the Revised Code;

(9) Any "community alternative home" as defined in section 3724.01 of the Revised Code.

(B) "Abuse" means knowingly causing physical harm or recklessly causing serious physical harm to a person by physical contact with the person or by the inappropriate use of a physical or chemical restraint, medication, or isolation on the person.

(C)(1) "Gross neglect" means knowingly failing to provide a person

with any treatment, care, goods, or service that is necessary to maintain the health or safety of the person when the failure results in physical harm or serious physical harm to the person.

(2) "Neglect" means recklessly failing to provide a person with any treatment, care, goods, or service that is necessary to maintain the health or safety of the person when the failure results in serious physical harm to the person.

(D) "Inappropriate use of a physical or chemical restraint, medication, or isolation" means the use of physical or chemical restraint, medication, or isolation as punishment, for staff convenience, excessively, as a substitute for treatment, or in quantities that preclude habilitation and treatment.

Sec. 2919.271. (A)(1)(a) If a defendant is charged with a violation of section 2919.27 of the Revised Code or of a municipal ordinance that is substantially similar to that section, the court may order an evaluation of the mental condition of the defendant if the court determines that either of the following criteria apply:

(i) If the alleged violation is a violation of a protection order issued or consent agreement approved pursuant to section 2919.26 or 3113.31 of the Revised Code, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of a family or household member covered by the order or agreement, or conduct by the defendant that caused a family or household member to believe that the defendant would cause physical harm to that member or that member's property.

(ii) If the alleged violation is a violation of a protection order issued pursuant to section 2903.213 or 2903.214 of the Revised Code or a protection order issued by a court of another state, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of the person covered by the order, or conduct by the defendant that caused the person covered by the order to believe that the defendant would cause physical harm to that person or that person's property.

(b) If a defendant is charged with a violation of section 2903.211 of the Revised Code or of a municipal ordinance that is substantially similar to that section, the court may order an evaluation of the mental condition of the defendant.

(2) An evaluation ordered under division (A)(1) of this section shall be completed no later than thirty days from the date the order is entered pursuant to that division. In that order, the court shall do either of the following:

(a) Order that the evaluation of the mental condition of the defendant be

preceded by an examination conducted either by a forensic center that is designated by the department of mental health to conduct examinations and make evaluations of defendants charged with violations of section 2903.211 or 2919.27 of the Revised Code or of substantially similar municipal ordinances in the area in which the court is located, or by any other program or facility that is designated by the department of mental health or the department of ~~mental retardation and~~ developmental disabilities to conduct examinations and make evaluations of defendants charged with violations of section 2903.211 or 2919.27 of the Revised Code or of substantially similar municipal ordinances, and that is operated by either department or is certified by either department as being in compliance with the standards established under division (I) of section 5119.01 of the Revised Code or division (C) of section 5123.04 of the Revised Code.

(b) Designate a center, program, or facility other than one designated by the department of mental health or the department of ~~mental retardation and~~ developmental disabilities, as described in division (A)(2)(a) of this section, to conduct the evaluation and preceding examination of the mental condition of the defendant.

Whether the court acts pursuant to division (A)(2)(a) or (b) of this section, the court may designate examiners other than the personnel of the center, program, facility, or department involved to make the evaluation and preceding examination of the mental condition of the defendant.

(B) If the court considers that additional evaluations of the mental condition of a defendant are necessary following the evaluation authorized by division (A) of this section, the court may order up to two additional similar evaluations. These evaluations shall be completed no later than thirty days from the date the applicable court order is entered. If more than one evaluation of the mental condition of the defendant is ordered under this division, the prosecutor and the defendant may recommend to the court an examiner whom each prefers to perform one of the evaluations and preceding examinations.

(C)(1) The court may order a defendant who has been released on bail to submit to an examination under division (A) or (B) of this section. The examination shall be conducted either at the detention facility in which the defendant would have been confined if the defendant had not been released on bail, or, if so specified by the center, program, facility, or examiners involved, at the premises of the center, program, or facility. Additionally, the examination shall be conducted at the times established by the examiners involved. If such a defendant refuses to submit to an examination or a complete examination as required by the court or the center, program,

facility, or examiners involved, the court may amend the conditions of the bail of the defendant and order the sheriff to take the defendant into custody and deliver the defendant to the detention facility in which the defendant would have been confined if the defendant had not been released on bail, or, if so specified by the center, program, facility, or examiners involved, to the premises of the center, program, or facility, for purposes of the examination.

(2) A defendant who has not been released on bail shall be examined at the detention facility in which the defendant is confined or, if so specified by the center, program, facility, or examiners involved, at the premises of the center, program, or facility.

(D) The examiner of the mental condition of a defendant under division (A) or (B) of this section shall file a written report with the court within thirty days after the entry of an order for the evaluation of the mental condition of the defendant. The report shall contain the findings of the examiner; the facts in reasonable detail on which the findings are based; the opinion of the examiner as to the mental condition of the defendant; the opinion of the examiner as to whether the defendant represents a substantial risk of physical harm to other persons as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that placed other persons in reasonable fear of violent behavior and serious physical harm, or evidence of present dangerousness; and the opinion of the examiner as to the types of treatment or counseling that the defendant needs. The court shall provide copies of the report to the prosecutor and defense counsel.

(E) The costs of any evaluation and preceding examination of a defendant that is ordered pursuant to division (A) or (B) of this section shall be taxed as court costs in the criminal case.

(F) If the examiner considers it necessary in order to make an accurate evaluation of the mental condition of a defendant, an examiner under division (A) or (B) of this section may request any family or household member of the defendant to provide the examiner with information. A family or household member may, but is not required to, provide information to the examiner upon receipt of the request.

(G) As used in this section:

(1) "Bail" includes a recognizance.

(2) "Examiner" means a psychiatrist, a licensed independent social worker who is employed by a forensic center that is certified as being in compliance with the standards established under division (I) of section 5119.01 or division (C) of section 5123.04 of the Revised Code, a licensed professional clinical counselor who is employed at a forensic center that is

certified as being in compliance with such standards, or a licensed clinical psychologist, except that in order to be an examiner, a licensed clinical psychologist shall meet the criteria of division (I)(1) of section 5122.01 of the Revised Code or be employed to conduct examinations by the department of mental health or by a forensic center certified as being in compliance with the standards established under division (I) of section 5119.01 or division (C) of section 5123.04 of the Revised Code that is designated by the department of mental health.

(3) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(4) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(5) "Psychiatrist" and "licensed clinical psychologist" have the same meanings as in section 5122.01 of the Revised Code.

(6) "Protection order issued by a court of another state" has the same meaning as in section 2919.27 of the Revised Code.

Sec. 2921.36. (A) No person shall knowingly convey, or attempt to convey, onto the grounds of a detention facility or of an institution, office building, or other place that is under the control of the department of mental health, the department of ~~mental retardation and~~ developmental disabilities, the department of youth services, or the department of rehabilitation and correction any of the following items:

(1) Any deadly weapon or dangerous ordnance, as defined in section 2923.11 of the Revised Code, or any part of or ammunition for use in such a deadly weapon or dangerous ordnance;

(2) Any drug of abuse, as defined in section 3719.011 of the Revised Code;

(3) Any intoxicating liquor, as defined in section 4301.01 of the Revised Code.

(B) Division (A) of this section does not apply to any person who conveys or attempts to convey an item onto the grounds of a detention facility or of an institution, office building, or other place under the control of the department of mental health, the department of ~~mental retardation and~~ developmental disabilities, the department of youth services, or the department of rehabilitation and correction pursuant to the written authorization of the person in charge of the detention facility or the institution, office building, or other place and in accordance with the written rules of the detention facility or the institution, office building, or other place.

(C) No person shall knowingly deliver, or attempt to deliver, to any

person who is confined in a detention facility, to a child confined in a youth services facility, to a prisoner who is temporarily released from confinement for a work assignment, or to any patient in an institution under the control of the department of mental health or the department of ~~mental retardation and~~ developmental disabilities any item listed in division (A)(1), (2), or (3) of this section.

(D) No person shall knowingly deliver, or attempt to deliver, cash to any person who is confined in a detention facility, to a child confined in a youth services facility, or to a prisoner who is temporarily released from confinement for a work assignment.

(E) No person shall knowingly deliver, or attempt to deliver, to any person who is confined in a detention facility, to a child confined in a youth services facility, or to a prisoner who is temporarily released from confinement for a work assignment a cellular telephone, two-way radio, or other electronic communications device.

(F)(1) It is an affirmative defense to a charge under division (A)(1) of this section that the weapon or dangerous ordnance in question was being transported in a motor vehicle for any lawful purpose, that it was not on the actor's person, and, if the weapon or dangerous ordnance in question was a firearm, that it was unloaded and was being carried in a closed package, box, or case or in a compartment that can be reached only by leaving the vehicle.

(2) It is an affirmative defense to a charge under division (C) of this section that the actor was not otherwise prohibited by law from delivering the item to the confined person, the child, the prisoner, or the patient and that either of the following applies:

(a) The actor was permitted by the written rules of the detention facility or the institution, office building, or other place to deliver the item to the confined person or the patient.

(b) The actor was given written authorization by the person in charge of the detention facility or the institution, office building, or other place to deliver the item to the confined person or the patient.

(G)(1) Whoever violates division (A)(1) of this section or commits a violation of division (C) of this section involving an item listed in division (A)(1) of this section is guilty of illegal conveyance of weapons onto the grounds of a specified governmental facility, a felony of the third degree. If the offender is an officer or employee of the department of rehabilitation and correction, the court shall impose a mandatory prison term.

(2) Whoever violates division (A)(2) of this section or commits a violation of division (C) of this section involving any drug of abuse is guilty

of illegal conveyance of drugs of abuse onto the grounds of a specified governmental facility, a felony of the third degree. If the offender is an officer or employee of the department of rehabilitation and correction or of the department of youth services, the court shall impose a mandatory prison term.

(3) Whoever violates division (A)(3) of this section or commits a violation of division (C) of this section involving any intoxicating liquor is guilty of illegal conveyance of intoxicating liquor onto the grounds of a specified governmental facility, a misdemeanor of the second degree.

(4) Whoever violates division (D) of this section is guilty of illegal conveyance of cash onto the grounds of a detention facility, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (D) of this section, illegal conveyance of cash onto the grounds of a detention facility is a felony of the fifth degree.

(5) Whoever violates division (E) of this section is guilty of illegal conveyance of a communications device onto the grounds of a specified governmental facility, a misdemeanor of the first degree, or if the offender previously has been convicted of or pleaded guilty to a violation of division (E) of this section, a felony of the fifth degree.

Sec. 2921.38. (A) No person who is confined in a detention facility, with intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.

(B) No person, with intent to harass, annoy, threaten, or alarm a law enforcement officer, shall cause or attempt to cause the law enforcement officer to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the law enforcement officer, by expelling the bodily substance upon the law enforcement officer, or in any other manner.

(C) No person, with knowledge that the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis and with intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.

(D) Whoever violates this section is guilty of harassment with a bodily substance. A violation of division (A) or (B) of this section is a felony of the fifth degree. A violation of division (C) of this section is a felony of the third degree.

(E)(1) The court, on request of the prosecutor, or the law enforcement authority responsible for the investigation of the violation, shall cause a person who allegedly has committed a violation of this section to submit to one or more appropriate tests to determine if the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis.

(2) The court shall charge the offender with the costs of the test or tests ordered under division (E)(1) of this section unless the court determines that the accused is unable to pay, in which case the costs shall be charged to the entity that operates the detention facility in which the alleged offense occurred.

(F) This section does not apply to a person who is hospitalized, institutionalized, or confined in a facility operated by the department of mental health or the department of ~~mental retardation and~~ developmental disabilities.

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

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

Sec. 2935.03. (A)(1) A sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, township constable, police officer of a township or joint township police district, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code, state university law enforcement officer appointed under section 3345.04 of the Revised Code, veterans' home police officer appointed under section 5907.02 of the Revised Code, special police officer employed by a port

authority under section 4582.04 or 4582.28 of the Revised Code, or a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended, shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, college, university, veterans' home operated under Chapter 5907. of the Revised Code, port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

(2) A peace officer of the department of natural resources, a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code, or an individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the peace officer's, state fire marshal law enforcement officer's, or individual's territorial jurisdiction, a law of this state.

(3) The house sergeant at arms if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code and an assistant house sergeant at arms shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the sergeant at arms's or assistant sergeant at arms's territorial jurisdiction specified in division (D)(1)(a) of section 101.311 of the Revised Code or while providing security pursuant to division (D)(1)(f) of section 101.311 of the Revised Code, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

(B)(1) When there is reasonable ground to believe that an offense of violence, the offense of criminal child enticement as defined in section 2905.05 of the Revised Code, the offense of public indecency as defined in section 2907.09 of the Revised Code, the offense of domestic violence as defined in section 2919.25 of the Revised Code, the offense of violating a

protection order as defined in section 2919.27 of the Revised Code, the offense of menacing by stalking as defined in section 2903.211 of the Revised Code, the offense of aggravated trespass as defined in section 2911.211 of the Revised Code, a theft offense as defined in section 2913.01 of the Revised Code, or a felony drug abuse offense as defined in section 2925.01 of the Revised Code, has been committed within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, college, university, veterans' home operated under Chapter 5907. of the Revised Code, port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer, a peace officer described in division (A) of this section may arrest and detain until a warrant can be obtained any person who the peace officer has reasonable cause to believe is guilty of the violation.

(2) For purposes of division (B)(1) of this section, the execution of any of the following constitutes reasonable ground to believe that the offense alleged in the statement was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the violation:

(a) A written statement by a person alleging that an alleged offender has committed the offense of menacing by stalking or aggravated trespass;

(b) A written statement by the administrator of the interstate compact on mental health appointed under section 5119.51 of the Revised Code alleging that a person who had been hospitalized, institutionalized, or confined in any facility under an order made pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or confinement in the facility and that occurs outside of the facility, in violation of section 2921.34 of the Revised Code;

(c) A written statement by the administrator of any facility in which a person has been hospitalized, institutionalized, or confined under an order made pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code alleging that the person has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of

the facility that is incidental to hospitalization, institutionalization, or confinement in the facility and that occurs outside of the facility, in violation of section 2921.34 of the Revised Code.

(3)(a) For purposes of division (B)(1) of this section, a peace officer described in division (A) of this section has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense if any of the following occurs:

(i) A person executes a written statement alleging that the person in question has committed the offense of domestic violence or the offense of violating a protection order against the person who executes the statement or against a child of the person who executes the statement.

(ii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer, based upon the peace officer's own knowledge and observation of the facts and circumstances of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order or based upon any other information, including, but not limited to, any reasonably trustworthy information given to the peace officer by the alleged victim of the alleged incident of the offense or any witness of the alleged incident of the offense, concludes that there are reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that the person in question is guilty of committing the offense.

(iii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer witnessed the person in question commit the offense of domestic violence or the offense of violating a protection order.

(b) If pursuant to division (B)(3)(a) of this section a peace officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense, it is the preferred course of action in this state that the officer arrest and detain that person pursuant to division (B)(1) of this section until a warrant can be obtained.

If pursuant to division (B)(3)(a) of this section a peace officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that family or household members have committed the offense against each other, it is the preferred course of action in this state

that the officer, pursuant to division (B)(1) of this section, arrest and detain until a warrant can be obtained the family or household member who committed the offense and whom the officer has reasonable cause to believe is the primary physical aggressor. There is no preferred course of action in this state regarding any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor, but, pursuant to division (B)(1) of this section, the peace officer may arrest and detain until a warrant can be obtained any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor.

(c) If a peace officer described in division (A) of this section does not arrest and detain a person whom the officer has reasonable cause to believe committed the offense of domestic violence or the offense of violating a protection order when it is the preferred course of action in this state pursuant to division (B)(3)(b) of this section that the officer arrest that person, the officer shall articulate in the written report of the incident required by section 2935.032 of the Revised Code a clear statement of the officer's reasons for not arresting and detaining that person until a warrant can be obtained.

(d) In determining for purposes of division (B)(3)(b) of this section which family or household member is the primary physical aggressor in a situation in which family or household members have committed the offense of domestic violence or the offense of violating a protection order against each other, a peace officer described in division (A) of this section, in addition to any other relevant circumstances, should consider all of the following:

(i) Any history of domestic violence or of any other violent acts by either person involved in the alleged offense that the officer reasonably can ascertain;

(ii) If violence is alleged, whether the alleged violence was caused by a person acting in self-defense;

(iii) Each person's fear of physical harm, if any, resulting from the other person's threatened use of force against any person or resulting from the other person's use or history of the use of force against any person, and the reasonableness of that fear;

(iv) The comparative severity of any injuries suffered by the persons involved in the alleged offense.

(e)(i) A peace officer described in division (A) of this section shall not require, as a prerequisite to arresting or charging a person who has

committed the offense of domestic violence or the offense of violating a protection order, that the victim of the offense specifically consent to the filing of charges against the person who has committed the offense or sign a complaint against the person who has committed the offense.

(ii) If a person is arrested for or charged with committing the offense of domestic violence or the offense of violating a protection order and if the victim of the offense does not cooperate with the involved law enforcement or prosecuting authorities in the prosecution of the offense or, subsequent to the arrest or the filing of the charges, informs the involved law enforcement or prosecuting authorities that the victim does not wish the prosecution of the offense to continue or wishes to drop charges against the alleged offender relative to the offense, the involved prosecuting authorities, in determining whether to continue with the prosecution of the offense or whether to dismiss charges against the alleged offender relative to the offense and notwithstanding the victim's failure to cooperate or the victim's wishes, shall consider all facts and circumstances that are relevant to the offense, including, but not limited to, the statements and observations of the peace officers who responded to the incident that resulted in the arrest or filing of the charges and of all witnesses to that incident.

(f) In determining pursuant to divisions (B)(3)(a) to (g) of this section whether to arrest a person pursuant to division (B)(1) of this section, a peace officer described in division (A) of this section shall not consider as a factor any possible shortage of cell space at the detention facility to which the person will be taken subsequent to the person's arrest or any possibility that the person's arrest might cause, contribute to, or exacerbate overcrowding at that detention facility or at any other detention facility.

(g) If a peace officer described in division (A) of this section intends pursuant to divisions (B)(3)(a) to (g) of this section to arrest a person pursuant to division (B)(1) of this section and if the officer is unable to do so because the person is not present, the officer promptly shall seek a warrant for the arrest of the person.

(h) If a peace officer described in division (A) of this section responds to a report of an alleged incident of the offense of domestic violence or an alleged incident of the offense of violating a protection order and if the circumstances of the incident involved the use or threatened use of a deadly weapon or any person involved in the incident brandished a deadly weapon during or in relation to the incident, the deadly weapon that was used, threatened to be used, or brandished constitutes contraband, and, to the extent possible, the officer shall seize the deadly weapon as contraband pursuant to Chapter 2981. of the Revised Code. Upon the seizure of a deadly

weapon pursuant to division (B)(3)(h) of this section, section 2981.12 of the Revised Code shall apply regarding the treatment and disposition of the deadly weapon. For purposes of that section, the "underlying criminal offense" that was the basis of the seizure of a deadly weapon under division (B)(3)(h) of this section and to which the deadly weapon had a relationship is any of the following that is applicable:

(i) The alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded;

(ii) Any offense that arose out of the same facts and circumstances as the report of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded.

(4) If, in the circumstances described in divisions (B)(3)(a) to (g) of this section, a peace officer described in division (A) of this section arrests and detains a person pursuant to division (B)(1) of this section, or if, pursuant to division (B)(3)(h) of this section, a peace officer described in division (A) of this section seizes a deadly weapon, the officer, to the extent described in and in accordance with section 9.86 or 2744.03 of the Revised Code, is immune in any civil action for damages for injury, death, or loss to person or property that arises from or is related to the arrest and detention or the seizure.

(C) When there is reasonable ground to believe that a violation of division (A)(1), (2), (3), (4), or (5) of section 4506.15 or a violation of section 4511.19 of the Revised Code has been committed by a person operating a motor vehicle subject to regulation by the public utilities commission of Ohio under Title XLIX of the Revised Code, a peace officer with authority to enforce that provision of law may stop or detain the person whom the officer has reasonable cause to believe was operating the motor vehicle in violation of the division or section and, after investigating the circumstances surrounding the operation of the vehicle, may arrest and detain the person.

(D) If a sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code, special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, special police officer employed by a municipal corporation at a municipal airport or other municipal air navigation facility

described in division (A) of this section, township constable, police officer of a township or joint township police district, state university law enforcement officer appointed under section 3345.04 of the Revised Code, peace officer of the department of natural resources, individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code, the house sergeant at arms if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code, or an assistant house sergeant at arms is authorized by division (A) or (B) of this section to arrest and detain, within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, port authority, municipal airport or other municipal air navigation facility, college, or university in which the officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer, a person until a warrant can be obtained, the peace officer, outside the limits of that territory, may pursue, arrest, and detain that person until a warrant can be obtained if all of the following apply:

(1) The pursuit takes place without unreasonable delay after the offense is committed;

(2) The pursuit is initiated within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, port authority, municipal airport or other municipal air navigation facility, college, or university in which the peace officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer;

(3) The offense involved is a felony, a misdemeanor of the first degree or a substantially equivalent municipal ordinance, a misdemeanor of the second degree or a substantially equivalent municipal ordinance, or any offense for which points are chargeable pursuant to section 4510.036 of the Revised Code.

(E) In addition to the authority granted under division (A) or (B) of this section:

(1) A sheriff or deputy sheriff may arrest and detain, until a warrant can be obtained, any person found violating section 4503.11, 4503.21, or 4549.01, sections 4549.08 to 4549.12, section 4549.62, or Chapter 4511. or 4513. of the Revised Code on the portion of any street or highway that is

located immediately adjacent to the boundaries of the county in which the sheriff or deputy sheriff is elected or appointed.

(2) A member of the police force of a township police district created under section 505.48 of the Revised Code, a member of the police force of a joint township police district created under section 505.481 of the Revised Code, or a township constable appointed in accordance with section 509.01 of the Revised Code, who has received a certificate from the Ohio peace officer training commission under section 109.75 of the Revised Code, may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section, other than sections 4513.33 and 4513.34 of the Revised Code, on the portion of any street or highway that is located immediately adjacent to the boundaries of the township police district or joint township police district, in the case of a member of a township police district or joint township police district police force, or the unincorporated territory of the township, in the case of a township constable. However, if the population of the township that created the township police district served by the member's police force, or the townships that created the joint township police district served by the member's police force, or the township that is served by the township constable, is sixty thousand or less, the member of the township police district or joint police district police force or the township constable may not make an arrest under division (E)(2) of this section on a state highway that is included as part of the interstate system.

(3) A police officer or village marshal appointed, elected, or employed by a municipal corporation may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section on the portion of any street or highway that is located immediately adjacent to the boundaries of the municipal corporation in which the police officer or village marshal is appointed, elected, or employed.

(4) A peace officer of the department of natural resources, a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code, or an individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section, other than sections 4513.33 and 4513.34 of the Revised Code, on the portion of any street or highway that is located immediately adjacent to the boundaries of the lands and waters that constitute the territorial jurisdiction of the peace officer or state fire marshal

law enforcement officer.

(F)(1) A department of mental health special police officer or a department of ~~mental retardation and~~ developmental disabilities special police officer may arrest without a warrant and detain until a warrant can be obtained any person found committing on the premises of any institution under the jurisdiction of the particular department a misdemeanor under a law of the state.

A department of mental health special police officer or a department of ~~mental retardation and~~ developmental disabilities special police officer may arrest without a warrant and detain until a warrant can be obtained any person who has been hospitalized, institutionalized, or confined in an institution under the jurisdiction of the particular department pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code and who is found committing on the premises of any institution under the jurisdiction of the particular department a violation of section 2921.34 of the Revised Code that involves an escape from the premises of the institution.

(2)(a) If a department of mental health special police officer or a department of ~~mental retardation and~~ developmental disabilities special police officer finds any person who has been hospitalized, institutionalized, or confined in an institution under the jurisdiction of the particular department pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code committing a violation of section 2921.34 of the Revised Code that involves an escape from the premises of the institution, or if there is reasonable ground to believe that a violation of section 2921.34 of the Revised Code has been committed that involves an escape from the premises of an institution under the jurisdiction of the department of mental health or the department of ~~mental retardation and~~ developmental disabilities and if a department of mental health special police officer or a department of ~~mental retardation and~~ developmental disabilities special police officer has reasonable cause to believe that a particular person who has been hospitalized, institutionalized, or confined in the institution pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code is guilty of the violation, the special police officer, outside of the premises of the institution, may pursue, arrest, and detain that person for that violation of section 2921.34 of the Revised Code, until a warrant can be obtained, if both of the following apply:

(i) The pursuit takes place without unreasonable delay after the offense

is committed;

(ii) The pursuit is initiated within the premises of the institution from which the violation of section 2921.34 of the Revised Code occurred.

(b) For purposes of division (F)(2)(a) of this section, the execution of a written statement by the administrator of the institution in which a person had been hospitalized, institutionalized, or confined pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code alleging that the person has escaped from the premises of the institution in violation of section 2921.34 of the Revised Code constitutes reasonable ground to believe that the violation was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the violation.

(G) As used in this section:

(1) A "department of mental health special police officer" means a special police officer of the department of mental health designated under section 5119.14 of the Revised Code who is certified by the Ohio peace officer training commission under section 109.77 of the Revised Code as having successfully completed an approved peace officer basic training program.

(2) A "department of ~~mental retardation and~~ developmental disabilities special police officer" means a special police officer of the department of ~~mental retardation and~~ developmental disabilities designated under section 5123.13 of the Revised Code who is certified by the Ohio peace officer training council under section 109.77 of the Revised Code as having successfully completed an approved peace officer basic training program.

(3) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(4) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(5) "Street" or "highway" has the same meaning as in section 4511.01 of the Revised Code.

(6) "Interstate system" has the same meaning as in section 5516.01 of the Revised Code.

(7) "Peace officer of the department of natural resources" means an employee of the department of natural resources who is a natural resources law enforcement staff officer designated pursuant to section 1501.013 of the Revised Code, a forest officer designated pursuant to section 1503.29 of the Revised Code, a preserve officer designated pursuant to section 1517.10 of the Revised Code, a wildlife officer designated pursuant to section 1531.13

of the Revised Code, a park officer designated pursuant to section 1541.10 of the Revised Code, or a state watercraft officer designated pursuant to section 1547.521 of the Revised Code.

(8) "Portion of any street or highway" means all lanes of the street or highway irrespective of direction of travel, including designated turn lanes, and any berm, median, or shoulder.

Sec. 2945.37. (A) As used in sections 2945.37 to 2945.402 of the Revised Code:

(1) "Prosecutor" means a prosecuting attorney or a city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has authority to prosecute a criminal case that is before the court or the criminal case in which a defendant in a criminal case has been found incompetent to stand trial or not guilty by reason of insanity.

(2) "Examiner" means either of the following:

(a) A psychiatrist or a licensed clinical psychologist who satisfies the criteria of division (I)(1) of section 5122.01 of the Revised Code or is employed by a certified forensic center designated by the department of mental health to conduct examinations or evaluations.

(b) For purposes of a separate mental retardation evaluation that is ordered by a court pursuant to division (H) of section 2945.371 of the Revised Code, a psychologist designated by the director of ~~mental retardation and~~ developmental disabilities pursuant to that section to conduct that separate mental retardation evaluation.

(3) "Nonsecured status" means any unsupervised, off-grounds movement or trial visit from a hospital or institution, or any conditional release, that is granted to a person who is found incompetent to stand trial and is committed pursuant to section 2945.39 of the Revised Code or to a person who is found not guilty by reason of insanity and is committed pursuant to section 2945.40 of the Revised Code.

(4) "Unsupervised, off-grounds movement" includes only off-grounds privileges that are unsupervised and that have an expectation of return to the hospital or institution on a daily basis.

(5) "Trial visit" means a patient privilege of a longer stated duration of unsupervised community contact with an expectation of return to the hospital or institution at designated times.

(6) "Conditional release" means a commitment status under which the trial court at any time may revoke a person's conditional release and order the rehospitalization or reinstitutionalization of the person as described in division (A) of section 2945.402 of the Revised Code and pursuant to which a person who is found incompetent to stand trial or a person who is found

not guilty by reason of insanity lives and receives treatment in the community for a period of time that does not exceed the maximum prison term or term of imprisonment that the person could have received for the offense in question had the person been convicted of the offense instead of being found incompetent to stand trial on the charge of the offense or being found not guilty by reason of insanity relative to the offense.

(7) "Licensed clinical psychologist," "mentally ill person subject to hospitalization by court order," and "psychiatrist" have the same meanings as in section 5122.01 of the Revised Code.

(8) "Mentally retarded person subject to institutionalization by court order" has the same meaning as in section 5123.01 of the Revised Code.

(B) In a criminal action in a court of common pleas, a county court, or a municipal court, the court, prosecutor, or defense may raise the issue of the defendant's competence to stand trial. If the issue is raised before the trial has commenced, the court shall hold a hearing on the issue as provided in this section. If the issue is raised after the trial has commenced, the court shall hold a hearing on the issue only for good cause shown or on the court's own motion.

(C) The court shall conduct the hearing required or authorized under division (B) of this section within thirty days after the issue is raised, unless the defendant has been referred for evaluation in which case the court shall conduct the hearing within ten days after the filing of the report of the evaluation or, in the case of a defendant who is ordered by the court pursuant to division (H) of section 2945.371 of the Revised Code to undergo a separate mental retardation evaluation conducted by a psychologist designated by the director of ~~mental retardation and~~ developmental disabilities, within ten days after the filing of the report of the separate mental retardation evaluation under that division. A hearing may be continued for good cause.

(D) The defendant shall be represented by counsel at the hearing conducted under division (C) of this section. If the defendant is unable to obtain counsel, the court shall appoint counsel under Chapter 120. of the Revised Code or under the authority recognized in division (C) of section 120.06, division (E) of section 120.16, division (E) of section 120.26, or section 2941.51 of the Revised Code before proceeding with the hearing.

(E) The prosecutor and defense counsel may submit evidence on the issue of the defendant's competence to stand trial. A written report of the evaluation of the defendant may be admitted into evidence at the hearing by stipulation, but, if either the prosecution or defense objects to its admission, the report may be admitted under sections 2317.36 to 2317.38 of the

Revised Code or any other applicable statute or rule.

(F) The court shall not find a defendant incompetent to stand trial solely because the defendant is receiving or has received treatment as a voluntary or involuntary mentally ill patient under Chapter 5122. or a voluntary or involuntary mentally retarded resident under Chapter 5123. of the Revised Code or because the defendant is receiving or has received psychotropic drugs or other medication, even if the defendant might become incompetent to stand trial without the drugs or medication.

(G) A defendant is presumed to be competent to stand trial. If, after a hearing, the court finds by a preponderance of the evidence that, because of the defendant's present mental condition, the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the court shall find the defendant incompetent to stand trial and shall enter an order authorized by section 2945.38 of the Revised Code.

(H) Municipal courts shall follow the procedures set forth in sections 2945.37 to 2945.402 of the Revised Code. Except as provided in section 2945.371 of the Revised Code, a municipal court shall not order an evaluation of the defendant's competence to stand trial or the defendant's mental condition at the time of the commission of the offense to be conducted at any hospital operated by the department of mental health. Those evaluations shall be performed through community resources including, but not limited to, certified forensic centers, court probation departments, and community mental health agencies. All expenses of the evaluations shall be borne by the legislative authority of the municipal court, as defined in section 1901.03 of the Revised Code, and shall be taxed as costs in the case. If a defendant is found incompetent to stand trial or not guilty by reason of insanity, a municipal court may commit the defendant as provided in sections 2945.38 to 2945.402 of the Revised Code.

Sec. 2945.371. (A) If the issue of a defendant's competence to stand trial is raised or if a defendant enters a plea of not guilty by reason of insanity, the court may order one or more evaluations of the defendant's present mental condition or, in the case of a plea of not guilty by reason of insanity, of the defendant's mental condition at the time of the offense charged. An examiner shall conduct the evaluation.

(B) If the court orders more than one evaluation under division (A) of this section, the prosecutor and the defendant may recommend to the court an examiner whom each prefers to perform one of the evaluations. If a defendant enters a plea of not guilty by reason of insanity and if the court does not designate an examiner recommended by the defendant, the court

shall inform the defendant that the defendant may have independent expert evaluation and that, if the defendant is unable to obtain independent expert evaluation, it will be obtained for the defendant at public expense if the defendant is indigent.

(C) If the court orders an evaluation under division (A) of this section, the defendant shall be available at the times and places established by the examiners who are to conduct the evaluation. The court may order a defendant who has been released on bail or recognizance to submit to an evaluation under this section. If a defendant who has been released on bail or recognizance refuses to submit to a complete evaluation, the court may amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to a center, program, or facility operated or certified by the department of mental health or the department of ~~mental retardation and~~ developmental disabilities where the defendant may be held for evaluation for a reasonable period of time not to exceed twenty days.

(D) A defendant who has not been released on bail or recognizance may be evaluated at the defendant's place of detention. Upon the request of the examiner, the court may order the sheriff to transport the defendant to a program or facility operated by the department of mental health or the department of ~~mental retardation and~~ developmental disabilities, where the defendant may be held for evaluation for a reasonable period of time not to exceed twenty days, and to return the defendant to the place of detention after the evaluation. A municipal court may make an order under this division only upon the request of a certified forensic center examiner.

(E) If a court orders the evaluation to determine a defendant's mental condition at the time of the offense charged, the court shall inform the examiner of the offense with which the defendant is charged.

(F) In conducting an evaluation of a defendant's mental condition at the time of the offense charged, the examiner shall consider all relevant evidence. If the offense charged involves the use of force against another person, the relevant evidence to be considered includes, but is not limited to, any evidence that the defendant suffered, at the time of the commission of the offense, from the "battered woman syndrome."

(G) The examiner shall file a written report with the court within thirty days after entry of a court order for evaluation, and the court shall provide copies of the report to the prosecutor and defense counsel. The report shall include all of the following:

- (1) The examiner's findings;
- (2) The facts in reasonable detail on which the findings are based;

(3) If the evaluation was ordered to determine the defendant's competence to stand trial, all of the following findings or recommendations that are applicable:

(a) Whether the defendant is capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense;

(b) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, whether the defendant presently is mentally ill or mentally retarded and, if the examiner's opinion is that the defendant presently is mentally retarded, whether the defendant appears to be a mentally retarded person subject to institutionalization by court order;

(c) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the examiner's opinion as to the likelihood of the defendant becoming capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense within one year if the defendant is provided with a course of treatment;

(d) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that the defendant presently is mentally ill or mentally retarded, the examiner's recommendation as to the least restrictive treatment alternative, consistent with the defendant's treatment needs for restoration to competency and with the safety of the community.

(4) If the evaluation was ordered to determine the defendant's mental condition at the time of the offense charged, the examiner's findings as to whether the defendant, at the time of the offense charged, did not know, as a result of a severe mental disease or defect, the wrongfulness of the defendant's acts charged.

(H) If the examiner's report filed under division (G) of this section indicates that in the examiner's opinion the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that in the examiner's opinion the defendant appears to be a mentally retarded person subject to institutionalization by court order, the court shall order the defendant to undergo a separate mental retardation evaluation conducted by a psychologist designated by the director of ~~mental retardation and~~

developmental disabilities. Divisions (C) to (F) of this section apply in relation to a separate mental retardation evaluation conducted under this division. The psychologist appointed under this division to conduct the separate mental retardation evaluation shall file a written report with the court within thirty days after the entry of the court order requiring the separate mental retardation evaluation, and the court shall provide copies of the report to the prosecutor and defense counsel. The report shall include all of the information described in divisions (G)(1) to (4) of this section. If the court orders a separate mental retardation evaluation of a defendant under this division, the court shall not conduct a hearing under divisions (B) to (H) of section 2945.37 of the Revised Code regarding that defendant until a report of the separate mental retardation evaluation conducted under this division has been filed. Upon the filing of that report, the court shall conduct the hearing within the period of time specified in division (C) of section 2945.37 of the Revised Code.

(I) An examiner appointed under divisions (A) and (B) of this section or under division (H) of this section to evaluate a defendant to determine the defendant's competence to stand trial also may be appointed to evaluate a defendant who has entered a plea of not guilty by reason of insanity, but an examiner of that nature shall prepare separate reports on the issue of competence to stand trial and the defense of not guilty by reason of insanity.

(J) No statement that a defendant makes in an evaluation or hearing under divisions (A) to (H) of this section relating to the defendant's competence to stand trial or to the defendant's mental condition at the time of the offense charged shall be used against the defendant on the issue of guilt in any criminal action or proceeding, but, in a criminal action or proceeding, the prosecutor or defense counsel may call as a witness any person who evaluated the defendant or prepared a report pursuant to a referral under this section. Neither the appointment nor the testimony of an examiner appointed under this section precludes the prosecutor or defense counsel from calling other witnesses or presenting other evidence on competency or insanity issues.

(K) Persons appointed as examiners under divisions (A) and (B) of this section or under division (H) of this section shall be paid a reasonable amount for their services and expenses, as certified by the court. The certified amount shall be paid by the county in the case of county courts and courts of common pleas and by the legislative authority, as defined in section 1901.03 of the Revised Code, in the case of municipal courts.

Sec. 2945.38. (A) If the issue of a defendant's competence to stand trial is raised and if the court, upon conducting the hearing provided for in

section 2945.37 of the Revised Code, finds that the defendant is competent to stand trial, the defendant shall be proceeded against as provided by law. If the court finds the defendant competent to stand trial and the defendant is receiving psychotropic drugs or other medication, the court may authorize the continued administration of the drugs or medication or other appropriate treatment in order to maintain the defendant's competence to stand trial, unless the defendant's attending physician advises the court against continuation of the drugs, other medication, or treatment.

(B)(1)(a) If, after taking into consideration all relevant reports, information, and other evidence, the court finds that the defendant is incompetent to stand trial and that there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court shall order the defendant to undergo treatment. If the defendant has been charged with a felony offense and if, after taking into consideration all relevant reports, information, and other evidence, the court finds that the defendant is incompetent to stand trial, but the court is unable at that time to determine whether there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court shall order continuing evaluation and treatment of the defendant for a period not to exceed four months to determine whether there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment.

(b) The court order for the defendant to undergo treatment or continuing evaluation and treatment under division (B)(1)(a) of this section shall specify that the treatment or continuing evaluation and treatment shall occur at a facility operated by the department of mental health or the department of ~~mental retardation and~~ developmental disabilities, at a facility certified by either of those departments as being qualified to treat mental illness or mental retardation, at a public or private community mental health or mental retardation facility, or by a psychiatrist or another mental health or mental retardation professional. The order may restrict the defendant's freedom of movement as the court considers necessary. The prosecutor in the defendant's case shall send to the chief clinical officer of the hospital or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed copies of relevant police reports and other background information that pertains to the defendant and is available to the prosecutor unless the prosecutor determines that the release of any of the information in the police reports or any of the other

background information to unauthorized persons would interfere with the effective prosecution of any person or would create a substantial risk of harm to any person.

In determining placement alternatives, the court shall consider the extent to which the person is a danger to the person and to others, the need for security, and the type of crime involved and shall order the least restrictive alternative available that is consistent with public safety and treatment goals. In weighing these factors, the court shall give preference to protecting public safety.

(c) If the defendant is found incompetent to stand trial, if the chief clinical officer of the hospital or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed for treatment or continuing evaluation and treatment under division (B)(1)(b) of this section determines that medication is necessary to restore the defendant's competency to stand trial, and if the defendant lacks the capacity to give informed consent or refuses medication, the chief clinical officer, managing officer, director, or person to which the defendant is committed for treatment or continuing evaluation and treatment may petition the court for authorization for the involuntary administration of medication. The court shall hold a hearing on the petition within five days of the filing of the petition if the petition was filed in a municipal court or a county court regarding an incompetent defendant charged with a misdemeanor or within ten days of the filing of the petition if the petition was filed in a court of common pleas regarding an incompetent defendant charged with a felony offense. Following the hearing, the court may authorize the involuntary administration of medication or may dismiss the petition.

(2) If the court finds that the defendant is incompetent to stand trial and that, even if the defendant is provided with a course of treatment, there is not a substantial probability that the defendant will become competent to stand trial within one year, the court shall order the discharge of the defendant, unless upon motion of the prosecutor or on its own motion, the court either seeks to retain jurisdiction over the defendant pursuant to section 2945.39 of the Revised Code or files an affidavit in the probate court for the civil commitment of the defendant pursuant to Chapter 5122. or 5123. of the Revised Code alleging that the defendant is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order. If an affidavit is filed in the probate court, the trial court shall send to the probate court copies of all written reports of the defendant's mental condition that were prepared

pursuant to section 2945.371 of the Revised Code.

The trial court may issue the temporary order of detention that a probate court may issue under section 5122.11 or 5123.71 of the Revised Code, to remain in effect until the probable cause or initial hearing in the probate court. Further proceedings in the probate court are civil proceedings governed by Chapter 5122. or 5123. of the Revised Code.

(C) No defendant shall be required to undergo treatment, including any continuing evaluation and treatment, under division (B)(1) of this section for longer than whichever of the following periods is applicable:

(1) One year, if the most serious offense with which the defendant is charged is one of the following offenses:

(a) Aggravated murder, murder, or an offense of violence for which a sentence of death or life imprisonment may be imposed;

(b) An offense of violence that is a felony of the first or second degree;

(c) A conspiracy to commit, an attempt to commit, or complicity in the commission of an offense described in division (C)(1)(a) or (b) of this section if the conspiracy, attempt, or complicity is a felony of the first or second degree.

(2) Six months, if the most serious offense with which the defendant is charged is a felony other than a felony described in division (C)(1) of this section;

(3) Sixty days, if the most serious offense with which the defendant is charged is a misdemeanor of the first or second degree;

(4) Thirty days, if the most serious offense with which the defendant is charged is a misdemeanor of the third or fourth degree, a minor misdemeanor, or an unclassified misdemeanor.

(D) Any defendant who is committed pursuant to this section shall not voluntarily admit the defendant or be voluntarily admitted to a hospital or institution pursuant to section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised Code.

(E) Except as otherwise provided in this division, a defendant who is charged with an offense and is committed to a hospital or other institution by the court under this section shall not be granted unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status. The court may grant a defendant supervised off-grounds movement to obtain medical treatment or specialized habilitation treatment services if the person who supervises the treatment or the continuing evaluation and treatment of the defendant ordered under division (B)(1)(a) of this section informs the court that the treatment or continuing evaluation and treatment cannot be provided at the hospital or the institution to which the defendant is

committed. The chief clinical officer of the hospital or the managing officer of the institution to which the defendant is committed or a designee of either of those persons may grant a defendant movement to a medical facility for an emergency medical situation with appropriate supervision to ensure the safety of the defendant, staff, and community during that emergency medical situation. The chief clinical officer of the hospital or the managing officer of the institution shall notify the court within twenty-four hours of the defendant's movement to the medical facility for an emergency medical situation under this division.

(F) The person who supervises the treatment or continuing evaluation and treatment of a defendant ordered to undergo treatment or continuing evaluation and treatment under division (B)(1)(a) of this section shall file a written report with the court at the following times:

(1) Whenever the person believes the defendant is capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense;

(2) For a felony offense, fourteen days before expiration of the maximum time for treatment as specified in division (C) of this section and fourteen days before the expiration of the maximum time for continuing evaluation and treatment as specified in division (B)(1)(a) of this section, and, for a misdemeanor offense, ten days before the expiration of the maximum time for treatment, as specified in division (C) of this section;

(3) At a minimum, after each six months of treatment;

(4) Whenever the person who supervises the treatment or continuing evaluation and treatment of a defendant ordered under division (B)(1)(a) of this section believes that there is not a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense even if the defendant is provided with a course of treatment.

(G) A report under division (F) of this section shall contain the examiner's findings, the facts in reasonable detail on which the findings are based, and the examiner's opinion as to the defendant's capability of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense. If, in the examiner's opinion, the defendant remains incapable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense and there is a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense if the defendant is provided with a course of treatment, if in the examiner's

opinion the defendant remains mentally ill or mentally retarded, and if the maximum time for treatment as specified in division (C) of this section has not expired, the report also shall contain the examiner's recommendation as to the least restrictive treatment alternative that is consistent with the defendant's treatment needs for restoration to competency and with the safety of the community. The court shall provide copies of the report to the prosecutor and defense counsel.

(H) If a defendant is committed pursuant to division (B)(1) of this section, within ten days after the treating physician of the defendant or the examiner of the defendant who is employed or retained by the treating facility advises that there is not a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense even if the defendant is provided with a course of treatment, within ten days after the expiration of the maximum time for treatment as specified in division (C) of this section, within ten days after the expiration of the maximum time for continuing evaluation and treatment as specified in division (B)(1)(a) of this section, within thirty days after a defendant's request for a hearing that is made after six months of treatment, or within thirty days after being advised by the treating physician or examiner that the defendant is competent to stand trial, whichever is the earliest, the court shall conduct another hearing to determine if the defendant is competent to stand trial and shall do whichever of the following is applicable:

(1) If the court finds that the defendant is competent to stand trial, the defendant shall be proceeded against as provided by law.

(2) If the court finds that the defendant is incompetent to stand trial, but that there is a substantial probability that the defendant will become competent to stand trial if the defendant is provided with a course of treatment, and the maximum time for treatment as specified in division (C) of this section has not expired, the court, after consideration of the examiner's recommendation, shall order that treatment be continued, may change the facility or program at which the treatment is to be continued, and shall specify whether the treatment is to be continued at the same or a different facility or program.

(3) If the court finds that the defendant is incompetent to stand trial, if the defendant is charged with an offense listed in division (C)(1) of this section, and if the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment, or if the maximum time for treatment relative to that offense as specified in division (C) of this section has

expired, further proceedings shall be as provided in sections 2945.39, 2945.401, and 2945.402 of the Revised Code.

(4) If the court finds that the defendant is incompetent to stand trial, if the most serious offense with which the defendant is charged is a misdemeanor or a felony other than a felony listed in division (C)(1) of this section, and if the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment, or if the maximum time for treatment relative to that offense as specified in division (C) of this section has expired, the court shall dismiss the indictment, information, or complaint against the defendant. A dismissal under this division is not a bar to further prosecution based on the same conduct. The court shall discharge the defendant unless the court or prosecutor files an affidavit in probate court for civil commitment pursuant to Chapter 5122. or 5123. of the Revised Code. If an affidavit for civil commitment is filed, the court may detain the defendant for ten days pending civil commitment. All of the following provisions apply to persons charged with a misdemeanor or a felony other than a felony listed in division (C)(1) of this section who are committed by the probate court subsequent to the court's or prosecutor's filing of an affidavit for civil commitment under authority of this division:

(a) The chief clinical officer of the hospital or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed or admitted shall do all of the following:

(i) Notify the prosecutor, in writing, of the discharge of the defendant, send the notice at least ten days prior to the discharge unless the discharge is by the probate court, and state in the notice the date on which the defendant will be discharged;

(ii) Notify the prosecutor, in writing, when the defendant is absent without leave or is granted unsupervised, off-grounds movement, and send this notice promptly after the discovery of the absence without leave or prior to the granting of the unsupervised, off-grounds movement, whichever is applicable;

(iii) Notify the prosecutor, in writing, of the change of the defendant's commitment or admission to voluntary status, send the notice promptly upon learning of the change to voluntary status, and state in the notice the date on which the defendant was committed or admitted on a voluntary status.

(b) Upon receiving notice that the defendant will be granted unsupervised, off-grounds movement, the prosecutor either shall re-indict the defendant or promptly notify the court that the prosecutor does not intend to prosecute the charges against the defendant.

(I) If a defendant is convicted of a crime and sentenced to a jail or workhouse, the defendant's sentence shall be reduced by the total number of days the defendant is confined for evaluation to determine the defendant's competence to stand trial or treatment under this section and sections 2945.37 and 2945.371 of the Revised Code or by the total number of days the defendant is confined for evaluation to determine the defendant's mental condition at the time of the offense charged.

Sec. 2945.39. (A) If a defendant who is charged with an offense described in division (C)(1) of section 2945.38 of the Revised Code is found incompetent to stand trial, after the expiration of the maximum time for treatment as specified in division (C) of that section or after the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment, one of the following applies:

(1) The court or the prosecutor may file an affidavit in probate court for civil commitment of the defendant in the manner provided in Chapter 5122. or 5123. of the Revised Code. If the court or prosecutor files an affidavit for civil commitment, the court may detain the defendant for ten days pending civil commitment. If the probate court commits the defendant subsequent to the court's or prosecutor's filing of an affidavit for civil commitment, the chief clinical officer of the hospital or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed or admitted shall send to the prosecutor the notices described in divisions (H)(4)(a)(i) to (iii) of section 2945.38 of the Revised Code within the periods of time and under the circumstances specified in those divisions.

(2) On the motion of the prosecutor or on its own motion, the court may retain jurisdiction over the defendant if, at a hearing, the court finds both of the following by clear and convincing evidence:

(a) The defendant committed the offense with which the defendant is charged.

(b) The defendant is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order.

(B) In making its determination under division (A)(2) of this section as to whether to retain jurisdiction over the defendant, the court may consider all relevant evidence, including, but not limited to, any relevant psychiatric, psychological, or medical testimony or reports, the acts constituting the offense charged, and any history of the defendant that is relevant to the defendant's ability to conform to the law.

(C) If the court conducts a hearing as described in division (A)(2) of this section and if the court does not make both findings described in divisions (A)(2)(a) and (b) of this section by clear and convincing evidence, the court shall dismiss the indictment, information, or complaint against the defendant. Upon the dismissal, the court shall discharge the defendant unless the court or prosecutor files an affidavit in probate court for civil commitment of the defendant pursuant to Chapter 5122. or 5123. of the Revised Code. If the court or prosecutor files an affidavit for civil commitment, the court may order that the defendant be detained for up to ten days pending the civil commitment. If the probate court commits the defendant subsequent to the court's or prosecutor's filing of an affidavit for civil commitment, the chief clinical officer of the hospital or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed or admitted shall send to the prosecutor the notices described in divisions (H)(4)(a)(i) to (iii) of section 2945.38 of the Revised Code within the periods of time and under the circumstances specified in those divisions. A dismissal of charges under this division is not a bar to further criminal proceedings based on the same conduct.

(D)(1) If the court conducts a hearing as described in division (A)(2) of this section and if the court makes the findings described in divisions (A)(2)(a) and (b) of this section by clear and convincing evidence, the court shall commit the defendant to a hospital operated by the department of mental health, a facility operated by the department of ~~mental retardation~~ and developmental disabilities, or another medical or psychiatric facility, as appropriate. In determining the place and nature of the commitment, the court shall order the least restrictive commitment alternative available that is consistent with public safety and the welfare of the defendant. In weighing these factors, the court shall give preference to protecting public safety.

(2) If a court makes a commitment of a defendant under division (D)(1) of this section, the prosecutor shall send to the place of commitment all reports of the defendant's current mental condition and, except as otherwise provided in this division, any other relevant information, including, but not limited to, a transcript of the hearing held pursuant to division (A)(2) of this section, copies of relevant police reports, and copies of any prior arrest and conviction records that pertain to the defendant and that the prosecutor possesses. The prosecutor shall send the reports of the defendant's current mental condition in every case of commitment, and, unless the prosecutor determines that the release of any of the other relevant information to unauthorized persons would interfere with the effective prosecution of any person or would create a substantial risk of harm to any person, the

prosecutor also shall send the other relevant information. Upon admission of a defendant committed under division (D)(1) of this section, the place of commitment shall send to the board of alcohol, drug addiction, and mental health services or the community mental health board serving the county in which the charges against the defendant were filed a copy of all reports of the defendant's current mental condition and a copy of the other relevant information provided by the prosecutor under this division, including, if provided, a transcript of the hearing held pursuant to division (A)(2) of this section, the relevant police reports, and the prior arrest and conviction records that pertain to the defendant and that the prosecutor possesses.

(3) If a court makes a commitment under division (D)(1) of this section, all further proceedings shall be in accordance with sections 2945.401 and 2945.402 of the Revised Code.

Sec. 2945.40. (A) If a person is found not guilty by reason of insanity, the verdict shall state that finding, and the trial court shall conduct a full hearing to determine whether the person is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order. Prior to the hearing, if the trial judge believes that there is probable cause that the person found not guilty by reason of insanity is a mentally ill person subject to hospitalization by court order or mentally retarded person subject to institutionalization by court order, the trial judge may issue a temporary order of detention for that person to remain in effect for ten court days or until the hearing, whichever occurs first.

Any person detained pursuant to a temporary order of detention issued under this division shall be held in a suitable facility, taking into consideration the place and type of confinement prior to and during trial.

(B) The court shall hold the hearing under division (A) of this section to determine whether the person found not guilty by reason of insanity is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order within ten court days after the finding of not guilty by reason of insanity. Failure to conduct the hearing within the ten-day period shall cause the immediate discharge of the respondent, unless the judge grants a continuance for not longer than ten court days for good cause shown or for any period of time upon motion of the respondent.

(C) If a person is found not guilty by reason of insanity, the person has the right to attend all hearings conducted pursuant to sections 2945.37 to 2945.402 of the Revised Code. At any hearing conducted pursuant to one of those sections, the court shall inform the person that the person has all of the

following rights:

(1) The right to be represented by counsel and to have that counsel provided at public expense if the person is indigent, with the counsel to be appointed by the court under Chapter 120. of the Revised Code or under the authority recognized in division (C) of section 120.06, division (E) of section 120.16, division (E) of section 120.26, or section 2941.51 of the Revised Code;

(2) The right to have independent expert evaluation and to have that independent expert evaluation provided at public expense if the person is indigent;

(3) The right to subpoena witnesses and documents, to present evidence on the person's behalf, and to cross-examine witnesses against the person;

(4) The right to testify in the person's own behalf and to not be compelled to testify;

(5) The right to have copies of any relevant medical or mental health document in the custody of the state or of any place of commitment other than a document for which the court finds that the release to the person of information contained in the document would create a substantial risk of harm to any person.

(D) The hearing under division (A) of this section shall be open to the public, and the court shall conduct the hearing in accordance with the Rules of Civil Procedure. The court shall make and maintain a full transcript and record of the hearing proceedings. The court may consider all relevant evidence, including, but not limited to, any relevant psychiatric, psychological, or medical testimony or reports, the acts constituting the offense in relation to which the person was found not guilty by reason of insanity, and any history of the person that is relevant to the person's ability to conform to the law.

(E) Upon completion of the hearing under division (A) of this section, if the court finds there is not clear and convincing evidence that the person is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, the court shall discharge the person, unless a detainer has been placed upon the person by the department of rehabilitation and correction, in which case the person shall be returned to that department.

(F) If, at the hearing under division (A) of this section, the court finds by clear and convincing evidence that the person is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, it shall commit the person to a hospital operated by the department of mental health, a facility operated by

the department of ~~mental retardation and~~ developmental disabilities, or another medical or psychiatric facility, as appropriate, and further proceedings shall be in accordance with sections 2945.401 and 2945.402 of the Revised Code. In determining the place and nature of the commitment, the court shall order the least restrictive commitment alternative available that is consistent with public safety and the welfare of the person. In weighing these factors, the court shall give preference to protecting public safety.

(G) If a court makes a commitment of a person under division (F) of this section, the prosecutor shall send to the place of commitment all reports of the person's current mental condition, and, except as otherwise provided in this division, any other relevant information, including, but not limited to, a transcript of the hearing held pursuant to division (A) of this section, copies of relevant police reports, and copies of any prior arrest and conviction records that pertain to the person and that the prosecutor possesses. The prosecutor shall send the reports of the person's current mental condition in every case of commitment, and, unless the prosecutor determines that the release of any of the other relevant information to unauthorized persons would interfere with the effective prosecution of any person or would create a substantial risk of harm to any person, the prosecutor also shall send the other relevant information. Upon admission of a person committed under division (F) of this section, the place of commitment shall send to the board of alcohol, drug addiction, and mental health services or the community mental health board serving the county in which the charges against the person were filed a copy of all reports of the person's current mental condition and a copy of the other relevant information provided by the prosecutor under this division, including, if provided, a transcript of the hearing held pursuant to division (A) of this section, the relevant police reports, and the prior arrest and conviction records that pertain to the person and that the prosecutor possesses.

(H) A person who is committed pursuant to this section shall not voluntarily admit the person or be voluntarily admitted to a hospital or institution pursuant to ~~sections~~ section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised Code.

Sec. 2945.401. (A) A defendant found incompetent to stand trial and committed pursuant to section 2945.39 of the Revised Code or a person found not guilty by reason of insanity and committed pursuant to section 2945.40 of the Revised Code shall remain subject to the jurisdiction of the trial court pursuant to that commitment, and to the provisions of this section, until the final termination of the commitment as described in division (J)(1)

of this section. If the jurisdiction is terminated under this division because of the final termination of the commitment resulting from the expiration of the maximum prison term or term of imprisonment described in division (J)(1)(b) of this section, the court or prosecutor may file an affidavit for the civil commitment of the defendant or person pursuant to Chapter 5122. or 5123. of the Revised Code.

(B) A hearing conducted under any provision of sections 2945.37 to 2945.402 of the Revised Code shall not be conducted in accordance with Chapters 5122. and 5123. of the Revised Code. Any person who is committed pursuant to section 2945.39 or 2945.40 of the Revised Code shall not voluntarily admit the person or be voluntarily admitted to a hospital or institution pursuant to section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised Code. All other provisions of Chapters 5122. and 5123. of the Revised Code regarding hospitalization or institutionalization shall apply to the extent they are not in conflict with this chapter. A commitment under section 2945.39 or 2945.40 of the Revised Code shall not be terminated and the conditions of the commitment shall not be changed except as otherwise provided in division (D)(2) of this section with respect to a mentally retarded person subject to institutionalization by court order or except by order of the trial court.

(C) The hospital, facility, or program to which a defendant or person has been committed under section 2945.39 or 2945.40 of the Revised Code shall report in writing to the trial court, at the times specified in this division, as to whether the defendant or person remains a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order and, in the case of a defendant committed under section 2945.39 of the Revised Code, as to whether the defendant remains incompetent to stand trial. The hospital, facility, or program shall make the reports after the initial six months of treatment and every two years after the initial report is made. The trial court shall provide copies of the reports to the prosecutor and to the counsel for the defendant or person. Within thirty days after its receipt pursuant to this division of a report from a hospital, facility, or program, the trial court shall hold a hearing on the continued commitment of the defendant or person or on any changes in the conditions of the commitment of the defendant or person. The defendant or person may request a change in the conditions of confinement, and the trial court shall conduct a hearing on that request if six months or more have elapsed since the most recent hearing was conducted under this section.

(D)(1) Except as otherwise provided in division (D)(2) of this section, when a defendant or person has been committed under section 2945.39 or

2945.40 of the Revised Code, at any time after evaluating the risks to public safety and the welfare of the defendant or person, the chief clinical officer of the hospital, facility, or program to which the defendant or person is committed may recommend a termination of the defendant's or person's commitment or a change in the conditions of the defendant's or person's commitment.

Except as otherwise provided in division (D)(2) of this section, if the chief clinical officer recommends on-grounds unsupervised movement, off-grounds supervised movement, or nonsecured status for the defendant or person or termination of the defendant's or person's commitment, the following provisions apply:

(a) If the chief clinical officer recommends on-grounds unsupervised movement or off-grounds supervised movement, the chief clinical officer shall file with the trial court an application for approval of the movement and shall send a copy of the application to the prosecutor. Within fifteen days after receiving the application, the prosecutor may request a hearing on the application and, if a hearing is requested, shall so inform the chief clinical officer. If the prosecutor does not request a hearing within the fifteen-day period, the trial court shall approve the application by entering its order approving the requested movement or, within five days after the expiration of the fifteen-day period, shall set a date for a hearing on the application. If the prosecutor requests a hearing on the application within the fifteen-day period, the trial court shall hold a hearing on the application within thirty days after the hearing is requested. If the trial court, within five days after the expiration of the fifteen-day period, sets a date for a hearing on the application, the trial court shall hold the hearing within thirty days after setting the hearing date. At least fifteen days before any hearing is held under this division, the trial court shall give the prosecutor written notice of the date, time, and place of the hearing. At the conclusion of each hearing conducted under this division, the trial court either shall approve or disapprove the application and shall enter its order accordingly.

(b) If the chief clinical officer recommends termination of the defendant's or person's commitment at any time or if the chief clinical officer recommends the first of any nonsecured status for the defendant or person, the chief clinical officer shall send written notice of this recommendation to the trial court and to the local forensic center. The local forensic center shall evaluate the committed defendant or person and, within thirty days after its receipt of the written notice, shall submit to the trial court and the chief clinical officer a written report of the evaluation. The trial court shall provide a copy of the chief clinical officer's written notice

and of the local forensic center's written report to the prosecutor and to the counsel for the defendant or person. Upon the local forensic center's submission of the report to the trial court and the chief clinical officer, all of the following apply:

(i) If the forensic center disagrees with the recommendation of the chief clinical officer, it shall inform the chief clinical officer and the trial court of its decision and the reasons for the decision. The chief clinical officer, after consideration of the forensic center's decision, shall either withdraw, proceed with, or modify and proceed with the recommendation. If the chief clinical officer proceeds with, or modifies and proceeds with, the recommendation, the chief clinical officer shall proceed in accordance with division (D)(1)(b)(iii) of this section.

(ii) If the forensic center agrees with the recommendation of the chief clinical officer, it shall inform the chief clinical officer and the trial court of its decision and the reasons for the decision, and the chief clinical officer shall proceed in accordance with division (D)(1)(b)(iii) of this section.

(iii) If the forensic center disagrees with the recommendation of the chief clinical officer and the chief clinical officer proceeds with, or modifies and proceeds with, the recommendation or if the forensic center agrees with the recommendation of the chief clinical officer, the chief clinical officer shall work with the board of alcohol, drug addiction, and mental health services or community mental health board serving the area, as appropriate, to develop a plan to implement the recommendation. If the defendant or person is on medication, the plan shall include, but shall not be limited to, a system to monitor the defendant's or person's compliance with the prescribed medication treatment plan. The system shall include a schedule that clearly states when the defendant or person shall report for a medication compliance check. The medication compliance checks shall be based upon the effective duration of the prescribed medication, taking into account the route by which it is taken, and shall be scheduled at intervals sufficiently close together to detect a potential increase in mental illness symptoms that the medication is intended to prevent.

The chief clinical officer, after consultation with the board of alcohol, drug addiction, and mental health services or the community mental health board serving the area, shall send the recommendation and plan developed under division (D)(1)(b)(iii) of this section, in writing, to the trial court, the prosecutor and the counsel for the committed defendant or person. The trial court shall conduct a hearing on the recommendation and plan developed under division (D)(1)(b)(iii) of this section. Divisions (D)(1)(c) and (d) and (E) to (J) of this section apply regarding the hearing.

(c) If the chief clinical officer's recommendation is for nonsecured status or termination of commitment, the prosecutor may obtain an independent expert evaluation of the defendant's or person's mental condition, and the trial court may continue the hearing on the recommendation for a period of not more than thirty days to permit time for the evaluation.

The prosecutor may introduce the evaluation report or present other evidence at the hearing in accordance with the Rules of Evidence.

(d) The trial court shall schedule the hearing on a chief clinical officer's recommendation for nonsecured status or termination of commitment and shall give reasonable notice to the prosecutor and the counsel for the defendant or person. Unless continued for independent evaluation at the prosecutor's request or for other good cause, the hearing shall be held within thirty days after the trial court's receipt of the recommendation and plan.

(2)(a) Division (D)(1) of this section does not apply to on-grounds unsupervised movement of a defendant or person who has been committed under section 2945.39 or 2945.40 of the Revised Code, who is a mentally retarded person subject to institutionalization by court order, and who is being provided residential habilitation, care, and treatment in a facility operated by the department of ~~mental retardation and~~ developmental disabilities.

(b) If, pursuant to section 2945.39 of the Revised Code, the trial court commits a defendant who is found incompetent to stand trial and who is a mentally retarded person subject to institutionalization by court order, if the defendant is being provided residential habilitation, care, and treatment in a facility operated by the department of ~~mental retardation and~~ developmental disabilities, if an individual who is conducting a survey for the department of health to determine the facility's compliance with the certification requirements of the medicaid program under ~~chapter~~ Chapter 5111. of the Revised Code and Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, cites the defendant's receipt of the residential habilitation, care, and treatment in the facility as being inappropriate under the certification requirements, if the defendant's receipt of the residential habilitation, care, and treatment in the facility potentially jeopardizes the facility's continued receipt of federal medicaid moneys, and if as a result of the citation the chief clinical officer of the facility determines that the conditions of the defendant's commitment should be changed, the department of ~~mental retardation and~~ developmental disabilities may cause the defendant to be removed from the particular facility and, after evaluating the risks to public safety and the welfare of the defendant and after determining whether another type of placement is

consistent with the certification requirements, may place the defendant in another facility that the department selects as an appropriate facility for the defendant's continued receipt of residential habilitation, care, and treatment and that is a no less secure setting than the facility in which the defendant had been placed at the time of the citation. Within three days after the defendant's removal and alternative placement under the circumstances described in division (D)(2)(b) of this section, the department of ~~mental retardation and~~ developmental disabilities shall notify the trial court and the prosecutor in writing of the removal and alternative placement.

The trial court shall set a date for a hearing on the removal and alternative placement, and the hearing shall be held within twenty-one days after the trial court's receipt of the notice from the department of ~~mental retardation and~~ developmental disabilities. At least ~~ten days~~ ten days before the hearing is held, the trial court shall give the prosecutor, the department of ~~mental retardation and~~ developmental disabilities, and the counsel for the defendant written notice of the date, time, and place of the hearing. At the hearing, the trial court shall consider the citation issued by the individual who conducted the survey for the department of health to be prima-facie evidence of the fact that the defendant's commitment to the particular facility was inappropriate under the certification requirements of the medicaid program under Chapter 5111. of the Revised Code and Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, and potentially jeopardizes the particular facility's continued receipt of federal medicaid moneys. At the conclusion of the hearing, the trial court may approve or disapprove the defendant's removal and alternative placement. If the trial court approves the defendant's removal and alternative placement, the department of ~~mental retardation and~~ developmental disabilities may continue the defendant's alternative placement. If the trial court disapproves the defendant's removal and alternative placement, it shall enter an order modifying the defendant's removal and alternative placement, but that order shall not require the department of ~~mental retardation and~~ developmental disabilities to replace the defendant for purposes of continued residential habilitation, care, and treatment in the facility associated with the citation issued by the individual who conducted the survey for the department of health.

(E) In making a determination under this section regarding nonsecured status or termination of commitment, the trial court shall consider all relevant factors, including, but not limited to, all of the following:

(1) Whether, in the trial court's view, the defendant or person currently represents a substantial risk of physical harm to the defendant or person or

others;

(2) Psychiatric and medical testimony as to the current mental and physical condition of the defendant or person;

(3) Whether the defendant or person has insight into the defendant's or person's condition so that the defendant or person will continue treatment as prescribed or seek professional assistance as needed;

(4) The grounds upon which the state relies for the proposed commitment;

(5) Any past history that is relevant to establish the defendant's or person's degree of conformity to the laws, rules, regulations, and values of society;

(6) If there is evidence that the defendant's or person's mental illness is in a state of remission, the medically suggested cause and degree of the remission and the probability that the defendant or person will continue treatment to maintain the remissive state of the defendant's or person's illness should the defendant's or person's commitment conditions be altered.

(F) At any hearing held pursuant to division (C) or (D)(1) or (2) of this section, the defendant or the person shall have all the rights of a defendant or person at a commitment hearing as described in section 2945.40 of the Revised Code.

(G) In a hearing held pursuant to division (C) or (D)(1) of this section, the prosecutor has the burden of proof as follows:

(1) For a recommendation of termination of commitment, to show by clear and convincing evidence that the defendant or person remains a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order;

(2) For a recommendation for a change in the conditions of the commitment to a less restrictive status, to show by clear and convincing evidence that the proposed change represents a threat to public safety or a threat to the safety of any person.

(H) In a hearing held pursuant to division (C) or (D)(1) or (2) of this section, the prosecutor shall represent the state or the public interest.

(I) At the conclusion of a hearing conducted under division (D)(1) of this section regarding a recommendation from the chief clinical officer of a hospital, program, or facility, the trial court may approve, disapprove, or modify the recommendation and shall enter an order accordingly.

(J)(1) A defendant or person who has been committed pursuant to section 2945.39 or 2945.40 of the Revised Code continues to be under the jurisdiction of the trial court until the final termination of the commitment. For purposes of division (J) of this section, the final termination of a

commitment occurs upon the earlier of one of the following:

(a) The defendant or person no longer is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, as determined by the trial court;

(b) The expiration of the maximum prison term or term of imprisonment that the defendant or person could have received if the defendant or person had been convicted of the most serious offense with which the defendant or person is charged or in relation to which the defendant or person was found not guilty by reason of insanity;

(c) The trial court enters an order terminating the commitment under the circumstances described in division (J)(2)(a)(ii) of this section.

(2)(a) If a defendant is found incompetent to stand trial and committed pursuant to section 2945.39 of the Revised Code, if neither of the circumstances described in divisions (J)(1)(a) and (b) of this section applies to that defendant, and if a report filed with the trial court pursuant to division (C) of this section indicates that the defendant presently is competent to stand trial or if, at any other time during the period of the defendant's commitment, the prosecutor, the counsel for the defendant, or the chief clinical officer of the hospital, facility, or program to which the defendant is committed files an application with the trial court alleging that the defendant presently is competent to stand trial and requesting a hearing on the competency issue or the trial court otherwise has reasonable cause to believe that the defendant presently is competent to stand trial and determines on its own motion to hold a hearing on the competency issue, the trial court shall schedule a hearing on the competency of the defendant to stand trial, shall give the prosecutor, the counsel for the defendant, and the chief clinical officer notice of the date, time, and place of the hearing at least fifteen days before the hearing, and shall conduct the hearing within thirty days of the filing of the application or of its own motion. If, at the conclusion of the hearing, the trial court determines that the defendant presently is capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense, the trial court shall order that the defendant is competent to stand trial and shall be proceeded against as provided by law with respect to the applicable offenses described in division (C)(1) of section 2945.38 of the Revised Code and shall enter whichever of the following additional orders is appropriate:

(i) If the trial court determines that the defendant remains a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, the trial court shall

order that the defendant's commitment to the hospital, facility, or program be continued during the pendency of the trial on the applicable offenses described in division (C)(1) of section 2945.38 of the Revised Code.

(ii) If the trial court determines that the defendant no longer is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, the trial court shall order that the defendant's commitment to the hospital, facility, or program shall not be continued during the pendency of the trial on the applicable offenses described in division (C)(1) of section 2945.38 of the Revised Code. This order shall be a final termination of the commitment for purposes of division (J)(1)(c) of this section.

(b) If, at the conclusion of the hearing described in division (J)(2)(a) of this section, the trial court determines that the defendant remains incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the trial court shall order that the defendant continues to be incompetent to stand trial, that the defendant's commitment to the hospital, facility, or program shall be continued, and that the defendant remains subject to the jurisdiction of the trial court pursuant to that commitment, and to the provisions of this section, until the final termination of the commitment as described in division (J)(1) of this section.

Sec. 2967.22. Whenever it is brought to the attention of the adult parole authority or a department of probation that a parolee, person under a community control sanction, person under transitional control, or releasee appears to be a mentally ill person subject to hospitalization by court order, as defined in section 5122.01 of the Revised Code, or a mentally retarded person subject to institutionalization by court order, as defined in section 5123.01 of the Revised Code, the parole or probation officer, subject to the approval of the chief of the adult parole authority, the designee of the chief of the adult parole authority, or the chief probation officer, may file an affidavit under section 5122.11 or 5123.71 of the Revised Code. A parolee, person under a community control sanction, or releasee who is involuntarily detained under Chapter 5122. or 5123. of the Revised Code shall receive credit against the period of parole or community control or the term of post-release control for the period of involuntary detention.

If a parolee, person under a community control sanction, person under transitional control, or releasee escapes from an institution or facility within the department of mental health or the department of ~~mental retardation and~~ developmental disabilities, the superintendent of the institution immediately shall notify the chief of the adult parole authority or the chief probation

officer. Notwithstanding the provisions of section 5122.26 of the Revised Code, the procedure for the apprehension, detention, and return of the parolee, person under a community control sanction, person under transitional control, or releasee is the same as that provided for the apprehension, detention, and return of persons who escape from institutions operated by the department of rehabilitation and correction. If the escaped parolee, person under transitional control, or releasee is not apprehended and returned to the custody of the department of mental health or the department of ~~mental retardation and~~ developmental disabilities within ninety days after the escape, the parolee, person under transitional control, or releasee shall be discharged from the custody of the department of mental health or the department of ~~mental retardation and~~ developmental disabilities and returned to the custody of the department of rehabilitation and correction. If the escaped person under a community control sanction is not apprehended and returned to the custody of the department of mental health or the department of ~~mental retardation and~~ developmental disabilities within ninety days after the escape, the person under a community control sanction shall be discharged from the custody of the department of mental health or the department of ~~mental retardation and~~ developmental disabilities and returned to the custody of the court that sentenced that person.

Sec. 3109.18. (A)(1) A board of county commissioners may establish a child abuse and child neglect prevention advisory board or may designate the county family and children first council to serve as the child abuse and child neglect prevention advisory board. The boards of county commissioners of two or more contiguous counties may instead form a multicounty district to be served by a child abuse and child neglect prevention advisory board or may designate a regional family and children first council to serve as the district child abuse and child neglect prevention advisory board. Each advisory board shall meet at least twice a year.

(2) The county auditor is hereby designated as the auditor and fiscal officer of the advisory board. In the case of a multicounty district, the boards of county commissioners that formed the district shall designate the auditor of one of the counties as the auditor and fiscal officer of the advisory board.

(B) Each county that establishes an advisory board or, in a multicounty district, the auditor who has been designated as the auditor and fiscal officer of the advisory board, shall establish a fund in the county treasury known as the county or district children's trust fund. The auditor shall deposit all funds received from the children's trust fund board into that fund, and the auditor shall distribute money from the fund at the request of the advisory board.

(C) Each January, the board of county commissioners of a county that has established an advisory board or, in a multicounty district, the board of county commissioners of the county served by the auditor who has been designated as the auditor and fiscal officer for the advisory board, shall appropriate the amount described in division (B)(2) of section 3109.17 of the Revised Code for distribution by the advisory board to child abuse and child neglect prevention programs.

(D)(1) Except in the case of a county or regional family and children first council that is designated to serve as a child abuse and child neglect prevention advisory board, each advisory board shall consist of an odd number of members from both the public and private sectors, including all of the following:

(a) A representative of an agency responsible for the administration of children's services in the county or district;

(b) A provider of alcohol or drug addiction services or a representative of a board of alcohol, drug addiction, and mental health services that serves the county or district;

(c) A provider of mental health services or a representative of a board of alcohol, drug addiction, and mental health services that serves the county or district;

(d) A representative of a county board of ~~mental retardation and~~ developmental disabilities that serves the county or district;

(e) A representative of the educational community appointed by the superintendent of the school district with largest enrollment in the county or multicounty district.

(2) The following groups and entities may be represented on the advisory board:

(a) Parent groups;

(b) Juvenile justice officials;

(c) Pediatricians, health department nurses, and other representatives of the medical community;

(d) School personnel;

(e) Counselors and social workers;

(f) Head start agencies;

(g) Child care providers;

(h) Other persons with demonstrated knowledge in programs for children.

(3) Of the members first appointed, at least one shall serve for a term of three years, at least one for a term of two years, and at least one for a term of one year. Thereafter, each member shall serve a term of three years. Each

member shall serve until the member's successor is appointed. All vacancies on the board shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(E) Each child abuse and child neglect prevention advisory board may incur reasonable costs not to exceed five per cent of the funds allocated to the county or district under section 3109.17 of the Revised Code, for the purpose of carrying out the functions of the advisory board.

(F) Each child abuse and child neglect prevention advisory board shall do all of the following:

(1) For each fiscal biennium, develop a local allocation plan for the purpose of preventing child abuse and child neglect and submit the plan to the children's trust fund board on or before the first day of April preceding the fiscal year for which the plan is developed;

(2) Provide effective public notice, as defined by the children's trust fund board in the state plan or, if the board does not define the term in the state plan, as defined in rules adopted by the department of job and family services, to potential applicants about the availability of funds from the children's trust fund, including an estimate of the amount of money available for grants within each county or district, the date of at least one public hearing, information on obtaining a copy of the grant application form, and the deadline for submitting grant applications;

(3) Review all applications received using criteria specified in the state plan adopted by the board under section 3109.17 of the Revised Code;

(4) Consistent with the local allocation plan developed pursuant to division (F)(1) of this section, make grants to child abuse and child neglect prevention programs.

(5) Establish any reporting requirements for grant recipients, in addition to those specified by the children's trust fund board, and for children's advocacy centers for which funds are used in accordance with section 3109.172 of the Revised Code.

(G) A member of a child abuse and child neglect prevention advisory board shall not participate in the development of a local allocation plan under division (F)(1) of this section if it is reasonable to expect that the member's judgment could be affected by the member's own financial, business, property, or personal interest or other conflict of interest. For purposes of this division, "conflict of interest" means the taking of any action that violates any applicable provision of Chapter 102. or 2921. of the Revised Code. Questions relating to the existence of a conflict of interest pertaining to Chapter 2921. of the Revised Code shall be submitted by the advisory board to the local prosecuting attorney for resolution. Questions

relating to the existence of a conflict of interest pertaining to Chapter 102. of the Revised Code shall be submitted by the advisory board to the Ohio ethics commission for resolution.

(H) Each advisory board shall assist the children's trust fund board in monitoring programs that receive money from the children's trust fund and shall perform such other duties for the local administration of the children's trust fund as the children's trust fund board requires.

(I) A children's advocacy center for which a child abuse and child neglect prevention advisory board uses any amount out of the funds allocated to the advisory board under section 3109.172 of the Revised Code, as start-up costs for the establishment and operation of the center, shall use the moneys so received only for establishment and operation of the center in accordance with sections 2151.425 to 2151.428 of the Revised Code. Any other person or entity that is a recipient of a grant from the children's trust fund shall use the grant funds only to fund primary and secondary child abuse and child neglect prevention programs. Any grant funds that are not spent by the recipient of the funds within the time specified by the terms of the grant shall be returned to the county treasurer. Any grant funds returned that are not redistributed by the advisory board within the state fiscal year in which they are received shall be returned to the treasurer of state. The treasurer of state shall deposit such unspent moneys into the children's trust fund to be spent for purposes consistent with the state plan adopted under section 3109.17 of the Revised Code.

(J) Applications for grants from the children's trust fund shall be made to the advisory board on forms prescribed by the children's trust fund board.

(K)(1) Each children's advocacy center for which a child abuse and child neglect prevention advisory board uses any amount out of the funds allocated to the advisory board under section 3109.172 of the Revised Code, as start-up costs for the establishment and operation of the center, and each other person or entity that is a recipient of a children's trust fund grant from an advisory board shall file with the advisory board a copy of a semi-annual and an annual report that includes the information required by the children's trust fund board.

(2) Each advisory board shall file with the children's trust fund board, not later than the fifteenth day of August following the year for which the report is written, a copy of an annual report regarding the county or district local allocation plan that contains the information required by the children's trust fund board, and regarding the advisory board's use of any amount out of the funds allocated to the advisory board under section 3109.172 of the Revised Code as start-up costs for the establishment and operation of a

children's advocacy center.

Sec. 3301.07. The state board of education shall exercise under the acts of the general assembly general supervision of the system of public education in the state. In addition to the powers otherwise imposed on the state board under the provisions of law, the board shall have the following powers:

(A) Exercise policy forming, planning, and evaluative functions for the public schools of the state, and for adult education, except as otherwise provided by law;

(B) Exercise leadership in the improvement of public education in this state, and administer the educational policies of this state relating to public schools, and relating to instruction and instructional material, building and equipment, transportation of pupils, administrative responsibilities of school officials and personnel, and finance and organization of school districts, educational service centers, and territory. Consultative and advisory services in such matters shall be provided by the board to school districts and educational service centers of this state. The board also shall develop a standard of financial reporting which shall be used by all school districts and educational service centers to make their financial information available to the public in a format understandable by the average citizen and provide year-to-year comparisons for at least five years. The format shall show, among other things, district and educational service center revenue by source; expenditures for salaries, wages, and benefits of employees, showing such amounts separately for classroom teachers, other employees required to hold licenses issued pursuant to sections 3319.22 to 3319.31 of the Revised Code, and all other employees; expenditures other than for personnel, by category, including utilities, textbooks and other educational materials, equipment, permanent improvements, pupil transportation, extracurricular athletics, and other extracurricular activities; and per pupil expenditures.

(C) Administer and supervise the allocation and distribution of all state and federal funds for public school education under the provisions of law, and may prescribe such systems of accounting as are necessary and proper to this function. It may require county auditors and treasurers, boards of education, educational service center governing boards, treasurers of such boards, teachers, and other school officers and employees, or other public officers or employees, to file with it such reports as it may prescribe relating to such funds, or to the management and condition of such funds.

(D) Formulate and prescribe minimum standards to be applied to all elementary and secondary schools in this state for the purpose of requiring a

general education of high quality. Such standards shall provide adequately for: the licensing of teachers, administrators, and other professional personnel and their assignment according to training and qualifications; efficient and effective instructional materials and equipment, including library facilities; the proper organization, administration, and supervision of each school, including regulations for preparing all necessary records and reports and the preparation of a statement of policies and objectives for each school; buildings, grounds, health and sanitary facilities and services; admission of pupils, and such requirements for their promotion from grade to grade as will assure that they are capable and prepared for the level of study to which they are certified; requirements for graduation; and such other factors as the board finds necessary.

In the formulation and administration of such standards for nonpublic schools the board shall also consider the particular needs, methods and objectives of those schools, provided they do not conflict with the provision of a general education of a high quality and provided that regular procedures shall be followed for promotion from grade to grade of pupils who have met the educational requirements prescribed.

(E) May require as part of the health curriculum information developed under section 2108.34 of the Revised Code promoting the donation of anatomical gifts pursuant to Chapter 2108. of the Revised Code and may provide the information to high schools, educational service centers, and joint vocational school district boards of education;

(F) Prepare and submit annually to the governor and the general assembly a report on the status, needs, and major problems of the public schools of the state, with recommendations for necessary legislative action and a ten-year projection of the state's public and nonpublic school enrollment, by year and by grade level;

(G) Prepare and submit to the director of budget and management the biennial budgetary requests of the state board of education, for its agencies and for the public schools of the state;

(H) Cooperate with federal, state, and local agencies concerned with the health and welfare of children and youth of the state;

(I) Require such reports from school districts and educational service centers, school officers, and employees as are necessary and desirable. The superintendents and treasurers of school districts and educational service centers shall certify as to the accuracy of all reports required by law or state board or state department of education rules to be submitted by the district or educational service center and which contain information necessary for calculation of state funding. Any superintendent who knowingly falsifies

such report shall be subject to license revocation pursuant to section 3319.31 of the Revised Code.

(J) In accordance with Chapter 119. of the Revised Code, adopt procedures, standards, and guidelines for the education of children with disabilities pursuant to Chapter 3323. of the Revised Code, including procedures, standards, and guidelines governing programs and services operated by county boards of ~~mental retardation and~~ developmental disabilities pursuant to section 3323.09 of the Revised Code;

(K) For the purpose of encouraging the development of special programs of education for academically gifted children, employ competent persons to analyze and publish data, promote research, advise and counsel with boards of education, and encourage the training of teachers in the special instruction of gifted children. The board may provide financial assistance out of any funds appropriated for this purpose to boards of education and educational service center governing boards for developing and conducting programs of education for academically gifted children.

(L) Require that all public schools emphasize and encourage, within existing units of study, the teaching of energy and resource conservation as recommended to each district board of education by leading business persons involved in energy production and conservation, beginning in the primary grades;

(M) Formulate and prescribe minimum standards requiring the use of phonics as a technique in the teaching of reading in grades kindergarten through three. In addition, the state board shall provide in-service training programs for teachers on the use of phonics as a technique in the teaching of reading in grades kindergarten through three.

(N) Develop and modify as necessary a state plan for technology to encourage and promote the use of technological advancements in educational settings.

The board may adopt rules necessary for carrying out any function imposed on it by law, and may provide rules as are necessary for its government and the government of its employees, and may delegate to the superintendent of public instruction the management and administration of any function imposed on it by law. It may provide for the appointment of board members to serve on temporary committees established by the board for such purposes as are necessary. Permanent or standing committees shall not be created.

Sec. 3301.15. The state board of education or its authorized representatives may inspect all institutions under the control of the department of job and family services, the department of mental health, the

department of ~~mental retardation and~~ developmental disabilities, and the department of rehabilitation and correction which employ teachers, and may make a report on the teaching, discipline, and school equipment in these institutions to the director of job and family services, the director of mental health, the director of ~~mental retardation and~~ developmental disabilities, the director of rehabilitation and correction, and the governor.

Sec. 3301.52. As used in sections 3301.52 to 3301.59 of the Revised Code:

(A) "Preschool program" means either of the following:

(1) A child care program for preschool children that is operated by a school district board of education or an eligible nonpublic school.

(2) A child care program for preschool children age three or older that is operated by a county ~~MR/DD~~ DD board.

(B) "Preschool child" or "child" means a child who has not entered kindergarten and is not of compulsory school age.

(C) "Parent, guardian, or custodian" means the person or government agency that is or will be responsible for a child's school attendance under section 3321.01 of the Revised Code.

(D) "Superintendent" means the superintendent of a school district or the chief administrative officer of an eligible nonpublic school.

(E) "Director" means the director, head teacher, elementary principal, or site administrator who is the individual on site and responsible for supervision of a preschool program.

(F) "Preschool staff member" means a preschool employee whose primary responsibility is care, teaching, or supervision of preschool children.

(G) "Nonteaching employee" means a preschool program or school child program employee whose primary responsibilities are duties other than care, teaching, and supervision of preschool children or school children.

(H) "Eligible nonpublic school" means a nonpublic school chartered as described in division (B)(8) of section 5104.02 of the Revised Code or chartered by the state board of education for any combination of grades one through twelve, regardless of whether it also offers kindergarten.

(I) "County ~~MR/DD~~ DD board" means a county board of ~~mental retardation and~~ developmental disabilities.

(J) "School child program" means a child care program for only school children that is operated by a school district board of education, county ~~MR/DD~~ DD board, or eligible nonpublic school.

(K) "School child" and "child care" have the same meanings as in section 5104.01 of the Revised Code.

(L) "School child program staff member" means an employee whose primary responsibility is the care, teaching, or supervision of children in a school child program.

Sec. 3301.53. (A) The state board of education, in consultation with the director of job and family services, shall formulate and prescribe by rule adopted under Chapter 119. of the Revised Code minimum standards to be applied to preschool programs operated by school district boards of education, county ~~MR/DD~~ DD boards, or eligible nonpublic schools. The rules shall include the following:

(1) Standards ensuring that the preschool program is located in a safe and convenient facility that accommodates the enrollment of the program, is of the quality to support the growth and development of the children according to the program objectives, and meets the requirements of section 3301.55 of the Revised Code;

(2) Standards ensuring that supervision, discipline, and programs will be administered according to established objectives and procedures;

(3) Standards ensuring that preschool staff members and nonteaching employees are recruited, employed, assigned, evaluated, and provided inservice education without discrimination on the basis of age, color, national origin, race, or sex; and that preschool staff members and nonteaching employees are assigned responsibilities in accordance with written position descriptions commensurate with their training and experience;

(4) A requirement that boards of education intending to establish a preschool program demonstrate a need for a preschool program prior to establishing the program;

(5) Requirements that children participating in preschool programs have been immunized to the extent considered appropriate by the state board to prevent the spread of communicable disease;

(6) Requirements that the parents of preschool children complete the emergency medical authorization form specified in section 3313.712 of the Revised Code.

(B) The state board of education in consultation with the director of job and family services shall ensure that the rules adopted by the state board under sections 3301.52 to 3301.58 of the Revised Code are consistent with and meet or exceed the requirements of Chapter 5104. of the Revised Code with regard to child day-care centers. The state board and the director of job and family services shall review all such rules at least once every five years.

(C) The state board of education, in consultation with the director of job and family services, shall adopt rules for school child programs that are

consistent with and meet or exceed the requirements of the rules adopted for school child day-care centers under Chapter 5104. of the Revised Code.

Sec. 3301.55. (A) A school district, county ~~MR/DD~~ DD board, or eligible nonpublic school operating a preschool program shall house the program in buildings that meet the following requirements:

(1) The building is operated by the district, county ~~MR/DD~~ DD board, or eligible nonpublic school and has been approved by the division of industrial compliance in the department of commerce or a certified municipal, township, or county building department for the purpose of operating a program for preschool children. Any such structure shall be constructed, equipped, repaired, altered, and maintained in accordance with applicable provisions of Chapters 3781. and 3791. and with rules adopted by the board of building standards under Chapter 3781. of the Revised Code for the safety and sanitation of structures erected for this purpose.

(2) The building is in compliance with fire and safety laws and regulations as evidenced by reports of annual school fire and safety inspections as conducted by appropriate local authorities.

(3) The school is in compliance with rules established by the state board of education regarding school food services.

(4) The facility includes not less than thirty-five square feet of indoor space for each child in the program. Safe play space, including both indoor and outdoor play space, totaling not less than sixty square feet for each child using the space at any one time, shall be regularly available and scheduled for use.

(5) First aid facilities and space for temporary placement or isolation of injured or ill children are provided.

(B) Each school district, county ~~MR/DD~~ DD board, or eligible nonpublic school that operates, or proposes to operate, a preschool program shall submit a building plan including all information specified by the state board of education to the board not later than the first day of September of the school year in which the program is to be initiated. The board shall determine whether the buildings meet the requirements of this section and section 3301.53 of the Revised Code, and notify the superintendent of its determination. If the board determines, on the basis of the building plan or any other information, that the buildings do not meet those requirements, it shall cause the buildings to be inspected by the department of education. The department shall make a report to the superintendent specifying any aspects of the building that are not in compliance with the requirements of this section and section 3301.53 of the Revised Code and the time period that will be allowed the district, county ~~MR/DD~~ DD board, or school to

meet the requirements.

Sec. 3301.57. (A) For the purpose of improving programs, facilities, and implementation of the standards promulgated by the state board of education under section 3301.53 of the Revised Code, the state department of education shall provide consultation and technical assistance to school districts, county ~~MR/DD~~ DD boards, and eligible nonpublic schools operating preschool programs or school child programs, and inservice training to preschool staff members, school child program staff members, and nonteaching employees.

(B) The department and the school district board of education, county ~~MR/DD~~ DD board, or eligible nonpublic school shall jointly monitor each preschool program and each school child program.

If the program receives any grant or other funding from the state or federal government, the department annually shall monitor all reports on attendance, financial support, and expenditures according to provisions for use of the funds.

(C) The department of education, at least twice during every twelve-month period of operation of a preschool program or a licensed school child program, shall inspect the program and provide a written inspection report to the superintendent of the school district, county ~~MR/DD~~ DD board, or eligible nonpublic school. At least one inspection shall be unannounced, and all inspections may be unannounced. No person shall interfere with any inspection conducted pursuant to this division or to the rules adopted pursuant to sections 3301.52 to 3301.59 of the Revised Code.

Upon receipt of any complaint that a preschool program or a licensed school child program is out of compliance with the requirements in sections 3301.52 to 3301.59 of the Revised Code or the rules adopted under those sections, the department shall investigate and may inspect the program.

(D) If a preschool program or a licensed school child program is determined to be out of compliance with the requirements of sections 3301.52 to 3301.59 of the Revised Code or the rules adopted under those sections, the department of education shall notify the appropriate superintendent, county ~~MR/DD~~ DD board, or eligible nonpublic school in writing regarding the nature of the violation, what must be done to correct the violation, and by what date the correction must be made. If the correction is not made by the date established by the department, it may commence action under Chapter 119. of the Revised Code to close the program or to revoke the license of the program. If a program does not comply with an order to cease operation issued in accordance with Chapter 119. of the Revised Code, the department shall notify the attorney general,

the prosecuting attorney of the county in which the program is located, or the city attorney, village solicitor, or other chief legal officer of the municipal corporation in which the program is located that the program is operating in violation of sections 3301.52 to 3301.59 of the Revised Code or the rules adopted under those sections and in violation of an order to cease operation issued in accordance with Chapter 119. of the Revised Code. Upon receipt of the notification, the attorney general, prosecuting attorney, city attorney, village solicitor, or other chief legal officer shall file a complaint in the court of common pleas of the county in which the program is located requesting the court to issue an order enjoining the program from operating. The court shall grant the requested injunctive relief upon a showing that the program named in the complaint is operating in violation of sections 3301.52 to 3301.59 of the Revised Code or the rules adopted under those sections and in violation of an order to cease operation issued in accordance with Chapter 119. of the Revised Code.

(E) The department of education shall prepare an annual report on inspections conducted under this section. The report shall include the number of inspections conducted, the number and types of violations found, and the steps taken to address the violations. The department shall file the report with the governor, the president and minority leader of the senate, and the speaker and minority leader of the house of representatives on or before the first day of January of each year, beginning in 1999.

Sec. 3301.58. (A) The department of education is responsible for the licensing of preschool programs and school child programs and for the enforcement of sections 3301.52 to 3301.59 of the Revised Code and of any rules adopted under those sections. No school district board of education, county ~~MR/DD~~ DD board, or eligible nonpublic school shall operate, establish, manage, conduct, or maintain a preschool program without a license issued under this section. A school district board of education, county ~~MR/DD~~ DD board, or eligible nonpublic school may obtain a license under this section for a school child program. The school district board of education, county ~~MR/DD~~ DD board, or eligible nonpublic school shall post the current license for each preschool program and licensed school child program it operates, establishes, manages, conducts, or maintains in a conspicuous place in the preschool program or licensed school child program that is accessible to parents, custodians, or guardians and employees and staff members of the program at all times when the program is in operation.

(B) Any school district board of education, county ~~MR/DD~~ DD board, or eligible nonpublic school that desires to operate, establish, manage,

conduct, or maintain a preschool program shall apply to the department of education for a license on a form that the department shall prescribe by rule. Any school district board of education, county ~~MR/~~DD board, or eligible nonpublic school that desires to obtain a license for a school child program shall apply to the department for a license on a form that the department shall prescribe by rule. The department shall provide at no charge to each applicant for a license under this section a copy of the requirements under sections 3301.52 to 3301.59 of the Revised Code and any rules adopted under those sections. The department shall mail application forms for the renewal of a license at least one hundred twenty days prior to the date of the expiration of the license, and the application for renewal of a license shall be filed with the department at least sixty days before the date of the expiration of the existing license. The department may establish application fees by rule adopted under Chapter 119. of the Revised Code, and all applicants for a license shall pay any fee established by the department at the time of making an application for a license. All fees collected pursuant to this section shall be paid into the state treasury to the credit of the general revenue fund.

(C) Upon the filing of an application for a license, the department of education shall investigate and inspect the preschool program or school child program to determine the license capacity for each age category of children of the program and to determine whether the program complies with sections 3301.52 to 3301.59 of the Revised Code and any rules adopted under those sections. When, after investigation and inspection, the department of education is satisfied that sections 3301.52 to 3301.59 of the Revised Code and any rules adopted under those sections are complied with by the applicant, the department of education shall issue the program a provisional license as soon as practicable in the form and manner prescribed by the rules of the department. The provisional license shall be valid for six months from the date of issuance unless revoked.

(D) The department of education shall investigate and inspect a preschool program or school child program that has been issued a provisional license at least once during operation under the provisional license. If, after the investigation and inspection, the department of education determines that the requirements of sections 3301.52 to 3301.59 of the Revised Code and any rules adopted under those sections are met by the provisional licensee, the department of education shall issue a license that is effective for two years from the date of the issuance of the provisional license.

(E) Upon the filing of an application for the renewal of a license by a

preschool program or school child program, the department of education shall investigate and inspect the preschool program or school child program. If the department of education determines that the requirements of sections 3301.52 to 3301.59 of the Revised Code and any rules adopted under those sections are met by the applicant, the department of education shall renew the license for two years from the date of the expiration date of the previous license.

(F) The license or provisional license shall state the name of the school district board of education, county ~~MR/DD~~ DD board, or eligible nonpublic school that operates the preschool program or school child program and the license capacity of the program. The license shall include any other information required by section 5104.03 of the Revised Code for the license of a child day-care center.

(G) The department of education may revoke the license of any preschool program or school child program that is not in compliance with the requirements of sections 3301.52 to 3301.59 of the Revised Code and any rules adopted under those sections.

(H) If the department of education revokes a license or refuses to renew a license to a program, the department shall not issue a license to the program within two years from the date of the revocation or refusal. All actions of the department with respect to licensing preschool programs and school child programs shall be in accordance with Chapter 119. of the Revised Code.

Sec. 3304.231. There is hereby created a brain injury advisory committee, which shall advise the administrator of the rehabilitation services commission and the brain injury program with regard to unmet needs of survivors of brain injury, development of programs for survivors and their families, establishment of training programs for health care professionals, and any other matter within the province of the brain injury program. The committee shall consist of not less than eighteen and not more than twenty-one members as follows:

(A) Not less than ten and not more than twelve members appointed by the administrator of the rehabilitation services commission, including all of the following: a survivor of brain injury, a relative of a survivor of brain injury, a licensed physician recommended by the Ohio chapter of the American college of emergency physicians, a licensed physician recommended by the Ohio state medical association, one other health care professional, a rehabilitation professional, an individual who represents the brain injury association of Ohio, and not less than three nor more than five individuals who shall represent the public;

(B) The directors of the departments of health, alcohol and drug addiction services, ~~mental retardation and~~ developmental disabilities, mental health, job and family services, and highway safety; the administrator of workers' compensation; the superintendent of public instruction; and the administrator of the rehabilitation services commission. Any of the officials specified in this division may designate an individual to serve in the official's place as a member of the committee.

The director of health shall make initial appointments to the committee by November 1, 1990. Appointments made after July 26, 1991, shall be made by the administrator of the rehabilitation services commission. Terms of office shall be two years. Members may be reappointed. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office as a member for the remainder of that term.

Members of the committee shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

Sec. 3313.65. (A) As used in this section and section 3313.64 of the Revised Code:

(1) A person is "in a residential facility" if the person is a resident or a resident patient of an institution, home, or other residential facility that is:

(a) Licensed as a nursing home, residential care facility, or home for the aging by the director of health under section 3721.02 of the Revised Code or licensed as a community alternative home by the director of health under section 3724.03 of the Revised Code;

(b) Licensed as an adult care facility by the director of health under Chapter 3722. of the Revised Code;

(c) Maintained as a county home or district home by the board of county commissioners or a joint board of county commissioners under Chapter 5155. of the Revised Code;

(d) Operated or administered by a board of alcohol, drug addiction, and mental health services under section 340.03 or 340.06 of the Revised Code, or provides residential care pursuant to contracts made under section 340.03 or 340.033 of the Revised Code;

(e) Maintained as a state institution for the mentally ill under Chapter 5119. of the Revised Code;

(f) Licensed by the department of mental health under section 5119.20 or 5119.22 of the Revised Code;

(g) Licensed as a residential facility by the department of ~~mental~~

~~retardation and~~ developmental disabilities under section 5123.19 of the Revised Code;

(h) Operated by the veteran's administration or another agency of the United States government;

(i) The Ohio soldiers' and sailors' home.

(2) A person is "in a correctional facility" if any of the following apply:

(a) The person is an Ohio resident and is:

(i) Imprisoned, as defined in section 1.05 of the Revised Code;

(ii) Serving a term in a community-based correctional facility or a district community-based correctional facility;

(iii) Required, as a condition of parole, a post-release control sanction, a community control sanction, transitional control, or early release from imprisonment, as a condition of shock parole or shock probation granted under the law in effect prior to July 1, 1996, or as a condition of a furlough granted under the version of section 2967.26 of the Revised Code in effect prior to March 17, 1998, to reside in a halfway house or other community residential center licensed under section 2967.14 of the Revised Code or a similar facility designated by the court of common pleas that established the condition or by the adult parole authority.

(b) The person is imprisoned in a state correctional institution of another state or a federal correctional institution but was an Ohio resident at the time the sentence was imposed for the crime for which the person is imprisoned.

(3) A person is "in a juvenile residential placement" if the person is an Ohio resident who is under twenty-one years of age and has been removed, by the order of a juvenile court, from the place the person resided at the time the person became subject to the court's jurisdiction in the matter that resulted in the person's removal.

(4) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(5) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

(B) If the circumstances described in division (C) of this section apply, the determination of what school district must admit a child to its schools and what district, if any, is liable for tuition shall be made in accordance with this section, rather than section 3313.64 of the Revised Code.

(C) A child who does not reside in the school district in which the child's parent resides and for whom a tuition obligation previously has not been established under division (C)(2) of section 3313.64 of the Revised Code shall be admitted to the schools of the district in which the child resides if at least one of the child's parents is in a residential or correctional

facility or a juvenile residential placement and the other parent, if living and not in such a facility or placement, is not known to reside in this state.

(D) Regardless of who has custody or care of the child, whether the child resides in a home, or whether the child receives special education, if a district admits a child under division (C) of this section, tuition shall be paid to that district as follows:

(1) If the child's parent is in a juvenile residential placement, by the district in which the child's parent resided at the time the parent became subject to the jurisdiction of the juvenile court;

(2) If the child's parent is in a correctional facility, by the district in which the child's parent resided at the time the sentence was imposed;

(3) If the child's parent is in a residential facility, by the district in which the parent resided at the time the parent was admitted to the residential facility, except that if the parent was transferred from another residential facility, tuition shall be paid by the district in which the parent resided at the time the parent was admitted to the facility from which the parent first was transferred;

(4) In the event of a disagreement as to which school district is liable for tuition under division (C)(1), (2), or (3) of this section, the superintendent of public instruction shall determine which district shall pay tuition.

(E) If a child covered by division (D) of this section receives special education in accordance with Chapter 3323. of the Revised Code, the tuition shall be paid in accordance with section 3323.13 or 3323.14 of the Revised Code. Tuition for children who do not receive special education shall be paid in accordance with division (J) of section 3313.64 of the Revised Code.

Sec. 3313.715. The board of education of a school district may request from the director of ~~mental retardation and~~ developmental disabilities the appropriate identification numbers for all students residing in the district who are medical assistance recipients under Chapter 5111. of the Revised Code. The director shall furnish such numbers upon receipt of lists of student names furnished by the district board, in such form as the director may require.

The director of job and family services shall provide the director of ~~mental retardation and~~ developmental disabilities with the data necessary for compliance with this section.

Section 3319.321 of the Revised Code does not apply to the release of student names or other data to the director of ~~mental retardation and~~ developmental disabilities for the purposes of this section. Chapter 1347. of the Revised Code does not apply to information required to be kept by a school board or the departments of job and family services or ~~mental~~

~~retardation and~~ developmental disabilities to the extent necessary to comply with this section and section 3313.714 of the Revised Code. However, any such information or data shall be used only for the specific legal purposes of such boards and departments and shall not be released to any unauthorized person.

Sec. 3314.022. The governing authority of any community school established under this chapter may contract with the governing authority of another community school, the board of education of a school district, the governing board of an educational service center, a county ~~MR/DD~~ DD board, or the administrative authority of a nonpublic school for provision of services for any disabled student enrolled at the school. Any school district board of education or educational service center governing board shall negotiate with a community school governing authority that seeks to contract for the provision of services for a disabled student under this section in the same manner as it would with the board of education of a school district that seeks to contract for such services.

Sec. 3314.99. (A) Whoever violates division (F) of section 3314.40 of the Revised Code shall be punished as follows:

(1) Except as otherwise provided in division (A)(2) of this section, the person is guilty of a misdemeanor of the fourth degree.

(2) The person is guilty of a misdemeanor of the first degree if both of the following conditions apply:

(a) The employee who is the subject of the report that the person fails to submit was required to be reported for the commission or alleged commission of an act or offense involving the infliction on a child of any physical or mental wound, injury, disability, or condition of a nature that constitutes abuse or neglect of the child;

(b) During the period between the violation of division (F) of section 3314.40 of the Revised Code and the conviction of or plea of guilty by the person for that violation, the employee who is the subject of the report that the person fails to submit inflicts on any child attending a school district, educational service center, public or nonpublic school, or county board of ~~mental retardation and~~ developmental disabilities where the employee works any physical or mental wound, injury, disability, or condition of a nature that constitutes abuse or neglect of the child.

(B) Whoever violates division (B) of section 3314.403 of the Revised Code is guilty of a misdemeanor of the first degree.

Sec. 3317.01. As used in this section and section 3317.011 of the Revised Code, "school district," unless otherwise specified, means any city, local, exempted village, joint vocational, or cooperative education school

district and any educational service center.

This chapter shall be administered by the state board of education. The superintendent of public instruction shall calculate the amounts payable to each school district and shall certify the amounts payable to each eligible district to the treasurer of the district as provided by this chapter. As soon as possible after such amounts are calculated, the superintendent shall certify to the treasurer of each school district the district's adjusted charge-off increase, as defined in section 5705.211 of the Revised Code. No moneys shall be distributed pursuant to this chapter without the approval of the controlling board.

The state board of education shall, in accordance with appropriations made by the general assembly, meet the financial obligations of this chapter.

Annually, the department of education shall calculate and report to each school district the district's total state and local funds for providing an adequate basic education to the district's nondisabled students, utilizing the determination in section 3317.012 of the Revised Code. In addition, the department shall calculate and report separately for each school district the district's total state and local funds for providing an adequate education for its students with disabilities, utilizing the determinations in both sections 3317.012 and 3317.013 of the Revised Code.

Not later than the thirty-first day of August of each fiscal year, the department of education shall provide to each school district and county ~~MR/DD~~ DD board a preliminary estimate of the amount of funding that the department calculates the district will receive under each of divisions (C)(1) and (4) of section 3317.022 of the Revised Code. No later than the first day of December of each fiscal year, the department shall update that preliminary estimate.

Moneys distributed pursuant to this chapter shall be calculated and paid on a fiscal year basis, beginning with the first day of July and extending through the thirtieth day of June. The moneys appropriated for each fiscal year shall be distributed at least monthly to each school district unless otherwise provided for. The state board shall submit a yearly distribution plan to the controlling board at its first meeting in July. The state board shall submit any proposed midyear revision of the plan to the controlling board in January. Any year-end revision of the plan shall be submitted to the controlling board in June. If moneys appropriated for each fiscal year are distributed other than monthly, such distribution shall be on the same basis for each school district.

The total amounts paid each month shall constitute, as nearly as possible, one-twelfth of the total amount payable for the entire year.

Until fiscal year 2007, payments made during the first six months of the fiscal year may be based on an estimate of the amounts payable for the entire year. Payments made in the last six months shall be based on the final calculation of the amounts payable to each school district for that fiscal year. Payments made in the last six months may be adjusted, if necessary, to correct the amounts distributed in the first six months, and to reflect enrollment increases when such are at least three per cent.

Beginning in fiscal year 2007, payments shall be calculated to reflect the biannual reporting of average daily membership. In fiscal year 2007 and in each fiscal year thereafter, annualized periodic payments for each school district shall be based on the district's final student counts verified by the superintendent of public instruction based on reports under section 3317.03 of the Revised Code, as adjusted, if so ordered, under division (K) of that section, as follows:

the sum of one-half of the number of students verified  
and adjusted for the first full week in October  
plus one-half of the average of the numbers  
verified and adjusted for the first full week  
in October and for the first full week in February

Except as otherwise provided, payments under this chapter shall be made only to those school districts in which:

(A) The school district, except for any educational service center and any joint vocational or cooperative education school district, levies for current operating expenses at least twenty mills. Levies for joint vocational or cooperative education school districts or county school financing districts, limited to or to the extent apportioned to current expenses, shall be included in this qualification requirement. School district income tax levies under Chapter 5748. of the Revised Code, limited to or to the extent apportioned to current operating expenses, shall be included in this qualification requirement to the extent determined by the tax commissioner under division (D) of section 3317.021 of the Revised Code.

(B) The school year next preceding the fiscal year for which such payments are authorized meets the requirement of section 3313.48 or 3313.481 of the Revised Code, with regard to the minimum number of days or hours school must be open for instruction with pupils in attendance, for individualized parent-teacher conference and reporting periods, and for professional meetings of teachers. This requirement shall be waived by the superintendent of public instruction if it had been necessary for a school to be closed because of disease epidemic, hazardous weather conditions, inoperability of school buses or other equipment necessary to the school's

operation, damage to a school building, or other temporary circumstances due to utility failure rendering the school building unfit for school use, provided that for those school districts operating pursuant to section 3313.48 of the Revised Code the number of days the school was actually open for instruction with pupils in attendance and for individualized parent-teacher conference and reporting periods is not less than one hundred seventy-five, or for those school districts operating on a trimester plan the number of days the school was actually open for instruction with pupils in attendance not less than seventy-nine days in any trimester, for those school districts operating on a quarterly plan the number of days the school was actually open for instruction with pupils in attendance not less than fifty-nine days in any quarter, or for those school districts operating on a pentamester plan the number of days the school was actually open for instruction with pupils in attendance not less than forty-four days in any pentamester.

A school district shall not be considered to have failed to comply with this division or section 3313.481 of the Revised Code because schools were open for instruction but either twelfth grade students were excused from attendance for up to three days or only a portion of the kindergarten students were in attendance for up to three days in order to allow for the gradual orientation to school of such students.

The superintendent of public instruction shall waive the requirements of this section with reference to the minimum number of days or hours school must be in session with pupils in attendance for the school year succeeding the school year in which a board of education initiates a plan of operation pursuant to section 3313.481 of the Revised Code. The minimum requirements of this section shall again be applicable to such a district beginning with the school year commencing the second July succeeding the initiation of one such plan, and for each school year thereafter.

A school district shall not be considered to have failed to comply with this division or section 3313.48 or 3313.481 of the Revised Code because schools were open for instruction but the length of the regularly scheduled school day, for any number of days during the school year, was reduced by not more than two hours due to hazardous weather conditions.

(C) The school district has on file, and is paying in accordance with, a teachers' salary schedule which complies with section 3317.13 of the Revised Code.

A board of education or governing board of an educational service center which has not conformed with other law and the rules pursuant thereto, shall not participate in the distribution of funds authorized by sections 3317.022 to 3317.0211, 3317.11, 3317.16, 3317.17, and 3317.19 of

the Revised Code, except for good and sufficient reason established to the satisfaction of the state board of education and the state controlling board.

All funds allocated to school districts under this chapter, except those specifically allocated for other purposes, shall be used to pay current operating expenses only.

Sec. 3317.02. As used in this chapter:

(A) Unless otherwise specified, "school district" means city, local, and exempted village school districts.

(B) "Formula amount" means the base cost for the fiscal year specified in division (B)(4) of section 3317.012 of the Revised Code.

(C) "FTE basis" means a count of students based on full-time equivalency, in accordance with rules adopted by the department of education pursuant to section 3317.03 of the Revised Code. In adopting its rules under this division, the department shall provide for counting any student in category one, two, three, four, five, or six special education ADM or in category one or two vocational education ADM in the same proportion the student is counted in formula ADM.

(D) "Formula ADM" means, for a city, local, or exempted village school district, the final number verified by the superintendent of public instruction, based on the number reported pursuant to division (A) of section 3317.03 of the Revised Code, as adjusted, if so ordered, under division (K) of that section. "Formula ADM" means, for a joint vocational school district, the final number verified by the superintendent of public instruction, based on the number reported pursuant to division (D) of section 3317.03 of the Revised Code, as adjusted, if so ordered, under division (K) of that section. Beginning in fiscal year 2007, for payments in which formula ADM is a factor, the formula ADM for each school district for the fiscal year is the sum of one-half of the number verified and adjusted for October of that fiscal year plus one-half of the average of the numbers verified and adjusted for October and February of that fiscal year.

(E) "Three-year average formula ADM" means the average of formula ADMs for the preceding three fiscal years.

(F)(1) "Category one special education ADM" means the average daily membership of children with disabilities receiving special education services for the disability specified in division (A) of section 3317.013 of the Revised Code and reported under division (B)(5) or (D)(2)(b) of section 3317.03 of the Revised Code. Beginning in fiscal year 2007, the district's category one special education ADM for a fiscal year is the sum of one-half of the number reported for October of that fiscal year plus one-half of the average of the numbers reported for October and February of that fiscal

year.

(2) "Category two special education ADM" means the average daily membership of children with disabilities receiving special education services for those disabilities specified in division (B) of section 3317.013 of the Revised Code and reported under division (B)(6) or (D)(2)(c) of section 3317.03 of the Revised Code. Beginning in fiscal year 2007, the district's category two special education ADM for a fiscal year is the sum of one-half of the number reported for October of that fiscal year plus one-half of the average of the numbers reported for October and February of that fiscal year.

(3) "Category three special education ADM" means the average daily membership of students receiving special education services for those disabilities specified in division (C) of section 3317.013 of the Revised Code, and reported under division (B)(7) or (D)(2)(d) of section 3317.03 of the Revised Code. Beginning in fiscal year 2007, the district's category three special education ADM for a fiscal year is the sum of one-half of the number reported for October of that fiscal year plus one-half of the average of the numbers reported for October and February of that fiscal year.

(4) "Category four special education ADM" means the average daily membership of students receiving special education services for those disabilities specified in division (D) of section 3317.013 of the Revised Code and reported under division (B)(8) or (D)(2)(e) of section 3317.03 of the Revised Code. Beginning in fiscal year 2007, the district's category four special education ADM for a fiscal year is the sum of one-half of the number reported for October of that fiscal year plus one-half of the average of the numbers reported for October and February of that fiscal year.

(5) "Category five special education ADM" means the average daily membership of students receiving special education services for the disabilities specified in division (E) of section 3317.013 of the Revised Code and reported under division (B)(9) or (D)(2)(f) of section 3317.03 of the Revised Code. Beginning in fiscal year 2007, the district's category five special education ADM for a fiscal year is the sum of one-half of the number reported for October of that fiscal year plus one-half of the average of the numbers reported for October and February of that fiscal year.

(6) "Category six special education ADM" means the average daily membership of students receiving special education services for the disabilities specified in division (F) of section 3317.013 of the Revised Code and reported under division (B)(10) or (D)(2)(g) of section 3317.03 of the Revised Code. Beginning in fiscal year 2007, the district's category six special education ADM for a fiscal year is the sum of one-half of the

number reported for October of that fiscal year plus one-half of the average of the numbers reported for October and February of that fiscal year.

(7) "Category one vocational education ADM" means the average daily membership of students receiving vocational education services described in division (A) of section 3317.014 of the Revised Code and reported under division (B)(11) or (D)(2)(h) of section 3317.03 of the Revised Code. Beginning in fiscal year 2007, the district's category one vocational education ADM for a fiscal year is the sum of one-half of the number reported for October of that fiscal year plus one-half of the average of the numbers reported for October and February of that fiscal year.

(8) "Category two vocational education ADM" means the average daily membership of students receiving vocational education services described in division (B) of section 3317.014 of the Revised Code and reported under division (B)(12) or (D)(2)(i) of section 3317.03 of the Revised Code. Beginning in fiscal year 2007, the district's category two vocational education ADM for a fiscal year is the sum of one-half of the number reported for October of that fiscal year plus one-half of the average of the numbers reported for October and February of that fiscal year.

(G) "Preschool child with a disability" means a child with a disability, as defined in section 3323.01 of the Revised Code, who is at least age three but is not of compulsory school age, as defined in section 3321.01 of the Revised Code, and who is not currently enrolled in kindergarten.

(H) "County ~~MR/DD~~ DD board" means a county board of ~~mental retardation and~~ developmental disabilities.

(I) "Recognized valuation" means the amount calculated for a school district pursuant to section 3317.015 of the Revised Code.

(J) "Transportation ADM" means the number of children reported under division (B)(13) of section 3317.03 of the Revised Code.

(K) "Average efficient transportation use cost per student" means a statistical representation of transportation costs as calculated under division (D)(2) of section 3317.022 of the Revised Code.

(L) "Taxes charged and payable" means the taxes charged and payable against real and public utility property after making the reduction required by section 319.301 of the Revised Code, plus the taxes levied against tangible personal property.

(M) "Total taxable value" means the sum of the amounts certified for a city, local, exempted village, or joint vocational school district under divisions (A)(1) and (2) of section 3317.021 of the Revised Code.

(N) "Tax exempt value" of a school district means the amount certified for a school district under division (A)(4) of section 3317.021 of the Revised

Code.

(O) "Potential value" of a school district means the recognized valuation of a school district plus the tax exempt value of the district.

(P) "District median income" means the median Ohio adjusted gross income certified for a school district. On or before the first day of July of each year, the tax commissioner shall certify to the department of education and the office of budget and management for each city, exempted village, and local school district the median Ohio adjusted gross income of the residents of the school district determined on the basis of tax returns filed for the second preceding tax year by the residents of the district.

(Q) "Statewide median income" means the median district median income of all city, exempted village, and local school districts in the state.

(R) "Income factor" for a city, exempted village, or local school district means the quotient obtained by dividing that district's median income by the statewide median income.

(S) "Medically fragile child" means a child to whom all of the following apply:

(1) The child requires the services of a doctor of medicine or osteopathic medicine at least once a week due to the instability of the child's medical condition.

(2) The child requires the services of a registered nurse on a daily basis.

(3) The child is at risk of institutionalization in a hospital, skilled nursing facility, or intermediate care facility for the mentally retarded.

(T) A child may be identified as having an "other health impairment-major" if the child's condition meets the definition of "other health impaired" established in rules adopted by the state board of education prior to July 1, 2001, and if either of the following apply:

(1) The child is identified as having a medical condition that is among those listed by the superintendent of public instruction as conditions where a substantial majority of cases fall within the definition of "medically fragile child." The superintendent of public instruction shall issue an initial list no later than September 1, 2001.

(2) The child is determined by the superintendent of public instruction to be a medically fragile child. A school district superintendent may petition the superintendent of public instruction for a determination that a child is a medically fragile child.

(U) A child may be identified as having an "other health impairment-minor" if the child's condition meets the definition of "other health impaired" established in rules adopted by the state board of education prior to July 1, 2001, but the child's condition does not meet either of the

conditions specified in division (T)(1) or (2) of this section.

(V) "State education aid" has the same meaning as in section 5751.20 of the Revised Code.

(W) "Property exemption value" means zero in fiscal year 2006, and in fiscal year 2007 and each fiscal year thereafter, the amount certified for a school district under divisions (A)(6) and (7) of section 3317.021 of the Revised Code.

(X) "Internet- or computer-based community school" has the same meaning as in section 3314.02 of the Revised Code.

Sec. 3317.024. In addition to the moneys paid to eligible school districts pursuant to section 3317.022 of the Revised Code, moneys appropriated for the education programs in divisions (A) to (I), (K), (L), and (N) of this section shall be distributed to school districts meeting the requirements of section 3317.01 of the Revised Code; in the case of divisions (G) and (L) of this section, to educational service centers as provided in section 3317.11 of the Revised Code; in the case of divisions (D) and (J) of this section, to county ~~MR/DD~~ DD boards; in the case of division (N) of this section, to joint vocational school districts; in the case of division (H) of this section, to cooperative education school districts; and in the case of division (M) of this section, to the institutions defined under section 3317.082 of the Revised Code providing elementary or secondary education programs to children other than children receiving special education under section 3323.091 of the Revised Code. The following shall be distributed monthly, quarterly, or annually as may be determined by the state board of education:

(A) An amount for each island school district and each joint state school district for the operation of each high school and each elementary school maintained within such district and for capital improvements for such schools. Such amounts shall be determined on the basis of standards adopted by the state board of education.

(B) An amount for each school district operating classes for children of migrant workers who are unable to be in attendance in an Ohio school during the entire regular school year. The amounts shall be determined on the basis of standards adopted by the state board of education, except that payment shall be made only for subjects regularly offered by the school district providing the classes.

(C) An amount for each school district with guidance, testing, and counseling programs approved by the state board of education. The amount shall be determined on the basis of standards adopted by the state board of education.

(D) An amount for the emergency purchase of school buses as provided

for in section 3317.07 of the Revised Code;

(E) An amount for each school district required to pay tuition for a child in an institution maintained by the department of youth services pursuant to section 3317.082 of the Revised Code, provided the child was not included in the calculation of the district's average daily membership for the preceding school year.

(F) An amount for adult basic literacy education for each district participating in programs approved by the state board of education. The amount shall be determined on the basis of standards adopted by the state board of education.

(G) An amount for the approved cost of transporting eligible pupils with disabilities attending a special education program approved by the department of education whom it is impossible or impractical to transport by regular school bus in the course of regular route transportation provided by the district or service center. No district or service center is eligible to receive a payment under this division for the cost of transporting any pupil whom it transports by regular school bus and who is included in the district's transportation ADM. The state board of education shall establish standards and guidelines for use by the department of education in determining the approved cost of such transportation for each district or service center.

(H) An amount to each school district, including each cooperative education school district, pursuant to section 3313.81 of the Revised Code to assist in providing free lunches to needy children and an amount to assist needy school districts in purchasing necessary equipment for food preparation. The amounts shall be determined on the basis of rules adopted by the state board of education.

(I) An amount to each school district, for each pupil attending a chartered nonpublic elementary or high school within the district. The amount shall equal the amount appropriated for the implementation of section 3317.06 of the Revised Code divided by the average daily membership in grades kindergarten through twelve in nonpublic elementary and high schools within the state as determined during the first full week in October of each school year.

(J) An amount for each county ~~MR/DD~~ DD board, distributed on the basis of standards adopted by the state board of education, for the approved cost of transportation required for children attending special education programs operated by the county ~~MR/DD~~ DD board under section 3323.09 of the Revised Code;

(K) An amount for each school district that establishes a mentor teacher program that complies with rules of the state board of education. No school

district shall be required to establish or maintain such a program in any year unless sufficient funds are appropriated to cover the district's total costs for the program.

(L) An amount to each school district or educational service center for the total number of gifted units approved pursuant to section 3317.05 of the Revised Code. The amount for each such unit shall be the sum of the minimum salary for the teacher of the unit, calculated on the basis of the teacher's training level and years of experience pursuant to the salary schedule prescribed in the version of section 3317.13 of the Revised Code in effect prior to July 1, 2001, plus fifteen per cent of that minimum salary amount, plus two thousand six hundred seventy-eight dollars.

(M) An amount to each institution defined under section 3317.082 of the Revised Code providing elementary or secondary education to children other than children receiving special education under section 3323.091 of the Revised Code. This amount for any institution in any fiscal year shall equal the total of all tuition amounts required to be paid to the institution under division (A)(1) of section 3317.082 of the Revised Code.

(N) A grant to each school district and joint vocational school district that operates a "graduation, reality, and dual-role skills" (GRADS) program for pregnant and parenting students that is approved by the department. The amount of the payment shall be the district's state share percentage, as defined in section 3317.022 or 3317.16 of the Revised Code, times the GRADS personnel allowance times the full-time-equivalent number of GRADS teachers approved by the department. The GRADS personnel allowance is \$47,555 in fiscal years 2008 and 2009. The GRADS program shall include instruction on adoption as an option for unintended pregnancies.

The state board of education or any other board of education or governing board may provide for any resident of a district or educational service center territory any educational service for which funds are made available to the board by the United States under the authority of public law, whether such funds come directly or indirectly from the United States or any agency or department thereof or through the state or any agency, department, or political subdivision thereof.

Sec. 3317.03. Notwithstanding divisions (A)(1), (B)(1), and (C) of this section, except as provided in division (A)(2)(h) of this section, any student enrolled in kindergarten more than half time shall be reported as one-half student under this section.

(A) The superintendent of each city and exempted village school district and of each educational service center shall, for the schools under the

superintendent's supervision, certify to the state board of education on or before the fifteenth day of October in each year for the first full school week in October the formula ADM. Beginning in fiscal year 2007, each superintendent also shall certify to the state board, for the schools under the superintendent's supervision, the formula ADM for the first full week in February. If a school under the superintendent's supervision is closed for one or more days during that week due to hazardous weather conditions or other circumstances described in the first paragraph of division (B) of section 3317.01 of the Revised Code, the superintendent may apply to the superintendent of public instruction for a waiver, under which the superintendent of public instruction may exempt the district superintendent from certifying the formula ADM for that school for that week and specify an alternate week for certifying the formula ADM of that school.

The formula ADM shall consist of the average daily membership during such week of the sum of the following:

(1) On an FTE basis, the number of students in grades kindergarten through twelve receiving any educational services from the district, except that the following categories of students shall not be included in the determination:

- (a) Students enrolled in adult education classes;
- (b) Adjacent or other district students enrolled in the district under an open enrollment policy pursuant to section 3313.98 of the Revised Code;
- (c) Students receiving services in the district pursuant to a compact, cooperative education agreement, or a contract, but who are entitled to attend school in another district pursuant to section 3313.64 or 3313.65 of the Revised Code;
- (d) Students for whom tuition is payable pursuant to sections 3317.081 and 3323.141 of the Revised Code;
- (e) Students receiving services in the district through a scholarship awarded under section 3310.41 of the Revised Code.

(2) On an FTE basis, except as provided in division (A)(2)(h) of this section, the number of students entitled to attend school in the district pursuant to section 3313.64 or 3313.65 of the Revised Code, but receiving educational services in grades kindergarten through twelve from one or more of the following entities:

- (a) A community school pursuant to Chapter 3314. of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in such community school;
- (b) An alternative school pursuant to sections 3313.974 to 3313.979 of the Revised Code as described in division (I)(2)(a) or (b) of this section;

(c) A college pursuant to Chapter 3365. of the Revised Code, except when the student is enrolled in the college while also enrolled in a community school pursuant to Chapter 3314. or a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code;

(d) An adjacent or other school district under an open enrollment policy adopted pursuant to section 3313.98 of the Revised Code;

(e) An educational service center or cooperative education district;

(f) Another school district under a cooperative education agreement, compact, or contract;

(g) A chartered nonpublic school with a scholarship paid under section 3310.08 of the Revised Code;

(h) An alternative public provider or a registered private provider with a scholarship awarded under section 3310.41 of the Revised Code. Each such scholarship student who is enrolled in kindergarten shall be counted as one full-time-equivalent student.

As used in this section, "alternative public provider" and "registered private provider" have the same meanings as in section 3310.41 of the Revised Code.

(i) A science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in the school.

(3) Twenty per cent of the number of students enrolled in a joint vocational school district or under a vocational education compact, excluding any students entitled to attend school in the district under section 3313.64 or 3313.65 of the Revised Code who are enrolled in another school district through an open enrollment policy as reported under division (A)(2)(d) of this section and then enroll in a joint vocational school district or under a vocational education compact;

(4) The number of children with disabilities, other than preschool children with disabilities, entitled to attend school in the district pursuant to section 3313.64 or 3313.65 of the Revised Code who are placed by the district with a county ~~MR/DD~~ DD board, minus the number of such children placed with a county ~~MR/DD~~ DD board in fiscal year 1998. If this calculation produces a negative number, the number reported under division (A)(4) of this section shall be zero.

(5) Beginning in fiscal year 2007, in the case of the report submitted for the first full week in February, or the alternative week if specified by the superintendent of public instruction, the number of students reported under

division (A)(1) or (2) of this section for the first full week of the preceding October but who since that week have received high school diplomas.

(B) To enable the department of education to obtain the data needed to complete the calculation of payments pursuant to this chapter, in addition to the formula ADM, each superintendent shall report separately the following student counts for the same week for which formula ADM is certified:

(1) The total average daily membership in regular day classes included in the report under division (A)(1) or (2) of this section for kindergarten, and each of grades one through twelve in schools under the superintendent's supervision;

(2) The number of all preschool children with disabilities enrolled as of the first day of December in classes in the district that are eligible for approval under division (B) of section 3317.05 of the Revised Code and the number of those classes, which shall be reported not later than the fifteenth day of December, in accordance with rules adopted under that section;

(3) The number of children entitled to attend school in the district pursuant to section 3313.64 or 3313.65 of the Revised Code who are:

(a) Participating in a pilot project scholarship program established under sections 3313.974 to 3313.979 of the Revised Code as described in division (I)(2)(a) or (b) of this section;

(b) Enrolled in a college under Chapter 3365. of the Revised Code, except when the student is enrolled in the college while also enrolled in a community school pursuant to Chapter 3314. or a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code;

(c) Enrolled in an adjacent or other school district under section 3313.98 of the Revised Code;

(d) Enrolled in a community school established under Chapter 3314. of the Revised Code that is not an internet- or computer-based community school as defined in section 3314.02 of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in such community school;

(e) Enrolled in an internet- or computer-based community school, as defined in section 3314.02 of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in the school;

(f) Enrolled in a chartered nonpublic school with a scholarship paid under section 3310.08 of the Revised Code;

(g) Enrolled in kindergarten through grade twelve in an alternative public provider or a registered private provider with a scholarship awarded

under section 3310.41 of the Revised Code;

(h) Enrolled as a preschool child with a disability in an alternative public provider or a registered private provider with a scholarship awarded under section 3310.41 of the Revised Code;

(i) Participating in a program operated by a county ~~MR/DD~~ DD board or a state institution;

(j) Enrolled in a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in the school.

(4) The number of pupils enrolled in joint vocational schools;

(5) The average daily membership of children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for the category one disability described in division (A) of section 3317.013 of the Revised Code;

(6) The average daily membership of children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for category two disabilities described in division (B) of section 3317.013 of the Revised Code;

(7) The average daily membership of children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for category three disabilities described in division (C) of section 3317.013 of the Revised Code;

(8) The average daily membership of children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for category four disabilities described in division (D) of section 3317.013 of the Revised Code;

(9) The average daily membership of children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for the category five disabilities described in division (E) of section 3317.013 of the Revised Code;

(10) The combined average daily membership of children with disabilities reported under division (A)(1) or (2) and under division (B)(3)(h) of this section receiving special education services for category six disabilities described in division (F) of section 3317.013 of the Revised Code, including children attending a special education program operated by an alternative public provider or a registered private provider with a scholarship awarded under section 3310.41 of the Revised Code;

(11) The average daily membership of pupils reported under division (A)(1) or (2) of this section enrolled in category one vocational education

programs or classes, described in division (A) of section 3317.014 of the Revised Code, operated by the school district or by another district, other than a joint vocational school district, or by an educational service center, excluding any student reported under division (B)(3)(e) of this section as enrolled in an internet- or computer-based community school, notwithstanding division (C) of section 3317.02 of the Revised Code and division (C)(3) of this section;

(12) The average daily membership of pupils reported under division (A)(1) or (2) of this section enrolled in category two vocational education programs or services, described in division (B) of section 3317.014 of the Revised Code, operated by the school district or another school district, other than a joint vocational school district, or by an educational service center, excluding any student reported under division (B)(3)(e) of this section as enrolled in an internet- or computer-based community school, notwithstanding division (C) of section 3317.02 of the Revised Code and division (C)(3) of this section;

(13) The average number of children transported by the school district on board-owned or contractor-owned and -operated buses, reported in accordance with rules adopted by the department of education;

(14)(a) The number of children, other than preschool children with disabilities, the district placed with a county ~~MR/DD~~ DD board in fiscal year 1998;

(b) The number of children with disabilities, other than preschool children with disabilities, placed with a county ~~MR/DD~~ DD board in the current fiscal year to receive special education services for the category one disability described in division (A) of section 3317.013 of the Revised Code;

(c) The number of children with disabilities, other than preschool children with disabilities, placed with a county ~~MR/DD~~ DD board in the current fiscal year to receive special education services for category two disabilities described in division (B) of section 3317.013 of the Revised Code;

(d) The number of children with disabilities, other than preschool children with disabilities, placed with a county ~~MR/DD~~ DD board in the current fiscal year to receive special education services for category three disabilities described in division (C) of section 3317.013 of the Revised Code;

(e) The number of children with disabilities, other than preschool children with disabilities, placed with a county ~~MR/DD~~ DD board in the current fiscal year to receive special education services for category four

disabilities described in division (D) of section 3317.013 of the Revised Code;

(f) The number of children with disabilities, other than preschool children with disabilities, placed with a county ~~MR/DD~~ DD board in the current fiscal year to receive special education services for the category five disabilities described in division (E) of section 3317.013 of the Revised Code;

(g) The number of children with disabilities, other than preschool children with disabilities, placed with a county ~~MR/DD~~ DD board in the current fiscal year to receive special education services for category six disabilities described in division (F) of section 3317.013 of the Revised Code.

(C)(1) Except as otherwise provided in this section for kindergarten students, the average daily membership in divisions (B)(1) to (12) of this section shall be based upon the number of full-time equivalent students. The state board of education shall adopt rules defining full-time equivalent students and for determining the average daily membership therefrom for the purposes of divisions (A), (B), and (D) of this section.

(2) A student enrolled in a community school established under Chapter 3314. or a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code shall be counted in the formula ADM and, if applicable, the category one, two, three, four, five, or six special education ADM of the school district in which the student is entitled to attend school under section 3313.64 or 3313.65 of the Revised Code for the same proportion of the school year that the student is counted in the enrollment of the community school or the science, technology, engineering, and mathematics school for purposes of section 3314.08 or 3326.33 of the Revised Code. Notwithstanding the number of students reported pursuant to division (B)(3)(d), (e), or (j) of this section, the department may adjust the formula ADM of a school district to account for students entitled to attend school in the district under section 3313.64 or 3313.65 of the Revised Code who are enrolled in a community school or a science, technology, engineering, and mathematics school for only a portion of the school year.

(3) No child shall be counted as more than a total of one child in the sum of the average daily memberships of a school district under division (A), divisions (B)(1) to (12), or division (D) of this section, except as follows:

(a) A child with a disability described in section 3317.013 of the Revised Code may be counted both in formula ADM and in category one,

two, three, four, five, or six special education ADM and, if applicable, in category one or two vocational education ADM. As provided in division (C) of section 3317.02 of the Revised Code, such a child shall be counted in category one, two, three, four, five, or six special education ADM in the same proportion that the child is counted in formula ADM.

(b) A child enrolled in vocational education programs or classes described in section 3317.014 of the Revised Code may be counted both in formula ADM and category one or two vocational education ADM and, if applicable, in category one, two, three, four, five, or six special education ADM. Such a child shall be counted in category one or two vocational education ADM in the same proportion as the percentage of time that the child spends in the vocational education programs or classes.

(4) Based on the information reported under this section, the department of education shall determine the total student count, as defined in section 3301.011 of the Revised Code, for each school district.

(D)(1) The superintendent of each joint vocational school district shall certify to the superintendent of public instruction on or before the fifteenth day of October in each year for the first full school week in October the formula ADM. Beginning in fiscal year 2007, each superintendent also shall certify to the state superintendent the formula ADM for the first full week in February. If a school operated by the joint vocational school district is closed for one or more days during that week due to hazardous weather conditions or other circumstances described in the first paragraph of division (B) of section 3317.01 of the Revised Code, the superintendent may apply to the superintendent of public instruction for a waiver, under which the superintendent of public instruction may exempt the district superintendent from certifying the formula ADM for that school for that week and specify an alternate week for certifying the formula ADM of that school.

The formula ADM, except as otherwise provided in this division, shall consist of the average daily membership during such week, on an FTE basis, of the number of students receiving any educational services from the district, including students enrolled in a community school established under Chapter 3314. or a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code who are attending the joint vocational district under an agreement between the district board of education and the governing authority of the community school or the science, technology, engineering, and mathematics school and are entitled to attend school in a city, local, or exempted village school district whose territory is part of the territory of the joint vocational district. Beginning in fiscal year 2007, in the case of the report submitted for the first

week in February, or the alternative week if specified by the superintendent of public instruction, the superintendent of the joint vocational school district may include the number of students reported under division (D)(1) of this section for the first full week of the preceding October but who since that week have received high school diplomas.

The following categories of students shall not be included in the determination made under division (D)(1) of this section:

- (a) Students enrolled in adult education classes;
- (b) Adjacent or other district joint vocational students enrolled in the district under an open enrollment policy pursuant to section 3313.98 of the Revised Code;
- (c) Students receiving services in the district pursuant to a compact, cooperative education agreement, or a contract, but who are entitled to attend school in a city, local, or exempted village school district whose territory is not part of the territory of the joint vocational district;
- (d) Students for whom tuition is payable pursuant to sections 3317.081 and 3323.141 of the Revised Code.

(2) To enable the department of education to obtain the data needed to complete the calculation of payments pursuant to this chapter, in addition to the formula ADM, each superintendent shall report separately the average daily membership included in the report under division (D)(1) of this section for each of the following categories of students for the same week for which formula ADM is certified:

- (a) Students enrolled in each grade included in the joint vocational district schools;
- (b) Children with disabilities receiving special education services for the category one disability described in division (A) of section 3317.013 of the Revised Code;
- (c) Children with disabilities receiving special education services for the category two disabilities described in division (B) of section 3317.013 of the Revised Code;
- (d) Children with disabilities receiving special education services for category three disabilities described in division (C) of section 3317.013 of the Revised Code;
- (e) Children with disabilities receiving special education services for category four disabilities described in division (D) of section 3317.013 of the Revised Code;
- (f) Children with disabilities receiving special education services for the category five disabilities described in division (E) of section 3317.013 of the Revised Code;

(g) Children with disabilities receiving special education services for category six disabilities described in division (F) of section 3317.013 of the Revised Code;

(h) Students receiving category one vocational education services, described in division (A) of section 3317.014 of the Revised Code;

(i) Students receiving category two vocational education services, described in division (B) of section 3317.014 of the Revised Code.

The superintendent of each joint vocational school district shall also indicate the city, local, or exempted village school district in which each joint vocational district pupil is entitled to attend school pursuant to section 3313.64 or 3313.65 of the Revised Code.

(E) In each school of each city, local, exempted village, joint vocational, and cooperative education school district there shall be maintained a record of school membership, which record shall accurately show, for each day the school is in session, the actual membership enrolled in regular day classes. For the purpose of determining average daily membership, the membership figure of any school shall not include any pupils except those pupils described by division (A) of this section. The record of membership for each school shall be maintained in such manner that no pupil shall be counted as in membership prior to the actual date of entry in the school and also in such manner that where for any cause a pupil permanently withdraws from the school that pupil shall not be counted as in membership from and after the date of such withdrawal. There shall not be included in the membership of any school any of the following:

(1) Any pupil who has graduated from the twelfth grade of a public or nonpublic high school;

(2) Any pupil who is not a resident of the state;

(3) Any pupil who was enrolled in the schools of the district during the previous school year when tests were administered under section 3301.0711 of the Revised Code but did not take one or more of the tests required by that section and was not excused pursuant to division (C)(1) or (3) of that section;

(4) Any pupil who has attained the age of twenty-two years, except for veterans of the armed services whose attendance was interrupted before completing the recognized twelve-year course of the public schools by reason of induction or enlistment in the armed forces and who apply for reenrollment in the public school system of their residence not later than four years after termination of war or their honorable discharge.

If, however, any veteran described by division (E)(4) of this section elects to enroll in special courses organized for veterans for whom tuition is

paid under the provisions of federal laws, or otherwise, that veteran shall not be included in average daily membership.

Notwithstanding division (E)(3) of this section, the membership of any school may include a pupil who did not take a test required by section 3301.0711 of the Revised Code if the superintendent of public instruction grants a waiver from the requirement to take the test to the specific pupil and a parent is not paying tuition for the pupil pursuant to section 3313.6410 of the Revised Code. The superintendent may grant such a waiver only for good cause in accordance with rules adopted by the state board of education.

Except as provided in divisions (B)(2) and (F) of this section, the average daily membership figure of any local, city, exempted village, or joint vocational school district shall be determined by dividing the figure representing the sum of the number of pupils enrolled during each day the school of attendance is actually open for instruction during the week for which the formula ADM is being certified by the total number of days the school was actually open for instruction during that week. For purposes of state funding, "enrolled" persons are only those pupils who are attending school, those who have attended school during the current school year and are absent for authorized reasons, and those children with disabilities currently receiving home instruction.

The average daily membership figure of any cooperative education school district shall be determined in accordance with rules adopted by the state board of education.

(F)(1) If the formula ADM for the first full school week in February is at least three per cent greater than that certified for the first full school week in the preceding October, the superintendent of schools of any city, exempted village, or joint vocational school district or educational service center shall certify such increase to the superintendent of public instruction. Such certification shall be submitted no later than the fifteenth day of February. For the balance of the fiscal year, beginning with the February payments, the superintendent of public instruction shall use the increased formula ADM in calculating or recalculating the amounts to be allocated in accordance with section 3317.022 or 3317.16 of the Revised Code. In no event shall the superintendent use an increased membership certified to the superintendent after the fifteenth day of February. Division (F)(1) of this section does not apply after fiscal year 2006.

(2) If on the first school day of April the total number of classes or units for preschool children with disabilities that are eligible for approval under division (B) of section 3317.05 of the Revised Code exceeds the number of units that have been approved for the year under that division, the

superintendent of schools of any city, exempted village, or cooperative education school district or educational service center shall make the certifications required by this section for that day. If the department determines additional units can be approved for the fiscal year within any limitations set forth in the acts appropriating moneys for the funding of such units, the department shall approve additional units for the fiscal year on the basis of such average daily membership. For each unit so approved, the department shall pay an amount computed in the manner prescribed in section 3317.052 or 3317.19 and section 3317.053 of the Revised Code.

(3) If a student attending a community school under Chapter 3314. or a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code is not included in the formula ADM certified for the school district in which the student is entitled to attend school under section 3313.64 or 3313.65 of the Revised Code, the department of education shall adjust the formula ADM of that school district to include the student in accordance with division (C)(2) of this section, and shall recalculate the school district's payments under this chapter for the entire fiscal year on the basis of that adjusted formula ADM. This requirement applies regardless of whether the student was enrolled, as defined in division (E) of this section, in the community school or the science, technology, engineering, and mathematics school during the week for which the formula ADM is being certified.

(4) If a student awarded an educational choice scholarship is not included in the formula ADM of the school district from which the department deducts funds for the scholarship under section 3310.08 of the Revised Code, the department shall adjust the formula ADM of that school district to include the student to the extent necessary to account for the deduction, and shall recalculate the school district's payments under this chapter for the entire fiscal year on the basis of that adjusted formula ADM. This requirement applies regardless of whether the student was enrolled, as defined in division (E) of this section, in the chartered nonpublic school, the school district, or a community school during the week for which the formula ADM is being certified.

(G)(1)(a) The superintendent of an institution operating a special education program pursuant to section 3323.091 of the Revised Code shall, for the programs under such superintendent's supervision, certify to the state board of education, in the manner prescribed by the superintendent of public instruction, both of the following:

(i) The average daily membership of all children with disabilities other than preschool children with disabilities receiving services at the institution

for each category of disability described in divisions (A) to (F) of section 3317.013 of the Revised Code;

(ii) The average daily membership of all preschool children with disabilities in classes or programs approved annually by the department of education for unit funding under section 3317.05 of the Revised Code.

(b) The superintendent of an institution with vocational education units approved under division (A) of section 3317.05 of the Revised Code shall, for the units under the superintendent's supervision, certify to the state board of education the average daily membership in those units, in the manner prescribed by the superintendent of public instruction.

(2) The superintendent of each county ~~MR/DD~~ DD board that maintains special education classes under section 3317.20 of the Revised Code or units approved pursuant to section 3317.05 of the Revised Code shall do both of the following:

(a) Certify to the state board, in the manner prescribed by the board, the average daily membership in classes under section 3317.20 of the Revised Code for each school district that has placed children in the classes;

(b) Certify to the state board, in the manner prescribed by the board, the number of all preschool children with disabilities enrolled as of the first day of December in classes eligible for approval under division (B) of section 3317.05 of the Revised Code, and the number of those classes.

(3)(a) If on the first school day of April the number of classes or units maintained for preschool children with disabilities by the county ~~MR/DD~~ DD board that are eligible for approval under division (B) of section 3317.05 of the Revised Code is greater than the number of units approved for the year under that division, the superintendent shall make the certification required by this section for that day.

(b) If the department determines that additional classes or units can be approved for the fiscal year within any limitations set forth in the acts appropriating moneys for the funding of the classes and units described in division (G)(3)(a) of this section, the department shall approve and fund additional units for the fiscal year on the basis of such average daily membership. For each unit so approved, the department shall pay an amount computed in the manner prescribed in sections 3317.052 and 3317.053 of the Revised Code.

(H) Except as provided in division (I) of this section, when any city, local, or exempted village school district provides instruction for a nonresident pupil whose attendance is unauthorized attendance as defined in section 3327.06 of the Revised Code, that pupil's membership shall not be included in that district's membership figure used in the calculation of that

district's formula ADM or included in the determination of any unit approved for the district under section 3317.05 of the Revised Code. The reporting official shall report separately the average daily membership of all pupils whose attendance in the district is unauthorized attendance, and the membership of each such pupil shall be credited to the school district in which the pupil is entitled to attend school under division (B) of section 3313.64 or section 3313.65 of the Revised Code as determined by the department of education.

(I)(1) A city, local, exempted village, or joint vocational school district admitting a scholarship student of a pilot project district pursuant to division (C) of section 3313.976 of the Revised Code may count such student in its average daily membership.

(2) In any year for which funds are appropriated for pilot project scholarship programs, a school district implementing a state-sponsored pilot project scholarship program that year pursuant to sections 3313.974 to 3313.979 of the Revised Code may count in average daily membership:

(a) All children residing in the district and utilizing a scholarship to attend kindergarten in any alternative school, as defined in section 3313.974 of the Revised Code;

(b) All children who were enrolled in the district in the preceding year who are utilizing a scholarship to attend any such alternative school.

(J) The superintendent of each cooperative education school district shall certify to the superintendent of public instruction, in a manner prescribed by the state board of education, the applicable average daily memberships for all students in the cooperative education district, also indicating the city, local, or exempted village district where each pupil is entitled to attend school under section 3313.64 or 3313.65 of the Revised Code.

(K) If the superintendent of public instruction determines that a component of the formula ADM certified or reported by a district superintendent, or other reporting entity, is not correct, the superintendent of public instruction may order that the formula ADM used for the purposes of payments under any section of Title XXXIII of the Revised Code be adjusted in the amount of the error.

Sec. 3317.032. (A) Each city, local, exempted village, and cooperative education school district, each educational service center, each county ~~MR/DD~~ DD board, and each institution operating a special education program pursuant to section 3323.091 of the Revised Code shall, in accordance with procedures adopted by the state board of education, maintain a record of district membership of both of the following:

(1) All preschool children with disabilities in units approved under division (B) of section 3317.05 of the Revised Code;

(2) All preschool children with disabilities who are not in units approved under division (B) of section 3317.05 of the Revised Code but who are otherwise served by a special education program.

(B) The superintendent of each district, board, or institution subject to division (A) of this section shall certify to the state board of education, in accordance with procedures adopted by that board, membership figures of all preschool children with disabilities whose membership is maintained under division (A)(2) of this section. The figures certified under this division shall be used in the determination of the ADM used to compute funds for educational service center governing boards under section 3317.11 of the Revised Code.

Sec. 3317.05. (A) For the purpose of calculating payments under sections 3317.052 and 3317.053 of the Revised Code, the department of education shall determine for each institution, by the last day of January of each year and based on information certified under section 3317.03 of the Revised Code, the number of vocational education units or fractions of units approved by the department on the basis of standards and rules adopted by the state board of education. As used in this division, "institution" means an institution operated by a department specified in section 3323.091 of the Revised Code and that provides vocational education programs under the supervision of the division of vocational education of the department that meet the standards and rules for these programs, including licensure of professional staff involved in the programs, as established by the state board.

(B) For the purpose of calculating payments under sections 3317.052, 3317.053, 3317.11, and 3317.19 of the Revised Code, the department shall determine, based on information certified under section 3317.03 of the Revised Code, the following by the last day of January of each year for each educational service center, for each school district, including each cooperative education school district, for each institution eligible for payment under section 3323.091 of the Revised Code, and for each county ~~MR/DD~~ DD board: the number of classes operated by the school district, service center, institution, or county ~~MR/DD~~ DD board for preschool children with disabilities, or fraction thereof, including in the case of a district or service center that is a funding agent, classes taught by a licensed teacher employed by that district or service center under section 3313.841 of the Revised Code, approved annually by the department on the basis of standards and rules adopted by the state board.

(C) For the purpose of calculating payments under sections 3317.052, 3317.053, 3317.11, and 3317.19 of the Revised Code, the department shall determine, based on information certified under section 3317.03 of the Revised Code, the following by the last day of January of each year for each school district, including each cooperative education school district, for each institution eligible for payment under section 3323.091 of the Revised Code, and for each county ~~MR/DD~~ DD board: the number of units for related services, as defined in section 3323.01 of the Revised Code, for preschool children with disabilities approved annually by the department on the basis of standards and rules adopted by the state board.

(D) All of the arithmetical calculations made under this section shall be carried to the second decimal place. The total number of units for school districts, service centers, and institutions approved annually under this section shall not exceed the number of units included in the estimate of cost for these units and appropriations made for them by the general assembly.

In the case of units for preschool children with disabilities described in division (B) of this section, the department shall approve only preschool units for children who are under age six on the thirtieth day of September of the academic year, or on the first day of August of the academic year if the school district in which the child is enrolled has adopted a resolution under division (A)(3) of section 3321.01 of the Revised Code, but not less than age three on the first day of December of the academic year, except that such a unit may include one or more children who are under age three or are age six or over on the applicable date, as reported under division (B)(2) or (G)(2)(b) of section 3317.03 of the Revised Code, if such children have been admitted to the unit pursuant to rules of the state board. The number of units for county ~~MR/DD~~ DD boards and institutions eligible for payment under section 3323.091 of the Revised Code approved under this section shall not exceed the number that can be funded with appropriations made for such purposes by the general assembly.

No unit shall be approved under divisions (B) and (C) of this section unless a plan has been submitted and approved under Chapter 3323. of the Revised Code.

(E) The department shall approve units or fractions thereof for gifted children on the basis of standards and rules adopted by the state board.

Sec. 3317.051. (A)(1) Notwithstanding sections 3317.05 and 3317.11 of the Revised Code, a unit funded pursuant to division (L) of section 3317.024 or division (A)(2) of section 3317.052 of the Revised Code shall not be approved for state funding in one school district, including any cooperative education school district or any educational service center, to the extent that

such unit provides programs in or services to another district which receives payment pursuant to section 3317.04 of the Revised Code.

(2) Any city, local, exempted village, or cooperative education school district or any educational service center may combine partial unit eligibility for programs for preschool children with disabilities pursuant to section 3317.05 of the Revised Code, and such combined partial units may be approved for state funding in one school district or service center.

(B) After units have been initially approved for any fiscal year under section 3317.05 of the Revised Code, no unit shall be subsequently transferred from a school district or educational service center to another city, exempted village, local, or cooperative education school district or educational service center or to an institution or county ~~MR/DD~~ DD board solely for the purpose of reducing the financial obligations of the school district in a fiscal year it receives payment pursuant to section 3317.04 of the Revised Code.

Sec. 3317.052. As used in this section, "institution" means an institution operated by a department specified in division (A) of section 3323.091 of the Revised Code.

(A)(1) The department of education shall pay each school district, educational service center, institution eligible for payment under section 3323.091 of the Revised Code, or county ~~MR/DD~~ DD board an amount for the total of all classroom units for preschool children with disabilities approved under division (B) of section 3317.05 of the Revised Code. For each unit, the amount shall be the sum of the minimum salary for the teacher of the unit, calculated on the basis of the teacher's training level and years of experience pursuant to the salary schedule prescribed in the version of section 3317.13 of the Revised Code in effect prior to July 1, 2001, plus fifteen per cent of that minimum salary amount, and eight thousand twenty-three dollars.

(2) The department shall pay each school district, educational service center, institution eligible for payment under section 3323.091 of the Revised Code, or county ~~MR/DD~~ DD board an amount for the total of all related services units for preschool children with disabilities approved under division (C) of section 3317.05 of the Revised Code. For each such unit, the amount shall be the sum of the minimum salary for the teacher of the unit calculated on the basis of the teacher's training level and years of experience pursuant to the salary schedule prescribed in the version of section 3317.13 of the Revised Code in effect prior to July 1, 2001, fifteen per cent of that minimum salary amount, and two thousand one hundred thirty-two dollars.

(B) If a school district, educational service center, or county ~~MR/DD~~

DD board has had additional units for preschool children with disabilities approved for the year under division (F)(2) or (G)(3) of section 3317.03 of the Revised Code, the district, educational service center, or board shall receive an additional amount during the last half of the fiscal year. For each district, center, or board, the additional amount for each unit shall equal fifty per cent of the amounts computed for the unit in the manner prescribed by division (A) of this section and division (C) of section 3317.053 of the Revised Code.

(C) The department shall pay each institution approved for vocational education units under division (A) of section 3317.05 of the Revised Code an amount for the total of all the units approved under that division. The amount for each unit shall be the sum of the minimum salary for the teacher of the unit, calculated on the basis of the teacher's training level and years of experience pursuant to the salary schedule prescribed in the version of section 3317.13 of the Revised Code in effect prior to July 1, 2001, plus fifteen per cent of that minimum salary amount, and nine thousand five hundred ten dollars. Each institution that receives units funds under this division annually shall report to the department on the delivery of services and the performance of students and any other information required by the department to evaluate the institution's vocational education program.

Sec. 3317.07. The state board of education shall establish rules for the purpose of distributing subsidies for the purchase of school buses under division (D) of section 3317.024 of the Revised Code.

No school bus subsidy payments shall be paid to any district unless such district can demonstrate that pupils residing more than one mile from the school could not be transported without such additional aid.

The amount paid to a county ~~MR/DD~~ DD board for buses purchased for transportation of children in special education programs operated by the board shall be based on a per pupil allocation for eligible students.

The amount paid to a school district for buses purchased for transportation of pupils with disabilities and nonpublic school pupils shall be determined by a per pupil allocation based on the number of special education and nonpublic school pupils for whom transportation is provided.

The state board of education shall adopt a formula to determine the amount of payments that shall be distributed to school districts to purchase school buses for pupils other than pupils with disabilities or nonpublic school pupils.

If any district or ~~MR/DD~~ county DD board obtains bus services for pupil transportation pursuant to a contract, such district or board may use payments received under this section to defray the costs of contracting for

bus services in lieu of for purchasing buses.

If the department of education determines that a county ~~MR/DD~~ DD board no longer needs a school bus because the board no longer transports children to a special education program operated by the board, or if the department determines that a school district no longer needs a school bus to transport pupils to a nonpublic school or special education program, the department may reassign a bus that was funded with payments provided pursuant to this section for the purpose of transporting such pupils. The department may reassign a bus to a county ~~MR/DD~~ DD board or school district that transports children to a special education program designated in the children's individualized education plans, or to a school district that transports pupils to a nonpublic school, and needs an additional school bus.

Sec. 3317.15. (A) As used in this section, "child with a disability" has the same meaning as in section 3323.01 of the Revised Code.

(B) Each city, exempted village, local, and joint vocational school district shall continue to comply with all requirements of federal statutes and regulations, the Revised Code, and rules adopted by the state board of education governing education of children with disabilities, including, but not limited to, requirements that children with disabilities be served by appropriately licensed or certificated education personnel.

(C) Each city, exempted village, local, and joint vocational school district shall consult with the educational service center serving the county in which the school district is located and, if it elects to participate pursuant to section 5126.04 of the Revised Code, the county ~~MR/DD~~ DD board of that county, in providing services that serve the best interests of children with disabilities.

(D) Each school district shall annually provide documentation to the department of education that it employs the appropriate number of licensed or certificated personnel to serve the district's students with disabilities.

(E) The department annually shall audit a sample of school districts to ensure that children with disabilities are being appropriately reported.

(F) Each school district shall provide speech-language pathology services at a ratio of one speech-language pathologist per two thousand students receiving any educational services from the district other than adult education. Each district shall provide school psychological services at a ratio of one school psychologist per two thousand five hundred students receiving any educational services from the district other than adult education. A district may obtain the services of speech-language pathologists and school psychologists by any means permitted by law, including contracting with an educational service center. If, however, a district is unable to obtain the

services of the required number of speech-language pathologists or school psychologists, the district may request from the superintendent of public instruction, and the superintendent may grant, a waiver of this provision for a period of time established by the superintendent.

Sec. 3317.20. This section does not apply to preschool children with disabilities.

(A) As used in this section:

(1) "Applicable weight" means the multiple specified in section 3317.013 of the Revised Code for a disability described in that section.

(2) "Child's school district" means the school district in which a child is entitled to attend school pursuant to section 3313.64 or 3313.65 of the Revised Code.

(3) "State share percentage" means the state share percentage of the child's school district as defined in section 3317.022 of the Revised Code.

(B) Except as provided in division (C) of this section, the department shall annually pay each county ~~MR/DD~~ DD board for each child with a disability, other than a preschool child with a disability, for whom the county ~~MR/DD~~ DD board provides special education and related services an amount equal to the formula amount + (state share percentage X formula amount X the applicable weight).

(C) If any school district places with a county ~~MR/DD~~ DD board more children with disabilities than it had placed with a county ~~MR/DD~~ DD board in fiscal year 1998, the department shall not make a payment under division (B) of this section for the number of children exceeding the number placed in fiscal year 1998. The department instead shall deduct from the district's payments under this chapter, and pay to the county ~~MR/DD~~ DD board, an amount calculated in accordance with the formula prescribed in division (B) of this section for each child over the number of children placed in fiscal year 1998.

(D) The department shall calculate for each county ~~MR/DD~~ DD board receiving payments under divisions (B) and (C) of this section the following amounts:

(1) The amount received by the county ~~MR/DD~~ DD board for approved special education and related services units, other than units for preschool children with disabilities, in fiscal year 1998, divided by the total number of children served in the units that year;

(2) The product of the quotient calculated under division (D)(1) of this section times the number of children for whom payments are made under divisions (B) and (C) of this section.

If the amount calculated under division (D)(2) of this section is greater

than the total amount calculated under divisions (B) and (C) of this section, the department shall pay the county ~~MR/DD~~ DD board one hundred per cent of the difference in addition to the payments under divisions (B) and (C) of this section.

(E) Each county ~~MR/DD~~ DD board shall report to the department, in the manner specified by the department, the name of each child for whom the county ~~MR/DD~~ DD board provides special education and related services and the child's school district.

(F)(1) For the purpose of verifying the accuracy of the payments under this section, the department may request from either of the following entities the data verification code assigned under division (D)(2) of section 3301.0714 of the Revised Code to any child who is placed with a county ~~MR/DD~~ DD board:

- (a) The child's school district;
- (b) The independent contractor engaged to create and maintain data verification codes.

(2) Upon a request by the department under division (F)(1) of this section for the data verification code of a child, the child's school district shall submit that code to the department in the manner specified by the department. If the child has not been assigned a code, the district shall assign a code to that child and submit the code to the department by a date specified by the department. If the district does not assign a code to the child by the specified date, the department shall assign a code to the child.

The department annually shall submit to each school district the name and data verification code of each child residing in the district for whom the department has assigned a code under this division.

(3) The department shall not release any data verification code that it receives under division (F) of this section to any person except as provided by law.

(G) Any document relative to special education and related services provided by a county ~~MR/DD~~ DD board that the department holds in its files that contains both a student's name or other personally identifiable information and the student's data verification code shall not be a public record under section 149.43 of the Revised Code.

Sec. 3319.22. (A)(1) The state board of education shall adopt rules establishing the standards and requirements for obtaining temporary, associate, provisional, and professional educator licenses of any categories, types, and levels the board elects to provide. However, no educator license shall be required for teaching children two years old or younger.

- (2) If the state board requires any examinations for educator licensure,

the department of education shall provide the results of such examinations received by the department to the Ohio board of regents, in the manner and to the extent permitted by state and federal law.

(B) Any rules the state board of education adopts, amends, or rescinds for educator licenses under this section, division (D) of section 3301.07 of the Revised Code, or any other law shall be adopted, amended, or rescinded under Chapter 119. of the Revised Code except as follows:

(1) Notwithstanding division (D) of section 119.03 and division (A)(1) of section 119.04 of the Revised Code, in the case of the adoption of any rule or the amendment or rescission of any rule that necessitates institutions' offering teacher preparation programs that are approved by the state board of education under section 3319.23 of the Revised Code to revise the curriculum of those programs, the effective date shall not be as prescribed in division (D) of section 119.03 and division (A)(1) of section 119.04 of the Revised Code. Instead, the effective date of such rules, or the amendment or rescission of such rules, shall be the date prescribed by section 3319.23 of the Revised Code.

(2) Notwithstanding the authority to adopt, amend, or rescind emergency rules in division (F) of section 119.03 of the Revised Code, this authority shall not apply to the state board of education with regard to rules for educator licenses.

(C)(1) The rules adopted under this section establishing standards requiring additional coursework for the renewal of any educator license shall require a school district and a chartered nonpublic school to establish local professional development committees. In a nonpublic school, the chief administrative officer shall establish the committees in any manner acceptable to such officer. The committees established under this division shall determine whether coursework that a district or chartered nonpublic school teacher proposes to complete meets the requirement of the rules. The department of education shall provide technical assistance and support to committees as the committees incorporate the professional development standards adopted by the state board of education pursuant to section 3319.61 of the Revised Code into their review of coursework that is appropriate for license renewal. The rules shall establish a procedure by which a teacher may appeal the decision of a local professional development committee.

(2) In any school district in which there is no exclusive representative established under Chapter 4117. of the Revised Code, the professional development committees shall be established as described in division (C)(2) of this section.

Not later than the effective date of the rules adopted under this section, the board of education of each school district shall establish the structure for one or more local professional development committees to be operated by such school district. The committee structure so established by a district board shall remain in effect unless within thirty days prior to an anniversary of the date upon which the current committee structure was established, the board provides notice to all affected district employees that the committee structure is to be modified. Professional development committees may have a district-level or building-level scope of operations, and may be established with regard to particular grade or age levels for which an educator license is designated.

Each professional development committee shall consist of at least three classroom teachers employed by the district, one principal employed by the district, and one other employee of the district appointed by the district superintendent. For committees with a building-level scope, the teacher and principal members shall be assigned to that building, and the teacher members shall be elected by majority vote of the classroom teachers assigned to that building. For committees with a district-level scope, the teacher members shall be elected by majority vote of the classroom teachers of the district, and the principal member shall be elected by a majority vote of the principals of the district, unless there are two or fewer principals employed by the district, in which case the one or two principals employed shall serve on the committee. If a committee has a particular grade or age level scope, the teacher members shall be licensed to teach such grade or age levels, and shall be elected by majority vote of the classroom teachers holding such a license and the principal shall be elected by all principals serving in buildings where any such teachers serve. The district superintendent shall appoint a replacement to fill any vacancy that occurs on a professional development committee, except in the case of vacancies among the elected classroom teacher members, which shall be filled by vote of the remaining members of the committee so selected.

Terms of office on professional development committees shall be prescribed by the district board establishing the committees. The conduct of elections for members of professional development committees shall be prescribed by the district board establishing the committees. A professional development committee may include additional members, except that the majority of members on each such committee shall be classroom teachers employed by the district. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which a predecessor was appointed shall hold office as a member for the remainder of that term.

The initial meeting of any professional development committee, upon election and appointment of all committee members, shall be called by a member designated by the district superintendent. At this initial meeting, the committee shall select a chairperson and such other officers the committee deems necessary, and shall adopt rules for the conduct of its meetings. Thereafter, the committee shall meet at the call of the chairperson or upon the filing of a petition with the district superintendent signed by a majority of the committee members calling for the committee to meet.

(3) In the case of a school district in which an exclusive representative has been established pursuant to Chapter 4117. of the Revised Code, professional development committees shall be established in accordance with any collective bargaining agreement in effect in the district that includes provisions for such committees.

If the collective bargaining agreement does not specify a different method for the selection of teacher members of the committees, the exclusive representative of the district's teachers shall select the teacher members.

If the collective bargaining agreement does not specify a different structure for the committees, the board of education of the school district shall establish the structure, including the number of committees and the number of teacher and administrative members on each committee; the specific administrative members to be part of each committee; whether the scope of the committees will be district levels, building levels, or by type of grade or age levels for which educator licenses are designated; the lengths of terms for members; the manner of filling vacancies on the committees; and the frequency and time and place of meetings. However, in all cases, except as provided in division (C)(4) of this section, there shall be a majority of teacher members of any professional development committee, there shall be at least five total members of any professional development committee, and the exclusive representative shall designate replacement members in the case of vacancies among teacher members, unless the collective bargaining agreement specifies a different method of selecting such replacements.

(4) Whenever an administrator's coursework plan is being discussed or voted upon, the local professional development committee shall, at the request of one of its administrative members, cause a majority of the committee to consist of administrative members by reducing the number of teacher members voting on the plan.

(D)(1) The department of education, educational service centers, county boards of ~~mental retardation and~~ developmental disabilities, regional professional development centers, special education regional resource

centers, college and university departments of education, head start programs, the eTech Ohio commission, and the Ohio education computer network may establish local professional development committees to determine whether the coursework proposed by their employees who are licensed or certificated under this section or section 3319.222 of the Revised Code meet the requirements of the rules adopted under this section. They may establish local professional development committees on their own or in collaboration with a school district or other agency having authority to establish them.

Local professional development committees established by county boards of ~~mental retardation~~ and developmental disabilities shall be structured in a manner comparable to the structures prescribed for school districts in divisions (C)(2) and (3) of this section, as shall the committees established by any other entity specified in division (D)(1) of this section that provides educational services by employing or contracting for services of classroom teachers licensed or certificated under this section or section 3319.222 of the Revised Code. All other entities specified in division (D)(1) of this section shall structure their committees in accordance with guidelines which shall be issued by the state board.

(2) Any public agency that is not specified in division (D)(1) of this section but provides educational services and employs or contracts for services of classroom teachers licensed or certificated under this section or section 3319.222 of the Revised Code may establish a local professional development committee, subject to the approval of the department of education. The committee shall be structured in accordance with guidelines issued by the state board.

Sec. 3319.99. (A) Whoever violates division (A) of section 3319.151 of the Revised Code is guilty of a minor misdemeanor.

(B) Whoever violates division (H)(1) of section 3319.311 of the Revised Code is guilty of a misdemeanor of the first degree.

(C) Whoever violates division (F) of section 3319.313 of the Revised Code shall be punished as follows:

(1) Except as otherwise provided in division (C)(2) of this section, the person is guilty of a misdemeanor of the fourth degree.

(2) The person is guilty of a misdemeanor of the first degree if both of the following conditions apply:

(a) The employee who is the subject of the report that the person fails to submit was required to be reported for the commission or alleged commission of an act or offense involving the infliction on a child of any physical or mental wound, injury, disability, or condition of a nature that

constitutes abuse or neglect of the child;

(b) During the period between the violation of division (F) of section 3319.313 of the Revised Code and the conviction of or plea of guilty by the person for that violation, the employee who is the subject of the report that the person fails to submit inflicts on any child attending a school district, educational service center, public or nonpublic school, or county board of ~~mental retardation and~~ developmental disabilities where the employee works any physical or mental wound, injury, disability, or condition of a nature that constitutes abuse or neglect of the child.

(D) Whoever violates division (B) or (D) of section 3319.317 of the Revised Code is guilty of a misdemeanor of the first degree.

Sec. 3323.01. As used in this chapter:

(A) "Child with a disability" means a child who is at least three years of age and less than twenty-two years of age; who has mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities; and who, by reason thereof, needs special education and related services.

A "child with a disability" may include a child who is at least three years of age and less than six years of age; who is experiencing developmental delays, as defined by standards adopted by the state board of education and as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services.

(B) "County ~~MR/DD~~ DD board" means a county board of ~~mental retardation and~~ developmental disabilities.

(C) "Free appropriate public education" means special education and related services that meet all of the following:

(1) Are provided at public expense, under public supervision and direction, and without charge;

(2) Meet the standards of the state board of education;

(3) Include an appropriate preschool, elementary, or secondary education as otherwise provided by the law of this state;

(4) Are provided for each child with a disability in conformity with the child's individualized education program.

(D) "Homeless children" means "homeless children and youths" as

defined in section 725 of the "McKinney-Vento Homeless Assistance Act," 42 U.S.C. 11434a.

(E) "Individualized education program" or "IEP" means the written statement described in section 3323.011 of the Revised Code.

(F) "Individualized education program team" or "IEP team" means a group of individuals composed of:

- (1) The parents of a child with a disability;
- (2) At least one regular education teacher of the child, if the child is or may be participating in the regular education environment;
- (3) At least one special education teacher, or where appropriate, at least one special education provider of the child;
- (4) A representative of the school district who meets all of the following:
  - (a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - (b) Is knowledgeable about the general education curriculum;
  - (c) Is knowledgeable about the availability of resources of the school district.

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team as described in divisions (F)(2) to (4) of this section;

(6) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;

(7) Whenever appropriate, the child with a disability.

(G) "Instruction in braille reading and writing" means the teaching of the system of reading and writing through touch commonly known as standard English braille.

(H) "Other educational agency" means a department, division, bureau, office, institution, board, commission, committee, authority, or other state or local agency, which is not a city, local, or exempted village school district or an agency administered by the department of ~~mental retardation and~~ developmental disabilities, that provides or seeks to provide special education or related services to children with disabilities. The term "other educational agency" includes a joint vocational school district.

(I) "Parent" of a child with a disability, except as used in sections 3323.09 and 3323.141 of the Revised Code, means:

- (1) A natural or adoptive parent of a child but not a foster parent of a child;
- (2) A guardian, but not the state if the child is a ward of the state;

(3) An individual acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare;

(4) An individual assigned to be a surrogate parent, provided the individual is not prohibited by this chapter from serving as a surrogate parent for a child.

(J) "Preschool child with a disability" means a child with a disability who is at least three years of age but is not of compulsory school age, as defined under section 3321.01 of the Revised Code, and who is not currently enrolled in kindergarten.

(K) "Related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, school health services, social work services in schools, and parent counseling and training, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. "Related services" does not include a medical device that is surgically implanted, or the replacement of such device.

(L) "School district" means a city, local, or exempted village school district.

(M) "School district of residence," as used in sections 3323.09, 3323.091, 3323.13, and 3323.14 of the Revised Code, means:

(1) The school district in which the child's natural or adoptive parents reside;

(2) If the school district specified in division (M)(1) of this section cannot be determined, the last school district in which the child's natural or adoptive parents are known to have resided if the parents' whereabouts are unknown;

(3) If the school district specified in division (M)(2) of this section cannot be determined, the school district determined under section 2151.362 of the Revised Code, or if no district has been so determined, the school district as determined by the probate court of the county in which the child resides.

(4) Notwithstanding divisions (M)(1) to (3) of this section, if a school district is required by section 3313.65 of the Revised Code to pay tuition for a child, that district shall be the child's school district of residence.

(N) "Special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. "Special education" includes instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, including an early childhood education setting, and instruction in physical education.

(O) "Student with a visual impairment" means any person who is less than twenty-two years of age and who has a visual impairment as that term is defined in this section.

(P) "Transition services" means a coordinated set of activities for a child with a disability that meet all of the following:

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education; vocational education; integrated employment (including supported employment); continuing and adult education; adult services; independent living; or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests;

(3) Includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

"Transition services" for children with disabilities may be special education, if provided as specially designed instruction, or may be a related service, if required to assist a child with a disability to benefit from special education.

(Q) "Visual impairment" for any individual means that one of the following applies to the individual:

(1) The individual has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision in the better eye such that the widest diameter subtends an angular distance of no greater than twenty degrees.

(2) The individual has a medically indicated expectation of meeting the requirements of division (Q)(1) of this section over a period of time.

(3) The individual has a medically diagnosed and medically uncorrectable limitation in visual functioning that adversely affects the

individual's ability to read and write standard print at levels expected of the individual's peers of comparable ability and grade level.

(R) "Ward of the state" has the same meaning as in section 602(36) of the "Individuals with Disabilities Education Improvement Act of 2004," 20 U.S.C. 1401(36).

Sec. 3323.02. As used in this section, "IDEIA" means the "Individuals with Disabilities Education Improvement Act of 2004," Pub. L. No. 108-446.

It is the purpose of this chapter to ensure that all children with disabilities residing in this state who are at least three years of age and less than twenty-two years of age, including children with disabilities who have been suspended or expelled from school, have available to them a free appropriate public education. No school district, county ~~MR/DD~~ DD board, or other educational agency shall receive state or federal funds for special education and related services unless those services for children with disabilities are provided in accordance with IDEIA and related provisions of the Code of Federal Regulations, the provisions of this chapter, rules and standards adopted by the state board of education, and any procedures or guidelines issued by the superintendent of public instruction. Any options or discretion provided to the state by IDEIA may be exercised in state law or in rules or standards adopted by the state board of education.

The state board of education shall establish rules or standards for the provision of special education and related services for all children with disabilities who are at least three years of age and less than twenty-two years of age residing in the state, regardless of the severity of their disabilities, including children with disabilities who have been suspended or expelled from school. The state law and the rules or standards of the state board of education may impose requirements that are not required by IDEIA or related provisions of the Code of Federal Regulations. The school district of residence is responsible, in all instances, for ensuring that the requirements of Part B of IDEIA are met for every eligible child in its jurisdiction, regardless of whether services are provided by another school district, other educational agency, or other agency, department, or entity, unless IDEIA or related provisions of the Code of Federal Regulations, another section of this chapter, or a rule adopted by the state board of education specifies that another school district, other educational agency, or other agency, department, or entity is responsible for ensuring compliance with Part B of IDEIA.

Notwithstanding division (A)(4) of section 3301.53 of the Revised Code and any rules adopted pursuant to that section and division (A) of section

3313.646 of the Revised Code, a board of education of a school district may provide special education and related services for preschool children with disabilities in accordance with this chapter and section 3301.52, divisions (A)(1) to (3) and (A)(5) and (6) of section 3301.53, and sections 3301.54 to 3301.59 of the Revised Code.

The superintendent of public instruction may require any state or local agency to provide documentation that special education and related services for children with disabilities provided by the agency are in compliance with the requirements of this chapter.

Not later than the first day of February of each year the superintendent of public instruction shall furnish the chairpersons of the education committees of the house of representatives and the senate with a report on the status of implementation of special education and related services for children with disabilities required by this chapter. The report shall include but shall not be limited to the following items: the most recent available figures on the number of children identified as children with disabilities and the number of identified children receiving special education and related services. The information contained in these reports shall be public information.

Sec. 3323.021. As used in this section, "participating county ~~MR/DD~~ DD board" means a county board of ~~mental retardation and~~ developmental disabilities electing to participate in the provision of or contracting for educational services for children under division (D) of section 5126.05 of the Revised Code.

(A) When a school district, educational service center, or participating county ~~MR/DD~~ DD board enters into an agreement or contract with another school district, educational service center, or participating county ~~MR/DD~~ DD board to provide educational services to a disabled child during a school year, both of the following shall apply:

(1) Beginning with fiscal year 1999, if the provider of the services intends to increase the amount it charges for some or all of those services during the next school year or if the provider intends to cease offering all or part of those services during the next school year, the provider shall notify the entity for which the services are provided of these intended changes no later ~~that~~ than the first day of March of the current fiscal year.

(2) Beginning with fiscal year 1999, if the entity for which services are provided intends to cease obtaining those services from the provider for the next school year or intends to change the type or amount of services it obtains from the provider for the next school year, the entity shall notify the service provider of these intended changes no later than the first day of

March of the current fiscal year.

(B) School districts, educational service centers, participating county ~~MR/DD~~ DD boards, and other applicable governmental entities shall collaborate where possible to maximize federal sources of revenue to provide additional funds for special education related services for disabled children. Annually, each school district shall report to the department of education any amounts of money the district received through such medical assistance program.

(C) The state board of education, the department of ~~mental-retardation~~ ~~and~~ developmental disabilities, and the department of job and family services shall develop working agreements for pursuing additional funds for services for disabled children.

Sec. 3323.03. The state board of education shall, in consultation with the department of health, the department of mental health, and the department of ~~mental-retardation~~ ~~and~~ developmental disabilities, establish standards and procedures for the identification, location, and evaluation of all children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services. The state board shall develop and implement a practical method to determine which children with disabilities are currently receiving needed special education and related services.

In conducting the evaluation, the board of education of each school district shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the child's parent. The board of education of each school district, in consultation with the county ~~MR/DD~~ DD board, the county family and children first council, and the board of alcohol, drug addiction, and mental health services of each county in which the school district has territory, shall identify, locate, and evaluate all children with disabilities residing within the district to determine which children with disabilities are not receiving appropriate special education and related services. In addition, the board of education of each school district, in consultation with such county boards or council, shall identify, locate, and evaluate all children with disabilities who are enrolled by their parents in nonpublic elementary and secondary schools located within the public school district, without regard to where those children reside in accordance with rules of the state board of education or guidelines of the superintendent of public instruction.

Each county ~~MR/DD~~ DD board, county family and children first council, and board of alcohol, drug addiction, and mental health services and the board's or council's contract agencies may transmit to boards of education the names and addresses of children with disabilities who are not receiving appropriate special education and related services.

Sec. 3323.04. The state board of education, in consultation with the department of mental health and the department of ~~mental retardation and~~ developmental disabilities, shall establish procedures and standards for the development of individualized education programs for children with disabilities.

The state board shall require the board of education of each school district to develop an individualized education program for each child with a disability who is at least three years of age and less than twenty-two years of age residing in the district in a manner that is in accordance with rules of the state board.

Prior to the placement of a child with a disability in a program operated under section 3323.09 of the Revised Code, the district board of education shall consult the county ~~MR/DD~~ DD board of the county in which the child resides regarding the proposed placement.

A child with a disability enrolled in a nonpublic school or facility shall be provided special education and related services, in accordance with an individualized education program, at no cost for those services, if the child is placed in, or referred to, that nonpublic school or facility by the department of education or a school district.

The IEP team shall review the individualized education program of each child with a disability periodically, but at least annually, to determine whether the annual goals for the child are being achieved, and shall revise the individualized education program as appropriate.

The state board shall establish procedures and standards to assure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, shall be educated with children who are not disabled. Special classes, separate schools, or other removal of children with disabilities from the regular educational environment shall be used only when the nature or severity of a child's disability is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily.

If an agency directly affected by a placement decision objects to such decision, an impartial hearing officer, appointed by the department of education from a list prepared by the department, shall conduct a hearing to review the placement decision. The agencies that are parties to a hearing

shall divide the costs of such hearing equally. The decision of the hearing officer shall be final, except that any party to the hearing who is aggrieved by the findings or the decision of the hearing officer may appeal the findings or decision in accordance with division (H) of section 3323.05 of the Revised Code or the parent of any child affected by such decision may present a complaint in accordance with that section.

Sec. 3323.05. The state board of education shall establish procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards under this chapter with respect to a free appropriate public education.

The procedures shall include, but need not be limited to:

(A) An opportunity for the parents of a child with a disability to examine all records related to the child and to participate in meetings with respect to identification, evaluation, and educational placement of the child, and to obtain an independent educational evaluation of the child;

(B) Procedures to protect the rights of the child whenever the parents of the child are not known, an agency after making reasonable efforts cannot find the parents, or the child is a ward of the state, including the assignment, in accordance with section 3323.051 of the Revised Code, of an individual to act as a surrogate for the parents;

(C) Prior written notice to the child's parents of a school district's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate education for the child. The procedures established under this division shall:

(1) Be designed to ensure that the written prior notice is in the native language of the parents, unless it clearly is not feasible to do so.

(2) Specify that the prior written notice shall include:

(a) A description of the action proposed or refused by the district;

(b) An explanation of why the district proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action;

(c) A statement that the parents of a child with a disability have protection under the procedural safeguards and, if the notice is not in regard to an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(d) Sources for parents to contact to obtain assistance in understanding the provisions of Part B of the "Individuals with Disabilities Education Improvement Act of 2004";

(e) A description of other options considered by the IEP team and the reason why those options were rejected;

(f) A description of the factors that are relevant to the agency's proposal or refusal.

(D) An opportunity for the child's parents to present complaints to the superintendent of the child's school district of residence with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education under this chapter.

Within twenty school days after receipt of a complaint, the district superintendent or the superintendent's designee, without undue delay and at a time and place convenient to all parties, shall review the case, may conduct an administrative review, and shall notify all parties in writing of the superintendent's or designee's decision. Where the child is placed in a program operated by a county ~~MR/DD~~ DD board or other educational agency, the superintendent shall consult with the administrator of that county ~~MR/DD~~ DD board or agency.

Any party aggrieved by the decision of the district superintendent or the superintendent's designee may file a complaint with the state board as provided under division (E) of this section, request mediation as provided under division (F) of this section, or present a due process complaint notice and request for a due process hearing in writing to the superintendent of the district, with a copy to the state board, as provided under division (G) of this section.

(E) An opportunity for a party to file a complaint with the state board of education with respect to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. The department of education shall review and, where appropriate, investigate the complaint and issue findings.

(F) An opportunity for parents and a school district to resolve through mediation disputes involving any matter.

(1) The procedures established under this section shall ensure that the mediation process is voluntary on the part of the parties, is not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under this chapter, and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) A school district may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party to encourage the use, and explain the benefits, of the mediation process to the parents. The disinterested party shall be an individual who is under contract with a parent training and information center or community parent resource

center in the state or is under contract with an appropriate alternative dispute resolution entity.

(3) The department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(4) The department shall bear the cost of the mediation process, including the costs of meetings described in division (F)(2) of this section.

(5) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(6) Discussions that occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.

(7) In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth the resolution and that:

(a) States that all discussions that occurred during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding;

(b) Is signed by both the parent and a representative for the school district who has the authority to bind the district;

(c) Is enforceable in any state court of competent jurisdiction or in a district court of the United States.

(G)(1) An opportunity for parents or a school district to present a due process complaint and request for a due process hearing to the superintendent of the school district of the child's residence with respect to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. The party presenting the due process complaint and request for a due process hearing shall provide due process complaint notice to the other party and forward a copy of the notice to the state board. The due process complaint notice shall include:

(a) The name of the child, the address of the residence of the child, or the available contact information in the case of a homeless child, and the name of the school the child is attending;

(b) A description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to the problem;

(c) A proposed resolution of the problem to the extent known and available to the party at the time.

A party shall not have a due process hearing until the party, or the

attorney representing the party, files a notice that meets the requirement for filing a due process complaint notice.

A due process hearing shall be conducted by an impartial hearing officer in accordance with standards and procedures adopted by the state board. A hearing officer shall not be an employee of the state board or any agency involved in the education or care of the child or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing. A hearing officer shall possess knowledge of, and the ability to understand, the provisions of the "Individuals with Disabilities Education Improvement Act of 2004," federal and state regulations pertaining to that act, and legal interpretations of that act by federal and state courts; possess the knowledge and ability to conduct hearings in accordance with appropriate standard legal practice; and possess the knowledge and ability to render and write decisions in accordance with appropriate standard legal practice. The due process requirements of section 615 of the "Individuals with Disabilities Education Improvement Act of 2004," 20 U.S.C. 1415, apply to due process complaint notices and requests for due process hearings and to due process hearings held under division (G) of this section, including, but not limited to, timelines for requesting hearings, requirements for sufficient complaint notices, resolution sessions, and sufficiency and hearing decisions.

(2) Discussions that occur during a resolution session shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding. If a resolution to the dispute is reached at a resolution session, the parties must execute a legally binding written settlement agreement which shall state that all discussions that occurred during the resolution process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.

(3) A party to a hearing under division (G) of this section shall be accorded:

(a) The right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(b) The right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) The right to a written or electronic verbatim record of the hearing;

(d) The right to written findings of fact and decisions, which findings of fact and decisions shall be made available to the public consistent with the requirements relating to the confidentiality of personally identifiable data, information, and records collected and maintained by state educational

agencies and local educational agencies; and shall be transmitted to the advisory panel established and maintained by the department for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the state.

(H) An opportunity for any party aggrieved by the findings and decision rendered in a hearing under division (G) of this section to appeal within forty-five days of notification of the decision to the state board, which shall appoint a state level officer who shall review the case and issue a final order. The state level officer shall be appointed and shall review the case in accordance with standards and procedures adopted by the state board.

Any party aggrieved by the final order of the state level officer may appeal the final order, in accordance with Chapter 119. of the Revised Code, within forty-five days after notification of the order to the court of common pleas of the county in which the child's school district of residence is located, or to a district court of the United States within ninety days after the date of the decision of the state level review officer, as provided in section 615(i)(2) of the "Individuals with Disabilities Education Improvement Act of 2004," 20 U.S.C. 1415(i)(2).

Sec. 3323.07. The state board of education shall authorize the establishment and maintenance of special education and related services for all children with disabilities who are at least three years of age and less than twenty-two years of age, including children with disabilities who have been suspended or expelled from school, and may authorize special education and related services for children with disabilities who are less than three years of age in accordance with rules adopted by the state board. The state board shall require the boards of education of school districts, shall authorize the department of mental health and the department of ~~mental retardation and~~ developmental disabilities, and may authorize any other educational agency, to establish and maintain such special education and related services in accordance with standards adopted by the state board.

Sec. 3323.09. (A) As used in this section:

(1) "Home" has the meaning given in section 3313.64 of the Revised Code.

(2) "Preschool child" means a child who is at least age three but under age six on the thirtieth day of September of an academic year.

(B) Each county ~~MR/DD~~ DD board shall establish special education programs for all children with disabilities who in accordance with section 3323.04 of the Revised Code have been placed in special education programs operated by the county board and for preschool children who are developmentally delayed or at risk of being developmentally delayed. The

board annually shall submit to the department of education a plan for the provision of these programs and, if applicable, a request for approval of units under section 3317.05 of the Revised Code. The superintendent of public instruction shall review the plan and approve or modify it in accordance with rules adopted by the state board of education under section 3301.07 of the Revised Code. The superintendent of public instruction shall compile the plans submitted by county boards and shall submit a comprehensive plan to the state board.

A county ~~MR/DD~~ DD board may combine transportation for children enrolled in classes funded under section 3317.20 or units approved under section 3317.05 with transportation for children and adults enrolled in programs and services offered by the board under section 5126.12 of the Revised Code.

(C) A county ~~MR/DD~~ DD board that during the school year provided special education pursuant to this section for any child with mental disabilities under twenty-two years of age shall prepare and submit the following reports and statements:

(1) The board shall prepare a statement for each child who at the time of receiving such special education was a resident of a home and was not in the legal or permanent custody of an Ohio resident or a government agency in this state, and whose natural or adoptive parents are not known to have been residents of this state subsequent to the child's birth. The statement shall contain the child's name, the name of the child's school district of residence, the name of the county board providing the special education, and the number of months, including any fraction of a month, it was provided. Not later than the thirtieth day of June, the board shall forward a certified copy of such statement to both the director of ~~mental retardation and~~ developmental disabilities and to the home.

Within thirty days after its receipt of a statement, the home shall pay tuition to the county board computed in the manner prescribed by section 3323.141 of the Revised Code.

(2) The board shall prepare a report for each school district that is the school district of residence of one or more of such children for whom statements are not required by division (C)(1) of this section. The report shall contain the name of the county board providing special education, the name of each child receiving special education, the number of months, including fractions of a month, that the child received it, and the name of the child's school district of residence. Not later than the thirtieth day of June, the board shall forward certified copies of each report to the school district named in the report, the superintendent of public instruction, and the

director of ~~mental retardation and~~ developmental disabilities.

Sec. 3323.091. (A) The department of mental health, the department of ~~mental retardation and~~ developmental disabilities, the department of youth services, and the department of rehabilitation and correction shall establish and maintain special education programs for children with disabilities in institutions under their jurisdiction according to standards adopted by the state board of education.

(B) The superintendent of each state institution required to provide services under division (A) of this section, and each county ~~MR/DD~~ DD board, providing special education for preschool children with disabilities under this chapter may apply to the state department of education for unit funding, which shall be paid in accordance with sections 3317.052 and 3317.053 of the Revised Code.

The superintendent of each state institution required to provide services under division (A) of this section may apply to the department of education for special education and related services weighted funding for children with disabilities other than preschool children with disabilities, calculated in accordance with section 3317.201 of the Revised Code.

Each county ~~MR/DD~~ DD board providing special education for children with disabilities other than preschool children with disabilities may apply to the department of education for base cost and special education and related services weighted funding calculated in accordance with section 3317.20 of the Revised Code.

(C) In addition to the authorization to apply for state funding described in division (B) of this section, each state institution required to provide services under division (A) of this section is entitled to tuition payments calculated in the manner described in division (C) of this section.

On or before the thirtieth day of June of each year, the superintendent of each institution that during the school year provided special education pursuant to this section shall prepare a statement for each child with a disability under twenty-two years of age who has received special education. The statement shall contain the child's data verification code assigned pursuant to division (D)(2) of section 3301.0714 of the Revised Code and the name of the child's school district of residence. Within sixty days after receipt of such statement, the department of education shall perform one of the following:

(1) For any child except a preschool child with a disability described in division (C)(2) of this section, pay to the institution submitting the statement an amount equal to the tuition calculated under division (A) of section 3317.08 of the Revised Code for the period covered by the statement, and

deduct the same from the amount of state funds, if any, payable under sections 3317.022 and 3317.023 of the Revised Code, to the child's school district of residence or, if the amount of such state funds is insufficient, require the child's school district of residence to pay the institution submitting the statement an amount equal to the amount determined under this division.

(2) For any preschool child with a disability not included in a unit approved under division (B) of section 3317.05 of the Revised Code, perform the following:

(a) Pay to the institution submitting the statement an amount equal to the tuition calculated under division (B) of section 3317.08 of the Revised Code for the period covered by the statement, except that in calculating the tuition under that section the operating expenses of the institution submitting the statement under this section shall be used instead of the operating expenses of the school district of residence;

(b) Deduct from the amount of state funds, if any, payable under sections 3317.022 and 3317.023 of the Revised Code to the child's school district of residence an amount equal to the amount paid under division (C)(2)(a) of this section.

Sec. 3323.12. The board of education of a school district shall provide home instruction for children with disabilities who are at least three years of age and less than twenty-two years of age and who are unable to attend school, even with the help of special transportation. The board may arrange for the provision of home instruction for a child by a cooperative agreement or contract with a county ~~MR/DD~~ DD board or other educational agency. For the purposes of determining formula ADM under section 3317.03 of the Revised Code, five hours of home instruction shall be equivalent to attendance for five school days.

Sec. 3323.141. (A) When a child who is not in the legal or permanent custody of an Ohio resident or a government agency in this state and whose natural or adoptive parents are not known to have been residents of this state subsequent to the child's birth is a resident of a home as defined in section 3313.64 of the Revised Code and receives special education and related services from a school district or county MR/DD board, the home shall pay tuition to the board providing the special education.

(B) In the case of a child described in division (A) of this section who receives special education and related services from a school district, tuition shall be the amount determined under division (B)(1) or (2) of this section.

(1) For a child other than a child described in division (B)(2) of this section the tuition shall be an amount equal to the sum of the following:

(a) Tuition as determined in the manner provided for by division (B) of section 3317.081 of the Revised Code for the district that provides the special education;

(b) Such excess cost as is determined by using a formula established by rule of the department of education. The excess cost computed in this section shall not be used as excess cost computed under section 3323.14 of the Revised Code.

(2) For a child who is a preschool child with a disability not included in a unit approved under division (B) of section 3317.05 of the Revised Code, the tuition shall be computed as follows:

(a) Determine the amount of the tuition of the district providing the education for the child as calculated under division (B) of section 3317.08 of the Revised Code;

(b) For each type of special education service included in the computation of the amount of tuition under division (B)(2)(a) of this section, divide the amount determined for that computation under division (B)(2) of section 3317.08 of the Revised Code by the total number of preschool children with disabilities used for that computation under division (B)(3) of section 3317.08 of the Revised Code;

(c) Determine the sum of the quotients obtained under division (B)(2)(b) of this section;

(d) Determine the sum of the amounts determined under divisions (B)(2)(a) and (c) of this section.

(C) In the case of a child described in division (A) of this section who receives special education and related services from a county MR/DD board, tuition shall be the amount determined under division (C)(1) or (2) of this section.

(1) For a child other than a child described in division (C)(2) of this section, the tuition shall be an amount equal to such board's per capita cost of providing special education and related services for children at least three but less than twenty-two years of age as determined by using a formula established by rule of the department of ~~mental retardation and~~ developmental disabilities.

(2) For a child who is a preschool child with a disability not included in a unit approved under division (B) of section 3317.05 of the Revised Code, the tuition shall equal the sum of the amounts of each such board's per capita cost of providing each of the special education or related service that the child receives. The calculation of tuition shall be made by using a formula established by rule of the department of ~~mental retardation and~~ developmental disabilities. The formula for the calculation of per capita

costs under division (C)(2) of this section shall be based only on each such MR/DD board's cost of providing each type of special education or related service to preschool children with disabilities not included in a unit approved under division (B) of section 3317.05 of the Revised Code.

(D) If a home fails to pay the tuition required under this section, the board of education or county MR/DD board providing the education may recover in a civil action the tuition and the expenses incurred in prosecuting the action, including court costs and reasonable attorney's fees. If the prosecuting attorney or city director of law represents the board in such action, costs and reasonable attorney's fees awarded by the court, based upon the time spent preparing and presenting the case by the prosecuting attorney, director, or a designee of either, shall be deposited in the county or city general fund.

Sec. 3323.142. This section does not apply to any preschool child with a disability except if included in a unit approved under division (B) of section 3317.05 of the Revised Code.

As used in this section, "per pupil amount" for a preschool child with a disability included in such an approved unit means the amount determined by dividing the amount received for the classroom unit in which the child has been placed by the number of children in the unit. For any other child, "per pupil amount" means the amount paid for the child under section 3317.20 of the Revised Code.

When a school district places or has placed a child with a county ~~MR/DD~~ DD board for special education, but another district is responsible for tuition under section 3313.64 or 3313.65 of the Revised Code and the child is not a resident of the territory served by the county ~~MR/DD~~ DD board, the board may charge the district responsible for tuition with the educational costs in excess of the per pupil amount received by the board under Chapter 3317. of the Revised Code. The amount of the excess cost shall be determined by the formula established by rule of the department of education under section 3323.14 of the Revised Code, and the payment for such excess cost shall be made by the school district directly to the county ~~MR/DD~~ DD board.

A school district board of education and the county ~~MR/DD~~ DD board that serves the school district may negotiate and contract, at or after the time of placement, for payments by the board of education to the county ~~MR/DD~~ DD board for additional services provided to a child placed with the county ~~MR/DD~~ DD board and whose individualized education program established pursuant to section 3323.08 of the Revised Code requires additional services that are not routinely provided children in the county ~~MR/DD~~ DD board's

program but are necessary to maintain the child's enrollment and participation in the program. Additional services may include, but are not limited to, specialized supplies and equipment for the benefit of the child and instruction, training, or assistance provided by staff members other than staff members for which funding is received under Chapter 3317. of the Revised Code.

Sec. 3323.31. The Franklin county educational service center shall establish the Ohio Center for Autism and Low Incidence. The Center shall administer programs and coordinate services for infants, preschool and school-age children, and adults with autism and low incidence disabilities. The Center's principal focus shall be programs and services for persons with autism. The Center shall be under the direction of an executive director, appointed by the superintendent of the service center in consultation with the advisory board established under section 3323.33 of the Revised Code.

In addition to its other duties, the Ohio Center for Autism and Low Incidence shall participate as a member of an interagency workgroup on autism, as it is established by the department of ~~mental retardation and~~ developmental disabilities and shall provide technical assistance and support to the department in the department's leadership role to develop and implement the initiatives identified by the workgroup.

Sec. 3326.99. (A) Whoever violates division (F) of section 3326.24 of the Revised Code shall be punished as follows:

(1) Except as otherwise provided in division (A)(2) of this section, the person is guilty of a misdemeanor of the fourth degree.

(2) The person is guilty of a misdemeanor of the first degree if both of the following conditions apply:

(a) The employee who is the subject of the report that the person fails to submit was required to be reported for the commission or alleged commission of an act or offense involving the infliction on a child of any physical or mental wound, injury, disability, or condition of a nature that constitutes abuse or neglect of the child;

(b) During the period between the violation of division (F) of section 3326.24 of the Revised Code and the conviction of or plea of guilty by the person for that violation, the employee who is the subject of the report that the person fails to submit inflicts on any child attending a school district, educational service center, public or nonpublic school, or county board of ~~mental retardation and~~ developmental disabilities where the employee works any physical or mental wound, injury, disability, or condition of a nature that constitutes abuse or neglect of the child.

(B) Whoever violates division (B) of section 3326.243 of the Revised

Code is guilty of a misdemeanor of the first degree.

Sec. 3501.01. As used in the sections of the Revised Code relating to elections and political communications:

(A) "General election" means the election held on the first Tuesday after the first Monday in each November.

(B) "Regular municipal election" means the election held on the first Tuesday after the first Monday in November in each odd-numbered year.

(C) "Regular state election" means the election held on the first Tuesday after the first Monday in November in each even-numbered year.

(D) "Special election" means any election other than those elections defined in other divisions of this section. A special election may be held only on the first Tuesday after the first Monday in February, May, August, or November, or on the day authorized by a particular municipal or county charter for the holding of a primary election, except that in any year in which a presidential primary election is held, no special election shall be held in February or May, except as authorized by a municipal or county charter, but may be held on the first Tuesday after the first Monday in March.

(E)(1) "Primary" or "primary election" means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties. Primary elections shall be held on the first Tuesday after the first Monday in May of each year except in years in which a presidential primary election is held.

(2) "Presidential primary election" means a primary election as defined by division (E)(1) of this section at which an election is held for the purpose of choosing delegates and alternates to the national conventions of the major political parties pursuant to section 3513.12 of the Revised Code. Unless otherwise specified, presidential primary elections are included in references to primary elections. In years in which a presidential primary election is held, all primary elections shall be held on the first Tuesday after the first Monday in March except as otherwise authorized by a municipal or county charter.

(F) "Political party" means any group of voters meeting the requirements set forth in section 3517.01 of the Revised Code for the formation and existence of a political party.

(1) "Major political party" means any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received no less than twenty per cent of the total vote cast for such

office at the most recent regular state election.

(2) "Intermediate political party" means any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received less than twenty per cent but not less than ten per cent of the total vote cast for such office at the most recent regular state election.

(3) "Minor political party" means any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received less than ten per cent but not less than five per cent of the total vote cast for such office at the most recent regular state election or which has filed with the secretary of state, subsequent to any election in which it received less than five per cent of such vote, a petition signed by qualified electors equal in number to at least one per cent of the total vote cast for such office in the last preceding regular state election, except that a newly formed political party shall be known as a minor political party until the time of the first election for governor or president which occurs not less than twelve months subsequent to the formation of such party, after which election the status of such party shall be determined by the vote for the office of governor or president.

(G) "Dominant party in a precinct" or "dominant political party in a precinct" means that political party whose candidate for election to the office of governor at the most recent regular state election at which a governor was elected received more votes than any other person received for election to that office in such precinct at such election.

(H) "Candidate" means any qualified person certified in accordance with the provisions of the Revised Code for placement on the official ballot of a primary, general, or special election to be held in this state, or any qualified person who claims to be a write-in candidate, or who knowingly assents to being represented as a write-in candidate by another at either a primary, general, or special election to be held in this state.

(I) "Independent candidate" means any candidate who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or special election through the filing of a statement of candidacy and nominating petition, as prescribed in section 3513.257 of the Revised Code.

(J) "Nonpartisan candidate" means any candidate whose name is required, pursuant to section 3505.04 of the Revised Code, to be listed on the nonpartisan ballot, including all candidates for judicial office, for member of any board of education, for municipal or township offices in which primary elections are not held for nominating candidates by political

parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices.

(K) "Party candidate" means any candidate who claims to be a member of a political party, whose name has been certified on the office-type ballot at a general or special election through the filing of a declaration of candidacy and petition of candidate, and who has won the primary election of the candidate's party for the public office the candidate seeks or is selected by party committee in accordance with section 3513.31 of the Revised Code.

(L) "Officer of a political party" includes, but is not limited to, any member, elected or appointed, of a controlling committee, whether representing the territory of the state, a district therein, a county, township, a city, a ward, a precinct, or other territory, of a major, intermediate, or minor political party.

(M) "Question or issue" means any question or issue certified in accordance with the Revised Code for placement on an official ballot at a general or special election to be held in this state.

(N) "Elector" or "qualified elector" means a person having the qualifications provided by law to be entitled to vote.

(O) "Voter" means an elector who votes at an election.

(P) "Voting residence" means that place of residence of an elector which shall determine the precinct in which the elector may vote.

(Q) "Precinct" means a district within a county established by the board of elections of such county within which all qualified electors having a voting residence therein may vote at the same polling place.

(R) "Polling place" means that place provided for each precinct at which the electors having a voting residence in such precinct may vote.

(S) "Board" or "board of elections" means the board of elections appointed in a county pursuant to section 3501.06 of the Revised Code.

(T) "Political subdivision" means a county, township, city, village, or school district.

(U) "Election officer" or "election official" means any of the following:

- (1) Secretary of state;
- (2) Employees of the secretary of state serving the division of elections in the capacity of attorney, administrative officer, administrative assistant, elections administrator, office manager, or clerical supervisor;
- (3) Director of a board of elections;
- (4) Deputy director of a board of elections;
- (5) Member of a board of elections;
- (6) Employees of a board of elections;

(7) Precinct polling place judges;

(8) Employees appointed by the boards of elections on a temporary or part-time basis.

(V) "Acknowledgment notice" means a notice sent by a board of elections, on a form prescribed by the secretary of state, informing a voter registration applicant or an applicant who wishes to change the applicant's residence or name of the status of the application; the information necessary to complete or update the application, if any; and if the application is complete, the precinct in which the applicant is to vote.

(W) "Confirmation notice" means a notice sent by a board of elections, on a form prescribed by the secretary of state, to a registered elector to confirm the registered elector's current address.

(X) "Designated agency" means an office or agency in the state that provides public assistance or that provides state-funded programs primarily engaged in providing services to persons with disabilities and that is required by the National Voter Registration Act of 1993 to implement a program designed and administered by the secretary of state for registering voters, or any other public or government office or agency that implements a program designed and administered by the secretary of state for registering voters, including the department of job and family services, the program administered under section 3701.132 of the Revised Code by the department of health, the department of mental health, the department of ~~mental retardation~~ and developmental disabilities, the rehabilitation services commission, and any other agency the secretary of state designates. "Designated agency" does not include public high schools and vocational schools, public libraries, or the office of a county treasurer.

(Y) "National Voter Registration Act of 1993" means the "National Voter Registration Act of 1993," 107 Stat. 77, 42 U.S.C.A. 1973gg.

(Z) "Voting Rights Act of 1965" means the "Voting Rights Act of 1965," 79 Stat. 437, 42 U.S.C.A. 1973, as amended.

(AA) "Photo identification" means a document that meets each of the following requirements:

(1) It shows the name of the individual to whom it was issued, which shall conform to the name in the poll list or signature pollbook.

(2) It shows the current address of the individual to whom it was issued, which shall conform to the address in the poll list or signature pollbook, except for a driver's license or a state identification card issued under section 4507.50 of the Revised Code, which may show either the current or former address of the individual to whom it was issued, regardless of whether that address conforms to the address in the poll list or signature pollbook.

- (3) It shows a photograph of the individual to whom it was issued.
- (4) It includes an expiration date that has not passed.
- (5) It was issued by the government of the United States or this state.

Sec. 3701.78. (A) There is hereby created the commission on minority health, consisting of eighteen members. The governor shall appoint to the commission nine members from among health researchers, health planners, and health professionals. The speaker of the house of representatives shall appoint to the commission two members of the house of representatives, not more than one of whom is a member of the same political party, and the president of the senate shall appoint to the commission two members of the senate, not more than one of whom is a member of the same political party. The directors of health, mental health, ~~mental retardation and~~ developmental disabilities, and job and family services, or their designees, and the superintendent of public instruction, or the superintendent's designee, shall be members of the commission. The commission shall elect a chairperson from among its members. Of the members appointed by the governor, five shall be appointed to initial terms of one year, and four shall be appointed to initial terms of two years. Thereafter, all members appointed by the governor shall be appointed to terms of two years. All members of the commission appointed by the speaker of the house of representatives or the president of the senate shall be nonvoting members of the commission and be appointed within thirty days after the commencement of the first regular session of each general assembly, and shall serve until the expiration of the session of the general assembly during which they were appointed. Members of the commission shall serve without compensation, but shall be reimbursed for the actual and necessary expenses they incur in the performance of their official duties.

(B) The commission shall promote health and the prevention of disease among members of minority groups. Each year the commission shall distribute grants from available funds to community-based health groups to be used to promote health and the prevention of disease among members of minority groups. As used in this division, "minority group" means any of the following economically disadvantaged groups: Blacks, American Indians, Hispanics, and Orientals. The commission shall adopt and maintain rules pursuant to Chapter 119. of the Revised Code to provide for the distribution of these grants. No group shall qualify to receive a grant from the commission unless it receives at least twenty per cent of its funds from sources other than grants distributed under this section.

(C) The commission may appoint such employees as it considers necessary to carry out its duties under this section. The department of health

shall provide office space for the commission.

(D) The commission shall meet at the call of its chairperson to conduct its official business. A majority of the voting members of the commission constitute a quorum. The votes of at least eight voting members of the commission are necessary for the commission to take any official action or to approve the distribution of grants under this section.

Sec. 3701.93. As used in sections 3701.931 to 3701.936 of the Revised Code:

(A) "Board of health" has the same meaning as in section 3717.01 of the Revised Code.

(B) "Nonpublic school" means a chartered nonpublic school that meets the minimum education standards prescribed by the state board of education under section 3301.07 of the Revised Code. "Nonpublic school" includes facilities used for child care programs for preschool children operated by the school.

(C) "Public school" means either of the following:

(1) A school operated by a school district, educational service center, or county board of ~~mental retardation and~~ developmental disabilities, including facilities used for child care programs for preschool children operated by the district, center, or board;

(2) A community school established under Chapter 3314. of the Revised Code, including a facility operated by an internet- or computer-based community school, as defined in section 3314.02 of the Revised Code, that is used as a classroom or laboratory for one or more students. "Public school" does not mean the residence of a student enrolled in an internet- or computer-based community school.

(D) "School" does not mean any of the following:

(1) A child care program for preschool children that is licensed by the department of job and family services pursuant to Chapter 5104. of the Revised Code;

(2) A child care program for preschool children that is not operated by a public or nonpublic school;

(3) A chartered kindergarten that is associated with a freestanding preschool and that is not operated by a school district, educational service center, or county board of ~~mental retardation and~~ developmental disabilities.

Sec. 3701.932. (A) Each board of health shall report the findings from the inspection of each public and nonpublic school building and associated grounds conducted under section 3701.931 of the Revised Code to all of the following:

(1) The principal or chief administrator of the building;

(2) The administrator responsible for facility operations and maintenance on behalf of the school district, educational service center, county board of ~~mental retardation and~~ developmental disabilities, or community school controlling the inspected building and grounds;

(3) In the case of a school operated by a school district, the superintendent and board of education of that district;

(4) In the case of a school operated by an educational service center or county board of ~~mental retardation and~~ developmental disabilities, the center or board;

(5) The auditor of state.

(B) Each report shall include recommendations for changes that the board of health determines may be needed to abate conditions that are hazardous to occupants. The report shall include recommendations made pursuant to an inspection conducted under section 3707.26 of the Revised Code.

(C) The report is a public record under section 149.43 of the Revised Code.

Sec. 3701.933. The board of education of each school district, the governing board of each educational service center, the county board of ~~mental retardation and~~ developmental disabilities, the governing authority of each community school, and the chief administrator of each nonpublic school shall submit to the board of health, by a deadline and in a manner established by the director of health, a written plan for abatement of the conditions determined to be hazardous to occupants, as described in the report submitted under section 3701.932 of the Revised Code. The plan shall include a schedule for completion of the abatement.

The board of health shall determine compliance with the written plan for abatement. On completion of any plan for abatement, the board of health shall submit a supplemental report to all parties specified in division (A) of section 3701.932 of the Revised Code.

The plan submitted under this section is a public record under section 149.43 of the Revised Code.

Sec. 3705.36. Three years after the date a birth defects information system is implemented pursuant to section 3705.30 of the Revised Code, and annually thereafter, the department of health shall prepare a report regarding the birth defects information system. The council created under section 3705.34 of the Revised Code shall, not later than two years after the date a birth defects information system is implemented, specify the information the department is to include in each report. The department shall file the report with the governor, the president and minority leader of

the senate, the speaker and minority leader of the house of representatives, the departments of ~~mental retardation~~ and developmental disabilities, education, and job and family services, the commission on minority health, and the news media.

Sec. 3721.01. (A) As used in sections 3721.01 to 3721.09 and 3721.99 of the Revised Code:

(1)(a) "Home" means an institution, residence, or facility that provides, for a period of more than twenty-four hours, whether for a consideration or not, accommodations to three or more unrelated individuals who are dependent upon the services of others, including a nursing home, residential care facility, home for the aging, and a veterans' home operated under Chapter 5907. of the Revised Code.

(b) "Home" also means both of the following:

(i) Any facility that a person, as defined in section 3702.51 of the Revised Code, proposes for certification as a skilled nursing facility or nursing facility under Title XVIII or XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, and for which a certificate of need, other than a certificate to recategorize hospital beds as described in section 3702.522 of the Revised Code or division (R)(7)(d) of the version of section 3702.51 of the Revised Code in effect immediately prior to April 20, 1995, has been granted to the person under sections 3702.51 to 3702.62 of the Revised Code after August 5, 1989;

(ii) A county home or district home that is or has been licensed as a residential care facility.

(c) "Home" does not mean any of the following:

(i) Except as provided in division (A)(1)(b) of this section, a public hospital or hospital as defined in section 3701.01 or 5122.01 of the Revised Code;

(ii) A residential facility for mentally ill persons as defined under section 5119.22 of the Revised Code;

(iii) A residential facility as defined in section 5123.19 of the Revised Code;

(iv) A community alternative home as defined in section 3724.01 of the Revised Code;

(v) An adult care facility as defined in section 3722.01 of the Revised Code;

(vi) An alcohol or drug addiction program as defined in section 3793.01 of the Revised Code;

(vii) A facility licensed to provide methadone treatment under section 3793.11 of the Revised Code;

(viii) A facility providing services under contract with the department of ~~mental retardation and~~ developmental disabilities under section 5123.18 of the Revised Code;

(ix) A facility operated by a hospice care program licensed under section 3712.04 of the Revised Code that is used exclusively for care of hospice patients;

(x) A facility, infirmary, or other entity that is operated by a religious order, provides care exclusively to members of religious orders who take vows of celibacy and live by virtue of their vows within the orders as if related, and does not participate in the medicare program established under Title XVIII of the "Social Security Act" or the medical assistance program established under Chapter 5111. of the Revised Code and Title XIX of the "Social Security Act," if on January 1, 1994, the facility, infirmary, or entity was providing care exclusively to members of the religious order;

(xi) A county home or district home that has never been licensed as a residential care facility.

(2) "Unrelated individual" means one who is not related to the owner or operator of a home or to the spouse of the owner or operator as a parent, grandparent, child, grandchild, brother, sister, niece, nephew, aunt, uncle, or as the child of an aunt or uncle.

(3) "Mental impairment" does not mean mental illness as defined in section 5122.01 of the Revised Code or mental retardation as defined in section 5123.01 of the Revised Code.

(4) "Skilled nursing care" means procedures that require technical skills and knowledge beyond those the untrained person possesses and that are commonly employed in providing for the physical, mental, and emotional needs of the ill or otherwise incapacitated. "Skilled nursing care" includes, but is not limited to, the following:

(a) Irrigations, catheterizations, application of dressings, and supervision of special diets;

(b) Objective observation of changes in the patient's condition as a means of analyzing and determining the nursing care required and the need for further medical diagnosis and treatment;

(c) Special procedures contributing to rehabilitation;

(d) Administration of medication by any method ordered by a physician, such as hypodermically, rectally, or orally, including observation of the patient after receipt of the medication;

(e) Carrying out other treatments prescribed by the physician that involve a similar level of complexity and skill in administration.

(5)(a) "Personal care services" means services including, but not limited

to, the following:

- (i) Assisting residents with activities of daily living;
- (ii) Assisting residents with self-administration of medication, in accordance with rules adopted under section 3721.04 of the Revised Code;
- (iii) Preparing special diets, other than complex therapeutic diets, for residents pursuant to the instructions of a physician or a licensed dietitian, in accordance with rules adopted under section 3721.04 of the Revised Code.

(b) "Personal care services" does not include "skilled nursing care" as defined in division (A)(4) of this section. A facility need not provide more than one of the services listed in division (A)(5)(a) of this section to be considered to be providing personal care services.

(6) "Nursing home" means a home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services but not skilled nursing care. A nursing home is licensed to provide personal care services and skilled nursing care.

(7) "Residential care facility" means a home that provides either of the following:

(a) Accommodations for seventeen or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment;

(b) Accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, any of the skilled nursing care authorized by section 3721.011 of the Revised Code.

(8) "Home for the aging" means a home that provides services as a residential care facility and a nursing home, except that the home provides its services only to individuals who are dependent on the services of others by reason of both age and physical or mental impairment.

The part or unit of a home for the aging that provides services only as a residential care facility is licensed as a residential care facility. The part or unit that may provide skilled nursing care beyond the extent authorized by section 3721.011 of the Revised Code is licensed as a nursing home.

(9) "County home" and "district home" mean a county home or district home operated under Chapter 5155. of the Revised Code.

(B) The public health council may further classify homes. For the purposes of this chapter, any residence, institution, hotel, congregate housing project, or similar facility that meets the definition of a home under

this section is such a home regardless of how the facility holds itself out to the public.

(C) For purposes of this chapter, personal care services or skilled nursing care shall be considered to be provided by a facility if they are provided by a person employed by or associated with the facility or by another person pursuant to an agreement to which neither the resident who receives the services nor the resident's sponsor is a party.

(D) Nothing in division (A)(4) of this section shall be construed to permit skilled nursing care to be imposed on an individual who does not require skilled nursing care.

Nothing in division (A)(5) of this section shall be construed to permit personal care services to be imposed on an individual who is capable of performing the activity in question without assistance.

(E) Division (A)(1)(c)(x) of this section does not prohibit a facility, infirmary, or other entity described in that division from seeking licensure under sections 3721.01 to 3721.09 of the Revised Code or certification under Title XVIII or XIX of the "Social Security Act." However, such a facility, infirmary, or entity that applies for licensure or certification must meet the requirements of those sections or titles and the rules adopted under them and obtain a certificate of need from the director of health under section 3702.52 of the Revised Code.

(F) Nothing in this chapter, or rules adopted pursuant to it, shall be construed as authorizing the supervision, regulation, or control of the spiritual care or treatment of residents or patients in any home who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.

Sec. 3721.14. To assist in the implementation of the rights granted in division (A) of section 3721.13 of the Revised Code, each home shall provide:

(A) Appropriate staff training to implement each resident's rights under division (A) of section 3721.13 of the Revised Code, including, but not limited to, explaining:

(1) The resident's rights and the staff's responsibility in the implementation of the rights;

(2) The staff's obligation to provide all residents who have similar needs with comparable service.

(B) Arrangements for a resident's needed ancillary services;

(C) Protected areas outside the home for residents to enjoy outdoor activity, within the capacity of the facility, consistent with applicable laws and rules;

(D) Adequate indoor space, which need not be dedicated to that purpose, for families of residents to meet privately with families of other residents;

(E) Access to the following persons to enter the home during reasonable hours, except where such access would interfere with resident care or the privacy of residents:

(1) Employees of the department of health, department of mental health, department of ~~mental retardation and~~ developmental disabilities, department of aging, department of job and family services, and county departments of job and family services;

(2) Prospective residents and their sponsors;

(3) A resident's sponsors;

(4) Residents' rights advocates;

(5) A resident's attorney;

(6) A minister, priest, rabbi, or other person ministering to a resident's religious needs.

(F) In writing, a description of the home's grievance procedures.

Sec. 3722.01. (A) As used in this chapter:

(1) "Owner" means the person who owns the business of and who ultimately controls the operation of an adult care facility and to whom the manager, if different from the owner, is responsible.

(2) "Manager" means the person responsible for the daily operation of an adult care facility. The manager and the owner of a facility may be the same person.

(3) "Adult" means an individual eighteen years of age or older.

(4) "Unrelated" means that an adult resident is not related to the owner or manager of an adult care facility or to the owner's or manager's spouse as a parent, grandparent, child, stepchild, grandchild, brother, sister, niece, nephew, aunt, or uncle, or as the child of an aunt or uncle.

(5) "Skilled nursing care" means skilled nursing care as defined in section 3721.01 of the Revised Code.

(6)(a) "Personal care services" means services including, but not limited to, the following:

(i) Assisting residents with activities of daily living;

(ii) Assisting residents with self-administration of medication, in accordance with rules adopted by the public health council pursuant to this chapter;

(iii) Preparing special diets, other than complex therapeutic diets, for residents pursuant to the instructions of a physician or a licensed dietitian, in accordance with rules adopted by the public health council pursuant to this

chapter.

(b) "Personal care services" does not include "skilled nursing care" as defined in section 3721.01 of the Revised Code. A facility need not provide more than one of the services listed in division (A)(6)(a) of this section to be considered to be providing personal care services.

(7) "Adult family home" means a residence or facility that provides accommodations to three to five unrelated adults and supervision and personal care services to at least three of those adults.

(8) "Adult group home" means a residence or facility that provides accommodations to six to sixteen unrelated adults and provides supervision and personal care services to at least three of the unrelated adults.

(9) "Adult care facility" means an adult family home or an adult group home. For the purposes of this chapter, any residence, facility, institution, hotel, congregate housing project, or similar facility that provides accommodations and supervision to three to sixteen unrelated adults, at least three of whom are provided personal care services, is an adult care facility regardless of how the facility holds itself out to the public. "Adult care facility" does not include:

(a) A facility operated by a hospice care program licensed under section 3712.04 of the Revised Code that is used exclusively for care of hospice patients;

(b) A nursing home, residential care facility, or home for the aging as defined in section 3721.01 of the Revised Code;

(c) A community alternative home as defined in section 3724.01 of the Revised Code;

(d) An alcohol and drug addiction program as defined in section 3793.01 of the Revised Code;

(e) A residential facility for the mentally ill licensed by the department of mental health under section 5119.22 of the Revised Code;

(f) A facility licensed to provide methadone treatment under section 3793.11 of the Revised Code;

(g) A residential facility licensed under section 5123.19 of the Revised Code or otherwise regulated by the department of ~~mental retardation and~~ developmental disabilities;

(h) Any residence, institution, hotel, congregate housing project, or similar facility that provides personal care services to fewer than three residents or that provides, for any number of residents, only housing, housekeeping, laundry, meal preparation, social or recreational activities, maintenance, security, transportation, and similar services that are not personal care services or skilled nursing care;

(i) Any facility that receives funding for operating costs from the department of development under any program established to provide emergency shelter housing or transitional housing for the homeless;

(j) A terminal care facility for the homeless that has entered into an agreement with a hospice care program under section 3712.07 of the Revised Code;

(k) A facility approved by the veterans administration under section 104(a) of the "Veterans Health Care Amendments of 1983," 97 Stat. 993, 38 U.S.C.A. 630, as amended, and used exclusively for the placement and care of veterans;

(l) Until January 1, 1994, the portion of a facility in which care is provided exclusively to members of a religious order if the facility is owned by or part of a nonprofit institution of higher education authorized to award degrees by the Ohio board of regents under Chapter 1713. of the Revised Code.

(10) "Residents' rights advocate" means:

(a) An employee or representative of any state or local government entity that has a responsibility for residents of adult care facilities and has registered with the department of health under section 3701.07 of the Revised Code;

(b) An employee or representative, other than a manager or employee of an adult care facility or nursing home, of any private nonprofit corporation or association that qualifies for tax-exempt status under section 501(a) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501(a), as amended, that has registered with the department of health under section 3701.07 of the Revised Code, and whose purposes include educating and counseling residents, assisting residents in resolving problems and complaints concerning their care and treatment, and assisting them in securing adequate services.

(11) "Sponsor" means an adult relative, friend, or guardian of a resident of an adult care facility who has an interest in or responsibility for the resident's welfare.

(12) "Ombudsperson" means a "representative of the office of the state long-term care ombudsperson program" as defined in section 173.14 of the Revised Code.

(13) "Mental health agency" means a community mental health agency, as defined in section 5119.22 of the Revised Code, under contract with a board of alcohol, drug addiction, and mental health services pursuant to division (A)(8)(a) of section 340.03 of the Revised Code.

(B) For purposes of this chapter, personal care services or skilled

nursing care shall be considered to be provided by a facility if they are provided by a person employed by or associated with the facility or by another person pursuant to an agreement to which neither the resident who receives the services nor the resident's sponsor is a party.

(C) Nothing in division (A)(6) of this section shall be construed to permit personal care services to be imposed upon a resident who is capable of performing the activity in question without assistance.

Sec. 3727.01. (A) As used in this section, "health maintenance organization" means a public or private organization organized under the law of any state that is qualified under section 1310(d) of Title XIII of the "Public Health Service Act," 87 Stat. 931 (1973), 42 U.S.C. 300e-9, or that does all of the following:

(1) Provides or otherwise makes available to enrolled participants health care services including at least the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency and preventive service, and out-of-area coverage;

(2) Is compensated, except for copayments, for the provision of basic health care services to enrolled participants by a payment that is paid on a periodic basis without regard to the date the health care services are provided and that is fixed without regard to the frequency, extent, or kind of health service actually provided;

(3) Provides physician services primarily in either of the following ways:

(a) Directly through physicians who are either employees or partners of the organization;

(b) Through arrangements with individual physicians or one or more groups of physicians organized on a group-practice or individual-practice basis.

(B) As used in this chapter:

(1) "Children's hospital" has the same meaning as in section 3702.51 of the Revised Code.

(2) "Hospital" means an institution classified as a hospital under section 3701.07 of the Revised Code in which are provided to inpatients diagnostic, medical, surgical, obstetrical, psychiatric, or rehabilitation care for a continuous period longer than twenty-four hours or a hospital operated by a health maintenance organization. "Hospital" does not include a facility licensed under Chapter 3721. of the Revised Code, a health care facility operated by the department of mental health or the department of ~~mental retardation~~ and developmental disabilities, a health maintenance organization that does not operate a hospital, the office of any private

licensed health care professional, whether organized for individual or group practice, or a clinic that provides ambulatory patient services and where patients are not regularly admitted as inpatients. "Hospital" also does not include an institution for the sick that is operated exclusively for patients who use spiritual means for healing and for whom the acceptance of medical care is inconsistent with their religious beliefs, accredited by a national accrediting organization, exempt from federal income taxation under section 501 of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C.A. 1, as amended, and providing twenty-four hour nursing care pursuant to the exemption in division (E) of section 4723.32 of the Revised Code from the licensing requirements of Chapter 4723. of the Revised Code.

(3) "Joint commission" means the commission formerly known as the joint commission on accreditation of healthcare organizations or the joint commission on accreditation of hospitals.

Sec. 3735.58. (A) The director of mental health, the director of ~~mental retardation and~~ developmental disabilities, or the director of rehabilitation and correction may enter into contracts for the sale of land not needed by their departments and under their jurisdiction or supervision to metropolitan housing authorities for use by such an authority for a housing project or projects. Such contract may contain such conditions and terms as are, in the discretion of the directors, in the best interests of the state and the welfare of the residents of the state.

(B) The director may, upon receipt of a request from a metropolitan housing authority, request the approval of the governor to sell and convey land not needed by ~~his~~ the director's department and under ~~his~~ the director's jurisdiction or supervision to an authority, subject to such terms and conditions consistent with the public interest and welfare of the residents of the state as the director considers necessary. The governor, with the approval of the controlling board, may approve the request. Such property shall be appraised at its fair market value before it is conveyed. The director of administrative services shall cause it to be appraised by three disinterested persons and shall determine the fee which each appraiser shall receive, not to exceed fifty dollars. All appraisal fees shall be paid by the authority which shall deposit with the director one hundred fifty dollars before the appraisal is made. If the deposit exceeds the appraisal fee, the balance shall be returned to the authority. The appraisal value, when approved by the director, is the purchase price. If the purchase price is not paid within ninety days after notice to the authority of the approved appraisal value, the director shall withdraw ~~his~~ approval of the appraisal value and no deed shall be delivered to the authority without the written

approval of the director of the purchase price. If the purchase price is paid within ninety days, a deed shall be prepared and recorded pursuant to section 5301.13 of the Revised Code.

(C) Moneys received from sales of land to a metropolitan housing authority shall be placed in the state treasury in special funds, to be used for such purposes of the department of mental health, the department of ~~mental retardation~~ ~~and~~ developmental disabilities, or the department of rehabilitation and correction as is appropriate.

Sec. 4109.06. (A) This chapter does not apply to the following:

(1) Minors who are students working on any properly guarded machines in the manual training department of any school when the work is performed under the personal supervision of an instructor;

(2) Students participating in a vocational program approved by the Ohio department of education;

(3) A minor participating in a play, pageant, or concert produced by an outdoor historical drama corporation, a professional traveling theatrical production, a professional concert tour, or a personal appearance tour as a professional motion picture star, or as an actor or performer in motion pictures or in radio or television productions in accordance with the rules adopted pursuant to division (A) of section 4109.05 of the Revised Code;

(4) The participation, without remuneration of a minor and with the consent of a parent or guardian, in a performance given by a church, school, or academy, or at a concert or entertainment given solely for charitable purposes, or by a charitable or religious institution;

(5) Minors who are employed by their parents in occupations other than occupations prohibited by rule adopted under this chapter;

(6) Minors engaged in the delivery of newspapers to the consumer;

(7) Minors who have received a high school diploma or a certificate of attendance from an accredited secondary school or a certificate of high school equivalence;

(8) Minors who are currently heads of households or are parents contributing to the support of their children;

(9) Minors engaged in lawn mowing, snow shoveling, and other related employment;

(10) Minors employed in agricultural employment in connection with farms operated by their parents, grandparents, or guardians where they are members of the guardians' household. Minors are not exempt from this chapter if they reside in agricultural labor camps as defined in section 3733.41 of the Revised Code;

(11) Students participating in a program to serve as precinct officers as

authorized by section 3501.22 of the Revised Code.

(B) Sections 4109.02, 4109.08, 4109.09, and 4109.11 of the Revised Code do not apply to the following:

(1) Minors who work in a sheltered workshop operated by a county board of ~~mental retardation~~ developmental disabilities;

(2) Minors performing services for a nonprofit organization where the minor receives no compensation, except for any expenses incurred by the minor or except for meals provided to the minor;

(3) Minors who are employed in agricultural employment and who do not reside in agricultural labor camps.

(C) Division (D) of section 4109.07 of the Revised Code does not apply to minors who have their employment hours established as follows:

(1) A minor adjudicated to be an unruly child or delinquent child who, as a result of the adjudication, is placed on probation may either file a petition in the juvenile court in whose jurisdiction the minor resides, or apply to the superintendent or to the chief administrative officer who issued the minor's age and schooling certificate pursuant to section 3331.01 of the Revised Code, alleging the restrictions on the hours of employment described in division (D) of section 4109.07 of the Revised Code will cause a substantial hardship or are not in the minor's best interests. Upon receipt of a petition or application, the court, the superintendent, or the chief administrative officer, as appropriate, shall consult with the person required to supervise the minor on probation. If after that consultation, the court, the superintendent, or the chief administrative officer finds the minor has failed to show the restrictions will result in a substantial hardship or that the restrictions are not in the minor's best interests, the court, the superintendent, or the chief administrative officer shall uphold the restrictions. If after that consultation, the court, the superintendent, or the chief administrative officer finds the minor has shown the restricted hours will cause a substantial hardship or are not in the minor's best interests, the court, the superintendent, or the chief administrative officer shall establish differing hours of employment for the minor and notify the minor and the minor's employer of those hours, which shall be binding in lieu of the restrictions on the hours of employment described in division (D) of section 4109.07 of the Revised Code.

(2) Any minor to whom division (C)(1) of this section does not apply may either file a petition in the juvenile court in whose jurisdiction the person resides, or apply to the superintendent or to the chief administrative officer who issued the minor's age and schooling certificate pursuant to section 3331.01 of the Revised Code, alleging the restrictions on the hours

of employment described in division (D) of section 4109.07 of the Revised Code will cause a substantial hardship or are not in the minor's best interests.

If, as a result of a petition or application, the court, the superintendent, or the chief administrative officer, as appropriate, finds the minor has failed to show such restrictions will result in a substantial hardship or that the restrictions are not in the minor's best interests, the court, the superintendent, or the chief administrative officer shall uphold the restrictions. If the court, the superintendent, or the chief administrative officer finds the minor has shown the restricted hours will cause a substantial hardship or are not in the minor's best interests, the court, the superintendent, or the chief administrative officer shall establish the hours of employment for the minor and shall notify the minor and the minor's employer of those hours.

(D) Section 4109.03, divisions (A) and (C) of section 4109.02, and division (B) of section 4109.08 of the Revised Code do not apply to minors who are sixteen or seventeen years of age and who are employed at a seasonal amusement or recreational establishment.

(E) As used in this section, "certificate of high school equivalence" means a statement issued by the state board of education or an equivalent agency of another state that the holder of the statement has achieved the equivalent of a high school education as measured by scores obtained on the tests of general educational development published by the American council on education.

Sec. 4115.32. (A) Subject to section 4115.36 of the Revised Code, there is hereby created the state committee for the purchase of products and services provided by persons with severe disabilities. The committee shall be composed ex officio of the following persons, or their designees:

(1) The directors of administrative services, mental health, ~~mental retardation and~~ developmental disabilities, transportation, natural resources, and commerce;

(2) The administrators of the rehabilitation services commission and the bureau of workers' compensation;

(3) The secretary of state;

(4) One representative of a purchasing department of a political subdivision who is designated by the governor.

The governor shall appoint two representatives of a qualified nonprofit agency for persons with severe disabilities, and a person with a severe disability to the committee.

(B) Within thirty days after September 29, 1995, the governor shall appoint the representatives of a qualified nonprofit agency for persons with

severe disabilities to the committee for a term ending August 31, 1996. Thereafter, terms for such representatives are for three years, each term ending on the same day of the same month of the year as did the term that it succeeds. Each committee member shall serve from the date of the member's appointment until the end of the term for which the member was appointed. Vacancies shall be filled in the same manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall serve as a member for the remainder of that term. A member shall serve subsequent to the expiration of the member's term and shall continue to serve until the member's successor takes office.

(C) Members of the committee shall serve without compensation. Except as otherwise provided in divisions (C)(1) and (2) of this section, members shall be reimbursed for actual and necessary expenses, including travel expenses, incurred while away from their homes or regular places of business and incurred while performing services for the committee.

(1) The members listed in divisions (A)(1) to (3) of this section, or their designees, shall not be reimbursed for any expenses.

(2) No member of the committee who is entitled to receive reimbursement for the performance of services for the committee from another agency or entity shall receive reimbursement from the committee.

(D) The committee shall elect from among its members a chairperson. The committee may request from any agency of the state, political subdivision, or instrumentality of the state any information necessary to enable it to carry out the intent of sections 4115.31 to 4115.35 of the Revised Code. Upon request of the committee, the agency, subdivision, or instrumentality shall furnish the information to the chairperson of the committee.

(E) The committee shall not later than one hundred eighty days following the close of each fiscal year transmit to the governor, the general assembly, and each qualified nonprofit agency for persons with severe disabilities a report that includes the names of the committee members serving during the preceding fiscal year, the dates of committee meetings in that year, and any recommendations for changes in sections 4115.31 to 4115.35 of the Revised Code that the committee determines are necessary.

(F) The director of administrative services shall designate a subordinate to act as executive director of the committee and shall furnish other staff and clerical assistance, office space, and supplies required by the committee.

Sec. 4141.29. Each eligible individual shall receive benefits as compensation for loss of remuneration due to involuntary total or partial

unemployment in the amounts and subject to the conditions stipulated in this chapter.

(A) No individual is entitled to a waiting period or benefits for any week unless the individual:

(1) Has filed a valid application for determination of benefit rights in accordance with section 4141.28 of the Revised Code;

(2) Has made a claim for benefits in accordance with section 4141.28 of the Revised Code;

(3) Has registered at an employment office or other registration place maintained or designated by the director of job and family services. Registration shall be made in accordance with the time limits, frequency, and manner prescribed by the director.

(4)(a)(i) Is able to work and available for suitable work and, except as provided in division (A)(4)(a)(ii) of this section, is actively seeking suitable work either in a locality in which the individual has earned wages subject to this chapter during the individual's base period, or if the individual leaves that locality, then in a locality where suitable work normally is performed.

(ii) The director may waive the requirement that a claimant be actively seeking work when the director finds that the individual has been laid off and the employer who laid the individual off has notified the director within ten days after the layoff, that work is expected to be available for the individual within a specified number of days not to exceed forty-five calendar days following the last day the individual worked. In the event the individual is not recalled within the specified period, this waiver shall cease to be operative with respect to that layoff.

(b) The individual shall be instructed as to the efforts that the individual must make in the search for suitable work, except where the active search for work requirement has been waived under division (A)(4)(a) of this section, and shall keep a record of where and when the individual has sought work in complying with those instructions and, upon request, shall produce that record for examination by the director.

(c) An individual who is attending a training course approved by the director meets the requirement of this division, if attendance was recommended by the director and the individual is regularly attending the course and is making satisfactory progress. An individual also meets the requirements of this division if the individual is participating and advancing in a training program, as defined in division (P) of section 5709.61 of the Revised Code, and if an enterprise, defined in division (B) of section 5709.61 of the Revised Code, is paying all or part of the cost of the individual's participation in the training program with the intention of hiring

the individual for employment as a new employee, as defined in division (L) of section 5709.61 of the Revised Code, for at least ninety days after the individual's completion of the training program.

(d) An individual who becomes unemployed while attending a regularly established school and whose base period qualifying weeks were earned in whole or in part while attending that school, meets the availability and active search for work requirements of division (A)(4)(a) of this section if the individual regularly attends the school during weeks with respect to which the individual claims unemployment benefits and makes self available on any shift of hours for suitable employment with the individual's most recent employer or any other employer in the individual's base period, or for any other suitable employment to which the individual is directed, under this chapter.

(e) The director shall adopt any rules that the director deems necessary for the administration of division (A)(4) of this section.

(f) Notwithstanding any other provisions of this section, no otherwise eligible individual shall be denied benefits for any week because the individual is in training approved under section 236(a)(1) of the "Trade Act of 1974," 88 Stat. 1978, 19 U.S.C.A. 2296, nor shall that individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this chapter, or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work.

For the purposes of division (A)(4)(f) of this section, "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for the purposes of the "Trade Act of 1974," 88 Stat. 1978, 19 U.S.C.A. 2101, and wages for such work at not less than eighty per cent of the individual's average weekly wage as determined for the purposes of that federal act.

(5) Is unable to obtain suitable work. An individual who is provided temporary work assignments by the individual's employer under agreed terms and conditions of employment, and who is required pursuant to those terms and conditions to inquire with the individual's employer for available work assignments upon the conclusion of each work assignment, is not considered unable to obtain suitable employment if suitable work assignments are available with the employer but the individual fails to contact the employer to inquire about work assignments.

(6) Participates in reemployment services, such as job search assistance

services, if the individual has been determined to be likely to exhaust benefits under this chapter, including compensation payable pursuant to 5 U.S.C.A. Chapter 85, other than extended compensation, and needs reemployment services pursuant to the profiling system established by the director under division (K) of this section, unless the director determines that:

(a) The individual has completed such services; or

(b) There is justifiable cause for the claimant's failure to participate in such services.

(B) An individual suffering total or partial unemployment is eligible for benefits for unemployment occurring subsequent to a waiting period of one week and no benefits shall be payable during this required waiting period. Not more than one week of waiting period shall be required of any individual in any benefit year in order to establish the individual's eligibility for total or partial unemployment benefits.

(C) The waiting period for total or partial unemployment shall commence on the first day of the first week with respect to which the individual first files a claim for benefits at an employment office or other place of registration maintained or designated by the director or on the first day of the first week with respect to which the individual has otherwise filed a claim for benefits in accordance with the rules of the department of job and family services, provided such claim is allowed by the director.

(D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

(1) For any week with respect to which the director finds that:

(a) The individual's unemployment was due to a labor dispute other than a lockout at any factory, establishment, or other premises located in this or any other state and owned or operated by the employer by which the individual is or was last employed; and for so long as the individual's unemployment is due to such labor dispute. No individual shall be disqualified under this provision if either of the following applies:

(i) The individual's employment was with such employer at any factory, establishment, or premises located in this state, owned or operated by such employer, other than the factory, establishment, or premises at which the labor dispute exists, if it is shown that the individual is not financing, participating in, or directly interested in such labor dispute;

(ii) The individual's employment was with an employer not involved in the labor dispute but whose place of business was located within the same premises as the employer engaged in the dispute, unless the individual's employer is a wholly owned subsidiary of the employer engaged in the

dispute, or unless the individual actively participates in or voluntarily stops work because of such dispute. If it is established that the claimant was laid off for an indefinite period and not recalled to work prior to the dispute, or was separated by the employer prior to the dispute for reasons other than the labor dispute, or that the individual obtained a bona fide job with another employer while the dispute was still in progress, such labor dispute shall not render the employee ineligible for benefits.

(b) The individual has been given a disciplinary layoff for misconduct in connection with the individual's work.

(2) For the duration of the individual's unemployment if the director finds that:

(a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work, provided division (D)(2) of this section does not apply to the separation of a person under any of the following circumstances:

(i) Separation from employment for the purpose of entering the armed forces of the United States if the individual is inducted into the armed forces within one of the following periods:

(I) Thirty days after separation;

(II) One hundred eighty days after separation if the individual's date of induction is delayed solely at the discretion of the armed forces.

(ii) Separation from employment pursuant to a labor-management contract or agreement, or pursuant to an established employer plan, program, or policy, which permits the employee, because of lack of work, to accept a separation from employment;

(iii) The individual has left employment to accept a recall from a prior employer or, except as provided in division (D)(2)(a)(iv) of this section, to accept other employment as provided under section 4141.291 of the Revised Code, or left or was separated from employment that was concurrent employment at the time of the most recent separation or within six weeks prior to the most recent separation where the remuneration, hours, or other conditions of such concurrent employment were substantially less favorable than the individual's most recent employment and where such employment, if offered as new work, would be considered not suitable under the provisions of divisions (E) and (F) of this section. Any benefits that would otherwise be chargeable to the account of the employer from whom an individual has left employment or was separated from employment that was concurrent employment under conditions described in division (D)(2)(a)(iii) of this section, shall instead be charged to the mutualized account created by division (B) of section 4141.25 of the Revised Code, except that any

benefits chargeable to the account of a reimbursing employer under division (D)(2)(a)(iii) of this section shall be charged to the account of the reimbursing employer and not to the mutualized account, except as provided in division (D)(2) of section 4141.24 of the Revised Code.

(iv) When an individual has been issued a definite layoff date by the individual's employer and before the layoff date, the individual quits to accept other employment, the provisions of division (D)(2)(a)(iii) of this section apply and no disqualification shall be imposed under division (D) of this section. However, if the individual fails to meet the employment and earnings requirements of division (A)(2) of section 4141.291 of the Revised Code, then the individual, pursuant to division (A)(5) of this section, shall be ineligible for benefits for any week of unemployment that occurs prior to the layoff date.

(b) The individual has refused without good cause to accept an offer of suitable work when made by an employer either in person or to the individual's last known address, or has refused or failed to investigate a referral to suitable work when directed to do so by a local employment office of this state or another state, provided that this division shall not cause a disqualification for a waiting week or benefits under the following circumstances:

(i) When work is offered by the individual's employer and the individual is not required to accept the offer pursuant to the terms of the labor-management contract or agreement; or

(ii) When the individual is attending a training course pursuant to division (A)(4) of this section except, in the event of a refusal to accept an offer of suitable work or a refusal or failure to investigate a referral, benefits thereafter paid to such individual shall not be charged to the account of any employer and, except as provided in division (B)(1)(b) of section 4141.241 of the Revised Code, shall be charged to the mutualized account as provided in division (B) of section 4141.25 of the Revised Code.

(c) Such individual quit work to marry or because of marital, parental, filial, or other domestic obligations.

(d) The individual became unemployed by reason of commitment to any correctional institution.

(e) The individual became unemployed because of dishonesty in connection with the individual's most recent or any base period work. Remuneration earned in such work shall be excluded from the individual's total base period remuneration and qualifying weeks that otherwise would be credited to the individual for such work in the individual's base period shall not be credited for the purpose of determining the total benefits to

which the individual is eligible and the weekly benefit amount to be paid under section 4141.30 of the Revised Code. Such excluded remuneration and noncredited qualifying weeks shall be excluded from the calculation of the maximum amount to be charged, under division (D) of section 4141.24 and section 4141.33 of the Revised Code, against the accounts of the individual's base period employers. In addition, no benefits shall thereafter be paid to the individual based upon such excluded remuneration or noncredited qualifying weeks.

For purposes of division (D)(2)(e) of this section, "dishonesty" means the commission of substantive theft, fraud, or deceitful acts.

(E) No individual otherwise qualified to receive benefits shall lose the right to benefits by reason of a refusal to accept new work if:

(1) As a condition of being so employed the individual would be required to join a company union, or to resign from or refrain from joining any bona fide labor organization, or would be denied the right to retain membership in and observe the lawful rules of any such organization.

(2) The position offered is vacant due directly to a strike, lockout, or other labor dispute.

(3) The work is at an unreasonable distance from the individual's residence, having regard to the character of the work the individual has been accustomed to do, and travel to the place of work involves expenses substantially greater than that required for the individual's former work, unless the expense is provided for.

(4) The remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(F) Subject to the special exceptions contained in division (A)(4)(f) of this section and section 4141.301 of the Revised Code, in determining whether any work is suitable for a claimant in the administration of this chapter, the director, in addition to the determination required under division (E) of this section, shall consider the degree of risk to the claimant's health, safety, and morals, the individual's physical fitness for the work, the individual's prior training and experience, the length of the individual's unemployment, the distance of the available work from the individual's residence, and the individual's prospects for obtaining local work.

(G) The "duration of unemployment" as used in this section means the full period of unemployment next ensuing after a separation from any base period or subsequent work and until an individual has become reemployed in employment subject to this chapter, or the unemployment compensation act of another state, or of the United States, and until such individual has

worked six weeks and for those weeks has earned or been paid remuneration equal to six times an average weekly wage of not less than: eighty-five dollars and ten cents per week beginning on June 26, 1990; and beginning on and after January 1, 1992, twenty-seven and one-half per cent of the statewide average weekly wage as computed each first day of January under division (B)(3) of section 4141.30 of the Revised Code, rounded down to the nearest dollar, except for purposes of division (D)(2)(c) of this section, such term means the full period of unemployment next ensuing after a separation from such work and until such individual has become reemployed subject to the terms set forth above, and has earned wages equal to one-half of the individual's average weekly wage or sixty dollars, whichever is less.

(H) If a claimant is disqualified under division (D)(2)(a), (c), or (d) of this section or found to be qualified under the exceptions provided in division (D)(2)(a)(i), (iii), or (iv) of this section or division (A)(2) of section 4141.291 of the Revised Code, then benefits that may become payable to such claimant, which are chargeable to the account of the employer from whom the individual was separated under such conditions, shall be charged to the mutualized account provided in section 4141.25 of the Revised Code, provided that no charge shall be made to the mutualized account for benefits chargeable to a reimbursing employer, except as provided in division (D)(2) of section 4141.24 of the Revised Code. In the case of a reimbursing employer, the director shall refund or credit to the account of the reimbursing employer any over-paid benefits that are recovered under division (B) of section 4141.35 of the Revised Code. Amounts chargeable to other states, the United States, or Canada that are subject to agreements and arrangements that are established pursuant to section 4141.43 of the Revised Code shall be credited or reimbursed according to the agreements and arrangements to which the chargeable amounts are subject.

(I)(1) Benefits based on service in employment as provided in divisions (B)(2)(a) and (b) of section 4141.01 of the Revised Code shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this chapter; except that after December 31, 1977:

(a) Benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education, as defined in division (Y) of section 4141.01 of the Revised Code; or for an educational institution as defined in division (CC) of section 4141.01 of the Revised Code, shall not be paid to any individual for any week of unemployment that begins during the period between two successive academic years or

terms, or during a similar period between two regular but not successive terms or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of those academic years or terms and has a contract or a reasonable assurance that the individual will perform services in any such capacity for any such institution in the second of those academic years or terms.

(b) Benefits based on service for an educational institution or an institution of higher education in other than an instructional, research, or principal administrative capacity, shall not be paid to any individual for any week of unemployment which begins during the period between two successive academic years or terms of the employing educational institution or institution of higher education, provided the individual performed those services for the educational institution or institution of higher education during the first such academic year or term and, there is a reasonable assurance that such individual will perform those services for any educational institution or institution of higher education in the second of such academic years or terms.

If compensation is denied to any individual for any week under division (I)(1)(b) of this section and the individual was not offered an opportunity to perform those services for an institution of higher education or for an educational institution for the second of such academic years or terms, the individual is entitled to a retroactive payment of compensation for each week for which the individual timely filed a claim for compensation and for which compensation was denied solely by reason of division (I)(1)(b) of this section. An application for retroactive benefits shall be timely filed if received by the director or the director's deputy within or prior to the end of the fourth full calendar week after the end of the period for which benefits were denied because of reasonable assurance of employment. The provision for the payment of retroactive benefits under division (I)(1)(b) of this section is applicable to weeks of unemployment beginning on and after November 18, 1983. The provisions under division (I)(1)(b) of this section shall be retroactive to September 5, 1982, only if, as a condition for full tax credit against the tax imposed by the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311, the United States secretary of labor determines that retroactivity is required by federal law.

(c) With respect to weeks of unemployment beginning after December 31, 1977, benefits shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess, if the individual performs any services described in divisions (I)(1)(a) and (b) of this section in the period immediately before the vacation

period or holiday recess, and there is a reasonable assurance that the individual will perform any such services in the period immediately following the vacation period or holiday recess.

(d) With respect to any services described in division (I)(1)(a), (b), or (c) of this section, benefits payable on the basis of services in any such capacity shall be denied as specified in division (I)(1)(a), (b), or (c) of this section to any individual who performs such services in an educational institution or institution of higher education while in the employ of an educational service agency. For this purpose, the term "educational service agency" means a governmental agency or governmental entity that is established and operated exclusively for the purpose of providing services to one or more educational institutions or one or more institutions of higher education.

(e) Any individual employed by a public school district or a county board of ~~mental retardation~~ developmental disabilities shall be notified by the thirtieth day of April each year if the individual is not to be reemployed the following academic year.

(2) No disqualification will be imposed, between academic years or terms or during a vacation period or holiday recess under this division, unless the director or the director's deputy has received a statement in writing from the educational institution or institution of higher education that the claimant has a contract for, or a reasonable assurance of, reemployment for the ensuing academic year or term.

(3) If an individual has employment with an educational institution or an institution of higher education and employment with a noneducational employer, during the base period of the individual's benefit year, then the individual may become eligible for benefits during the between-term, or vacation or holiday recess, disqualification period, based on employment performed for the noneducational employer, provided that the employment is sufficient to qualify the individual for benefit rights separately from the benefit rights based on school employment. The weekly benefit amount and maximum benefits payable during a disqualification period shall be computed based solely on the nonschool employment.

(J) Benefits shall not be paid on the basis of employment performed by an alien, unless the alien had been lawfully admitted to the United States for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was otherwise permanently residing in the United States under color of law at the time the services were performed, under section 212(d)(5) of the "Immigration and Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101:

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence that the individual had not, in fact, been lawfully admitted to the United States.

(K) The director shall establish and utilize a system of profiling all new claimants under this chapter that:

(1) Identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;

(2) Refers claimants identified pursuant to division (K)(1) of this section to reemployment services, such as job search assistance services, available under any state or federal law;

(3) Collects follow-up information relating to the services received by such claimants and the employment outcomes for such claimant's subsequent to receiving such services and utilizes such information in making identifications pursuant to division (K)(1) of this section; and

(4) Meets such other requirements as the United States secretary of labor determines are appropriate.

Sec. 4511.21. (A) No person shall operate a motor vehicle, trackless trolley, or streetcar at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead.

(B) It is prima-facie lawful, in the absence of a lower limit declared or established pursuant to this section by the director of transportation or local authorities, for the operator of a motor vehicle, trackless trolley, or streetcar to operate the same at a speed not exceeding the following:

(1)(a) Twenty miles per hour in school zones during school recess and while children are going to or leaving school during the opening or closing hours, and when twenty miles per hour school speed limit signs are erected; except that, on controlled-access highways and expressways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by division (B)(4) of this section and on freeways, if the right-of-way line fence has been erected without pedestrian opening,

the speed shall be governed by divisions (B)(9) and (10) of this section. The end of every school zone may be marked by a sign indicating the end of the zone. Nothing in this section or in the manual and specifications for a uniform system of traffic control devices shall be construed to require school zones to be indicated by signs equipped with flashing or other lights, or giving other special notice of the hours in which the school zone speed limit is in effect.

(b) As used in this section and in section 4511.212 of the Revised Code, "school" means any school chartered under section 3301.16 of the Revised Code and any nonchartered school that during the preceding year filed with the department of education in compliance with rule 3301-35-08 of the Ohio Administrative Code, a copy of the school's report for the parents of the school's pupils certifying that the school meets Ohio minimum standards for nonchartered, nontax-supported schools and presents evidence of this filing to the jurisdiction from which it is requesting the establishment of a school zone. "School" also includes a special elementary school that in writing requests the county engineer of the county in which the special elementary school is located to create a school zone at the location of that school. Upon receipt of such a written request, the county engineer shall create a school zone at that location by erecting the appropriate signs.

(c) As used in this section, "school zone" means that portion of a street or highway passing a school fronting upon the street or highway that is encompassed by projecting the school property lines to the fronting street or highway, and also includes that portion of a state highway. Upon request from local authorities for streets and highways under their jurisdiction and that portion of a state highway under the jurisdiction of the director of transportation or a request from a county engineer in the case of a school zone for a special elementary school, the director may extend the traditional school zone boundaries. The distances in divisions (B)(1)(c)(i), (ii), and (iii) of this section shall not exceed three hundred feet per approach per direction and are bounded by whichever of the following distances or combinations thereof the director approves as most appropriate:

(i) The distance encompassed by projecting the school building lines normal to the fronting highway and extending a distance of three hundred feet on each approach direction;

(ii) The distance encompassed by projecting the school property lines intersecting the fronting highway and extending a distance of three hundred feet on each approach direction;

(iii) The distance encompassed by the special marking of the pavement for a principal school pupil crosswalk plus a distance of three hundred feet

on each approach direction of the highway.

Nothing in this section shall be construed to invalidate the director's initial action on August 9, 1976, establishing all school zones at the traditional school zone boundaries defined by projecting school property lines, except when those boundaries are extended as provided in divisions (B)(1)(a) and (c) of this section.

(d) As used in this division, "crosswalk" has the meaning given that term in division (LL)(2) of section 4511.01 of the Revised Code.

The director may, upon request by resolution of the legislative authority of a municipal corporation, the board of trustees of a township, or a county board of ~~mental retardation and~~ developmental disabilities created pursuant to Chapter 5126. of the Revised Code, and upon submission by the municipal corporation, township, or county board of such engineering, traffic, and other information as the director considers necessary, designate a school zone on any portion of a state route lying within the municipal corporation, lying within the unincorporated territory of the township, or lying adjacent to the property of a school that is operated by such county board, that includes a crosswalk customarily used by children going to or leaving a school during recess and opening and closing hours, whenever the distance, as measured in a straight line, from the school property line nearest the crosswalk to the nearest point of the crosswalk is no more than one thousand three hundred twenty feet. Such a school zone shall include the distance encompassed by the crosswalk and extending three hundred feet on each approach direction of the state route.

(e) As used in this section, "special elementary school" means a school that meets all of the following criteria:

(i) It is not chartered and does not receive tax revenue from any source.

(ii) It does not educate children beyond the eighth grade.

(iii) It is located outside the limits of a municipal corporation.

(iv) A majority of the total number of students enrolled at the school are not related by blood.

(v) The principal or other person in charge of the special elementary school annually sends a report to the superintendent of the school district in which the special elementary school is located indicating the total number of students enrolled at the school, but otherwise the principal or other person in charge does not report any other information or data to the superintendent.

(2) Twenty-five miles per hour in all other portions of a municipal corporation, except on state routes outside business districts, through highways outside business districts, and alleys;

(3) Thirty-five miles per hour on all state routes or through highways

within municipal corporations outside business districts, except as provided in divisions (B)(4) and (6) of this section;

(4) Fifty miles per hour on controlled-access highways and expressways within municipal corporations;

(5) Fifty-five miles per hour on highways outside municipal corporations, other than highways within island jurisdictions as provided in division (B)(8) of this section and freeways as provided in divisions (B)(13) and (14) of this section;

(6) Fifty miles per hour on state routes within municipal corporations outside urban districts unless a lower prima-facie speed is established as further provided in this section;

(7) Fifteen miles per hour on all alleys within the municipal corporation;

(8) Thirty-five miles per hour on highways outside municipal corporations that are within an island jurisdiction;

(9) Fifty-five miles per hour at all times on freeways with paved shoulders inside municipal corporations, other than freeways as provided in divisions (B)(13) and (14) of this section;

(10) Fifty-five miles per hour at all times on freeways outside municipal corporations, other than freeways as provided in divisions (B)(13) and (14) of this section;

(11) Fifty-five miles per hour at all times on all portions of freeways that are part of the interstate system and on all portions of freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system for operators of any motor vehicle weighing in excess of eight thousand pounds empty weight and any noncommercial bus, except as provided in division (B)(14) of this section;

(12) Fifty-five miles per hour for operators of any motor vehicle weighing eight thousand pounds or less empty weight and any commercial bus at all times on all portions of freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, and freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, unless a higher speed limit is established under division (L) of this section;

(13) Sixty-five miles per hour for operators of any motor vehicle weighing eight thousand pounds or less empty weight and any commercial bus at all times on all portions of the following:

(a) Freeways that are part of the interstate system and that had such a

speed limit established prior to October 1, 1995, and freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995;

(b) Freeways that are part of the interstate system and freeways that are not part of the interstate system but are built to the standards and specifications that are applicable to freeways that are part of the interstate system, and that had such a speed limit established under division (L) of this section;

(c) Rural, divided, multi-lane highways that are designated as part of the national highway system under the "National Highway System Designation Act of 1995," 109 Stat. 568, 23 U.S.C.A. 103, and that had such a speed limit established under division (M) of this section.

(14) Sixty-five miles per hour at all times on all portions of freeways that are part of the interstate system and that had such a speed limit on the effective date of this amendment for operators of any motor vehicle weighing in excess of eight thousand pounds empty weight and any noncommercial bus.

(C) It is prima-facie unlawful for any person to exceed any of the speed limitations in divisions (B)(1)(a), (2), (3), (4), (6), (7), and (8) of this section, or any declared or established pursuant to this section by the director or local authorities and it is unlawful for any person to exceed any of the speed limitations in division (D) of this section. No person shall be convicted of more than one violation of this section for the same conduct, although violations of more than one provision of this section may be charged in the alternative in a single affidavit.

(D) No person shall operate a motor vehicle, trackless trolley, or streetcar upon a street or highway as follows:

(1) At a speed exceeding fifty-five miles per hour, except upon a freeway as provided in divisions (B)(13) and (14) of this section;

(2) At a speed exceeding sixty-five miles per hour upon a freeway as provided in divisions (B)(13) and (14) of this section;

(3) If a motor vehicle weighing in excess of eight thousand pounds empty weight or a noncommercial bus as prescribed in division (B)(11) of this section, at a speed exceeding fifty-five miles per hour upon a freeway as provided in that division;

(4) At a speed exceeding the posted speed limit upon a freeway for which the director has determined and declared a speed limit of not more than sixty-five miles per hour pursuant to division (L)(2) or (M) of this section;

(5) At a speed exceeding sixty-five miles per hour upon a freeway for which such a speed limit has been established through the operation of division (L)(3) of this section;

(6) At a speed exceeding the posted speed limit upon a freeway for which the director has determined and declared a speed limit pursuant to division (I)(2) of this section.

(E) In every charge of violation of this section the affidavit and warrant shall specify the time, place, and speed at which the defendant is alleged to have driven, and in charges made in reliance upon division (C) of this section also the speed which division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of, or a limit declared or established pursuant to, this section declares is prima-facie lawful at the time and place of such alleged violation, except that in affidavits where a person is alleged to have driven at a greater speed than will permit the person to bring the vehicle to a stop within the assured clear distance ahead the affidavit and warrant need not specify the speed at which the defendant is alleged to have driven.

(F) When a speed in excess of both a prima-facie limitation and a limitation in division (D)(1), (2), (3), (4), (5), or (6) of this section is alleged, the defendant shall be charged in a single affidavit, alleging a single act, with a violation indicated of both division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of this section, or of a limit declared or established pursuant to this section by the director or local authorities, and of the limitation in division (D)(1), (2), (3), (4), (5), or (6) of this section. If the court finds a violation of division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of, or a limit declared or established pursuant to, this section has occurred, it shall enter a judgment of conviction under such division and dismiss the charge under division (D)(1), (2), (3), (4), (5), or (6) of this section. If it finds no violation of division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of, or a limit declared or established pursuant to, this section, it shall then consider whether the evidence supports a conviction under division (D)(1), (2), (3), (4), (5), or (6) of this section.

(G) Points shall be assessed for violation of a limitation under division (D) of this section in accordance with section 4510.036 of the Revised Code.

(H) Whenever the director determines upon the basis of a geometric and traffic characteristic study that any speed limit set forth in divisions (B)(1)(a) to (D) of this section is greater or less than is reasonable or safe under the conditions found to exist at any portion of a street or highway under the jurisdiction of the director, the director shall determine and declare a reasonable and safe prima-facie speed limit, which shall be

effective when appropriate signs giving notice of it are erected at the location.

(I)(1) Except as provided in divisions (I)(2) and (K) of this section, whenever local authorities determine upon the basis of an engineering and traffic investigation that the speed permitted by divisions (B)(1)(a) to (D) of this section, on any part of a highway under their jurisdiction, is greater than is reasonable and safe under the conditions found to exist at such location, the local authorities may by resolution request the director to determine and declare a reasonable and safe prima-facie speed limit. Upon receipt of such request the director may determine and declare a reasonable and safe prima-facie speed limit at such location, and if the director does so, then such declared speed limit shall become effective only when appropriate signs giving notice thereof are erected at such location by the local authorities. The director may withdraw the declaration of a prima-facie speed limit whenever in the director's opinion the altered prima-facie speed becomes unreasonable. Upon such withdrawal, the declared prima-facie speed shall become ineffective and the signs relating thereto shall be immediately removed by the local authorities.

(2) A local authority may determine on the basis of a geometric and traffic characteristic study that the speed limit of sixty-five miles per hour on a portion of a freeway under its jurisdiction that was established through the operation of division (L)(3) of this section is greater than is reasonable or safe under the conditions found to exist at that portion of the freeway. If the local authority makes such a determination, the local authority by resolution may request the director to determine and declare a reasonable and safe speed limit of not less than fifty-five miles per hour for that portion of the freeway. If the director takes such action, the declared speed limit becomes effective only when appropriate signs giving notice of it are erected at such location by the local authority.

(J) Local authorities in their respective jurisdictions may authorize by ordinance higher prima-facie speeds than those stated in this section upon through highways, or upon highways or portions thereof where there are no intersections, or between widely spaced intersections, provided signs are erected giving notice of the authorized speed, but local authorities shall not modify or alter the basic rule set forth in division (A) of this section or in any event authorize by ordinance a speed in excess of fifty miles per hour.

Alteration of prima-facie limits on state routes by local authorities shall not be effective until the alteration has been approved by the director. The director may withdraw approval of any altered prima-facie speed limits whenever in the director's opinion any altered prima-facie speed becomes

unreasonable, and upon such withdrawal, the altered prima-facie speed shall become ineffective and the signs relating thereto shall be immediately removed by the local authorities.

(K)(1) As used in divisions (K)(1), (2), (3), and (4) of this section, "unimproved highway" means a highway consisting of any of the following:

- (a) Unimproved earth;
- (b) Unimproved graded and drained earth;
- (c) Gravel.

(2) Except as otherwise provided in divisions (K)(4) and (5) of this section, whenever a board of township trustees determines upon the basis of an engineering and traffic investigation that the speed permitted by division (B)(5) of this section on any part of an unimproved highway under its jurisdiction and in the unincorporated territory of the township is greater than is reasonable or safe under the conditions found to exist at the location, the board may by resolution declare a reasonable and safe prima-facie speed limit of fifty-five but not less than twenty-five miles per hour. An altered speed limit adopted by a board of township trustees under this division becomes effective when appropriate traffic control devices, as prescribed in section 4511.11 of the Revised Code, giving notice thereof are erected at the location, which shall be no sooner than sixty days after adoption of the resolution.

(3)(a) Whenever, in the opinion of a board of township trustees, any altered prima-facie speed limit established by the board under this division becomes unreasonable, the board may adopt a resolution withdrawing the altered prima-facie speed limit. Upon the adoption of such a resolution, the altered prima-facie speed limit becomes ineffective and the traffic control devices relating thereto shall be immediately removed.

(b) Whenever a highway ceases to be an unimproved highway and the board has adopted an altered prima-facie speed limit pursuant to division (K)(2) of this section, the board shall, by resolution, withdraw the altered prima-facie speed limit as soon as the highway ceases to be unimproved. Upon the adoption of such a resolution, the altered prima-facie speed limit becomes ineffective and the traffic control devices relating thereto shall be immediately removed.

(4)(a) If the boundary of two townships rests on the centerline of an unimproved highway in unincorporated territory and both townships have jurisdiction over the highway, neither of the boards of township trustees of such townships may declare an altered prima-facie speed limit pursuant to division (K)(2) of this section on the part of the highway under their joint jurisdiction unless the boards of township trustees of both of the townships

determine, upon the basis of an engineering and traffic investigation, that the speed permitted by division (B)(5) of this section is greater than is reasonable or safe under the conditions found to exist at the location and both boards agree upon a reasonable and safe prima-facie speed limit of less than fifty-five but not less than twenty-five miles per hour for that location. If both boards so agree, each shall follow the procedure specified in division (K)(2) of this section for altering the prima-facie speed limit on the highway. Except as otherwise provided in division (K)(4)(b) of this section, no speed limit altered pursuant to division (K)(4)(a) of this section may be withdrawn unless the boards of township trustees of both townships determine that the altered prima-facie speed limit previously adopted becomes unreasonable and each board adopts a resolution withdrawing the altered prima-facie speed limit pursuant to the procedure specified in division (K)(3)(a) of this section.

(b) Whenever a highway described in division (K)(4)(a) of this section ceases to be an unimproved highway and two boards of township trustees have adopted an altered prima-facie speed limit pursuant to division (K)(4)(a) of this section, both boards shall, by resolution, withdraw the altered prima-facie speed limit as soon as the highway ceases to be unimproved. Upon the adoption of the resolution, the altered prima-facie speed limit becomes ineffective and the traffic control devices relating thereto shall be immediately removed.

(5) As used in division (K)(5) of this section:

(a) "Commercial subdivision" means any platted territory outside the limits of a municipal corporation and fronting a highway where, for a distance of three hundred feet or more, the frontage is improved with buildings in use for commercial purposes, or where the entire length of the highway is less than three hundred feet long and the frontage is improved with buildings in use for commercial purposes.

(b) "Residential subdivision" means any platted territory outside the limits of a municipal corporation and fronting a highway, where, for a distance of three hundred feet or more, the frontage is improved with residences or residences and buildings in use for business, or where the entire length of the highway is less than three hundred feet long and the frontage is improved with residences or residences and buildings in use for business.

Whenever a board of township trustees finds upon the basis of an engineering and traffic investigation that the prima-facie speed permitted by division (B)(5) of this section on any part of a highway under its jurisdiction that is located in a commercial or residential subdivision, except on

highways or portions thereof at the entrances to which vehicular traffic from the majority of intersecting highways is required to yield the right-of-way to vehicles on such highways in obedience to stop or yield signs or traffic control signals, is greater than is reasonable and safe under the conditions found to exist at the location, the board may by resolution declare a reasonable and safe prima-facie speed limit of less than fifty-five but not less than twenty-five miles per hour at the location. An altered speed limit adopted by a board of township trustees under this division shall become effective when appropriate signs giving notice thereof are erected at the location by the township. Whenever, in the opinion of a board of township trustees, any altered prima-facie speed limit established by it under this division becomes unreasonable, it may adopt a resolution withdrawing the altered prima-facie speed, and upon such withdrawal, the altered prima-facie speed shall become ineffective, and the signs relating thereto shall be immediately removed by the township.

(L)(1) Within one hundred twenty days of February 29, 1996, the director of transportation, based upon a geometric and traffic characteristic study of a freeway that is part of the interstate system or that is not part of the interstate system, but is built to the standards and specifications that are applicable to freeways that are part of the interstate system, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over a portion of such freeway, may determine and declare that the speed limit of less than sixty-five miles per hour established on such freeway or portion of freeway either is reasonable and safe or is less than that which is reasonable and safe.

(2) If the established speed limit for such a freeway or portion of freeway is determined to be less than that which is reasonable and safe, the director of transportation, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over the portion of freeway, shall determine and declare a reasonable and safe speed limit of not more than sixty-five miles per hour for that freeway or portion of freeway.

The director of transportation or local authority having jurisdiction over the freeway or portion of freeway shall erect appropriate signs giving notice of the speed limit at such location within one hundred fifty days of February 29, 1996. Such speed limit becomes effective only when such signs are erected at the location.

(3) If, within one hundred twenty days of February 29, 1996, the director of transportation does not make a determination and declaration of a reasonable and safe speed limit for a freeway or portion of freeway that is part of the interstate system or that is not part of the interstate system, but is

built to the standards and specifications that are applicable to freeways that are part of the interstate system and that has a speed limit of less than sixty-five miles per hour, the speed limit on that freeway or portion of a freeway shall be sixty-five miles per hour. The director of transportation or local authority having jurisdiction over the freeway or portion of the freeway shall erect appropriate signs giving notice of the speed limit of sixty-five miles per hour at such location within one hundred fifty days of February 29, 1996. Such speed limit becomes effective only when such signs are erected at the location. A speed limit established through the operation of division (L)(3) of this section is subject to reduction under division (I)(2) of this section.

(M) Within three hundred sixty days after February 29, 1996, the director of transportation, based upon a geometric and traffic characteristic study of a rural, divided, multi-lane highway that has been designated as part of the national highway system under the "National Highway System Designation Act of 1995," 109 Stat. 568, 23 U.S.C.A. 103, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over a portion of the highway, may determine and declare that the speed limit of less than sixty-five miles per hour established on the highway or portion of highway either is reasonable and safe or is less than that which is reasonable and safe.

If the established speed limit for the highway or portion of highway is determined to be less than that which is reasonable and safe, the director of transportation, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over the portion of highway, shall determine and declare a reasonable and safe speed limit of not more than sixty-five miles per hour for that highway or portion of highway. The director of transportation or local authority having jurisdiction over the highway or portion of highway shall erect appropriate signs giving notice of the speed limit at such location within three hundred ninety days after February 29, 1996. The speed limit becomes effective only when such signs are erected at the location.

(N)(1)(a) If the boundary of two local authorities rests on the centerline of a highway and both authorities have jurisdiction over the highway, the speed limit for the part of the highway within their joint jurisdiction shall be either one of the following as agreed to by both authorities:

(i) Either prima-facie speed limit permitted by division (B) of this section;

(ii) An altered speed limit determined and posted in accordance with this section.

(b) If the local authorities are unable to reach an agreement, the speed limit shall remain as established and posted under this section.

(2) Neither local authority may declare an altered prima-facie speed limit pursuant to this section on the part of the highway under their joint jurisdiction unless both of the local authorities determine, upon the basis of an engineering and traffic investigation, that the speed permitted by this section is greater than is reasonable or safe under the conditions found to exist at the location and both authorities agree upon a uniform reasonable and safe prima-facie speed limit of less than fifty-five but not less than twenty-five miles per hour for that location. If both authorities so agree, each shall follow the procedure specified in this section for altering the prima-facie speed limit on the highway, and the speed limit for the part of the highway within their joint jurisdiction shall be uniformly altered. No altered speed limit may be withdrawn unless both local authorities determine that the altered prima-facie speed limit previously adopted becomes unreasonable and each adopts a resolution withdrawing the altered prima-facie speed limit pursuant to the procedure specified in this section.

(O) As used in this section:

(1) "Interstate system" has the same meaning as in 23 U.S.C.A. 101.

(2) "Commercial bus" means a motor vehicle designed for carrying more than nine passengers and used for the transportation of persons for compensation.

(3) "Noncommercial bus" includes but is not limited to a school bus or a motor vehicle operated solely for the transportation of persons associated with a charitable or nonprofit organization.

(P)(1) A violation of any provision of this section is one of the following:

(a) Except as otherwise provided in divisions (P)(1)(b), (1)(c), (2), and (3) of this section, a minor misdemeanor;

(b) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two violations of any provision of this section or of any provision of a municipal ordinance that is substantially similar to any provision of this section, a misdemeanor of the fourth degree;

(c) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to three or more violations of any provision of this section or of any provision of a municipal ordinance that is substantially similar to any provision of this section, a misdemeanor of the third degree.

(2) If the offender has not previously been convicted of or pleaded guilty to a violation of any provision of this section or of any provision of a municipal ordinance that is substantially similar to this section and operated

a motor vehicle faster than thirty-five miles an hour in a business district of a municipal corporation, faster than fifty miles an hour in other portions of a municipal corporation, or faster than thirty-five miles an hour in a school zone during recess or while children are going to or leaving school during the school's opening or closing hours, a misdemeanor of the fourth degree.

(3) Notwithstanding division (P)(1) of this section, if the offender operated a motor vehicle in a construction zone where a sign was then posted in accordance with section 4511.98 of the Revised Code, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two times the usual amount imposed for the violation. No court shall impose a fine of two times the usual amount imposed for the violation upon an offender if the offender alleges, in an affidavit filed with the court prior to the offender's sentencing, that the offender is indigent and is unable to pay the fine imposed pursuant to this division and if the court determines that the offender is an indigent person and unable to pay the fine.

Sec. 4511.75. (A) The driver of a vehicle, streetcar, or trackless trolley upon meeting or overtaking from either direction any school bus stopped for the purpose of receiving or discharging any school child, person attending programs offered by community boards of mental health and county boards of ~~mental retardation~~ and developmental disabilities, or child attending a program offered by a head start agency, shall stop at least ten feet from the front or rear of the school bus and shall not proceed until such school bus resumes motion, or until signaled by the school bus driver to proceed.

It is no defense to a charge under this division that the school bus involved failed to display or be equipped with an automatically extended stop warning sign as required by division (B) of this section.

(B) Every school bus shall be equipped with amber and red visual signals meeting the requirements of section 4511.771 of the Revised Code, and an automatically extended stop warning sign of a type approved by the state board of education, which shall be actuated by the driver of the bus whenever but only whenever the bus is stopped or stopping on the roadway for the purpose of receiving or discharging school children, persons attending programs offered by community boards of mental health and county boards of ~~mental retardation~~ and developmental disabilities, or children attending programs offered by head start agencies. A school bus driver shall not actuate the visual signals or the stop warning sign in designated school bus loading areas where the bus is entirely off the roadway or at school buildings when children or persons attending programs offered by community boards of mental health and county boards of ~~mental retardation~~ and developmental disabilities are loading or unloading at

curbside or at buildings when children attending programs offered by head start agencies are loading or unloading at curbside. The visual signals and stop warning sign shall be synchronized or otherwise operated as required by rule of the board.

(C) Where a highway has been divided into four or more traffic lanes, a driver of a vehicle, streetcar, or trackless trolley need not stop for a school bus approaching from the opposite direction which has stopped for the purpose of receiving or discharging any school child, persons attending programs offered by community boards of mental health and county boards of ~~mental retardation and~~ developmental disabilities, or children attending programs offered by head start agencies. The driver of any vehicle, streetcar, or trackless trolley overtaking the school bus shall comply with division (A) of this section.

(D) School buses operating on divided highways or on highways with four or more traffic lanes shall receive and discharge all school children, persons attending programs offered by community boards of mental health and county boards of ~~mental retardation and~~ developmental disabilities, and children attending programs offered by head start agencies on their residence side of the highway.

(E) No school bus driver shall start the driver's bus until after any child, person attending programs offered by community boards of mental health and county boards of ~~mental retardation and~~ developmental disabilities, or child attending a program offered by a head start agency who may have alighted therefrom has reached a place of safety on the child's or person's residence side of the road.

(F)(1) Whoever violates division (A) of this section may be fined an amount not to exceed five hundred dollars. A person who is issued a citation for a violation of division (A) of this section is not permitted to enter a written plea of guilty and waive the person's right to contest the citation in a trial but instead must appear in person in the proper court to answer the charge.

(2) In addition to and independent of any other penalty provided by law, the court or mayor may impose upon an offender who violates this section a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code. When a license is suspended under this section, the court or mayor shall cause the offender to deliver the license to the court, and the court or clerk of the court immediately shall forward the license to the registrar of motor vehicles, together with notice of the court's

action.

(G) As used in this section:

(1) "Head start agency" has the same meaning as in section 3301.32 of the Revised Code.

(2) "School bus," as used in relation to children who attend a program offered by a head start agency, means a bus that is owned and operated by a head start agency, is equipped with an automatically extended stop warning sign of a type approved by the state board of education, is painted the color and displays the markings described in section 4511.77 of the Revised Code, and is equipped with amber and red visual signals meeting the requirements of section 4511.771 of the Revised Code, irrespective of whether or not the bus has fifteen or more children aboard at any time. "School bus" does not include a van owned and operated by a head start agency, irrespective of its color, lights, or markings.

Sec. 4723.071. (A) As used in this section, "health-related activities," "MR/DD personnel," "prescribed medication," and "tube feeding" have the same meanings as in section 5123.41 of the Revised Code.

(B) The board of nursing shall adopt rules as it considers necessary to govern nursing delegation as it applies to MR/DD personnel who administer prescribed medications, perform health-related activities, and perform tube feedings pursuant to the authority granted under section 5123.42 of the Revised Code. The board shall not establish in the rules any requirement that is inconsistent with the authority of MR/DD personnel granted under that section. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(C) The board of nursing may accept complaints from any person or government entity regarding the performance or qualifications of MR/DD personnel who administer prescribed medications, perform health-related activities, and perform tube feedings pursuant to the authority granted under section 5123.42 of the Revised Code. The board shall refer all complaints received to the department of ~~mental-retardation-and~~ developmental disabilities. The board may participate in an investigation of a complaint being conducted by the department under section 5123.421 of the Revised Code.

Sec. 5101.35. (A) As used in this section:

(1) "Agency" means the following entities that administer a family services program:

- (a) The department of job and family services;
- (b) A county department of job and family services;
- (c) A public children services agency;

(d) A private or government entity administering, in whole or in part, a family services program for or on behalf of the department of job and family services or a county department of job and family services or public children services agency.

(2) "Appellant" means an applicant, participant, former participant, recipient, or former recipient of a family services program who is entitled by federal or state law to a hearing regarding a decision or order of the agency that administers the program.

(3) "Family services program" means assistance provided under a Title IV-A program as defined in section 5101.80 of the Revised Code or under Chapter 5104., 5111., or 5115. or section 173.35, 5101.141, 5101.46, 5101.461, 5101.54, 5153.163, or 5153.165 of the Revised Code, other than assistance provided under section 5101.46 of the Revised Code by the department of mental health, the department of ~~mental retardation and~~ developmental disabilities, a board of alcohol, drug addiction, and mental health services, or a county board of ~~mental retardation and~~ developmental disabilities.

(B) Except as provided by divisions (G) and (H) of this section, an appellant who appeals under federal or state law a decision or order of an agency administering a family services program shall, at the appellant's request, be granted a state hearing by the department of job and family services. This state hearing shall be conducted in accordance with rules adopted under this section. The state hearing shall be recorded, but neither the recording nor a transcript of the recording shall be part of the official record of the proceeding. A state hearing decision is binding upon the agency and department, unless it is reversed or modified on appeal to the director of job and family services or a court of common pleas.

(C) Except as provided by division (G) of this section, an appellant who disagrees with a state hearing decision may make an administrative appeal to the director of job and family services in accordance with rules adopted under this section. This administrative appeal does not require a hearing, but the director or the director's designee shall review the state hearing decision and previous administrative action and may affirm, modify, remand, or reverse the state hearing decision. Any person designated to make an administrative appeal decision on behalf of the director shall have been admitted to the practice of law in this state. An administrative appeal decision is the final decision of the department and is binding upon the department and agency, unless it is reversed or modified on appeal to the court of common pleas.

(D) An agency shall comply with a decision issued pursuant to division

(B) or (C) of this section within the time limits established by rules adopted under this section. If a county department of job and family services or a public children services agency fails to comply within these time limits, the department may take action pursuant to section 5101.24 of the Revised Code. If another agency fails to comply within the time limits, the department may force compliance by withholding funds due the agency or imposing another sanction established by rules adopted under this section.

(E) An appellant who disagrees with an administrative appeal decision of the director of job and family services or the director's designee issued under division (C) of this section may appeal from the decision to the court of common pleas pursuant to section 119.12 of the Revised Code. The appeal shall be governed by section 119.12 of the Revised Code except that:

(1) The person may appeal to the court of common pleas of the county in which the person resides, or to the court of common pleas of Franklin county if the person does not reside in this state.

(2) The person may apply to the court for designation as an indigent and, if the court grants this application, the appellant shall not be required to furnish the costs of the appeal.

(3) The appellant shall mail the notice of appeal to the department of job and family services and file notice of appeal with the court within thirty days after the department mails the administrative appeal decision to the appellant. For good cause shown, the court may extend the time for mailing and filing notice of appeal, but such time shall not exceed six months from the date the department mails the administrative appeal decision. Filing notice of appeal with the court shall be the only act necessary to vest jurisdiction in the court.

(4) The department shall be required to file a transcript of the testimony of the state hearing with the court only if the court orders the department to file the transcript. The court shall make such an order only if it finds that the department and the appellant are unable to stipulate to the facts of the case and that the transcript is essential to a determination of the appeal. The department shall file the transcript not later than thirty days after the day such an order is issued.

(F) The department of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section, including rules governing the following:

(1) State hearings under division (B) of this section. The rules shall include provisions regarding notice of eligibility termination and the opportunity of an appellant appealing a decision or order of a county department of job and family services to request a county conference with

the county department before the state hearing is held.

(2) Administrative appeals under division (C) of this section;

(3) Time limits for complying with a decision issued under division (B) or (C) of this section;

(4) Sanctions that may be applied against an agency under division (D) of this section.

(G) The department of job and family services may adopt rules in accordance with Chapter 119. of the Revised Code establishing an appeals process for an appellant who appeals a decision or order regarding a Title IV-A program identified under division (A)(4)(c), (d), (e), or (f) of section 5101.80 of the Revised Code that is different from the appeals process established by this section. The different appeals process may include having a state agency that administers the Title IV-A program pursuant to an interagency agreement entered into under section 5101.801 of the Revised Code administer the appeals process.

(H) If an appellant receiving medicaid through a health insuring corporation that holds a certificate of authority under Chapter 1751. of the Revised Code is appealing a denial of medicaid services based on lack of medical necessity or other clinical issues regarding coverage by the health insuring corporation, the person hearing the appeal may order an independent medical review if that person determines that a review is necessary. The review shall be performed by a health care professional with appropriate clinical expertise in treating the recipient's condition or disease. The department shall pay the costs associated with the review.

A review ordered under this division shall be part of the record of the hearing and shall be given appropriate evidentiary consideration by the person hearing the appeal.

(I) The requirements of Chapter 119. of the Revised Code apply to a state hearing or administrative appeal under this section only to the extent, if any, specifically provided by rules adopted under this section.

Sec. 5101.46. (A) As used in this section:

(1) "Title XX" means Title XX of the "Social Security Act," 88 Stat. 2337 (1974), 42 U.S.C.A. 1397, as amended.

(2) "Respective local agency" means, with respect to the department of job and family services, a county department of job and family services; with respect to the department of mental health, a board of alcohol, drug addiction, and mental health services; and with respect to the department of ~~mental retardation and~~ developmental disabilities, a county board of ~~mental retardation and~~ developmental disabilities.

(3) "Federal poverty guidelines" means the poverty guidelines as revised

annually by the United States department of health and human services in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C.A. 9902, as amended, for a family size equal to the size of the family of the person whose income is being determined.

(B) The departments of job and family services, mental health, and ~~mental retardation and~~ developmental disabilities, with their respective local agencies, shall administer the provision of social services funded through grants made under Title XX. The social services furnished with Title XX funds shall be directed at the following goals:

(1) Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) Achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

(3) Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;

(4) Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care;

(5) Securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

(C)(1) All federal funds received under Title XX shall be appropriated as follows:

(a) Seventy-two and one-half per cent to the department of job and family services;

(b) Twelve and ninety-three one-hundredths per cent to the department of mental health;

(c) Fourteen and fifty-seven one-hundredths per cent to the department of ~~mental retardation and~~ developmental disabilities.

(2) Each state department shall, subject to the approval of the controlling board, develop formulas for the distribution of their Title XX appropriations to their respective local agencies. The formulas shall take into account the total population of the area that is served by the agency, the percentage of the population in the area that falls below the federal poverty guidelines, and the agency's history of and ability to utilize Title XX funds.

(3) Each of the state departments shall expend no more than three per cent of its Title XX appropriation for state administrative costs. Each of the department's respective local agencies shall expend no more than fourteen

per cent of its Title XX appropriation for local administrative costs.

(4) The department of job and family services shall expend no more than two per cent of its Title XX appropriation for the training of the following:

(a) Employees of county departments of job and family services;

(b) Providers of services under contract with the state departments' respective local agencies;

(c) Employees of a public children services agency directly engaged in providing Title XX services.

(D) The department of job and family services shall prepare a biennial comprehensive Title XX social services plan on the intended use of Title XX funds. The department shall develop a method for obtaining public comment during the development of the plan and following its completion.

For each state fiscal year, the department of job and family services shall prepare a report on the actual use of Title XX funds. The department shall make the annual report available for public inspection.

The departments of mental health and ~~mental retardation~~ and developmental disabilities shall prepare and submit to the department of job and family services the portions of each biennial plan and annual report that apply to services for mental health and mental retardation and developmental disabilities. Each respective local agency of the three state departments shall submit information as necessary for the preparation of biennial plans and annual reports.

(E) Each county department shall adopt a county profile for the administration and provision of Title XX social services in the county. In developing its county profile, the county department shall take into consideration the comments and recommendations received from the public by the county family services planning committee pursuant to section 329.06 of the Revised Code. As part of its preparation of the county profile, the county department may prepare a local needs report analyzing the need for Title XX social services.

The county department shall submit the county profile to the board of county commissioners for its review. Once the county profile has been approved by the board, the county department shall file a copy of the county profile with the department of job and family services. The department shall approve the county profile if the department determines the profile provides for the Title XX social services to meet the goals specified in division (B) of this section.

(F) Any of the three state departments and their respective local agencies may require that an entity under contract to provide social services

with Title XX funds submit to an audit on the basis of alleged misuse or improper accounting of funds. If an audit is required, the social services provider shall reimburse the state department or local agency for the cost it incurred in conducting the audit or having the audit conducted.

If an audit demonstrates that a social services provider is responsible for one or more adverse findings, the provider shall reimburse the appropriate state department or its respective local agency the amount of the adverse findings. The amount shall not be reimbursed with Title XX funds received under this section. The three state departments and their respective local agencies may terminate or refuse to enter into a Title XX contract with a social services provider if there are adverse findings in an audit that are the responsibility of the provider.

(G) The department of job and family services may adopt rules to implement and carry out the purposes of this section. Rules governing financial and operational matters of the department or matters between the department and county departments of job and family services shall be adopted as internal management rules in accordance with section 111.15 of the Revised Code. Rules governing eligibility for services, program participation, and other matters pertaining to applicants and participants shall be adopted in accordance with Chapter 119. of the Revised Code.

Sec. 5101.611. If a county department of job and family services knows or has reasonable cause to believe that the subject of a report made under section 5101.61 or of an investigation conducted under sections 5101.62 to 5101.64 or on the initiative of the department is mentally retarded or developmentally disabled as defined in section 5126.01 of the Revised Code, the department shall refer the case to the county board of ~~mental retardation and~~ developmental disabilities of that county for review pursuant to section 5126.31 of the Revised Code.

If a county board of ~~mental retardation and~~ developmental disabilities refers a case to the county department of job and family services in accordance with section 5126.31, the department shall proceed with the case in accordance with sections 5101.60 to 5101.71 of the Revised Code.

Sec. 5103.02. As used in sections 5103.03 to 5103.17 of the Revised Code:

(A) "Association" or "institution" includes any incorporated or unincorporated organization, society, association, or agency, public or private, that receives or cares for children for two or more consecutive weeks; any individual, including the operator of a foster home, who, for hire, gain, or reward, receives or cares for children for two or more consecutive weeks, unless the individual is related to them by blood or

marriage; and any individual not in the regular employ of a court, or of an institution or association certified in accordance with section 5103.03 of the Revised Code, who in any manner becomes a party to the placing of children in foster homes, unless the individual is related to such children by blood or marriage, or is the appointed guardian of such children; provided, that any organization, society, association, school, agency, child guidance center, detention or rehabilitation facility, or children's clinic licensed, regulated, approved, operated under the direction of, or otherwise certified by the department of education, a local board of education, the department of youth services, the department of mental health, or the department of ~~mental retardation and~~ developmental disabilities, or any individual who provides care for only a single-family group, placed there by their parents or other relative having custody, shall not be considered as being within the purview of these sections.

(B) "Family foster home" means a foster home that is not a specialized foster home.

(C) "Foster caregiver" means a person holding a valid foster home certificate issued under section 5103.03 of the Revised Code.

(D) "Foster home" means a private residence in which children are received apart from their parents, guardian, or legal custodian, by an individual reimbursed for providing the children nonsecure care, supervision, or training twenty-four hours a day. "Foster home" does not include care provided for a child in the home of a person other than the child's parent, guardian, or legal custodian while the parent, guardian, or legal custodian is temporarily away. Family foster homes and specialized foster homes are types of foster homes.

(E) "Medically fragile foster home" means a foster home that provides specialized medical services designed to meet the needs of children with intensive health care needs who meet all of the following criteria:

(1) Under rules adopted by the department of job and family services governing payment under Chapter 5111. of the Revised Code for long-term care services, the children require a skilled level of care.

(2) The children require the services of a doctor of medicine or osteopathic medicine at least once a week due to the instability of their medical conditions.

(3) The children require the services of a registered nurse on a daily basis.

(4) The children are at risk of institutionalization in a hospital, skilled nursing facility, or intermediate care facility for the mentally retarded.

(F) "Recommending agency" means a public children services agency,

private child placing agency, or private noncustodial agency that recommends that the department of job and family services take any of the following actions under section 5103.03 of the Revised Code regarding a foster home:

- (1) Issue a certificate;
- (2) Deny a certificate;
- (3) Renew a certificate;
- (4) Deny renewal of a certificate;
- (5) Revoke a certificate.

(G) "Specialized foster home" means a medically fragile foster home or a treatment foster home.

(H) "Treatment foster home" means a foster home that incorporates special rehabilitative services designed to treat the specific needs of the children received in the foster home and that receives and cares for children who are emotionally or behaviorally disturbed, chemically dependent, mentally retarded, developmentally disabled, or who otherwise have exceptional needs.

Sec. 5103.13. (A) As used in this section and section 5103.131 of the Revised Code:

(1)(a) "Children's crisis care facility" means a facility that has as its primary purpose the provision of residential and other care to either or both of the following:

(i) One or more preteens voluntarily placed in the facility by the preteen's parent or other caretaker who is facing a crisis that causes the parent or other caretaker to seek temporary care for the preteen and referral for support services;

(ii) One or more preteens placed in the facility by a public children services agency or private child placing agency that has legal custody or permanent custody of the preteen and determines that an emergency situation exists necessitating the preteen's placement in the facility rather than an institution certified under section 5103.03 of the Revised Code or elsewhere.

(b) "Children's crisis care facility" does not include either of the following:

(i) Any organization, society, association, school, agency, child guidance center, detention or rehabilitation facility, or children's clinic licensed, regulated, approved, operated under the direction of, or otherwise certified by the department of education, a local board of education, the department of youth services, the department of mental health, or the department of ~~mental retardation~~ and developmental disabilities;

(ii) Any individual who provides care for only a single-family group, placed there by their parents or other relative having custody.

(2) "Legal custody" and "permanent custody" have the same meanings as in section 2151.011 of the Revised Code.

(3) "Preteen" means an individual under thirteen years of age.

(B) No person shall operate a children's crisis care facility or hold a children's crisis care facility out as a certified children's crisis care facility unless there is a valid children's crisis care facility certificate issued under this section for the facility.

(C) A person seeking to operate a children's crisis care facility shall apply to the director of job and family services to obtain a certificate for the facility. The director shall certify the person's children's crisis care facility if the facility meets all of the certification standards established in rules adopted under division (F) of this section and the person complies with all of the rules governing the certification of children's crisis care facilities adopted under that division. The issuance of a children's crisis care facility certificate does not exempt the facility from a requirement to obtain another certificate or license mandated by law.

(D)(1) No certified children's crisis care facility shall do any of the following:

(a) Provide residential care to a preteen for more than one hundred twenty days in a calendar year;

(b) Subject to division (D)(1)(c) of this section and except as provided in division (D)(2) of this section, provide residential care to a preteen for more than sixty consecutive days;

(c) Except as provided in division (D)(3) of this section, provide residential care to a preteen for more than seventy-two consecutive hours if a public children services agency or private child placing agency placed the preteen in the facility;

(d) Fail to comply with section 2151.86 of the Revised Code.

(2) A certified children's crisis care facility may provide residential care to a preteen for up to ninety consecutive days, other than a preteen placed in the facility by a public children services agency or private child placing agency, if any of the following are the case:

(a) The preteen's parent or other caretaker is enrolled in an alcohol and drug addiction program certified under section 3793.06 of the Revised Code or a community mental health service certified under section 5119.611 of the Revised Code;

(b) The preteen's parent or other caretaker is an inpatient in a hospital;

(c) The preteen's parent or other caretaker is incarcerated;

(d) A physician has diagnosed the preteen's parent or other caretaker as medically incapacitated.

(3) A certified children's crisis care facility may provide residential care to a preteen placed in the facility by a public children services agency or private child placing agency for more than seventy-two consecutive hours if the director of job and family services or the director's designee issues the agency a waiver of the seventy-two consecutive hour limitation. The waiver may authorize the certified children's crisis care facility to provide residential care to the preteen for up to fourteen consecutive days.

(E) The director of job and family services may suspend or revoke a children's crisis care facility's certificate pursuant to Chapter 119. of the Revised Code if the facility violates division (D) of this section or ceases to meet any of the certification standards established in rules adopted under division (F) of this section or the facility's operator ceases to comply with any of the rules governing the certification of children's crisis care facilities adopted under that division.

(F) Not later than ninety days after ~~the effective date of this amendment~~ September 21, 2006, the director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code for the certification of children's crisis care facilities. The rules shall specify that a certificate shall not be issued to an applicant if the conditions at the children's crisis care facility would jeopardize the health or safety of the preteens placed in the facility.

Sec. 5104.08. (A) There is hereby created in the department of job and family services a child care advisory council to advise and assist the department in the administration of this chapter and in the development of child care. The council shall consist of twenty-two voting members appointed by the director of job and family services with the approval of the governor. The director of job and family services, the director of ~~mental retardation and~~ developmental disabilities, the director of mental health, the superintendent of public instruction, the director of health, the director of commerce, and the state fire marshal shall serve as nonvoting members of the council.

Six members shall be representatives of child care centers subject to licensing, the members to represent a variety of centers, including nonprofit and proprietary, from different geographical areas of the state. At least three members shall be parents, guardians, or custodians of children receiving child care or publicly funded child care in the child's own home, a center, a type A home, a head start program, a certified type B home, or a type B home at the time of appointment. Three members shall be representatives of

in-home aides, type A homes, certified type B homes, or type B homes or head start programs. At least six members shall represent county departments of job and family services. The remaining members shall be representatives of the teaching, child development, and health professions, and other individuals interested in the welfare of children. At least six members of the council shall not be employees or licensees of a child day-care center, head start program, or type A home, or providers operating a certified type B home or type B home, or in-home aides.

Appointments shall be for three-year terms. Vacancies shall be filled for the unexpired terms. A member of the council is subject to removal by the director of job and family services for a willful and flagrant exercise of authority or power that is not authorized by law, for a refusal or willful neglect to perform any official duty as a member of the council imposed by law, or for being guilty of misfeasance, malfeasance, nonfeasance, or gross neglect of duty as a member of the council.

There shall be two co-chairpersons of the council. One co-chairperson shall be the director of job and family services or the director's designee, and one co-chairperson shall be elected by the members of the council. The council shall meet as often as is necessary to perform its duties, provided that it shall meet at least once in each quarter of each calendar year and at the call of the co-chairpersons. The co-chairpersons or their designee shall send to each member a written notice of the date, time, and place of each meeting.

Members of the council shall serve without compensation, but shall be reimbursed for necessary expenses.

(B) The child care advisory council shall advise the director on matters affecting the licensing of centers and type A homes and the certification of type B homes and in-home aides. The council shall make an annual report to the director of job and family services that addresses the availability, affordability, accessibility, and quality of child care and that summarizes the recommendations and plans of action that the council has proposed to the director during the preceding fiscal year. The director of job and family services shall provide copies of the report to the governor, speaker and minority leader of the house of representatives, and the president and minority leader of the senate and, on request, shall make copies available to the public.

(C) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code to implement this section.

Sec. 5107.24. (A) As used in this section:

(1) "Adult-supervised living arrangement" means a family setting

approved, licensed, or certified by the department of job and family services, the department of mental health, the department of ~~mental retardation~~ and developmental disabilities, the department of youth services, a public children services agency, a private child placing agency, or a private noncustodial agency that is maintained by a person age eighteen or older who assumes responsibility for the care and control of a minor parent, pregnant minor, or child of a minor parent or provides the minor parent, pregnant minor, or child of a minor parent supportive services, including counseling, guidance, and supervision. "Adult-supervised living arrangement" does not mean a public institution.

(2) "Child of a minor parent" means a child born to a minor parent, except that the child ceases to be considered a child of minor parent when the minor parent attains age eighteen.

(3) "Minor parent" means a parent who is under age eighteen and is not married.

(4) "Pregnant minor" means a pregnant person who is under age eighteen and not married.

(B)(1) Except as provided in division (B)(2) of this section and to the extent permitted by Title IV-A and federal regulations adopted under Title IV-A, a pregnant minor, minor parent, or child of a minor parent must reside in a place of residence maintained by a parent, guardian, custodian, or specified relative of the pregnant minor or minor parent as the parent's, guardian's, custodian's, or specified relative's own home to be eligible to participate in Ohio works first.

(2) To the extent permitted by Title IV-A and federal regulations adopted under it, a pregnant minor, minor parent, or child of a minor parent is exempt from the requirement of division (B)(1) of this section if any of the following apply:

(a) The minor parent or pregnant minor does not have a parent, guardian, custodian, or specified relative living or whose whereabouts are known.

(b) No parent, guardian, custodian, or specified relative of the minor parent or pregnant minor will allow the pregnant minor, minor parent, or minor parent's child to live in the parent's, guardian's, custodian's, or specified relative's home.

(c) The department of job and family services, a county department of job and family services, or a public children services agency determines that the physical or emotional health or safety of the pregnant minor, minor parent, or minor parent's child would be in jeopardy if the pregnant minor, minor parent, or minor parent's child lived in the same home as the parent,

guardian, custodian, or specified relative.

(d) The department of job and family services, a county department of job and family services, or a public children services agency otherwise determines that it is in the best interest of the pregnant minor, minor parent, or minor parent's child to waive the requirement of division (B)(1) of this section.

(C) A pregnant minor, minor parent, or child of a minor parent exempt from the requirement of division (B)(1) of this section must reside in an adult-supervised living arrangement to be eligible to participate in Ohio works first.

(D) The department of job and family services, whenever possible and to the extent permitted by Title IV-A and federal regulations adopted under it, shall provide cash assistance under Ohio works first to the parent, guardian, custodian, or specified relative of a pregnant minor or minor parent on behalf of the pregnant minor, minor parent, or minor parent's child.

Sec. 5111.042. The departments of ~~mental retardation and~~ developmental disabilities and job and family services may approve, reduce, deny, or terminate a service included in the individualized service plan developed for a medicaid recipient with mental retardation or other developmental disability who is eligible for medicaid case management services. If either department approves, reduces, denies, or terminates a service, that department shall timely notify the medicaid recipient that the recipient may request a hearing under section 5101.35 of the Revised Code.

Sec. 5111.151. (A) This section applies to eligibility determinations for all cases involving medicaid provided pursuant to this chapter, qualified medicare beneficiaries, specified low-income medicare beneficiaries, qualifying individuals-1, qualifying individuals-2, and medical assistance for covered families and children.

(B) As used in this section:

(1) "Trust" means any arrangement in which a grantor transfers real or personal property to a trust with the intention that it be held, managed, or administered by at least one trustee for the benefit of the grantor or beneficiaries. "Trust" includes any legal instrument or device similar to a trust.

(2) "Legal instrument or device similar to a trust" includes, but is not limited to, escrow accounts, investment accounts, partnerships, contracts, and other similar arrangements that are not called trusts under state law but are similar to a trust and to which all of the following apply:

(a) The property in the trust is held, managed, retained, or administered

by a trustee.

(b) The trustee has an equitable, legal, or fiduciary duty to hold, manage, retain, or administer the property for the benefit of the beneficiary.

(c) The trustee holds identifiable property for the beneficiary.

(3) "Grantor" is a person who creates a trust, including all of the following:

(a) An individual;

(b) An individual's spouse;

(c) A person, including a court or administrative body, with legal authority to act in place of or on behalf of an individual or an individual's spouse;

(d) A person, including a court or administrative body, that acts at the direction or on request of an individual or the individual's spouse.

(4) "Beneficiary" is a person or persons, including a grantor, who benefits in some way from a trust.

(5) "Trustee" is a person who manages a trust's principal and income for the benefit of the beneficiaries.

(6) "Person" has the same meaning as in section 1.59 of the Revised Code and includes an individual, corporation, business trust, estate, trust, partnership, and association.

(7) "Applicant" is an individual who applies for medicaid or the individual's spouse.

(8) "Recipient" is an individual who receives medicaid or the individual's spouse.

(9) "Revocable trust" is a trust that can be revoked by the grantor or the beneficiary, including all of the following, even if the terms of the trust state that it is irrevocable:

(a) A trust that provides that the trust can be terminated only by a court;

(b) A trust that terminates on the happening of an event, but only if the event occurs at the direction or control of the grantor, beneficiary, or trustee.

(10) "Irrevocable trust" is a trust that cannot be revoked by the grantor or terminated by a court and that terminates only on the occurrence of an event outside of the control or direction of the beneficiary or grantor.

(11) "Payment" is any disbursement from the principal or income of the trust, including actual cash, noncash or property disbursements, or the right to use and occupy real property.

(12) "Payments to or for the benefit of the applicant or recipient" is a payment to any person resulting in a direct or indirect benefit to the applicant or recipient.

(13) "Testamentary trust" is a trust that is established by a will and does

not take effect until after the death of the person who created the trust.

(C) If an applicant or recipient is a beneficiary of a trust, the county department of job and family services shall determine what type of trust it is and shall treat the trust in accordance with the appropriate provisions of this section and rules adopted by the department of job and family services governing trusts. The county department of job and family services may determine that the trust or portion of the trust is one of the following:

- (1) A countable resource;
- (2) Countable income;
- (3) A countable resource and countable income;
- (4) Not a countable resource or countable income.

(D)(1) A trust or legal instrument or device similar to a trust shall be considered a medicaid qualifying trust if all of the following apply:

- (a) The trust was established on or prior to August 10, 1993.
- (b) The trust was not established by a will.
- (c) The trust was established by an applicant or recipient.
- (d) The applicant or recipient is or may become the beneficiary of all or part of the trust.
- (e) Payment from the trust is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the applicant or recipient.

(2) If a trust meets the requirement of division (D)(1) of this section, the amount of the trust that is considered by the county department of job and family services as an available resource to the applicant or recipient shall be the maximum amount of payments permitted under the terms of the trust to be distributed to the applicant or recipient, assuming the full exercise of discretion by the trustee or trustees. The maximum amount shall include only amounts that are permitted to be distributed but are not distributed from either the income or principal of the trust.

(3) Amounts that are actually distributed from a medicaid qualifying trust to a beneficiary for any purpose shall be treated in accordance with rules adopted by the department of job and family services governing income.

(4) Availability of a medicaid qualifying trust shall be considered without regard to any of the following:

- (a) Whether or not the trust is irrevocable or was established for purposes other than to enable a grantor to qualify for medicaid, medical assistance for covered families and children, or as a qualified medicare beneficiary, specified low-income medicare beneficiary, qualifying individual-1, or qualifying individual-2;

(b) Whether or not the trustee actually exercises discretion.

(5) If any real or personal property is transferred to a medicaid qualifying trust that is not distributable to the applicant or recipient, the transfer shall be considered an improper disposition of assets and shall be subject to section 5111.0116 of the Revised Code and rules to implement that section adopted under section 5111.011 of the Revised Code.

(6) The baseline date for the look-back period for disposition of assets involving a medicaid qualifying trust shall be the date on which the applicant or recipient is both institutionalized and first applies for medicaid.

(E)(1) A trust or legal instrument or device similar to a trust shall be considered a self-settled trust if all of the following apply:

(a) The trust was established on or after August 11, 1993.

(b) The trust was not established by a will.

(c) The trust was established by an applicant or recipient, spouse of an applicant or recipient, or a person, including a court or administrative body, with legal authority to act in place of or on behalf of an applicant, recipient, or spouse, or acting at the direction or on request of an applicant, recipient, or spouse.

(2) A trust that meets the requirements of division (E)(1) of this section and is a revocable trust shall be treated by the county department of job and family services as follows:

(a) The corpus of the trust shall be considered a resource available to the applicant or recipient.

(b) Payments from the trust to or for the benefit of the applicant or recipient shall be considered unearned income of the applicant or recipient.

(c) Any other payments from the trust shall be considered an improper disposition of assets and shall be subject to section 5111.0116 of the Revised Code and rules to implement that section adopted under section 5111.011 of the Revised Code.

(3) A trust that meets the requirements of division (E)(1) of this section and is an irrevocable trust shall be treated by the county department of job and family services as follows:

(a) If there are any circumstances under which payment from the trust could be made to or for the benefit of the applicant or recipient, including a payment that can be made only in the future, the portion from which payments could be made shall be considered a resource available to the applicant or recipient. The county department of job and family services shall not take into account when payments can be made.

(b) Any payment that is actually made to or for the benefit of the applicant or recipient from either the corpus or income shall be considered

unearned income.

(c) If a payment is made to someone other than to the applicant or recipient and the payment is not for the benefit of the applicant or recipient, the payment shall be considered an improper disposition of assets and shall be subject to section 5111.0116 of the Revised Code and rules to implement that section adopted under section 5111.011 of the Revised Code.

(d) The date of the disposition shall be the later of the date of establishment of the trust or the date of the occurrence of the event.

(e) When determining the value of the disposed asset under this provision, the value of the trust shall be its value on the date payment to the applicant or recipient was foreclosed.

(f) Any income earned or other resources added subsequent to the foreclosure date shall be added to the total value of the trust.

(g) Any payments to or for the benefit of the applicant or recipient after the foreclosure date but prior to the application date shall be subtracted from the total value. Any other payments shall not be subtracted from the value.

(h) Any addition of assets after the foreclosure date shall be considered a separate disposition.

(4) If a trust is funded with assets of another person or persons in addition to assets of the applicant or recipient, the applicable provisions of this section and rules adopted by the department of job and family services governing trusts shall apply only to the portion of the trust attributable to the applicant or recipient.

(5) The availability of a self-settled trust shall be considered without regard to any of the following:

(a) The purpose for which the trust is established;

(b) Whether the trustees have exercised or may exercise discretion under the trust;

(c) Any restrictions on when or whether distributions may be made from the trust;

(d) Any restrictions on the use of distributions from the trust.

(6) The baseline date for the look-back period for dispositions of assets involving a self-settled trust shall be the date on which the applicant or recipient is both institutionalized and first applies for medicaid.

(F) The principal or income from any of the following shall be exempt from being counted as a resource by a county department of job and family services:

(1)(a) A special needs trust that meets all of the following requirements:

(i) The trust contains assets of an applicant or recipient under sixty-five years of age and may contain the assets of other individuals.

(ii) The applicant or recipient is disabled as defined in rules adopted by the department of job and family services.

(iii) The trust is established for the benefit of the applicant or recipient by a parent, grandparent, legal guardian, or a court.

(iv) The trust requires that on the death of the applicant or recipient the state will receive all amounts remaining in the trust up to an amount equal to the total amount of medicaid paid on behalf of the applicant or recipient.

(b) If a special needs trust meets the requirements of division (F)(1)(a) of this section and has been established for a disabled applicant or recipient under sixty-five years of age, the exemption for the trust granted pursuant to division (F) of this section shall continue after the disabled applicant or recipient becomes sixty-five years of age if the applicant or recipient continues to be disabled as defined in rules adopted by the department of job and family services. Except for income earned by the trust, the grantor shall not add to or otherwise augment the trust after the applicant or recipient attains sixty-five years of age. An addition or augmentation of the trust by the applicant or recipient with the applicant's own assets after the applicant or recipient attains sixty-five years of age shall be treated as an improper disposition of assets.

(c) Cash distributions to the applicant or recipient shall be counted as unearned income. All other distributions from the trust shall be treated as provided in rules adopted by the department of job and family services governing in-kind income.

(d) Transfers of assets to a special needs trust shall not be treated as an improper transfer of resources. Assets held prior to the transfer to the trust shall be considered as countable assets or countable income or countable assets and income.

(2)(a) A qualifying income trust that meets all of the following requirements:

(i) The trust is composed only of pension, social security, and other income to the applicant or recipient, including accumulated interest in the trust.

(ii) The income is received by the individual and the right to receive the income is not assigned or transferred to the trust.

(iii) The trust requires that on the death of the applicant or recipient the state will receive all amounts remaining in the trust up to an amount equal to the total amount of medicaid paid on behalf of the applicant or recipient.

(b) No resources shall be used to establish or augment the trust.

(c) If an applicant or recipient has irrevocably transferred or assigned the applicant's or recipient's right to receive income to the trust, the trust

shall not be considered a qualifying income trust by the county department of job and family services.

(d) Income placed in a qualifying income trust shall not be counted in determining an applicant's or recipient's eligibility for medicaid. The recipient of the funds may place any income directly into a qualifying income trust without those funds adversely affecting the applicant's or recipient's eligibility for medicaid. Income generated by the trust that remains in the trust shall not be considered as income to the applicant or recipient.

(e) All income placed in a qualifying income trust shall be combined with any countable income not placed in the trust to arrive at a base income figure to be used for spend down calculations.

(f) The base income figure shall be used for post-eligibility deductions, including personal needs allowance, monthly income allowance, family allowance, and medical expenses not subject to third party payment. Any income remaining shall be used toward payment of patient liability. Payments made from a qualifying income trust shall not be combined with the base income figure for post-eligibility calculations.

(g) The base income figure shall be used when determining the spend down budget for the applicant or recipient. Any income remaining after allowable deductions are permitted as provided under rules adopted by the department of job and family services shall be considered the applicant's or recipient's spend down liability.

(3)(a) A pooled trust that meets all of the following requirements:

(i) The trust contains the assets of the applicant or recipient of any age who is disabled as defined in rules adopted by the department of job and family services.

(ii) The trust is established and managed by a nonprofit association.

(iii) A separate account is maintained for each beneficiary of the trust but, for purposes of investment and management of funds, the trust pools the funds in these accounts.

(iv) Accounts in the trust are established by the applicant or recipient, the applicant's or recipient's parent, grandparent, or legal guardian, or a court solely for the benefit of individuals who are disabled.

(v) The trust requires that, to the extent that any amounts remaining in the beneficiary's account on the death of the beneficiary are not retained by the trust, the trust pay to the state the amounts remaining in the trust up to an amount equal to the total amount of medicaid paid on behalf of the beneficiary.

(b) Cash distributions to the applicant or recipient shall be counted as

unearned income. All other distributions from the trust shall be treated as provided in rules adopted by the department of job and family services governing in-kind income.

(c) Transfers of assets to a pooled trust shall not be treated as an improper disposition of assets. Assets held prior to the transfer to the trust shall be considered as countable assets, countable income, or countable assets and income.

(4) A supplemental services trust that meets the requirements of section 5815.28 of the Revised Code and to which all of the following apply:

(a) A person may establish a supplemental services trust pursuant to section 5815.28 of the Revised Code only for another person who is eligible to receive services through one of the following agencies:

- (i) The department of ~~mental retardation and~~ developmental disabilities;
- (ii) A county board of ~~mental retardation and~~ developmental disabilities;
- (iii) The department of mental health;
- (iv) A board of alcohol, drug addiction, and mental health services.

(b) A county department of job and family services shall not determine eligibility for another agency's program. An applicant or recipient shall do one of the following:

(i) Provide documentation from one of the agencies listed in division (F)(4)(a) of this section that establishes that the applicant or recipient was determined to be eligible for services from the agency at the time of the creation of the trust;

(ii) Provide an order from a court of competent jurisdiction that states that the applicant or recipient was eligible for services from one of the agencies listed in division (F)(4)(a) of this section at the time of the creation of the trust.

(c) At the time the trust is created, the trust principal does not exceed the maximum amount permitted. The maximum amount permitted in calendar year 2006 is two hundred twenty-two thousand dollars. Each year thereafter, the maximum amount permitted is the prior year's amount plus two thousand dollars.

(d) A county department of job and family services shall review the trust to determine whether it complies with the provisions of section 5815.28 of the Revised Code.

(e) Payments from supplemental services trusts shall be exempt as long as the payments are for supplemental services as defined in rules adopted by the department of job and family services. All supplemental services shall be purchased by the trustee and shall not be purchased through direct cash payments to the beneficiary.

(f) If a trust is represented as a supplemental services trust and a county department of job and family services determines that the trust does not meet the requirements provided in division (F)(4) of this section and section 5815.28 of the Revised Code, the county department of job and family services shall not consider it an exempt trust.

(G)(1) A trust or legal instrument or device similar to a trust shall be considered a trust established by an individual for the benefit of the applicant or recipient if all of the following apply:

(a) The trust is created by a person other than the applicant or recipient.

(b) The trust names the applicant or recipient as a beneficiary.

(c) The trust is funded with assets or property in which the applicant or recipient has never held an ownership interest prior to the establishment of the trust.

(2) Any portion of a trust that meets the requirements of division (G)(1) of this section shall be an available resource only if the trust permits the trustee to expend principal, corpus, or assets of the trust for the applicant's or recipient's medical care, care, comfort, maintenance, health, welfare, general well being, or any combination of these purposes.

(3) A trust that meets the requirements of division (G)(1) of this section shall be considered an available resource even if the trust contains any of the following types of provisions:

(a) A provision that prohibits the trustee from making payments that would supplant or replace medicaid or other public assistance;

(b) A provision that prohibits the trustee from making payments that would impact or have an effect on the applicant's or recipient's right, ability, or opportunity to receive medicaid or other public assistance;

(c) A provision that attempts to prevent the trust or its corpus or principal from being counted as an available resource.

(4) A trust that meets the requirements of division (G)(1) of this section shall not be counted as an available resource if at least one of the following circumstances applies:

(a) If a trust contains a clear statement requiring the trustee to preserve a portion of the trust for another beneficiary or remainderman, that portion of the trust shall not be counted as an available resource. Terms of a trust that grant discretion to preserve a portion of the trust shall not qualify as a clear statement requiring the trustee to preserve a portion of the trust.

(b) If a trust contains a clear statement requiring the trustee to use a portion of the trust for a purpose other than medical care, care, comfort, maintenance, welfare, or general well being of the applicant or recipient, that portion of the trust shall not be counted as an available resource. Terms

of a trust that grant discretion to limit the use of a portion of the trust shall not qualify as a clear statement requiring the trustee to use a portion of the trust for a particular purpose.

(c) If a trust contains a clear statement limiting the trustee to making fixed periodic payments, the trust shall not be counted as an available resource and payments shall be treated in accordance with rules adopted by the department of job and family services governing income. Terms of a trust that grant discretion to limit payments shall not qualify as a clear statement requiring the trustee to make fixed periodic payments.

(d) If a trust contains a clear statement that requires the trustee to terminate the trust if it is counted as an available resource, the trust shall not be counted as an available resource. Terms of a trust that grant discretion to terminate the trust do not qualify as a clear statement requiring the trustee to terminate the trust.

(e) If a person obtains a judgment from a court of competent jurisdiction that expressly prevents the trustee from using part or all of the trust for the medical care, care, comfort, maintenance, welfare, or general well being of the applicant or recipient, the trust or that portion of the trust subject to the court order shall not be counted as a resource.

(f) If a trust is specifically exempt from being counted as an available resource by a provision of the Revised Code, rules, or federal law, the trust shall not be counted as a resource.

(g) If an applicant or recipient presents a final judgment from a court demonstrating that the applicant or recipient was unsuccessful in a civil action against the trustee to compel payments from the trust, the trust shall not be counted as an available resource.

(h) If an applicant or recipient presents a final judgment from a court demonstrating that in a civil action against the trustee the applicant or recipient was only able to compel limited or periodic payments, the trust shall not be counted as an available resource and payments shall be treated in accordance with rules adopted by the department of job and family services governing income.

(i) If an applicant or recipient provides written documentation showing that the cost of a civil action brought to compel payments from the trust would be cost prohibitive, the trust shall not be counted as an available resource.

(5) Any actual payments to the applicant or recipient from a trust that meet the requirements of division (G)(1) of this section, including trusts that are not counted as an available resource, shall be treated as provided in rules adopted by the department of job and family services governing income.

Payments to any person other than the applicant or recipient shall not be considered income to the applicant or recipient. Payments from the trust to a person other than the applicant or recipient shall not be considered an improper disposition of assets.

Sec. 5111.202. (A) As used in this section:

(1) "Dementia" includes Alzheimer's disease or a related disorder.

(2) "Serious mental illness" means "serious mental illness," as defined by the United States department of health and human services in regulations adopted under section 1919(e)(7)(G)(i) of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended.

(3) "Mentally ill individual" means an individual who has a serious mental illness other than either of the following:

(a) A primary diagnosis of dementia;

(b) A primary diagnosis that is not a primary diagnosis of dementia and a primary diagnosis of something other than a serious mental illness.

(4) "Mentally retarded individual" means an individual who is mentally retarded or has a related condition, as described in section 1905(d) of the "Social Security Act."

(5) "Specialized services" means the services specified by the United States department of health and human services in regulations adopted under section 1919(e)(7)(G)(iii) of the "Social Security Act."

(B)(1) Except as provided in division (D) of this section, no nursing facility shall admit as a resident any mentally ill individual unless the facility has received evidence that the department of mental health has determined both of the following under section 5119.061 of the Revised Code:

(a) That the individual requires the level of services provided by a nursing facility because of the individual's physical and mental condition;

(b) Whether the individual requires specialized services for mental illness.

(2) Except as provided in division (D) of this section, no nursing facility shall admit as a resident any mentally retarded individual unless the facility has received evidence that the department of ~~mental retardation and~~ developmental disabilities has determined both of the following under section 5123.021 of the Revised Code:

(a) That the individual requires the level of services provided by a nursing facility because of the individual's physical and mental condition;

(b) Whether the individual requires specialized services for mental retardation.

(C) The department of job and family services shall not make payments

under the medical assistance program to a nursing facility on behalf of any individual who is admitted to the facility in violation of division (B) of this section for the period beginning on the date of admission and ending on the date the requirements of division (B) of this section are met.

(D) A determination under division (B) of this section is not required for any individual who is exempted from the requirement that a determination be made by division (B)(2) of section 5119.061 of the Revised Code or rules adopted by the department of mental health under division (E)(3) of that section, or by division (B)(2) of section 5123.021 of the Revised Code or rules adopted by the department of ~~mental retardation and~~ developmental disabilities under division (E)(3) of that section.

Sec. 5111.203. Regardless of whether or not an applicant for admission to a nursing facility or resident of a nursing facility is an applicant for or recipient of medical assistance, the department of job and family services shall provide notice and an opportunity for a hearing to any applicant for admission to a nursing facility or resident of a nursing facility who is adversely affected by a determination made by the department of mental health under section 5119.061 of the Revised Code or by the department of ~~mental retardation and~~ developmental disabilities under section 5123.021 of the Revised Code. The hearing shall be conducted in the same manner as hearings conducted under section 5101.35 of the Revised Code. Any decision made by the department of job and family services on the basis of the hearing is binding on the department of mental health and the department of ~~mental retardation and~~ developmental disabilities.

Sec. 5111.211. (A) The department of ~~mental retardation and~~ developmental disabilities is responsible for the nonfederal share of claims submitted for services that are covered by the medicaid program and provided to an eligible medicaid recipient by an intermediate care facility for the mentally retarded if all of the following are the case:

- (1) The services are provided on or after July 1, 2003;
- (2) The facility receives initial certification by the director of health as an intermediate care facility for the mentally retarded on or after June 1, 2003;
- (3) The facility, or a portion of the facility, is licensed by the director of ~~mental retardation and~~ developmental disabilities as a residential facility under section 5123.19 of the Revised Code;
- (4) There is a valid provider agreement for the facility.

(B) Each month, the department of job and family services shall invoice the department of ~~mental retardation and~~ developmental disabilities by interagency transfer voucher for the claims for which the department of

~~mental retardation and~~ developmental disabilities is responsible pursuant to this section.

Sec. 5111.251. (A) The department of job and family services shall pay a provider for each of the provider's eligible intermediate care facilities for the mentally retarded for its reasonable capital costs, a per resident per day rate established prospectively each fiscal year for each intermediate care facility for the mentally retarded. Except as otherwise provided in sections 5111.20 to 5111.33 of the Revised Code, the rate shall be based on the facility's capital costs for the calendar year preceding the fiscal year in which the rate will be paid. The rate shall equal the sum of the following:

(1) The facility's desk-reviewed, actual, allowable, per diem cost of ownership for the preceding cost reporting period, limited as provided in divisions (C) and (F) of this section;

(2) Any efficiency incentive determined under division (B) of this section;

(3) Any amounts for renovations determined under division (D) of this section;

(4) Any amounts for return on equity determined under division (I) of this section.

Buildings shall be depreciated using the straight line method over forty years or over a different period approved by the department. Components and equipment shall be depreciated using the straight line method over a period designated by the director of job and family services in rules adopted under section 5111.02 of the Revised Code, consistent with the guidelines of the American hospital association, or over a different period approved by the department of job and family services. Any rules authorized by this division that specify useful lives of buildings, components, or equipment apply only to assets acquired on or after July 1, 1993. Depreciation for costs paid or reimbursed by any government agency shall not be included in costs of ownership or renovation unless that part of the payment under sections 5111.20 to 5111.33 of the Revised Code is used to reimburse the government agency.

(B) The department of job and family services shall pay to a provider for each of the provider's eligible intermediate care facilities for the mentally retarded an efficiency incentive equal to fifty per cent of the difference between any desk-reviewed, actual, allowable cost of ownership and the applicable limit on cost of ownership payments under division (C) of this section. For purposes of computing the efficiency incentive, depreciation for costs paid or reimbursed by any government agency shall be considered as a cost of ownership, and the applicable limit under division

(C) of this section shall apply both to facilities with more than eight beds and facilities with eight or fewer beds. The efficiency incentive paid to a provider for a facility with eight or fewer beds shall not exceed three dollars per patient day, adjusted annually for the inflation rate for the twelve-month period beginning on the first day of July of the calendar year preceding the calendar year that precedes the fiscal year for which the efficiency incentive is determined and ending on the thirtieth day of the following June, using the consumer price index for shelter costs for all urban consumers for the north central region, as published by the United States bureau of labor statistics.

(C) Cost of ownership payments for intermediate care facilities for the mentally retarded with more than eight beds shall not exceed the following limits:

(1) For facilities with dates of licensure prior to January 1, 1958, not exceeding two dollars and fifty cents per patient day;

(2) For facilities with dates of licensure after December 31, 1957, but prior to January 1, 1968, not exceeding:

(a) Three dollars and fifty cents per patient day if the cost of construction was three thousand five hundred dollars or more per bed;

(b) Two dollars and fifty cents per patient day if the cost of construction was less than three thousand five hundred dollars per bed.

(3) For facilities with dates of licensure after December 31, 1967, but prior to January 1, 1976, not exceeding:

(a) Four dollars and fifty cents per patient day if the cost of construction was five thousand one hundred fifty dollars or more per bed;

(b) Three dollars and fifty cents per patient day if the cost of construction was less than five thousand one hundred fifty dollars per bed, but exceeds three thousand five hundred dollars per bed;

(c) Two dollars and fifty cents per patient day if the cost of construction was three thousand five hundred dollars or less per bed.

(4) For facilities with dates of licensure after December 31, 1975, but prior to January 1, 1979, not exceeding:

(a) Five dollars and fifty cents per patient day if the cost of construction was six thousand eight hundred dollars or more per bed;

(b) Four dollars and fifty cents per patient day if the cost of construction was less than six thousand eight hundred dollars per bed but exceeds five thousand one hundred fifty dollars per bed;

(c) Three dollars and fifty cents per patient day if the cost of construction was five thousand one hundred fifty dollars or less per bed, but exceeds three thousand five hundred dollars per bed;

(d) Two dollars and fifty cents per patient day if the cost of construction was three thousand five hundred dollars or less per bed.

(5) For facilities with dates of licensure after December 31, 1978, but prior to January 1, 1980, not exceeding:

(a) Six dollars per patient day if the cost of construction was seven thousand six hundred twenty-five dollars or more per bed;

(b) Five dollars and fifty cents per patient day if the cost of construction was less than seven thousand six hundred twenty-five dollars per bed but exceeds six thousand eight hundred dollars per bed;

(c) Four dollars and fifty cents per patient day if the cost of construction was six thousand eight hundred dollars or less per bed but exceeds five thousand one hundred fifty dollars per bed;

(d) Three dollars and fifty cents per patient day if the cost of construction was five thousand one hundred fifty dollars or less but exceeds three thousand five hundred dollars per bed;

(e) Two dollars and fifty cents per patient day if the cost of construction was three thousand five hundred dollars or less per bed.

(6) For facilities with dates of licensure after December 31, 1979, but prior to January 1, 1981, not exceeding:

(a) Twelve dollars per patient day if the beds were originally licensed as residential facility beds by the department of ~~mental retardation and~~ developmental disabilities;

(b) Six dollars per patient day if the beds were originally licensed as nursing home beds by the department of health.

(7) For facilities with dates of licensure after December 31, 1980, but prior to January 1, 1982, not exceeding:

(a) Twelve dollars per patient day if the beds were originally licensed as residential facility beds by the department of ~~mental retardation and~~ developmental disabilities;

(b) Six dollars and forty-five cents per patient day if the beds were originally licensed as nursing home beds by the department of health.

(8) For facilities with dates of licensure after December 31, 1981, but prior to January 1, 1983, not exceeding:

(a) Twelve dollars per patient day if the beds were originally licensed as residential facility beds by the department of ~~mental retardation and~~ developmental disabilities;

(b) Six dollars and seventy-nine cents per patient day if the beds were originally licensed as nursing home beds by the department of health.

(9) For facilities with dates of licensure after December 31, 1982, but prior to January 1, 1984, not exceeding:

(a) Twelve dollars per patient day if the beds were originally licensed as residential facility beds by the department of ~~mental retardation and~~ developmental disabilities;

(b) Seven dollars and nine cents per patient day if the beds were originally licensed as nursing home beds by the department of health.

(10) For facilities with dates of licensure after December 31, 1983, but prior to January 1, 1985, not exceeding:

(a) Twelve dollars and twenty-four cents per patient day if the beds were originally licensed as residential facility beds by the department of ~~mental retardation and~~ developmental disabilities;

(b) Seven dollars and twenty-three cents per patient day if the beds were originally licensed as nursing home beds by the department of health.

(11) For facilities with dates of licensure after December 31, 1984, but prior to January 1, 1986, not exceeding:

(a) Twelve dollars and fifty-three cents per patient day if the beds were originally licensed as residential facility beds by the department of ~~mental retardation and~~ developmental disabilities;

(b) Seven dollars and forty cents per patient day if the beds were originally licensed as nursing home beds by the department of health.

(12) For facilities with dates of licensure after December 31, 1985, but prior to January 1, 1987, not exceeding:

(a) Twelve dollars and seventy cents per patient day if the beds were originally licensed as residential facility beds by the department of ~~mental retardation and~~ developmental disabilities;

(b) Seven dollars and fifty cents per patient day if the beds were originally licensed as nursing home beds by the department of health.

(13) For facilities with dates of licensure after December 31, 1986, but prior to January 1, 1988, not exceeding:

(a) Twelve dollars and ninety-nine cents per patient day if the beds were originally licensed as residential facility beds by the department of ~~mental retardation and~~ developmental disabilities;

(b) Seven dollars and sixty-seven cents per patient day if the beds were originally licensed as nursing home beds by the department of health.

(14) For facilities with dates of licensure after December 31, 1987, but prior to January 1, 1989, not exceeding thirteen dollars and twenty-six cents per patient day;

(15) For facilities with dates of licensure after December 31, 1988, but prior to January 1, 1990, not exceeding thirteen dollars and forty-six cents per patient day;

(16) For facilities with dates of licensure after December 31, 1989, but

prior to January 1, 1991, not exceeding thirteen dollars and sixty cents per patient day;

(17) For facilities with dates of licensure after December 31, 1990, but prior to January 1, 1992, not exceeding thirteen dollars and forty-nine cents per patient day;

(18) For facilities with dates of licensure after December 31, 1991, but prior to January 1, 1993, not exceeding thirteen dollars and sixty-seven cents per patient day;

(19) For facilities with dates of licensure after December 31, 1992, not exceeding fourteen dollars and twenty-eight cents per patient day.

(D) Beginning January 1, 1981, regardless of the original date of licensure, the department of job and family services shall pay a rate for the per diem capitalized costs of renovations to intermediate care facilities for the mentally retarded made after January 1, 1981, not exceeding six dollars per patient day using 1980 as the base year and adjusting the amount annually until June 30, 1993, for fluctuations in construction costs calculated by the department using the "Dodge building cost indexes, northeastern and north central states," published by Marshall and Swift. The payment provided for in this division is the only payment that shall be made for the capitalized costs of a nonextensive renovation of an intermediate care facility for the mentally retarded. Nonextensive renovation costs shall not be included in cost of ownership, and a nonextensive renovation shall not affect the date of licensure for purposes of division (C) of this section. This division applies to nonextensive renovations regardless of whether they are made by an owner or a lessee. If the tenancy of a lessee that has made renovations ends before the depreciation expense for the renovation costs has been fully reported, the former lessee shall not report the undepreciated balance as an expense.

For a nonextensive renovation to qualify for payment under this division, both of the following conditions must be met:

(1) At least five years have elapsed since the date of licensure or date of an extensive renovation of the portion of the facility that is proposed to be renovated, except that this condition does not apply if the renovation is necessary to meet the requirements of federal, state, or local statutes, ordinances, rules, or policies.

(2) The provider has obtained prior approval from the department of job and family services. The provider shall submit a plan that describes in detail the changes in capital assets to be accomplished by means of the renovation and the timetable for completing the project. The time for completion of the project shall be no more than eighteen months after the renovation begins.

The director of job and family services shall adopt rules under section 5111.02 of the Revised Code that specify criteria and procedures for prior approval of renovation projects. No provider shall separate a project with the intent to evade the characterization of the project as a renovation or as an extensive renovation. No provider shall increase the scope of a project after it is approved by the department of job and family services unless the increase in scope is approved by the department.

(E) The amounts specified in divisions (C) and (D) of this section shall be adjusted beginning July 1, 1993, for the estimated inflation for the twelve-month period beginning on the first day of July of the calendar year preceding the calendar year that precedes the fiscal year for which rate will be paid and ending on the thirtieth day of the following June, using the consumer price index for shelter costs for all urban consumers for the north central region, as published by the United States bureau of labor statistics.

(F)(1) For facilities of eight or fewer beds that have dates of licensure or have been granted project authorization by the department of ~~mental retardation and~~ developmental disabilities before July 1, 1993, and for facilities of eight or fewer beds that have dates of licensure or have been granted project authorization after that date if the providers of the facilities demonstrate that they made substantial commitments of funds on or before that date, cost of ownership shall not exceed eighteen dollars and thirty cents per resident per day. The eighteen-dollar and thirty-cent amount shall be increased by the change in the "Dodge building cost indexes, northeastern and north central states," published by Marshall and Swift, during the period beginning June 30, 1990, and ending July 1, 1993, and by the change in the consumer price index for shelter costs for all urban consumers for the north central region, as published by the United States bureau of labor statistics, annually thereafter.

(2) For facilities with eight or fewer beds that have dates of licensure or have been granted project authorization by the department of ~~mental retardation and~~ developmental disabilities on or after July 1, 1993, for which substantial commitments of funds were not made before that date, cost of ownership payments shall not exceed the applicable amount calculated under division (F)(1) of this section, if the department of job and family services gives prior approval for construction of the facility. If the department does not give prior approval, cost of ownership payments shall not exceed the amount specified in division (C) of this section.

(3) Notwithstanding divisions (D) and (F)(1) and (2) of this section, the total payment for cost of ownership, cost of ownership efficiency incentive, and capitalized costs of renovations for an intermediate care facility for the

mentally retarded with eight or fewer beds shall not exceed the sum of the limitations specified in divisions (C) and (D) of this section.

(G) Notwithstanding any provision of this section or section 5111.241 of the Revised Code, the director of job and family services may adopt rules under section 5111.02 of the Revised Code that provide for a calculation of a combined maximum payment limit for indirect care costs and cost of ownership for intermediate care facilities for the mentally retarded with eight or fewer beds.

(H) After the date on which a transaction of sale is closed, the provider shall refund to the department the amount of excess depreciation paid to the provider for the facility by the department for each year the provider has operated the facility under a provider agreement and prorated according to the number of medicaid patient days for which the provider has received payment for the facility. For the purposes of this division, "depreciation paid to the provider for the facility" means the amount paid to the provider for the intermediate care facility for the mentally retarded for cost of ownership pursuant to this section less any amount paid for interest costs. For the purposes of this division, "excess depreciation" is the intermediate care facility for the mentally retarded's depreciated basis, which is the provider's cost less accumulated depreciation, subtracted from the purchase price but not exceeding the amount of depreciation paid to the provider for the facility.

(I) The department of job and family services shall pay a provider for each of the provider's eligible proprietary intermediate care facilities for the mentally retarded a return on the facility's net equity computed at the rate of one and one-half times the average of interest rates on special issues of public debt obligations issued to the federal hospital insurance trust fund for the cost reporting period. No facility's return on net equity paid under this division shall exceed one dollar per patient day.

In calculating the rate for return on net equity, the department shall use the greater of the facility's inpatient days during the applicable cost reporting period or the number of inpatient days the facility would have had during that period if its occupancy rate had been ninety-five per cent.

(J)(1) Except as provided in division (J)(2) of this section, if a provider leases or transfers an interest in a facility to another provider who is a related party, the related party's allowable cost of ownership shall include the lesser of the following:

- (a) The annual lease expense or actual cost of ownership, whichever is applicable;
- (b) The reasonable cost to the lessor or provider making the transfer.

(2) If a provider leases or transfers an interest in a facility to another provider who is a related party, regardless of the date of the lease or transfer, the related party's allowable cost of ownership shall include the annual lease expense or actual cost of ownership, whichever is applicable, subject to the limitations specified in divisions (B) to (I) of this section, if all of the following conditions are met:

(a) The related party is a relative of owner;

(b) In the case of a lease, if the lessor retains any ownership interest, it is, except as provided in division (J)(2)(d)(ii) of this section, in only the real property and any improvements on the real property;

(c) In the case of a transfer, the provider making the transfer retains, except as provided in division (J)(2)(d)(iv) of this section, no ownership interest in the facility;

(d) The department of job and family services determines that the lease or transfer is an arm's length transaction pursuant to rules adopted under section 5111.02 of the Revised Code. The rules shall provide that a lease or transfer is an arm's length transaction if all of the following, as applicable, apply:

(i) In the case of a lease, once the lease goes into effect, the lessor has no direct or indirect interest in the lessee or, except as provided in division (J)(2)(b) of this section, the facility itself, including interest as an owner, officer, director, employee, independent contractor, or consultant, but excluding interest as a lessor.

(ii) In the case of a lease, the lessor does not reacquire an interest in the facility except through the exercise of a lessor's rights in the event of a default. If the lessor reacquires an interest in the facility in this manner, the department shall treat the facility as if the lease never occurred when the department calculates its reimbursement rates for capital costs.

(iii) In the case of a transfer, once the transfer goes into effect, the provider that made the transfer has no direct or indirect interest in the provider that acquires the facility or the facility itself, including interest as an owner, officer, director, employee, independent contractor, or consultant, but excluding interest as a creditor.

(iv) In the case of a transfer, the provider that made the transfer does not reacquire an interest in the facility except through the exercise of a creditor's rights in the event of a default. If the provider reacquires an interest in the facility in this manner, the department shall treat the facility as if the transfer never occurred when the department calculates its reimbursement rates for capital costs.

(v) The lease or transfer satisfies any other criteria specified in the rules.

(e) Except in the case of hardship caused by a catastrophic event, as determined by the department, or in the case of a lessor or provider making the transfer who is at least sixty-five years of age, not less than twenty years have elapsed since, for the same facility, allowable cost of ownership was determined most recently under this division.

Sec. 5111.291. Notwithstanding sections 5111.20 to 5111.33 of the Revised Code, the department of job and family services may compute the rate for intermediate care facilities for the mentally retarded operated by the department of ~~mental retardation~~ and developmental disabilities or the department of mental health according to the reasonable cost principles of Title XVIII.

Sec. 5111.65. As used in sections 5111.65 to 5111.688 of the Revised Code:

(A) "Change of operator" means an entering operator becoming the operator of a nursing facility or intermediate care facility for the mentally retarded in the place of the exiting operator.

(1) Actions that constitute a change of operator include the following:

(a) A change in an exiting operator's form of legal organization, including the formation of a partnership or corporation from a sole proprietorship;

(b) A transfer of all the exiting operator's ownership interest in the operation of the facility to the entering operator, regardless of whether ownership of any or all of the real property or personal property associated with the facility is also transferred;

(c) A lease of the facility to the entering operator or the exiting operator's termination of the exiting operator's lease;

(d) If the exiting operator is a partnership, dissolution of the partnership;

(e) If the exiting operator is a partnership, a change in composition of the partnership unless both of the following apply:

(i) The change in composition does not cause the partnership's dissolution under state law.

(ii) The partners agree that the change in composition does not constitute a change in operator.

(f) If the operator is a corporation, dissolution of the corporation, a merger of the corporation into another corporation that is the survivor of the merger, or a consolidation of one or more other corporations to form a new corporation.

(2) The following, alone, do not constitute a change of operator:

(a) A contract for an entity to manage a nursing facility or intermediate care facility for the mentally retarded as the operator's agent, subject to the

operator's approval of daily operating and management decisions;

(b) A change of ownership, lease, or termination of a lease of real property or personal property associated with a nursing facility or intermediate care facility for the mentally retarded if an entering operator does not become the operator in place of an exiting operator;

(c) If the operator is a corporation, a change of one or more members of the corporation's governing body or transfer of ownership of one or more shares of the corporation's stock, if the same corporation continues to be the operator.

(B) "Effective date of a change of operator" means the day the entering operator becomes the operator of the nursing facility or intermediate care facility for the mentally retarded.

(C) "Effective date of a facility closure" means the last day that the last of the residents of the nursing facility or intermediate care facility for the mentally retarded resides in the facility.

(D) "Effective date of a voluntary termination" means the day the intermediate care facility for the mentally retarded ceases to accept medicaid patients.

(E) "Effective date of a voluntary withdrawal of participation" means the day the nursing facility ceases to accept new medicaid patients other than the individuals who reside in the nursing facility on the day before the effective date of the voluntary withdrawal of participation.

(F) "Entering operator" means the person or government entity that will become the operator of a nursing facility or intermediate care facility for the mentally retarded when a change of operator occurs.

(G) "Exiting operator" means any of the following:

(1) An operator that will cease to be the operator of a nursing facility or intermediate care facility for the mentally retarded on the effective date of a change of operator;

(2) An operator that will cease to be the operator of a nursing facility or intermediate care facility for the mentally retarded on the effective date of a facility closure;

(3) An operator of an intermediate care facility for the mentally retarded that is undergoing or has undergone a voluntary termination;

(4) An operator of a nursing facility that is undergoing or has undergone a voluntary withdrawal of participation.

(H)(1) "Facility closure" means discontinuance of the use of the building, or part of the building, that houses the facility as a nursing facility or intermediate care facility for the mentally retarded that results in the relocation of all of the facility's residents. A facility closure occurs

regardless of any of the following:

(a) The operator completely or partially replacing the facility by constructing a new facility or transferring the facility's license to another facility;

(b) The facility's residents relocating to another of the operator's facilities;

(c) Any action the department of health takes regarding the facility's certification under Title XIX of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1396, as amended, that may result in the transfer of part of the facility's survey findings to another of the operator's facilities;

(d) Any action the department of health takes regarding the facility's license under Chapter 3721. of the Revised Code;

(e) Any action the department of ~~mental-retardation-and~~ developmental disabilities takes regarding the facility's license under section 5123.19 of the Revised Code.

(2) A facility closure does not occur if all of the facility's residents are relocated due to an emergency evacuation and one or more of the residents return to a medicaid-certified bed in the facility not later than thirty days after the evacuation occurs.

(I) "Fiscal year," "intermediate care facility for the mentally retarded," "nursing facility," "operator," "owner," and "provider agreement" have the same meanings as in section 5111.20 of the Revised Code.

(J) "Voluntary termination" means an operator's voluntary election to terminate the participation of an intermediate care facility for the mentally retarded in the medicaid program but to continue to provide service of the type provided by a residential facility as defined in section 5123.19 of the Revised Code.

(K) "Voluntary withdrawal of participation" means an operator's voluntary election to terminate the participation of a nursing facility in the medicaid program but to continue to provide service of the type provided by a nursing facility.

Sec. 5111.677. Neither of the following shall affect the department of job and family services' determination of whether or when a change of operator occurs or the effective date of an entering operator's provider agreement under section 5111.671, section 5111.672, or, pursuant to section 5111.675, section 5111.22 of the Revised Code:

(A) The department of health's determination that a change of operator has or has not occurred for purposes of licensure under Chapter 3721. of the Revised Code;

(B) The department of ~~mental-retardation-and~~ developmental

disabilities' determination that a change of operator has or has not occurred for purposes of licensure under section 5123.19 of the Revised Code.

Sec. 5111.709. (A) There is hereby created the medicaid buy-in advisory council. The council shall consist of all of the following:

(1) The following voting members:

(a) The executive director of assistive technology of Ohio or the executive director's designee;

(b) The director of the axis center for public awareness of people with disabilities or the director's designee;

(c) The executive director of the cerebral palsy association of Ohio or the executive director's designee;

(d) The chief executive officer of Ohio advocates for mental health or the chief executive officer's designee;

(e) The state director of the Ohio chapter of AARP or the state director's designee;

(f) The director of the Ohio developmental disabilities council created under section 5123.35 of the Revised Code or the director's designee;

(g) The executive director of the governor's council on people with disabilities created under section 3303.41 of the Revised Code or the executive director's designee;

(h) The administrator of the legal rights service created under section 5123.60 of the Revised Code or the administrator's designee;

(i) The chairperson of the Ohio Olmstead task force or the chairperson's designee;

(j) The executive director of the Ohio statewide independent living council or the executive director's designee;

(k) The president of the Ohio chapter of the national multiple sclerosis society or the president's designee;

(l) The executive director of the arc of Ohio or the executive director's designee;

(m) The executive director of the commission on minority health or the executive director's designee;

(n) The executive director of the brain injury association of Ohio or the executive director's designee;

(o) The executive officer of any other advocacy organization who volunteers to serve on the council, or such an executive officer's designee, if the other voting members, at a meeting called by the chairperson elected under division (C) of this section, determine it is appropriate for the advocacy organization to be represented on the council;

(p) One or more participants who volunteer to serve on the council and

are selected by the other voting members at a meeting the chairperson calls after the medicaid buy-in for workers with disabilities program is implemented.

(2) The following non-voting members:

(a) The director of job and family services or the director's designee;

(b) The administrator of the rehabilitation services commission or the administrator's designee;

(c) The director of alcohol and drug addiction services or the director's designee;

(d) The director of ~~mental retardation and~~ developmental disabilities or the director's designee;

(e) The director of mental health or the director's designee;

(f) The executive officer of any other government entity, or the executive officer's designee, if the voting members, at a meeting called by the chairperson, determine it is appropriate for the government entity to be represented on the council.

(B) All members of the medicaid buy-in advisory council shall serve without compensation or reimbursement, except as serving on the council is considered part of their usual job duties.

(C) The voting members of the medicaid buy-in advisory council shall elect one of the members of the council to serve as the council's chairperson for a two-year term. The chairperson may be re-elected to successive terms.

(D) The department of job and family services shall provide the Ohio medicaid buy-in advisory council with accommodations for the council to hold its meetings and shall provide the council with other administrative assistance the council needs to perform its duties.

Sec. 5111.87. (A) As used in this section and section 5111.871 of the Revised Code:

(1) "Intermediate care facility for the mentally retarded" has the same meaning as in section 5111.20 of the Revised Code.

(2) "Medicaid waiver component" has the same meaning as in section 5111.85 of the Revised Code.

(B) The director of job and family services may apply to the United States secretary of health and human services for both of the following:

(1) One or more medicaid waiver components under which home and community-based services are provided to individuals with mental retardation or other developmental disability as an alternative to placement in an intermediate care facility for the mentally retarded;

(2) One or more medicaid waiver components under which home and community-based services are provided in the form of any of the following:

(a) Early intervention and supportive services for children under three years of age who have developmental delays or disabilities the director determines are significant;

(b) Therapeutic services for children who have autism;

(c) Specialized habilitative services for individuals who are eighteen years of age or older and have autism.

(C) No medicaid waiver component authorized by division (B)(2)(b) or (c) of this section shall provide services that are available under another medicaid waiver component. No medicaid waiver component authorized by division (B)(2)(b) of this section shall provide services to an individual that the individual is eligible to receive through an individualized education program as defined in section 3323.01 of the Revised Code.

(D) The director of ~~mental retardation and~~ developmental disabilities or director of health may request that the director of job and family services apply for one or more medicaid waivers under this section.

(E) Before applying for a waiver under this section, the director of job and family services shall seek, accept, and consider public comments.

Sec. 5111.871. The department of job and family services shall enter into a contract with the department of ~~mental retardation and~~ developmental disabilities under section 5111.91 of the Revised Code with regard to one or more of the components of the medicaid program established by the department of job and family services under one or more of the medicaid waivers sought under section 5111.87 of the Revised Code. The contract shall provide for the department of ~~mental retardation and~~ developmental disabilities to administer the components in accordance with the terms of the waivers. The directors of job and family services and ~~mental retardation and~~ developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code governing the components.

If the department of ~~mental retardation and~~ developmental disabilities or the department of job and family services denies an individual's application for home and community-based services provided under any of these medicaid components, the department that denied the services shall give timely notice to the individual that the individual may request a hearing under section 5101.35 of the Revised Code.

The departments of ~~mental retardation and~~ developmental disabilities and job and family services may approve, reduce, deny, or terminate a service included in the individualized service plan developed for a medicaid recipient eligible for home and community-based services provided under any of these medicaid components. The departments shall consider the recommendations a county board of ~~mental retardation and~~ developmental

disabilities makes under division (A)(1)(c) of section 5126.055 of the Revised Code. If either department approves, reduces, denies, or terminates a service, that department shall give timely notice to the medicaid recipient that the recipient may request a hearing under section 5101.35 of the Revised Code.

If supported living, as defined in section 5126.01 of the Revised Code, is to be provided as a service under any of these components, any person or government entity with a current, valid medicaid provider agreement and a current, valid certificate under section 5123.161 of the Revised Code may provide the service.

If a service is to be provided under any of these components by a residential facility, as defined in section 5123.19 of the Revised Code, any person or government entity with a current, valid medicaid provider agreement and a current, valid license under section 5123.19 of the Revised Code may provide the service.

Sec. 5111.872. When the department of ~~mental retardation and~~ developmental disabilities allocates enrollment numbers to a county board of ~~mental retardation and~~ developmental disabilities for home and community-based services specified in division (B)(1) of section 5111.87 of the Revised Code and provided under any of the components of the medicaid program that the department administers under section 5111.871 of the Revised Code, the department shall consider all of the following:

(A) The number of individuals with mental retardation or other developmental disability who are on a waiting list the county board establishes under division (C) of section 5126.042 of the Revised Code for those services and are given priority on the waiting list pursuant to division (D) or (E) of that section;

(B) The implementation component required by division (A)(3) of section 5126.054 of the Revised Code of the county board's plan approved under section 5123.046 of the Revised Code;

(C) Anything else the department considers necessary to enable county boards to provide those services to individuals in accordance with the priority requirements of divisions (D) and (E) of section 5126.042 of the Revised Code.

Sec. 5111.873. (A) Not later than the effective date of the first of any medicaid waivers the United States secretary of health and human services grants pursuant to a request made under section 5111.87 of the Revised Code, the director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code establishing statewide fee schedules for home and community-based services specified in division (B)(1) of

section 5111.87 of the Revised Code and provided under the components of the medicaid program that the department of ~~mental retardation and~~ developmental disabilities administers under section 5111.871 of the Revised Code. The rules shall provide for all of the following:

(1) The department of ~~mental retardation and~~ developmental disabilities arranging for the initial and ongoing collection of cost information from a comprehensive, statistically valid sample of persons and government entities providing the services at the time the information is obtained;

(2) The collection of consumer-specific information through an assessment instrument the department of ~~mental retardation and~~ developmental disabilities shall provide to the department of job and family services;

(3) With the information collected pursuant to divisions (A)(1) and (2) of this section, an analysis of that information, and other information the director determines relevant, methods and standards for calculating the fee schedules that do all of the following:

(a) Assure that the fees are consistent with efficiency, economy, and quality of care;

(b) Consider the intensity of consumer resource need;

(c) Recognize variations in different geographic areas regarding the resources necessary to assure the health and welfare of consumers;

(d) Recognize variations in environmental supports available to consumers.

(B) As part of the process of adopting rules under this section, the director shall consult with the director of ~~mental retardation and~~ developmental disabilities, representatives of county boards of ~~mental retardation and~~ developmental disabilities, persons who provide the home and community-based services, and other persons and government entities the director identifies.

(C) The directors of job and family services and ~~mental retardation and~~ developmental disabilities shall review the rules adopted under this section at times they determine to ensure that the methods and standards established by the rules for calculating the fee schedules continue to do everything that division (A)(3) of this section requires.

Sec. 5111.874. (A) As used in sections 5111.874 to 5111.8710 of the Revised Code:

"Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.

"ICF/MR services" means intermediate care facility for the mentally retarded services covered by the medicaid program that an intermediate care

facility for the mentally retarded provides to a resident of the facility who is a medicaid recipient eligible for medicaid-covered intermediate care facility for the mentally retarded services.

"Intermediate care facility for the mentally retarded" means an intermediate care facility for the mentally retarded that is certified as in compliance with applicable standards for the medicaid program by the director of health in accordance with Title XIX of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1396, as amended, and licensed as a residential facility under section 5123.19 of the Revised Code.

"Residential facility" has the same meaning as in section 5123.19 of the Revised Code.

(B) For the purpose of increasing the number of slots available for home and community-based services and subject to sections 5111.877 and 5111.878 of the Revised Code, the operator of an intermediate care facility for the mentally retarded may convert all of the beds in the facility from providing ICF/MR services to providing home and community-based services if all of the following requirements are met:

(1) The operator provides the directors of health, job and family services, and ~~mental retardation and~~ developmental disabilities at least ninety days' notice of the operator's intent to relinquish the facility's certification as an intermediate care facility for the mentally retarded and to begin providing home and community-based services.

(2) The operator complies with the requirements of sections 5111.65 to 5111.688 of the Revised Code regarding a voluntary termination as defined in section 5111.65 of the Revised Code if those requirements are applicable.

(3) The operator notifies each of the facility's residents that the facility is to cease providing ICF/MR services and inform each resident that the resident may do either of the following:

(a) Continue to receive ICF/MR services by transferring to another facility that is an intermediate care facility for the mentally retarded willing and able to accept the resident if the resident continues to qualify for ICF/MR services;

(b) Begin to receive home and community-based services instead of ICF/MR services from any provider of home and community-based services that is willing and able to provide the services to the resident if the resident is eligible for the services and a slot for the services is available to the resident.

(4) The operator meets the requirements for providing home and community-based services, including the following:

(a) Such requirements applicable to a residential facility if the operator

maintains the facility's license as a residential facility;

(b) Such requirements applicable to a facility that is not licensed as a residential facility if the operator surrenders the facility's residential facility license under section 5123.19 of the Revised Code.

(5) The director of ~~mental retardation and~~ developmental disabilities approves the conversion.

(C) The notice to the director of ~~mental retardation and~~ developmental disabilities under division (B)(1) of this section shall specify whether the operator wishes to surrender the facility's license as a residential facility under section 5123.19 of the Revised Code.

(D) If the director of ~~mental retardation and~~ developmental disabilities approves a conversion under division (B) of this section, the director of health shall terminate the certification of the intermediate care facility for the mentally retarded to be converted. The director of health shall notify the director of job and family services of the termination. On receipt of the director of health's notice, the director of job and family services shall terminate the operator's medicaid provider agreement that authorizes the operator to provide ICF/MR services at the facility. The operator is not entitled to notice or a hearing under Chapter 119. of the Revised Code before the director of job and family services terminates the medicaid provider agreement.

Sec. 5111.875. (A) For the purpose of increasing the number of slots available for home and community-based services and subject to sections 5111.877 and 5111.878 of the Revised Code, a person who acquires, through a request for proposals issued by the director of ~~mental retardation and~~ developmental disabilities, a residential facility that is an intermediate care facility for the mentally retarded and for which the license as a residential facility was previously surrendered or revoked may convert some or all of the facility's beds from providing ICF/MR services to providing home and community-based services if all of the following requirements are met:

(1) The person provides the directors of health, job and family services, and ~~mental retardation and~~ developmental disabilities at least ninety days' notice of the person's intent to make the conversion.

(2) The person complies with the requirements of sections 5111.65 to 5111.688 of the Revised Code regarding a voluntary termination as defined in section 5111.65 of the Revised Code if those requirements are applicable.

(3) If the person intends to convert all of the facility's beds, the person notifies each of the facility's residents that the facility is to cease providing ICF/MR services and informs each resident that the resident may do either

of the following:

(a) Continue to receive ICF/MR services by transferring to another facility that is an intermediate care facility for the mentally retarded willing and able to accept the resident if the resident continues to qualify for ICF/MR services;

(b) Begin to receive home and community-based services instead of ICF/MR services from any provider of home and community-based services that is willing and able to provide the services to the resident if the resident is eligible for the services and a slot for the services is available to the resident.

(4) If the person intends to convert some but not all of the facility's beds, the person notifies each of the facility's residents that the facility is to convert some of its beds from providing ICF/MR services to providing home and community-based services and inform each resident that the resident may do either of the following:

(a) Continue to receive ICF/MR services from any provider of ICF/MR services that is willing and able to provide the services to the resident if the resident continues to qualify for ICF/MR services;

(b) Begin to receive home and community-based services instead of ICF/MR services from any provider of home and community-based services that is willing and able to provide the services to the resident if the resident is eligible for the services and a slot for the services is available to the resident.

(5) The person meets the requirements for providing home and community-based services at a residential facility.

(B) The notice provided to the directors under division (A)(1) of this section shall specify whether some or all of the facility's beds are to be converted. If some but not all of the beds are to be converted, the notice shall specify how many of the facility's beds are to be converted and how many of the beds are to continue to provide ICF/MR services.

(C) On receipt of a notice under division (A)(1) of this section, the director of health shall do the following:

(1) Terminate the certification of the intermediate care facility for the mentally retarded if the notice specifies that all of the facility's beds are to be converted;

(2) Reduce the facility's certified capacity by the number of beds being converted if the notice specifies that some but not all of the beds are to be converted.

(D) The director of health shall notify the director of job and family services of the termination or reduction under division (C) of this section.

On receipt of the director of health's notice, the director of job and family services shall do the following:

(1) Terminate the person's medicaid provider agreement that authorizes the person to provide ICF/MR services at the facility if the facility's certification was terminated;

(2) Amend the person's medicaid provider agreement to reflect the facility's reduced certified capacity if the facility's certified capacity is reduced.

The person is not entitled to notice or a hearing under Chapter 119. of the Revised Code before the director of job and family services terminates or amends the medicaid provider agreement.

Sec. 5111.876. Subject to section 5111.877 of the Revised Code, the director of ~~mental retardation and~~ developmental disabilities may request that the director of job and family services seek the approval of the United States secretary of health and human services to increase the number of slots available for home and community-based services by a number not exceeding the number of beds that were part of the licensed capacity of a residential facility that had its license revoked or surrendered under section 5123.19 of the Revised Code if the residential facility was an intermediate care facility for the mentally retarded at the time of the license revocation or surrender. The revocation or surrender may have occurred before, or may occur on or after, ~~the effective date of this section~~ June 24, 2008. The request may include beds the director removed from such a residential facility's licensed capacity before transferring ownership or operation of the residential facility pursuant to a request for proposals.

Sec. 5111.8710. The directors of job and family services and ~~mental retardation and~~ developmental disabilities may adopt rules in accordance with Chapter 119. of the Revised Code as necessary to implement sections 5111.874 to 5111.8710 of the Revised Code.

Sec. 5111.915. (A) The department of job and family services shall enter into an agreement with the department of administrative services for the department of administrative services to contract through competitive selection pursuant to section 125.07 of the Revised Code with a vendor to perform an assessment of the data collection and data warehouse functions of the medicaid data warehouse system, including the ability to link the data sets of all agencies serving medicaid recipients.

The assessment of the data system shall include functions related to fraud and abuse detection, program management and budgeting, and performance measurement capabilities of all agencies serving medicaid recipients, including the departments of aging, alcohol and drug addiction

services, health, job and family services, mental health, and ~~mental retardation and~~ developmental disabilities.

The department of administrative services shall enter into this contract within thirty days after ~~the effective date of this section~~ September 29, 2005. The contract shall require the vendor to complete the assessment within ninety days after ~~the effective date of this section~~ September 29, 2005.

A qualified vendor with whom the department of administrative services contracts to assess the data system shall also assist the medicaid agencies in the definition of the requirements for an enhanced data system or a new data system and assist the department of administrative services in the preparation of a request for proposal to enhance or develop a data system.

(B) Based on the assessment performed pursuant to division (A) of this section, the department of administrative services shall seek a qualified vendor through competitive selection pursuant to section 125.07 of the Revised Code to develop or enhance a data collection and data warehouse system for the department of job and family services and all agencies serving medicaid recipients.

Within ninety days after ~~the effective date of this section~~ September 29, 2005, the department of job and family services shall seek enhanced federal funding for ninety per cent of the funds required to establish or enhance the data system. The department of administrative services shall not award a contract for establishing or enhancing the data system until the department of job and family services receives approval from the secretary of the United States department of health and human services for the ninety per cent federal match.

Sec. 5112.30. As used in sections 5112.30 to 5112.39 of the Revised Code:

(A) "Intermediate care facility for the mentally retarded" has the same meaning as in section 5111.20 of the Revised Code, except that it does not include any such facility operated by the department of ~~mental retardation and~~ developmental disabilities.

(B) "Medicaid" has the same meaning as in section 5111.01 of the Revised Code.

Sec. 5112.32. For the purpose of the franchise permit fee imposed under section 5112.31 of the Revised Code, the department of ~~mental retardation and~~ developmental disabilities shall:

(A) Not later than August 1, 1993, report to the department of job and family services the number of beds in each intermediate care facility for the mentally retarded certified on July 1, 1993, under Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended;

(B) Not later than June 1, 1994, and the first day of each June thereafter, report to the department of job and family services the number of beds in each such facility certified on the preceding first day of May under that title.

Sec. 5112.37. There is hereby created in the state treasury the home and community-based services for the mentally retarded and developmentally disabled fund. Ninety-four and twenty-eight hundredths per cent of all installment payments and penalties paid by an intermediate care facility for the mentally retarded under sections 5112.33 and 5112.34 of the Revised Code shall be deposited into the fund. The department of job and family services shall distribute the money in the fund in accordance with rules adopted under section 5112.39 of the Revised Code. The departments of job and family services and ~~mental retardation and~~ developmental disabilities shall use the money for the medicaid program established under Chapter 5111. of the Revised Code and home and community-based services to mentally retarded and developmentally disabled persons.

Sec. 5112.371. There is hereby created in the state treasury the children with intensive behavioral needs programs fund. Five and seventy-two hundredths per cent of all installment payments and penalties paid by an intermediate care facility for the mentally retarded under sections 5112.33 and 5112.34 of the Revised Code shall be deposited in the fund. The money in the fund shall be used for the programs the director of ~~mental retardation and~~ developmental disabilities establishes under section 5123.0417 of the Revised Code.

Sec. 5119.16. As used in this section, "free clinic" has the same meaning as in section 2305.2341 of the Revised Code.

(A) The department of mental health is hereby designated to provide certain goods and services for the department of mental health, the department of ~~mental retardation and~~ developmental disabilities, the department of rehabilitation and correction, the department of youth services, and other state, county, or municipal agencies requesting such goods and services when the department of mental health determines that it is in the public interest, and considers it advisable, to provide these goods and services. The department of mental health also may provide goods and services to agencies operated by the United States government and to public or private nonprofit agencies, other than free clinics, that are funded in whole or in part by the state if the public or private nonprofit agencies are designated for participation in this program by the director of mental health for community mental health agencies, the director of ~~mental retardation and~~ developmental disabilities for community mental retardation and developmental disabilities agencies, the director of rehabilitation and

correction for community rehabilitation and correction agencies, or the director of youth services for community youth services agencies.

Designated community agencies shall receive goods and services through the department of mental health only in those cases where the designating state agency certifies that providing such goods and services to the agency will conserve public resources to the benefit of the public and where the provision of such goods and services is considered feasible by the department of mental health.

(B) The department of mental health may permit free clinics to purchase certain goods and services to the extent the purchases fall within the exemption to the Robinson-Patman Act, 15 U.S.C. 13 et seq., applicable to ~~non-profit~~ nonprofit institutions, in 15 U.S.C. 13c, as amended.

(C) The goods and services to be provided by the department of mental health under divisions (A) and (B) of this section may include:

(1) Procurement, storage, processing, and distribution of food and professional consultation on food operations;

(2) Procurement, storage, and distribution of medical and laboratory supplies, dental supplies, medical records, forms, optical supplies, and sundries, subject to section 5120.135 of the Revised Code;

(3) Procurement, storage, repackaging, distribution, and dispensing of drugs, the provision of professional pharmacy consultation, and drug information services;

(4) Other goods and services as may be agreed to.

(D) The department of mental health shall provide the goods and services designated in division (C) of this section to its institutions and to state-operated community-based mental health services.

(E) After consultation with and advice from the director of ~~mental retardation~~ and developmental disabilities, the director of rehabilitation and correction, and the director of youth services, the department of mental health shall provide the goods and services designated in division (C) of this section to the department of ~~mental retardation~~ and developmental disabilities, the department of rehabilitation and correction, and the department of youth services.

(F) The cost of administration of this section shall be determined by the department of mental health and paid by the agencies or free clinics receiving the goods and services to the department for deposit in the state treasury to the credit of the mental health fund, which is hereby created. The fund shall be used to pay the cost of administration of this section to the department.

(G) If the goods or services designated in division (C) of this section are

not provided in a satisfactory manner by the department of mental health to the agencies described in division (A) of this section, the director of ~~mental retardation~~ and developmental disabilities, the director of rehabilitation and correction, the director of youth services, or the managing officer of a department of mental health institution shall attempt to resolve unsatisfactory service with the director of mental health. If, after such attempt, the provision of goods or services continues to be unsatisfactory, the director or officer shall notify the director of mental health. If within thirty days of such notice the department of mental health does not provide the specified goods and services in a satisfactory manner, the director of ~~mental retardation~~ and developmental disabilities, the director of rehabilitation and correction, the director of youth services, or the managing officer of the department of mental health institution shall notify the director of mental health of the director's or managing officer's intent to cease purchasing goods and services from the department. Following a sixty-day cancellation period from the date of such notice, the department of ~~mental retardation~~ developmental disabilities, department of rehabilitation and correction, department of youth services, or the department of mental health institution may obtain the goods and services from a source other than the department of mental health, if the department certifies to the department of administrative services that the requirements of this division have been met.

(H) Whenever a state agency fails to make a payment for goods and services provided under this section within thirty-one days after the date the payment was due, the office of budget and management may transfer moneys from the state agency to the department of mental health. The amount transferred shall not exceed the amount of overdue payments. Prior to making a transfer under this division, the office of budget and management shall apply any credits the state agency has accumulated in payments for goods and services provided under this section.

(I) Purchases of goods and services under this section are not subject to section 307.86 of the Revised Code.

Sec. 5119.221. (A) Upon petition by the director of mental health, the court of common pleas or the probate court may appoint a receiver to take possession of and operate a residential facility licensed pursuant to section 5119.22 of the Revised Code, when conditions existing at the residential facility present a substantial risk of physical or mental harm to residents and no other remedies at law are adequate to protect the health, safety, and welfare of the residents.

Petitions filed pursuant to this section shall include:

(1) A description of the specific conditions existing at the residential

facility which present a substantial risk of physical or mental harm to residents;

(2) A statement of the absence of other adequate remedies at law;

(3) The number of individuals residing at the facility;

(4) A statement that the facts have been brought to the attention of the owner or licensee and that conditions have not been remedied within a reasonable period of time or that the conditions, though remedied periodically, habitually exist at the residential facility as a pattern or practice; and

(5) The name and address of the person holding the license for the residential facility.

(B) A court in which a petition is filed pursuant to this section shall notify the person holding the license for the facility of the filing. The department shall send notice of the filing to the following, as appropriate: the legal rights service created pursuant to section 5123.60 of the Revised Code; facility owner; facility operator; board of alcohol, drug addiction, and mental health services; board of health; department of ~~mental retardation~~ ~~and~~ developmental disabilities; department of job and family services; facility residents; and residents' families and guardians. The court shall provide a hearing on the petition within five court days of the time it was filed, except that the court may appoint a receiver prior to that time if it determines that the circumstances necessitate such action.

Following a hearing on the petition, and upon a determination that the appointment of a receiver is warranted, the court shall appoint a receiver and notify the department of mental health and appropriate persons of this action.

In setting forth the powers of the receiver, the court may generally authorize the receiver to do all that is prudent and necessary to safely and efficiently operate the residential facility within the requirements of state and federal law, but shall require the receiver to obtain court approval prior to making any single expenditure of more than five thousand dollars to correct deficiencies in the structure or furnishings of a facility. The court shall closely review the conduct of the receiver and shall require regular and detailed reports.

(C) A receivership established pursuant to this section shall be terminated, following notification of the appropriate parties and a hearing, if the court determines either of the following:

(1) The residential facility has been closed and the former residents have been relocated to an appropriate facility;

(2) Circumstances no longer exist at the residential facility which

present a substantial risk of physical or mental harm to residents, and there is no deficiency in the residential facility that is likely to create a future risk of harm.

Notwithstanding division (C)(2) of this section, the court shall not terminate a receivership for a residential facility that has previously operated under another receivership unless the responsibility for the operation of the facility is transferred to an operator approved by the court and the department of mental health.

(D) Except for the department of mental health or appropriate board of alcohol, drug addiction, and mental health services, no party or person interested in an action shall be appointed a receiver pursuant to this section.

To assist the court in identifying persons qualified to be named as receivers, the director of the department of mental health shall maintain a list of the names of such persons. The department of mental health, the department of job and family services, and the department of health shall provide technical assistance to any receiver appointed pursuant to this section.

Before entering upon the duties of receiver, the receiver must be sworn to perform the duties faithfully, and, with surety approved by the court, judge, or clerk, execute a bond to such person, and in such sum as the court or judge directs, to the effect that such receiver will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

(1) Under the control of the appointing court, a receiver may do the following:

- (a) Bring and defend actions in the appointee's name as receiver;
- (b) Take and keep possession of property.

(2) The court shall authorize the receiver to do the following:

(a) Collect payment for all goods and services provided to the residents or others during the period of the receivership at the same rate as was charged by the licensee at the time the petition for receivership was filed, unless a different rate is set by the court;

(b) Honor all leases, mortgages, and secured transactions governing all buildings, goods, and fixtures of which the receiver has taken possession, but, in the case of a rental agreement only to the extent of payments that are for the use of the property during the period of the receivership, or, in the case of a purchase agreement, only to the extent that payments come due during the period of the receivership;

(c) If transfer of residents is necessary, provide for the orderly transfer of residents by:

- (i) Cooperating with all appropriate state and local agencies in carrying

out the transfer of residents to alternative community placements;

(ii) Providing for the transportation of residents' belongings and records;

(iii) Helping to locate alternative placements and develop plans for transfer;

(iv) Encouraging residents or guardians to participate in transfer planning except when an emergency exists and immediate transfer is necessary.

(d) Make periodic reports on the status of the residential facility to the court; the appropriate state agencies; and the board of alcohol, drug addiction, and mental health services. Each report shall be made available to residents, their guardians, and families.

(e) Compromise demands or claims; and

(f) Generally do such acts respecting the residential facility as the court authorizes.

Notwithstanding any other provision of law, contracts which are necessary to carry out the powers and duties of the receiver need not be competitively bid.

Sec. 5119.51. Pursuant to Article X of the compact set forth in section 5119.50 of the Revised Code, the director of mental health and the director of ~~mental retardation and~~ developmental disabilities each shall designate an officer who shall be the compact administrator for ~~his~~ the department and who, acting jointly with like officers of other party states, shall adopt rules to carry out more effectively the terms of the compact. The compact administrators of each department shall serve subject to the pleasure of the governor and shall cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreements entered into by this state thereunder.

Sec. 5120.07. (A) There is hereby created the ex-offender reentry coalition consisting of the following seventeen members or their designees:

(1) The director of rehabilitation and correction;

(2) The director of aging;

(3) The director of alcohol and drug addiction services;

(4) The director of development;

(5) The superintendent of public instruction;

(6) The director of health;

(7) The director of job and family services;

(8) The director of mental health;

(9) The director of ~~mental retardation and~~ developmental disabilities;

(10) The director of public safety;

- (11) The director of youth services;
- (12) The chancellor of the Ohio board of regents;
- (13) The director of the governor's office of external affairs and economic opportunity;
- (14) The director of the governor's office of faith-based and community initiatives;
- (15) The director of the rehabilitation services commission;
- (16) The director of the department of commerce;
- (17) The executive director of a health care licensing board created under Title XLVII of the Revised Code, as appointed by the chairperson of the coalition.

(B) The members of the coalition shall serve without compensation. The director of rehabilitation and correction or the director's designee shall be the chairperson of the coalition.

(C) In consultation with persons interested and involved in the reentry of ex-offenders into the community, including but not limited to, service providers, community-based organizations, and local governments, the coalition shall identify and examine social service barriers and other obstacles to the reentry of ex-offenders into the community. Not later than one year after ~~the effective date of this act~~ April 7, 2009, and on or before the same date of each year thereafter, the coalition shall submit to the speaker of the house of representatives and the president of the senate a report, including recommendations for legislative action, the activities of the coalition, and the barriers affecting the successful reentry of ex-offenders into the community. The report shall analyze the effects of those barriers on ex-offenders and on their children and other family members in various areas, including but not limited to, the following:

- (1) Admission to public and other housing;
- (2) Child support obligations and procedures;
- (3) Parental incarceration and family reunification;
- (4) Social security benefits, veterans' benefits, food stamps, and other forms of public assistance;
- (5) Employment;
- (6) Education programs and financial assistance;
- (7) Substance abuse, mental health, and sex offender treatment programs and financial assistance;
- (8) Civic and political participation;
- (9) Other collateral consequences under the Revised Code or the Ohio administrative code law that may result from a criminal conviction.

Sec. 5120.135. (A) As used in this section, "laboratory services"

includes the performance of medical laboratory analysis; professional laboratory and pathologist consultation; the procurement, storage, and distribution of laboratory supplies; and the performance of phlebotomy services.

(B) The department of rehabilitation and correction shall provide laboratory services to the departments of mental health, ~~mental retardation~~ ~~and~~ developmental disabilities, youth services, and rehabilitation and correction. The department of rehabilitation and correction may also provide laboratory services to other state, county, or municipal agencies and to private persons that request laboratory services if the department of rehabilitation and correction determines that the provision of laboratory services is in the public interest and considers it advisable to provide such services. The department of rehabilitation and correction may also provide laboratory services to agencies operated by the United States government and to public and private entities funded in whole or in part by the state if the director of rehabilitation and correction designates them as eligible to receive such services.

The department of rehabilitation and correction shall provide laboratory services from a laboratory that complies with the standards for certification set by the United States department of health and human services under the "Clinical Laboratory Improvement Amendments of 1988," 102 Stat. 293, 42 U.S.C.A. 263a. In addition, the laboratory shall maintain accreditation or certification with an appropriate accrediting or certifying organization as considered necessary by the recipients of its laboratory services and as authorized by the director of rehabilitation and correction.

(C) The cost of administering this section shall be determined by the department of rehabilitation and correction and shall be paid by entities that receive laboratory services to the department for deposit in the state treasury to the credit of the laboratory services fund, which is hereby created. The fund shall be used to pay the costs the department incurs in administering this section.

(D) If the department of rehabilitation and correction does not provide laboratory services under this section in a satisfactory manner to the department of ~~mental retardation~~ ~~and~~ developmental disabilities, youth services, or mental health, the director of ~~mental retardation~~ ~~and~~ developmental disabilities, youth services, or mental health shall attempt to resolve the matter of the unsatisfactory provision of services with the director of rehabilitation and correction. If, after this attempt, the provision of laboratory services continues to be unsatisfactory, the director of ~~mental retardation~~ ~~and~~ developmental disabilities, youth services, or mental health

shall notify the director of rehabilitation and correction regarding the continued unsatisfactory provision of laboratory services. If, within thirty days after the director receives this notice, the department of rehabilitation and correction does not provide the specified laboratory services in a satisfactory manner, the director of ~~mental retardation and~~ developmental disabilities, youth services, or mental health shall notify the director of rehabilitation and correction of the notifying director's intent to cease obtaining laboratory services from the department of rehabilitation and correction. Following the end of a cancellation period of sixty days that begins on the date of the notice, the department that sent the notice may obtain laboratory services from a provider other than the department of rehabilitation and correction, if the department that sent the notice certifies to the department of administrative services that the requirements of this division have been met.

(E) Whenever a state agency fails to make a payment for laboratory services provided to it by the department of rehabilitation and correction under this section within thirty-one days after the date the payment was due, the office of budget and management may transfer moneys from that state agency to the department of rehabilitation and correction for deposit to the credit of the laboratory services fund. The amount transferred shall not exceed the amount of the overdue payments. Prior to making a transfer under this division, the office shall apply any credits the state agency has accumulated in payment for laboratory services provided under this section.

Sec. 5121.01. As used in sections 5121.01 to 5121.21 of the Revised Code:

(A) "Resident" means a person admitted to an institution or other facility pursuant to Chapter 5123. of the Revised Code who is under observation or receiving habilitation and care.

(B) "Applicable cost" means the rate for support applicable to a resident as specified in this section.

The cost for support of residents in institutions under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities, and of residents in private facilities or homes whose care or treatment is being paid for by the department, shall be based on the average per capita cost of the care and treatment of the residents. The cost of services for residents shall be computed using the projected average daily per capita cost at the institution, or at the discretion of the department, the subunit thereof in which services are provided. Such costs shall be computed at least annually for the next prospective period using generally accepted governmental accounting principles. The cost of services for residents that are being cared

for and maintained in a private facility or home under the supervision of the department and for which a purchase of services contract is being paid to the private facility or home by the department shall not be more than the per diem cost of the contract. The cost of services for a resident receiving pre-admission care, after-care, day-care, or routine consultation and treatment services in a community service unit under the jurisdiction of the department shall be computed on the basis of the average cost of such services at the institution at which they are provided.

The department shall annually determine the ability to pay of a resident or the resident's liable relatives and the amount that such person shall pay in accordance with section 5121.04 of the Revised Code.

Collections of support payments shall be made by the department and, subject to meeting prior requirements for payment and crediting of such collections and other available receipts, in accordance with the bond proceedings applicable to obligations issued pursuant to section 154.20 of the Revised Code, such collections and other available receipts designated by the director of ~~mental retardation and~~ developmental disabilities for deposit in the special accounts, together with insurance contract payments provided for in division (B)(8) of section 5121.04 of the Revised Code, shall be remitted to the treasurer of state for deposit in the state treasury to the credit of the ~~mental retardation~~ developmental disabilities operating fund, which is hereby created, to be used for the general purposes of the department. The department shall make refunds of overpayment of support charges from the ~~mental retardation~~ developmental disabilities operating fund.

Sec. 5121.02. All individuals admitted to a state institution operated by the department of ~~mental retardation and~~ developmental disabilities under section 5123.03 of the Revised Code shall be maintained at the expense of the state. Their traveling and incidental expenses in conveying them to the state institution shall be paid by the county of commitment. Upon admission, the individuals shall be neatly and comfortably clothed. Thereafter, the expense of necessary clothing shall be borne by the responsible relatives or guardian if they are financially able. If not furnished, the state shall bear the expense. Any required traveling expense after admission to the state institution shall be borne by the state if the responsible relatives or guardian are unable to do so.

Sec. 5121.03. When any person is committed to an institution under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities pursuant to judicial proceedings, the judge ordering such commitment shall:

(A) Make a reliable report on the financial condition of such person and of each of the relatives of the person who are liable for the person's support, as provided in section 5121.06 of the Revised Code and rules and procedures adopted by the director of ~~mental retardation and~~ developmental disabilities;

(B) Certify to the managing officer of such institution, and the managing officer shall thereupon enter upon the managing officer's records the name and address of any guardian appointed and of any relative liable for such person's support under section 5121.06 of the Revised Code.

Sec. 5121.04. (A) The department of ~~mental retardation and~~ developmental disabilities shall investigate the financial condition of the residents in institutions, residents whose care or treatment is being paid for in a private facility or home under the control of the department, and of the relatives named in section 5121.06 of the Revised Code as liable for the support of such residents, in order to determine the ability of any resident or liable relatives to pay for the support of the resident and to provide suitable clothing as required by the superintendent of the institution.

(B) The department shall follow the provisions of this division in determining the ability to pay of a resident or the resident's liable relatives and the amount to be charged such resident or liable relatives.

(1) Subject to divisions (B)(10) and (11) of this section, a resident without dependents shall be liable for the full applicable cost. A resident without dependents who has a gross annual income equal to or exceeding the sum of the full applicable cost, plus fifty dollars per month, regardless of the source of such income, shall pay currently the full amount of the applicable cost; if the resident's gross annual income is less than such sum, not more than fifty dollars per month shall be kept for personal use by or on behalf of the resident, except as permitted in the state plan for providing medical assistance under Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, and the balance shall be paid currently on the resident's support. Subject to divisions (B)(10) and (11) of this section, the estate of a resident without dependents shall pay currently any remaining difference between the applicable cost and the amounts prescribed in this section, or shall execute an agreement with the department for payment to be made at some future date under terms suitable to the department. However, no security interest, mortgage, or lien shall be taken, granted, or charged against any principal residence of a resident without dependents under an agreement or otherwise to secure support payments, and no foreclosure actions shall be taken on security interests, mortgages, or liens taken, granted, or charged against principal residences of residents

prior to October 7, 1977.

(2) The ability to pay of a resident with dependents, or of a liable relative of a resident either with or without dependents, shall be determined in accordance with the resident's or liable relative's income or other assets, the needs of others who are dependent on such income and other assets for support, and, if applicable, divisions (B)(10) and (11) of this section.

For the first thirty days of care and treatment of each admission, but in no event for more than thirty days in any calendar year, the resident with dependents or the liable relative of a resident either with or without dependents shall be charged an amount equal to the percentage of the average applicable cost determined in accordance with the schedule of adjusted gross annual income contained after this paragraph. After such first thirty days of care and treatment, such resident or such liable relative shall be charged an amount equal to the percentage of a base support rate of four dollars per day for residents, as determined in accordance with the schedule of gross annual income contained after this paragraph, or in accordance with division (B)(5) of this section. Beginning January 1, 1978, the department shall increase the base rate when the consumer price index average is more than 4.0 for the preceding calendar year by not more than the average for such calendar year.

Adjusted Gross Annual  
Income of Resident

or Liable Relative (FN a)

Number of Dependents (FN b)

8 or

1 2 3 4 5 6 7 more

Rate of Support (In Percentages)

\$15,000 or less	--	--	--	--	--	--	--	--
15,001 to 17,500	20	--	--	--	--	--	--	--
17,501 to 20,000	25	20	--	--	--	--	--	--
20,001 to 21,000	30	25	20	--	--	--	--	--
21,001 to 22,000	35	30	25	20	--	--	--	--
22,001 to 23,000	40	35	30	25	20	--	--	--
23,001 to 24,000	45	40	35	30	25	20	--	--
24,001 to 25,000	50	45	40	35	30	25	20	--
25,001 to 26,000	55	50	45	40	35	30	25	20
26,001 to 27,000	60	55	50	45	40	35	30	25
27,001 to 28,000	70	60	55	50	45	40	35	30
28,001 to 30,000	80	70	60	55	50	45	40	35
30,001 to 40,000	90	80	70	60	55	50	45	40
40,001 and over	100	90	80	70	60	55	50	45

Footnote a. The resident or relative shall furnish a copy of the resident's or relative's federal income tax return as evidence of gross annual income.

Footnote b. The number of dependents includes the liable relative but excludes a resident in an institution. "Dependent" includes any person who receives more than half the person's support from the resident or the resident's liable relative.

(3) A resident or liable relative having medical, funeral, or related expenses in excess of four per cent of the adjusted gross annual income, which expenses were not covered by insurance, may adjust such gross annual income by reducing the adjusted gross annual income by the full amount of such expenses. Proof of such expenses satisfactory to the department must be furnished.

(4) Additional dependencies may be claimed if:

(a) The liable relative is blind;

(b) The liable relative is over sixty-five;

(c) A child is a college student with expenses in excess of fifty dollars per month;

(d) The services of a housekeeper, costing in excess of fifty dollars per month, are required if the person who normally keeps house for minor children is the resident.

(5) If with respect to any resident with dependents there is chargeable under division (B)(2) of this section less than fifty per cent of the applicable cost or, if the base support rate was used, less than fifty per cent of the amount determined by use of the base support rate, and if with respect to such resident there is a liable relative who has an estate having a value in excess of fifteen thousand dollars or if such resident has a dependent and an estate having a value in excess of fifteen thousand dollars, there shall be paid with respect to such resident a total of fifty per cent of the applicable cost or the base support rate amount, as the case may be, on a current basis or there shall be executed with respect to such resident an agreement with the department for payment to be made at some future date under terms suitable to the department.

(6) When a person has been a resident for fifteen years and the support charges for which a relative is liable have been paid for the fifteen-year period, the liable relative shall be relieved of any further support charges.

(7) The department shall accept voluntary payments from residents or liable relatives whose incomes are below the minimum shown in the schedule set forth in this division. The department also shall accept voluntary payments in excess of required amounts from both liable and nonliable relatives.

(8) If a resident is covered by an insurance policy, or other contract that provides for payment of expenses for care and treatment for mental retardation or other developmental disability at or from an institution or facility (including a community service unit under the jurisdiction of the department), the other provisions of this section, except divisions (B)(8), (10), and (11) of this section, and of section 5121.01 of the Revised Code shall be suspended to the extent that such insurance policy or other contract is in force, and such resident shall be charged the full amount of the applicable cost. Any insurance carrier or other third party payor providing coverage for such care and treatment shall pay for this support obligation in an amount equal to the lesser of either the applicable cost or the benefits provided under the policy or other contract. Whether or not an insured, owner of, or other person having an interest in such policy or other contract is liable for support payments under other provisions of this chapter, the insured, policy owner, or other person shall assign payment directly to the department of all assignable benefits under the policy or other contract and shall pay over to the department, within ten days of receipt, all insurance or other benefits received as reimbursement or payment for expenses incurred by the resident or for any other reason. If the insured, policy owner, or other person refuses to assign such payment to the department or refuses to pay such received reimbursements or payments over to the department within ten days of receipt, the insured's, policy owners', or other person's total liability for the services equals the applicable statutory liability for payment for the services as determined under other provisions of this chapter, plus the amounts payable under the terms of the policy or other contract. In no event shall this total liability exceed the full amount of the applicable cost. Upon its request, the department is entitled to a court order that compels the insured, owner of, or other person having an interest in the policy or other contract to comply with the assignment requirements of this division or that itself serves as a legally sufficient assignment in compliance with such requirements. Notwithstanding section 5123.89 of the Revised Code and any other law relating to confidentiality of records, the managing officer of the institution or facility where a person is or has been a resident shall disclose pertinent medical information concerning the resident to the insurance carrier or other third party payor in question, in order to effect collection from the carrier or payor of the state's claim for care and treatment under this division. For such disclosure, the managing officer is not subject to any civil or criminal liability.

(9) The rate to be charged for pre-admission care, after-care, day-care, or routine consultation and treatment services shall be based upon the ability

of the resident or the resident's liable relatives to pay. When it is determined by the department that a charge shall be made, such charge shall be computed as provided in divisions (B)(1) and (2) of this section.

(10) If a resident with or without dependents is the beneficiary of a trust created pursuant to section 5815.28 of the Revised Code, then, notwithstanding any contrary provision of this chapter or of a rule adopted pursuant to this chapter, divisions (C) and (D) of that section shall apply in determining the assets or resources of the resident, the resident's estate, the settlor, or the settlor's estate and to claims arising under this chapter against the resident, the resident's estate, the settlor, or the settlor's estate.

(11) If the department waives the liability of an individual and the individual's liable relatives pursuant to section 5123.194 of the Revised Code, the liability of the individual and relative ceases in accordance with the waiver's terms.

(C) The department may enter into agreements with a resident or a liable relative for support payments to be made in the future. However, no security interest, mortgage, or lien shall be taken, granted, or charged against any principal family residence of a resident with dependents or a liable relative under an agreement or otherwise to secure support payments, and no foreclosure actions shall be taken on security interests, mortgages or liens taken, granted, or charged against principal residences of residents or liable relatives prior to October 7, 1977.

(D) The department shall make all investigations and determinations required by this section within ninety days after a resident is admitted to an institution under the department's control and immediately shall notify by mail the persons liable of the amount to be charged.

(E) All actions to enforce the collection of payments agreed upon or charged by the department shall be commenced within six years after the date of default of an agreement to pay support charges or the date such payment becomes delinquent. If a payment is made pursuant to an agreement which is in default, a new six-year period for actions to enforce the collection of payments under such agreement shall be computed from the date of such payment. For purposes of this division an agreement is in default or a payment is delinquent if a payment is not made within thirty days after it is incurred or a payment, pursuant to an agreement, is not made within thirty days after the date specified for such payment. In all actions to enforce the collection of payment for the liability for support, every court of record shall receive into evidence the proof of claim made by the state together with all debts and credits, and it shall be prima-facie evidence of the facts contained in it.

Sec. 5121.05. The department of ~~mental retardation and~~ developmental disabilities may subpoena witnesses, take testimony under oath, and examine any public records relating to the income and other assets of a resident or liable relative. All information, conclusions, and recommendations shall be submitted to the department by the investigating agent of the department. The department shall determine the amount of support to be paid, by whom, and whether clothing shall be furnished by the relatives or guardian.

Sec. 5121.051. All outstanding liability of relatives for the support of any patient or resident in a benevolent institution under the control of the department of mental health or the department of ~~mental retardation and~~ developmental disabilities accrued prior to January 1, 1956, including the liability of the patient ~~himself~~ personally, is hereby ~~cancelled~~ canceled, provided that this section does not abrogate any written agreements or security arrangement for the payment of support charges entered into between the state and any patient or liable relative prior to such date.

Sec. 5121.06. (A) The following persons other than the resident or the resident's estate are liable relatives and all the following persons are jointly and severally liable for the support of a resident in an institution under the control of the department of ~~mental retardation and~~ developmental disabilities:

- (1) The resident or the resident's estate;
- (2) The resident's spouse;
- (3) The father or mother, or both, of a minor resident under the age of eighteen years.

(B) The department shall determine, pursuant to section 5121.04 of the Revised Code, the amount to be charged each resident and liable relative in the order named in this section, but shall not collect from any person more than one hundred per cent of the applicable cost.

(C) An action to collect delinquent payments or to enforce agreements in default may be brought against any or all persons named in this section. To the extent parents of adult residents, pursuant to the language of this section previously in force, incurred charges for the support of such residents between the eighteenth birthday of such resident and July 1, 1975, their liability for such period may be ~~cancelled~~ canceled, compromised, or settled as provided in section 5121.07 of the Revised Code.

(D) Irrespective of the number of residents whose care might be chargeable against a liable relative, no individual liable relative nor group of liable relatives who are members of the same family unit shall be charged with the support of more than one resident during the same period of time,

and different periods of time for which such liable relative has paid the charges for such different residents' care and support shall be added together for the purpose of completing the maximum fifteen-year period of liability of such liable relative under division (B)(6) of section 5121.04 of the Revised Code.

Sec. 5121.061. The authority of the department of ~~mental retardation and~~ developmental disabilities to modify support charges pursuant to section 5121.04 of the Revised Code shall not be exercised until the resident or liable relative has petitioned the department for modification as provided in section 5121.07 of the Revised Code and has offered to the department satisfactory proof of the resident's or liable relative's earnings and assets. The department may modify the charges if its investigation warrants such modification.

Sec. 5121.07. Any person who has been charged with the payment of the support of a resident or for pre-admission care, after-care, day-care, or routine consultation and treatment services in a community service unit under the control of the department of ~~mental retardation and~~ developmental disabilities may petition the department for a release from, or modification of, such charge, and the department, after an investigation, may cancel or modify such former charge, or may cancel, compromise, or settle any accrued liability in an amount not exceeding five thousand dollars. Amounts in excess thereof may be canceled, compromised, or settled as provided in section 131.02 of the Revised Code. The department may for due cause increase the amount previously ordered paid.

Sec. 5121.08. The managing officers of the institutions under the control of the department of ~~mental retardation and~~ developmental disabilities and the committing court, if requested, shall submit to the department such information as they may obtain concerning the financial condition of any resident or of relatives liable for the resident's support.

Sec. 5121.09. In case the estate of any resident in an institution under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities is sufficient for the resident's support, without hardship to any others who may be dependent thereon, and no guardian has been appointed for such estate, the agent of the department shall petition the probate court of the proper county to appoint a guardian.

Sec. 5121.10. Upon the death of a resident or former resident of any institution under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities, or upon the death of a person responsible under section 5121.06 of the Revised Code for the support of a resident, the department may waive the presentation of any claim for support against the

estate of such decedent, when in its judgment an otherwise dependent person will be directly benefited by the estate. Claims against an estate for support of a resident are subject to section 5815.28 and Chapter 2117. of the Revised Code, and shall be treated, and may be barred, the same as the claims of other creditors of the estate, pursuant to that section or chapter.

The department may accept from a guardian or trustee of a resident a contract agreeing to pay to the state from the property of the guardian's or trustee's ward before or at the death of the ward a fixed annual amount for the support of the ward while the ward is a resident, with interest at four per cent per annum. A copy of the contract shall be filed in the probate court of the proper county and duly entered as a part of the records concerning the ward.

Sec. 5121.11. The state shall bear the expense of the burial or cremation of an indigent resident who dies in a state institution operated by the department of ~~mental retardation and~~ developmental disabilities under section 5123.03 of the Revised Code or in a state correctional institution if the body is not claimed for interment or cremation at the expense of friends or relatives or is not delivered for anatomical purposes or for the study of embalming in accordance with section 1713.34 of the Revised Code. The managing officer of the institution shall provide at the grave of the person or, if the person's cremated remains are buried, at the grave of the person's cremated remains, a metal, stone, or concrete marker on which shall be inscribed the name and age of the person and the date of death.

Sec. 5121.12. The support and maintenance of residents confined in state institutions operated by the department of ~~mental retardation and~~ developmental disabilities under section 5123.03 of the Revised Code, including those transferred to them from state correctional institutions, and also including persons under indictment or conviction for crime, shall be collected and paid in accordance with sections 5121.01 to 5121.21 of the Revised Code.

Sec. 5123.01. As used in this chapter:

(A) "Chief medical officer" means the licensed physician appointed by the managing officer of an institution for the mentally retarded with the approval of the director of ~~mental retardation and~~ developmental disabilities to provide medical treatment for residents of the institution.

(B) "Chief program director" means a person with special training and experience in the diagnosis and management of the mentally retarded, certified according to division (C) of this section in at least one of the designated fields, and appointed by the managing officer of an institution for the mentally retarded with the approval of the director to provide

habilitation and care for residents of the institution.

(C) "Comprehensive evaluation" means a study, including a sequence of observations and examinations, of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions if any, by a group of persons with special training and experience in the diagnosis and management of persons with mental retardation or a developmental disability, which group shall include individuals who are professionally qualified in the fields of medicine, psychology, and social work, together with such other specialists as the individual case may require.

(D) "Education" means the process of formal training and instruction to facilitate the intellectual and emotional development of residents.

(E) "Habilitation" means the process by which the staff of the institution assists the resident in acquiring and maintaining those life skills that enable the resident to cope more effectively with the demands of the resident's own person and of the resident's environment and in raising the level of the resident's physical, mental, social, and vocational efficiency. Habilitation includes but is not limited to programs of formal, structured education and training.

(F) "Health officer" means any public health physician, public health nurse, or other person authorized or designated by a city or general health district.

(G) "Home and community-based services" means medicaid-funded home and community-based services specified in division (B)(1) of section 5111.87 of the Revised Code provided under the medicaid waiver components the department of ~~mental retardation and~~ developmental disabilities administers pursuant to section 5111.871 of the Revised Code.

(H) "Indigent person" means a person who is unable, without substantial financial hardship, to provide for the payment of an attorney and for other necessary expenses of legal representation, including expert testimony.

(I) "Institution" means a public or private facility, or a part of a public or private facility, that is licensed by the appropriate state department and is equipped to provide residential habilitation, care, and treatment for the mentally retarded.

(J) "Licensed physician" means a person who holds a valid certificate issued under Chapter 4731. of the Revised Code authorizing the person to practice medicine and surgery or osteopathic medicine and surgery, or a medical officer of the government of the United States while in the performance of the officer's official duties.

(K) "Managing officer" means a person who is appointed by the director of ~~mental retardation and~~ developmental disabilities to be in executive

control of an institution for the mentally retarded under the jurisdiction of the department.

(L) "Medicaid" has the same meaning as in section 5111.01 of the Revised Code.

(M) "Medicaid case management services" means case management services provided to an individual with mental retardation or other developmental disability that the state medicaid plan requires.

(N) "Mentally retarded person" means a person having significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior, manifested during the developmental period.

(O) "Mentally retarded person subject to institutionalization by court order" means a person eighteen years of age or older who is at least moderately mentally retarded and in relation to whom, because of the person's retardation, either of the following conditions exist:

(1) The person represents a very substantial risk of physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's most basic physical needs and that provision for those needs is not available in the community;

(2) The person needs and is susceptible to significant habilitation in an institution.

(P) "A person who is at least moderately mentally retarded" means a person who is found, following a comprehensive evaluation, to be impaired in adaptive behavior to a moderate degree and to be functioning at the moderate level of intellectual functioning in accordance with standard measurements as recorded in the most current revision of the manual of terminology and classification in mental retardation published by the American association on mental retardation.

(Q) As used in this division, "substantial functional limitation," "developmental delay," and "established risk" have the meanings established pursuant to section 5123.011 of the Revised Code.

"Developmental disability" means a severe, chronic disability that is characterized by all of the following:

(1) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness as defined in division (A) of section 5122.01 of the Revised Code.

(2) It is manifested before age twenty-two.

(3) It is likely to continue indefinitely.

(4) It results in one of the following:

(a) In the case of a person under three years of age, at least one developmental delay or an established risk;

(b) In the case of a person at least three years of age but under six years of age, at least two developmental delays or an established risk;

(c) In the case of a person six years of age or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is at least sixteen years of age, capacity for economic self-sufficiency.

(5) It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.

(R) "Developmentally disabled person" means a person with a developmental disability.

(S) "State institution" means an institution that is tax-supported and under the jurisdiction of the department.

(T) "Residence" and "legal residence" have the same meaning as "legal settlement," which is acquired by residing in Ohio for a period of one year without receiving general assistance prior to July 17, 1995, under former Chapter 5113. of the Revised Code, financial assistance under Chapter 5115. of the Revised Code, or assistance from a private agency that maintains records of assistance given. A person having a legal settlement in the state shall be considered as having legal settlement in the assistance area in which the person resides. No adult person coming into this state and having a spouse or minor children residing in another state shall obtain a legal settlement in this state as long as the spouse or minor children are receiving public assistance, care, or support at the expense of the other state or its subdivisions. For the purpose of determining the legal settlement of a person who is living in a public or private institution or in a home subject to licensing by the department of job and family services, the department of mental health, or the department of ~~mental retardation and~~ developmental disabilities, the residence of the person shall be considered as though the person were residing in the county in which the person was living prior to the person's entrance into the institution or home. Settlement once acquired shall continue until a person has been continuously absent from Ohio for a period of one year or has acquired a legal residence in another state. A woman who marries a man with legal settlement in any county immediately acquires the settlement of her husband. The legal settlement of a minor is

that of the parents, surviving parent, sole parent, parent who is designated the residential parent and legal custodian by a court, other adult having permanent custody awarded by a court, or guardian of the person of the minor, provided that:

(1) A minor female who marries shall be considered to have the legal settlement of her husband and, in the case of death of her husband or divorce, she shall not thereby lose her legal settlement obtained by the marriage.

(2) A minor male who marries, establishes a home, and who has resided in this state for one year without receiving general assistance prior to July 17, 1995, under former Chapter 5113. of the Revised Code, financial assistance under Chapter 5115. of the Revised Code, or assistance from a private agency that maintains records of assistance given shall be considered to have obtained a legal settlement in this state.

(3) The legal settlement of a child under eighteen years of age who is in the care or custody of a public or private child caring agency shall not change if the legal settlement of the parent changes until after the child has been in the home of the parent for a period of one year.

No person, adult or minor, may establish a legal settlement in this state for the purpose of gaining admission to any state institution.

(U)(1) "Resident" means, subject to division (R)(2) of this section, a person who is admitted either voluntarily or involuntarily to an institution or other facility pursuant to section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code subsequent to a finding of not guilty by reason of insanity or incompetence to stand trial or under this chapter who is under observation or receiving habilitation and care in an institution.

(2) "Resident" does not include a person admitted to an institution or other facility under section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code to the extent that the reference in this chapter to resident, or the context in which the reference occurs, is in conflict with any provision of sections 2945.37 to 2945.402 of the Revised Code.

(V) "Respondent" means the person whose detention, commitment, or continued commitment is being sought in any proceeding under this chapter.

(W) "Working day" and "court day" mean Monday, Tuesday, Wednesday, Thursday, and Friday, except when such day is a legal holiday.

(X) "Prosecutor" means the prosecuting attorney, village solicitor, city director of law, or similar chief legal officer who prosecuted a criminal case in which a person was found not guilty by reason of insanity, who would have had the authority to prosecute a criminal case against a person if the person had not been found incompetent to stand trial, or who prosecuted a

case in which a person was found guilty.

(Y) "Court" means the probate division of the court of common pleas.

(Z) "Supported living" has the same meaning as in section 5126.01 of the Revised Code.

Sec. 5123.011. The director of ~~mental retardation and~~ developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code that establish definitions of "substantial functional limitation," "developmental delay," "established risk," "biological risk," and "environmental risk."

Sec. 5123.012. (A) As used in this section:

(1) "Biological risk" and "environmental risk" have the meanings established pursuant to section 5123.011 of the Revised Code.

(2) "Preschool child with a disability" has the same meaning as in section 3323.01 of the Revised Code.

(B) Except as provided in division (C) of this section, the department of ~~mental retardation and~~ developmental disabilities shall make eligibility determinations in accordance with the definition of "developmental disability" in section 5123.01 of the Revised Code. The department may adopt rules in accordance with Chapter 119. of the Revised Code establishing eligibility for programs and services for either of the following:

(1) Individuals under age six who have a biological risk or environmental risk of a developmental delay;

(2) Any preschool child with a disability eligible for services under section 3323.02 of the Revised Code whose disability is not attributable solely to mental illness as defined in section 5122.01 of the Revised Code.

(C)(1) The department shall make determinations of eligibility for protective services in accordance with sections 5123.55 to 5123.59 of the Revised Code.

(2) Determinations of whether a mentally retarded person is subject to institutionalization by court order shall be made in accordance with sections 5123.71 to 5123.76 of the Revised Code and shall be based on the definition of "mentally retarded person subject to institutionalization by court order" in section 5123.01 of the Revised Code.

(3) All persons who were eligible for services and enrolled in programs offered by the department of ~~mental retardation and~~ developmental disabilities pursuant to this chapter on July 1, 1991, shall continue to be eligible for those services and to be enrolled in those programs as long as they are in need of services.

Sec. ~~5123.011~~ 5123.013. The provisions of this chapter regarding institutionalization apply to a person who is found incompetent to stand trial

or not guilty by reason of insanity and is committed pursuant to section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code to the extent that the provisions are not in conflict with any provision of sections 2945.37 to 2945.402 of the Revised Code. If a provision of this chapter is in conflict with a provision in sections 2945.37 to 2945.402 of the Revised Code regarding a person who has been so committed, the provision in sections 2945.37 to 2945.402 of the Revised Code shall control regarding that person.

Sec. 5123.014. Whenever the department or director of mental retardation and developmental disabilities is referred to or designated in any statute, rule, contract, grant, or other document, the reference or designation shall be deemed to refer to the department or director of developmental disabilities, as the case may be.

Sec. 5123.02. The department of ~~mental retardation and~~ developmental disabilities shall do the following:

(A) Promote comprehensive statewide programs and services for persons with mental retardation or a developmental disability and their families wherever they reside in the state. These programs shall include public education, prevention, diagnosis, treatment, training, and care.

(B) Provide administrative leadership for statewide services which include residential facilities, evaluation centers, and community classes which are wholly or in part financed by the department of ~~mental retardation and~~ developmental disabilities as provided by section 5123.26 of the Revised Code;

(C) Develop and maintain, to the extent feasible, data on all services and programs for persons with mental retardation or a developmental disability, that are provided by governmental and private agencies;

(D) Make periodic determinations of the number of persons with mental retardation or a developmental disability requiring services in the state;

(E) Provide leadership to local authorities in planning and developing community-wide services for persons with mental retardation or a developmental disability and their families;

(F) Promote programs of professional training and research in cooperation with other state departments, agencies, and institutions of higher learning.

Sec. 5123.021. (A) As used in this section, "mentally retarded individual" and "specialized services" have the same meanings as in section 5111.202 of the Revised Code.

(B)(1) Except as provided in division (B)(2) of this section and rules adopted under division (E)(3) of this section, for purposes of section

5111.202 of the Revised Code, the department of ~~mental retardation and~~ developmental disabilities shall determine in accordance with section 1919(e)(7) of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, and regulations adopted under section 1919(f)(8)(A) of that act whether, because of the individual's physical and mental condition, a mentally retarded individual seeking admission to a nursing facility requires the level of services provided by a nursing facility and, if the individual requires that level of services, whether the individual requires specialized services for mental retardation.

(2) A determination under this division is not required for any of the following:

(a) An individual seeking readmission to a nursing facility after having been transferred from a nursing facility to a hospital for care;

(b) An individual who meets all of the following conditions:

(i) The individual is admitted to the nursing facility directly from a hospital after receiving inpatient care at the hospital;

(ii) The individual requires nursing facility services for the condition for which the individual received care in the hospital;

(iii) The individual's attending physician has certified, before admission to the nursing facility, that the individual is likely to require less than thirty days of nursing facility services.

(c) An individual transferred from one nursing facility to another nursing facility, with or without an intervening hospital stay.

(C) Except as provided in rules adopted under division (F)(3) of this section, the department of ~~mental retardation and~~ developmental disabilities shall review and determine, for each resident of a nursing facility who is mentally retarded, whether the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility and whether the resident requires specialized services for mental retardation. The review and determination shall be conducted in accordance with section 1919(e)(7) of the "Social Security Act" and the regulations adopted under section 1919(f)(8)(A) of the act. The review and determination shall be completed promptly after a nursing facility has notified the department that there has been a significant change in the resident's mental or physical condition.

(D)(1) In the case of a nursing facility resident who has continuously resided in a nursing facility for at least thirty months before the date of a review and determination under division (C) of this section, if the resident is determined not to require the level of services provided by a nursing facility, but is determined to require specialized services for mental retardation, the

department, in consultation with the resident's family or legal representative and care givers, shall do all of the following:

(a) Inform the resident of the institutional and noninstitutional alternatives covered under the state plan for medical assistance;

(b) Offer the resident the choice of remaining in the nursing facility or receiving covered services in an alternative institutional or noninstitutional setting;

(c) Clarify the effect on eligibility for services under the state plan for medical assistance if the resident chooses to leave the facility, including its effect on readmission to the facility;

(d) Provide for or arrange for the provision of specialized services for the resident's mental retardation in the setting chosen by the resident.

(2) In the case of a nursing facility resident who has continuously resided in a nursing facility for less than thirty months before the date of the review and determination under division (C) of this section, if the resident is determined not to require the level of services provided by a nursing facility, but is determined to require specialized services for mental retardation, or if the resident is determined to require neither the level of services provided by a nursing facility nor specialized services for mental retardation, the department shall act in accordance with its alternative disposition plan approved by the United States department of health and human services under section 1919(e)(7)(E) of the "Social Security Act."

(3) In the case of an individual who is determined under division (B) or (C) of this section to require both the level of services provided by a nursing facility and specialized services for mental retardation, the department of ~~mental retardation and~~ developmental disabilities shall provide or arrange for the provision of the specialized services needed by the individual or resident while residing in a nursing facility.

(E) The department of ~~mental retardation and~~ developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(1) Establish criteria to be used in making the determinations required by divisions (B) and (C) of this section. The criteria shall not exceed the criteria established by regulations adopted by the United States department of health and human services under section 1919(f)(8)(A) of the "Social Security Act."

(2) Specify information to be provided by the individual or nursing facility resident being assessed;

(3) Specify any circumstances, in addition to circumstances listed in division (B) of this section, under which determinations under divisions (B)

and (C) of this section are not required to be made.

Sec. 5123.03. (A) The department of ~~mental retardation and~~ developmental disabilities shall do all of the following:

(1) Maintain, operate, manage, and govern all state institutions for the care, treatment, and training of the mentally retarded;

(2) Designate all such institutions by appropriate names;

(3) Provide and designate facilities for the custody, care, and special treatment of persons of the following classes:

(a) Dangerous persons in state institutions for the mentally retarded who represent a serious threat to the safety of the other patients of the institution;

(b) Persons charged with crimes who are found incompetent to stand trial or not guilty by reason of insanity and who are also mentally retarded persons subject to institutionalization by court order.

(4) Have control of all institutions maintained in part by the state for the care, treatment, and training of the mentally retarded;

(5) Administer the laws relative to persons in such institutions in an efficient, economical, and humane manner;

(6) Ascertain by actual examinations and inquiry whether institutionalizations are made according to law.

(B) The department may do any of the following:

(1) Subject to section 5139.08 of the Revised Code, receive from the department of youth services for observation, diagnosis, care, habilitation, or placement any children in the custody of the department of youth services;

(2) Receive for observation any minor from a public institution other than an institution under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities, from a private charitable institution, or from a person having legal custody of such a minor, upon such terms as are proper;

(3) Receive from the department of mental health any patient in the custody of the department who is transferred to the department of ~~mental retardation and~~ developmental disabilities upon such terms and conditions as may be agreed upon by the two departments.

~~(e)~~(C) In addition to the powers and duties expressly conferred by this section, the department may take any other action necessary for the full and efficient executive, administrative, and fiscal supervision of the state institutions described in this section.

Sec. 5123.031. The director of ~~mental retardation and~~ developmental disabilities may require the performance of duties by the officers of the institutions under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities so as fully to meet the requirements, intents,

and purposes of this chapter. In case of an apparent conflict between the powers conferred upon any managing officer and those conferred by this chapter upon the department, the presumption shall be conclusive in favor of the department.

The director shall adopt rules for the nonpartisan management of the institutions under the jurisdiction of the department. An officer or employee of the department or any officer or employee of any institution under its control who, by solicitation or otherwise, exerts ~~his~~ the officer's or employee's influence directly or indirectly to induce any other officer or employee of the department or any of its institutions to adopt ~~his~~ the officer's or employee's political views or to favor any particular person, issue, or candidate for office shall be removed from ~~his~~ the officer's or employee's office or position, by the department in case of an officer or employee, and by the governor in case of the director.

The managing officer of any institution under the jurisdiction of the department shall submit reports to the director relating to the admission, examination, comprehensive evaluation, diagnosis, release, or discharge of any resident.

The director, or a person designated by ~~him~~ the director, shall visit each institution regularly to review the admission procedures of all new residents and to investigate complaints made by any resident or by any person on behalf of a resident.

The director shall prescribe the forms of affidavits, applications, comprehensive evaluations, orders of institutionalization and release, and all other forms that are required in the institutionalization, admission, and release of all persons with respect to institutions under the jurisdiction of the department, and of reports and records provided for under this chapter.

Sec. 5123.032. (A) As used in this section, "developmental center" means any institution or facility of the department of ~~mental retardation and~~ developmental disabilities that, on or after ~~the effective date of this section~~ January 30, 2004, is named, designated, or referred to as a developmental center.

(B) Notwithstanding any other provision of law, on and after ~~the effective date of this section~~ January 30, 2004, any closure of a developmental center shall be subject to, and in accordance with, this section. Notwithstanding any other provision of law, if the governor announced on or after January 1, 2003, and prior to ~~the effective date of this section~~ January 30, 2004, the intended closure of a developmental center and if the closure identified in the announcement has not occurred prior to ~~the effective date of this section~~ January 30, 2004, the closure identified in

the announcement shall be subject to the criteria set forth in this section as if the announcement had been made on or after ~~the effective date of this section~~ January 30, 2004, except for the time at which the notice to the general assembly must be provided as identified in division (C) of this section.

(C) Notwithstanding any other provision of law, on and after ~~the effective date of this section~~ January 30, 2004, at least ten days prior to making any official, public announcement that the governor intends to close one or more developmental centers, the governor shall notify the general assembly in writing that the governor intends to close one or more developmental centers. Notwithstanding any other provision of law, if the governor announced on or after January 1, 2003, and prior to ~~the effective date of this section~~ January 30, 2004, the intended closure of a developmental center and if the closure identified in the announcement has not occurred prior to ~~the effective date of this section~~ January 30, 2004, not later than ten days after ~~the effective date of this section~~ January 30, 2004, the governor shall notify the general assembly in writing of the prior announcement and that the governor intends to close the center identified in the prior announcement, and the notification to the general assembly shall constitute, for purposes of this section, the governor's official, public announcement that the governor intends to close that center.

The notice required by this division shall identify by name each developmental center that the governor intends to close or, if the governor has not determined any specific developmental center to close, shall state the governor's general intent to close one or more developmental centers. When the governor notifies the general assembly as required by this division, the legislative service commission promptly shall conduct an independent study of the developmental centers of the department of ~~mental retardation and~~ developmental disabilities and of the department's operation of the centers, and the study shall address relevant criteria and factors, including, but not limited to, all of the following:

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

(2) The availability of alternate facilities;

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

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

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

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

(7) The utilization and maximization of resources;

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

(9) Continuing costs following closure of a facility;

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

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

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

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

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

Not later than the date on which the legislative service commission is required to complete the report under this division, the ~~mental-retardation~~ ~~and~~ developmental disabilities developmental center closure commission is hereby created as described in division (E) of this section. The officials with the duties to appoint members of the closure commission, as described in division (E) of this section, shall appoint the specified members of the closure commission, and, as soon as possible after the appointments, the closure commission shall meet for the purposes described in that division. Upon completion of the report and the creation of the closure commission under this division, the legislative service commission promptly shall provide a copy of the report to the closure commission and shall present the report as described in division (E) of this section.

(E)(1) A ~~mental-retardation~~ ~~and~~ developmental disabilities developmental center closure commission shall be created at the time and in the manner specified in division (D) of this section. The closure commission

consists of six members. One member shall be the director of ~~the department of mental retardation and~~ developmental disabilities. One member shall be the director of ~~the department of~~ health. One member shall be a private executive with expertise in facility utilization, in economics, or in both facility utilization and economics, jointly appointed by the speaker of the house of representatives and the president of the senate. The member appointed for expertise in facility utilization, economics, or both may not be a member of the general assembly and may not have a developmental center identified for closure by the governor in the county in which the member resides. One member shall be a member of the board of the Ohio civil service employees' association, jointly appointed by the speaker of the house of representatives and the president of the senate. One member shall be either a family member of a resident of a developmental center or a representative of a mental retardation and developmental disabilities advocacy group, jointly appointed by the speaker of the house of representatives and the president of the senate. The member appointed who is a family member of a developmental center resident or a representative of an advocacy group may not be a member of the general assembly. One member shall be a member of the law enforcement community, appointed by the governor. The officials with the duties to appoint members of the closure commission shall make the appointments, and the closure commission shall meet, within the time periods specified in division (D) of this section. The members of the closure commission shall serve without compensation. At the closure commission's first meeting, the members shall organize and appoint a chairperson and vice-chairperson.

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

- (a) Whether any developmental center should be closed;
- (b) If the recommendation described in division (E)(1)(a) of this section is that one or more developmental centers should be closed, which center or centers should be closed;
- (c) If the governor's notice described in division (C) of this section identifies by name one or more developmental centers that the governor

intends to close, whether the center or centers so identified should be closed.

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

- (a) Follow the recommendation of the commission;
- (b) Close no developmental center;
- (c) Take other action that the governor determines is necessary for the purpose of expenditure reductions or budget cuts and state the reasons for the action.

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

Sec. 5123.033. The program fee fund is hereby created in the state treasury. All fees collected pursuant to sections 5123.161, 5123.164, 5123.19, and 5126.25 of the Revised Code shall be credited to the fund. Money credited to the fund shall be used solely for the department of ~~mental retardation and~~ developmental disabilities' duties under sections 5123.16 to 5123.169, 5123.19, and 5126.25 of the Revised Code and to provide continuing education and professional training to employees of county boards of ~~mental retardation and~~ developmental disabilities for the purpose of section 5126.25 of the Revised Code and other providers of services to individuals with mental retardation or a developmental disability. If the money credited to the fund is inadequate to pay all of the department's costs in performing those duties and providing the continuing education and professional training, the department may use other available funds appropriated to the department to pay the remaining costs of performing those duties and providing the continuing education and professional training.

Sec. 5123.04. (A) The director of ~~mental retardation and~~ developmental disabilities is the executive head of the department of ~~mental retardation and~~ developmental disabilities. All duties conferred on the department and its institutions by law or by order of the director shall be performed under such

rules as the director prescribes, and shall be under the director's control. The director shall establish bylaws for the government of all institutions under the jurisdiction of the department. Except as otherwise is provided as to appointments by chiefs of divisions, the director shall appoint such employees as are necessary for the efficient conduct of the department, and shall prescribe their titles and duties. If the director is not a licensed physician, decisions relating to medical diagnosis and treatment shall be the responsibility of a licensed physician appointed by the director.

(B) The director shall adopt rules for the proper execution of the powers and duties of the department.

(C) The director shall adopt rules establishing standards that mental retardation programs and facilities shall follow when performing evaluations of the mental condition of defendants ordered by the court under section 2919.271 or 2945.371 of the Revised Code, and for the treatment of defendants who have been found incompetent to stand trial under section 2945.38 of the Revised Code, and certify the compliance of such programs and facilities with the standards.

(D) On behalf of the department, the director has the authority to, and responsibility for, entering into contracts and other agreements.

(E) The director shall adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(1) Specify the supplemental services that may be provided through a trust authorized by section 5815.28 of the Revised Code;

(2) Establish standards for the maintenance and distribution to a beneficiary of assets of a trust authorized by section 5815.28 of the Revised Code.

(F) The director shall provide monitoring of county boards of ~~mental retardation and~~ developmental disabilities.

Sec. 5123.042. (A) The director of ~~mental retardation and~~ developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code establishing the following:

(1) Uniform standards under which:

(a) A person or agency shall submit plans to the county board of ~~mental retardation and~~ developmental disabilities for the development of residential services for individuals with mental retardation or a developmental disability within the county;

(b) The county board must review the plans and recommend providers for the services.

(2) The eligibility criteria for selecting persons and agencies to provide residential services, which shall take into consideration the

recommendations of the county board.

(B) The county board, in accordance with its comprehensive service plan, shall review all proposals for the development of residential services that are submitted to it and shall, if the proposals are acceptable to the county board, recommend providers for the development of residential services within the county. The department shall approve proposals for the development of residential services within counties based upon the availability of funds and in accordance with rules adopted under division (A)(2) of this section.

No county board shall recommend providers for the development of residential services if the county board is an applicant to provide services. In cases of possible conflict of interest, the director shall appoint a committee that shall, in accordance with the approved county comprehensive service plan, review and recommend to the director providers for the services.

If a county board fails to establish an approved comprehensive service plan, the director may establish residential services development goals for the county board based on documented need as determined by the department. If a county board fails to develop or implement such a plan in accordance with the rules adopted under this section, the department may, without the involvement of the county board, review and select providers for the development of residential services in the county.

Sec. 5123.043. (A) The director of ~~mental-retardation-and~~ developmental disabilities shall adopt rules establishing procedures for administrative resolution of complaints filed under division (B) of this section and section 5126.06 of the Revised Code. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(B) Except as provided in division (C) of this section, any person or county board of ~~mental-retardation-and~~ developmental disabilities that has a complaint involving any of the programs, services, policies, or administrative practices of the department of ~~mental-retardation-and~~ developmental disabilities or any of the entities under contract with the department, may file a complaint with the department. Prior to commencing a civil action regarding the complaint, a person or county board shall attempt to have the complaint resolved through the administrative resolution process established in the rules adopted under this section. After exhausting the administrative resolution process, the person or county board may commence a civil action if the complaint is not settled to the person's or county board's satisfaction.

(C) An employee of the department may not file under this section a complaint related to the terms and conditions of employment for the

employee.

Sec. 5123.044. The department of ~~mental retardation and~~ developmental disabilities shall determine whether county boards of ~~mental retardation and~~ developmental disabilities are in compliance with section 5126.046 of the Revised Code. The department shall provide assistance to an individual with mental retardation or other developmental disability who requests assistance with the individual's right under section 5126.046 of the Revised Code to choose a provider of habilitation, vocational, community employment, residential, or supported living services if the department is notified of a county board's alleged violation of the individual's right to choose such a provider.

Sec. 5123.046. The department of ~~mental retardation and~~ developmental disabilities shall review each component of the three-calendar-year plan it receives from a county board of ~~mental retardation and~~ developmental disabilities under section 5126.054 of the Revised Code and, in consultation with the department of job and family services and office of budget and management, approve each component that includes all the information and conditions specified in that section. The third component of the plan shall be approved or disapproved not later than forty-five days after the third component is submitted to the department. If the department approves all three components of the plan, the plan is approved. Otherwise, the plan is disapproved. If the plan is disapproved, the department shall take action against the county board under division (B) of section 5126.056 of the Revised Code.

In approving plans under this section, the department shall ensure that the aggregate of all plans provide for the increased enrollment into home and community-based services during each state fiscal year of at least five hundred individuals who did not receive residential services, supported living, or home and community-based services the prior state fiscal year if the department has enough additional enrollment available for this purpose.

The department shall establish protocols that the department shall use to determine whether a county board is complying with the programmatic and financial accountability mechanisms and achieving outcomes specified in its approved plan. If the department determines that a county board is not in compliance with the mechanisms or achieving the outcomes specified in its approved plan, the department may take action under division (F) of section 5126.055 of the Revised Code.

Sec. 5123.047. The department of ~~mental retardation and~~ developmental disabilities shall pay the nonfederal share of medicaid expenditures for medicaid case management services and home and community-based

services for which no county board of ~~mental retardation and~~ developmental disabilities is required by section 5126.059 or 5126.0510 of the Revised Code to pay.

Sec. 5123.048. The director of ~~mental retardation and~~ developmental disabilities may enter into an agreement with a county board of ~~mental retardation and~~ developmental disabilities under which the department of ~~mental retardation and~~ developmental disabilities is to pay the nonfederal share of medicaid expenditures for one or more of the home and community-based services that the county board would, if not for the agreement, be required by section 5126.0510 of the Revised Code to pay. The agreement shall specify which home and community-based services the agreement covers. The department shall pay the nonfederal share of medicaid expenditures for the home and community-based services that the agreement covers as long as the agreement is in effect.

Sec. 5123.049. The director of ~~mental retardation and~~ developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code governing the authorization and payment of home and community-based services and medicaid case management services. The rules shall provide for private providers of the services to receive one hundred per cent of the medicaid allowable payment amount and for government providers of the services to receive the federal share of the medicaid allowable payment, less the amount withheld as a fee under section 5123.0412 of the Revised Code and any amount that may be required by rules adopted under section 5123.0413 of the Revised Code to be deposited into the state ~~MR/DD~~ developmental disabilities risk fund. The rules shall establish the process by which county boards of ~~mental retardation and~~ developmental disabilities shall certify and provide the nonfederal share of medicaid expenditures that the county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay. The process shall require a county board to certify that the county board has funding available at one time for two months costs for those expenditures. The process may permit a county board to certify that the county board has funding available at one time for more than two months costs for those expenditures.

Sec. 5123.0410. An individual with mental retardation or other developmental disability who moves from one county in this state to another county in this state shall receive home and community-based services in the new county that are comparable in scope to the home and community-based services the individual receives in the prior county at the time the individual moves. If the county board serving the county to which the individual moves

determines under section 5126.041 of the Revised Code that the individual is eligible for county board services, the county board shall ensure that the individual receives the comparable services. If the county board determines that the individual is not eligible for county board services, the department of ~~mental retardation and~~ developmental disabilities shall ensure that the individual receives the comparable services.

If the home and community-based services that the individual receives at the time the individual moves include supported living or residential services, the department shall reduce the amount the department allocates to the county board serving the county the individual left for those supported living or residential services by an amount that equals the payment the department authorizes or projects, or both, for those supported living or residential services from the last day the individual resides in the county to the last day of the state fiscal year in which the individual moves. The department shall increase the amount the department allocates to the county board serving the county the individual moves to by the same amount. The department shall make the reduction and increase effective the day the department determines the individual has residence in the new county. The department shall determine the amount that is to be reduced and increased in accordance with the department's rules for authorizing payments for home and community-based services established adopted under section 5123.049 of the Revised Code. The department shall annualize the reduction and increase for the subsequent state fiscal year as necessary.

Sec. 5123.0411. The department of ~~mental retardation and~~ developmental disabilities may bring a mandamus action against a county board of ~~mental retardation and~~ developmental disabilities that fails to pay the nonfederal share of medicaid expenditures that the county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay. The department may bring the mandamus action in the court of common pleas of the county served by the county board or in the Franklin county court of common pleas.

Sec. 5123.0412. (A) The department of ~~mental retardation and~~ developmental disabilities shall charge each county board of ~~mental retardation and~~ developmental disabilities an annual fee equal to one and one-half per cent of the total value of all medicaid paid claims for home and community-based services provided during the year to an individual eligible for services from the county board. No county board shall pass the cost of a fee charged to the county board under this section on to another provider of these services.

(B) The fees collected under this section shall be deposited into the

~~ODMR/DD~~ ODDD administration and oversight fund and the ODJFS administration and oversight fund, both of which are hereby created in the state treasury. The portion of the fees to be deposited into the ~~ODMR/DD~~ ODDD administration and oversight fund and the portion of the fees to be deposited into the ODJFS administration and oversight fund shall be the portion specified in an interagency agreement entered into under division (C) of this section. The department of ~~mental retardation and~~ developmental disabilities shall use the money in the ~~ODMR/DD~~ ODDD administration and oversight fund and the department of job and family services shall use the money in the ODJFS administration and oversight fund for both of the following purposes:

(1) The administrative and oversight costs of medicaid case management services and home and community-based services. The administrative and oversight costs shall include costs for staff, systems, and other resources the departments need and dedicate solely to the following duties associated with the services:

- (a) Eligibility determinations;
- (b) Training;
- (c) Fiscal management;
- (d) Claims processing;
- (e) Quality assurance oversight;
- (f) Other duties the departments identify.

(2) Providing technical support to county boards' local administrative authority under section 5126.055 of the Revised Code for the services.

(C) The departments of ~~mental retardation and~~ developmental disabilities and job and family services shall enter into an interagency agreement to do both of the following:

(1) Specify which portion of the fees collected under this section is to be deposited into the ~~ODMR/DD~~ ODDD administration and oversight fund and which portion is to be deposited into the ODJFS administration and oversight fund;

(2) Provide for the departments to coordinate the staff whose costs are paid for with money in the ~~ODMR/DD~~ ODDD administration and oversight fund and the ODJFS administration and oversight fund.

(D) The departments shall submit an annual report to the director of budget and management certifying how the departments spent the money in the ~~ODMR/DD~~ ODDD administration and oversight fund and the ODJFS administration and oversight fund for the purposes specified in division (B) of this section.

Sec. 5123.0413. (A) The department of ~~mental retardation and~~

developmental disabilities, in consultation with the department of job and family services, office of budget and management, and county boards of ~~mental retardation and~~ developmental disabilities, shall adopt rules in accordance with Chapter 119. of the Revised Code no later than January 1, 2002, establishing a method of paying for extraordinary costs, including extraordinary costs for services to individuals with mental retardation or other developmental disability, and ensure the availability of adequate funds in the event a county property tax levy for services for individuals with mental retardation or other developmental disability fails. The rules may provide for using and managing either or both of the following:

(1) A state ~~MR/DD~~ developmental disabilities risk fund, which is hereby created in the state treasury;

(2) A state insurance against ~~MR/DD~~ developmental disabilities risk fund, which is hereby created in the state treasury.

(B) Beginning January 1, 2002, the department of job and family services may not request approval from the United States secretary of health and human services to increase the number of slots for home and community-based services until the rules required by division (A) of this section are in effect.

Sec. 5123.0414. (A) When the director of ~~mental retardation and~~ developmental disabilities, under section 119.07 of the Revised Code, sends a party a notice by registered mail, return receipt requested, that the director intends to take action against the party authorized by section 5123.082, 5123.166, 5123.168, 5123.19, 5123.45, 5123.51, or 5126.25 of the Revised Code and the notice is returned to the director with an endorsement indicating that the notice was refused or unclaimed, the director shall resend the notice by ordinary mail to the party.

(B) If the original notice was refused, the notice shall be deemed received as of the date the director resends the notice.

(C) If the original notice was unclaimed, the notice shall be deemed received as of the date the director resends the notice unless, not later than thirty days after the date the director sent the original notice, the resent notice is returned to the director for failure of delivery.

If the notice concerns taking action under section 5123.51 of the Revised Code and the resent notice is returned to the director for failure of delivery not later than thirty days after the date the director sent the original notice, the director shall cause the notice to be published in a newspaper of general circulation in the county of the party's last known residence or business and shall mail a dated copy of the published notice to the party at the last known address. The notice shall be deemed received as of the date

of the publication.

If the notice concerns taking action under section 5123.082, 5123.166, 5123.168, 5123.19, 5123.45, or 5126.25 of the Revised Code and the resent notice is returned to the director for failure of delivery not later than thirty days after the date the director sent the original notice, the director shall resend the notice to the party a second time. The notice shall be deemed received as of the date the director resends the notice the second time.

Sec. 5123.0415. As used in this section, "license" means a license, certificate, or evidence of registration.

Each person and government entity that applies for or holds a valid license issued under section 5123.082, 5123.161, 5123.19, 5123.45, 5126.25, or 5126.252 of the Revised Code shall notify the director of ~~mental retardation and~~ developmental disabilities of any change in the person or government entity's address.

Sec. 5123.0416. (A) Subject to the availability of funds appropriated to the department of ~~mental retardation and~~ developmental disabilities for medicaid waiver state match, the department shall expend, in fiscal year 2009 and each fiscal year thereafter, not less than the amount appropriated in appropriation item 322-416, medicaid waiver – state match, in fiscal year 2008 to do both of the following:

(1) Pay the nonfederal share of medicaid expenditures for home and community-based services that section 5123.047 of the Revised Code requires the department to pay;

(2) Assist county boards of ~~mental retardation and~~ developmental disabilities in paying the nonfederal share of medicaid expenditures for home and community-based services that section 5126.0510 of the Revised Code requires county boards to pay.

(B) The department shall make the expenditures required by division (A)(2) of this section in the form of allocations to county boards or by other means. If the department makes the expenditures in the form of allocations, the process for making the allocations shall conform to a process the department shall establish after consulting with representatives of county boards.

Sec. 5123.0417. (A) Using funds available under section 5112.371 of the Revised Code, the director of ~~mental retardation and~~ developmental disabilities shall establish one or more programs for individuals under twenty-one years of age who have intensive behavioral needs, including such individuals with a primary diagnosis of autism spectrum disorder. The programs may include one or more medicaid waiver components that the director administers pursuant to section 5111.871 of the Revised Code. The

programs may do one or more of the following:

(1) Establish models that incorporate elements common to effective intervention programs and evidence-based practices in services for children with intensive behavioral needs;

(2) Design a template for individualized education plans and individual service plans that provide consistent intervention programs and evidence-based practices for the care and treatment of children with intensive behavioral needs;

(3) Disseminate best practice guidelines for use by families of children with intensive behavioral needs and professionals working with such families;

(4) Develop a transition planning model for effectively mainstreaming school-age children with intensive behavioral needs to their public school district;

(5) Contribute to the field of early and effective identification and intervention programs for children with intensive behavioral needs by providing financial support for scholarly research and publication of clinical findings.

(B) The director of ~~mental retardation and~~ developmental disabilities shall collaborate with the director of job and family services and consult with the executive director of the Ohio center for autism and low incidence and university-based programs that specialize in services for individuals with developmental disabilities when establishing programs under this section.

Sec. 5123.05. The department of ~~mental retardation and~~ developmental disabilities may conduct audits of the services and programs that either receive funds through the department or are subject to regulation by the department. Audits shall be conducted in accordance with procedures prescribed by the department. Records created or received by the department in connection with an audit are not public records under section 149.43 of the Revised Code until a report of the audit is released by the department.

Sec. 5123.051. (A) If the department of ~~mental retardation and~~ developmental disabilities determines pursuant to an audit conducted under section 5123.05 of the Revised Code or a reconciliation conducted under section 5123.18 of the Revised Code that money is owed the state by a provider of a service or program, the department may enter into a payment agreement with the provider. The agreement shall include the following:

(1) A schedule of installment payments whereby the money owed the state is to be paid in full within a period not to exceed one year;

(2) A provision that the provider may pay the entire balance owed at any

time during the term of the agreement;

(3) A provision that if any installment is not paid in full within forty-five days after it is due, the entire balance owed is immediately due and payable;

(4) Any other terms and conditions that are agreed to by the department and the provider.

(B) The department may include a provision in a payment agreement that requires the provider to pay interest on the money owed the state. The department, in its discretion, shall determine whether to require the payment of interest and, if it so requires, the rate of interest. Neither the obligation to pay interest nor the rate of interest is subject to negotiation between the department and the provider.

(C) If the provider fails to pay any installment in full within forty-five days after its due date, the department shall certify the entire balance owed to the attorney general for collection under section 131.02 of the Revised Code. The department may withhold funds from payments made to a provider under section 5123.18 of the Revised Code to satisfy a judgment secured by the attorney general.

(D) The purchase of service fund is hereby created. Money credited to the fund shall be used solely for purposes of section 5123.05 of the Revised Code.

Sec. 5123.06. The director of ~~mental retardation and~~ developmental disabilities may establish divisions in the department of ~~mental retardation and~~ developmental disabilities and prescribe their powers and duties.

Each division shall consist of a deputy director and the officers and employees, including those in institutions, necessary for the performance of the functions assigned to it. The director shall supervise the work of each division and be responsible for the determination of general policies in the exercise of powers vested in the department and powers assigned to each division. The deputy director of each division shall be responsible to the director for the organization, direction, and supervision of the work of the division and the exercise of the powers and the performance of the duties of the department assigned to the division, and, with the approval of the director, may establish bureaus or other administrative units in the division.

Appointment to the position of deputy director of a division may be made from persons holding positions in the classified service in the department.

The deputy director of each division shall be a person who has had special training and experience in the type of work with the performance of which the division is charged.

Each deputy director of a division, under the director, shall have entire executive charge of the division to which the deputy director is appointed. Subject to sections 124.01 to 124.64 of the Revised Code, and civil service rules, the deputy director of a division shall, with the approval of the director, select and appoint the necessary employees in the deputy director's division and may remove those employees for cause.

Sec. 5123.07. There may be created in the department of ~~mental retardation and~~ developmental disabilities a bureau of research. The bureau shall:

(A) Plan, direct, and coordinate all research programs conducted by the department;

(B) Provide continuing evaluation of research programs;

(C) Direct and coordinate scientific investigations and studies as undertaken under this section.

The department shall institute and encourage scientific investigation by the staffs of the various institutions under its control and supervision, and publish bulletins and reports of the scientific and clinical work done in such institutions. Scientific investigation in the department shall be undertaken and continued only with the approval of the director of ~~mental retardation and~~ developmental disabilities.

Sec. 5123.08. An appointing officer may appoint a person who holds a certified position in the classified service within the department of ~~mental retardation and~~ developmental disabilities to a position in the unclassified service within the department. A person appointed pursuant to this section to a position in the unclassified service shall retain the right to resume the position and status held by the person in the classified service immediately prior to the person's appointment to the position in the unclassified service, regardless of the number of positions the person held in the unclassified service. An employee's right to resume a position in the classified service may only be exercised when an appointing authority demotes the employee to a pay range lower than the employee's current pay range or revokes the employee's appointment to the unclassified service. An employee forfeits the right to resume a position in the classified service when the employee is removed from the position in the unclassified service due to incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of this chapter or Chapter 124. of the Revised Code, the rules of the director of ~~mental retardation and~~ developmental disabilities or the director of administrative services, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a

felony. An employee also forfeits the right to resume a position in the classified service upon transfer to a different agency.

Reinstatement to a position in the classified service shall be to a position substantially equal to that position in the classified service held previously, as certified by the director of administrative services. If the position the person previously held in the classified service has been placed in the unclassified service or is otherwise unavailable, the person shall be appointed to a position in the classified service within the department that the director of administrative services certifies is comparable in compensation to the position the person previously held in the classified service. Service in the position in the unclassified service shall be counted as service in the position in the classified service held by the person immediately prior to the person's appointment to the position in the unclassified service. When a person is reinstated to a position in the classified service as provided in this section, the person is entitled to all rights, status, and benefits accruing to the position in the classified service during the time of the person's service in the position in the unclassified service.

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

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

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

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

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

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

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

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

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

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

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

adopted by the director in accordance with division (M) of this section, the director shall not employ a person to fill a position with the department who has been convicted of or pleaded guilty to any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 5123.082. (A) The director of ~~mental-retardation-and~~ developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code:

(1) Designating positions of employment for which the director determines that certification or evidence of registration is required as a condition of employment in the department of ~~mental-retardation-and~~ developmental disabilities, entities that contract with the department or county boards of ~~mental-retardation-and~~ developmental disabilities to operate programs or provide services to persons with mental retardation and developmental disabilities, or other positions of employment in programs that serve those persons. The rules shall designate the position of investigative agent, as defined in section 5126.20 of the Revised Code, as a position for which certification is required.

(2) Establishing levels of certification or registration for each position for which certification or registration is required;

(3) Establishing for each level of each position the requirements that must be met to obtain certification or registration, including standards regarding education, specialized training, and experience. The standards shall take into account the nature and needs of persons with mental retardation or a developmental disability and the specialized techniques

needed to serve them. The requirements for an investigative agent shall be the same as the certification requirements for an investigative agent under section 5126.25 of the Revised Code.

(4) Establishing renewal schedules and renewal requirements for certification and registration, including standards regarding education, specialized training, and experience. The renewal requirements for an investigative agent shall be the same as the renewal requirements for an investigative agent under section 5126.25 of the Revised Code.

(5) Establishing procedures for denial, suspension, and revocation of a certificate or evidence of registration, including appeal procedures;

(6) Establishing other requirements needed to carry out this section.

(B) The director shall issue, renew, deny, suspend, or revoke a certificate or evidence of registration in accordance with rules adopted under this section. The director shall deny, suspend, or revoke a certificate or evidence of registration if the director finds, pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code, that an applicant for or holder of a certificate or evidence of registration is guilty of intemperate, immoral, or other conduct unbecoming to the applicant's or holder's position, or is guilty of incompetence or negligence within the scope of the applicant's or holder's duties. The director shall deny or revoke a certificate or evidence of registration after the director finds, pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code, that the applicant for or holder of the certificate or evidence of registration has been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of section 5126.28 of the Revised Code, unless the individual meets standards for rehabilitation that the director establishes in the rules adopted under that section. Evidence supporting such allegations must be presented to the director in writing, and the director shall provide prompt notice of the allegations to the person who is the subject of the allegations. A denial, suspension, or revocation may be appealed in accordance with the procedures established in rules adopted under this section.

(C) A person holding a valid certificate or evidence of registration under this section on the effective date of any rules adopted under this section that increase the certification or registration standards shall have the period that the rules prescribe, but not less than one year after the effective date of the rules, to meet the new standards.

(D) No person shall be employed in a position for which certification or registration is required under rules adopted under this section, unless the person holds a valid certificate or evidence of registration for the position.

Sec. 5123.083. On receipt of a notice pursuant to section 3123.43 of the Revised Code, the director of ~~mental retardation and~~ developmental disabilities shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a certificate or evidence of registration issued pursuant to this chapter.

Sec. 5123.09. Subject to the rules of the department of ~~mental retardation and~~ developmental disabilities, each institution under the jurisdiction of the department shall be under the control of a managing officer to be known as a superintendent or by other appropriate title. The managing officer shall be appointed by the director of ~~mental retardation and~~ developmental disabilities and shall be in the unclassified service and serve at the pleasure of the director. Each managing officer shall be of good moral character and have skill, ability, and experience in the managing officer's profession. Appointment to the position of managing officer of an institution may be made from persons holding positions in the classified service in the department.

The managing officer, under the director, shall have entire executive charge of the institution for which the managing officer is appointed, except as provided in section 5119.16 of the Revised Code. Subject to civil service rules and rules adopted by the department, the managing officer shall appoint the necessary employees, and the managing officer or the director may remove those employees for cause. A report of all appointments, resignations, and discharges shall be filed with the appropriate division at the close of each month.

After conference with the managing officer of each institution, the director shall determine the number of employees to be appointed to the various institutions and clinics.

Sec. 5123.091. The director of ~~mental retardation and~~ developmental disabilities may, by rule and with the approval of the governor, change the purpose for which any institution under the control of the department is being used. The director may designate a new or another use for the institution, provided the change of use and new designation has for its objective improvement in the classification, segregation, care, education, cure, or rehabilitation of the persons admitted.

Sec. 5123.092. (A) There is hereby established at each institution and branch institution under the control of the department of ~~mental retardation and~~ developmental disabilities a citizen's advisory council consisting of thirteen members. At least seven of the members shall be persons who are not providers of mental retardation services. Each council shall include

parents or other relatives of residents of institutions under the control of the department, community leaders, professional persons in relevant fields, and persons who have an interest in or knowledge of mental retardation. The managing officer of the institution shall be a nonvoting member of the council.

(B) The director of ~~mental retardation and~~ developmental disabilities shall be the appointing authority for the voting members of each citizen's advisory council. Each time the term of a voting member expires, the remaining members of the council shall recommend to the director one or more persons to serve on the council. The director may accept a nominee of the council or reject the nominee or nominees. If the director rejects the nominee or nominees, the remaining members of the advisory council shall further recommend to the director one or more other persons to serve on the advisory council. This procedure shall continue until a member is appointed to the advisory council.

Each advisory council shall elect from its appointed members a chairperson, vice-chairperson, and a secretary to serve for terms of one year. Advisory council officers shall not serve for more than two consecutive terms in the same office. A majority of the advisory council members constitutes a quorum.

(C) Terms of office shall be for three years, each term ending on the same day of the same month of the year as did the term which it succeeds. No member shall serve more than two consecutive terms, except that any former member may be appointed if one year or longer has elapsed since the member served two consecutive terms. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Any vacancy shall be filled in the same manner in which the original appointment was made, and the appointee to a vacancy in an unexpired term shall serve the balance of the term of the original appointee. Any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

(D) Members shall be expected to attend all meetings of the advisory council. Unexcused absence from two successive regularly scheduled meetings shall be considered prima-facie evidence of intent not to continue as a member. The chairperson of the board shall, after a member has been absent for two successive regularly scheduled meetings, direct a letter to the member asking if the member wishes to remain in membership. If an affirmative reply is received, the member shall be retained as a member except that, if, after having expressed a desire to remain a member, the

member then misses a third successive regularly scheduled meeting without being excused, the chairperson shall terminate the member's membership.

(E) A citizen's advisory council shall meet six times annually, or more frequently if three council members request the chairperson to call a meeting. The council shall keep minutes of each meeting and shall submit them to the managing officer of the institution with which the council is associated, the department of ~~mental retardation and~~ developmental disabilities, and the legal rights service.

(F) Members of citizen's advisory councils shall receive no compensation for their services, except that they shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties by the institution with which they are associated from funds allocated to it, provided that reimbursement for those expenses shall not exceed limits imposed upon the department of ~~mental retardation and~~ developmental disabilities by administrative rules regulating travel within this state.

(G) The councils shall have reasonable access to all patient treatment and living areas and records of the institution, except those records of a strictly personal or confidential nature. The councils shall have access to a patient's personal records with the consent of the patient or the patient's legal guardian or, if the patient is a minor, with the consent of the parent or legal guardian of the patient.

(H) As used in this section, "branch institution" means a facility that is located apart from an institution and is under the control of the managing officer of the institution.

Sec. 5123.093. The citizen's advisory councils established under section 5123.092 of the Revised Code shall:

(A) Transmit verbal or written information from any person or organization associated with the institution or within the community, that an advisory council considers important, to the joint council on ~~mental retardation and~~ developmental disabilities created by section 101.37 of the Revised Code and the director of ~~mental retardation and~~ developmental disabilities;

(B) Review the records of all applicants to any unclassified position at the institution, except for resident physician positions filled under section 5123.11 of the Revised Code;

(C) Review and evaluate institutional employee training and continuing education programs;

(D) On or before the thirty-first day of January of each year, submit a written report to the joint council on ~~mental retardation and~~ developmental

disabilities and the director of ~~mental retardation and~~ developmental disabilities regarding matters affecting the institution including, but not limited to, allegations of dehumanizing practices and violations of individual or legal rights;

(E) Review institutional budgets, programs, services, and planning;

(F) Develop and maintain relationships within the community with community mental retardation and developmental disabilities organizations;

(G) Participate in the formulation of the institution's objectives, administrative procedures, program philosophy, and long range goals;

(H) Bring any matter that an advisory council considers important to the attention of the joint council on ~~mental retardation and~~ developmental disabilities and the director of ~~mental retardation and~~ developmental disabilities;

(I) Recommend to the director of ~~mental retardation and~~ developmental disabilities persons for appointment to citizen's advisory councils;

(J) Adopt any rules or procedures necessary to carry out this section.

The chairperson of the advisory council or the chairperson's designee shall be notified within twenty-four hours of any alleged incident of abuse to a resident or staff member by anyone. Incidents of resident or staff abuse shall include, but not be limited to, sudden deaths, accidents, suicides, attempted suicides, injury caused by other persons, alleged criminal acts, errors in prescribing or administering medication, theft from clients, fires, epidemic disease, administering unprescribed drugs, unauthorized use of restraint, withholding of information concerning alleged abuse, neglect, or any deprivation of rights as defined in Chapter 5122. or 5123. of the Revised Code.

Sec. 5123.10. The department of ~~mental retardation and~~ developmental disabilities shall require any of its employees and each officer and employee of every institution under its control who may be charged with custody or control of any money or property belonging to the state or who is required to give bond to give a surety company bond, properly conditioned, in a sum to be fixed by the department which, when approved by the department, shall be filed in the office of the secretary of state. The cost of such bonds, when approved by the department, shall be paid from funds available for the department. The bonds required or authorized by this section may, in the discretion of the director of ~~mental retardation and~~ developmental disabilities, be individual, schedule, or blanket bonds.

Sec. 5123.11. (A) The director of ~~mental retardation and~~ developmental disabilities may enter into an agreement with the boards of trustees or boards of directors of two or more universities in which there is a college of

medicine or college of osteopathic medicine, or of two or more colleges of medicine or colleges of osteopathic medicine, or any combination of those universities and colleges, to establish, manage, and conduct residency medical training programs. The agreement may also provide for clinical clerkships for medical students. The director shall also enter into an agreement with the boards of trustees or boards of directors of one or more universities in which there is a school of professional psychology to establish, manage, and conduct residency psychological training programs.

(B) The department shall pay all costs incurred by a university or college that relate directly to the training of resident physicians or psychologists in programs developed under this section. The director of ~~mental retardation and~~ developmental disabilities shall ensure that any procedures and limitations imposed for the purpose of reimbursing universities or colleges, or for direct payment of residents' salaries, are incorporated into agreements between the department and the universities or colleges. Any agreement shall provide that residency training for a physician shall not exceed four calendar years.

Sec. 5123.12. The director of ~~mental retardation and~~ developmental disabilities may enter into an agreement with boards of trustees or boards of directors of one or more universities, colleges, or schools to establish, manage, and conduct residency training programs for students enrolled in courses of studies for occupations or professions which may be determined by the director to be needed by the department to provide adequate care and treatment for the residents of any institution administered by the director.

Sec. 5123.122. Notwithstanding section 5121.04 of the Revised Code and except as provided in section 5123.194 of the Revised Code, the liable relative of a mentally retarded or developmentally disabled person who is a minor receiving residential services pursuant to a contract entered into with the department of ~~mental retardation and~~ developmental disabilities under section 5123.18 of the Revised Code shall be charged for the minor's support the percentage of a base support rate determined in accordance with division (B)(2) of section 5121.04 of the Revised Code.

Sec. 5123.13. (A) As used in this section, "felony" has the same meaning as in section 109.511 of the Revised Code.

(B)(1) Subject to division (C) of this section, upon the recommendation of the director of ~~mental retardation and~~ developmental disabilities, the managing officer of an institution under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities may designate one or more employees to be special police officers of the department. The special police officers shall take an oath of office, wear the badge of office, and

give bond for the proper and faithful discharge of their duties in an amount that the director requires.

(2) In accordance with section 109.77 of the Revised Code, the special police officers shall be required to complete successfully a peace officer basic training program approved by the Ohio peace officer training commission and to be certified by the commission. The cost of the training shall be paid by the department of ~~mental retardation and~~ developmental disabilities.

(3) Special police officers, on the premises of institutions under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities and subject to the rules of the department, shall protect the property of the institutions and the persons and property of patients in the institutions, suppress riots, disturbances, and breaches of the peace, and enforce the laws of the state and the rules of the department for the preservation of good order. They may arrest any person without a warrant and detain the person until a warrant can be obtained under the circumstances described in division (F) of section 2935.03 of the Revised Code.

(C)(1) The managing officer of an institution under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities shall not designate an employee as a special police officer of the department pursuant to division (B)(1) of this section on a permanent basis, on a temporary basis, for a probationary term, or on other than a permanent basis if the employee previously has been convicted of or has pleaded guilty to a felony.

(2)(a) The managing officer of an institution under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities shall terminate the employment as a special police officer of the department of an employee designated as a special police officer under division (B)(1) of this section if that employee does either of the following:

(i) Pleads guilty to a felony;

(ii) Pleads guilty to a misdemeanor pursuant to a negotiated plea agreement as provided in division (D) of section 2929.43 of the Revised Code in which the employee agrees to surrender the certificate awarded to that employee under section 109.77 of the Revised Code.

(b) The managing officer shall suspend from employment as a special police officer of the department an employee designated as a special police officer under division (B)(1) of this section if that employee is convicted, after trial, of a felony. If the special police officer files an appeal from that conviction and the conviction is upheld by the highest court to which the appeal is taken or if the special police officer does not file a timely appeal,

the managing officer shall terminate the employment of that special police officer. If the special police officer files an appeal that results in that special police officer's acquittal of the felony or conviction of a misdemeanor, or in the dismissal of the felony charge against that special police officer, the managing officer shall reinstate that special police officer. A special police officer of the department who is reinstated under division (C)(2)(b) of this section shall not receive any back pay unless that special police officer's conviction of the felony was reversed on appeal, or the felony charge was dismissed, because the court found insufficient evidence to convict the special police officer of the felony.

(3) Division (C) of this section does not apply regarding an offense that was committed prior to January 1, 1997.

(4) The suspension from employment, or the termination of the employment, of a special police officer under division (C)(2) of this section shall be in accordance with Chapter 119. of the Revised Code.

Sec. 5123.14. The department of ~~mental retardation and~~ developmental disabilities may make such investigations as are necessary in the performance of its duties and to that end the director of ~~mental retardation and~~ developmental disabilities shall have the same power as a judge of a county court to administer oaths and to enforce the attendance and testimony of witnesses and the production of books or papers.

The department shall keep a record of such investigations stating the time, place, charges or subject, witnesses summoned and examined, and its conclusions.

In matters involving the conduct of an officer, a stenographic report of the evidence shall be taken and a copy of such report, with all documents introduced, kept on file at the office of the department.

Witnesses shall be paid the fees and mileage provided for under section 119.094 of the Revised Code, but no officer or employee of the institution under investigation is entitled to such fees.

Any judge of the probate court or of the court of common pleas, upon application of the department, may compel the attendance of witnesses, the production of books or papers, and the giving of testimony before the department, by a judgment for contempt or otherwise, in the same manner as in cases before said courts.

Sec. 5123.15. The department of ~~mental retardation and~~ developmental disabilities may appoint and commission any competent agency or person, to serve without compensation, as a special agent, investigator, or representative to perform a designated duty for and in behalf of the department. Specific credentials shall be given by the department to each

person so designated, and each credential shall state the:

- (A) Name;
- (B) Agency with which such person is connected;
- (C) Purpose of appointment;
- (D) Date of expiration of appointment;
- (E) Such information as the department considers proper.

Sec. 5123.16. (A) As used in sections 5123.16 to 5123.169 of the Revised Code:

(1) "Provider" means a person or government entity certified by the director of ~~mental retardation and~~ developmental disabilities to provide supported living.

(2) "Related party" means any of the following:

(a) In the case of a provider who is an individual, any of the following:

- (i) The spouse of the provider;
- (ii) A parent or stepparent of the provider or provider's spouse;
- (iii) A child of the provider or provider's spouse;
- (iv) A sibling, half sibling, or stepsibling of the provider or provider's spouse;

spouse;

(v) A grandparent of the provider or provider's spouse;

(vi) A grandchild of the provider or provider's spouse;

(vii) An employee or employer of the provider or provider's spouse.

(b) In the case of a provider that is a person other than an individual, any of the following:

(i) An employee of the person;

(ii) An officer of the provider, including the chief executive officer, president, vice-president, secretary, and treasurer;

(iii) A member of the provider's board of directors or trustees;

(iv) A person owning a financial interest of five per cent or more in the provider;

(v) A corporation that has a subsidiary relationship with the provider;

(vi) A person or government entity that has control over the provider's day-to-day operation;

(vii) A person over which the provider has control of the day-to-day operation.

(c) In the case of a provider that is a government entity, any of the following:

(i) An employee of the provider;

(ii) An officer of the provider;

(iii) A member of the provider's governing board;

(iv) A government entity that has control over the provider's day-to-day

operation;

(v) A person or government entity over which the provider has control of the day-to-day operation.

(B) No person or government entity may provide supported living without a valid supported living certificate issued by the director of ~~mental retardation and~~ developmental disabilities.

(C) A county board of ~~mental retardation and~~ developmental disabilities may provide supported living only to the extent permitted by rules adopted under section 5123.169 of the Revised Code.

Sec. 5123.161. A person or government entity that seeks to provide supported living shall apply to the director of ~~mental retardation and~~ developmental disabilities for a supported living certificate.

Except as provided in section 5123.166 of the Revised Code, the director shall issue the applicant a supported living certificate if the applicant follows the application process established in rules adopted under section 5123.169 of the Revised Code, meets the applicable certification standards established in those rules, and pays the certification fee established in those rules.

Sec. 5123.162. The director of ~~mental retardation and~~ developmental disabilities may conduct surveys of persons and government entities that seek a supported living certificate to determine whether the persons and government entities meet the certification standards. The director may also conduct surveys of providers to determine whether the providers continue to meet the certification standards. The director shall conduct the surveys in accordance with rules adopted under section 5123.169 of the Revised Code.

The records of surveys conducted under this section are public records for the purpose of section 149.43 of the Revised Code and shall be made available on the request of any person or government entity.

Sec. 5123.163. A supported living certificate is valid for a period of time established in rules adopted under section 5123.169 of the Revised Code, unless any of the following occur before the end of that period of time:

(A) The director of ~~mental retardation and~~ developmental disabilities issues an order requiring that action be taken against the certificate holder under section 5123.166 of the Revised Code.

(B) The director issues an order terminating the certificate under section 5123.168 of the Revised Code.

(C) The certificate holder voluntarily surrenders the certificate to the director.

Sec. 5123.164. Except as provided in section 5123.166 of the Revised

Code, the director of ~~mental retardation and~~ developmental disabilities shall renew a supported living certificate if the certificate holder follows the renewal process established in rules adopted under section 5123.169 of the Revised Code, continues to meet the applicable certification standards established in those rules, and pays the renewal fee established in those rules.

Sec. 5123.166. (A) If good cause exists as specified in division (B) of this section and determined in accordance with procedures established in rules adopted under section 5123.169 of the Revised Code, the director of ~~mental retardation and~~ developmental disabilities may issue an adjudication order requiring that one of the following actions be taken against a person or government entity seeking or holding a supported living certificate:

- (1) Refusal to issue or renew a supported living certificate;
- (2) Revocation of a supported living certificate;

(3) Suspension of a supported living certificate holder's authority to do either or both of the following:

(a) Continue to provide supported living to one or more individuals from one or more counties who receive supported living from the certificate holder at the time the director takes the action;

(b) Begin to provide supported living to one or more individuals from one or more counties who do not receive supported living from the certificate holder at the time the director takes the action.

(B) The following constitute good cause for taking action under division (A) of this section against a person or government entity seeking or holding a supported living certificate:

(1) The person or government entity's failure to meet or continue to meet the applicable certification standards established in rules adopted under section 5123.169 of the Revised Code;

(2) The person or government entity violates section 5123.165 of the Revised Code;

(3) The person or government entity's failure to satisfy the requirements of section 5123.52, 5126.28, or 5126.281 of the Revised Code;

- (4) Misfeasance;
- (5) Malfeasance;
- (6) Nonfeasance;
- (7) Confirmed abuse or neglect;
- (8) Financial irresponsibility;

(9) Other conduct the director determines is or would be injurious to individuals who receive or would receive supported living from the person or government entity.

(C) Except as provided in division (D) of this section, the director shall issue an adjudication order under division (A) of this section in accordance with Chapter 119. of the Revised Code.

(D)(1) The director may issue an order requiring that action specified in division (A)(3) of this section be taken before a provider is provided notice and an opportunity for a hearing if all of the following are the case:

(a) The director determines such action is warranted by the provider's failure to continue to meet the applicable certification standards;

(b) The director determines that the failure either represents a pattern of serious noncompliance or creates a substantial risk to the health or safety of an individual who receives or would receive supported living from the provider;

(c) If the order will suspend the provider's authority to continue to provide supported living to an individual who receives supported living from the provider at the time the director issues the order, both of the following are the case:

(i) The director makes the individual, or the individual's guardian, aware of the director's determination under division (D)(1)(b) of this section and the individual or guardian does not select another provider.

(ii) A county board of ~~mental retardation and~~ developmental disabilities has filed a complaint with a probate court under section 5123.33 of the Revised Code that includes facts describing the nature of abuse or neglect that the individual has suffered due to the provider's actions that are the basis for the director making the determination under division (D)(1)(b) of this section and the probate court does not issue an order authorizing the county board to arrange services for the individual pursuant to an individualized service plan developed for the individual under section 5123.31 of the Revised Code.

(2) If the director issues an order under division (D)(1) of this section, sections 119.091 to 119.13 of the Revised Code and all of the following apply:

(a) The director shall send the provider notice of the order by registered mail, return receipt requested, not later than twenty-four hours after issuing the order and shall include in the notice the reasons for the order, the citation to the law or rule directly involved, and a statement that the provider will be afforded a hearing if the provider requests it within ten days of the time of receiving the notice.

(b) If the provider requests a hearing within the required time and the provider has provided the director the provider's current address, the director shall immediately set, and notify the provider of, the date, time, and place

for the hearing.

(c) The date of the hearing shall be not later than thirty days after the director receives the provider's timely request for the hearing.

(d) The hearing shall be conducted in accordance with section 119.09 of the Revised Code, except for all of the following:

(i) The hearing shall continue uninterrupted until its close, except for weekends, legal holidays, and other interruptions the provider and director agree to.

(ii) If the director appoints a referee or examiner to conduct the hearing, the referee or examiner, not later than ten days after the date the referee or examiner receives a transcript of the testimony and evidence presented at the hearing or, if the referee or examiner does not receive the transcript or no such transcript is made, the date that the referee or examiner closes the record of the hearing, shall submit to the director a written report setting forth the referee or examiner's findings of fact and conclusions of law and a recommendation of the action the director should take.

(iii) The provider may, not later than five days after the date the director, in accordance with section 119.09 of the Revised Code, sends the provider or the provider's attorney or other representative of record a copy of the referee or examiner's report and recommendation, file with the director written objections to the report and recommendation.

(iv) The director shall approve, modify, or disapprove the referee or examiner's report and recommendation not earlier than six days, and not later than fifteen days, after the date the director, in accordance with section 119.09 of the Revised Code, sends a copy of the report and recommendation to the provider or the provider's attorney or other representative of record.

(3) The director may lift an order issued under division (D)(1) of this section even though a hearing regarding the order is occurring or pending if the director determines that the provider has taken action eliminating the good cause for issuing the order. The hearing shall proceed unless the provider withdraws the request for the hearing in a written letter to the director.

(4) The director shall lift an order issued under division (D)(1) of this section if both of the following are the case:

(a) The provider provides the director a plan of compliance the director determines is acceptable.

(b) The director determines that the provider has implemented the plan of compliance correctly.

Sec. 5123.167. If the director of ~~mental retardation and~~ developmental disabilities issues an adjudication order under section 5123.166 of the

Revised Code refusing to issue a supported living certificate to a person or government entity or to renew a person or government entity's supported living certificate, neither the person or government entity nor a related party of the person or government entity may apply for another supported living certificate earlier than the date that is one year after the date the order is issued. If the director issues an adjudication order under that section revoking a person or government entity's supported living certificate, neither the person or government entity nor a related party of the person or government entity may apply for another supported living certificate earlier than the date that is five years after the date the order is issued.

Sec. 5123.168. The director of ~~mental retardation and~~ developmental disabilities may issue an adjudication order in accordance with Chapter 119. of the Revised Code to terminate a supported living certificate if the certificate holder has not billed for supported living for twelve consecutive months.

Sec. 5123.169. The director of ~~mental retardation and~~ developmental disabilities shall adopt rules under Chapter 119. of the Revised Code establishing all of the following:

(A) The extent to which a county board of ~~mental retardation and~~ developmental disabilities may provide supported living;

(B) The application process for obtaining a supported living certificate under section 5123.161 of the Revised Code;

(C) The certification standards a person or government entity must meet to obtain a supported living certificate to provide supported living;

(D) The certification fee for a supported living certificate, which shall be deposited into the program fee fund created under section 5123.033 of the Revised Code;

(E) The period of time a supported living certificate is valid;

(F) The process for renewing a supported living certificate under section 5123.164 of the Revised Code;

(G) The renewal fee for a supported living certificate, which shall be deposited into the program fee fund created under section 5123.033 of the Revised Code;

(H) Procedures for conducting surveys under section 5123.162 of the Revised Code;

(I) Procedures for determining whether there is good cause to take action under section 5123.166 of the Revised Code against a person or government entity seeking or holding a supported living certificate.

Sec. 5123.17. The department of ~~mental retardation and~~ developmental disabilities may provide for the custody, supervision, control, treatment, and

training of persons with mental retardation or a developmental disability elsewhere than within the enclosure of an institution under its jurisdiction, if the department so determines with respect to any individual or group of individuals. In all such cases, the department shall ensure adequate and proper supervision for the protection of those persons and of the public.

Sec. 5123.171. As used in this section, "respite care" means appropriate, short-term, temporary care provided to a mentally retarded or developmentally disabled person to sustain the family structure or to meet planned or emergency needs of the family.

The department of ~~mental retardation and~~ developmental disabilities shall provide respite care services to persons with mental retardation or a developmental disability for the purpose of promoting self-sufficiency and normalization, preventing or reducing inappropriate institutional care, and furthering the unity of the family by enabling the family to meet the special needs of a mentally retarded or developmentally disabled person.

In order to be eligible for respite care services under this section, the mentally retarded or developmentally disabled person must be in need of habilitation services as defined in section 5126.01 of the Revised Code.

Respite care may be provided in a facility licensed under section 5123.19 of the Revised Code or certified as an intermediate care facility for the mentally retarded under Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, or certified as a respite care home under section 5126.05 of the Revised Code.

The department shall develop a system for locating vacant beds that are available for respite care and for making information on vacant beds available to users of respite care services. Facilities certified as intermediate care facilities for the mentally retarded and facilities holding contracts with the department for the provision of residential services under section 5123.18 of the Revised Code shall report vacant beds to the department but shall not be required to accept respite care clients.

The director of ~~mental retardation and~~ developmental disabilities shall adopt, and may amend or rescind, rules in accordance with Chapter 119. of the Revised Code for both of the following:

(A) Certification by county boards of ~~mental retardation and~~ developmental disabilities of respite care homes;

(B) Provision of respite care services authorized by this section. Rules adopted under this division shall establish all of the following:

(1) A formula for distributing funds appropriated for respite care services;

(2) Standards for supervision, training and quality control in the

provision of respite care services;

(3) Eligibility criteria for emergency respite care services.

Sec. 5123.172. (A) As used in this section:

(1) "Provider" means any person or government agency that owns, operates, manages, or is employed or under contract to operate a residential facility licensed under section 5123.19 of the Revised Code.

(2) "Related to a provider" means that a person or government agency is affiliated with a provider, has control over the provider or is controlled by the provider, or is a member of the provider's family.

(3) "Member of the provider's family" means the provider's spouse, natural or adoptive parent, stepparent, natural or adoptive child, stepchild, sibling, stepsister, stepbrother, half-brother, half-sister, daughter-in-law, son-in-law, brother-in-law, sister-in-law, grandparent, or grandchild.

(B) Prior to entering into a contract with the department of ~~mental retardation~~ and developmental disabilities under section 5123.18 of the Revised Code and as required thereafter, every provider holding or negotiating a contract with the department shall report upon the request of the department, in the form and on the schedule established in rules adopted by the department in accordance with Chapter 119. of the Revised Code, the following information:

(1) The name and address of every person holding a financial interest of five per cent or more in the management or operation of the residential facility;

(2) The names and addresses of members of the board of trustees or directors of the residential facility or of the management contractor;

(3) Every contract or business transaction between the provider and any person or government agency related to the provider if such contract or transaction would affect rates of payment under section 5123.18 of the Revised Code.

(C) The department shall make reports filed under division (B) of this section available to the appropriate county board of ~~mental retardation~~ and developmental disabilities and any other appropriate public agencies.

(D) Any provider who fails to comply with reporting requirements of this section shall be subject to a civil penalty not to exceed one thousand dollars for each violation and to possible license revocation.

Sec. 5123.18. (A) As used in this section:

(1) "Contractor" means a person or government agency that enters into a contract with the department of ~~mental retardation~~ and developmental disabilities under this section.

(2) "Government agency" means a state agency as defined in section

117.01 of the Revised Code or a similar agency of a political subdivision of the state.

(3) "Residential services" means the services necessary for an individual with mental retardation or a developmental disability to live in the community, including room and board, clothing, transportation, personal care, habilitation, supervision, and any other services the department considers necessary for the individual to live in the community.

(B)(1) The department of ~~mental retardation and~~ developmental disabilities may enter into a contract with a person or government agency to provide residential services to individuals with mental retardation or developmental disabilities in need of residential services. Contracts for residential services shall be of the following types:

(a) Companion home contracts - contracts under which the contractor is an individual, the individual is the primary caregiver, and the individual owns or leases and resides in the home in which the services are provided.

(b) Agency-operated companion home contracts - contracts under which the contractor subcontracts, for purposes of coordinating the provision of residential services, with one or more individuals who are primary caregivers and own or lease and reside in the homes in which the services are provided.

(c) Community home contracts - contracts for residential services under which the contractor owns or operates a home that is used solely to provide residential services.

(d) Combined agency-operated companion home and community home contracts.

(2) A companion home contract shall cover not more than one home. An agency-operated companion home contract or a community home contract may cover more than one home.

(C) Contracts shall be in writing and shall provide for payment to be made to the contractor at the times agreed to by the department and the contractor. Each contract shall specify the period during which it is valid, the amount to be paid for residential services, and the number of individuals for whom payment will be made. Contracts may be renewed.

(D) To be eligible to enter into a contract with the department under this section, the person or government agency and the home in which the residential services are provided must meet all applicable standards for licensing or certification by the appropriate government agency. In addition, if the residential facility is operated as a nonprofit entity, the members of the board of trustees or board of directors of the facility must not have a financial interest in or receive financial benefit from the facility, other than

reimbursement for actual expenses incurred in attending board meetings.

(E)(1) The department shall determine the payment amount assigned to an initial contract. To the extent that the department determines sufficient funds are available, the payment amount assigned to an initial contract shall be equal to the average amount assigned to contracts for other homes that are of the same type and size and serve individuals with similar needs, except that if an initial contract is the result of a change of contractor or ownership, the payment amount assigned to the contract shall be the lesser of the amount assigned to the previous contract or the contract's total adjusted predicted funding need calculated under division (I) of this section.

(2) A renewed contract shall be assigned a payment amount in accordance with division (K) of this section.

(3) When a contractor relocates a home to another site at which residential services are provided to the same individuals, the payment amount assigned to the contract for the new home shall be the payment amount assigned to the contract at the previous location.

(F)(1) Annually, a contractor shall complete an assessment of each individual to whom the contractor provides residential services to predict the individual's need for routine direct services staff. The department shall establish by rule adopted in accordance with Chapter 119. of the Revised Code the assessment instrument to be used by contractors to make assessments. Assessments shall be submitted to the department not later than the thirty-first day of January of each year.

A contractor shall submit a revised assessment for an individual if there is a substantial, long-term change in the nature of the individual's needs. A contractor shall submit revised assessments for all individuals receiving residential services if there is a change in the composition of the home's residents.

(2) Annually, a contractor shall submit a cost report to the department specifying the costs incurred in providing residential services during the immediately preceding calendar year. Only costs actually incurred by a contractor shall be reported on a cost report. Cost reports shall be prepared according to a uniform chart of accounts approved by the department and shall be submitted on forms prescribed by the department.

(3) The department shall not renew the contract held by a contractor who fails to submit the assessments or cost reports required under this division.

(4) The department shall adopt rules as necessary regarding the submission of assessments and cost reports under this division. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(G) Prior to renewing a contract entered into under this section, the department shall compute the contract's total predicted funding need and total adjusted predicted funding need. The department shall also compute the contract's unmet funding need if the payment amount assigned to the contract is less than the total adjusted predicted funding need. The results of these calculations shall be used to determine the payment amount assigned to the renewed contract.

(H)(1) A contract's total predicted funding need is an amount equal to the sum of the predicted funding needs for the following cost categories:

- (a) Routine direct services staff;
- (b) Dietary, program supplies, and specialized staff;
- (c) Facility and general services;
- (d) Administration.

(2) Based on the assessments submitted by the contractor, the department shall compute the contract's predicted funding need for the routine direct services staff cost category by multiplying the number of direct services staff predicted to be necessary for the home by the sum of the following:

(a) Entry level wages paid during the immediately preceding cost reporting period to comparable staff employed by the county board of ~~mental retardation and~~ developmental disabilities of the county in which the home is located;

(b) Fringe benefits and payroll taxes as determined by the department using state civil service statistics from the same period as the cost reporting period.

(3) The department shall establish by rule adopted in accordance with Chapter 119. of the Revised Code the method to be used to compute the predicted funding need for the dietary, program supplies, and specialized staff cost category; the facility and general services cost category; and the administration cost category. The rules shall not establish a maximum amount that may be attributed to the dietary, program supplies, and specialized staff cost category. The rules shall establish a process for determining the combined maximum amount that may be attributed to the facility and general services cost category and the administration cost category.

(I)(1) A contract's total adjusted predicted funding need is the contract's total predicted funding need with adjustments made for the following:

- (a) Inflation, as provided under division (I)(2) of this section;
- (b) The predicted cost of complying with new requirements established under federal or state law that were not taken into consideration when the

total predicted funding need was computed;

(c) Changes in needs based on revised assessments submitted by the contractor.

(2) In adjusting the total predicted funding need for inflation, the department shall use either the consumer price index compound annual inflation rate calculated by the United States department of labor for all items or another index or measurement of inflation designated in rules that the department shall adopt in accordance with Chapter 119. of the Revised Code.

When a contract is being renewed for the first time, and the contract is to begin on the first day of July, the inflation adjustment applied to the contract's total predicted funding need shall be the estimated rate of inflation for the calendar year in which the contract is renewed. If the consumer price index is being used, the department shall base its estimate on the rate of inflation calculated for the three-month period ending the thirty-first day of March of that calendar year. If another index or measurement is being used, the department shall base its estimate on the most recent calculations of the rate of inflation available under the index or measurement. Each year thereafter, the inflation adjustment shall be estimated in the same manner, except that if the estimated rate of inflation for a year is different from the actual rate of inflation for that year, the difference shall be added to or subtracted from the rate of inflation estimated for the next succeeding year.

If a contract begins at any time other than July first, the inflation adjustment applied to the contract's total predicted funding need shall be determined by a method comparable to that used for contracts beginning July first. The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing the method to be used.

(J) A contract's unmet funding need is the difference between the payment amount assigned to the contract and the total adjusted predicted funding need, if the payment amount assigned is less than the total adjusted predicted funding need.

(K) The payment amount to be assigned to a contract being renewed shall be determined by comparing the total adjusted predicted funding need with the payment amount assigned to the current contract.

(1) If the payment amount assigned to the current contract equals or exceeds the total adjusted predicted funding need, the payment amount assigned to the renewed contract shall be the same as that assigned to the current contract, unless a reduction is made pursuant to division (L) of this section.

(2) If the payment amount assigned to the current contract is less than

the total adjusted predicted funding need, the payment amount assigned to the renewed contract shall be increased if the department determines that funds are available for such increases. The amount of a contract's increase shall be the same percentage of the available funds that the contract's unmet funding need is of the total of the unmet funding need for all contracts.

(L) When renewing a contract provided for in division (B) of this section other than a companion home contract, the department may reduce the payment amount assigned to a renewed contract if the sum of the contractor's allowable reported costs and the maximum efficiency incentive is less than ninety-one and one-half per cent of the amount received pursuant to this section during the immediately preceding contract year.

The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing a formula to be used in computing the maximum efficiency incentive, which shall be at least four per cent of the weighted average payment amount to be made to all contractors during the contract year. The maximum efficiency incentive shall be computed annually.

(M) The department may increase the payment amount assigned to a contract based on the contract's unmet funding need at times other than when the contract is renewed. The department may develop policies for determining priorities in making such increases.

(N)(1) In addition to the contracts provided for in division (B) of this section, the department may enter into the following contracts:

(a) A contract to pay the cost of beginning operation of a new home that is to be funded under a companion home contract, agency-operated companion home contract, community home contract, or combined agency-operated companion home and community home contract.

(b) A contract to pay the cost associated with increasing the number of individuals served by a home funded under a companion home contract, agency-operated companion home contract, community home contract, or combined agency-operated companion home and community home contract.

(2) The department shall adopt rules as necessary regarding contracts entered into under this division. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(O) Except for companion home contracts, the department shall conduct a reconciliation of the amount earned under a contract and the actual costs incurred by the contractor. An amount is considered to have been earned for delivering a service at the time the service is delivered. The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures for conducting reconciliations.

A reconciliation shall be based on the annual cost report submitted by

the contractor. If a reconciliation reveals that a contractor owes money to the state, the amount owed shall be collected in accordance with section 5123.051 of the Revised Code.

When conducting reconciliations, the department shall review all reported costs that may be affected by transactions required to be reported under division (B)(3) of section 5123.172 of the Revised Code. If the department determines that such transactions have increased the cost reported by a contractor, the department may disallow or adjust the cost allowable for payment. The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing standards for disallowances or adjustments.

(P) The department may audit the contracts it enters into under this section. Audits may be conducted by the department or an entity with which the department contracts to perform the audits. The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures for conducting audits.

An audit may include the examination of a contractor's financial books and records, the costs incurred by a contractor in providing residential services, and any other relevant information specified by the department. An audit shall not be commenced more than four years after the expiration of the contract to be audited, except in cases where the department has reasonable cause to believe that a contractor has committed fraud.

If an audit reveals that a contractor owes money to the state, the amount owed, subject to an adjudication hearing under this division, shall be collected in accordance with section 5123.051 of the Revised Code. If an audit reveals that a reconciliation conducted under this section resulted in the contractor erroneously paying money to the state, the department shall refund the money to the contractor, or, in lieu of making a refund, the department may offset the erroneous payment against any money determined as a result of the audit to be owed by the contractor to the state. The department is not required to pay interest on any money refunded under this division.

In conducting audits or making determinations of amounts owed by a contractor and amounts to be refunded or offset, the department shall not be bound by the results of reconciliations conducted under this section, except with regard to cases involving claims that have been certified pursuant to section 5123.051 of the Revised Code to the attorney general for collection for which a full and final settlement has been reached or a final judgment has been made from which all rights of appeal have expired or been exhausted.

Not later than ninety days after an audit's completion, the department shall provide the contractor a copy of a report of the audit. The report shall state the findings of the audit, including the amount of any money the contractor is determined to owe the state.

(Q) The department shall adopt rules specifying the amount that will be allowed under a reconciliation or audit for the cost incurred by a contractor for compensation of owners, administrators, and other personnel. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(R) Each contractor shall, for at least seven years, maintain fiscal records related to payments received pursuant to this section.

(S) The department may enter into shared funding agreements with other government agencies to fund contracts entered into under this section. The amount of each agency's share of the cost shall be determined through negotiations with the department. The department's share shall not exceed the amount it would have paid without entering into the shared funding agreement, nor shall it be reduced by any amounts contributed by the other parties to the agreement.

(T) Except as provided in section 5123.194 of the Revised Code, an individual who receives residential services pursuant to divisions (A) through (U) of this section and the individual's liable relatives or guardians shall pay support charges in accordance with Chapter 5121. of the Revised Code.

(U) The department may make reimbursements or payments for any of the following pursuant to rules adopted under this division:

(1) Unanticipated, nonrecurring costs associated with the health or habilitation of a person who resides in a home funded under a contract provided for in division (B) of this section;

(2) The cost of staff development training for contractors if the director of ~~mental retardation and~~ developmental disabilities has given prior approval for the training;

(3) Fixed costs that the department, pursuant to the rules, determines relate to the continued operation of a home funded under a contract provided for in division (B) of this section when a short term vacancy occurs and the contractor has diligently attempted to fill the vacancy.

The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing standards for use in determining which costs it may make payment or reimbursements for under this division.

(V) In addition to the rules required or authorized to be adopted under this section, the department may adopt any other rules necessary to implement divisions (A) through (U) of this section. The rules shall be

adopted in accordance with Chapter 119. of the Revised Code.

(W) The department may delegate to county boards of ~~mental retardation and~~ developmental disabilities its authority under this section to negotiate and enter into contracts or subcontracts for residential services. In the event that it elects to delegate its authority, the department shall adopt rules in accordance with Chapter 119. of the Revised Code for the boards' administration of the contracts or subcontracts. In administering the contracts or subcontracts, the boards shall be subject to all applicable provisions of Chapter 5126. of the Revised Code and shall not be subject to the provisions of divisions (A) to (V) of this section.

Subject to the department's rules, a board may require the following to contribute to the cost of the residential services an individual receives pursuant to this division: the individual or the individual's estate, the individual's spouse, the individual's guardian, and, if the individual is under age eighteen, either or both of the individual's parents. Chapter 5121. of the Revised Code shall not apply to individuals or entities that are subject to making contributions under this division. In calculating contributions to be made under this division, a board, subject to the department's rules, may allow an amount to be kept for meeting the personal needs of the individual who receives residential services.

Sec. 5123.181. The director of ~~mental retardation and~~ developmental disabilities and the director of job and family services shall, in concert with each other, eliminate all double billings and double payments for services on behalf of persons with mental retardation or another developmental disability in intermediate care facilities. The department of ~~mental retardation and~~ developmental disabilities may enter into contracts with providers of services for the purpose of making payments to the providers for services rendered to eligible clients who are persons with mental retardation or a developmental disability over and above the services authorized and paid under Chapter 5111. of the Revised Code. Payments authorized under this section and section 5123.18 of the Revised Code shall not be subject to audit findings pursuant to Chapter 5111. of the Revised Code, unless an audit determines that payment was made to the provider for services that were not rendered in accordance with the provisions of the provider agreement entered into with the department of job and family services or the department of ~~mental retardation and~~ developmental disabilities pursuant to this section.

Sec. 5123.19. (A) As used in this section and in sections 5123.191, 5123.194, 5123.196, 5123.198, and 5123.20 of the Revised Code:

(1)(a) "Residential facility" means a home or facility in which a

mentally retarded or developmentally disabled person resides, except the home of a relative or legal guardian in which a mentally retarded or developmentally disabled person resides, a respite care home certified under section 5126.05 of the Revised Code, a county home or district home operated pursuant to Chapter 5155. of the Revised Code, or a dwelling in which the only mentally retarded or developmentally disabled residents are in an independent living arrangement or are being provided supported living.

(b) "Intermediate care facility for the mentally retarded" means a residential facility that is considered an intermediate care facility for the mentally retarded for the purposes of Chapter 5111. of the Revised Code.

(2) "Political subdivision" means a municipal corporation, county, or township.

(3) "Independent living arrangement" means an arrangement in which a mentally retarded or developmentally disabled person resides in an individualized setting chosen by the person or the person's guardian, which is not dedicated principally to the provision of residential services for mentally retarded or developmentally disabled persons, and for which no financial support is received for rendering such service from any governmental agency by a provider of residential services.

(4) "Licensee" means the person or government agency that has applied for a license to operate a residential facility and to which the license was issued under this section.

(5) "Related party" has the same meaning as in section 5123.16 of the Revised Code except that "provider" as used in the definition of "related party" means a person or government entity that held or applied for a license to operate a residential facility, rather than a person or government entity certified to provide supported living.

(B) Every person or government agency desiring to operate a residential facility shall apply for licensure of the facility to the director of ~~mental retardation and~~ developmental disabilities unless the residential facility is subject to section 3721.02, 3722.04, 5103.03, or 5119.20 of the Revised Code. Notwithstanding Chapter 3721. of the Revised Code, a nursing home that is certified as an intermediate care facility for the mentally retarded under Title XIX of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1396, as amended, shall apply for licensure of the portion of the home that is certified as an intermediate care facility for the mentally retarded.

(C) Subject to section 5123.196 of the Revised Code, the director of ~~mental retardation and~~ developmental disabilities shall license the operation

of residential facilities. An initial license shall be issued for a period that does not exceed one year, unless the director denies the license under division (D) of this section. A license shall be renewed for a period that does not exceed three years, unless the director refuses to renew the license under division (D) of this section. The director, when issuing or renewing a license, shall specify the period for which the license is being issued or renewed. A license remains valid for the length of the licensing period specified by the director, unless the license is terminated, revoked, or voluntarily surrendered.

(D) If it is determined that an applicant or licensee is not in compliance with a provision of this chapter that applies to residential facilities or the rules adopted under such a provision, the director may deny issuance of a license, refuse to renew a license, terminate a license, revoke a license, issue an order for the suspension of admissions to a facility, issue an order for the placement of a monitor at a facility, issue an order for the immediate removal of residents, or take any other action the director considers necessary consistent with the director's authority under this chapter regarding residential facilities. In the director's selection and administration of the sanction to be imposed, all of the following apply:

(1) The director may deny, refuse to renew, or revoke a license, if the director determines that the applicant or licensee has demonstrated a pattern of serious noncompliance or that a violation creates a substantial risk to the health and safety of residents of a residential facility.

(2) The director may terminate a license if more than twelve consecutive months have elapsed since the residential facility was last occupied by a resident or a notice required by division (K) of this section is not given.

(3) The director may issue an order for the suspension of admissions to a facility for any violation that may result in sanctions under division (D)(1) of this section and for any other violation specified in rules adopted under division (H)(2) of this section. If the suspension of admissions is imposed for a violation that may result in sanctions under division (D)(1) of this section, the director may impose the suspension before providing an opportunity for an adjudication under Chapter 119. of the Revised Code. The director shall lift an order for the suspension of admissions when the director determines that the violation that formed the basis for the order has been corrected.

(4) The director may order the placement of a monitor at a residential facility for any violation specified in rules adopted under division (H)(2) of this section. The director shall lift the order when the director determines that the violation that formed the basis for the order has been corrected.

(5) If the director determines that two or more residential facilities owned or operated by the same person or government entity are not being operated in compliance with a provision of this chapter that applies to residential facilities or the rules adopted under such a provision, and the director's findings are based on the same or a substantially similar action, practice, circumstance, or incident that creates a substantial risk to the health and safety of the residents, the director shall conduct a survey as soon as practicable at each residential facility owned or operated by that person or government entity. The director may take any action authorized by this section with respect to any facility found to be operating in violation of a provision of this chapter that applies to residential facilities or the rules adopted under such a provision.

(6) When the director initiates license revocation proceedings, no opportunity for submitting a plan of correction shall be given. The director shall notify the licensee by letter of the initiation of the proceedings. The letter shall list the deficiencies of the residential facility and inform the licensee that no plan of correction will be accepted. The director shall also send a copy of the letter to the county board of ~~mental retardation and~~ developmental disabilities. The county board shall send a copy of the letter to each of the following:

- (a) Each resident who receives services from the licensee;
- (b) The guardian of each resident who receives services from the licensee if the resident has a guardian;
- (c) The parent or guardian of each resident who receives services from the licensee if the resident is a minor.

(7) Pursuant to rules which shall be adopted in accordance with Chapter 119. of the Revised Code, the director may order the immediate removal of residents from a residential facility whenever conditions at the facility present an immediate danger of physical or psychological harm to the residents.

(8) In determining whether a residential facility is being operated in compliance with a provision of this chapter that applies to residential facilities or the rules adopted under such a provision, or whether conditions at a residential facility present an immediate danger of physical or psychological harm to the residents, the director may rely on information obtained by a county board of ~~mental retardation and~~ developmental disabilities or other governmental agencies.

(9) In proceedings initiated to deny, refuse to renew, or revoke licenses, the director may deny, refuse to renew, or revoke a license regardless of whether some or all of the deficiencies that prompted the proceedings have

been corrected at the time of the hearing.

(E) The director shall establish a program under which public notification may be made when the director has initiated license revocation proceedings or has issued an order for the suspension of admissions, placement of a monitor, or removal of residents. The director shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this division. The rules shall establish the procedures by which the public notification will be made and specify the circumstances for which the notification must be made. The rules shall require that public notification be made if the director has taken action against the facility in the eighteen-month period immediately preceding the director's latest action against the facility and the latest action is being taken for the same or a substantially similar violation of a provision of this chapter that applies to residential facilities or the rules adopted under such a provision. The rules shall specify a method for removing or amending the public notification if the director's action is found to have been unjustified or the violation at the residential facility has been corrected.

(F)(1) Except as provided in division (F)(2) of this section, appeals from proceedings initiated to impose a sanction under division (D) of this section shall be conducted in accordance with Chapter 119. of the Revised Code.

(2) Appeals from proceedings initiated to order the suspension of admissions to a facility shall be conducted in accordance with Chapter 119. of the Revised Code, unless the order was issued before providing an opportunity for an adjudication, in which case all of the following apply:

(a) The licensee may request a hearing not later than ten days after receiving the notice specified in section 119.07 of the Revised Code.

(b) If a timely request for a hearing that includes the licensee's current address is made, the hearing shall commence not later than thirty days after the department receives the request.

(c) After commencing, the hearing shall continue uninterrupted, except for Saturdays, Sundays, and legal holidays, unless other interruptions are agreed to by the licensee and the director.

(d) If the hearing is conducted by a hearing examiner, the hearing examiner shall file a report and recommendations not later than ten days after the last of the following:

(i) The close of the hearing;

(ii) If a transcript of the proceedings is ordered, the hearing examiner receives the transcript;

(iii) If post-hearing briefs are timely filed, the hearing examiner receives the briefs.

(e) A copy of the written report and recommendation of the hearing examiner shall be sent, by certified mail, to the licensee and the licensee's attorney, if applicable, not later than five days after the report is filed.

(f) Not later than five days after the hearing examiner files the report and recommendations, the licensee may file objections to the report and recommendations.

(g) Not later than fifteen days after the hearing examiner files the report and recommendations, the director shall issue an order approving, modifying, or disapproving the report and recommendations.

(h) Notwithstanding the pendency of the hearing, the director shall lift the order for the suspension of admissions when the director determines that the violation that formed the basis for the order has been corrected.

(G) Neither a person or government agency whose application for a license to operate a residential facility is denied nor a related party of the person or government agency may apply for a license to operate a residential facility before the date that is one year after the date of the denial. Neither a licensee whose residential facility license is revoked nor a related party of the licensee may apply for a residential facility license before the date that is five years after the date of the revocation.

(H) In accordance with Chapter 119. of the Revised Code, the director shall adopt and may amend and rescind rules for licensing and regulating the operation of residential facilities, including intermediate care facilities for the mentally retarded. The rules for intermediate care facilities for the mentally retarded may differ from those for other residential facilities. The rules shall establish and specify the following:

(1) Procedures and criteria for issuing and renewing licenses, including procedures and criteria for determining the length of the licensing period that the director must specify for each license when it is issued or renewed;

(2) Procedures and criteria for denying, refusing to renew, terminating, and revoking licenses and for ordering the suspension of admissions to a facility, placement of a monitor at a facility, and the immediate removal of residents from a facility;

(3) Fees for issuing and renewing licenses, which shall be deposited into the program fee fund created under section 5123.033 of the Revised Code;

(4) Procedures for surveying residential facilities;

(5) Requirements for the training of residential facility personnel;

(6) Classifications for the various types of residential facilities;

(7) Certification procedures for licensees and management contractors that the director determines are necessary to ensure that they have the skills and qualifications to properly operate or manage residential facilities;

(8) The maximum number of persons who may be served in a particular type of residential facility;

(9) Uniform procedures for admission of persons to and transfers and discharges of persons from residential facilities;

(10) Other standards for the operation of residential facilities and the services provided at residential facilities;

(11) Procedures for waiving any provision of any rule adopted under this section.

(I) Before issuing a license, the director of the department or the director's designee shall conduct a survey of the residential facility for which application is made. The director or the director's designee shall conduct a survey of each licensed residential facility at least once during the period the license is valid and may conduct additional inspections as needed. A survey includes but is not limited to an on-site examination and evaluation of the residential facility, its personnel, and the services provided there.

In conducting surveys, the director or the director's designee shall be given access to the residential facility; all records, accounts, and any other documents related to the operation of the facility; the licensee; the residents of the facility; and all persons acting on behalf of, under the control of, or in connection with the licensee. The licensee and all persons on behalf of, under the control of, or in connection with the licensee shall cooperate with the director or the director's designee in conducting the survey.

Following each survey, unless the director initiates a license revocation proceeding, the director or the director's designee shall provide the licensee with a report listing any deficiencies, specifying a timetable within which the licensee shall submit a plan of correction describing how the deficiencies will be corrected, and, when appropriate, specifying a timetable within which the licensee must correct the deficiencies. After a plan of correction is submitted, the director or the director's designee shall approve or disapprove the plan. A copy of the report and any approved plan of correction shall be provided to any person who requests it.

The director shall initiate disciplinary action against any department employee who notifies or causes the notification to any unauthorized person of an unannounced survey of a residential facility by an authorized representative of the department.

(J) In addition to any other information which may be required of applicants for a license pursuant to this section, the director shall require each applicant to provide a copy of an approved plan for a proposed residential facility pursuant to section 5123.042 of the Revised Code. This

division does not apply to renewal of a license.

(K) A licensee shall notify the owner of the building in which the licensee's residential facility is located of any significant change in the identity of the licensee or management contractor before the effective date of the change if the licensee is not the owner of the building.

Pursuant to rules which shall be adopted in accordance with Chapter 119. of the Revised Code, the director may require notification to the department of any significant change in the ownership of a residential facility or in the identity of the licensee or management contractor. If the director determines that a significant change of ownership is proposed, the director shall consider the proposed change to be an application for development by a new operator pursuant to section 5123.042 of the Revised Code and shall advise the applicant within sixty days of the notification that the current license shall continue in effect or a new license will be required pursuant to this section. If the director requires a new license, the director shall permit the facility to continue to operate under the current license until the new license is issued, unless the current license is revoked, refused to be renewed, or terminated in accordance with Chapter 119. of the Revised Code.

(L) A county board of ~~mental retardation and~~ developmental disabilities, the legal rights service, and any interested person may file complaints alleging violations of statute or department rule relating to residential facilities with the department. All complaints shall be in writing and shall state the facts constituting the basis of the allegation. The department shall not reveal the source of any complaint unless the complainant agrees in writing to waive the right to confidentiality or until so ordered by a court of competent jurisdiction.

The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures for the receipt, referral, investigation, and disposition of complaints filed with the department under this division.

(M) The department shall establish procedures for the notification of interested parties of the transfer or interim care of residents from residential facilities that are closing or are losing their license.

(N) Before issuing a license under this section to a residential facility that will accommodate at any time more than one mentally retarded or developmentally disabled individual, the director shall, by first class mail, notify the following:

- (1) If the facility will be located in a municipal corporation, the clerk of the legislative authority of the municipal corporation;
- (2) If the facility will be located in unincorporated territory, the clerk of

the appropriate board of county commissioners and the fiscal officer of the appropriate board of township trustees.

The director shall not issue the license for ten days after mailing the notice, excluding Saturdays, Sundays, and legal holidays, in order to give the notified local officials time in which to comment on the proposed issuance.

Any legislative authority of a municipal corporation, board of county commissioners, or board of township trustees that receives notice under this division of the proposed issuance of a license for a residential facility may comment on it in writing to the director within ten days after the director mailed the notice, excluding Saturdays, Sundays, and legal holidays. If the director receives written comments from any notified officials within the specified time, the director shall make written findings concerning the comments and the director's decision on the issuance of the license. If the director does not receive written comments from any notified local officials within the specified time, the director shall continue the process for issuance of the license.

(O) Any person may operate a licensed residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least six but not more than eight persons with mental retardation or a developmental disability as a permitted use in any residential district or zone, including any single-family residential district or zone, of any political subdivision. These residential facilities may be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed upon all single-family residences within the district or zone.

(P) Any person may operate a licensed residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least nine but not more than sixteen persons with mental retardation or a developmental disability as a permitted use in any multiple-family residential district or zone of any political subdivision, except that a political subdivision that has enacted a zoning ordinance or resolution establishing planned unit development districts may exclude these residential facilities from those districts, and a political subdivision that has enacted a zoning ordinance or resolution may regulate these residential facilities in multiple-family residential districts or zones as a conditionally permitted use or special exception, in either case, under reasonable and specific standards and conditions set out in the zoning ordinance or resolution to:

(1) Require the architectural design and site layout of the residential

facility and the location, nature, and height of any walls, screens, and fences to be compatible with adjoining land uses and the residential character of the neighborhood;

(2) Require compliance with yard, parking, and sign regulation;

(3) Limit excessive concentration of these residential facilities.

(Q) This section does not prohibit a political subdivision from applying to residential facilities nondiscriminatory regulations requiring compliance with health, fire, and safety regulations and building standards and regulations.

(R) Divisions (O) and (P) of this section are not applicable to municipal corporations that had in effect on June 15, 1977, an ordinance specifically permitting in residential zones licensed residential facilities by means of permitted uses, conditional uses, or special exception, so long as such ordinance remains in effect without any substantive modification.

(S)(1) The director may issue an interim license to operate a residential facility to an applicant for a license under this section if either of the following is the case:

(a) The director determines that an emergency exists requiring immediate placement of persons in a residential facility, that insufficient licensed beds are available, and that the residential facility is likely to receive a permanent license under this section within thirty days after issuance of the interim license.

(b) The director determines that the issuance of an interim license is necessary to meet a temporary need for a residential facility.

(2) To be eligible to receive an interim license, an applicant must meet the same criteria that must be met to receive a permanent license under this section, except for any differing procedures and time frames that may apply to issuance of a permanent license.

(3) An interim license shall be valid for thirty days and may be renewed by the director for a period not to exceed one hundred fifty days.

(4) The director shall adopt rules in accordance with Chapter 119. of the Revised Code as the director considers necessary to administer the issuance of interim licenses.

(T) Notwithstanding rules adopted pursuant to this section establishing the maximum number of persons who may be served in a particular type of residential facility, a residential facility shall be permitted to serve the same number of persons being served by the facility on the effective date of the rules or the number of persons for which the facility is authorized pursuant to a current application for a certificate of need with a letter of support from the department of ~~mental retardation and~~ developmental disabilities and

which is in the review process prior to April 4, 1986.

(U) The director or the director's designee may enter at any time, for purposes of investigation, any home, facility, or other structure that has been reported to the director or that the director has reasonable cause to believe is being operated as a residential facility without a license issued under this section.

The director may petition the court of common pleas of the county in which an unlicensed residential facility is located for an order enjoining the person or governmental agency operating the facility from continuing to operate without a license. The court may grant the injunction on a showing that the person or governmental agency named in the petition is operating a residential facility without a license. The court may grant the injunction, regardless of whether the residential facility meets the requirements for receiving a license under this section.

Sec. 5123.191. (A) The court of common pleas or a judge thereof in the judge's county, or the probate court, may appoint a receiver to take possession of and operate a residential facility licensed by the department of ~~mental retardation and~~ developmental disabilities, in causes pending in such courts respectively, when conditions existing at the facility present a substantial risk of physical or mental harm to residents and no other remedies at law are adequate to protect the health, safety, and welfare of the residents. Conditions at the facility that may present such risk of harm include, but are not limited to, instances when any of the following occur:

(1) The residential facility is in violation of state or federal law or regulations.

(2) The facility has had its license revoked or procedures for revocation have been initiated, or the facility is closing or intends to cease operations.

(3) Arrangements for relocating residents need to be made.

(4) Insolvency of the operator, licensee, or landowner threatens the operation of the facility.

(5) The facility or operator has demonstrated a pattern and practice of repeated violations of state or federal laws or regulations.

(B) A court in which a petition is filed pursuant to this section shall notify the person holding the license for the facility and the department of ~~mental retardation and~~ developmental disabilities of the filing. The court shall order the department to notify the legal rights service, facility owner, facility operator, county board of ~~mental retardation and~~ developmental disabilities, facility residents, and residents' parents and guardians of the filing of the petition.

The court shall provide a hearing on the petition within five court days

of the time it was filed, except that the court may appoint a receiver prior to that time if it determines that the circumstances necessitate such action. Following a hearing on the petition, and upon a determination that the appointment of a receiver is warranted, the court shall appoint a receiver and notify the department of ~~mental retardation and~~ developmental disabilities and appropriate persons of this action.

(C) A residential facility for which a receiver has been named is deemed to be in compliance with section 5123.19 and Chapter 3721. of the Revised Code for the duration of the receivership.

(D) When the operating revenue of a residential facility in receivership is insufficient to meet its operating expenses, including the cost of bringing the facility into compliance with state or federal laws or regulations, the court may order the state to provide necessary funding, except as provided in division (K) of this section. The state shall provide such funding, subject to the approval of the controlling board. The court may also order the appropriate authorities to expedite all inspections necessary for the issuance of licenses or the certification of a facility, and order a facility to be closed if it determines that reasonable efforts cannot bring the facility into substantial compliance with the law.

(E) In establishing a receivership, the court shall set forth the powers and duties of the receiver. The court may generally authorize the receiver to do all that is prudent and necessary to safely and efficiently operate the residential facility within the requirements of state and federal law, but shall require the receiver to obtain court approval prior to making any single expenditure of more than five thousand dollars to correct deficiencies in the structure or furnishings of a facility. The court shall closely review the conduct of the receiver it has appointed and shall require regular and detailed reports. The receivership shall be reviewed at least every sixty days.

(F) A receivership established pursuant to this section shall be terminated, following notification of the appropriate parties and a hearing, if the court determines either of the following:

(1) The residential facility has been closed and the former residents have been relocated to an appropriate facility.

(2) Circumstances no longer exist at the facility that present a substantial risk of physical or mental harm to residents, and there is no deficiency in the facility that is likely to create a future risk of harm.

Notwithstanding division (F)(2) of this section, the court shall not terminate a receivership for a residential facility that has previously operated under another receivership unless the responsibility for the operation of the facility is transferred to an operator approved by the court and the

department of ~~mental retardation and~~ developmental disabilities.

(G) The department of ~~mental retardation and~~ developmental disabilities may, upon its own initiative or at the request of an owner, operator, or resident of a residential facility, or at the request of a resident's guardian or relative, a county board of ~~mental retardation and~~ developmental disabilities, or the legal rights service, petition the court to appoint a receiver to take possession of and operate a residential facility. When the department has been requested to file a petition by any of the parties listed above, it shall, within forty-eight hours of such request, either file such a petition or notify the requesting party of its decision not to file. If the department refuses to file, the requesting party may file a petition with the court requesting the appointment of a receiver to take possession of and operate a residential facility.

Petitions filed pursuant to this division shall include the following:

(1) A description of the specific conditions existing at the facility which present a substantial risk of physical or mental harm to residents;

(2) A statement of the absence of other adequate remedies at law;

(3) The number of individuals residing at the facility;

(4) A statement that the facts have been brought to the attention of the owner or licensee and that conditions have not been remedied within a reasonable period of time or that the conditions, though remedied periodically, habitually exist at the facility as a pattern or practice;

(5) The name and address of the person holding the license for the facility and the address of the department of ~~mental retardation and~~ developmental disabilities.

The court may award to an operator appropriate costs and expenses, including reasonable attorney's fees, if it determines that a petitioner has initiated a proceeding in bad faith or merely for the purpose of harassing or embarrassing the operator.

(H) Except for the department of ~~mental retardation and~~ developmental disabilities or a county board of ~~mental retardation and~~ developmental disabilities, no party or person interested in an action shall be appointed a receiver pursuant to this section.

To assist the court in identifying persons qualified to be named as receivers, the director of ~~mental retardation and~~ developmental disabilities or the director's designee shall maintain a list of the names of such persons. The director shall, in accordance with Chapter 119. of the Revised Code, establish standards for evaluating persons desiring to be included on such a list.

(I) Before a receiver enters upon the duties of that person, the receiver

must be sworn to perform the duties of receiver faithfully, and, with surety approved by the court, judge, or clerk, execute a bond to such person, and in such sum as the court or judge directs, to the effect that such receiver will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

(J) Under the control of the appointing court, a receiver may bring and defend actions in the receiver's own name as receiver and take and keep possession of property.

The court shall authorize the receiver to do the following:

(1) Collect payment for all goods and services provided to the residents or others during the period of the receivership at the same rate as was charged by the licensee at the time the petition for receivership was filed, unless a different rate is set by the court;

(2) Honor all leases, mortgages, and secured transactions governing all buildings, goods, and fixtures of which the receiver has taken possession and continues to use, subject to the following conditions:

(a) In the case of a rental agreement, only to the extent of payments that are for the use of the property during the period of the receivership;

(b) In the case of a purchase agreement only to the extent of payments that come due during the period of the receivership;

(c) If the court determines that the cost of the lease, mortgage, or secured transaction was increased by a transaction required to be reported under division (B)(3) of section 5123.172 of the Revised Code, only to the extent determined by the court to be the fair market value for use of the property during the period of the receivership.

(3) If transfer of residents is necessary, provide for the orderly transfer of residents by doing the following:

(a) Cooperating with all appropriate state and local agencies in carrying out the transfer of residents to alternative community placements;

(b) Providing for the transportation of residents' belongings and records;

(c) Helping to locate alternative placements and develop discharge plans;

(d) Preparing residents for the trauma of discharge;

(e) Permitting residents or guardians to participate in transfer or discharge planning except when an emergency exists and immediate transfer is necessary.

(4) Make periodic reports on the status of the residential program to the appropriate state agency, county board of ~~mental retardation~~ and developmental disabilities, parents, guardians, and residents;

(5) Compromise demands or claims;

(6) Generally do such acts respecting the residential facility as the court authorizes.

(K) Neither the receiver nor the department of ~~mental retardation and~~ developmental disabilities is liable for debts incurred by the owner or operator of a residential facility for which a receiver has been appointed.

(L) The department of ~~mental retardation and~~ developmental disabilities may contract for the operation of a residential facility in receivership. The department shall establish the conditions of a contract. A condition may be the same as, similar to, or different from a condition established by section 5123.18 of the Revised Code and the rules adopted under that section for a contract entered into under that section. Notwithstanding any other provision of law, contracts that are necessary to carry out the powers and duties of the receiver need not be competitively bid.

(M) The department of ~~mental retardation and~~ developmental disabilities, the department of job and family services, and the department of health shall provide technical assistance to any receiver appointed pursuant to this section.

Sec. 5123.194. In the case of an individual who resides in a residential facility and is preparing to move into an independent living arrangement and the individual's liable relative, the department of ~~mental retardation and~~ developmental disabilities may waive the support collection requirements of sections 5121.04, 5123.122, and 5123.18 of the Revised Code for the purpose of allowing income or resources to be used to acquire items necessary for independent living. The department shall adopt rules in accordance with section 111.15 of the Revised Code to implement this section, including rules that establish the method the department shall use to determine when an individual is preparing to move into an independent living arrangement.

Sec. 5123.195. (A) Not later than sixty days after the end of calendar years 2003, 2004, and 2005, the director of ~~mental retardation and~~ developmental disabilities shall submit a report to the president and minority leader of the senate and speaker and minority leader of the house of representatives regarding the implementation of section 5123.19 of the Revised Code since ~~the effective date of this section~~ March 31, 2003. The director shall include in the report all of the following information:

(1) A summary of any rules adopted under that section to implement the amendments to that section that go into effect on ~~the effective date of this section~~ March 31, 2003;

(2) The number of residential facility licenses issued, renewed, and denied under that section since the effective date of the amendments to

section 5123.19 of the Revised Code that go into effect on ~~the effective date of this section~~ March 31, 2003 or, in the case of the reports due in 2005 and 2006, since the previous report was submitted;

(3) The length of time for which residential facility licenses are issued and renewed under that section;

(4) The sanctions imposed pursuant to division (D) of section 5123.19 of the Revised Code and the kinds of violations that cause the sanctions;

(5) Any other information the director determines is important to the implementation of the amendments to section 5123.19 of the Revised Code that go into effect on ~~the effective date of this section~~ March 31, 2003.

(B) On submission of the report under division (A) of this section, the director shall inform each member of the general assembly that the report is available.

Sec. 5123.196. (A) Except as provided in division (E) of this section, the director of ~~mental retardation and~~ developmental disabilities shall not issue a license under section 5123.19 of the Revised Code on or after July 1, 2003, if issuance will result in there being more beds in all residential facilities licensed under that section than is permitted under division (B) of this section.

(B) The maximum number of beds for the purpose of division (A) of this section shall not exceed ten thousand eight hundred thirty-eight minus, except as provided in division (C) of this section, both of the following:

(1) The number of such beds that cease to be residential facility beds on or after July 1, 2003, because a residential facility license is revoked, terminated, or not renewed for any reason or is surrendered in accordance with section 5123.19 of the Revised Code;

(2) The number of such beds for which a licensee voluntarily converts to use for supported living on or after July 1, 2003.

(C) The director is not required to reduce the maximum number of beds pursuant to division (B) of this section by a bed that ceases to be a residential facility bed if the director determines that the bed is needed to provide services to an individual with mental retardation or a developmental disability who resided in the residential facility in which the bed was located.

(D) The director shall maintain an up-to-date written record of the maximum number of residential facility beds provided for by division (B) of this section.

(E) The director may issue an interim license under division (S) of section 5123.19 of the Revised Code and issue, pursuant to rules adopted under division (H)(11) of that section, a waiver allowing a residential

facility to admit more residents than the facility is licensed to admit regardless of whether the interim license or waiver will result in there being more beds in all residential facilities licensed under that section than is permitted under division (B) of this section.

Sec. 5123.198. (A) As used in this section, "date of the commitment" means the date that an individual specified in division (B) of this section begins to reside in a state-operated intermediate care facility for the mentally retarded after being committed to the facility pursuant to sections 5123.71 to 5123.76 of the Revised Code.

(B) Except as provided in division (C) of this section, whenever a resident of a residential facility is committed to a state-operated intermediate care facility for the mentally retarded pursuant to sections 5123.71 to 5123.76 of the Revised Code, the department of ~~mental retardation and~~ developmental disabilities, pursuant to an adjudication order issued in accordance with Chapter 119. of the Revised Code, shall reduce by one the number of residents for which the facility in which the resident resided is licensed.

(C) The department shall not reduce under division (B) of this section the number of residents for which a residential facility is licensed if any of the following are the case:

(1) The resident of the residential facility who is committed to a state-operated intermediate care facility for the mentally retarded resided in the residential facility because of the closure, on or after June 26, 2003, of another state-operated intermediate care facility for the mentally retarded;

(2) The residential facility admits within ninety days of the date of the commitment an individual who resides on the date of the commitment in a state-operated intermediate care facility for the mentally retarded or another residential facility;

(3) The department fails to do either of the following within ninety days of the date of the commitment:

(a) Identify an individual to whom all of the following applies:

(i) Resides on the date of the commitment in a state-operated intermediate care facility for the mentally retarded or another residential facility;

(ii) Has indicated to the department an interest in relocating to the residential facility or has a parent or guardian who has indicated to the department an interest for the individual to relocate to the residential facility;

(iii) The department determines the individual has needs that the residential facility can meet.

(b) Provide the residential facility with information about the individual identified under division (C)(2)(a) of this section that the residential facility needs in order to determine whether the facility can meet the individual's needs.

(4) If the department completes the actions specified in divisions (C)(3)(a) and (b) of this section not later than ninety days after the date of the commitment and except as provided in division (D) of this section, the residential facility does all of the following not later than ninety days after the date of the commitment:

- (a) Evaluates the information provided by the department;
- (b) Assesses the identified individual's needs;
- (c) Determines that the residential facility cannot meet the identified individual's needs.

(5) If the department completes the actions specified in divisions (C)(3)(a) and (b) of this section not later than ninety days after the date of the commitment and the residential facility determines that the residential facility can meet the identified individual's needs, the individual, or a parent or guardian of the individual, refuses placement in the residential facility.

(D) The department may reduce under division (B) of this section the number of residents for which a residential facility is licensed even though the residential facility completes the actions specified in division (C)(4) of this section not later than ninety days after the date of the commitment if all of the following are the case:

(1) The department disagrees with the residential facility's determination that the residential facility cannot meet the identified individual's needs.

(2) The department issues a written decision pursuant to the uniform procedures for admissions, transfers, and discharges established by rules adopted under division (H)(9) of section 5123.19 of the Revised Code that the residential facility should admit the identified individual.

(3) After the department issues the written decision specified in division (D)(2) of this section, the residential facility refuses to admit the identified individual.

(E) A residential facility that admits, refuses to admit, transfers, or discharges a resident under this section shall comply with the uniform procedures for admissions, transfers, and discharges established by rules adopted under division (H)(9) of section 5123.19 of the Revised Code.

(F) The department of ~~mental retardation and~~ developmental disabilities may notify the department of job and family services of any reduction under this section in the number of residents for which a residential facility that is an intermediate care facility for the mentally retarded is licensed. On

receiving the notice, the department of job and family services may transfer to the department of ~~mental retardation and~~ developmental disabilities the savings in the nonfederal share of medicaid expenditures for each fiscal year after the year of the commitment to be used for costs of the resident's care in the state-operated intermediate care facility for the mentally retarded. In determining the amount saved, the department of job and family services shall consider medicaid payments for the remaining residents of the facility in which the resident resided.

Sec. 5123.21. The director of ~~mental retardation and~~ developmental disabilities or the director's designee may transfer or authorize the transfer of an involuntary resident or a consenting voluntary resident from one public institution to another or to an institution other than a public institution or other facility, if the director determines that it would be consistent with the habilitation needs of the resident to do so.

Before an involuntary resident may be transferred to a more restrictive setting, the managing officer of the institution shall file a motion with the court requesting the court to amend its order of placement issued under section 5123.76 of the Revised Code. At the resident's request, the court shall hold a hearing on the motion at which the resident has the same rights as at a full hearing under section 5123.76 of the Revised Code.

Whenever a resident is transferred, the director shall give written notice of the transfer to the resident's legal guardian, parents, spouse, and counsel, or, if none is known, to the resident's nearest known relative or friend. If the resident is a minor, the department before making such a transfer shall make a minute of the order for the transfer and the reason for it upon its record and shall send a certified copy at least seven days prior to the transfer to the person shown by its record to have had the care or custody of the minor immediately prior to the minor's commitment. Whenever a consenting voluntary resident is transferred, the notification shall be given only at the resident's request. The managing officer shall advise a voluntary resident who is being transferred that the patient may decide if such a notification shall be given. In all such transfers, due consideration shall be given to the relationship of the resident to the resident's family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the resident.

Sec. 5123.211. (A) As used in this section, "residential services" has the same meaning as in section 5126.01 of the Revised Code.

(B) The department of ~~mental retardation and~~ developmental disabilities shall provide or arrange provision of residential services for each person who, on or after July 1, 1989, ceases to be a resident of a state institution

because of closure of the institution or a reduction in the institution's population by forty per cent or more within a period of one year. The services shall be provided in the county in which the person chooses to reside and shall consist of one of the following as determined appropriate by the department in consultation with the county board of ~~mental retardation~~ ~~and~~ developmental disabilities of the county in which the services are to be provided:

(1) Residential services provided pursuant to section 5123.18 of the Revised Code;

(2) Residential services for which reimbursement is made under the medical assistance program established under section 5111.01 of the Revised Code;

(3) Residential services provided in a manner or setting approved by the director of ~~mental retardation and~~ developmental disabilities.

(C) Not less than six months prior to closing a state institution or reducing a state institution's population by forty per cent or more within a period of one year, the department shall identify those counties in which individuals leaving the institution have chosen to reside and notify the county boards of ~~mental retardation and~~ developmental disabilities in those counties of the need to develop the services specified in division (B) of this section. The notice shall specify the number of individuals requiring services who plan to reside in the county and indicate the amount of funds the department will use to provide or arrange services for those individuals.

(D) In each county in which one or more persons receive residential services pursuant to division (B) of this section, the department shall provide or arrange provision of residential services, or shall distribute moneys to the county board of ~~mental retardation and~~ developmental disabilities to provide or arrange provision of residential services, for an equal number of persons with mental retardation or developmental disabilities in that county who the county board has determined need residential services but are not receiving them.

Sec. 5123.22. When it is necessary for an institution under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities to acquire any real estate, right-of-way, or easement in real estate in order to accomplish the purposes for which it was organized or is being conducted, and the department is unable to agree with the owner of such property upon the price to be paid therefor, such property may be appropriated in the manner provided for the appropriation of property for other state purposes.

Any instrument by which real property is acquired pursuant to this

section shall identify the agency of the state that has the use and benefit of the real property as specified in section 5301.012 of the Revised Code.

Sec. 5123.221. The department of ~~mental retardation and~~ developmental disabilities shall determine and direct what lands belonging to institutions under its control shall be cultivated.

The department of agriculture, the department of health, and the Ohio state university shall cooperate with the department of ~~mental retardation and~~ developmental disabilities, and the managing officer of each institution mentioned in section 5123.03 of the Revised Code, in making such cooperative tests as are necessary to determine the quality, strength, and purity of supplies, the value and use of farm lands, or the conditions and needs of mechanical equipment.

The department may direct the purchase of any materials, supplies, or other articles for any institution subject to its jurisdiction from any other such institution at the reasonable market value, such value to be fixed by the department, and payments therefor shall be made as between institutions in the manner provided for payment for supplies.

Sec. 5123.23. The director of ~~mental retardation and~~ developmental disabilities may lease, for oil and gas, any real estate owned by the state and placed under the supervision of the department of ~~mental retardation and~~ developmental disabilities, to any person, upon such terms and for such number of years, not more than forty, as will be for the best interest of the state. No such lease shall be agreed upon or entered into before the proposal to lease the property has been advertised once each week for four weeks in a newspaper of general circulation in the county in which the property is located. The lease shall be made with the person offering the best terms to the state.

The director, in such lease, may grant to the lessee the right to use so much of the surface of the land as may be reasonably necessary to carry on the work of prospecting for, extracting, piping, storing, and removing all oil or gas, and for depositing waste material and maintaining such buildings and constructions as are reasonably necessary for exploring or prospecting for such oil and gas.

All leases made under this section shall be prepared by the attorney general and approved by the governor. All money received from any such leases shall be paid into the state treasury to the credit of the general revenue fund.

Sec. 5123.24. A person, firm, or corporation may file a petition in the court of common pleas of the county in which an institution under the jurisdiction of the department of ~~mental retardation and~~ developmental

disabilities is located, in which petition the desire to erect or carry on at a less distance than that prescribed in section 3767.19 of the Revised Code shall be set forth, the business prohibited, the precise point of its establishment, and the reasons and circumstances, in its opinion, why the erection or carrying on thereof would not annoy or endanger the health, convenience, or recovery of the residents of such institution. The petitioner shall give notice in a newspaper of general circulation in the county of the pendency and prayer of the petition for at least six consecutive weeks before the day set for hearing the petition and serve a written notice upon the superintendent of the institution at least thirty days before the day set for hearing the petition.

If, upon the hearing of the petition, it appears that the notice has been given as required and the court is of the opinion that no good reason exists why such establishment may not be erected or such business carried on and that by the erection or carrying on thereof at the point named, the institution will sustain no detriment, the court may issue an order granting the prayer of the petitioner. Thereafter the petitioner may locate such establishment or carry on such business at the point named in the petition.

Sec. 5123.25. The department of administrative services shall purchase all supplies needed for the proper support and maintenance of the institutions under the control of the department of ~~mental retardation and~~ developmental disabilities in accordance with the competitive selection procedures of Chapter 125. of the Revised Code and such rules as the department of administrative services adopts. All bids shall be publicly opened on the day and hour and at the place specified in the advertisement.

Preference shall be given to bidders in localities wherein the institution is located, if the price is fair and reasonable and not greater than the usual price.

The department of administrative services may require such security as it considers proper to accompany the bids and shall fix the security to be given by the contractor.

The department of administrative services may reject any or all bids and secure new bids, if for any reason it is considered for the best interest of the state to do so, and it may authorize the managing officer of any institution to purchase perishable goods and supplies for use in cases of emergency, in which cases the managing officer shall certify such fact in writing and the department of administrative services shall record the reasons for the purchases.

Sec. 5123.26. The treasurer of state shall have charge of all funds under the jurisdiction of the department of ~~mental retardation and~~ developmental

disabilities and shall pay out the same only in accordance with Chapter 5123. of the Revised Code.

The department shall cause to be furnished a contract of indemnity to cover all moneys and funds received by it or by its managing officers, employees, or agents while such moneys or funds are in the possession of such managing officers, employees, or agents. Such funds are designated as follows:

(A) Funds which are due and payable to the treasurer of state as provided by Chapter 131. of the Revised Code;

(B) Those funds which are held in trust by the managing officers, employees, or agents of the institution as local funds or accounts under the jurisdiction of the department.

Such contract of indemnity shall be made payable to the state and the premium for such contract of indemnity may be paid from any of the funds received for the use of the department under this chapter or Chapter 5121. of the Revised Code.

Funds collected from various sources, such as the sale of goods, farm products, and all miscellaneous articles, shall be transmitted on or before Monday of each week to the treasurer of state and a detailed statement of such collections shall be made to the division of business administration by each managing officer.

Sec. 5123.27. The director of ~~mental retardation and~~ developmental disabilities may accept, hold, and administer in trust on behalf of the state, if it is for the public interest, any grant, devise, gift, or bequest of money or property made to the state for the use or benefit of any institution under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities or for the use and benefit of persons with mental retardation or a developmental disability under the control of the department. If the trust so provides, the money or property may be used for any work which the department is authorized to undertake.

The department shall keep such gift, grant, devise, or bequest as a distinct property or fund and, if it is in money, shall invest it in the manner provided by law. The department may deposit in a proper trust company or savings bank any money left in trust during a specified life or lives and shall adopt rules governing the deposit, transfer, withdrawal, or investment of the money and the income from it.

The department shall, in the manner prescribed by the director of budget and management pursuant to section 126.21 of the Revised Code, account for all money or property received or expended under this section. The records, together with a statement certified by the depository showing the

money deposited there to the credit of the trust, shall be open to public inspection. The director of budget and management may require the department to file a report with the director on any particular portion, or the whole, of any trust property received or expended by it.

The department shall, upon the expiration of any trust according to its terms, dispose of the money or property held under the trust in the manner provided in the instrument creating the trust. If the instrument creating the trust failed to make any terms of disposition, or if no trust was in evidence, the decedent resident's money, saving or commercial deposits, dividends or distributions, bonds, or any other interest-bearing debt certificate or stamp issued by the United States government shall escheat to the state. All such unclaimed intangible personal property of a former resident shall be retained by the managing officer in such institution for the period of one year, during which time every possible effort shall be made to find the former resident or the former resident's legal representative.

If after a period of one year from the time the resident has left the institution or has died, the managing officer has been unable to locate the person or the person's legal representative, then, upon proper notice of that fact, the director shall at that time formulate in writing a method of disposition on the minutes of the department authorizing the managing officer to convert such intangible personal property to cash to be paid into the state treasury to the credit of the general revenue fund.

The department shall include in its annual report a statement of all such money and property and the terms and conditions relating to them.

Sec. 5123.28. (A) Except as otherwise provided in this division, money or property deposited with managing officers of institutions under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities by any resident under the department's control or by relatives, guardians, conservators, and others for the special benefit of such resident, as well as all other funds and all other income paid to the resident, to the resident's estate, or on the resident's behalf, or paid to the managing officer or to the institution as representative payee or otherwise paid on the resident's behalf, shall remain in the hands of such managing officers in appropriate accounts for use accordingly. Each such managing officer shall keep itemized book accounts of the receipt and disposition of such money and property, which book shall be open at all times to the inspection of the department. The director of ~~mental retardation and~~ developmental disabilities shall adopt rules governing the deposit, transfer, withdrawal, or investment of such funds and the income of the funds, as well as rules under which such funds and income shall be paid by managing officers,

institutions, or district managers for the support of such residents pursuant to Chapter 5121. of the Revised Code, or for their other needs.

This division does not require, and shall not be construed as requiring, the deposit of the principal or income of a trust created pursuant to section 5815.28 of the Revised Code with managing officers of institutions under the jurisdiction of the department.

(B) Whenever any resident confined in a state institution under the jurisdiction of the department dies, escapes, or is discharged from the institution, any personal funds of the resident remain in the hands of the managing officer of the institution, and no demand is made upon the managing officer by the owner of the funds or the owner's legally appointed representative, the managing officer shall hold the funds in the personal deposit fund for a period of at least one year during which time the managing officer shall make every effort possible to locate the owner or the owner's legally appointed representative. If, at the end of this period, no demand has been made for the funds, the managing officer shall dispose of the funds as follows:

(1) All money in a personal deposit fund in excess of ten dollars due for the support of a resident, shall be paid in accordance with Chapter 5121. of the Revised Code.

(2) All money in a personal deposit fund in excess of ten dollars not due for the support of a resident, shall be placed to the credit of the institution's local account designated as the "industrial and entertainment" fund.

(3) The first ten dollars to the credit of a resident shall be placed to the credit of the institution's local account designated as the "industrial and entertainment" fund.

(C) Whenever any resident in any state institution subject to the jurisdiction of the department dies, escapes, or is discharged from the institution, any personal effects of the resident remain in the hands of the managing officer of the institution, and no demand is made upon the managing officer by the owner of the personal effects or the owner's legally appointed representative, the managing officer shall hold and dispose of the personal effects in the following manner. All the miscellaneous personal effects shall be held for a period of at least one year, during which time the managing officer shall make every effort possible to locate the owner or the owner's legal representative. If, at the end of this period, no demand has been made by the owner of the property or the owner's legal representative, the managing officer shall file with the county recorder of the county of commitment of such owner, all deeds, wills, contract mortgages, or assignments. The balance of the personal effects shall be sold at public

auction after being duly advertised, and the funds turned over to the treasurer of state for credit to the general revenue fund. If any of the property is not of a type to be filed with the county recorder and is not salable at public auction, the managing officer of the institution shall destroy that property.

Sec. 5123.29. Each managing officer of an institution under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities, with the approval of the director of ~~mental retardation and~~ developmental disabilities, may establish funds in the institutions under the jurisdiction of the department, designated as follows:

(A) Industrial and entertainment fund for the entertainment and welfare of the residents of the institution.

(B) Commissary fund for the benefit of residents of the institution. Commissary revenue in excess of operating costs and reserve shall be considered profits. All profits from the commissary fund operations shall be paid into the industrial and entertainment fund, and used only for the entertainment and welfare of residents.

The director shall establish rules for the operation of the industrial and entertainment and commissary funds.

Sec. 5123.30. The department of ~~mental retardation and~~ developmental disabilities shall keep in its office a proper and complete set of books and accounts with each institution, which shall clearly show the nature and amount of every expenditure authorized and made at such institution, and which shall contain an account of all appropriations made by the general assembly and of all other funds, together with the disposition of such funds.

The department shall prescribe the form of vouchers, records, and methods of keeping accounts at each of the institutions, which shall be as nearly uniform as possible. The department may examine the records of any institution at any time.

The department may authorize any of its bookkeepers, accountants, or employees to examine the records, accounts, and vouchers or take an inventory of the property of any institution, or do whatever is necessary, and pay the actual and reasonable expenses incurred in such service when an itemized account is filed and approved.

Sec. 5123.31. The department of ~~mental retardation and~~ developmental disabilities shall keep in its office, accessible only to its employees, except by the consent of the department or the order of the judge of a court of record, a record showing the name, residence, sex, age, nativity, occupation, condition, and date of entrance or commitment of every resident in the institutions governed by it, the date, cause, and terms of discharge and the

condition of such person at the time of leaving, and also a record of all transfers from one institution to another, and, if such person dies while in the care or custody of the department, the date and cause of death. These and such other facts as the department requires shall be furnished by the managing officer of each institution within ten days after the commitment, entrance, death, or discharge of a resident.

In case of an accident or injury or peculiar death of a resident the managing officer shall make a special report to the department within twenty-four hours thereafter, giving the circumstances as fully as possible.

Sec. 5123.33. In its annual report, the department of ~~mental retardation~~ ~~and~~ developmental disabilities shall include a list of the officers and agents employed, and complete financial statement of the various institutions under its control. The report shall describe the condition of each institution, and shall state, as to each institution, whether:

(A) The moneys appropriated have been economically and judiciously expended;

(B) The objects of the institutions have been accomplished;

(C) The laws in relation to such institutions have been fully complied with;

(D) All parts of the state are equally benefited by the institutions.

Such annual report shall be accompanied by the reports of the managing officers, such other information as the department considers proper, and the department's recommendations for the more effective accomplishment of the general purpose of this chapter.

Sec. 5123.34. This chapter attempts to do all of the following:

(A) Provide humane and scientific treatment and care and the highest attainable degree of individual development for persons with mental retardation or a developmental disability;

(B) Promote the study of the causes of mental retardation and developmental disabilities, with a view to ultimate prevention;

(C) Secure by uniform and systematic management the highest attainable degree of economy in the administration of the institutions under the control of the department of ~~mental retardation~~ ~~and~~ developmental disabilities.

Sections 5123.02 to 5123.04, 5123.042, 5123.043, 5123.10, 5123.21, 5123.221, 5123.25, and 5123.31 of the Revised Code shall be liberally construed to attain these purposes.

Sec. 5123.35. (A) There is hereby created the Ohio developmental disabilities council, which shall serve as an advocate for all persons with developmental disabilities. The council shall act in accordance with the

"Developmental Disabilities Assistance and Bill of Rights Act," 98 Stat. 2662 (1984), 42 U.S.C. 6001, as amended. The governor shall appoint the members of the council in accordance with 42 U.S.C. 6024.

(B) The Ohio developmental disabilities council shall develop the state plan required by federal law as a condition of receiving federal assistance under 42 U.S.C. 6021 to 6030. The department of ~~mental retardation and~~ developmental disabilities, as the state agency selected by the governor for purposes of receiving the federal assistance, shall receive, account for, and disburse funds based on the state plan and shall provide assurances and other administrative support services required as a condition of receiving the federal assistance.

(C) The federal funds may be disbursed through grants to or contracts with persons and government agencies for the provision of necessary or useful goods and services for developmentally disabled persons. The Ohio developmental disabilities council may award the grants or enter into the contracts.

(D) The Ohio developmental disabilities council may award grants to or enter into contracts with a member of the council or an entity that the member represents if all of the following apply:

(1) The member serves on the council as a representative of one of the principal state agencies concerned with services for persons with developmental disabilities as specified in 42 U.S.C. 6024(b)(3), a representative of a university affiliated program as defined in 42 U.S.C. 6001(18), or a representative of the legal rights service created under section 5123.60 of the Revised Code.

(2) The council determines that the member or the entity the member represents is capable of providing the goods or services specified under the terms of the grant or contract.

(3) The member has not taken part in any discussion or vote of the council related to awarding the grant or entering into the contract, including service as a member of a review panel established by the council to award grants or enter into contracts or to make recommendations with regard to awarding grants or entering into contracts.

(E) A member of the Ohio developmental disabilities council is not in violation of Chapter 102. or section 2921.42 of the Revised Code with regard to receiving a grant or entering into a contract under this section if the requirements of division (D) of this section have been met.

Sec. 5123.351. The director of ~~mental retardation and~~ developmental disabilities, with respect to the eligibility for state reimbursement of expenses incurred by facilities and programs established and operated under

Chapter 5126. of the Revised Code for persons with mental retardation or a developmental disability, shall do all of the following:

(A) Make rules that may be necessary to carry out the purposes of Chapter 5126. and sections 5123.35, 5123.351, and 5123.36 of the Revised Code;

(B) Define minimum standards for qualifications of personnel, professional services, and in-service training and educational leave programs;

(C) Review and evaluate community programs and make recommendations for needed improvements to county boards of ~~mental retardation and~~ developmental disabilities and to program directors;

(D) Withhold state reimbursement, in whole or in part, from any county or combination of counties for failure to comply with Chapter 5126. or section 5123.35 or 5123.351 of the Revised Code or rules of the department of ~~mental retardation and~~ developmental disabilities;

(E) Withhold state funds from an agency, corporation, or association denying or rendering service on the basis of race, color, sex, religion, ancestry, national origin, disability as defined in section 4112.01 of the Revised Code, or inability to pay;

(F) Provide consultative staff service to communities to assist in ascertaining needs and in planning and establishing programs.

Sec. 5123.352. There is hereby created in the state treasury the community ~~mental retardation and~~ developmental disabilities trust fund. The director of ~~mental retardation and~~ developmental disabilities, not later than sixty days after the end of each fiscal year, shall certify to the director of budget and management the amount of all the unexpended, unencumbered balances of general revenue fund appropriations made to the department of ~~mental retardation and~~ developmental disabilities for the fiscal year, excluding appropriations for rental payments to the Ohio public facilities commission, and the amount of any other funds held by the department in excess of amounts necessary to meet the department's operating costs and obligations pursuant to this chapter and Chapter 5126. of the Revised Code. On receipt of the certification, the director of budget and management shall transfer cash to the trust fund in an amount up to, but not exceeding, the total of the amounts certified by the director of ~~mental retardation and~~ developmental disabilities, except in cases in which the transfer will involve more than twenty million dollars. In such cases, the director of budget and management shall notify the controlling board and must receive the board's approval of the transfer prior to making the transfer.

All moneys in the trust fund shall be distributed in accordance with

section 5126.19 of the Revised Code.

Sec. 5123.36. (A) To the extent funds are available and on application by a county board of ~~mental retardation and~~ developmental disabilities or private nonprofit agency incorporated to provide mental retardation or developmental disability services, the director of ~~mental retardation and~~ developmental disabilities may enter into an agreement with the county board or agency to assist the county board or agency with a mental retardation or developmental disability construction project. Except as provided by division (B) of this section, the director may provide up to ninety per cent of the total project cost where circumstances warrant. The director may, where circumstances warrant, use existing facilities or other in-kind match for the local share of the communities' share of the cost.

(B) Upon the recommendation of the director, for projects of the highest priority of the department of ~~mental retardation and~~ developmental disabilities, the controlling board may authorize the director to provide more than ninety per cent of the total cost of a project under this section.

(C) A county board is eligible for funds under this section for a project bid on or after January 1, 1992, under either section 153.07 or 307.86 of the Revised Code, as long as all other applicable requirements were followed.

(D) A private nonprofit agency that receives funds pursuant to this section for the construction of a single-family home, including, where appropriate, the acquisition and installation of a single-family home fabricated in an off-site facility, is not subject to the requirements of Chapter 153. of the Revised Code with respect to the construction project, notwithstanding any provision of that chapter to the contrary.

(E) The director may not assist a project under this section unless the controlling board or director of budget and management also approves the project pursuant to section 126.14 of the Revised Code.

Sec. 5123.37. A county board of ~~mental retardation and~~ developmental disabilities or private, nonprofit agency that receives state funds pursuant to an agreement with the director of ~~mental retardation and~~ developmental disabilities under section 5123.36 of the Revised Code to acquire a facility may apply to the director for approval to sell the facility before the terms of the agreement expire for the purpose of acquiring a replacement facility to be used to provide mental retardation or developmental disability services to individuals the county board or agency serves. The application shall be made on a form the director shall prescribe. The county board or agency shall include in the application the specific purpose for which the replacement facility is to be used. The director may refuse to approve the application if the director determines that any of the following apply:

(A) The application is incomplete or indicates that the county board or agency is unable to purchase a replacement facility.

(B) The replacement facility would not be used to continue to provide mental retardation or developmental disability services that the director determines are appropriate for the individuals the county board or agency serves.

(C) The county board or agency has failed to comply with a provision of Chapter 5123. or 5126. of the Revised Code or a rule adopted by the director.

(D) Approving the application would be inconsistent with the plans and priorities of the department of ~~mental retardation and~~ developmental disabilities.

Sec. 5123.371. If the director of ~~mental retardation and~~ developmental disabilities approves an application submitted under section 5123.37 of the Revised Code, the county board of ~~mental retardation and~~ developmental disabilities or private, nonprofit agency that submitted the application shall, after selling the facility for which the county board or agency received approval to sell, pay to the director the portion of the proceeds that equals the amount that the director determines the county board or agency owes the department of ~~mental retardation and~~ developmental disabilities, including the department's security interest in the facility, for the state funds used to acquire the facility.

Sec. 5123.372. If the director of ~~mental retardation and~~ developmental disabilities approves an application submitted under section 5123.37 of the Revised Code, the director shall establish a deadline by which the county board of ~~mental retardation and~~ developmental disabilities or private, nonprofit agency that submitted the application must notify the director that the county board or agency is ready to acquire a replacement facility to be used for the purpose stated in the application. The director may extend the deadline as many times as the director determines necessary.

Sec. 5123.373. If, on or before the deadline or, if any, the last extended deadline established under section 5123.372 of the Revised Code for a county board of ~~mental retardation and~~ developmental disabilities or private, nonprofit agency, the county board or agency notifies the director of ~~mental retardation and~~ developmental disabilities that the county board or agency is ready to acquire the replacement facility, the director shall enter into an agreement with the county board or agency that provides for the director to pay to the county board or agency a percentage of the cost of acquiring the replacement facility. The agreement shall specify the amount that the director shall pay. The amount may be the amount of the security interest

that the department of ~~mental retardation and~~ developmental disabilities had in the previous facility or a different amount. The agreement may provide for the department to hold a security interest in the replacement facility.

Sec. 5123.374. (A) The director of ~~mental retardation and~~ developmental disabilities may rescind approval of an application submitted under section 5123.37 of the Revised Code if either of the following occurs:

(1) The county board of ~~mental retardation and~~ developmental disabilities or private, nonprofit agency that submitted the application fails, on or before the deadline or, if any, the last extended deadline established under section 5123.372 of the Revised Code for the county board or agency, to notify the director that the county board or agency is ready to acquire the replacement facility.

(2) The county board or agency at any time notifies the director that the county board or agency no longer intends to acquire a replacement facility.

(B) If the director rescinds approval of an application, the director shall use any funds the county board or agency paid to the director under section 5123.371 of the Revised Code to assist mental retardation or developmental disabilities construction projects under section 5123.36 of the Revised Code.

Sec. 5123.375. The ~~MR/DD~~ developmental disabilities community capital replacement facilities fund is hereby created in the state treasury. The director of ~~mental retardation and~~ developmental disabilities shall credit all amounts paid to the director under section 5123.371 of the Revised Code to the fund. The director shall use the money in the fund as follows:

(A) To make payments to county boards of ~~mental retardation and~~ developmental disabilities and private, nonprofit agencies pursuant to agreements entered into under section 5123.373 of the Revised Code;

(B) To provide, pursuant to section 5123.374 of the Revised Code, assistance for mental retardation or developmental disabilities construction projects under section 5123.36 of the Revised Code.

Sec. 5123.38. (A) Except as provided in division (B) and (C) of this section, if an individual receiving supported living or home and community-based services funded by a county board of ~~mental retardation and~~ developmental disabilities is committed to a state-operated intermediate care facility for the mentally retarded pursuant to sections 5123.71 to 5123.76 of the Revised Code, the department of ~~mental retardation and~~ developmental disabilities shall use the funds otherwise allocated to the county board as the nonfederal share of medicaid expenditures for the individual's care in the state-operated facility.

(B) Division (A) of this section does not apply if the county board, not later than ninety days after the date of the commitment of a person receiving

supported services, commences funding of supported living for an individual who resides in a state-operated intermediate care facility for the mentally retarded on the date of the commitment or another eligible individual designated by the department.

(C) Division (A) of this section does not apply if the county board, not later than ninety days after the date of the commitment of a person receiving home and community-based services, commences funding of home and community-based services for an individual who resides in a state-operated intermediate care facility for the mentally retarded on the date of the commitment or another eligible individual designated by the department.

Sec. 5123.40. There is hereby created in the state treasury the services fund for individuals with mental retardation and developmental disabilities. On the death of the beneficiary of a trust created pursuant to section 5815.28 of the Revised Code, the portion of the remaining assets of the trust specified in the trust instrument shall be deposited to the credit of the fund.

Money credited to the fund shall be used for individuals with mental retardation and developmental disabilities. In accordance with Chapter 119. of the Revised Code, the department of ~~mental retardation and~~ developmental disabilities may adopt any rules necessary to implement this section.

Sec. 5123.41. As used in this section and sections 5123.42 to 5123.47 of the Revised Code:

(A) "Adult services" has the same meaning as in section 5126.01 of the Revised Code.

(B) "Certified supported living provider" means a person or government entity certified under section 5123.161 of the Revised Code.

(C) "Drug" has the same meaning as in section 4729.01 of the Revised Code.

(D) "Family support services" has the same meaning as in section 5126.01 of the Revised Code.

(E) "Health-related activities" means the following:

- (1) Taking vital signs;
- (2) Application of clean dressings that do not require health assessment;
- (3) Basic measurement of bodily intake and output;
- (4) Oral suctioning;
- (5) Use of glucometers;
- (6) External urinary catheter care;
- (7) Emptying and replacing colostomy bags;
- (8) Collection of specimens by noninvasive means.

(F) "Licensed health professional authorized to prescribe drugs" has the

same meaning as in section 4729.01 of the Revised Code.

(G) "MR/DD personnel" means the employees and the workers under contract who provide specialized services to individuals with mental retardation and developmental disabilities. "MR/DD personnel" includes those who provide the services as follows:

(1) Through direct employment with the department of ~~mental retardation and~~ developmental disabilities or a county board of ~~mental retardation and~~ developmental disabilities;

(2) Through an entity under contract with the department of ~~mental retardation and~~ developmental disabilities or a county board of ~~mental retardation and~~ developmental disabilities;

(3) Through direct employment or by being under contract with private entities, including private entities that operate residential facilities.

(H) "Nursing delegation" means the process established in rules adopted by the board of nursing pursuant to Chapter 4723. of the Revised Code under which a registered nurse or licensed practical nurse acting at the direction of a registered nurse transfers the performance of a particular nursing activity or task to another person who is not otherwise authorized to perform the activity or task.

(I) "Prescribed medication" means a drug that is to be administered according to the instructions of a licensed health professional authorized to prescribe drugs.

(J) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code or subject to section 5123.192 of the Revised Code.

(K) "Specialized services" has the same meaning as in section 5123.50 of the Revised Code.

(L) "Tube feeding" means the provision of nutrition to an individual through a gastrostomy tube or a jejunostomy tube.

Sec. 5123.42. (A) Beginning nine months after ~~the effective date of this section~~ March 31, 2003, MR/DD personnel who are not specifically authorized by other provisions of the Revised Code to administer prescribed medications, perform health-related activities, or perform tube feedings may do so pursuant to this section as part of the specialized services the MR/DD personnel provide to individuals with mental retardation and developmental disabilities in the following categories:

(1) Recipients of early intervention, preschool, and school-age services offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

(2) Recipients of adult services offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

(3) Recipients of family support services offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

(4) Recipients of services from certified supported living providers, if the services are offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

(5) Recipients of residential support services from certified home and community-based services providers, if the services are received in a community living arrangement that includes not more than four individuals with mental retardation and developmental disabilities and the services are offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

(6) Recipients of services not included in divisions (A)(1) to (5) of this section that are offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

(7) Residents of a residential facility with five or fewer resident beds;

(8) Residents of a residential facility with at least six but not more than sixteen resident beds;

(9) Residents of a residential facility with seventeen or more resident beds who are on a field trip from the facility, if all of the following are the case:

(a) The field trip is sponsored by the facility for purposes of complying with federal medicaid statutes and regulations, state medicaid statutes and rules, or other federal or state statutes, regulations, or rules that require the facility to provide habilitation, community integration, or normalization services to its residents.

(b) Not more than five field trip participants are residents who have health needs requiring the administration of prescribed medications, excluding participants who self-administer prescribed medications or receive assistance with self-administration of prescribed medications.

(c) The facility staffs the field trip with MR/DD personnel in such a manner that one person will administer prescribed medications, perform health-related activities, or perform tube feedings for not more than two participants if one or both of those participants have health needs requiring the person to administer prescribed medications through a gastrostomy or jejunostomy tube.

(d) According to the instructions of a health care professional acting within the scope of the professional's practice, the health needs of the participants who require administration of prescribed medications by MR/DD personnel are such that the participants must receive the medications during the field trip to avoid jeopardizing their health and

safety.

(B)(1) In the case of recipients of early intervention, preschool, and school-age services, as specified in division (A)(1) of this section, all of the following apply:

(a) With nursing delegation, MR/DD personnel may perform health-related activities.

(b) With nursing delegation, MR/DD personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(2) In the case of recipients of adult services, as specified in division (A)(2) of this section, all of the following apply:

(a) With nursing delegation, MR/DD personnel may perform health-related activities.

(b) With nursing delegation, MR/DD personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(3) In the case of recipients of family support services, as specified in division (A)(3) of this section, all of the following apply:

(a) Without nursing delegation, MR/DD personnel may perform health-related activities.

(b) Without nursing delegation, MR/DD personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(e) With nursing delegation, MR/DD personnel may administer routine doses of insulin through subcutaneous injections and insulin pumps.

(4) In the case of recipients of services from certified supported living providers, as specified in division (A)(4) of this section, all of the following apply:

(a) Without nursing delegation, MR/DD personnel may perform health-related activities.

(b) Without nursing delegation, MR/DD personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(e) With nursing delegation, MR/DD personnel may administer routine doses of insulin through subcutaneous injections and insulin pumps.

(5) In the case of recipients of residential support services from certified home and community-based services providers, as specified in division (A)(5) of this section, all of the following apply:

(a) Without nursing delegation, MR/DD personnel may perform health-related activities.

(b) Without nursing delegation, MR/DD personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(e) With nursing delegation, MR/DD personnel may administer routine doses of insulin through subcutaneous injections and insulin pumps.

(6) In the case of recipients of services not included in divisions (A)(1) to (5) of this section, as specified in division (A)(6) of this section, all of the following apply:

(a) With nursing delegation, MR/DD personnel may perform health-related activities.

(b) With nursing delegation, MR/DD personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(7) In the case of residents of a residential facility with five or fewer beds, as specified in division (A)(7) of this section, all of the following apply:

(a) Without nursing delegation, MR/DD personnel may perform health-related activities.

(b) Without nursing delegation, MR/DD personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(e) With nursing delegation, MR/DD personnel may administer routine doses of insulin through subcutaneous injections and insulin pumps.

(8) In the case of residents of a residential facility with at least six but not more than sixteen resident beds, as specified in division (A)(8) of this section, all of the following apply:

(a) With nursing delegation, MR/DD personnel may perform health-related activities.

(b) With nursing delegation, MR/DD personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, MR/DD personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(9) In the case of residents of a residential facility with seventeen or more resident beds who are on a field trip from the facility, all of the following apply during the field trip, subject to the limitations specified in division (A)(9) of this section:

(a) With nursing delegation, MR/DD personnel may perform health-related activities.

(b) With nursing delegation, MR/DD personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, MR/DD personnel may administer

prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, MR/DD personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(C) The authority of MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings pursuant to this section is subject to all of the following:

(1) To administer prescribed medications, perform health-related activities, or perform tube feedings for individuals in the categories specified under divisions (A)(1) to (8) of this section, MR/DD personnel shall obtain the certificate or certificates required by the department of ~~mental retardation~~ and developmental disabilities and issued under section 5123.45 of the Revised Code. MR/DD personnel shall administer prescribed medication, perform health-related activities, and perform tube feedings only as authorized by the certificate or certificates held.

(2) To administer prescribed medications, perform health-related activities, or perform tube feedings for individuals in the category specified under division (A)(9) of this section, MR/DD personnel shall successfully complete the training course or courses developed under section 5123.43 of the Revised Code for the MR/DD personnel. MR/DD personnel shall administer prescribed medication, perform health-related activities, and perform tube feedings only as authorized by the training completed.

(3) If nursing delegation is required under division (B) of this section, MR/DD personnel shall not act without nursing delegation or in a manner that is inconsistent with the delegation.

(4) The employer of MR/DD personnel shall ensure that MR/DD personnel have been trained specifically with respect to each individual for whom they administer prescribed medications, perform health-related activities, or perform tube feedings. MR/DD personnel shall not administer prescribed medications, perform health-related activities, or perform tube feedings for any individual for whom they have not been specifically trained.

(5) If the employer of MR/DD personnel believes that MR/DD personnel have not or will not safely administer prescribed medications, perform health-related activities, or perform tube feedings, the employer shall prohibit the action from continuing or commencing. MR/DD personnel shall not engage in the action or actions subject to an employer's prohibition.

(D) In accordance with section 5123.46 of the Revised Code, the department of ~~mental retardation~~ and developmental disabilities shall adopt

rules governing its implementation of this section. The rules shall include the following:

(1) Requirements for documentation of the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by MR/DD personnel pursuant to the authority granted under this section;

(2) Procedures for reporting errors that occur in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by MR/DD personnel pursuant to the authority granted under this section;

(3) Other standards and procedures the department considers necessary for implementation of this section.

Sec. 5123.421. The department of ~~mental retardation and~~ developmental disabilities shall accept complaints from any person or government entity regarding the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by MR/DD personnel pursuant to the authority granted under section 5123.42 of the Revised Code. The department shall conduct investigations of complaints as it considers appropriate. The department shall adopt rules in accordance with section 5123.46 of the Revised Code establishing procedures for accepting complaints and conducting investigations under this section.

Sec. 5123.43. (A) The department of ~~mental retardation and~~ developmental disabilities shall develop courses for the training of MR/DD personnel in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings pursuant to the authority granted under section 5123.42 of the Revised Code. The department may develop separate or combined training courses for the administration of prescribed medications, performance of health-related activities, and performance of tube feedings. Training in the administration of prescribed medications through gastrostomy and jejunostomy tubes may be included in a course providing training in tube feedings. Training in the administration of insulin may be developed as a separate course or included in a course providing training in the administration of other prescribed medications.

(B)(1) The department shall adopt rules in accordance with section 5123.46 of the Revised Code that specify the content and length of the training courses developed under this section. The rules may include any other standards the department considers necessary for the training courses.

(2) In adopting rules that specify the content of a training course or part of a training course that trains MR/DD personnel in the administration of

prescribed medications, the department shall ensure that the content includes all of the following:

- (a) Infection control and universal precautions;
- (b) Correct and safe practices, procedures, and techniques for administering prescribed medication;
- (c) Assessment of drug reaction, including known side effects, interactions, and the proper course of action if a side effect occurs;
- (d) The requirements for documentation of medications administered to each individual;
- (e) The requirements for documentation and notification of medication errors;
- (f) Information regarding the proper storage and care of medications;
- (g) Information about proper receipt of prescriptions and transcription of prescriptions into an individual's medication administration record, except when the MR/DD personnel being trained will administer prescribed medications only to residents of a residential facility with seventeen or more resident beds who are participating in a field trip, as specified in division (A)(9) of section 5123.42 of the Revised Code;
- (h) Course completion standards that require successful demonstration of proficiency in administering prescribed medications;
- (i) Any other material or course completion standards that the department considers relevant to the administration of prescribed medications by MR/DD personnel.

Sec. 5123.44. The department of ~~mental retardation and~~ developmental disabilities shall develop courses that train registered nurses to provide the MR/DD personnel training courses developed under section 5123.43 of the Revised Code. The department may develop courses that train registered nurses to provide all of the courses developed under section 5123.43 of the Revised Code or any one or more of the courses developed under that section.

The department shall adopt rules in accordance with section 5123.46 of the Revised Code that specify the content and length of the training courses. The rules may include any other standards the department considers necessary for the training courses.

Sec. 5123.45. (A) The department of ~~mental retardation and~~ developmental disabilities shall establish a program under which the department issues certificates to the following:

- (1) MR/DD personnel, for purposes of meeting the requirement of division (C)(1) of section 5123.42 of the Revised Code to obtain a certificate or certificates to administer prescribed medications, perform health-related

activities, and perform tube feedings;

(2) Registered nurses, for purposes of meeting the requirement of division (B)(1) of section 5123.441 of the Revised Code to obtain a certificate or certificates to provide the MR/DD personnel training courses developed under section 5123.43 of the Revised Code.

(B)(1) Except as provided in division (B)(2) of this section, to receive a certificate issued under this section, MR/DD personnel and registered nurses shall successfully complete the applicable training course or courses and meet all other applicable requirements established in rules adopted pursuant to this section. The department shall issue the appropriate certificate or certificates to MR/DD personnel and registered nurses who meet the requirements for the certificate or certificates.

(2) The department shall include provisions in the program for issuing certificates to the following:

(a) MR/DD personnel who, on ~~the effective date of this section~~ March 31, 2003, are authorized to provide care to individuals with mental retardation and developmental disabilities pursuant to section 5123.193 or sections 5126.351 to 5126.354 of the Revised Code. A person who receives a certificate under division (B)(2)(a) of this section shall not administer insulin until the person has been trained by a registered nurse who has received a certificate under this section that allows the registered nurse to provide training courses to MR/DD personnel in the administration of insulin.

(b) Registered nurses who, on ~~the effective date of this section~~ March 31, 2003, are authorized to train MR/DD personnel to provide care to individuals with mental retardation and developmental disabilities pursuant to section 5123.193 or sections 5126.351 to 5126.354 of the Revised Code. A registered nurse who receives a certificate under division (B)(2)(b) of this section shall not provide training courses to MR/DD personnel in the administration of insulin unless the registered nurse completes a course developed under section 5123.44 of the Revised Code that enables the registered nurse to receive a certificate to provide training courses to MR/DD personnel in the administration of insulin.

(C) Certificates issued to MR/DD personnel are valid for one year and may be renewed. Certificates issued to registered nurses are valid for two years and may be renewed.

To be eligible for renewal, MR/DD personnel and registered nurses shall meet the applicable continued competency requirements and continuing education requirements specified in rules adopted under division (D) of this section. In the case of registered nurses, continuing nursing

education completed in compliance with the license renewal requirements established under Chapter 4723. of the Revised Code may be counted toward meeting the continuing education requirements established in the rules adopted under division (D) of this section.

(D) In accordance with section 5123.46 of the Revised Code, the department shall adopt rules that establish all of the following:

(1) Requirements that MR/DD personnel and registered nurses must meet to be eligible to take a training course;

(2) Standards that must be met to receive a certificate, including requirements pertaining to an applicant's criminal background;

(3) Procedures to be followed in applying for a certificate and issuing a certificate;

(4) Standards and procedures for renewing a certificate, including requirements for continuing education and, in the case of MR/DD personnel who administer prescribed medications, standards that require successful demonstration of proficiency in administering prescribed medications;

(5) Standards and procedures for suspending or revoking a certificate;

(6) Standards and procedures for suspending a certificate without a hearing pending the outcome of an investigation;

(7) Any other standards or procedures the department considers necessary to administer the certification program.

Sec. 5123.451. The department of ~~mental retardation and~~ developmental disabilities shall establish and maintain a registry that lists all MR/DD personnel and registered nurses holding valid certificates issued under section 5123.45 of the Revised Code. The registry shall specify the type of certificate held and any limitations that apply to a certificate holder. The department shall make the information in the registry available to the public in computerized form or any other manner that provides continuous access to the information in the registry.

Sec. 5123.47. (A) As used in this section:

(1) "In-home care" means the supportive services provided within the home of an individual with mental retardation or a developmental disability who receives funding for the services through a county board of ~~mental retardation and~~ developmental disabilities, including any recipient of residential services funded as home and community-based services, family support services provided under section 5126.11 of the Revised Code, or supported living provided in accordance with sections 5126.41 to 5126.47 of the Revised Code. "In-home care" includes care that is provided outside an individual's home in places incidental to the home, and while traveling to places incidental to the home, except that "in-home care" does not include

care provided in the facilities of a county board of ~~mental retardation and~~ developmental disabilities or care provided in schools.

(2) "Parent" means either parent of a child, including an adoptive parent but not a foster parent.

(3) "Unlicensed in-home care worker" means an individual who provides in-home care but is not a health care professional.

(4) "Family member" means a parent, sibling, spouse, son, daughter, grandparent, aunt, uncle, cousin, or guardian of the individual with mental retardation or a developmental disability if the individual with mental retardation or developmental disabilities lives with the person and is dependent on the person to the extent that, if the supports were withdrawn, another living arrangement would have to be found.

(5) "Health care professional" means any of the following:

(a) A dentist who holds a valid license issued under Chapter 4715. of the Revised Code;

(b) A registered or licensed practical nurse who holds a valid license issued under Chapter 4723. of the Revised Code;

(c) An optometrist who holds a valid license issued under Chapter 4725. of the Revised Code;

(d) A pharmacist who holds a valid license issued under Chapter 4729. of the Revised Code;

(e) A person who holds a valid certificate issued under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited brand of medicine;

(f) A physician assistant who holds a valid certificate issued under Chapter 4730. of the Revised Code;

(g) An occupational therapist or occupational therapy assistant or a physical therapist or physical therapist assistant who holds a valid license issued under Chapter 4755. of the Revised Code;

(h) A respiratory care professional who holds a valid license issued under Chapter 4761. of the Revised Code.

(6) "Health care task" means a task that is prescribed, ordered, delegated, or otherwise directed by a health care professional acting within the scope of the professional's practice.

(B) Except as provided in division (E) of this section, a family member of an individual with mental retardation or a developmental disability may authorize an unlicensed in-home care worker to administer oral and topical prescribed medications or perform other health care tasks as part of the in-home care the worker provides to the individual, if all of the following apply:

(1) The family member is the primary supervisor of the care.

(2) The unlicensed in-home care worker has been selected by the family member or the individual receiving care and is under the direct supervision of the family member.

(3) The unlicensed in-home care worker is providing the care through an employment or other arrangement entered into directly with the family member and is not otherwise employed by or under contract with a person or government entity to provide services to individuals with mental retardation and developmental disabilities.

(C) A family member shall obtain a prescription, if applicable, and written instructions from a health care professional for the care to be provided to the individual. The family member shall authorize the unlicensed in-home care worker to provide the care by preparing a written document granting the authority. The family member shall provide the unlicensed in-home care worker with appropriate training and written instructions in accordance with the instructions obtained from the health care professional.

(D) A family member who authorizes an unlicensed in-home care worker to administer oral and topical prescribed medications or perform other health care tasks retains full responsibility for the health and safety of the individual receiving the care and for ensuring that the worker provides the care appropriately and safely. No entity that funds or monitors the provision of in-home care may be held liable for the results of the care provided under this section by an unlicensed in-home care worker, including such entities as the county board of ~~mental retardation and~~ developmental disabilities and the department of ~~mental retardation and~~ developmental disabilities.

An unlicensed in-home care worker who is authorized under this section by a family member to provide care to an individual may not be held liable for any injury caused in providing the care, unless the worker provides the care in a manner that is not in accordance with the training and instructions received or the worker acts in a manner that constitutes wanton or reckless misconduct.

(E) A county board of ~~mental retardation and~~ developmental disabilities may evaluate the authority granted by a family member under this section to an unlicensed in-home care worker at any time it considers necessary and shall evaluate the authority on receipt of a complaint. If the board determines that a family member has acted in a manner that is inappropriate for the health and safety of the individual receiving the care, the authorization granted by the family member to an unlicensed in-home care

worker is void, and the family member may not authorize other unlicensed in-home care workers to provide the care. In making such a determination, the board shall use appropriately licensed health care professionals and shall provide the family member an opportunity to file a complaint under section 5126.06 of the Revised Code.

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

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

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

(2) Sexual abuse;

(3) Verbal abuse.

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

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

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

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

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

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

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

(F) "Sexual abuse" means unlawful sexual conduct or sexual contact.

(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 shall review the notice.

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

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

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

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

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

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

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

(ii) The prosecutor consents to the hearing.

(3) In conducting a hearing pursuant to division (B)(2) of this section, the hearing officer shall do 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 property of 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;

(iii) Knowingly abused such an individual;

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

(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 retardation or a developmental disability.

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

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

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

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

(3) If the director includes an MR/DD employee in the registry established under section 5123.52 of the Revised Code, the director shall notify the employee, the person or government entity that employs or contracts with the employee, the individual with mental retardation or a developmental disability who was the subject of the report and that

individual's legal guardian, if any, the attorney general, and the prosecuting attorney or other law enforcement agency. If the MR/DD employee holds a license, certificate, registration, or other authorization to engage in a profession issued pursuant to Title XLVII of the Revised Code, the director shall notify the appropriate agency, board, department, or other entity responsible for regulating the employee's professional practice.

(4) If an individual whose name appears on the registry is involved in a court proceeding or arbitration arising from the same facts as the allegation resulting in the individual's placement on the registry, the disposition of the proceeding or arbitration shall be noted in the registry next to the individual's name.

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

(F) If the department is required by Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and the MR/DD employee subject to the notice does not timely request a hearing in accordance with section 119.07 or 5123.0414 of the Revised Code, the department is not required to hold a hearing.

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

Sec. 5123.52. (A) The department of ~~mental retardation and~~ developmental disabilities shall establish a registry of MR/DD employees consisting of the names of MR/DD employees included in the registry pursuant to section 5123.51 of the Revised Code.

(B) Before a person or government entity hires, contracts with, or employs an individual as an MR/DD employee, the person or government

entity shall inquire whether the individual is included in the registry.

(C) When it receives an inquiry regarding whether an individual is included in the registry, the department shall inform the person making the inquiry whether the individual is included in the registry.

(D)(1) Except as otherwise provided in a collective bargaining agreement entered into under Chapter 4117. of the Revised Code that is in effect on ~~the effective date of this section~~ November 22, 2000, no person or government entity shall hire, contract with, or employ as an MR/DD employee an individual who is included in the registry. Notwithstanding sections 4117.08 and 4117.10 of the Revised Code, no agreement entered into under Chapter 4117. of the Revised Code after ~~the effective date of this section~~ November 22, 2000, may contain any provision that in any way limits the effect or operation of this section.

(2) Neither the department nor any county board of ~~mental retardation and~~ developmental disabilities may enter into a new contract or renew a contract with a person or government entity that fails to comply with division (D)(1) of this section until the department or board is satisfied that the person or government entity will comply.

(3) A person or government entity that fails to hire or retain as an MR/DD employee a person because the person is included in the registry shall not be liable in damages in a civil action brought by the employee or applicant for employment. Termination of employment pursuant to division (D)(1) of this section constitutes a discharge for just cause for the purposes of section 4141.29 of the Revised Code.

(E) Information contained in the registry is a public record for the purposes of section 149.43 of the Revised Code and is subject to inspection and copying under section 1347.08 of the Revised Code.

Sec. 5123.53. An individual who is included in the registry may petition the director of ~~mental retardation and~~ developmental disabilities for removal from the registry. If the director determines that good cause exists, the director shall remove the individual from the registry and may properly reply to an inquiry that the individual is not included in the registry. Good cause includes meeting rehabilitation standards established in rules adopted under section 5123.54 of the Revised Code.

Sec. 5123.54. The director of ~~mental retardation and~~ developmental disabilities shall adopt rules under Chapter 119. of the Revised Code to implement sections 5123.51, 5123.52, and 5123.53 of the Revised Code. The rules shall establish rehabilitation standards for the purposes of section 5123.53 of the Revised Code and specify circumstances, other than meeting the standards, that constitute good cause for the purposes of that section.

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

(B) Any MR/DD employee who violates division (A) of this section 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, in addition to any other sanction or penalty authorized or required by law.

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

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

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

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

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

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

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

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

(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.

(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.

Sec. 5123.55. As used in sections 5123.55 to 5123.59 of the Revised Code:

(A) "Guardian" means a guardian of the person, limited guardian, interim guardian, or emergency guardian pursuant to appointment by the probate court under Chapter 2111. of the Revised Code.

(B) "Trustee" means a trustee appointed by and accountable to the probate court, in lieu of a guardian and without a judicial determination of incompetency, with respect to an estate of ten thousand dollars or less.

(C) "Protector" means an agency under contract with the department of ~~mental retardation and~~ developmental disabilities acting with or without court appointment to provide guidance, service, and encouragement in the development of maximum self-reliance to a person with mental retardation or a developmental disability, independent of any determination of incompetency.

(D) "Protective service" means performance of the duties of a guardian, trustee, or conservator, or acting as a protector, with respect to a person with mental retardation or a developmental disability.

(E) "Conservator" means a conservator of the person pursuant to an appointment by a probate court under Chapter 2111. of the Revised Code.

Sec. 5123.56. The department of ~~mental retardation and~~ developmental disabilities shall develop a statewide system of protective service in accordance with rules and standards established by the department. With respect to this program, the department may enter into a contract with any responsible public or private agency for provision of protective service by the agency, and the contract may permit the agency to charge the person receiving services fees for services provided.

No costs or fees shall be charged by a probate court for the filing of a petition for guardianship, trusteeship, protectorship, or conservatorship under sections 5123.55 to 5123.59 of the Revised Code, or for any service performed by a probate court, or by any state agency in the course of petitioning for protective services, or for any protective services provided under those sections.

An agency that provides protective services pursuant to a contract with another agency or a court may charge the agency or court fees for the services provided.

Sec. 5123.57. No guardianship or trusteeship appointment shall be made under sections 5123.55 to 5123.59 of the Revised Code and no person shall be accepted for service by a protector under those sections unless a comprehensive evaluation has been made in a clinic or other facility approved by the department of ~~mental retardation and~~ developmental disabilities. The evaluation shall include a medical, psychological, social, and educational evaluation, and a copy of the evaluation shall be filed with

the department.

Any agency that is appointed as a guardian, trustee, or conservator under sections 5123.55 to 5123.59 of the Revised Code or accepted as a protector under those sections shall provide for a review at least once each year in writing of the physical, mental, and social condition of each mentally retarded or developmentally disabled person for whom it is acting as guardian, trustee, or protector. An agency providing protective services under contract with the department shall file these reports with the department of ~~mental retardation and~~ developmental disabilities. Any record of the department or agency pertaining to a mentally retarded or developmentally disabled person shall not be a public record under section 149.43 of the Revised Code. Information contained in those records shall not be disclosed publicly in such a manner as to identify individuals, but may be made available to persons approved by the director of ~~mental retardation and~~ developmental disabilities or the court.

Sec. 5123.58. An agency providing protective services under contract with the department of ~~mental retardation and~~ developmental disabilities may be nominated under any of the following conditions as guardian, trustee, protector, conservator, or as trustee and protector of a mentally retarded or developmentally disabled person:

(A) The person who needs or believes ~~he~~ the person needs protective service may make application in writing.

(B) Any interested person may make application in writing on behalf of a mentally retarded or developmentally disabled person.

(C) A parent may name the department or agency as guardian or successor guardian in a will.

(D) A parent may name the department or agency as guardian, trustee, or protector, to assume such duties during the parent's lifetime.

If the results of the comprehensive evaluation required under section 5123.57 of the Revised Code indicate that the person named in the nomination is in need of protective services, the agency or service either shall reject or accept the nomination as guardian, trustee, or conservator, subject to appointment by the probate court, or reject or accept the nomination as protector, or trustee and protector.

At the time the nomination is accepted or when an appointment is made by the court, the mentally retarded or developmentally disabled person and any person who made application for service on ~~his~~ the mentally retarded or developmentally disabled person's behalf under this section shall be informed by the agency, service, or court of the procedure for terminating the appointment or service. The agency or service shall cease to provide

protective service as a protector pursuant to nomination under division (A), (B), or (D) of this section when a written request for termination is received by the agency from or on behalf of the mentally retarded or developmentally disabled person. If the agency or service believes the person to be in need of protective service, the agency or service may file an application for guardianship, trusteeship, or protectorship with the probate court. Termination of any court appointment as guardian, trustee, or protector shall be by order of the probate court.

Sec. 5123.59. Before entering upon the duties of trustee, an agency under contract with the department of ~~mental retardation and~~ developmental disabilities may require any of its employees having custody or control of funds or property to give bond to the probate court with sufficient surety, conditioned upon the full and faithful accounting of all trust funds which ~~he~~ the employee holds. The amount of the bond shall be determined by the court and may be modified by the court.

Sec. 5123.60. (A) A legal rights service is hereby created and established to protect and advocate the rights of mentally ill persons, mentally retarded persons, developmentally disabled persons, and other disabled persons who may be represented by the service pursuant to division (L) of this section; to receive and act upon complaints concerning institutional and hospital practices and conditions of institutions for mentally retarded or developmentally disabled persons and hospitals for the mentally ill; and to assure that all persons detained, hospitalized, discharged, or institutionalized, and all persons whose detention, hospitalization, discharge, or institutionalization is sought or has been sought under this chapter or Chapter 5122. of the Revised Code are fully informed of their rights and adequately represented by counsel in proceedings under this chapter or Chapter 5122. of the Revised Code and in any proceedings to secure the rights of those persons. Notwithstanding the definitions of "mentally retarded person" and "developmentally disabled person" in section 5123.01 of the Revised Code, the legal rights service shall determine who is a mentally retarded or developmentally disabled person for purposes of this section and sections 5123.601 to 5123.604 of the Revised Code.

(B)(1) In regard to those persons detained, hospitalized, or institutionalized under Chapter 5122. of the Revised Code, the legal rights service shall undertake formal representation only of those persons who are involuntarily detained, hospitalized, or institutionalized pursuant to sections 5122.10 to 5122.15 of the Revised Code, and those voluntarily detained, hospitalized, or institutionalized who are minors, who have been adjudicated incompetent, who have been detained, hospitalized, or institutionalized in a

public hospital, or who have requested representation by the legal rights service.

(2) If a person referred to in division (A) of this section voluntarily requests in writing that the legal rights service terminate participation in the person's case, such involvement shall cease.

(3) Persons described in divisions (A) and (B)(1) of this section who are represented by the legal rights service are clients of the legal rights service.

(C) Any person voluntarily hospitalized or institutionalized in a public hospital under division (A) of section 5122.02 of the Revised Code, after being fully informed of the person's rights under division (A) of this section, may, by written request, waive assistance by the legal rights service if the waiver is knowingly and intelligently made, without duress or coercion.

The waiver may be rescinded at any time by the voluntary patient or resident, or by the voluntary patient's or resident's legal guardian.

(D)(1) The legal rights service commission is hereby created for the purposes of appointing an administrator of the legal rights service, advising the administrator, assisting the administrator in developing a budget, advising the administrator in establishing and annually reviewing a strategic plan, creating a procedure for filing and determination of grievances against the legal rights service, and establishing general policy guidelines, including guidelines for the commencement of litigation, for the legal rights service. The commission may adopt rules to carry these purposes into effect and may receive and act upon appeals of personnel decisions by the administrator.

(2) The commission shall consist of seven members. One member, who shall serve as chairperson, shall be appointed by the chief justice of the supreme court, three members shall be appointed by the speaker of the house of representatives, and three members shall be appointed by the president of the senate. At least two members shall have experience in the field of developmental disabilities, and at least two members shall have experience in the field of mental health. No member shall be a provider or related to a provider of services to mentally retarded, developmentally disabled, or mentally ill persons.

(3) Terms of office of the members of the commission shall be for three years, each term ending on the same day of the month of the year as did the term which it succeeds. Each member shall serve subsequent to the expiration of the member's term until a successor is appointed and qualifies, or until sixty days has elapsed, whichever occurs first. No member shall serve more than two consecutive terms.

All vacancies in the membership of the commission shall be filled in the manner prescribed for regular appointments to the commission and shall be

limited to the unexpired terms.

(4) The commission shall meet at least four times each year. Members shall be reimbursed for their necessary and actual expenses incurred in the performance of their official duties.

(5) The administrator of the legal rights service shall serve at the pleasure of the commission.

The administrator shall be an attorney admitted to practice law in this state. The salary of the administrator shall be established in accordance with section 124.14 of the Revised Code.

(E) The legal rights service shall be completely independent of the department of mental health and the department of ~~mental retardation and~~ developmental disabilities and, notwithstanding section 109.02 of the Revised Code, shall also be independent of the office of the attorney general. The administrator of the legal rights service, staff, and attorneys designated by the administrator to represent persons detained, hospitalized, or institutionalized under this chapter or Chapter 5122. of the Revised Code shall have ready access to the following:

(1) During normal business hours and at other reasonable times, all records, except records of community residential facilities and records of contract agencies of county boards of ~~mental retardation and~~ developmental disabilities and boards of alcohol, drug addiction and mental health services, relating to expenditures of state and federal funds or to the commitment, care, treatment, and habilitation of all persons represented by the legal rights service, including those who may be represented pursuant to division (L) of this section, or persons detained, hospitalized, institutionalized, or receiving services under this chapter or Chapter 340., 5119., 5122., or 5126. of the Revised Code that are records maintained by the following entities providing services for those persons: departments; institutions; hospitals; boards of alcohol, drug addiction, and mental health services; county boards of ~~mental retardation and~~ developmental disabilities; and any other entity providing services to persons who may be represented by the service pursuant to division (L) of this section;

(2) Any records maintained in computerized data banks of the departments or boards or, in the case of persons who may be represented by the service pursuant to division (L) of this section, any other entity that provides services to those persons;

(3) During their normal working hours, personnel of the departments, facilities, boards, agencies, institutions, hospitals, and other service-providing entities;

(4) At any time, all persons detained, hospitalized, or institutionalized;

persons receiving services under this chapter or Chapter 340., 5119., 5122., or 5126. of the Revised Code; and persons who may be represented by the service pursuant to division (L) of this section.

(5) Records of a community residential facility, a contract agency of a board of alcohol, drug addiction, and mental health services, or a contract agency of a county board of ~~mental retardation and~~ developmental disabilities with one of the following consents:

(a) The consent of the person, including when the person is a minor or has been adjudicated incompetent;

(b) The consent of the person's guardian of the person, if any, or the parent if the person is a minor;

(c) No consent, if the person is unable to consent for any reason, and the guardian of the person, if any, or the parent of the minor, has refused to consent or has not responded to a request for consent and either of the following has occurred:

(i) A complaint regarding the person has been received by the legal rights service;

(ii) The legal rights service has determined that there is probable cause to believe that such person has been subjected to abuse or neglect.

(F) The administrator of the legal rights service shall do the following:

(1) Administer and organize the work of the legal rights service and establish administrative or geographic divisions as the administrator considers necessary, proper, and expedient;

(2) Adopt and promulgate rules that are not in conflict with rules adopted by the commission and prescribe duties for the efficient conduct of the business and general administration of the legal rights service;

(3) Appoint and discharge employees, and hire experts, consultants, advisors, or other professionally qualified persons as the administrator considers necessary to carry out the duties of the legal rights service;

(4) Apply for and accept grants of funds, and accept charitable gifts and bequests;

(5) Prepare and submit a budget to the general assembly for the operation of the legal rights service. At least thirty days prior to submitting the budget to the general assembly, the administrator shall provide a copy of the budget to the commission for review and comment. When submitting the budget to the general assembly, the administrator shall include a copy of any written comments returned by the commission to the administrator.

(6) Enter into contracts and make expenditures necessary for the efficient operation of the legal rights service;

(7) Annually prepare a report of activities and submit copies of the

report to the governor, the chief justice of the supreme court, the president of the senate, the speaker of the house of representatives, the director of mental health, and the director of ~~mental retardation and~~ developmental disabilities, and make the report available to the public;

(8) Upon request of the commission or of the chairperson of the commission, report to the commission on specific litigation issues or activities.

(G)(1) The legal rights service may act directly or contract with other organizations or individuals for the provision of the services envisioned under this section.

(2) Whenever possible, the administrator shall attempt to facilitate the resolution of complaints through administrative channels. Subject to division (G)(3) of this section, if attempts at administrative resolution prove unsatisfactory, the administrator may pursue any legal, administrative, and other appropriate remedies or approaches that may be necessary to accomplish the purposes of this section.

(3) The administrator may not pursue a class action lawsuit under division (G)(2) of this section when attempts at administrative resolution of a complaint prove unsatisfactory under that division unless both of the following have first occurred:

(a) At least four members of the commission, by their affirmative vote, have consented to the pursuit of the class action lawsuit;

(b) At least five members of the commission are present at the meeting of the commission at which that consent is obtained.

(4) All records received or maintained by the legal rights service in connection with any investigation, representation, or other activity under this section shall be confidential and shall not be disclosed except as authorized by the person represented by the legal rights service or, subject to any privilege, a guardian of the person or parent of the minor. Subject to division (G)(5) of this section, relationships between personnel and the agents of the legal rights service and its clients shall be fiduciary relationships, and all communications shall be privileged as if between attorney and client.

(5) Any person who has been represented by the legal rights service or who has applied for and been denied representation and who files a grievance with the service concerning the representation or application may appeal the decision of the service on the grievance to the commission. The person may appeal notwithstanding any objections of the person's legal guardian. The commission may examine any records relevant to the appeal and shall maintain the confidentiality of any records that are required to be

kept confidential.

(H) The legal rights service, on the order of the administrator, with the approval by an affirmative vote of at least four members of the commission, may compel by subpoena the appearance and sworn testimony of any person the administrator reasonably believes may be able to provide information or to produce any documents, books, records, papers, or other information necessary to carry out its duties. On the refusal of any person to produce or authenticate any requested documents, the legal rights service may apply to the Franklin county court of common pleas to compel the production or authentication of requested documents. If the court finds that failure to produce or authenticate any requested documents was improper, the court may hold the person in contempt as in the case of disobedience of the requirements of a subpoena issued from the court, or a refusal to testify in the court.

(I) The legal rights service may conduct public hearings.

(J) The legal rights service may request from any governmental agency any cooperation, assistance, services, or data that will enable it to perform its duties.

(K) In any malpractice action filed against the administrator of the legal rights service, a member of the staff of the legal rights service, or an attorney designated by the administrator to perform legal services under division (E) of this section, the state shall, when the administrator, member, or attorney has acted in good faith and in the scope of employment, indemnify the administrator, member, or attorney for any judgment awarded or amount negotiated in settlement, and for any court costs or legal fees incurred in defense of the claim.

This division does not limit or waive, and shall not be construed to limit or waive, any defense that is available to the legal rights service, its administrator or employees, persons under a personal services contract with it, or persons designated under division (E) of this section, including, but not limited to, any defense available under section 9.86 of the Revised Code.

(L) In addition to providing services to mentally ill, mentally retarded, or developmentally disabled persons, when a grant authorizing the provision of services to other individuals is accepted pursuant to division (F)(4) of this section, the legal rights service and its ombudsperson section may provide advocacy or ombudsperson services to those other individuals and exercise any other authority granted by this section or sections 5123.601 to 5123.604 of the Revised Code on behalf of those individuals. Determinations of whether an individual is eligible for services under this division shall be made by the legal rights service.

Sec. 5123.601. (A) As used in sections 5123.601 to 5123.604 of the Revised Code, "provider" means any person or governmental agency that furnishes one or more services to one or more mentally retarded, developmentally disabled, or mentally ill persons.

(B) There is hereby created within the legal rights service the ~~ombudsman~~ ombudsperson section. The administrator of the legal rights service shall adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures for receiving complaints and conducting investigations for the purposes of resolving and mediating complaints from mentally retarded, developmentally disabled, or mentally ill persons, their relatives, their guardians, and interested citizens, public officials, and governmental agencies or any deficiencies which come to its attention concerning any activity, practice, policy, or procedure it determines is adversely affecting or may adversely affect the health, safety, welfare, and civil or human rights of any mentally retarded, developmentally disabled, or mentally ill persons. After initial investigation, the section may decline to accept any complaint it determines is frivolous, vexatious, or not made in good faith. The section shall attempt to resolve the complaint at the lowest appropriate administrative level, unless otherwise provided by law. The procedures shall require the section to:

(1) Acknowledge the receipt of a complaint by sending written notice to the complainant no more than seven days after it receives the complaint;

(2) When appropriate, provide written notice to the department of ~~mental retardation and~~ developmental disabilities or the department of mental health and any other appropriate agency within seven days after receiving the complaint;

(3) Immediately refer a complaint made under this section to the department of ~~mental retardation and~~ developmental disabilities and to any other appropriate governmental agency, whenever the complaint involves an immediate and substantial threat to the health or safety of a mentally retarded or developmentally disabled person, or to the department of mental health and to any other appropriate governmental agency, whenever the complaint involves an immediate and substantial threat to the health or safety of a mentally ill person. The department or an agency designated by the department shall report its findings and actions no later than forty-eight hours following its receipt of the complaint.

(4) Within seven days after identifying a deficiency in the treatment of a mentally retarded, developmentally disabled, or mentally ill person that pertains to misconduct, breach of duty, or noncompliance with state or federal laws, local ordinances, or rules or regulations adopted under those

laws or ordinances that are administered by a governmental agency, refer the matter in writing to the appropriate state agency. The state agency shall report on its actions and findings within seven days of receiving the matter.

(5) Advise the complainant and any mentally retarded, developmentally disabled, or mentally ill person mentioned in the complaint, no more than thirty days after it receives the complaint, of any action it has taken and of any opinions and recommendations it has with respect to the complaint.

(6) Attempt to resolve the complaint by using informal techniques of mediation, conciliation, and persuasion. If the complaint cannot be resolved by the use of these informal techniques or if the act, practice, policy, or procedure that is the subject of the complaint adversely affects the health, safety, welfare, or civil or human rights of a mentally retarded, developmentally disabled, or mentally ill person, the section may recommend to the appropriate authorities or the administrator of the legal rights service that appropriate actions be taken.

(7) Report its opinions or recommendations to the parties involved after attempting to resolve a complaint through informal techniques of mediation, conciliation, or persuasion. The section may request any party affected by the opinions or recommendations to notify the section, within a time period specified by the section, of any action the party has taken on the section's recommendations.

(C) The section may make public any of its opinions or recommendations concerning a complaint, the responses of persons and governmental agencies to its opinions or recommendations, and any act, practice, policy, or procedure that adversely affects or may adversely affect the health, safety, welfare, or civil or human rights of a mentally retarded, developmentally disabled, or mentally ill person.

(D) The section shall at all times maintain confidentiality under sections 5123.601 to 5123.604 of the Revised Code concerning the identities of mentally retarded, developmentally disabled, or mentally ill persons, complainants, witnesses, and other involved parties who provide it with information unless the person, in writing, authorizes the release of the information.

Nothing in this section shall prohibit the legal rights service from taking appropriate action when the administrator determines it is necessary.

(E) Whenever information is disclosed indicating the commission of a crime or a violation of standards of professional conduct, the legal rights service shall, within seven days of receiving the complaint or identifying the information during its investigation, refer the matter to the attorney general, county prosecutor, other law enforcement official, or regulatory board, as

appropriate, to investigate the crime or violation. The section may disclose any information permitted by law that is necessary to resolve the matter referred. The section shall monitor and maintain records on every matter it refers under this division.

Sec. 5123.602. (A) Except as provided in division (B) of this section, the ombudsperson section of the legal rights service may, in order to carry out its duties under this chapter, make necessary inquiries and obtain information it considers necessary. Upon receiving a complaint and in the course of conducting an investigation in accordance with division (B) of section 5123.601 of the Revised Code, the section shall have ready access to the premises and records of all providers of services to mentally retarded, developmentally disabled, or mentally ill persons and shall have the right to communicate in a private and confidential setting with any mentally retarded, developmentally disabled, or mentally ill persons, with their parents, guardians, or advocates, and with employees of any provider.

(B) Records held by community residential facilities, contract agencies of boards of alcohol, drug addiction, and mental health services, and contract agencies of county boards of ~~mental retardation and~~ developmental disabilities shall only be accessible by the ombudsperson section of the legal rights service in a situation as described in division (E)(5) of section 5123.60 of the Revised Code.

Sec. 5123.604. (A) No one shall take a discriminatory, disciplinary, or retaliatory action against any officer or employee of a provider, any mentally retarded, developmentally disabled, or mentally ill person, the parents or guardian of a mentally retarded, developmentally disabled, or mentally ill person, or any volunteer or advocate for a mentally retarded, developmentally disabled, or mentally ill person, for any communication these persons make or information they disclose in good faith to the ombudsperson section of the legal rights service.

(B) No person shall knowingly interfere with lawful actions of the ombudsperson section, refuse entry to its representatives, fail to comply with its lawful demands, or offer any compensation, gratuity, or promise thereof in an effort to influence the outcome of any matter being considered by the section.

(C) The department of ~~mental retardation and~~ developmental disabilities shall immediately notify the ombudsperson section of all investigations of major unusual incidents or life-threatening situations, as defined in rules adopted by the department, involving mentally retarded and developmentally disabled persons, and shall furnish copies of all relevant reports within forty-eight hours after receipt. The department of mental

health shall notify the ombudsperson section of all major unusual incidents or life-threatening situations, as defined in rules adopted by the department, involving mentally ill persons within forty-eight hours after receipt of the report of the incident or situation. The departments of health and job and family services shall notify the department of ~~mental retardation and~~ developmental disabilities of all allegations and investigations of abuse, neglect, or life-threatening situations involving mentally retarded or developmentally disabled persons. Any other state agency with information concerning abuse, neglect, or life-threatening situations involving mentally retarded or developmentally disabled persons shall report that information immediately to the department of ~~mental retardation and~~ developmental disabilities.

Nothing in this section or section 5123.60, 5123.601, or 5123.602 of the Revised Code shall preclude any department or board, its contract agencies, a community residential facility, or other governmental entity from carrying out its responsibility as prescribed by law.

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

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

(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.

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

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

(C)(1) Any person listed in division (C)(2) of this section, having reason to believe that a person with mental retardation or a developmental disability has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect of that person, shall immediately report or cause reports to be made of such information to the entity specified in this division. Except as provided in section 5120.173 of the Revised Code or as otherwise provided in this division, the person making the report shall make it to a law enforcement agency or to the county board of ~~mental retardation and~~ developmental disabilities. If the report concerns a resident of a facility

operated by the department of ~~mental retardation and~~ developmental disabilities the report shall be made either to a law enforcement agency or to the department. If the report concerns any act or omission of an employee of a county board of ~~mental retardation and~~ developmental disabilities, the report immediately shall be made to the department and to the county board.

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

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

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

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

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

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

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

(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 custodian, if known;

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

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

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

(F) Any person having reasonable cause to believe that a person with mental retardation or a developmental disability has suffered or faces a substantial risk of suffering abuse or neglect may report or cause a report to

be made of that belief to the entity specified in this division. Except as provided in section 5120.173 of the Revised Code or as otherwise provided in this division, the person making the report shall make it to a law enforcement agency or the county board of ~~mental retardation and~~ developmental disabilities. If the person is a resident of a facility operated by the department of ~~mental retardation and~~ developmental disabilities, the report shall be made to a law enforcement agency or to the department. If the report concerns any act or omission of an employee of a county board of ~~mental retardation and~~ developmental disabilities, the report immediately shall be made to the department and to the county board.

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

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

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

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

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

(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 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 report of its findings to the county board.

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

(L) No employer or any person with the authority to do so shall discharge, demote, transfer, prepare a negative work performance evaluation, reduce pay or benefits, terminate work privileges, or take any other action detrimental to an employee or retaliate against an employee as a

result of the employee's having made a report under this section. This division does not preclude an employer or person with authority from taking action with regard to an employee who has made a report under this section if there is another reasonable basis for the action.

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

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

Sec. 5123.611. (A) As used in this section, "MR/DD employee" means all of the following:

- (1) An employee of the department of ~~mental retardation and~~ developmental disabilities;
- (2) An employee of a county board of ~~mental retardation and~~ developmental disabilities;
- (3) An employee in a position that includes providing specialized services, as defined in section 5123.50 of the Revised Code, to an individual with mental retardation or a developmental disability.

(B) At the conclusion of a review of a report of abuse, neglect, or a major unusual incident that is conducted by a review committee established pursuant to section 5123.61 of the Revised Code, the committee shall issue recommendations to the department. The department shall review the committee's recommendations and issue a report of its findings. The department shall make the report available to all of the following:

- (1) The individual with mental retardation or a developmental disability who is the subject of the report;
- (2) That individual's guardian or legal counsel;
- (3) The licensee, as defined in section 5123.19 of the Revised Code, of a residential facility in which the individual resides;
- (4) The employer of any MR/DD employee who allegedly committed or was responsible for the abuse, neglect, or major unusual incident.

(C) Except as provided in this section, the department shall not disclose its report to any person or government entity that is not authorized to investigate reports of abuse, neglect, or other major unusual incidents,

unless the individual with mental retardation or a developmental disability who is the subject of the report or the individual's guardian gives the department written consent.

Sec. 5123.612. The director of ~~mental retardation and~~ developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code regarding the reporting of major unusual incidents and unusual incidents concerning persons with mental retardation or a developmental disability. The rules shall specify what constitutes a major unusual incident or an unusual incident.

Sec. 5123.613. (A) When a person who is the subject of a report under section 5123.61 of the Revised Code dies, the department of ~~mental retardation and~~ developmental disabilities or the county board of ~~mental retardation and~~ developmental disabilities, whichever is applicable, shall, on written request, provide to both of the following persons the report and any records relating to the report:

(1) If the report or records are necessary to administer the estate of the person who is the subject of the report, to the executor or administrator of the person's estate;

(2) To the guardian of the person who is the subject of the report or, if the individual had no guardian at the time of death, to a person in the first applicable of the following categories:

- (a) The person's spouse;
- (b) The person's children;
- (c) The person's parents;
- (d) The person's brothers or sisters;
- (e) The person's uncles or aunts;
- (f) The person's closest relative by blood or adoption;
- (g) The person's closest relative by marriage.

(B) The department or county board shall provide the report and related records as required by this section not later than thirty days after receipt of the request."

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

- (1) Conduct an independent review or investigation of the incident;
- (2) Request that an independent review or investigation of the incident be conducted by a county board of ~~mental retardation and~~ developmental disabilities that is not implicated in the report, a regional council of

government, or any other entity authorized to conduct such investigations.

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

(1) Conduct an independent investigation regarding the incident;

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

Sec. 5123.63. Every state agency, county board of ~~mental retardation and~~ developmental disabilities, or political subdivision that provides services, either directly or through a contract, to persons with mental retardation or a developmental disability shall give each provider a copy of the list of rights contained in section 5123.62 of the Revised Code. Each public and private provider of services shall carry out the requirements of this section in addition to any other posting or notification requirements imposed by local, state, or federal law or rules.

The provider shall make copies of the list of rights and shall be responsible for an initial distribution of the list to each individual receiving services from the provider. If the individual is unable to read the list, the provider shall communicate the contents of the list to the individual to the extent practicable in a manner that the individual understands. The individual receiving services or the parent, guardian, or advocate of the individual shall sign an acknowledgement of receipt of a copy of the list of rights, and a copy of the signed acknowledgement shall be placed in the individual's file. The provider shall also be responsible for answering any questions and giving any explanations necessary to assist the individual to understand the rights enumerated. Instruction in these rights shall be documented.

Each provider shall make available to all persons receiving services and all employees and visitors a copy of the list of rights and the addresses and telephone numbers of the legal rights service, the department of ~~mental retardation and~~ developmental disabilities, and the county board of ~~mental retardation and~~ developmental disabilities of the county in which the provider provides services.

Sec. 5123.64. (A) Every provider of services to persons with mental retardation or a developmental disability shall establish policies and

programs to ensure that all staff members are familiar with the rights enumerated in section 5123.62 of the Revised Code and observe those rights in their contacts with persons receiving services. Any policy, procedure, or rule of the provider that conflicts with any of the rights enumerated shall be null and void. Every provider shall establish written procedures for resolving complaints of violations of those rights. A copy of the procedures shall be provided to any person receiving services or to any parent, guardian, or advocate of a person receiving services.

(B) Any person with mental retardation or a developmental disability who believes that the person's rights as enumerated in section 5123.62 of the Revised Code have been violated may:

- (1) Bring the violation to the attention of the provider for resolution;
- (2) Report the violation to the department of ~~mental retardation and~~ developmental disabilities, the ombudsperson section of the legal rights service, or the appropriate county board of ~~mental retardation and~~ developmental disabilities;
- (3) Take any other appropriate action to ensure compliance with sections 5123.60 to 5123.64 of the Revised Code, including the filing of a legal action to enforce rights or to recover damages for violation of rights.

Sec. 5123.65. In addition to the rights specified in section 5123.62 of the Revised Code, individuals with mental retardation and developmental disabilities who can safely self-administer medication or receive assistance with self-administration of medication have the right to self-administer medication or receive assistance with the self-administration of medication. The department of ~~mental retardation and~~ developmental disabilities shall adopt rules as it considers necessary to implement and enforce this section. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

Sec. 5123.71. (A)(1) Proceedings for the involuntary institutionalization of a person pursuant to sections 5123.71 to 5123.76 of the Revised Code shall be commenced by the filing of an affidavit with the probate division of the court of common pleas of the county where the person resides or where the person is institutionalized, in the manner and form prescribed by the department of ~~mental retardation and~~ developmental disabilities either on information or actual knowledge, whichever is determined to be proper by the court. The affidavit may be filed only by a person who has custody of the individual as a parent, guardian, or service provider or by a person acting on behalf of the department or a county board of ~~mental retardation and~~ developmental disabilities. This section does not apply regarding the institutionalization of a person pursuant to section 2945.39, 2945.40,

2945.401, or 2945.402 of the Revised Code.

The affidavit shall contain an allegation setting forth the specific category or categories under division (O) of section 5123.01 of the Revised Code upon which the commencement of proceedings is based and a statement of the factual ground for the belief that the person is a mentally retarded person subject to institutionalization by court order. Except as provided in division (A)(2) of this section, the affidavit shall be accompanied by both of the following:

(a) A comprehensive evaluation report prepared by the person's evaluation team that includes a statement by the members of the team certifying that they have performed a comprehensive evaluation of the person and that they are of the opinion that the person is a mentally retarded person subject to institutionalization by court order;

(b) An assessment report prepared by the county board of ~~mental retardation~~ and developmental disabilities under section 5123.711 of the Revised Code specifying that the individual is in need of services on an emergency or priority basis.

(2) In lieu of the comprehensive evaluation report, the affidavit may be accompanied by a written and sworn statement that the person or the guardian of a person adjudicated incompetent has refused to allow a comprehensive evaluation and county board assessment and assessment reports. Immediately after accepting an affidavit that is not accompanied by the reports of a comprehensive evaluation and county board assessment, the court shall cause a comprehensive evaluation and county board assessment of the person named in the affidavit to be performed. The evaluation shall be conducted in the least restrictive environment possible and the assessment shall be conducted in the same manner as assessments conducted under section 5123.711 of the Revised Code. The evaluation and assessment must be completed before a probable cause hearing or full hearing may be held under section 5123.75 or 5123.76 of the Revised Code.

A written report of the evaluation team's findings and the county board's assessment shall be filed with the court. The reports shall, consistent with the rules of evidence, be accepted as probative evidence in any proceeding under section 5123.75 or 5123.76 of the Revised Code. If the counsel for the person who is evaluated or assessed is known, the court shall send to the counsel a copy of the reports as soon as possible after they are filed and prior to any proceedings under section 5123.75 or 5123.76 of the Revised Code.

(B) Any person who is involuntarily detained in an institution or otherwise is in custody under this chapter shall be informed of the right to

do the following:

(1) Immediately make a reasonable number of telephone calls or use other reasonable means to contact an attorney, a physician, or both, to contact any other person or persons to secure representation by counsel, or to obtain medical assistance, and be provided assistance in making calls if the assistance is needed and requested;

(2) Retain counsel and have independent expert evaluation and, if the person is an indigent person, be represented by court-appointed counsel and have independent expert evaluation at court expense;

(3) Upon request, have a hearing to determine whether there is probable cause to believe that the person is a mentally retarded person subject to institutionalization by court order.

(C) No person who is being treated by spiritual means through prayer alone in accordance with a recognized religious method of healing may be ordered detained or involuntarily committed unless the court has determined that the person represents a very substantial risk of self-impairment, self-injury, or impairment or injury to others.

Sec. 5123.711. (A) As used in this section:

(1) "Emergency" means either of the following that creates a risk of substantial harm to an individual or others if action is not taken within thirty days:

(a) Health and safety conditions that pose a serious risk of immediate harm or death to the individual or others;

(b) Changes in the emotional or physical condition of an individual that necessitates substantial accommodation that cannot reasonably be provided by the individual's existing caretaker.

(2) "Priority" means a situation creating a risk of substantial harm to an individual or others, but for which action within thirty days is not necessary.

(3) "Resources" has the same meaning as in section 5126.01 of the Revised Code.

(B) Prior to filing an affidavit under section 5123.71 of the Revised Code for the involuntary institutionalization of an individual, a person who is eligible to file under that section and intends to do so shall request that the county board of ~~mental retardation and~~ developmental disabilities conduct an assessment of the individual's needs. Not later than thirty days after the date a request is received, the board shall complete the assessment and provide to the person a report of its findings and recommendations. The report shall be delivered by certified mail.

Within three working days after receiving a request for an assessment, the board shall notify the department of ~~mental retardation and~~

developmental disabilities that the request has been made and that there is the potential for court-ordered institutionalization of an individual. The department may provide assistance to the board in the performance of the assessment.

(C) The board's assessment of an individual's needs shall include the following:

(1) A determination of the current needs of the individual, including an appropriate plan for services;

(2) A determination of whether the community is the least restrictive environment in which the individual may be appropriately served;

(3) A determination of whether the individual meets the conditions for assistance on an emergency or priority basis;

(4) Identification of available resources to meet the individual's needs, including service providers with the capability of appropriately meeting those needs, special ancillary services, and moneys to pay for the services necessary to meet the individual's needs within the community rather than in a state institution.

(D) If the board's assessment of an individual identifies that county resources are available to meet the individual's needs in the community, the board shall provide services to the individual or arrange for the provision of services. If county resources are not available, the board shall petition the department of ~~mental retardation and~~ developmental disabilities for necessary resources that may be available from the department.

Sec. 5123.72. ~~Except as provided in division (B) of this section, the~~ The director of ~~mental retardation and~~ developmental disabilities shall designate a person to present the case on behalf of the state at the hearings provided for in sections 5123.75 and 5123.76 of the Revised Code. The designee of the director also may present the case on behalf of the state in any other hearing provided for in this chapter.

Sec. 5123.73. (A) After receipt of the affidavit required by section 5123.71 of the Revised Code, the court shall cause written notice, by mail or otherwise, of any hearing the court directs, to be given to all of the following persons:

(1) The respondent;

(2) The respondent's legal guardian, if any;

(3) The respondent's spouse, if address is known;

(4) The person filing the affidavit;

(5) Any one person designated by the respondent, except that if the respondent does not make a selection, the notice shall be sent to the adult next of kin other than the person who filed the affidavit, if that person's

address is known to the court;

(6) The respondent's counsel;

(7) The director of ~~mental retardation and~~ developmental disabilities or the director's designee under section 5123.72 of the Revised Code.

(B) All persons entitled to notice under this section may waive that notice.

(C) A copy of the affidavit and of any temporary order shall be served with a notice under this section.

Sec. 5123.74. (A) On receipt of an affidavit under section 5123.71 of the Revised Code, the probate division of the court of common pleas may, if it has probable cause to believe that the person named in the affidavit is a mentally retarded person subject to institutionalization by court order and that emergency institutionalization is required, do any of the following:

(1) Issue a temporary order of detention ordering any health or police officer or sheriff to take into custody and transport such person to an institution or other place as designated in section 5123.77 of the Revised Code;

(2) Order the county board of ~~mental retardation and~~ developmental disabilities to provide services to the individual in the community if the board's assessment of the individual conducted under section 5123.711 of the Revised Code identifies that resources are available to meet the individual's needs in an appropriate manner within the community as an alternative to institutionalization;

(3) Set the matter for further hearing.

(B) A managing officer of a nonpublic institution may, and the managing officer of a public institution shall, receive for observation, diagnosis, habilitation, and care any person whose admission is ordered pursuant to division (A)(1) of this section.

The alternatives to institutionalization that may be ordered under division (A)(2) of this section are limited to those that are necessary to remediate the emergency condition; necessary for the person's health, safety or welfare; and necessary for the protection of society, if applicable.

(C) A person detained under this section may be observed and habilitated until the probable cause hearing provided for in section 5123.75 of the Revised Code. If no probable cause hearing is requested or held, the person may be evaluated and shall be provided with habilitative services until the full hearing is held pursuant to section 5123.76 of the Revised Code.

Sec. 5123.75. A respondent who is involuntarily placed in an institution or other place as designated in section 5123.77 of the Revised Code or with

respect to whom proceedings have been instituted under section 5123.71 of the Revised Code shall, on request of the respondent, ~~his~~ the respondent's guardian, or ~~his~~ the respondent's counsel, or upon the court's own motion, be afforded a hearing to determine whether there is probable cause to believe that the respondent is a mentally retarded person subject to institutionalization by court order.

(A) The probable cause hearing shall be conducted within two court days from the day on which the request is made. Failure to conduct the probable cause hearing within this time shall effect an immediate discharge of the respondent. If the proceedings are not reinstated within thirty days, records of the proceedings shall be expunged.

(B) The respondent shall be informed that ~~he~~ the respondent may retain counsel and have independent expert evaluation and, if ~~he~~ the respondent is an indigent person, be represented by court appointed counsel and have independent expert evaluation at court expense.

(C) The probable cause hearing shall be conducted in a manner consistent with the procedures set forth in division (A) of section 5123.76 of the Revised Code, except divisions (A)(10) and (14) of that section, and the designee of the director of ~~mental retardation and~~ developmental disabilities shall present evidence for the state.

(D) If the court does not find probable cause to believe that the respondent is a mentally retarded person subject to institutionalization by court order, it shall order immediate release of the respondent and dismiss and expunge all record of the proceedings under this chapter.

(E) On motion of the respondent or ~~his~~ the respondent's counsel and for good cause shown, the court may order a continuance of the hearing.

(F) If the court finds probable cause to believe that the respondent is a mentally retarded person subject to institutionalization by court order, the court may issue an interim order of placement and, where proceedings under section 5123.71 of the Revised Code have been instituted, shall order a full hearing as provided in section 5123.76 of the Revised Code to be held on the question of whether the respondent is a mentally retarded person subject to institutionalization by court order. Unless specifically waived by the respondent or the respondent's counsel, the court shall schedule said hearing to be held as soon as possible within ten days from the probable cause hearing. A waiver of such full hearing at this point shall not preclude the respondent from asserting the respondent's right to such hearing under section 5123.76 of the Revised Code at any time prior to the mandatory hearing provided in division (H) of section 5123.76 of the Revised Code. In any case, if the respondent has waived ~~his~~ the right to the full hearing, a

mandatory hearing shall be held under division (H) of section 5123.76 of the Revised Code between the ninetieth and the one hundredth day after the original involuntary detention of the person unless the respondent has been discharged.

(G) Whenever possible, the probable cause hearing shall be held before the respondent is taken into custody.

Sec. 5123.76. (A) The full hearing shall be conducted in a manner consistent with the procedures outlined in this chapter and with due process of law. The hearing shall be held by a judge of the probate division or, upon transfer by the judge of the probate division, by another judge of the court of common pleas, or a referee designated by the judge of the probate division. Any referee designated by the judge of the probate division must be an attorney.

(1) The following shall be made available to counsel for the respondent:

(a) All relevant documents, information, and evidence in the custody or control of the state or prosecutor;

(b) All relevant documents, information, and evidence in the custody or control of the institution, facility, or program in which the respondent currently is held or in which the respondent has been held pursuant to these proceedings;

(c) With the consent of the respondent, all relevant documents, information, and evidence in the custody or control of any institution or person other than the state.

(2) The respondent has the right to be represented by counsel of the respondent's choice and has the right to attend the hearing except if unusual circumstances of compelling medical necessity exist that render the respondent unable to attend and the respondent has not expressed a desire to attend.

(3) If the respondent is not represented by counsel and the court determines that the conditions specified in division (A)(2) of this section justify the respondent's absence and the right to counsel has not been validly waived, the court shall appoint counsel forthwith to represent the respondent at the hearing, reserving the right to tax costs of appointed counsel to the respondent unless it is shown that the respondent is indigent. If the court appoints counsel, or if the court determines that the evidence relevant to the respondent's absence does not justify the absence, the court shall continue the case.

(4) The respondent shall be informed of the right to retain counsel, to have independent expert evaluation, and, if an indigent person, to be represented by court appointed counsel and have expert independent

evaluation at court expense.

(5) The hearing may be closed to the public unless counsel for the respondent requests that the hearing be open to the public.

(6) Unless objected to by the respondent, the respondent's counsel, or the designee of the director of ~~mental retardation and~~ developmental disabilities, the court, for good cause shown, may admit persons having a legitimate interest in the proceedings.

(7) The affiant under section 5123.71 of the Revised Code shall be subject to subpoena by either party.

(8) The court shall examine the sufficiency of all documents filed and shall inform the respondent, if present, and the respondent's counsel of the nature of the content of the documents and the reason for which the respondent is being held or for which the respondent's placement is being sought.

(9) The court shall receive only relevant, competent, and material evidence.

(10) The designee of the director shall present the evidence for the state. In proceedings under this chapter, the attorney general shall present the comprehensive evaluation, assessment, diagnosis, prognosis, record of habilitation and care, if any, and less restrictive habilitation plans, if any. The attorney general does not have a similar presentation responsibility in connection with a person who has been found not guilty by reason of insanity and who is the subject of a hearing under section 2945.40 of the Revised Code to determine whether the person is a mentally retarded person subject to institutionalization by court order.

(11) The respondent has the right to testify and the respondent or the respondent's counsel has the right to subpoena witnesses and documents and to present and cross-examine witnesses.

(12) The respondent shall not be compelled to testify and shall be so advised by the court.

(13) On motion of the respondent or the respondent's counsel for good cause shown, or upon the court's own motion, the court may order a continuance of the hearing.

(14) To an extent not inconsistent with this chapter, the Rules of Civil Procedure shall be applicable.

(B) Unless, upon completion of the hearing, the court finds by clear and convincing evidence that the respondent named in the affidavit is a mentally retarded person subject to institutionalization by court order, it shall order the respondent's discharge forthwith.

(C) If, upon completion of the hearing, the court finds by clear and

convincing evidence that the respondent is a mentally retarded person subject to institutionalization by court order, the court may order the respondent's discharge or order the respondent, for a period not to exceed ninety days, to any of the following:

(1) A public institution, provided that commitment of the respondent to the institution will not cause the institution to exceed its licensed capacity determined in accordance with section 5123.19 of the Revised Code and provided that such a placement is indicated by the comprehensive evaluation report filed pursuant to section 5123.71 of the Revised Code;

(2) A private institution;

(3) A county mental retardation program;

(4) Receive private habilitation and care;

(5) Any other suitable facility, program, or the care of any person consistent with the comprehensive evaluation, assessment, diagnosis, prognosis, and habilitation needs of the respondent.

(D) Any order made pursuant to division (C)(2), (4), or (5) of this section shall be conditional upon the receipt by the court of consent by the facility, program, or person to accept the respondent.

(E) In determining the place to which, or the person with whom, the respondent is to be committed, the court shall consider the comprehensive evaluation, assessment, diagnosis, and projected habilitation plan for the respondent, and shall order the implementation of the least restrictive alternative available and consistent with habilitation goals.

(F) If, at any time it is determined by the director of the facility or program to which, or the person to whom, the respondent is committed that the respondent could be equally well habilitated in a less restrictive environment that is available, the following shall occur:

(1) The respondent shall be released by the director of the facility or program or by the person forthwith and referred to the court together with a report of the findings and recommendations of the facility, program, or person.

(2) The director of the facility or program or the person shall notify the respondent's counsel and the designee of the director of ~~mental retardation~~ and developmental disabilities.

(3) The court shall dismiss the case or order placement in the less restrictive environment.

(G)(1) Except as provided in divisions (G)(2) and (3) of this section, any person who has been committed under this section may apply at any time during the ninety-day period for voluntary admission to an institution under section 5123.69 of the Revised Code. Upon admission of a voluntary

resident, the managing officer immediately shall notify the court, the respondent's counsel, and the designee of the director in writing of that fact by mail or otherwise, and, upon receipt of the notice, the court shall dismiss the case.

(2) A person who is found incompetent to stand trial or not guilty by reason of insanity and who is committed pursuant to section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code shall not be voluntarily admitted to an institution pursuant to division (G)(1) of this section until after the termination of the commitment, as described in division (J) of section 2945.401 of the Revised Code.

(H) If, at the end of any commitment period, the respondent has not already been discharged or has not requested voluntary admission status, the director of the facility or program, or the person to whose care the respondent has been committed, shall discharge the respondent forthwith, unless at least ten days before the expiration of that period the designee of the director of ~~mental retardation~~ and developmental disabilities or the prosecutor files an application with the court requesting continued commitment.

(1) An application for continued commitment shall include a written report containing a current comprehensive evaluation and assessment, a diagnosis, a prognosis, an account of progress and past habilitation, and a description of alternative habilitation settings and plans, including a habilitation setting that is the least restrictive setting consistent with the need for habilitation. A copy of the application shall be provided to respondent's counsel. The requirements for notice under section 5123.73 of the Revised Code and the provisions of divisions (A) to (E) of this section apply to all hearings on such applications.

(2) A hearing on the first application for continued commitment shall be held at the expiration of the first ninety-day period. The hearing shall be mandatory and may not be waived.

(3) Subsequent periods of commitment not to exceed one hundred eighty days each may be ordered by the court if the designee of the director of ~~mental retardation~~ and developmental disabilities files an application for continued commitment, after a hearing is held on the application or without a hearing if no hearing is requested and no hearing required under division (H)(4) of this section is waived. Upon the application of a person involuntarily committed under this section, supported by an affidavit of a licensed physician alleging that the person is no longer a mentally retarded person subject to institutionalization by court order, the court for good cause shown may hold a full hearing on the person's continued commitment prior

to the expiration of any subsequent period of commitment set by the court.

(4) A mandatory hearing shall be held at least every two years after the initial commitment.

(5) If the court, after a hearing upon a request to continue commitment, finds that the respondent is a mentally retarded person subject to institutionalization by court order, the court may make an order pursuant to divisions (C), (D), and (E) of this section.

(I) Notwithstanding the provisions of division (H) of this section, no person who is found to be a mentally retarded person subject to institutionalization by court order pursuant to division (O)(2) of section 5123.01 of the Revised Code shall be held under involuntary commitment for more than five years.

(J) The managing officer admitting a person pursuant to a judicial proceeding, within ten working days of the admission, shall make a report of the admission to the department.

Sec. 5123.801. If neither a discharged resident, nor a resident granted trial visit, nor the persons requesting the resident's trial visit or discharge are financially able to bear the expense of the resident's trial visit or discharge, the managing officer of an institution under the control of the department of ~~mental retardation and~~ developmental disabilities may then provide actual traveling and escort expenses to the township of which the resident resided at the time of institutionalization. The amount payable shall be charged to the current expense fund of the institution.

The expense of the return of a resident on trial visit from an institution, if it cannot be paid by the responsible relatives, shall be borne by the county of institutionalization.

The managing officer of the institution shall provide sufficient and proper clothing for traveling if neither the resident nor the persons requesting the resident's trial visit or discharge are financially able to provide that clothing.

Sec. 5123.81. When an involuntarily committed resident of an institution for the mentally retarded is absent without leave, an order shall be issued within five days after ~~his~~ the resident's absence requiring the resident to be taken into custody by any health or police officer, or sheriff and transported to the institution from which the resident is absent. The order may be issued by the director of ~~mental retardation and~~ developmental disabilities, the managing officer of the institution from which the resident is absent, or the probate judge of the county from which the resident was ordered institutionalized or in which he is found. The officer who takes the resident into custody shall immediately notify the issuer of the order.

Sec. 5123.811. The managing officer of an institution under the control of the department of ~~mental retardation and~~ developmental disabilities shall immediately report the removal, death, absence without leave, discharge, or trial visit of any resident, or return of an absent without leave or visiting resident to the department, the probate judge of the county from which such resident was institutionalized, and the probate judge of the county of the residence of such resident. In case of death, the managing officer shall also notify one or more of the nearest relatives of the deceased resident, if known to ~~him~~ the managing officer, by letter, telegram, or telephone. If the place of residence of such relative is unknown to the managing officer, immediately upon receiving notification, the probate judge shall in the speediest manner possible notify such relatives, if known to ~~him~~ the probate judge.

The managing officer of the institution shall, upon the request of the probate judge of the county from which such resident was institutionalized or the probate judge of the county of the residence of such resident, make a report to such judge of the condition of any resident under the care, treatment, custody, or control of such managing officer.

Sec. 5123.82. (A) Any person who has been institutionalized under this chapter may, at any time after discharge from such institution, make application to the managing officer of any public institution for habilitation and care if such person feels ~~he~~ the person is in need of such services. If the chief program director determines the applicant to be in need of such services, the managing officer may provide such services as are required by the applicant.

(B) Any person may apply to the managing officer of any public institution for habilitation and care if such person feels ~~he~~ the person is in need of such services. If ~~his~~ the person's condition warrants, ~~he~~ the person's may be enrolled as an outpatient and, during such enrollment, ~~he~~ the person may receive services subject to Chapter 5121. of the Revised Code.

(C) The application prescribed in division (A) or (B) of this section may also be made on behalf of a minor by a parent, guardian, or custodian of a minor, and on behalf of an adult adjudicated incompetent by the guardian or custodian of the adult.

(D) The managing officer of the public institution may refer any discharged resident who makes an application under this section to the director of any community mental retardation program serving the county in which such resident resides, or to such other facility as the director of ~~mental retardation and~~ developmental disabilities may designate. Upon notice of such referral, the director of such program may provide the services required by the applicant.

Sec. 5123.85. (A) All residents institutionalized pursuant to this chapter shall receive, within thirty days of their admission, a comprehensive evaluation, a diagnosis, a prognosis, and a description of habilitation goals consistent therewith.

(B) All such residents shall have a written habilitation plan consistent with the comprehensive evaluation, diagnosis, prognosis, and goals which shall be provided, upon request of resident or resident's counsel, to resident's counsel and to any private physician designated by the resident or the resident's counsel.

(C) All such residents shall receive habilitation and care consistent with the habilitation plan. The department of ~~mental-retardation~~ and developmental disabilities shall set standards for habilitation and care provided to such residents, consistent wherever possible with standards set by the joint commission on accreditation of facilities for the mentally retarded.

(D) All such residents shall receive periodic comprehensive re-evaluations of the habilitation plan by the professional staff of the institution at intervals not to exceed ninety days.

(E) All such residents shall be provided with prompt and adequate medical treatment for any physical or mental disease or injury.

Sec. 5123.86. (A) Except as provided in divisions (C), (D), (E), and (F) of this section, the chief medical officer shall provide all information, including expected physical and medical consequences, necessary to enable any resident of an institution for the mentally retarded to give a fully informed, intelligent, and knowing consent if any of the following procedures are proposed:

- (1) Surgery;
- (2) Convulsive therapy;
- (3) Major aversive interventions;
- (4) Sterilization;
- (5) Experimental procedures;
- (6) Any unusual or hazardous treatment procedures.

(B) No resident shall be subjected to any of the procedures listed in division (A)(4), (5), or (6) of this section without the resident's informed consent.

(C) If a resident is physically or mentally unable to receive the information required for surgery under division (A)(1) of this section, or has been adjudicated incompetent, the information may be provided to the resident's natural or court-appointed guardian, including an agency providing guardianship services under contract with the department of

~~mental retardation and~~ developmental disabilities under sections 5123.55 to 5123.59 of the Revised Code, who may give the informed, intelligent, and knowing written consent for surgery. Consent for surgery shall not be provided by a guardian who is an officer or employee of the department of mental health or the department of ~~mental retardation and~~ developmental disabilities.

If a resident is physically or mentally unable to receive the information required for surgery under division (A)(1) of this section and has no guardian, then the information, the recommendation of the chief medical officer, and the concurring judgment of a licensed physician who is not a full-time employee of the state may be provided to the court in the county in which the institution is located, which may approve the surgery. Before approving the surgery, the court shall notify the legal rights service created by section 5123.60 of the Revised Code, and shall notify the resident of the resident's rights to consult with counsel, to have counsel appointed by the court if the resident is indigent, and to contest the recommendation of the chief medical officer.

(D) If, in the judgment of two licensed physicians, delay in obtaining consent for surgery would create a grave danger to the health of a resident, emergency surgery may be performed without the consent of the resident if the necessary information is provided to the resident's guardian, including an agency providing guardianship services under contract with the department of ~~mental retardation and~~ developmental disabilities under sections 5123.55 to 5123.59 of the Revised Code, or to the resident's spouse or next of kin to enable that person or agency to give an informed, intelligent, and knowing written consent.

If the guardian, spouse, or next of kin cannot be contacted through exercise of reasonable diligence, or if the guardian, spouse, or next of kin is contacted, but refuses to consent, then the emergency surgery may be performed upon the written authorization of the chief medical officer and after court approval has been obtained. However, if delay in obtaining court approval would create a grave danger to the life of the resident, the chief medical officer may authorize surgery, in writing, without court approval. If the surgery is authorized without court approval, the chief medical officer who made the authorization and the physician who performed the surgery shall each execute an affidavit describing the circumstances constituting the emergency and warranting the surgery and the circumstances warranting their not obtaining prior court approval. The affidavit shall be filed with the court with which the request for prior approval would have been filed within five court days after the surgery, and a copy of the affidavit shall be placed

in the resident's file and shall be given to the guardian, spouse, or next of kin of the resident, to the hospital at which the surgery was performed, and to the legal rights service created by section 5123.60 of the Revised Code.

(E)(1) If it is the judgment of two licensed physicians, as described in division (E)(2) of this section, that a medical emergency exists and delay in obtaining convulsive therapy creates a grave danger to the life of a resident who is both mentally retarded and mentally ill, convulsive therapy may be administered without the consent of the resident if the resident is physically or mentally unable to receive the information required for convulsive therapy and if the necessary information is provided to the resident's natural or court-appointed guardian, including an agency providing guardianship services under contract with the department of ~~mental retardation and~~ developmental disabilities under sections 5123.55 to 5123.59 of the Revised Code, or to the resident's spouse or next of kin to enable that person or agency to give an informed, intelligent, and knowing written consent. If neither the resident's guardian, spouse, nor next of kin can be contacted through exercise of reasonable diligence, or if the guardian, spouse, or next of kin is contacted, but refuses to consent, then convulsive therapy may be performed upon the written authorization of the chief medical officer and after court approval has been obtained.

(2) The two licensed physicians referred to in division (E)(1) of this section shall not be associated with each other in the practice of medicine or surgery by means of a partnership or corporate arrangement, other business arrangement, or employment. At least one of the physicians shall be a psychiatrist as defined in division (E) of section 5122.01 of the Revised Code.

(F) Major aversive interventions shall not be used unless a resident continues to engage in behavior destructive to self or others after other forms of therapy have been attempted. The director of the legal rights service created by section 5123.60 of the Revised Code shall be notified of any proposed major aversive intervention. Major aversive interventions shall not be applied to a voluntary resident without the informed, intelligent, and knowing written consent of the resident or the resident's guardian, including an agency providing guardianship services under contract with the department of ~~mental retardation and~~ developmental disabilities under sections 5123.55 to 5123.59 of the Revised Code.

(G)(1) This chapter does not authorize any form of compulsory medical or psychiatric treatment of any resident who is being treated by spiritual means through prayer alone in accordance with a recognized religious method of healing.

(2) For purposes of this section, "convulsive therapy" does not include defibrillation.

Sec. 5123.89. (A) All certificates, applications, records, and reports made for the purpose of this chapter, other than court journal entries or court docket entries, which directly or indirectly identify a resident or former resident of an institution for the mentally retarded or person whose institutionalization has been sought under this chapter shall be kept confidential and shall not be disclosed by any person except in the following situations:

(1) It is the judgment of the court for judicial records, and the managing officer for institution records, that disclosure is in the best interest of the person identified, and that person or that person's guardian or, if that person is a minor, that person's parent or guardian consents.

(2) Disclosure is provided for in other sections of this chapter.

(3) It is the judgment of the managing officer for institution records that disclosure to a mental health facility is in the best interest of the person identified.

(B) The department of ~~mental retardation and~~ developmental disabilities shall adopt rules with respect to the systematic and periodic destruction of residents' records.

(C)(1) As used in this division, "family" means a parent, brother, sister, spouse, son, daughter, grandparent, aunt, uncle, or cousin.

(2) Upon the death of a resident or former resident of an institution for the mentally retarded or a person whose institutionalization was sought under this chapter, the managing officer of an institution shall provide access to the certificates, applications, records, and reports made for the purposes of this chapter to the resident's, former resident's, or person's guardian if the guardian makes a written request. If a deceased resident, former resident, or person whose institutionalization was sought under this chapter did not have a guardian at the time of death, the managing officer shall provide access to the certificates, applications, records, and reports made for purposes of this chapter to a member of the person's family, upon that family member's written request.

(D) No person shall reveal the contents of a record of a resident except as authorized by this chapter.

Sec. 5123.90. The attorney general shall attend to all suits instituted on behalf of or against any public institution under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities and the managing officer thereof.

If a writ of habeas corpus is applied for, the clerk of the court shall give

notice of the time and place of hearing to the attorney general.

Sec. 5123.96. Costs, fees, and expenses of all proceedings held under this chapter shall be paid as follows:

(A) To police and health officers, other than sheriffs or their deputies, the same fees allowed to constables, to be paid upon the approval of the probate judge;

(B) To sheriffs or their deputies, the same fees allowed for similar services in the court of common pleas;

(C) To physicians or licensed clinical psychologists acting as expert witnesses and to other expert witnesses designated by the court, an amount determined by the court;

(D) To witnesses in an administrative proceeding, the same fees and mileage as are provided to witnesses by section 119.094 of the Revised Code, and to witnesses in a judicial proceeding, the same fees and mileage as are provided to witnesses by section 2335.06 of the Revised Code, to be paid upon the approval of the probate judge;

(E) To a person, other than the sheriff or the sheriff's deputies, for taking a mentally retarded person to an institution or removing a mentally retarded person from an institution, the actual necessary expenses incurred, specifically itemized, and approved by the probate judge;

(F) To assistants who convey mentally retarded persons to institutions when authorized by the probate judge, a fee set by the probate court, provided the assistants are not drawing a salary from the state or any political subdivision of the state, and their actual necessary expenses incurred, provided that the expenses are specifically itemized and approved by the probate judge;

(G) To an attorney appointed by the probate division for an indigent who allegedly is a mentally retarded person pursuant to any section of this chapter, the fees that are determined by the probate division. When those indigent persons are before the court, all filing and recording fees shall be waived.

(H) To a referee who is appointed to conduct proceedings under this chapter that involve a respondent whose domicile is or, before the respondent's institutionalization, was not the county in which the proceedings are held, compensation as fixed by the probate division, but not more than the compensation paid for similar proceedings for respondents whose domicile is in the county in which the proceedings are held;

(I) To a court reporter appointed to make a transcript of proceedings under this chapter, the compensation and fees allowed in other cases under section 2101.08 of the Revised Code.

All costs, fees, and expenses described in this section, after payment by the county from appropriations pursuant to section 2101.11 of the Revised Code, shall be certified by the county auditor to the department of ~~mental retardation and~~ developmental disabilities within two months of the date the costs, fees, and expenses are incurred by the county. Payment shall be provided for by the director of budget and management upon presentation of properly verified vouchers. The director of ~~mental retardation and~~ developmental disabilities may adopt rules in accordance with Chapter 119. of the Revised Code to implement the payment of costs, fees, and expenses under this section.

Sec. 5126.01. As used in this chapter:

(A) As used in this division, "adult" means an individual who is eighteen years of age or over and not enrolled in a program or service under Chapter 3323. of the Revised Code and an individual sixteen or seventeen years of age who is eligible for adult services under rules adopted by the director of ~~mental retardation and~~ developmental disabilities pursuant to Chapter 119. of the Revised Code.

(1) "Adult services" means services provided to an adult outside the home, except when they are provided within the home according to an individual's assessed needs and identified in an individual service plan, that support learning and assistance in the area of self-care, sensory and motor development, socialization, daily living skills, communication, community living, social skills, or vocational skills.

(2) "Adult services" includes all of the following:

- (a) Adult day habilitation services;
- (b) Adult day care;
- (c) Prevocational services;
- (d) Sheltered employment;

(e) Educational experiences and training obtained through entities and activities that are not expressly intended for individuals with mental retardation and developmental disabilities, including trade schools, vocational or technical schools, adult education, job exploration and sampling, unpaid work experience in the community, volunteer activities, and spectator sports;

(f) Community employment services and supported employment services.

(B)(1) "Adult day habilitation services" means adult services that do the following:

(a) Provide access to and participation in typical activities and functions of community life that are desired and chosen by the general population,

including such activities and functions as opportunities to experience and participate in community exploration, companionship with friends and peers, leisure activities, hobbies, maintaining family contacts, community events, and activities where individuals without disabilities are involved;

(b) Provide supports or a combination of training and supports that afford an individual a wide variety of opportunities to facilitate and build relationships and social supports in the community.

(2) "Adult day habilitation services" includes all of the following:

(a) Personal care services needed to ensure an individual's ability to experience and participate in vocational services, educational services, community activities, and any other adult day habilitation services;

(b) Skilled services provided while receiving adult day habilitation services, including such skilled services as behavior management intervention, occupational therapy, speech and language therapy, physical therapy, and nursing services;

(c) Training and education in self-determination designed to help the individual do one or more of the following: develop self-advocacy skills, exercise the individual's civil rights, acquire skills that enable the individual to exercise control and responsibility over the services received, and acquire skills that enable the individual to become more independent, integrated, or productive in the community;

(d) Recreational and leisure activities identified in the individual's service plan as therapeutic in nature or assistive in developing or maintaining social supports;

(e) Counseling and assistance provided to obtain housing, including such counseling as identifying options for either rental or purchase, identifying financial resources, assessing needs for environmental modifications, locating housing, and planning for ongoing management and maintenance of the housing selected;

(f) Transportation necessary to access adult day habilitation services;

(g) Habilitation management, as described in section 5126.14 of the Revised Code.

(3) "Adult day habilitation services" does not include activities that are components of the provision of residential services, family support services, or supported living services.

(C) "Appointing authority" means the following:

(1) In the case of a member of a county board of ~~mental retardation and developmental disabilities~~ appointed by, or to be appointed by, a board of county commissioners, the board of county commissioners;

(2) In the case of a member of a county board appointed by, or to be

appointed by, a senior probate judge, the senior probate judge.

(D) "Community employment services" or "supported employment services" means job training and other services related to employment outside a sheltered workshop. "Community employment services" or "supported employment services" include all of the following:

(1) Job training resulting in the attainment of competitive work, supported work in a typical work environment, or self-employment;

(2) Supervised work experience through an employer paid to provide the supervised work experience;

(3) Ongoing work in a competitive work environment at a wage commensurate with workers without disabilities;

(4) Ongoing supervision by an employer paid to provide the supervision.

(E) As used in this division, "substantial functional limitation," "developmental delay," and "established risk" have the meanings established pursuant to section 5123.011 of the Revised Code.

"Developmental disability" means a severe, chronic disability that is characterized by all of the following:

(1) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness as defined in division (A) of section 5122.01 of the Revised Code;

(2) It is manifested before age twenty-two;

(3) It is likely to continue indefinitely;

(4) It results in one of the following:

(a) In the case of a person under age three, at least one developmental delay or an established risk;

(b) In the case of a person at least age three but under age six, at least two developmental delays or an established risk;

(c) In the case of a person age six or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is at least age sixteen, capacity for economic self-sufficiency.

(5) It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.

(F) "Early childhood services" means a planned program of habilitation

designed to meet the needs of individuals with mental retardation or other developmental disabilities who have not attained compulsory school age.

(G)(1) "Environmental modifications" means the physical adaptations to an individual's home, specified in the individual's service plan, that are necessary to ensure the individual's health, safety, and welfare or that enable the individual to function with greater independence in the home, and without which the individual would require institutionalization.

(2) "Environmental modifications" includes such adaptations as installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, and installation of specialized electric and plumbing systems necessary to accommodate the individual's medical equipment and supplies.

(3) "Environmental modifications" does not include physical adaptations or improvements to the home that are of general utility or not of direct medical or remedial benefit to the individual, including such adaptations or improvements as carpeting, roof repair, and central air conditioning.

(H) "Family support services" means the services provided under a family support services program operated under section 5126.11 of the Revised Code.

(I) "Habilitation" means the process by which the staff of the facility or agency assists an individual with mental retardation or other developmental disability in acquiring and maintaining those life skills that enable the individual to cope more effectively with the demands of the individual's own person and environment, and in raising the level of the individual's personal, physical, mental, social, and vocational efficiency. Habilitation includes, but is not limited to, programs of formal, structured education and training.

(J) "Home and community-based services" means medicaid-funded home and community-based services specified in division (B)(1) of section 5111.87 of the Revised Code and provided under the medicaid waiver components the department of ~~mental retardation and~~ developmental disabilities administers pursuant to section 5111.871 of the Revised Code.

(K) "Immediate family" means parents, grandparents, brothers, sisters, spouses, sons, daughters, aunts, uncles, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law.

(L) "Medicaid" has the same meaning as in section 5111.01 of the Revised Code.

(M) "Medicaid case management services" means case management services provided to an individual with mental retardation or other

developmental disability that the state medicaid plan requires.

(N) "Mental retardation" means a mental impairment manifested during the developmental period characterized by significantly subaverage general intellectual functioning existing concurrently with deficiencies in the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group.

(O) "Residential services" means services to individuals with mental retardation or other developmental disabilities to provide housing, food, clothing, habilitation, staff support, and related support services necessary for the health, safety, and welfare of the individuals and the advancement of their quality of life. "Residential services" includes program management, as described in section 5126.14 of the Revised Code.

(P) "Resources" means available capital and other assets, including moneys received from the federal, state, and local governments, private grants, and donations; appropriately qualified personnel; and appropriate capital facilities and equipment.

(Q) "Senior probate judge" means the current probate judge of a county who has served as probate judge of that county longer than any of the other current probate judges of that county. If a county has only one probate judge, "senior probate judge" means that probate judge.

(R) "Service and support administration" means the duties performed by a service and support administrator pursuant to section 5126.15 of the Revised Code.

(S)(1) "Specialized medical, adaptive, and assistive equipment, supplies, and supports" means equipment, supplies, and supports that enable an individual to increase the ability to perform activities of daily living or to perceive, control, or communicate within the environment.

(2) "Specialized medical, adaptive, and assistive equipment, supplies, and supports" includes the following:

(a) Eating utensils, adaptive feeding dishes, plate guards, mylatex straps, hand splints, reaches, feeder seats, adjustable pointer sticks, interpreter services, telecommunication devices for the deaf, computerized communications boards, other communication devices, support animals, veterinary care for support animals, adaptive beds, supine boards, prone boards, wedges, sand bags, sidelayers, bolsters, adaptive electrical switches, hand-held shower heads, air conditioners, humidifiers, emergency response systems, folding shopping carts, vehicle lifts, vehicle hand controls, other adaptations of vehicles for accessibility, and repair of the equipment received.

(b) Nondisposable items not covered by medicaid that are intended to assist an individual in activities of daily living or instrumental activities of daily living.

(T) "Supportive home services" means a range of services to families of individuals with mental retardation or other developmental disabilities to develop and maintain increased acceptance and understanding of such persons, increased ability of family members to teach the person, better coordination between school and home, skills in performing specific therapeutic and management techniques, and ability to cope with specific situations.

(U)(1) "Supported living" means services provided for as long as twenty-four hours a day to an individual with mental retardation or other developmental disability through any public or private resources, including moneys from the individual, that enhance the individual's reputation in community life and advance the individual's quality of life by doing the following:

(a) Providing the support necessary to enable an individual to live in a residence of the individual's choice, with any number of individuals who are not disabled, or with not more than three individuals with mental retardation and developmental disabilities unless the individuals are related by blood or marriage;

(b) Encouraging the individual's participation in the community;

(c) Promoting the individual's rights and autonomy;

(d) Assisting the individual in acquiring, retaining, and improving the skills and competence necessary to live successfully in the individual's residence.

(2) "Supported living" includes the provision of all of the following:

(a) Housing, food, clothing, habilitation, staff support, professional services, and any related support services necessary to ensure the health, safety, and welfare of the individual receiving the services;

(b) A combination of lifelong or extended-duration supervision, training, and other services essential to daily living, including assessment and evaluation and assistance with the cost of training materials, transportation, fees, and supplies;

(c) Personal care services and homemaker services;

(d) Household maintenance that does not include modifications to the physical structure of the residence;

(e) Respite care services;

(f) Program management, as described in section 5126.14 of the Revised Code.

Sec. 5126.011. Whenever a county board of mental retardation and developmental disabilities is referred to or designated in any statute, rule, contract, grant, or other document, the reference or designation shall be deemed to refer to a county board of developmental disabilities.

~~Sec. 5126.02. (A) Each county shall either have its own county board of mental retardation and developmental disabilities or, pursuant to section 5126.021 or 5126.022 of the Revised Code, be a member of a multicounty board of mental retardation and developmental disabilities. Subject to division (B) of this section:~~

~~(1) A county board shall be operated as a separate administrative and service entity.~~

~~(2) The functions of a county board shall not be combined with the functions of any other entity of county government.~~

~~(B) Division (A) of this section does not prohibit or restrict any county board from sharing administrative functions or personnel with one or more other county boards, including entering into an arrangement authorized by division (B) of section ~~5126.0226~~ 5126.0219 of the Revised Code.~~

~~Sec. ~~5126.028~~ 5126.021. Each county board of mental retardation and developmental disabilities shall consist of seven members. In the case of a single county board, the The board of county commissioners of the county shall appoint five members and the senior probate judge of the county shall appoint two members. In the case of a multicounty board, the membership shall be appointed as follows:~~

~~(A) If there are five member counties, the board of county commissioners of each of the member counties shall each appoint one member and the senior probate judges of the member counties with the largest and second largest population shall each appoint one member.~~

~~(B) If there are four member counties, the board of county commissioners of the member county with the largest population shall appoint two members, the other three boards of county commissioners shall each appoint one member, and the senior probate judges of the member counties with the largest and second largest population shall each appoint one member.~~

~~(C) If there are three member counties, the boards of county commissioners of the member counties with the largest and second largest populations shall each appoint two members, the other board of county commissioners shall appoint one member, and the senior probate judges of the member counties with the largest and second largest population shall each appoint one member.~~

~~(D) If there are two member counties, the board of county~~

~~commissioners of the member county with the largest population shall appoint three members, the board of county commissioners of the other county shall appoint two members, and the senior probate judge of each county shall each appoint one member.~~

Sec. ~~5126.029~~ 5126.022. (A) When making appointments to a county board of ~~mental retardation and~~ developmental disabilities, an appointing authority shall do all of the following:

~~(1)~~(A) Appoint only individuals who are residents of the county the appointing authority serves, citizens of the United States, and interested and knowledgeable in the field of mental retardation and other allied fields;

~~(2)~~(B) If the appointing authority is a board of county commissioners, appoint, ~~subject to division (B) of this section,~~ at least two individuals who are immediate family members of individuals eligible for services provided by the county board and, whenever possible, ensure that one of those two members is an immediate family member of an individual eligible for adult services and the other is an immediate family member of an individual eligible for early intervention services or services for preschool or school-age children;

~~(3)~~(C) If the appointing authority is a senior probate judge, appoint, ~~subject to division (B) of this section,~~ at least one individual who is an immediate family member of an individual eligible for residential services or supported living;

~~(4)~~(D) Appoint, to the maximum extent possible, individuals who have professional training and experience in business management, finance, law, health care practice, personnel administration, or government service;

~~(5)~~(E) Provide for the county board's membership to reflect, as nearly as possible, the composition of the county ~~or counties~~ that the county board serves.

~~(B) The appointing authorities of a multicounty board shall coordinate their appointments to the extent necessary to satisfy the requirements of this section. The coordination may provide for one of the boards of county commissioners making one of the two appointments required by division (A)(2) of this section and another board of county commissioners making the other appointment required by that division. The coordination shall ensure that at least one of the senior probate judges satisfies the requirement of division (A)(3) of this section.~~

Sec. ~~5126.0210~~ 5126.023. (A) None of the following individuals may serve as a member of a county board of ~~mental retardation and~~ developmental disabilities:

(1) An elected public official, except for a township trustee, township

fiscal officer, or individual excluded from the definition of public official or employee in division (B) of section 102.01 of the Revised Code;

(2) An immediate family member of another county board member;

(3) A county board employee or immediate family member of a county board employee;

(4) A former employee of the county board whose employment with the county board ceased less than one calendar year before the former employee would begin to serve as a member of the county board;

(5) An individual who or whose immediate family member is a board member or an employee of an agency licensed or certified by the department of ~~mental retardation and~~ developmental disabilities to provide services to individuals with mental retardation or developmental disabilities;

(6) An individual who or whose immediate family member is a board member or employee of an agency contracting with the county board that is not licensed or certified by the department of ~~mental retardation and~~ developmental disabilities to provide services to individuals with mental retardation or developmental disabilities unless there is no conflict of interest;

(7) An individual with an immediate family member who serves as a county commissioner of a county served by the county board unless the individual was a member of the county board before October 31, 1980.

(B) All questions relating to the existence of a conflict of interest for the purpose of division (A)(6) of this section shall be submitted to the local prosecuting attorney for resolution. The Ohio ethics commission may examine any issues arising under Chapter 102. and sections 2921.42, 2921.421, and 2921.43 of the Revised Code.

Sec. ~~5126.0211~~ 5126.024. (A) No individual may be appointed or reappointed to a county board of ~~mental retardation and~~ developmental disabilities unless the individual, before the appointment or reappointment, provides to the appointing authority a written declaration specifying both of the following:

(1) That no circumstance described in section ~~5126.0210~~ 5126.023 of the Revised Code exists that bars the individual from serving on the county board;

(2) Whether the individual or an immediate family member of the individual has an ownership interest in or is under contract with an agency contracting with the county board, and, if such an ownership interest or contract exists, the identity of the agency and the nature of the relationship to that agency.

(B) On appointment or reappointment of an individual to the county

board, the appointing authority shall provide a copy of the individual's declaration to the superintendent of the county board. The declaration is a public record for the purpose of section 149.43 of the Revised Code.

Sec. ~~5126.0212~~ 5126.025. Except for members appointed under section ~~5126.0214~~ 5126.027 of the Revised Code to fill a vacancy, members of a county board of ~~mental retardation and~~ developmental disabilities shall be appointed or reappointed not later than the last day of November, commence their terms on the date of the stated annual organizational meeting in the following January as provided under section ~~5126.0216~~ 5126.029 of the Revised Code, and serve terms of four years. The membership of an individual appointed as an immediate family member of a recipient of services shall not be terminated because the services are no longer received.

Sec. ~~5126.0213~~ 5126.026. Except as otherwise provided in this section and section ~~5126.0225~~ 5126.0218 of the Revised Code, a member of a county board of ~~mental retardation and~~ developmental disabilities may be reappointed to the county board. Prior to making a reappointment, the appointing authority shall ascertain, through written communication with the board, that the member being considered for reappointment meets the requirements of sections ~~5126.029~~ 5126.022 and ~~5126.0225~~ 5126.0218 of the Revised Code.

A member who has served during each of three consecutive terms shall not be reappointed for a subsequent term until two years after ceasing to be a member of the county board, except that a member who has served for ten years or less within three consecutive terms may be reappointed for a subsequent term before becoming ineligible for reappointment for two years.

Sec. ~~5126.0214~~ 5126.027. Within sixty days after a vacancy on a county board of ~~mental retardation and~~ developmental disabilities occurs, including a vacancy created under section ~~5126.0220~~ 5126.0213 of the Revised Code, the appointing authority shall fill the vacancy for the unexpired term. Before filling a vacancy, the appointing authority shall cause a notice of the vacancy to be published on at least two separate dates in one or more newspapers serving the county or counties the county board serves.

A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term.

Sec. ~~5126.0215~~ 5126.028. Members of a county board of ~~mental retardation and~~ developmental disabilities shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the conduct of county board business, including expenses that are incurred in the member's

county of residence in accordance with an established policy of the county board.

Sec. ~~5126.0216~~ 5126.029. Each county board of ~~mental retardation and~~ developmental disabilities shall hold an organizational meeting no later than the thirty-first day of January of each year and shall elect its officers, which shall include a president, vice-president, and recording secretary. After its annual organizational meeting, the board shall meet in such manner and at such times as prescribed by rules adopted by the board, but the board shall meet at least ten times annually in regularly scheduled sessions in accordance with section 121.22 of the Revised Code, not including in-service training sessions. A majority of the board constitutes a quorum. The board shall adopt rules for the conduct of its business and a record shall be kept of board proceedings, which shall be open for public inspection.

Sec. ~~5126.0217~~ 5126.0210. Each year, each member of a county board of ~~mental retardation and~~ developmental disabilities shall attend at least four hours of in-service training provided or approved by the department of ~~mental retardation and~~ developmental disabilities. This training shall not be considered regularly scheduled meetings of the county board.

Sec. ~~5126.0218~~ 5126.0211. A member of a county board of ~~mental retardation and~~ developmental disabilities shall be considered present at an in-service training session even though the member is not physically present in the room in which the session is held if the member is connected to the session through a system that enables the member to communicate with the individuals participating in the session and such individuals to communicate with the member.

Sec. ~~5126.0219~~ 5126.0212. In no circumstance shall a member of a county board of ~~mental retardation and~~ developmental disabilities participate in or vote on any matter before the county board concerning a contract agency of which the member or an immediate family member of the member is also a board member or an employee.

Sec. ~~5126.0220~~ 5126.0213. (A) Subject to sections ~~5126.0221~~ 5126.0214 and ~~5126.0223~~ 5126.0216 of the Revised Code, an appointing authority shall remove a member of a county board of ~~mental retardation and~~ developmental disabilities for any of the following reasons:

- (1) Neglect of duty;
- (2) Misconduct;
- (3) Malfeasance;
- (4) Ineligibility to serve on the county board pursuant to section ~~5126.0210~~ 5126.023 of the Revised Code;
- (5) Failure to attend at least four hours of in-service training session

each year;

(6) Failure to attend within one year four regularly scheduled board meetings;

(7) Failure to attend within one year two regularly scheduled board meetings if the member gave no prior notice of the member's absence;

(8) Consistently poor performance on the county board, as demonstrated by documentation that the president of the county board provides to the appointing authority and the appointing authority determines is convincing evidence.

(B) The removal provisions of divisions (A)(6) and (7) of this section do not apply to absences from special meetings or work sessions.

Sec. ~~5126.0221~~ 5126.0214. An appointing authority shall not remove a member of a county board of ~~mental retardation and~~ developmental disabilities from the county board by reason of division (A)(5), (6), or (7) of section ~~5126.0220~~ 5126.0213 of the Revised Code if the director of ~~mental retardation and~~ developmental disabilities waives the requirement that the member be removed. The director may issue the waiver only if the appointing authority requests that the director issue the waiver and provides the director evidence that is satisfactory to the director that the member's absences from the in-service training sessions or regularly scheduled board meetings are due to a serious health problem of the member or a member of the member's immediate family. The director's decision on whether to issue the waiver is final and not subject to appeal.

The county board on which the member serves may pass a resolution urging the appointing authority to request that the director issue the waiver. The member whose absences from the sessions or meetings are at issue may not vote on the resolution. The appointing authority may request the waiver regardless of whether the county board adopts the resolution.

Sec. ~~5126.0222~~ 5126.0215. If there are grounds for the mandatory removal of a member of a county board of ~~mental retardation and~~ developmental disabilities under section ~~5126.0220~~ 5126.0213 of the Revised Code, the county board shall supply the board member and the member's appointing authority with written notice of the grounds.

Sec. ~~5126.0223~~ 5126.0216. An appointing authority shall afford a member of a county board of ~~mental retardation and~~ developmental disabilities an opportunity for a hearing on the member's proposed removal in accordance with procedures the appointing authority shall establish, unless the appointing authority requested that the director of ~~mental retardation and~~ developmental disabilities waive the mandatory removal under section ~~5126.0224~~ 5126.0214 of the Revised Code and the director

refused to issue the waiver. The appointing authority shall hold the hearing if the member requests the hearing not later than thirty days after the date that the county board sends the member the notice required by section ~~5126.0222~~ 5126.0215 of the Revised Code.

Sec. ~~5126.0224~~ 5126.0217. If a member of a county board of ~~mental retardation and~~ developmental disabilities requests a hearing within the time required by section ~~5126.0223~~ 5126.0216 of the Revised Code, the appointing authority may not remove the member from the board before the conclusion of the hearing.

Sec. ~~5126.0225~~ 5126.0218. A member of a county board of ~~mental retardation and~~ developmental disabilities who is removed from the county board is ineligible for reappointment to the board for not less than one year. The appointing authority shall specify the time during which the member is ineligible for reappointment. If the member is removed under division (A)(5) of section ~~5126.0220~~ 5126.0213 of the Revised Code, the county board shall specify the training the member must complete before being eligible for reappointment.

Sec. ~~5126.0226~~ 5126.0219. (A) Each county board of ~~mental retardation and~~ developmental disabilities shall either employ a superintendent or obtain the services of the superintendent of another county board of ~~mental retardation and~~ developmental disabilities. The board shall provide for a superintendent who is qualified, as specified in rules adopted by the department of ~~mental retardation and~~ developmental disabilities in accordance with Chapter 119. of the Revised Code. The superintendent shall have no voting privileges on the board.

The board shall prescribe the duties of its superintendent and review the superintendent's performance. The superintendent may be removed, suspended, or demoted for cause pursuant to section 5126.23 of the Revised Code. The board shall fix the superintendent's compensation and reimburse the superintendent for actual and necessary expenses.

Each county board that employs its own superintendent shall employ the superintendent under a contract. To enter into a contract, the board shall adopt a resolution agreeing to the contract. Each contract for employment or re-employment of a superintendent shall be for a term of not less than one and not more than five years. At the expiration of a superintendent's current term of employment, the superintendent may be re-employed. If the board intends not to re-employ the superintendent, the board shall give the superintendent written notification of its intention. The notice shall be given not less than ninety days prior to the expiration of the superintendent's contract.

(B) Two or more county boards may enter into an arrangement under which the superintendent of one county board acts as the superintendent of another county board. To enter into such an arrangement, each board shall adopt a resolution agreeing to the arrangement. The resolutions shall specify the duration of the arrangement and the contribution each board is to make to the superintendent's compensation and reimbursement for expenses.

(C) If a vacancy occurs in the position of superintendent, a county board may appoint a person who holds a valid superintendent's certificate issued under the rules of the department to work under a contract for an interim period not to exceed one hundred eighty days until a permanent superintendent can be employed or arranged for under division (A) or (B) of this section. The director of the department may approve additional periods of time for these types of interim appointments when so requested by a resolution adopted by a county board, if the director determines that the additional periods are warranted and the services of a permanent superintendent are not available.

Sec. ~~5126.0227~~ 5126.0220. The superintendent of the county board of ~~mental retardation and~~ developmental disabilities shall:

(A) Administer the work of the board, subject to the board's rules;

(B) Recommend to the board the changes necessary to increase the effectiveness of the programs and services offered pursuant to Chapters 3323. and 5126. of the Revised Code;

(C) Employ persons for all positions authorized by the board, approve contracts of employment for management employees that are for a term of one year or less, and approve personnel actions that involve employees in the classified civil service as may be necessary for the work of the board;

(D) Approve compensation for employees within the limits set by the salary schedule and budget set by the board and in accordance with section 5126.26 of the Revised Code, and ensure that all employees and consultants are properly reimbursed for actual and necessary expenses incurred in the performance of official duties;

(E) Provide consultation to public agencies as defined in division (C) of section 102.01 of the Revised Code, including other county boards of ~~mental retardation and~~ developmental disabilities, and to individuals, agencies, or organizations providing services supported by the board.

The superintendent may authorize the payment of board obligations by the county auditor.

Sec. ~~5126.0228~~ 5126.0221. (A) As used in this section, "specialized services" has the same meaning as in section 5126.281 of the Revised Code.

(B) Except as provided in division (C) of section 5126.033 of the

Revised Code, none of the following individuals may be employed by a county board of ~~mental retardation and~~ developmental disabilities:

- (1) An employee of an agency contracting with the county board;
- (2) An immediate family member of an employee of an agency contracting with the county board unless the county board adopts a resolution authorizing the immediate family member's employment with the county board or the employment is consistent with a policy adopted by the board establishing parameters for such employment and the policy is consistent with Chapter 102. and sections 2921.42, 2921.421, and 2921.43 of the Revised Code;
- (3) An individual with an immediate family member who serves as a county commissioner of any of the counties served by the county board unless the individual was an employee of the county board before October 31, 1980;
- (4) An individual who is employed by, has an ownership interest in, performs or provides administrative duties for, or is a member of the governing board of an entity that provides specialized services, regardless of whether the entity contracts with the county board to provide specialized services.

Sec. ~~5126.0229~~ 5126.0222. As used in this section, "specialized services" has the same meaning as in section 5126.281 of the Revised Code.

Notwithstanding any provision of the Revised Code to the contrary, including applicable provisions of sections 102.03, 102.04, 2921.42, and 2921.43 of the Revised Code, an employee of a county board of ~~mental retardation and~~ developmental disabilities also may be a member of the governing board of a political subdivision, including the board of education of a school district, or an agency that does not provide specialized services. The county board may contract with such a governing board even though the governing board includes an individual who is an employee of the county board. That member of the governing board may not vote on any matter before the governing board concerning a contract with the county board or participate in any discussion or debate regarding such a contract.

Sec. 5126.03. As used in this section and in sections 5126.031 to 5126.034 of the Revised Code:

(A) "Direct services contract" means any legally enforceable agreement with an individual, agency, or other entity that, pursuant to its terms or operation, may result in a payment from a county board of ~~mental retardation and~~ developmental disabilities to an eligible person or to a member of the immediate family of an eligible person for services rendered to the eligible person. "Direct services contract" includes a contract for

supported living pursuant to sections 5126.40 to 5126.47 of the Revised Code, family support services under section 5126.11 of the Revised Code, and reimbursement for transportation expenses.

(B) "Eligible person" means a person eligible to receive services from a county board or from an entity under contract with a county board.

(C) "Former board member" means a person whose service on the county board ended less than one year prior to commencement of services under a direct services contract.

(D) "Former employee" means a person whose employment by the county board ended less than one year prior to commencement of services under a direct services contract.

Sec. 5126.031. (A) Except as provided in division (B) of this section, annually at the organizational meeting required by section ~~5126.0216~~ 5126.029 of the Revised Code, the chairperson of the county board of ~~mental retardation and~~ developmental disabilities shall appoint three members of the board to an ethics council to review all direct services contracts. The board's chairperson may be one of those appointed. The superintendent of the board shall be a nonvoting member of the council. The chairperson shall not appoint a person to the council if the person, or any member of the person's immediate family, will have any interest in any direct services contract under review by the council while the person serves on the council or during the twelve-month period after completing service on the council. If a council member or a member of the council member's immediate family has or will have such an interest, the chairperson shall replace the member by appointing another board member to the council.

The council shall meet regularly as directed by the board to perform its duties. Minutes shall be kept of the actions of the council. The minutes shall be part of the public record of the county board.

Any action taken by the council on direct services contracts under its review shall be in public. The council shall afford an affected party the opportunity to meet with the council on matters related to a direct services contract or any action taken by the council.

(B) If a county board establishes a policy specifying that the board is not willing to enter into direct services contracts with any person who is a board member or former board member or a member of the immediate family of a board member or former board member, the board may assume the responsibilities and perform the duties of an ethics council specified in section 5126.032 of the Revised Code. The policy shall be established by resolution adopted by a majority of the members of the board in attendance at a meeting at which there is a quorum and shall be in effect for one year

after its adoption, at which time the board shall, by resolution adopted in the same manner as the initial resolution, either renew the policy or establish a new one.

Sec. 5126.032. (A) The ethics council appointed for a county board of ~~mental retardation and~~ developmental disabilities shall review all direct services contracts, and approve or disapprove each contract in accordance with the standards in section 5126.033 of the Revised Code. The council shall develop, in consultation with the prosecuting attorney, and recommend to the board ethical standards, contract audit procedures, and grievance procedures with respect to the award and reconciliation of direct services contracts. The superintendent, or an employee of the county board designated by the superintendent, shall, in accordance with a policy established by the county board, certify to the council a copy of each proposed direct services contract or contract renewal at a reasonable time before the contract would take effect if entered into or renewed, if, at the time the contract or renewal is proposed, resources approved by the board for such purposes are available.

The council shall promptly review each direct services contract certified to it. If the contract does not meet the conditions specified in section 5126.033 of the Revised Code, the council shall recommend that the board not enter into the contract or suggest specified revisions. The superintendent shall provide all the information the council needs to make its determinations.

The council shall certify to the board its recommendation with regard to each contract. Except as provided in division (B) of this section, the board, by resolution, shall enter into each direct services contract that the council recommends or recommends with specified revisions. The board shall not enter into any contract that is not recommended by the council or enter into any contract to which revisions are suggested if the contract does not include the specified revisions.

(B) The prosecuting attorney, at the request of the board, shall prepare a legal review of any direct services contract that has been recommended, or recommended with revisions, by the council. The board shall enter into only those contracts submitted for review that are determined by the prosecuting attorney to be in compliance with state law.

Sec. 5126.033. (A) A county board of ~~mental retardation and~~ developmental disabilities shall not enter into a direct services contract unless the contract is limited either to the actual amount of the expenses or to a reasonable and allowable amount projected by the board.

(B) A county board shall not enter into a direct services contract that

would result in payment to a board member, former board member, employee, former employee, or member of the immediate family of a board member, former board member, employee, or former employee if the person who would receive services under the contract stands to receive any preferential treatment or any unfair advantage over other eligible persons.

(C) A county board shall not enter into a direct services contract for services provided in accordance with section 5126.11 or sections 5126.40 to 5126.46 of the Revised Code under which an individual, agency, or other entity will employ an individual who is also an employee of that county board unless all of the following conditions are met:

(1) The employee is not in a capacity to influence the award of the contract.

(2) The employee has not attempted in any manner to secure the contract on behalf of the individual, agency, or other entity.

(3) The employee is not employed in management level two or three according to rules adopted by the director of ~~mental retardation and~~ developmental disabilities and does not provide service and support administration.

(4) The employee is not employed by the board during the period when the contract is developed as an administrator or supervisor responsible for approving or supervising services to be provided under the contract and agrees not to take such a position while the contract is in effect, regardless of whether the position is related to the services provided under the contract.

(5) The employee has not taken any actions that create the need for the services to be provided under the contract.

(6) The individual, agency, or other entity seeks the services of the employee because of the employee's expertise and familiarity with the care and condition of one or more eligible persons and other individuals with such expertise and familiarity are unavailable, or an eligible person has requested to have the services provided by that employee.

The superintendent of the county board shall notify the employee and the individual, agency, or other entity that seeks the employee's services of the ethics council's determination under section 5126.032 of the Revised Code regarding the contract. The council's determination shall be binding on all parties.

The employee who is the subject of the contract shall inform the superintendent of the county board of any employment the employee has outside the county board that is with any individual, agency, or other entity that has a contract with the county board.

Sec. 5126.034. (A) If the requirements of section 5126.033 of the

Revised Code have been met for a particular direct services contract, a member or former member of a county board of ~~mental retardation and~~ developmental disabilities, an employee or former employee of a county board, or an immediate family member of a member, former member, employee, or former employee of a county board is not in violation of the restrictions in Chapter 102. and sections 2921.42 and ~~5126.0210~~ 5126.023 of the Revised Code with regard to that contract.

(B) Nothing in section 5126.033 of the Revised Code shall be construed to allow a member or employee of a county board to authorize, or use the authority of the member's or employee's office or employment to secure authorization of, a contract that could result in receipt by the county board member or employee or a member of the immediate family of the county board member or employee of payment for expenses incurred on behalf of an immediate family member who is an eligible person.

Sec. 5126.037. No county board of ~~mental retardation and~~ developmental disabilities shall contract with a nongovernmental agency whose board includes a county commissioner of any of the counties served by the county board.

Sec. 5126.038. (A) As used in this section, "professional services" means all of the following services provided on behalf of a county board of ~~mental retardation and~~ developmental disabilities, members or employees of a county board, or both:

- (1) Lobbying and other governmental affairs services;
- (2) Legal services other than the legal services provided by a county prosecutor or provided for the purpose of collective bargaining;
- (3) Public relation services;
- (4) Consulting services;
- (5) Personnel training services, not including tuition or professional growth reimbursement programs for county board members or employees.

(B) Each county board of ~~mental retardation and~~ developmental disabilities shall submit to the board of county commissioners of each county that is served by the county board, in accordance with the normal budget process and as part of its budget request, a list identifying the total expenditures projected for any of the following:

- (1) Any membership dues of the members or employees of the county board, in any organization, association, or other entity;
- (2) Any professional services of the county board, its members or employees, or both;
- (3) Any training of the members or employees of the county board.

Sec. 5126.04. (A) Each county board of ~~mental retardation and~~

developmental disabilities shall plan and set priorities based on available resources for the provision of facilities, programs, and other services to meet the needs of county residents who are individuals with mental retardation and other developmental disabilities, former residents of the county residing in state institutions or placed under purchase of service agreements under section 5123.18 of the Revised Code, and children subject to a determination made pursuant to section 121.38 of the Revised Code.

Each county board shall assess the facility and service needs of the individuals with mental retardation and other developmental disabilities who are residents of the county or former residents of the county residing in state institutions or placed under purchase of service agreements under section 5123.18 of the Revised Code.

Each county board shall require individual habilitation or service plans for individuals with mental retardation and other developmental disabilities who are being served or who have been determined eligible for services and are awaiting the provision of services. Each board shall ensure that methods of having their service needs evaluated are available.

(B)(1) If a foster child is in need of assessment for eligible services or is receiving services from a county board of ~~mental retardation and~~ developmental disabilities and that child is placed in a different county, the agency that placed the child, immediately upon placement, shall inform the county board in the new county all of the following:

- (a) That a foster child has been placed in that county;
- (b) The name and other identifying information of the foster child;
- (c) The name of the foster child's previous county of residence;

(d) That the foster child was in need of assessment for eligible services or was receiving services from the county board of ~~mental retardation and~~ developmental disabilities in the previous county.

(2) Upon receiving the notice described in division (B)(1) of this section or otherwise learning that the child was in need of assessment for eligible services or was receiving services from a county board of ~~mental retardation and~~ developmental disabilities in the previous county, the county board in the new county shall communicate with the county board of the previous county to determine how services for the foster child shall be provided in accordance with each board's plan and priorities as described in division (A) of this section.

If the two county boards are unable to reach an agreement within ten days of the child's placement, the county board in the new county shall send notice to the Ohio department of ~~mental retardation and~~ developmental disabilities of the failure to agree. The department shall decide how services

shall be provided for the foster child within ten days of receiving notice that the county boards could not reach an agreement. The department may decide that one, or both, of the county boards shall provide services. The services shall be provided in accordance with the board's plan and priorities as described in division (A) of this section.

(C) The department of ~~mental retardation and~~ developmental disabilities may adopt rules in accordance with Chapter 119. of the Revised Code as necessary to implement this section. To the extent that rules adopted under this section apply to the identification and placement of children with disabilities under Chapter 3323. of the Revised Code, the rules shall be consistent with the standards and procedures established under sections 3323.03 to 3323.05 of the Revised Code.

(D) The responsibility or authority of a county board to provide services under this chapter does not affect the responsibility of any other entity of state or local government to provide services to individuals with mental retardation and developmental disabilities.

(E) On or before the first day of February prior to a school year, a county board of ~~mental retardation and~~ developmental disabilities may elect not to participate during that school year in the provision of or contracting for educational services for children ages six through twenty-one years of age, provided that on or before that date the board gives notice of this election to the superintendent of public instruction, each school district in the county, and the educational service center serving the county. If a board makes this election, it shall not have any responsibility for or authority to provide educational services that school year for children ages six through twenty-one years of age. If a board does not make an election for a school year in accordance with this division, the board shall be deemed to have elected to participate during that school year in the provision of or contracting for educational services for children ages six through twenty-one years of age.

(F) If a county board of ~~mental retardation and~~ developmental disabilities elects to provide educational services during a school year to individuals six through twenty-one years of age who have multiple disabilities, the board may provide these services to individuals who are appropriately identified and determined eligible pursuant to Chapter 3323. of the Revised Code, and in accordance with applicable rules of the state board of education. The county board may also provide related services to individuals six through twenty-one years of age who have one or more disabling conditions, in accordance with section 3317.20 and Chapter 3323. of the Revised Code and applicable rules of the state board of education.

Sec. 5126.041. (A) As used in this section:

(1) "Biological risk" and "environmental risk" have the meanings established pursuant to section 5123.011 of the Revised Code.

(2) "Preschool child with a disability" has the same meaning as in section 3323.01 of the Revised Code.

(3) "State institution" means all or part of an institution under the control of the department of ~~mental retardation and~~ developmental disabilities pursuant to section 5123.03 of the Revised Code and maintained for the care, treatment, and training of the mentally retarded.

(B) Except as provided in division (C) of this section, each county board of ~~mental retardation and~~ developmental disabilities shall make eligibility determinations in accordance with the definition of "developmental disability" in section 5126.01 of the Revised Code. Pursuant to rules the department of ~~mental retardation and~~ developmental disabilities shall adopt in accordance with Chapter 119. of the Revised Code, a county board may establish eligibility for programs and services for either of the following:

(1) Individuals under age six who have a biological risk or environmental risk of a developmental delay;

(2) Any preschool child with a disability eligible for services under section 3323.02 of the Revised Code whose disability is not attributable solely to mental illness as defined in section 5122.01 of the Revised Code.

(C)(1) A county board shall make determinations of eligibility for service and support administration in accordance with rules adopted under section 5126.08 of the Revised Code.

(2) All persons who were eligible for services and enrolled in programs offered by a county board of ~~mental retardation and~~ developmental disabilities pursuant to this chapter on July 1, 1991, shall continue to be eligible for those services and to be enrolled in those programs as long as they are in need of services.

(3) A person who resided in a state institution on or before October 29, 1993, is eligible for programs and services offered by a county board of ~~mental retardation and~~ developmental disabilities, unless the person is determined by the county board not to be in need of those programs and services.

(D) A county board shall refer a person who requests but is not eligible for programs and services offered by the board to other entities of state and local government or appropriate private entities that provide services.

(E) Membership of a person on, or employment of a person by, a county board of ~~mental retardation and~~ developmental disabilities does not affect the eligibility of any member of that person's family for services provided

by the board or by any entity under contract with the board.

Sec. 5126.042. (A) As used in this section:

(1) "Emergency" means any situation that creates for an individual with mental retardation or developmental disabilities a risk of substantial self-harm or substantial harm to others if action is not taken within thirty days. An "emergency" may include one or more of the following situations:

(a) Loss of present residence for any reason, including legal action;

(b) Loss of present caretaker for any reason, including serious illness of the caretaker, change in the caretaker's status, or inability of the caretaker to perform effectively for the individual;

(c) Abuse, neglect, or exploitation of the individual;

(d) Health and safety conditions that pose a serious risk to the individual or others of immediate harm or death;

(e) Change in the emotional or physical condition of the individual that necessitates substantial accommodation that cannot be reasonably provided by the individual's existing caretaker.

(2) "Service substitution list" means a service substitution list established by a county board of ~~mental retardation and~~ developmental disabilities before ~~the effective date of this amendment~~ September 1, 2008, pursuant to division (B) of this section as this section existed on the day immediately before ~~the effective date of this amendment~~ September 1, 2008.

(B) If a county board of ~~mental retardation and~~ developmental disabilities determines that available resources are not sufficient to meet the needs of all individuals who request programs and services and may be offered the programs and services, it shall establish waiting lists for services. The board may establish priorities for making placements on its waiting lists according to an individual's emergency status and shall establish priorities in accordance with divisions (D) and (E) of this section.

The individuals who may be placed on a waiting list include individuals with a need for services on an emergency basis and individuals who have requested services for which resources are not available.

An individual placed on a county board's service substitution list before ~~the effective date of this amendment~~ September 1, 2008, for the purpose of obtaining home and community-based services shall be deemed to have been placed on the county board's waiting list for home and community-based services on the date the individual made a request to the county board that the individual receive home and community-based services instead of the services the individual received at the time the request for home and community-based services was made to the county board.

(C) A county board shall establish a separate waiting list for each of the following categories of services, and may establish separate waiting lists within the waiting lists:

- (1) Early childhood services;
- (2) Educational programs for preschool and school age children;
- (3) Adult services;
- (4) Service and support administration;
- (5) Residential services and supported living;
- (6) Transportation services;
- (7) Other services determined necessary and appropriate for persons with mental retardation or a developmental disability according to their individual habilitation or service plans;
- (8) Family support services provided under section 5126.11 of the Revised Code.

(D) Except as provided in division (G) of this section, a county board shall do, as priorities, all of the following in accordance with the assessment component, approved under section 5123.046 of the Revised Code, of the county board's plan developed under section 5126.054 of the Revised Code:

(1) For the purpose of obtaining additional federal medicaid funds for home and community-based services and medicaid case management services, do both of the following:

(a) Give an individual who is eligible for home and community-based services and meets both of the following requirements priority over any other individual on a waiting list established under division (C) of this section for home and community-based services that include supported living, residential services, or family support services:

- (i) Is twenty-two years of age or older;
- (ii) Receives supported living or family support services.

(b) Give an individual who is eligible for home and community-based services and meets both of the following requirements priority over any other individual on a waiting list established under division (C) of this section for home and community-based services that include adult services:

(i) Resides in the individual's own home or the home of the individual's family and will continue to reside in that home after enrollment in home and community-based services;

- (ii) Receives adult services from the county board.

(2) As federal medicaid funds become available pursuant to division (D)(1) of this section, give an individual who is eligible for home and community-based services and meets any of the following requirements priority for such services over any other individual on a waiting list

established under division (C) of this section:

(a) Does not receive residential services or supported living, either needs services in the individual's current living arrangement or will need services in a new living arrangement, and has a primary caregiver who is sixty years of age or older;

(b) Is less than twenty-two years of age and has at least one of the following service needs that are unusual in scope or intensity:

(i) Severe behavior problems for which a behavior support plan is needed;

(ii) An emotional disorder for which anti-psychotic medication is needed;

(iii) A medical condition that leaves the individual dependent on life-support medical technology;

(iv) A condition affecting multiple body systems for which a combination of specialized medical, psychological, educational, or habilitation services are needed;

(v) A condition the county board determines to be comparable in severity to any condition described in divisions (D)(2)(b)(i) to (iv) of this section and places the individual at significant risk of institutionalization.

(c) Is twenty-two years of age or older, does not receive residential services or supported living, and is determined by the county board to have intensive needs for home and community-based services on an in-home or out-of-home basis.

(E) Except as provided in division (G) of this section and for a number of years and beginning on a date specified in rules adopted under division (K) of this section, a county board shall give an individual who is eligible for home and community-based services, resides in a nursing facility, and chooses to move to another setting with the help of home and community-based services, priority over any other individual on a waiting list established under division (C) of this section for home and community-based services who does not meet these criteria.

(F) If two or more individuals on a waiting list established under division (C) of this section for home and community-based services have priority for the services pursuant to division (D)(1) or (2) or (E) of this section, a county board may use criteria specified in rules adopted under division (K)(2) of this section in determining the order in which the individuals with priority will be offered the services. Otherwise, the county board shall offer the home and community-based services to such individuals in the order they are placed on the waiting list.

(G) No individual may receive priority for services pursuant to division

(D) or (E) of this section over an individual placed on a waiting list established under division (C) of this section on an emergency status.

(H) Prior to establishing any waiting list under this section, a county board shall develop and implement a policy for waiting lists that complies with this section and rules adopted under division (K) of this section.

Prior to placing an individual on a waiting list, the county board shall assess the service needs of the individual in accordance with all applicable state and federal laws. The county board shall place the individual on the appropriate waiting list and may place the individual on more than one waiting list. The county board shall notify the individual of the individual's placement and position on each waiting list on which the individual is placed.

At least annually, the county board shall reassess the service needs of each individual on a waiting list. If it determines that an individual no longer needs a program or service, the county board shall remove the individual from the waiting list. If it determines that an individual needs a program or service other than the one for which the individual is on the waiting list, the county board shall provide the program or service to the individual or place the individual on a waiting list for the program or service in accordance with the board's policy for waiting lists.

When a program or service for which there is a waiting list becomes available, the county board shall reassess the service needs of the individual next scheduled on the waiting list to receive that program or service. If the reassessment demonstrates that the individual continues to need the program or service, the board shall offer the program or service to the individual. If it determines that an individual no longer needs a program or service, the county board shall remove the individual from the waiting list. If it determines that an individual needs a program or service other than the one for which the individual is on the waiting list, the county board shall provide the program or service to the individual or place the individual on a waiting list for the program or service in accordance with the board's policy for waiting lists. The county board shall notify the individual of the individual's placement and position on the waiting list on which the individual is placed.

(I) A child subject to a determination made pursuant to section 121.38 of the Revised Code who requires the home and community-based services provided through a medicaid component that the department of ~~mental retardation~~ and developmental disabilities administers under section 5111.871 of the Revised Code shall receive services through that medicaid component. For all other services, a child subject to a determination made pursuant to section 121.38 of the Revised Code shall be treated as an

emergency by the county boards and shall not be subject to a waiting list.

(J) Not later than the fifteenth day of March of each even-numbered year, each county board shall prepare and submit to the director of ~~mental retardation and~~ developmental disabilities its recommendations for the funding of services for individuals with mental retardation and developmental disabilities and its proposals for reducing the waiting lists for services.

(K)(1) The department of ~~mental retardation and~~ developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code governing waiting lists established under this section. The rules shall include procedures to be followed to ensure that the due process rights of individuals placed on waiting lists are not violated.

(2) As part of the rules adopted under this division, the department shall adopt rules establishing criteria a county board may use under division (F) of this section in determining the order in which individuals with priority for home and community-based services will be offered the services. The rules shall also specify conditions under which a county board, when there is no individual with priority for home and community-based services pursuant to division (D)(1) or (2) or (E) of this section available and appropriate for the services, may offer the services to an individual on a waiting list for the services but not given such priority for the services.

(3) As part of the rules adopted under this division, the department shall adopt rules specifying both of the following for the priority category established under division (E) of this section:

(a) The number of years, which shall not exceed five, that the priority category will be in effect;

(b) The date that the priority category is to go into effect.

(L) The following shall take precedence over the applicable provisions of this section:

(1) Medicaid rules and regulations;

(2) Any specific requirements that may be contained within a medicaid state plan amendment or waiver program that a county board has authority to administer or with respect to which it has authority to provide services, programs, or supports.

Sec. 5126.044. (A) As used in this section, "eligible person" has the same meaning as in section 5126.03 of the Revised Code.

(B) Except as provided in division (D) of this section, no person shall disclose the identity of an individual who requests programs or services under this chapter or release a record or report regarding an eligible person that is maintained by a county board of ~~mental retardation and~~

developmental disabilities or an entity under contract with a county board unless one of the following circumstances exists:

(1) The individual, eligible person, or the individual's guardian, or, if the individual is a minor, the individual's parent or guardian, makes a written request to the county board or entity for or approves in writing disclosure of the individual's identity or release of the record or report regarding the eligible person.

(2) Disclosure of the identity of an individual is needed for approval of a direct services contract under section 5126.032 or 5126.033 of the Revised Code. The county board shall release only the individual's name and the general nature of the services to be provided.

(3) Disclosure of the identity of the individual is needed to ascertain that the county board's waiting lists for programs or services are being maintained in accordance with section 5126.042 of the Revised Code and the rules adopted under that section. The county board shall release only the individual's name, the general nature of the programs or services to be provided the individual, the individual's rank on each waiting list that includes the individual, and any circumstances under which the individual was given priority when placed on a waiting list.

(C) A board or entity that discloses an individual's identity or releases a record or report regarding an eligible person shall maintain a record of when and to whom the disclosure or release was made.

(D)(1) At the request of an eligible person or the person's guardian or, if the eligible person is a minor, the person's parent or guardian, a county board or entity under contract with a county board shall provide the person who made the request access to records and reports regarding the eligible person. On written request, the county board or entity shall provide copies of the records and reports to the eligible person, guardian, or parent. The county board or entity may charge a reasonable fee to cover the costs of copying. The county board or entity may waive the fee in cases of hardship.

(2) A county board shall provide access to any waiting list or record or report regarding an eligible person maintained by the board to any state agency responsible for monitoring and reviewing programs and services provided or arranged by the county board, any state agency involved in the coordination of services for an eligible person, and any agency under contract with the department of ~~mental retardation and~~ developmental disabilities for the provision of protective service pursuant to section 5123.56 of the Revised Code.

(3) When an eligible person who requests programs or services under this chapter dies, the county board or entity under contract with the county

board, shall, on written request, provide to both of the following persons any reports and records in the board or entity's possession concerning the eligible person:

(a) If the report or records are necessary to administer the estate of the person who is the subject of the reports or records, to the executor or administrator of the person's estate;

(b) To the guardian of the person who is the subject of the reports or records or, if the individual had no guardian at the time of death, to a person in the first applicable of the following categories:

- (i) The person's spouse;
- (ii) The person's children;
- (iii) The person's parents;
- (iv) The person's brothers or sisters;
- (v) The person's uncles or aunts;
- (vi) The person's closest relative by blood or adoption;
- (vii) The person's closest relative by marriage.

The county board or entity shall provide the reports and records as required by division (D)(3) of this section not later than thirty days after receipt of the request.

(E) A county board shall notify an eligible person, the person's guardian, or, if the eligible person is a minor, the person's parent or guardian, prior to destroying any record or report regarding the eligible person.

Sec. 5126.045. (A) As used in this section, "eligible person" means a person eligible to receive services from a county board of ~~mental retardation~~ and developmental disabilities or from an entity under contract with a county board.

(B) A county board shall establish fees for services rendered to eligible persons if such fees are required by federal regulation and by rule adopted by the director of ~~mental retardation~~ and developmental disabilities.

A county board may provide services to a person who does not meet the standards for eligibility. The board may establish fees for these services, which may be paid for by the person, by another person on the person's behalf of the ineligible person, or by another governmental entity.

Sec. 5126.046. (A) Each county board of ~~mental retardation~~ and developmental disabilities that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for habilitation, vocational, or community employment services provided as part of home and community-based services shall create a list of all persons and government entities eligible to provide such habilitation, vocational, or community employment services. If the county board chooses and is eligible

to provide such habilitation, vocational, or community employment services, the county board shall include itself on the list. The county board shall make the list available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for such habilitation, vocational, or community employment services. The county board shall also make the list available to such individuals' families.

An individual with mental retardation or other developmental disability who is eligible for habilitation, vocational, or community employment services may choose the provider of the services.

(B) Each month, the department of ~~mental retardation and~~ developmental disabilities shall create a list of all persons and government entities eligible to provide residential services and supported living. The department shall include on the list all residential facilities licensed under section 5123.19 of the Revised Code and all supported living providers certified under section 5123.161 of the Revised Code. The department shall distribute the monthly lists to county boards that have local administrative authority under division (A) of section 5126.055 of the Revised Code for residential services and supported living provided as part of home and community-based services. A county board that receives a list shall make it available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for such residential services or supported living. The county board shall also make the list available to the families of those individuals.

An individual who is eligible for residential services or supported living may choose the provider of the residential services or supported living.

(C) If a county board that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for home and community-based services violates the right established by this section of an individual to choose a provider that is qualified and willing to provide services to the individual, the individual shall receive timely notice that the individual may request a hearing under section 5101.35 of the Revised Code.

(D) The departments of ~~mental retardation and~~ developmental disabilities and job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code governing the implementation of this section. The rules shall include procedures for individuals to choose their service providers. The rules shall not be limited by a provider selection system established under section 5126.42 of the Revised Code, including any pool of providers created pursuant to a provider selection system.

Sec. 5126.05. (A) Subject to the rules established by the director of

~~mental retardation and~~ developmental disabilities pursuant to Chapter 119. of the Revised Code for programs and services offered pursuant to this chapter, and subject to the rules established by the state board of education pursuant to Chapter 119. of the Revised Code for programs and services offered pursuant to Chapter 3323. of the Revised Code, the county board of ~~mental retardation and~~ developmental disabilities shall:

(1) Administer and operate facilities, programs, and services as provided by this chapter and Chapter 3323. of the Revised Code and establish policies for their administration and operation;

(2) Coordinate, monitor, and evaluate existing services and facilities available to individuals with mental retardation and developmental disabilities;

(3) Provide early childhood services, supportive home services, and adult services, according to the plan and priorities developed under section 5126.04 of the Revised Code;

(4) Provide or contract for special education services pursuant to Chapters 3317. and 3323. of the Revised Code and ensure that related services, as defined in section 3323.01 of the Revised Code, are available according to the plan and priorities developed under section 5126.04 of the Revised Code;

(5) Adopt a budget, authorize expenditures for the purposes specified in this chapter and do so in accordance with section 319.16 of the Revised Code, approve attendance of board members and employees at professional meetings and approve expenditures for attendance, and exercise such powers and duties as are prescribed by the director;

(6) Submit annual reports of its work and expenditures, pursuant to sections 3323.09 and 5126.12 of the Revised Code, to the director, the superintendent of public instruction, and the board of county commissioners at the close of the fiscal year and at such other times as may reasonably be requested;

(7) Authorize all positions of employment, establish compensation, including but not limited to salary schedules and fringe benefits for all board employees, approve contracts of employment for management employees that are for a term of more than one year, employ legal counsel under section 309.10 of the Revised Code, and contract for employee benefits;

(8) Provide service and support administration in accordance with section 5126.15 of the Revised Code;

(9) Certify respite care homes pursuant to rules adopted under section 5123.171 of the Revised Code by the director of ~~mental retardation and~~ developmental disabilities.

(B) To the extent that rules adopted under this section apply to the identification and placement of children with disabilities under Chapter 3323. of the Revised Code, they shall be consistent with the standards and procedures established under sections 3323.03 to 3323.05 of the Revised Code.

(C) Any county board may enter into contracts with other such boards and with public or private, nonprofit, or profit-making agencies or organizations of the same or another county, to provide the facilities, programs, and services authorized or required, upon such terms as may be agreeable, and in accordance with this chapter and Chapter 3323. of the Revised Code and rules adopted thereunder and in accordance with sections 307.86 and 5126.071 of the Revised Code.

(D) A county board may combine transportation for children and adults enrolled in programs and services offered under section 5126.12 with transportation for children enrolled in classes funded under section 3317.20 or units approved under section 3317.05 of the Revised Code.

(E) A county board may purchase all necessary insurance policies, may purchase equipment and supplies through the department of administrative services or from other sources, and may enter into agreements with public agencies or nonprofit organizations for cooperative purchasing arrangements.

(F) A county board may receive by gift, grant, devise, or bequest any moneys, lands, or property for the benefit of the purposes for which the board is established and hold, apply, and dispose of the moneys, lands, and property according to the terms of the gift, grant, devise, or bequest. All money received by gift, grant, bequest, or disposition of lands or property received by gift, grant, devise, or bequest shall be deposited in the county treasury to the credit of such board and shall be available for use by the board for purposes determined or stated by the donor or grantor, but may not be used for personal expenses of the board members. Any interest or earnings accruing from such gift, grant, devise, or bequest shall be treated in the same manner and subject to the same provisions as such gift, grant, devise, or bequest.

(G) The board of county commissioners shall levy taxes and make appropriations sufficient to enable the county board of ~~mental retardation~~ and developmental disabilities to perform its functions and duties, and may utilize any available local, state, and federal funds for such purpose.

Sec. 5126.051. (A) To the extent that resources are available, a county board of ~~mental retardation~~ and developmental disabilities shall provide for or arrange residential services and supported living for individuals with

mental retardation and developmental disabilities.

A county board may acquire, convey, lease, or sell property for residential services and supported living and enter into loan agreements, including mortgages, for the acquisition of such property. A county board is not required to comply with provisions of Chapter 307. of the Revised Code providing for competitive bidding or sheriff sales in the acquisition, lease, conveyance, or sale of property under this division, but the acquisition, lease, conveyance, or sale must be at fair market value determined by appraisal of one or more disinterested persons appointed by the board.

Any action taken by a county board under this division that will incur debt on the part of the county shall be taken in accordance with Chapter 133. of the Revised Code. A county board shall not incur any debt on the part of the county without the prior approval of the board of county commissioners.

(B)(1) To the extent that resources are available, in addition to sheltered employment and work activities provided as adult services pursuant to division (A)(3) of section 5126.05 of the Revised Code, a county board of ~~mental retardation and~~ developmental disabilities may provide or arrange for job training, vocational evaluation, and community employment services to mentally retarded and developmentally disabled individuals who are age eighteen and older and not enrolled in a program or service under Chapter 3323. of the Revised Code or age sixteen or seventeen and eligible for adult services under rules adopted by the director of ~~mental retardation and~~ developmental disabilities under Chapter 119. of the Revised Code. These services shall be provided in accordance with the individual's individual service or habilitation plan and shall include support services specified in the plan.

(2) A county board may, in cooperation with the Ohio rehabilitation services commission, seek federal funds for job training and community employment.

(3) A county board may contract with any agency, board, or other entity that is accredited by the commission on accreditation of rehabilitation facilities to provide services. A county board that is accredited by the commission on accreditation of rehabilitation facilities may provide services for which it is certified by the commission.

(C) To the extent that resources are available, a county board may provide services to an individual with mental retardation or other developmental disability in addition to those provided pursuant to this section, section 5126.05 of the Revised Code, or any other section of this chapter. The services shall be provided in accordance with the individual's habilitation or service plan and may be provided in collaboration with other

entities of state or local government.

Sec. 5126.052. (A) The superintendent of a county board of ~~mental retardation and~~ developmental disabilities providing transportation for pupils to special education programs under this chapter may establish a volunteer bus rider assistance program under which qualified persons may be authorized to ride with pupils to and from such programs. Volunteers shall not be compensated for their services and are not employees for purposes of Chapter 4117. or 4123. of the Revised Code. Nothing in this section authorizes a superintendent or board to adversely affect the employment of any employee of the board.

Volunteers may be assigned duties or responsibilities by the superintendent, including but not limited to, assisting pupils in embarking and disembarking from buses and in crossing streets where necessary to ensure the safety of the pupil, assisting the bus driver, and such other activities as the superintendent determines will aid in the safe and efficient transportation of pupils.

(B) The superintendent shall ensure that each pupil receiving transportation under this chapter is instructed in school bus safety, proper bus rider behavior, and the potential problems and hazards associated with school bus ridership. Such instruction shall occur within two weeks after the pupil first receives transportation under this chapter.

Sec. 5126.054. (A) Each county board of ~~mental retardation and~~ developmental disabilities shall, by resolution, develop a three-calendar year plan that includes the following three components:

(1) An assessment component that includes all of the following:

(a) The number of individuals with mental retardation or other developmental disability residing in the county who need the level of care provided by an intermediate care facility for the mentally retarded, may seek home and community-based services, are given priority for the services pursuant to division (D) of section 5126.042 of the Revised Code; the service needs of those individuals; and the projected annualized cost for services;

(b) The source of funds available to the county board to pay the nonfederal share of medicaid expenditures that the county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay;

(c) Any other applicable information or conditions that the department of ~~mental retardation and~~ developmental disabilities requires as a condition of approving the component under section 5123.046 of the Revised Code.

(2) ~~(A preliminary implementation component that specifies the number of individuals to be provided, during the first year that the plan is in effect,~~

home and community-based services pursuant to the priority given to them under divisions (D)(1) and (2) of section 5126.042 of the Revised Code and the types of home and community-based services the individuals are to receive;

(3) A component that provides for the implementation of medicaid case management services and home and community-based services for individuals who begin to receive the services on or after the date the plan is approved under section 5123.046 of the Revised Code. A county board shall include all of the following in the component:

(a) If the department of ~~mental retardation~~ and developmental disabilities or department of job and family services requires, an agreement to pay the nonfederal share of medicaid expenditures that the county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay;

(b) How the services are to be phased in over the period the plan covers, including how the county board will serve individuals on a waiting list established under division (C) of section 5126.042 who are given priority status under division (D)(1) of that section;

(c) Any agreement or commitment regarding the county board's funding of home and community-based services that the county board has with the department at the time the county board develops the component;

(d) Assurances adequate to the department that the county board will comply with all of the following requirements:

(i) To provide the types of home and community-based services specified in the preliminary implementation component required by division (A)(2) of this section to at least the number of individuals specified in that component;

(ii) To use any additional funds the county board receives for the services to improve the county board's resource capabilities for supporting such services available in the county at the time the component is developed and to expand the services to accommodate the unmet need for those services in the county;

(iii) To employ a business manager who is either a new employee who has earned at least a bachelor's degree in business administration or a current employee who has the equivalent experience of a bachelor's degree in business administration. If the county board will employ a new employee, the county board shall include in the component a timeline for employing the employee.

(iv) To employ or contract with a medicaid services manager who is either a new employee who has earned at least a bachelor's degree or a current employee who has the equivalent experience of a bachelor's degree.

If the county board will employ a new employee, the county board shall include in the component a timeline for employing the employee. Two or three county boards that have a combined total enrollment in county board services not exceeding one thousand individuals as determined pursuant to certifications made under division (B) of section 5126.12 of the Revised Code may satisfy this requirement by sharing the services of a medicaid services manager or using the services of a medicaid services manager employed by or under contract with a regional council that the county boards establish under section 5126.13 of the Revised Code.

(e) Programmatic and financial accountability measures and projected outcomes expected from the implementation of the plan;

(f) Any other applicable information or conditions that the department requires as a condition of approving the component under section 5123.046 of the Revised Code.

(B) A county board whose plan developed under division (A) of this section is approved by the department under section 5123.046 of the Revised Code shall update and renew the plan in accordance with a schedule the department shall develop.

Sec. 5126.055. (A) Except as provided in section 5126.056 of the Revised Code, a county board of ~~mental retardation and~~ developmental disabilities has medicaid local administrative authority to, and shall, do all of the following for an individual with mental retardation or other developmental disability who resides in the county that the county board serves and seeks or receives home and community-based services:

(1) Perform assessments and evaluations of the individual. As part of the assessment and evaluation process, the county board shall do all of the following:

(a) Make a recommendation to the department of ~~mental retardation and~~ developmental disabilities on whether the department should approve or deny the individual's application for the services, including on the basis of whether the individual needs the level of care an intermediate care facility for the mentally retarded provides;

(b) If the individual's application is denied because of the county board's recommendation and the individual requests a hearing under section 5101.35 of the Revised Code, present, with the department of ~~mental retardation and~~ developmental disabilities or department of job and family services, whichever denies the application, the reasons for the recommendation and denial at the hearing;

(c) If the individual's application is approved, recommend to the departments of ~~mental retardation and~~ developmental disabilities and job

and family services the services that should be included in the individual's individualized service plan and, if either department approves, reduces, denies, or terminates a service included in the individual's individualized service plan under section 5111.871 of the Revised Code because of the county board's recommendation, present, with the department that made the approval, reduction, denial, or termination, the reasons for the recommendation and approval, reduction, denial, or termination at a hearing under section 5101.35 of the Revised Code.

(2) In accordance with the rules adopted under section 5126.046 of the Revised Code, perform the county board's duties under that section regarding assisting the individual's right to choose a qualified and willing provider of the services and, at a hearing under section 5101.35 of the Revised Code, present evidence of the process for appropriate assistance in choosing providers;

(3) If the county board is certified under section 5123.161 of the Revised Code to provide the services and agrees to provide the services to the individual and the individual chooses the county board to provide the services, furnish, in accordance with the county board's medicaid provider agreement and for the authorized reimbursement rate, the services the individual requires;

(4) Monitor the services provided to the individual and ensure the individual's health, safety, and welfare. The monitoring shall include quality assurance activities. If the county board provides the services, the department of ~~mental-retardation and~~ developmental disabilities shall also monitor the services.

(5) Develop, with the individual and the provider of the individual's services, an effective individualized service plan that includes coordination of services, recommend that the departments of ~~mental-retardation and~~ developmental disabilities and job and family services approve the plan, and implement the plan unless either department disapproves it;

(6) Have an investigative agent conduct investigations under section 5126.313 of the Revised Code that concern the individual;

(7) Have a service and support administrator perform the duties under division (B)(9) of section 5126.15 of the Revised Code that concern the individual.

(B) A county board shall perform its medicaid local administrative authority under this section in accordance with all of the following:

(1) The county board's plan that the department of ~~mental-retardation and~~ developmental disabilities approves under section 5123.046 of the Revised Code;

(2) All applicable federal and state laws;

(3) All applicable policies of the departments of ~~mental retardation and~~ developmental disabilities and job and family services and the United States department of health and human services;

(4) The department of job and family services' supervision under its authority under section 5111.01 of the Revised Code to act as the single state medicaid agency;

(5) The department of ~~mental retardation and~~ developmental disabilities' oversight.

(C) The departments of ~~mental retardation and~~ developmental disabilities and job and family services shall communicate with and provide training to county boards regarding medicaid local administrative authority granted by this section. The communication and training shall include issues regarding audit protocols and other standards established by the United States department of health and human services that the departments determine appropriate for communication and training. County boards shall participate in the training. The departments shall assess the county board's compliance against uniform standards that the departments shall establish.

(D) A county board may not delegate its medicaid local administrative authority granted under this section but may contract with a person or government entity, including a council of governments, for assistance with its medicaid local administrative authority. A county board that enters into such a contract shall notify the director of ~~mental retardation and~~ developmental disabilities. The notice shall include the tasks and responsibilities that the contract gives to the person or government entity. The person or government entity shall comply in full with all requirements to which the county board is subject regarding the person or government entity's tasks and responsibilities under the contract. The county board remains ultimately responsible for the tasks and responsibilities.

(E) A county board that has medicaid local administrative authority under this section shall, through the departments of ~~mental retardation and~~ developmental disabilities and job and family services, reply to, and cooperate in arranging compliance with, a program or fiscal audit or program violation exception that a state or federal audit or review discovers. The department of job and family services shall timely notify the department of ~~mental retardation and~~ developmental disabilities and the county board of any adverse findings. After receiving the notice, the county board, in conjunction with the department of ~~mental retardation and~~ developmental disabilities, shall cooperate fully with the department of job and family services and timely prepare and send to the department a written plan of

correction or response to the adverse findings. The county board is liable for any adverse findings that result from an action it takes or fails to take in its implementation of medicaid local administrative authority.

(F) If the department of ~~mental retardation and~~ developmental disabilities or department of job and family services determines that a county board's implementation of its medicaid local administrative authority under this section is deficient, the department that makes the determination shall require that county board do the following:

(1) If the deficiency affects the health, safety, or welfare of an individual with mental retardation or other developmental disability, correct the deficiency within twenty-four hours;

(2) If the deficiency does not affect the health, safety, or welfare of an individual with mental retardation or other developmental disability, receive technical assistance from the department or submit a plan of correction to the department that is acceptable to the department within sixty days and correct the deficiency within the time required by the plan of correction.

Sec. 5126.056. (A) The department of ~~mental retardation and~~ developmental disabilities shall take action under division (B) of this section against a county board of ~~mental retardation and~~ developmental disabilities if any of the following are the case:

(1) The county board fails to submit to the department all the components of its three-year plan required by section 5126.054 of the Revised Code.

(2) The department disapproves the county board's three-year plan under section 5123.046 of the Revised Code.

(3) The county board fails, as required by division (B) of section 5126.054 of the Revised Code, to update and renew its three-year plan in accordance with a schedule the department develops under that section.

(4) The county board fails to implement its initial or renewed three-year plan approved by the department.

(5) The county board fails to correct a deficiency within the time required by division (F) of section 5126.055 of the Revised Code to the satisfaction of the department.

(6) The county board fails to submit an acceptable plan of correction to the department within the time required by division (F)(2) of section 5126.055 of the Revised Code.

(B) If required by division (A) of this section to take action against a county board, the department shall issue an order terminating the county board's medicaid local administrative authority over all or part of home and community-based services, medicaid case management services, or all or

part of both of those services. The department shall provide a copy of the order to the board of county commissioners, senior probate judge, county auditor, and president and superintendent of the county board. The department shall specify in the order the medicaid local administrative authority that the department is terminating, the reason for the termination, and the county board's option and responsibilities under this division.

A county board whose medicaid local administrative authority is terminated may, not later than thirty days after the department issues the termination order, recommend to the department that another county board that has not had any of its medicaid local administrative authority terminated or another entity the department approves administer the services for which the county board's medicaid local administrative authority is terminated. The department may contract with the other county board or entity to administer the services. If the department enters into such a contract, the county board shall adopt a resolution giving the other county board or entity full medicaid local administrative authority over the services that the other county board or entity is to administer. The other county board or entity shall be known as the contracting authority.

If the department rejects the county board's recommendation regarding a contracting authority, the county board may appeal the rejection under section 5123.043 of the Revised Code.

If the county board does not submit a recommendation to the department regarding a contracting authority within the required time or the department rejects the county board's recommendation and the rejection is upheld pursuant to an appeal, if any, under section 5123.043 of the Revised Code, the department shall appoint an administrative receiver to administer the services for which the county board's medicaid local administrative authority is terminated. To the extent necessary for the department to appoint an administrative receiver, the department may utilize employees of the department, management personnel from another county board, or other individuals who are not employed by or affiliated with in any manner a person that provides home and community-based services or medicaid case management services pursuant to a contract with any county board. The administrative receiver shall assume full administrative responsibility for the county board's services for which the county board's medicaid local administrative authority is terminated.

The contracting authority or administrative receiver shall develop and submit to the department a plan of correction to remediate the problems that caused the department to issue the termination order. If, after reviewing the plan, the department approves it, the contracting authority or administrative

receiver shall implement the plan.

The county board shall transfer control of state and federal funds it is otherwise eligible to receive for the services for which the county board's medicaid local administrative authority is terminated and funds the county board may use under division (A) of section 5126.0511 of the Revised Code to pay the nonfederal share of the services that the county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay. The county board shall transfer control of the funds to the contracting authority or administrative receiver administering the services. The amount the county board shall transfer shall be the amount necessary for the contracting authority or administrative receiver to fulfill its duties in administering the services, including its duties to pay its personnel for time worked, travel, and related matters. If the county board fails to make the transfer, the department may withhold the state and federal funds from the county board and bring a mandamus action against the county board in the court of common pleas of the county served by the county board or in the Franklin county court of common pleas. The mandamus action may not require that the county board transfer any funds other than the funds the county board is required by division (B) of this section to transfer.

The contracting authority or administrative receiver has the right to authorize the payment of bills in the same manner that the county board may authorize payment of bills under this chapter and section 319.16 of the Revised Code.

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)(2) to (7) of this section:

(1) The senior probate judge of the county or the senior probate judge's representative;

(2) The county peace officer;

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

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

(5) The prosecuting attorney of the county;

(6) The public children services agency;

(7) The coroner of the county.

(B) 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 sections

313.12, 2151.421, 2903.16, 5126.31, and 5126.33 of the Revised Code and shall have as its primary goal the elimination of all unnecessary interviews of persons who are the subject of reports made pursuant to 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 charge or complaint arising from any reported case of abuse, neglect, or exploitation or the suppression of any evidence obtained as a result of any reported abuse, neglect, or exploitation and does not give any rights or grounds for appeal or post-conviction relief to any person.

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

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

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

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

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

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

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

Sec. 5126.059. A county board of ~~mental retardation and~~ developmental disabilities shall pay the nonfederal share of medicaid expenditures for medicaid case management services the county board provides to an individual with mental retardation or other developmental disability who the county board determines under section 5126.041 of the Revised Code is eligible for county board services.

Sec. 5126.0510. (A) Except as otherwise provided in an agreement entered into under section 5123.048 of the Revised Code and subject to divisions (B), (C), and (D) of this section, a county board of ~~mental retardation and~~ developmental disabilities shall pay the nonfederal share of

medicaid expenditures for the following home and community-based services provided to an individual with mental retardation or other developmental disability who the county board determines under section 5126.041 of the Revised Code is eligible for county board services:

(1) Home and community-based services provided by the county board to such an individual;

(2) Home and community-based services provided by a provider other than the county board to such an individual who is enrolled as of June 30, 2007, in the medicaid waiver component under which the services are provided;

(3) Home and community-based services provided by a provider other than the county board to such an individual who, pursuant to a request the county board makes, enrolls in the medicaid waiver component under which the services are provided after June 30, 2007;

(4) Home and community-based services provided by a provider other than the county board to such an individual for whom there is in effect an agreement entered into under division (E) of this section between the county board and director of ~~mental retardation and~~ developmental disabilities.

(B) In the case of medicaid expenditures for home and community-based services for which division (A)(2) of this section requires a county board to pay the nonfederal share, the following shall apply to such services provided during fiscal year 2008 under the individual options medicaid waiver component:

(1) The county board shall pay no less than the total amount the county board paid as the nonfederal share for home and community-based services provided in fiscal year 2007 under the individual options medicaid waiver component;

(2) The county board shall pay no more than the sum of the following:

(a) The total amount the county board paid as the nonfederal share for home and community-based services provided in fiscal year 2007 under the individual options medicaid waiver component;

(b) An amount equal to one per cent of the total amount the department of ~~mental retardation and~~ developmental disabilities and county board paid as the nonfederal share for home and community-based services provided in fiscal year 2007 under the individual options medicaid waiver component to individuals the county board determined under section 5126.041 of the Revised Code are eligible for county board services.

(C) A county board is not required to pay the nonfederal share of home and community-based services provided after June 30, 2008, that the county board is otherwise required by division (A)(2) of this section to pay if the

department of ~~mental retardation and~~ developmental disabilities fails to comply with division (A) of section 5123.0416 of the Revised Code.

(D) A county board is not required to pay the nonfederal share of home and community-based services that the county board is otherwise required by division (A)(3) of this section to pay if both of the following apply:

(1) The services are provided to an individual who enrolls in the medicaid waiver component under which the services are provided as the result of an order issued following a state hearing, administrative appeal, or appeal to a court of common pleas made under section 5101.35 of the Revised Code;

(2) There are more individuals who are eligible for services from the county board enrolled in the medicaid waiver component than is required by section 5126.0512 of the Revised Code.

(E) A county board may enter into an agreement with the director of ~~mental retardation and~~ developmental disabilities under which the county board agrees to pay the nonfederal share of medicaid expenditures for one or more home and community-based services that the county board is not otherwise required by division (A)(1), (2), or (3) of this section to pay and that are provided to an individual the county board determines under section 5126.041 of the Revised Code is eligible for county board services. The agreement shall specify which home and community-based services the agreement covers. The county board shall pay the nonfederal share of medicaid expenditures for the home and community-based services that the agreement covers as long as the agreement is in effect.

Sec. 5126.0511. (A) A county board of ~~mental retardation and~~ developmental disabilities may use the following funds to pay the nonfederal share of the medicaid expenditures that the county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay:

(1) To the extent consistent with the levy that generated the taxes, the following taxes:

(a) Taxes levied pursuant to division (L) of section 5705.19 of the Revised Code and section 5705.222 of the Revised Code;

(b) Taxes levied under section 5705.191 of the Revised Code that the board of county commissioners allocates to the county board.

(2) Funds that the department of ~~mental retardation and~~ developmental disabilities distributes to the county board under sections 5126.11 and 5126.18 of the Revised Code;

(3) Earned federal revenue funds the county board receives for medicaid services the county board provides pursuant to the county board's valid medicaid provider agreement;

(4) Funds that the department of ~~mental retardation and~~ developmental disabilities distributes to the county board as subsidy payments;

(5) In the case of medicaid expenditures for home and community-based services, funds allocated to or otherwise made available for the county board under section 5123.0416 of the Revised Code to pay the nonfederal share of such medicaid expenditures.

Each year, each county board shall adopt a resolution specifying the amount of funds it will use in the next year to pay the nonfederal share of the medicaid expenditures that the county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay. The amount specified shall be adequate to assure that the services for which the medicaid expenditures are made will be available in the county in a manner that conforms to all applicable state and federal laws. A county board shall state in its resolution that the payment of the nonfederal share represents an ongoing financial commitment of the county board. A county board shall adopt the resolution in time for the county auditor to make the determination required by division (C) of this section.

(C) Each year, a county auditor shall determine whether the amount of funds a county board specifies in the resolution it adopts under division (B) of this section will be available in the following year for the county board to pay the nonfederal share of the medicaid expenditures that the county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay. The county auditor shall make the determination not later than the last day of the year before the year in which the funds are to be used.

Sec. 5126.0512. (A) As used in this section, "medicaid waiver component" means a medicaid waiver component as defined in section 5111.85 of the Revised Code under which home and community-based services are provided.

(B) Effective July 1, 2007, each county board of ~~mental retardation and~~ developmental disabilities shall ensure, for each medicaid waiver component, that the number of individuals eligible under section 5126.041 of the Revised Code for services from the county board who are enrolled in a medicaid waiver component is no less than the sum of the following:

(1) The number of individuals eligible for services from the county board who are enrolled in the medicaid waiver component on June 30, 2007;

(2) The number of medicaid waiver component slots the county board requested before July 1, 2007, that were assigned to the county board before that date but in which no individual was enrolled before that date.

(C) An individual enrolled in a medicaid waiver component after March 1, 2007, due to an emergency reserve capacity waiver assignment shall not

be counted in determining the number of individuals a county board must ensure under division (B) of this section are enrolled in a medicaid waiver component.

(D) An individual who is enrolled in a medicaid waiver component to comply with the terms of the consent order filed March 5, 2007, in *Martin v. Strickland*, Case No. 89-CV-00362, in the United States district court for the southern district of Ohio, eastern division, shall be excluded in determining whether a county board has complied with division (B) of this section.

(E) A county board shall make as many requests for individuals to be enrolled in a medicaid waiver component as necessary for the county board to comply with division (B) of this section.

Sec. 5126.06. (A) Except as provided in division (B) of this section, any person who has a complaint involving any of the programs, services, policies, or administrative practices of a county board of ~~mental retardation and~~ developmental disabilities or any of the entities under contract with the county board, may file a complaint with the board. Prior to commencing a civil action regarding the complaint, a person shall attempt to have the complaint resolved through the administrative resolution process established in the rules adopted under section 5123.043 of the Revised Code. After exhausting the administrative resolution process, the person may commence a civil action if the complaint is not settled to the person's satisfaction.

(B) An employee of a county board may not file under this section a complaint related to the terms and conditions of employment of the employee.

Sec. 5126.07. No county board of ~~mental retardation and~~ developmental disabilities or any agency, corporation, or association under contract with a county board of ~~mental retardation and~~ developmental disabilities shall discriminate in the provision of services under its authority or contract on the basis of race, color, sex, creed, disability, national origin, or the inability to pay.

Each county board of ~~mental retardation and~~ developmental disabilities shall provide a plan of affirmative action describing its goals and methods for the provision of equal employment opportunities for all persons under its authority and shall ensure nondiscrimination in employment under its authority or contract on the basis of race, color, sex, creed, disability, or national origin.

Sec. 5126.071. (A) As used in this section, "minority business enterprise" has the meaning given in division (E)(1) of section 122.71 of the Revised Code.

(B) Any minority business enterprise that desires to bid on a contract

under division (C) or (D) of this section shall first apply to the equal employment opportunity coordinator in the department of administrative services for certification as a minority business enterprise. The coordinator shall approve the application of any minority business enterprise that complies with the rules adopted under section 122.71 of the Revised Code. The coordinator shall prepare and maintain a list of minority business enterprises certified under this section.

(C) From the contracts to be awarded for the purchases of equipment, materials, supplies, insurance, and nonprogram services, other than contracts entered into and exempt under sections 307.86 and 5126.05 of the Revised Code, each county board of ~~mental retardation and~~ developmental disabilities shall select a number of contracts with an aggregate value of approximately fifteen per cent of the total estimated value of such contracts to be awarded in the current calendar year. The board shall set aside the contracts so selected for bidding by minority business enterprises only. The bidding procedures for such contracts shall be the same as for all other contracts awarded under section 307.86 of the Revised Code, except that only minority business enterprises certified and listed under division (B) of this section shall be qualified to submit bids. Contracts set aside and awarded under this section shall not include contracts for the purchase of services such as direct and ancillary services, service and support administration, residential services, and family support services.

(D) To the extent that a board is authorized to enter into contracts for construction which are not exempt from the competitive bidding requirements of section 307.86 of the Revised Code, the board shall set aside a number of contracts the aggregate value of which equals approximately five per cent of the aggregate value of construction contracts for the current calendar year for bidding by minority business enterprises only. The bidding procedures for the contracts set aside for minority business enterprises shall be the same as for all other contracts awarded by the board, except that only minority business enterprises certified and listed under division (B) of this section shall be qualified to submit bids.

Any contractor awarded a construction contract pursuant to this section shall make every effort to ensure that certified minority business subcontractors and materials suppliers participate in the contract. In the case of contracts specified in this division, the total value of subcontracts awarded to and materials and services purchased from minority businesses shall be at least ten per cent of the total value of the contract, wherever possible and whenever the contractor awards subcontracts or purchases materials or services.

(E) In the case of contracts set aside under divisions (C) and (D) of this section, if no bid is submitted by a minority business enterprise, the contract shall be awarded according to normal bidding procedures. The board shall from time to time set aside such additional contracts as are necessary to replace those contracts previously set aside on which no minority business enterprise bid.

(F) This section does not preclude any minority business enterprise from bidding on any other contract not specifically set aside for minority business enterprises.

(G) Within ninety days after the beginning of each calendar year, each county board of ~~mental retardation and~~ developmental disabilities shall file a report with the department of ~~mental retardation and~~ developmental disabilities that shows for that calendar year the name of each minority business enterprise with which the board entered into a contract, the value and type of each such contract, the total value of contracts awarded under divisions (C) and (D) of this section, the total value of contracts awarded for the purchases of equipment, materials, supplies, or services, other than contracts entered into under the exemptions of sections 307.86 and 5126.05 of the Revised Code, and the total value of contracts entered into for construction.

(H) Any person who intentionally misrepresents that person as owning, controlling, operating, or participating in a minority business enterprise for the purpose of obtaining contracts or any other benefits under this section shall be guilty of theft by deception as provided for in section 2913.02 of the Revised Code.

Sec. 5126.08. (A) The director of ~~mental retardation and~~ developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code for all programs and services offered by a county board of ~~mental retardation and~~ developmental disabilities. Such rules shall include, but are not limited to, the following:

- (1) Determination of what constitutes a program or service;
- (2) Standards to be followed by a board in administering, providing, arranging, or operating programs and services;
- (3) Standards for determining the nature and degree of mental retardation, including mild mental retardation, or developmental disability;
- (4) Standards for determining eligibility for programs and services under sections 5126.042 and 5126.15 of the Revised Code;
- (5) Procedures for obtaining consent for the arrangement of services under section 5126.31 of the Revised Code and for obtaining signatures on individual service plans under that section;

(6) Specification of the service and support administration to be provided by a county board and standards for resolving grievances in connection with service and support administration;

(7) Standards for the provision of environmental modifications, including standards that require adherence to all applicable state and local building codes;

(8) Standards for the provision of specialized medical, adaptive, and assistive equipment, supplies, and supports.

(B) The director shall be the final authority in determining the nature and degree of mental retardation or developmental disability.

Sec. 5126.081. (A) In addition to the rules adopted under division (A)(2) of section 5126.08 of the Revised Code establishing standards for the administration, provision, arrangement, and operation of programs and services by county boards of ~~mental retardation and~~ developmental disabilities, the department of ~~mental retardation and~~ developmental disabilities shall establish a system of accreditation for county boards of ~~mental retardation and~~ developmental disabilities to ensure that the boards are in compliance with federal and state statutes and rules. The department shall adopt rules in accordance with Chapter 119. of the Revised Code governing the system of accreditation. The rules shall include appropriate timelines for compliance when a board is found to be not in compliance and appropriate actions to be taken by boards in complying with the accreditation requirements.

(B) Prior to accrediting a board, the department shall conduct a comprehensive, on-site review of the board. During the review, the department shall document the board's compliance with the department's accreditation requirements. After completing the review, the department shall conduct an exit conference with the president of the board, the superintendent of the board, and any other officials the board asks to have present. The department shall discuss its findings from the review with the board's representatives and provide a written report of its findings not later than thirty days following the exit conference. If the department finds that the board is in compliance with the requirements for accreditation, the department shall issue evidence of accreditation to the board.

Accreditation may be granted for periods of up to five years and may be renewed. Not less than once prior to the date a board's accreditation is scheduled to expire, the department shall conduct a comprehensive, on-site review of the board.

Each board shall conduct an annual audit of itself to evaluate its compliance with the requirements for accreditation. The department may

conduct an interim review of any new program or service initiated by a board after its last comprehensive review. The department may conduct other reviews and investigations as necessary to enforce this section.

(C) If the department determines through its review of a board that the board is not in compliance with the requirements for accreditation, the department shall, except as provided in division (F) of this section, grant the board an opportunity to correct the matters in which it is not in compliance. The department shall grant the board an appropriate length of time to comply with the requirements prior to taking any action to deny accreditation to the board. To avoid denial of accreditation, the board superintendent shall prepare a plan of correction to remediate the matters specified in the department's written report as not being in compliance with the requirements for accreditation. The superintendent shall submit the plan to the board for review, and the board shall review the plan. If the board believes that the plan is sufficient to correct the matters, the board shall approve the plan by resolution and submit the plan to the department for its review. The department shall review the plan of correction. If the department approves the plan, the board shall commence action to implement the plan. The department shall, as necessary, conduct follow-up reviews of the board to determine whether it has met the requirements for accreditation. If the plan of correction submitted by a board is disapproved, the department shall inform the board of the reasons for disapproval and may grant the board an opportunity to submit a revised plan of correction.

A board may request technical assistance from the department, other boards, or professional organizations in preparing plans of correction and in implementing plans of correction.

(D) If, after being given the opportunity to implement a plan of correction, a board continues to fail to meet the requirements for accreditation, the department shall issue an order denying accreditation to the board. The department may deny accreditation to the board for all or part of the programs or services offered by the board.

The department shall simultaneously notify all of the following officials in the county: the members of the board of county commissioners, the senior probate judge, the county auditor, and the president and superintendent of the county board of ~~mental retardation and~~ developmental disabilities. The notice shall identify the programs and services that have been denied accreditation, the requirements for accreditation with which the board is not in compliance, and the responsibilities of the county officials to contract under division (E)(1) of this section to have the board's programs and services administered by another party or become subject to administrative

receivership under division (E)(2) of this section.

(E)(1) When a board is denied accreditation, the department shall first give the board the option of contracting to have the board's programs and services that were denied accreditation administered by an accredited county board of ~~mental retardation and~~ developmental disabilities or another qualified entity subject to the approval of the department. The board may contract with more than one board that has been accredited. When a board enters into a contract, the board shall, by resolution, give the contractor full administrative authority over the programs and services that the contractor will administer.

(2) If a board fails to exercise its option of entering into a contract under division (E)(1) of this section sooner than thirty days after the department denies accreditation, the department shall appoint an administrative receiver of the board's programs and services that were denied accreditation. The department may appoint employees of the department, management personnel from county boards of ~~mental retardation and~~ developmental disabilities, or individuals from other entities as necessary to meet its needs for appointing an administrative receiver, except that individuals from other entities may be appointed only when qualified department employees or board management personnel are unavailable. The department may not appoint an individual who is employed by or affiliated with an entity that is under contract with the board. The administrative receiver shall assume full administrative responsibility for the board's programs and services that were denied accreditation.

(3) The board or entity that contracts with a board under division (E)(1) of this section, or the administrative receiver appointed under division (E)(2) of this section, shall develop and implement a plan of correction to remediate the matters that caused the department to deny accreditation. The contractor or administrative receiver shall submit the plan to the department, and the department shall review the plan. If the plan is approved by the department, the contractor or administrative receiver shall commence action to implement the plan. The contractor or administrative receiver shall report to the department any findings it can make pertaining to issues or circumstances that are beyond the control of the board and result in the unlikelihood that compliance with the requirements for accreditation can be achieved unless the issues or circumstances are remediated.

(4) For purposes of divisions (E)(1) and (2) of this section, the department shall require the board that has been denied accreditation to transfer control of state and federal funds it is eligible to receive for the board's programs and services that have been denied accreditation in an

amount necessary for the contractor or administrative receiver to fulfill its duties in administering the programs and services for the board. The transfer of control of funds does not cause any programs and services of the board that are accredited to lose their accreditation. If the board refuses to transfer control of funds, the department may withhold state and federal funds from the board in an amount necessary for the contractor or administrative receiver to fulfill its duties. The amount transferred or withheld from a board shall include reimbursements for the personnel of the contractor or administrative receiver, including amounts for time worked, travel, and related expenses.

A contractor or administrative receiver that has assumed the administration of a board's programs and services has the right to authorize the payment of bills in the same manner that a board may authorize payment of bills under this chapter and section 319.16 of the Revised Code.

(F) When the department's review of a board reveals serious health and safety issues within the programs and services offered by the board, the department shall order the board to correct the violations immediately or appoint an administrative receiver.

(G) At any time a board can demonstrate that it is capable of assuming its duties in compliance with the department's requirements for accreditation, the department shall reverse its order denying accreditation and issue evidence of accreditation to the board.

A board may appeal the department's denial of accreditation or refusal to reverse a denial of accreditation only by filing a complaint under section 5123.043 of the Revised Code. If in its appeal the board can demonstrate that it is capable of assuming its duties in compliance with the department's requirements for accreditation, the department shall reverse its order denying accreditation and shall issue evidence of accreditation to the board.

(H) All notices issued to a board by the department under this section shall be delivered to the board's president and superintendent.

(I) A board's president may designate another member of the board as the individual to be responsible for fulfilling all or part of the president's responsibilities established under this section.

Sec. 5126.082. (A) In addition to the rules adopted under division (A)(2) of section 5126.08 of the Revised Code establishing standards to be followed by county boards of ~~mental retardation and~~ developmental disabilities in administering, providing, arranging, and operating programs and services and in addition to the board accreditation system established under section 5126.081 of the Revised Code, the director of ~~mental retardation and~~ developmental disabilities shall adopt rules in accordance

with Chapter 119. of the Revised Code establishing standards for promoting and advancing the quality of life of individuals with mental retardation and developmental disabilities receiving any of the following:

(1) Early childhood services pursuant to section 5126.05 of the Revised Code for children under age three;

(2) Adult services pursuant to section 5126.05 and division (B) of section 5126.051 of the Revised Code for individuals age sixteen or older;

(3) Family support services pursuant to section 5126.11 of the Revised Code.

(B) The rules adopted under this section shall specify the actions county boards of ~~mental retardation and~~ developmental disabilities and the agencies with which they contract should take to do the following:

(1) Offer individuals with mental retardation and developmental disabilities, and their families when appropriate, choices in programs and services that are centered on the needs and desires of those individuals;

(2) Maintain infants with their families whenever possible by collaborating with other agencies that provide services to infants and their families and taking other appropriate actions;

(3) Provide families that have children with mental retardation and developmental disabilities under age eighteen residing in their homes the resources necessary to allow the children to remain in their homes;

(4) Create and implement community employment services based on the needs and desires of adults with mental retardation and developmental disabilities;

(5) Create, in collaboration with other agencies, transportation systems that provide safe and accessible transportation within the county to individuals with disabilities;

(6) Provide services that allow individuals with disabilities to be integrated into the community by engaging in educational, vocational, and recreational activities with individuals who do not have disabilities;

(7) Provide age-appropriate retirement services for individuals age sixty-five and older with mental retardation and developmental disabilities;

(8) Establish residential services and supported living for individuals with mental retardation and developmental disabilities in accordance with their needs.

(C) To assist in funding programs and services that meet the standards established under this section, each county board of ~~mental retardation and~~ developmental disabilities shall make a good faith effort to acquire available federal funds, including reimbursements under Title XIX of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1396, as amended.

(D) Each county board of ~~mental retardation and~~ developmental disabilities shall work toward full compliance with the standards established under this section, based on its available resources. Funds received under this chapter shall be used to comply with the standards. Annually, each board shall conduct a self audit to evaluate the board's progress in complying fully with the standards.

(E) The department shall complete a program quality review of each county board of ~~mental retardation and~~ developmental disabilities to determine the extent to which the board has complied with the standards. The review shall be conducted in conjunction with the comprehensive accreditation review of the board that is conducted under section 5126.081 of the Revised Code.

Notwithstanding any provision of this chapter or Chapter 5123. of the Revised Code requiring the department to distribute funds to county boards of ~~mental retardation and~~ developmental disabilities, the department may withhold funds from a board if it finds that the board is not in substantial compliance with the standards established under this section.

(F) When the standards for accreditation from the commission on accreditation of rehabilitation facilities, or another accrediting agency, meet or exceed the standards established under this section, the director may accept accreditation from the commission or other agency as evidence that the board is in compliance with all or part of the standards established under this section. Programs and services accredited by the commission or agency are exempt from the program quality reviews required by division (E) of this section.

Sec. 5126.09. A county board of ~~mental retardation and~~ developmental disabilities may procure a policy or policies of insurance insuring board members or employees of the board or agencies with which the board contracts or volunteer bus rider assistants authorized by section 5126.061 of the Revised Code against liability arising from the performance of their official duties.

Sec. 5126.10. The director of ~~mental retardation and~~ developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code establishing standard cost allocation procedures and shall require county boards of ~~mental retardation and~~ developmental disabilities to use such procedures to allocate all indirect costs to services provided pursuant to Chapters 3323. and 5126. of the Revised Code.

Sec. 5126.11. (A) As used in this section, "respite care" means appropriate, short-term, temporary care that is provided to a mentally retarded or developmentally disabled person to sustain the family structure

or to meet planned or emergency needs of the family.

(B) Subject to rules adopted by the director of ~~mental retardation and~~ developmental disabilities, and subject to the availability of money from state and federal sources, the county board of ~~mental retardation and~~ developmental disabilities shall establish a family support services program. Under such a program, the board shall make payments to an individual with mental retardation or other developmental disability or the family of an individual with mental retardation or other developmental disability who desires to remain in and be supported in the family home. Payments shall be made for all or part of costs incurred or estimated to be incurred for services that would promote self-sufficiency and normalization, prevent or reduce inappropriate institutional care, and further the unity of the family by enabling the family to meet the special needs of the individual and to live as much like other families as possible. Payments may be made in the form of reimbursement for expenditures or in the form of vouchers to be used to purchase services.

(C) Payment shall not be made under this section to an individual or the individual's family if the individual is living in a residential facility that is providing residential services under contract with the department of ~~mental retardation and~~ developmental disabilities or a county board.

(D) Payments may be made for the following services:

(1) Respite care, in or out of the home;

(2) Counseling, supervision, training, and education of the individual, the individual's caregivers, and members of the individual's family that aid the family in providing proper care for the individual, provide for the special needs of the family, and assist in all aspects of the individual's daily living;

(3) Special diets, purchase or lease of special equipment, or modifications of the home, if such diets, equipment, or modifications are necessary to improve or facilitate the care and living environment of the individual;

(4) Providing support necessary for the individual's continued skill development, including such services as development of interventions to cope with unique problems that may occur within the complexity of the family, enrollment of the individual in special summer programs, provision of appropriate leisure activities, and other social skills development activities;

(5) Any other services that are consistent with the purposes specified in division (B) of this section and specified in the individual's service plan.

(E) In order to be eligible for payments under a family support services program, the individual or the individual's family must reside in the county

served by the county board, and the individual must be in need of habilitation. Payments shall be adjusted for income in accordance with the payment schedule established in rules adopted under this section. Payments shall be made only after the county board has taken into account all other available assistance for which the individual or family is eligible.

(F) Before incurring expenses for a service for which payment will be sought under a family support services program, the individual or family shall apply to the county board for a determination of eligibility and approval of the service. The service need not be provided in the county served by the county board. After being determined eligible and receiving approval for the service, the individual or family may incur expenses for the service or use the vouchers received from the county board for the purchase of the service.

If the county board refuses to approve a service, an appeal may be made in accordance with rules adopted by the department under this section.

(G) To be reimbursed for expenses incurred for approved services, the individual or family shall submit to the county board a statement of the expenses incurred accompanied by any evidence required by the board. To redeem vouchers used to purchase approved services, the entity that provided the service shall submit to the county board evidence that the service was provided and a statement of the charges. The county board shall make reimbursements and redeem vouchers no later than forty-five days after it receives the statements and evidence required by this division.

(H) A county board shall consider the following objectives in carrying out a family support services program:

(1) Enabling individuals to return to their families from an institution under the jurisdiction of the department of ~~mental retardation and~~ developmental disabilities;

(2) Enabling individuals found to be subject to institutionalization by court order under section 5123.76 of the Revised Code to remain with their families with the aid of payments provided under this section;

(3) Providing services to eligible children and adults currently residing in the community;

(4) Providing services to individuals with developmental disabilities who are not receiving other services from the board.

(I) The director shall adopt, and may amend and rescind, rules for the implementation of family support services programs by county boards. Such rules shall include the following:

(1) A payment schedule adjusted for income;

(2) A formula for distributing to county boards the money appropriated

for family support services;

(3) Standards for supervision, training, and quality control in the provision of respite care services;

(4) Eligibility standards and procedures for providing temporary emergency respite care;

(5) Procedures for hearing and deciding appeals made under division (F) of this section;

(6) Requirements to be followed by county boards regarding reports submitted under division (K) of this section.

Rules adopted under divisions (I)(1) and (2) of this section shall be adopted in accordance with section 111.15 of the Revised Code. Rules adopted under divisions (I)(3) to (6) of this section shall be adopted in accordance with Chapter 119. of the Revised Code.

(J) All individuals certified by the superintendent of the county board as eligible for temporary emergency respite care in accordance with rules adopted under this section shall be considered eligible for temporary emergency respite care for not more than five days to permit the determination of eligibility for family support services. The requirements of divisions (E) and (F) of this section do not apply to temporary emergency respite care.

(K) The department of ~~mental retardation and~~ developmental disabilities shall distribute to county boards money appropriated for family support services in quarterly installments of equal amounts. The installments shall be made not later than the thirtieth day of September, the thirty-first day of December, the thirty-first day of March, and the thirtieth day of June. A county board shall use no more than seven per cent of the funds for administrative costs. Each county board shall submit reports to the department on payments made under this section. The reports shall be submitted at those times and in the manner specified in rules adopted under this section.

(L) The county board shall not be required to make payments for family support services at a level that exceeds available state and federal funds for such payments.

Sec. 5126.12. (A) As used in this section:

(1) "Approved school age class" means a class operated by a county board of ~~mental retardation and~~ developmental disabilities and funded by the department of education under section 3317.20 of the Revised Code.

(2) "Approved preschool unit" means a class or unit operated by a county board of ~~mental retardation and~~ developmental disabilities and approved under division (B) of section 3317.05 of the Revised Code.

(3) "Active treatment" means a continuous treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services, and related services, that is directed toward the acquisition of behaviors necessary for an individual with mental retardation or other developmental disability to function with as much self-determination and independence as possible and toward the prevention of deceleration, regression, or loss of current optimal functional status.

(4) "Eligible for active treatment" means that an individual with mental retardation or other developmental disability resides in an intermediate care facility for the mentally retarded certified under Title XIX of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1396, as amended; resides in a state institution operated by the department of ~~mental retardation and~~ developmental disabilities; or is enrolled in home and community-based services.

(5) "Traditional adult services" means vocational and nonvocational activities conducted within a sheltered workshop or adult activity center or supportive home services.

(B) Each county board of ~~mental retardation and~~ developmental disabilities shall certify to the director of ~~mental retardation and~~ developmental disabilities all of the following:

(1) On or before the fifteenth day of October, the average daily membership for the first full week of programs and services during October receiving:

(a) Early childhood services provided pursuant to section 5126.05 of the Revised Code for children who are less than three years of age on the thirtieth day of September of the academic year;

(b) Special education for children with disabilities in approved school age classes;

(c) Adult services for persons sixteen years of age and older operated pursuant to section 5126.05 and division (B) of section 5126.051 of the Revised Code. Separate counts shall be made for the following:

(i) Persons enrolled in traditional adult services who are eligible for but not enrolled in active treatment;

(ii) Persons enrolled in traditional adult services who are eligible for and enrolled in active treatment;

(iii) Persons enrolled in traditional adult services but who are not eligible for active treatment;

(iv) Persons participating in community employment services. To be counted as participating in community employment services, a person must

have spent an average of no less than ten hours per week in that employment during the preceding six months.

(d) Other programs in the county for individuals with mental retardation and developmental disabilities that have been approved for payment of subsidy by the department of ~~mental retardation and~~ developmental disabilities.

The membership in each such program and service in the county shall be reported on forms prescribed by the department of ~~mental retardation and~~ developmental disabilities.

The department of ~~mental retardation and~~ developmental disabilities shall adopt rules defining full-time equivalent enrollees and for determining the average daily membership therefrom, except that certification of average daily membership in approved school age classes shall be in accordance with rules adopted by the state board of education. The average daily membership figure shall be determined by dividing the amount representing the sum of the number of enrollees in each program or service in the week for which the certification is made by the number of days the program or service was offered in that week. No enrollee may be counted in average daily membership for more than one program or service.

(2) By the fifteenth day of December, the number of children enrolled in approved preschool units on the first day of December;

(3) On or before the thirtieth day of April, an itemized report of all income and operating expenditures for the immediately preceding calendar year, in the format specified by the department of ~~mental retardation and~~ developmental disabilities;

(4) That each required certification and report is in accordance with rules established by the department of ~~mental retardation and~~ developmental disabilities and the state board of education for the operation and subsidization of the programs and services.

Sec. 5126.121. Each county board of ~~mental retardation and~~ developmental disabilities may be eligible to receive a subsidy from the department of ~~mental retardation and~~ developmental disabilities for the employment of a business manager as provided in this section. The department shall adopt rules in accordance with Chapter 119. of the Revised Code specifying standards for the employment of such a business manager. The rules shall include the minimum education and experience requirements for the position of business manager and shall specify requirements for courses in fiscal and business management that are annually sponsored or certified by the department and that are applicable to the position and designed to teach effective business practices. Each county board of ~~mental~~

~~retardation and~~ developmental disabilities that employs a business manager in accordance with the standards adopted under this section may receive a subsidy from the department.

The department shall distribute this subsidy to eligible county boards in quarterly installments of equal amounts. The installments shall be made not later than the thirtieth day of September, the thirty-first day of December, the thirty-first day of March, and the thirtieth day of June.

Sec. 5126.13. (A) A county board of ~~mental retardation and~~ developmental disabilities may enter into an agreement with one or more other county boards of ~~mental retardation and~~ developmental disabilities to establish a regional council in accordance with Chapter 167. of the Revised Code. The agreement shall specify the duties and functions to be performed by the council, which may include any duty or function a county board is required or authorized to perform under this chapter. If directed to do so by a resolution adopted by a county board that is a member of a regional council, the department of ~~mental retardation and~~ developmental disabilities shall make any distributions of money for that county for the duties or functions performed by the council pursuant to its agreement that are otherwise required to be made to the county board under this chapter to the fiscal officer of the council designated under section 167.04 of the Revised Code.

A county board may also enter into an agreement with one or more school districts or other political subdivisions to establish a regional council in accordance with Chapter 167. of the Revised Code.

(B) On or before the thirtieth day of March, the fiscal officer of a regional council described in this section shall report to the department of ~~mental retardation and~~ developmental disabilities, in the format specified by the department, all income and operating expenditures of the council for the immediately preceding calendar year.

Sec. 5126.14. The entity responsible for the habilitation management included in adult day habilitation services, the program management included in residential services, and the program management included in supported living shall provide administrative oversight by doing all of the following:

(A) Having available supervisory personnel to monitor and ensure implementation of all interventions in accordance with every individual service plan implemented by the staff who work with the individuals receiving the services;

(B) Providing appropriate training and technical assistance for all staff who work with the individuals receiving services;

(C) Communicating with service and support administration staff for the purpose of coordinating activities to ensure that services are provided to individuals in accordance with individual service plans and intended outcomes;

(D) Monitoring for unusual and major unusual incidents and cases of abuse, neglect, exploitation, or misappropriation of funds involving the individual under the care of staff who are providing the services; taking immediate actions as necessary to maintain the health, safety, and welfare of the individuals receiving the services; and providing notice of unusual and major unusual incidents and suspected cases of abuse, neglect, exploitation, or misappropriation of funds to the county board of ~~mental retardation and~~ developmental disabilities;

(E) Performing other administrative duties as required by state or federal law or by the county board of ~~mental retardation and~~ developmental disabilities through contracts with providers.

Sec. 5126.15. (A) A county board of ~~mental retardation and~~ developmental disabilities shall provide service and support administration to each individual three years of age or older who is eligible for service and support administration if the individual requests, or a person on the individual's behalf requests, service and support administration. A board shall provide service and support administration to each individual receiving home and community-based services. A board may provide, in accordance with the service coordination requirements of 34 C.F.R. 303.23, service and support administration to an individual under three years of age eligible for early intervention services under 34 C.F.R. part 303. A board may provide service and support administration to an individual who is not eligible for other services of the board. Service and support administration shall be provided in accordance with rules adopted under section 5126.08 of the Revised Code.

A board may provide service and support administration by directly employing service and support administrators or by contracting with entities for the performance of service and support administration. Individuals employed or under contract as service and support administrators shall not be in the same collective bargaining unit as employees who perform duties that are not administrative.

Individuals employed by a board as service and support administrators shall not be assigned responsibilities for implementing other services for individuals and shall not be employed by or serve in a decision-making or policy-making capacity for any other entity that provides programs or services to individuals with mental retardation or developmental disabilities.

An individual employed as a conditional status service and support administrator shall perform the duties of service and support administration only under the supervision of a management employee who is a service and support administration supervisor.

(B) The individuals employed by or under contract with a board to provide service and support administration shall do all of the following:

(1) Establish an individual's eligibility for the services of the county board of ~~mental retardation and~~ developmental disabilities;

(2) Assess individual needs for services;

(3) Develop individual service plans with the active participation of the individual to be served, other persons selected by the individual, and, when applicable, the provider selected by the individual, and recommend the plans for approval by the department of ~~mental retardation and~~ developmental disabilities when services included in the plans are funded through medicaid;

(4) Establish budgets for services based on the individual's assessed needs and preferred ways of meeting those needs;

(5) Assist individuals in making selections from among the providers they have chosen;

(6) Ensure that services are effectively coordinated and provided by appropriate providers;

(7) Establish and implement an ongoing system of monitoring the implementation of individual service plans to achieve consistent implementation and the desired outcomes for the individual;

(8) Perform quality assurance reviews as a distinct function of service and support administration;

(9) Incorporate the results of quality assurance reviews and identified trends and patterns of unusual incidents and major unusual incidents into amendments of an individual's service plan for the purpose of improving and enhancing the quality and appropriateness of services rendered to the individual;

(10) Ensure that each individual receiving services has a designated person who is responsible on a continuing basis for providing the individual with representation, advocacy, advice, and assistance related to the day-to-day coordination of services in accordance with the individual's service plan. The service and support administrator shall give the individual receiving services an opportunity to designate the person to provide daily representation. If the individual declines to make a designation, the administrator shall make the designation. In either case, the individual receiving services may change at any time the person designated to provide

daily representation.

Sec. 5126.18. (A) As used in this section:

(1) "County board" means a county board of ~~mental retardation and~~ developmental disabilities.

(2) Notwithstanding section 5126.01 of the Revised Code, "adult services" means the following services, as they are identified on individual information forms submitted by county boards to the department of ~~mental retardation and~~ developmental disabilities, provided to an individual with mental retardation or other developmental disability who is at least twenty-two years of age:

- (a) Assessment;
- (b) Home service;
- (c) Adult program;
- (d) Community employment services;
- (e) Retirement.

(3) "Adult services enrollment" means a county board's average daily membership in adult services, exclusive of such services provided to individuals served solely through service and support administration provided pursuant to section 5126.15 of the Revised Code or family support services provided pursuant to section 5126.11 of the Revised Code.

(4) "Taxable value" means the taxable value of a county board certified under division (B)(1) of this section.

(5) "Per-mill yield" of a county board means the quotient obtained by dividing (a) the taxable value of the county board by (b) one thousand.

(6) "Local adult services cost" means a county board's expenditures for adult services, excluding all federal and state reimbursements and subsidy allocations received by such boards and expended for such services, as certified under section 5126.12 of the Revised Code.

(7) "Statewide average millage" means one thousand multiplied by the quotient obtained by dividing (a) the total of the local adult services costs of all county boards by (b) the total of the taxable values of all county boards.

(8) "County yield" of a county board means the product obtained by multiplying (a) the statewide average millage by (b) the per-mill yield of the county board.

(9) "County yield per enrollee" of a county board means the quotient obtained by dividing (a) the county yield of the county board by (b) the adult enrollment of the county board.

(10) "Statewide yield per enrollee" means the quotient obtained by dividing (a) the sum of the county yields of all county boards by (b) the sum of the adult enrollments of all county boards.

(11) "Local tax effort for adult services" of a county board means one thousand multiplied by the quotient obtained by dividing (a) the local adult services cost of the county board by (b) the taxable value of the county board.

(12) "Funding percentage" for a fiscal year means the percentage that the amount appropriated to the department for the purpose of making payments under this section in the fiscal year is of the amount computed under division (C)(3) of this section for the fiscal year.

(13) "Funding-adjusted required millage" for a fiscal year means the statewide average millage multiplied by the funding percentage for that fiscal year.

(B)(1) On the request of the director of ~~mental retardation and~~ developmental disabilities, the tax commissioner shall provide to the department of ~~mental retardation and~~ developmental disabilities information specifying the taxable value of property on each county's tax list of real and public utility property and tax list of personal property for the most recent tax year for which such information is available. The director may request any other tax information necessary for the purposes of this section.

(2) On the request of the director, each county board shall report the county board's adult services enrollment and local adult services cost.

(C) Each year, the department of ~~mental retardation and~~ developmental disabilities shall compute the following:

(1) For each county board, the amount, if any, by which the statewide yield per enrollee exceeds the county yield per enrollee;

(2) For each county board, the amount of any excess computed under division (C)(1) of this section multiplied by the adult services enrollment of the county board;

(3) The sum of the amounts computed under division (C)(2) of this section for all county boards.

(D) From money appropriated for the purpose, the department shall provide for payment to each county board of the amount computed for that county board under division (C)(2) of this section, subject to any reduction or adjustment under division (E), (F), or (G) of this section. The department shall make the payments in quarterly installments of equal amounts. The installments shall be made not later than the thirtieth day of September, thirty-first day of December, thirty-first day of March, and thirtieth day of June.

(E) If a county board's local tax effort for adult services is less than the funding-adjusted required millage, the director shall reduce the amount of payment otherwise computed under division (C)(2) of this section so that the

amount paid, after the reduction, is the same percentage of the amount computed under division (C)(2) of this section as the county board's local tax effort for adult services is of the funding-adjusted required millage.

If the director reduces the amount of a county board's payment under this division, the department, not later than the fifteenth day of July, shall notify the county board of the reduction and the amount of the reduction. The notice shall include a statement that the county board may request to be exempted from the reduction by filing a request with the director, in the manner and form prescribed by the director, within twenty-one days after such notification is issued. The board may present evidence of its attempt to obtain passage of levies or any other extenuating circumstances the board considers relevant. If the county board requests a hearing before the director to present such evidence, the director shall conduct a hearing on the request unless the director exempts the board from the reduction on the basis of the evidence presented in the request filed by the board. Upon receiving a properly and timely filed request for exemption, but not later than the thirty-first day of August, the director shall determine whether the county board shall be exempted from all or a part of the reduction. The director may exempt the board from all or part of the reduction if the director finds that the board has made good faith efforts to obtain passage of tax levies or that there are extenuating circumstances.

(F) If a payment is reduced under division (E) of this section and the director does not exempt the county board from the reduction, the amount of the reduction shall be apportioned among all county boards entitled to payments under this section for which payments were not so reduced. The amount apportioned to each county board shall be proportionate to the amount of the board's payment as computed under division (C)(2) of this section.

(G) If, for any fiscal year, the amount appropriated to the department for the purpose of this section is less than the amount computed under division (C)(3) of this section for the fiscal year, the department shall adjust the amount of each payment as computed under divisions (C)(2), (E), and (F) of this section by multiplying that amount by the funding percentage.

(H) The payments authorized by this section are supplemental to all other funds that may be received by a county board. A county board shall use the payments solely to pay the nonfederal share of medicaid expenditures that sections 5126.059 and 5126.0510 of the Revised Code require the county board to pay.

Sec. 5126.19. (A) The director of ~~mental retardation and~~ developmental disabilities may grant temporary funding from the community ~~mental~~

~~retardation and~~ developmental disabilities trust fund based on allocations to county boards of ~~mental retardation and~~ developmental disabilities. The director may distribute all or part of the funding directly to a county board, the persons who provide the services for which the funding is granted, or persons with mental retardation or developmental disabilities who are to receive those services.

(B) Funding granted under division (A) of this section shall be granted according to the availability of moneys in the fund and priorities established by the director. Funding may be granted for any of the following purposes:

(1) Behavioral or short-term interventions for persons with mental retardation or developmental disabilities that assist them in remaining in the community by preventing institutionalization;

(2) Emergency respite care services, as defined in section 5126.11 of the Revised Code;

(3) Family support services provided under section 5126.11 of the Revised Code;

(4) Supported living, as defined in section 5126.01 of the Revised Code;

(5) Staff training for county board employees, employees of providers of residential services as defined in section 5126.01 of the Revised Code, and other personnel under contract with a county board, to provide the staff with necessary training in serving mentally retarded or developmentally disabled persons in the community;

(6) Short-term provision of early childhood services provided under section 5126.05, adult services provided under sections 5126.05 and 5126.051, and service and support administration provided under section 5126.15 of the Revised Code, when local moneys are insufficient to meet the need for such services due to the successive failure within a two-year period of three or more proposed levies for the services;

(7) Contracts with providers of residential services to maintain persons with mental retardation and developmental disabilities in their programs and avoid institutionalization.

(C) If the trust fund contains more than ten million dollars on the first day of July the director shall use one million dollars for payments under section 5126.18 of the Revised Code, two million dollars for subsidies to county boards for supported living, and one million dollars for subsidies to county boards for early childhood services and adult services provided under section 5126.05 of the Revised Code. Distributions of funds under this division shall be made prior to August 31 of the state fiscal year in which the funds are available. The funds shall be allocated to a county board in an amount equal to the same percentage of the total amount allocated to the

county board the immediately preceding state fiscal year.

(D) In addition to making grants under division (A) of this section, the director may use money available in the trust fund for the same purposes that rules adopted under section 5123.0413 of the Revised Code provide for money in the state ~~MR/DD~~ developmental disabilities risk fund and the state insurance against ~~MR/DD~~ developmental disabilities risk fund, both created under that section, to be used.

Sec. 5126.20. As used in this section and sections 5126.21 to 5126.29 of the Revised Code:

(A) "Service employee" means a person employed by a county board of ~~mental retardation and~~ developmental disabilities in a position which may require evidence of registration under section 5126.25 of the Revised Code but for which a bachelor's degree from an accredited college or university is not required, and includes employees in the positions listed in division (C) of section 5126.22 of the Revised Code.

(B)(1) "Professional employee" means both of the following:

(a) A person employed by a board in a position for which either a bachelor's degree from an accredited college or university or a license or certificate issued under Title XLVII of the Revised Code is a minimum requirement;

(b) A person employed by a board as a conditional status service and support administrator.

(2) "Professional employee" includes employees in the positions listed in division (B) of section 5126.22 of the Revised Code.

(C) "Management employee" means a person employed by a board in a position having supervisory or managerial responsibilities and duties, and includes employees in the positions listed in division (A) of section 5126.22 of the Revised Code.

(D) "Limited contract" means a contract of limited duration which is renewable at the discretion of the superintendent.

(E) "Continuing contract" means a contract of employment that was issued prior to June 24, 1988, to a classified employee under which the employee has completed the employee's probationary period and under which the employee retains employment until the employee retires or resigns, is removed pursuant to section 5126.23 of the Revised Code, or is laid off.

(F) "Supervisory responsibilities and duties" includes the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees of the board; to responsibly direct them; to adjust their grievances; or to effectively recommend such action, if the exercise of

that authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(G) "Managerial responsibilities and duties" includes formulating policy on behalf of the board, responsibly directing the implementation of policy, assisting in the preparation for the conduct of collective negotiations, administering collectively negotiated agreements, or having a major role in personnel administration.

(H) "Investigative agent" means an individual who conducts investigations under section 5126.313 of the Revised Code.

Sec. 5126.201. A person may be employed by a county board of ~~mental retardation and~~ developmental disabilities as a conditional status service and support administrator only if either of the following is true:

(A) The person has at least an appropriate associate degree;

(B) The person meets both of the following requirements:

(1) The person was employed by the county board and performed service and support administration duties on June 30, 2005;

(2) The person holds a high school diploma or a general educational development certificate of high school equivalence.

Sec. 5126.21. As used in this section, "management employee" does not include the superintendent of a county board of ~~mental retardation and~~ developmental disabilities.

(A)(1) Each management employee of a county board of ~~mental retardation and~~ developmental disabilities shall hold a limited contract for a period of not less than one year and not more than five years, except that a management employee hired after the beginning of a program year may be employed under a limited contract expiring at the end of the program year. The board shall approve all contracts of employment for management employees that are for a term of more than one year. A management employee shall receive notice of the superintendent's intention not to rehire the employee at least ninety days prior to the expiration of the contract. If the superintendent fails to notify a management employee, the employee shall be reemployed under a limited contract of one year at the same salary plus any authorized salary increases.

(2) During the term of a contract a management employee's salary may be increased, but shall not be reduced unless the reduction is part of a uniform plan affecting all employees of the board.

(B) All management employees may be removed, suspended, or demoted for cause pursuant to section 5126.23 of the Revised Code.

(C) All management employees shall receive employee benefits that shall include sick leave, vacation leave, holiday pay, and such other benefits

as are established by the board. Sections 124.38 and 325.19 of the Revised Code do not apply to management employees.

(D) The superintendent of a county board of ~~mental retardation and~~ developmental disabilities shall notify all management employees of the board of their salary no later than thirty days before the first day of the new contract year.

(E) All management employees of a county board of ~~mental retardation and~~ developmental disabilities who were given continuing contract status prior to the effective date of this section have continuing contract status so long as they maintain employment with the board.

(F) All management employees who were probationary employees on the effective date of this section shall, upon completion of their probationary period, be granted continuing contract status if retained in employment.

(G) Each county board of ~~mental retardation and~~ developmental disabilities shall establish a lay-off policy to be followed if it determines a reduction in the number of management employees is necessary.

Sec. 5126.22. (A) Employees who hold the following positions in a county board of ~~mental retardation and~~ developmental disabilities are management employees:

- assistant superintendent
- director of business
- director of personnel
- adult services director
- workshop director
- habilitation manager
- director of residential services
- principal (director of children services)
- program or service supervisor
- plant manager
- production manager
- service and support administration supervisor
- investigative agent

confidential employees as defined in section 4117.01 of the Revised Code

positions designated by the director of ~~mental retardation and~~ developmental disabilities as having managerial or supervisory responsibilities and duties

positions designated by the county board in accordance with division (D) of this section.

(B) Employees who hold the following positions in a board are

professional employees:

- personnel certified pursuant to Chapter 3319. of the Revised Code
- early intervention specialist
- physical development specialist
- habilitation specialist
- work adjustment specialist
- placement specialist
- vocational evaluator
- psychologist
- occupational therapist
- speech and language pathologist
- recreation specialist
- behavior management specialist
- physical therapist
- supportive home services specialist
- licensed practical nurse or registered nurse
- rehabilitation counselor
- doctor of medicine and surgery or of osteopathic medicine and surgery
- dentist
- service and support administrator
- conditional status service and support administrator
- social worker

any position that is not a management position and for which the standards for certification established by the director of ~~mental retardation~~ and developmental disabilities under section 5126.25 of the Revised Code require a bachelor's or higher degree

- professional positions designated by the director

professional positions designated by the county board in accordance with division (D) of this section.

(C) Employees who hold positions in a board that are neither management positions nor professional positions are service employees. Service employee positions include:

- workshop specialist
- workshop specialist assistant
- contract procurement specialist
- community employment specialist

any assistant to a professional employee certified to provide, or supervise the provision of, adult services or service and support administration

- service positions designated by the director

service positions designated by a county board in accordance with division (D) of this section.

(D) A county board may designate a position only if the position does not include directly providing, or supervising employees who directly provide, service or instruction to individuals with mental retardation or developmental disabilities.

(E) If a county board desires to have a position established that is not specifically listed in this section that includes directly providing, or supervising employees who directly provide, services or instruction to individuals with mental retardation or developmental disabilities, the board shall submit to the director a written description of the position and request that the director designate the position as a management, professional, or service position under this section. The director shall consider each request submitted under this division and respond within thirty days. If the director approves the request, the director shall designate the position as a management, professional, or service position.

(F) A county board shall not terminate its employment of any management, professional, or service employee solely because a position is added to or eliminated from those positions listed in this section or because a position is designated or no longer designated by the director or a county board.

Sec. 5126.221. Each county board of ~~mental retardation and~~ developmental disabilities shall employ at least one investigative agent or contract with a person or government entity, including another county board of ~~mental retardation and~~ developmental disabilities or a regional council established under section 5126.13 of the Revised Code, for the services of an investigative agent. Neither a county board nor a person or government entity with which a county board contracts for the services of an investigative agent shall assign any duties to an investigative agent other than conducting investigations under section 5126.313 of the Revised Code.

All investigative agents shall be trained in civil and criminal investigatory practices. The person responsible for supervising the work of the investigative agents shall report directly to a county board's superintendent regarding the investigative agents.

No investigative agent shall do anything that interferes with the investigative agent's objectivity in conducting investigations under section 5126.313 of the Revised Code.

Sec. 5126.23. (A) As used in this section, "employee" means a management employee or superintendent of a county board of ~~mental retardation and~~ developmental disabilities.

(B) An employee may be removed, suspended, or demoted in accordance with this section for violation of written rules set forth by the board or for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or other acts of misfeasance, malfeasance, or nonfeasance.

(C) Prior to the removal, suspension, or demotion of an employee pursuant to this section, the employee shall be notified in writing of the charges against ~~him~~ the employee. Except as otherwise provided in division (H) of this section, not later than thirty days after receiving such notification, a predisciplinary conference shall be held to provide the employee an opportunity to refute the charges against ~~him~~ the employee. At least seventy-two hours prior to the conference, the employee shall be given a copy of the charges against ~~him~~ the employee.

If the removal, suspension, or demotion action is directed against a management employee, the conference shall be held by the superintendent or a person ~~he~~ the superintendent designates, and the superintendent shall notify the management employee within fifteen days after the conference of the decision made with respect to the charges. If the removal, suspension, or demotion action is directed against a superintendent, the conference shall be held by the members of the board or their designees, and the board shall notify the superintendent within fifteen days after the conference of its decision with respect to the charges.

(D) Within fifteen days after receiving notification of the results of the predisciplinary conference, an employee may file with the board a written demand for a hearing before the board or before a referee, and the board shall set a time for the hearing which shall be within thirty days from the date of receipt of the written demand, and the board shall give the employee at least twenty days notice in writing of the time and place of the hearing.

(E) If a referee is demanded by an employee or a county board, the hearing shall be conducted by a referee selected in accordance with division (F) of this section; otherwise, it shall be conducted by a majority of the members of the board and shall be confined to the charges enumerated at the predisciplinary conference.

(F) Referees for the hearings required by this section shall be selected from the list of names compiled by the superintendent of public instruction pursuant to section 3319.161 of the Revised Code. Upon receipt of notice that a referee has been demanded by an employee or a county board, the superintendent of public instruction shall immediately designate three persons from such list, from whom the referee for the hearing shall be chosen, and ~~he~~ the superintendent of public instruction shall immediately

notify the designees, the county board, and the employee. If within five days of receipt of the notice, the county board and employee are unable to agree upon one of the designees to serve as referee, the superintendent of public instruction shall appoint one of the designees to serve as referee. The appointment of the referee shall be entered in the minutes of the county board. The referee appointed shall be paid ~~his~~ the referee's usual and customary fee for attending the hearing which shall be paid from the general fund of the county board of ~~mental retardation and~~ developmental disabilities.

(G) The board shall provide for a complete stenographic record of the proceedings, and a copy of the record shall be furnished to the employee.

Both parties may be present at the hearing, be represented by counsel, require witnesses to be under oath, cross-examine witnesses, take a record of the proceedings, and require the presence of witnesses in their behalf upon subpoena to be issued by the county board. If any person fails to comply with a subpoena, a judge of the court of common pleas of the county in which the person resides, upon application of any interested party, shall compel attendance of the person by attachment proceedings as for contempt. Any member of the board or the referee may administer oaths to witnesses. After a hearing by a referee, the referee shall file ~~his~~ a report within ten days after the termination of the hearing. After consideration of the referee's report, the board, by a majority vote, may accept or reject the referee's recommendation. After a hearing by the board, the board, by majority vote, may enter its determination upon its minutes. If the decision, after hearing, is in favor of the employee, the charges and the record of the hearing shall be physically expunged from the minutes and, if the employee has suffered any loss of salary by reason of being suspended, ~~he~~ the employee shall be paid ~~his~~ the employee's full salary for the period of such suspension.

Any employee affected by a determination of the board under this division may appeal to the court of common pleas of the county in which the board is located within thirty days after receipt of notice of the entry of such determination. The appeal shall be an original action in the court and shall be commenced by the filing of a complaint against the board, in which complaint the facts shall be alleged upon which the employee relies for a reversal or modification of such determination. Upon service or waiver of summons in that appeal, the board immediately shall transmit to the clerk of the court for filing a transcript of the original papers filed with the board, a certified copy of the minutes of the board into which the determination was entered, and a certified transcript of all evidence adduced at the hearing or hearings before the board or a certified transcript of all evidence adduced at

the hearing or hearings before the referee, whereupon the cause shall be at issue without further pleading and shall be advanced and heard without delay. The court shall examine the transcript and record of the hearing and shall hold such additional hearings as it considers advisable, at which it may consider other evidence in addition to the transcript and record.

Upon final hearing, the court shall grant or deny the relief prayed for in the complaint as may be proper in accordance with the evidence adduced in the hearing. Such an action is a special proceeding, and either the employee or the board may appeal from the decision of the court of common pleas pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

(H) Notwithstanding divisions (C) to (G) of this section, a county board and an employee may agree to submit issues regarding the employee's removal, suspension, or demotion to binding arbitration. The terms of the submission, including the method of selecting the arbitrator or arbitrators and the responsibility for compensating the arbitrator, shall be provided for in the arbitration agreement. The arbitrator shall be selected within fifteen days of the execution of the agreement. Chapter 2711. of the Revised Code governs the arbitration proceedings.

Sec. 5126.24. (A) As used in this section:

(1) "License" means an educator license issued by the state board of education under section 3319.22 of the Revised Code or a certificate issued by the department of ~~mental retardation and~~ developmental disabilities.

(2) "Teacher" means a person employed by a county board of ~~mental retardation and~~ developmental disabilities in a position that requires a license.

(3) "Nonteaching employee" means a person employed by a county board of ~~mental retardation and~~ developmental disabilities in a position that does not require a license.

(4) "Years of service" includes all service described in division (A) of section 3317.13 of the Revised Code.

(B) Subject to rules established by the director of ~~mental retardation and~~ developmental disabilities pursuant to Chapter 119. of the Revised Code, each county board of ~~mental retardation and~~ developmental disabilities shall annually adopt separate salary schedules for teachers and nonteaching employees.

(C) The teachers' salary schedule shall provide for increments based on training and years of service. The board may establish its own service requirements provided no teacher receives less than the salary the teacher would be paid under section 3317.13 of the Revised Code if the teacher

were employed by a school district board of education and provided full credit for a minimum of five years of actual teaching and military experience as defined in division (A) of such section is given to each teacher.

Each teacher who has completed training that would qualify the teacher for a higher salary bracket pursuant to this section shall file by the fifteenth day of September with the fiscal officer of the board, satisfactory evidence of the completion of such additional training. The fiscal officer shall then immediately place the teacher, pursuant to this section, in the proper salary bracket in accordance with training and years of service. No teacher shall be paid less than the salary to which the teacher would be entitled under section 3317.13 of the Revised Code if the teacher were employed by a school district board of education.

The superintendent of each county board, on or before the fifteenth day of October of each year, shall certify to the state board of education the name of each teacher employed, on an annual salary, in each special education program operated pursuant to section 3323.09 of the Revised Code during the first full school week of October. The superintendent further shall certify, for each teacher, the number of years of training completed at a recognized college, the degrees earned from a college recognized by the state board, the type of license held, the number of months employed by the board, the annual salary, and other information that the state board may request.

(D) The nonteaching employees' salary schedule established by the board shall be based on training, experience, and qualifications with initial salaries no less than salaries in effect on July 1, 1985. Each board shall prepare and may amend from time to time, specifications descriptive of duties, responsibilities, requirements, and desirable qualifications of the classifications of employees required to perform the duties specified in the salary schedule. All nonteaching employees shall be notified of the position classification to which they are assigned and the salary for the classification. The compensation of all nonteaching employees working for a particular board shall be uniform for like positions except as compensation would be affected by salary increments based upon length of service.

On the fifteenth day of October of each year the nonteaching employees' salary schedule and list of job classifications and salaries in effect on that date shall be filed by each board with the superintendent of public instruction. If such salary schedule and classification plan is not filed, the superintendent of public instruction shall order the board to file such schedule and list forthwith. If this condition is not corrected within ten days

after receipt of the order from the superintendent, no money shall be distributed to the district under Chapter 3317. of the Revised Code until the superintendent has satisfactory evidence of the board's full compliance with such order.

Sec. 5126.25. (A) The director of ~~mental retardation and~~ developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code establishing uniform standards and procedures for the certification of persons for employment by county boards of ~~mental retardation and~~ developmental disabilities as superintendents, management employees, and professional employees and uniform standards and procedures for the registration of persons for employment by county boards as registered service employees. As part of the rules, the director may establish continuing education and professional training requirements for renewal of certificates and evidence of registration and shall establish such requirements for renewal of an investigative agent certificate. In the rules, the director shall establish certification standards for employment in the position of investigative agent that require an individual to have or obtain no less than an associate degree from an accredited college or university or have or obtain comparable experience or training. The director shall not adopt rules that require any service employee to have or obtain a bachelor's or higher degree.

The director shall adopt the rules in a manner that provides for the issuance of certificates and evidence of registration according to categories, levels, and grades. The rules shall describe each category, level, and grade.

The rules adopted under this division shall apply to persons employed or seeking employment in a position that includes directly providing, or supervising persons who directly provide, services or instruction to or on behalf of individuals with mental retardation or developmental disabilities, except that the rules shall not apply to persons who hold a valid license issued under Chapter 3319. of the Revised Code and perform no duties other than teaching or supervision of a teaching program or persons who hold a valid license or certificate issued under Title XLVII of the Revised Code and perform only those duties governed by the license or certificate. The rules shall specify the positions that require certification or registration. The rules shall specify that the position of investigative agent requires certification.

(B) The director shall adopt rules in accordance with Chapter 119. of the Revised Code establishing standards for approval of courses of study to prepare persons to meet certification requirements. The director shall approve courses of study meeting the standards and provide for the

inspection of the courses to ensure the maintenance of satisfactory training procedures. The director shall approve courses of study only if given by a state university or college as defined in section 3345.32 of the Revised Code, a state university or college of another state, or an institution that has received a certificate of authorization to confer degrees from the board of regents pursuant to Chapter 1713. of the Revised Code or from a comparable agency of another state.

(C) Each applicant for a certificate for employment or evidence of registration for employment by a county board shall apply to the department of ~~mental retardation and~~ developmental disabilities on forms that the director of the department shall prescribe and provide. The application shall be accompanied by the application fee established in rules adopted under this section.

(D) The director shall issue a certificate for employment to each applicant who meets the standards for certification established under this section and shall issue evidence of registration for employment to each applicant who meets the standards for registration established under this section. Each certificate or evidence of registration shall state the category, level, and grade for which it is issued.

The director shall issue, renew, deny, suspend, or revoke certificates and evidence of registration in accordance with rules adopted under this section. The director shall deny, suspend, or revoke a certificate or evidence of registration if the director finds, pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code, that the applicant for or holder of the certificate or evidence of registration is guilty of intemperate, immoral, or other conduct unbecoming to the applicant's or holder's position, or is guilty of incompetence or negligence within the scope of the applicant's or holder's duties. The director shall deny or revoke a certificate or evidence of registration if the director finds, pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code, that the applicant for or holder of the certificate or evidence of registration has been convicted of or pleaded guilty to any of the offenses described in division (E) of section 5126.28 of the Revised Code, unless the individual meets standards for rehabilitation that the director establishes in the rules adopted under that section. Evidence supporting such allegations shall be presented to the director in writing and the director shall provide prompt notice of the allegations to the person who is the subject of the allegations. A denial, suspension, or revocation may be appealed in accordance with procedures the director shall establish in the rules adopted under this section.

(E)(1) A person holding a valid certificate under this section on the

effective date of any rules adopted under this section that increase certification standards shall have such period as the rules prescribe, but not less than one year after the effective date of the rules, to meet the new certification standards.

A person who is registered under this section on the effective date of any rule that changes the standards adopted under this section shall have such period as the rules prescribe, but not less than one year, to meet the new registration standards.

(2) If an applicant for a certificate for employment has not completed the courses of instruction necessary to meet the department's standards for certification, the department shall inform the applicant of the courses the applicant must successfully complete to meet the standards and shall specify the time within which the applicant must complete the courses. The department shall grant the applicant at least one year to complete the courses and shall not require the applicant to complete more than four courses in any one year. The applicant is not subject to any changes regarding the courses required for certification that are made after the department informs the applicant of the courses the applicant must complete, unless the applicant does not successfully complete the courses within the time specified by the department.

(F) A person who holds a certificate or evidence of registration, other than one designated as temporary, is qualified to be employed according to that certificate or evidence of registration by any county board.

(G) The director shall monitor county boards to ensure that their employees who must be certified or registered are appropriately certified or registered and performing those functions they are authorized to perform under their certificate or evidence of registration.

(H) A county board superintendent or the superintendent's designee may certify to the director that county board employees who are required to meet continuing education or professional training requirements as a condition of renewal of certificates or evidence of registration have met the requirements. The superintendent or the superintendent's designee shall maintain in appropriate personnel files evidence acceptable to the director that the employees have met the requirements and permit representatives of the department access to the evidence on request.

(I) All fees collected pursuant to this section shall be deposited in the state treasury to the credit of the program fee fund created under section 5123.033 of the Revised Code.

(J) Employees of entities that contract with county boards of ~~mental retardation~~ and developmental disabilities to operate programs and services

for individuals with mental retardation and developmental disabilities are subject to the certification and registration requirements established under section 5123.082 of the Revised Code.

Sec. 5126.251. On receipt of a notice pursuant to section 3123.43 of the Revised Code, the director of ~~mental retardation and~~ developmental disabilities shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a certificate or evidence of registration issued pursuant to this chapter.

Sec. 5126.252. Notwithstanding sections 5123.082, 5126.25, and 5126.26 of the Revised Code, the department of ~~mental retardation and~~ developmental disabilities may authorize county boards of ~~mental retardation and~~ developmental disabilities to establish and administer in their counties programs for the certification and registration of persons for employment by the boards. A certificate or evidence of registration issued by a board participating in programs under this section shall have the same force and effect as a certificate or evidence of registration issued by the department under section 5123.082 or 5126.25 of the Revised Code.

Sec. 5126.253. (A) As used in this section:

(1) "Conduct unbecoming to the teaching profession" shall be as described in rules adopted by the state board of education.

(2) "Intervention in lieu of conviction" means intervention in lieu of conviction under section 2951.041 of the Revised Code.

(3) "License" has the same meaning as in section 3319.31 of the Revised Code.

(4) "Pre-trial diversion program" means a pre-trial diversion program under section 2935.36 of the Revised Code or a similar diversion program under rules of a court.

(B) The superintendent of each county board of ~~mental retardation and~~ developmental disabilities or the president of the board, if division (C) of this section applies, shall promptly submit to the superintendent of public instruction the information prescribed in division (D) of this section when any of the following conditions applies to an employee of the board who holds a license issued by the state board of education:

(1) The superintendent or president knows that the employee has pleaded guilty to, has been found guilty by a jury or court of, has been convicted of, has been found to be eligible for intervention in lieu of conviction for, or has agreed to participate in a pre-trial diversion program for an offense described in division (B)(2) or (C) of section 3319.31 or division (B)(1) of section 3319.39 of the Revised Code.

(2) The board has initiated termination or nonrenewal proceedings against, has terminated, or has not renewed the contract of the employee because the board has reasonably determined that the employee has committed an act unbecoming to the teaching profession or an offense described in division (B)(2) or (C) of section 3319.31 or division (B)(1) of section 3319.39 of the Revised Code.

(3) The employee has resigned under threat of termination or nonrenewal as described in division (B)(2) of this section.

(4) The employee has resigned because of or in the course of an investigation by the board regarding whether the employee has committed an act unbecoming to the teaching profession or an offense described in division (B)(2) or (C) of section 3319.31 or division (B)(1) of section 3319.39 of the Revised Code.

(C) If the employee to whom any of the conditions prescribed in divisions (B)(1) to (4) of this section applies is the superintendent of a county board of ~~mental retardation and~~ developmental disabilities, the president of the board shall make the report required under this section.

(D) If a report is required under this section, the superintendent or president shall submit to the superintendent of public instruction the name and social security number of the employee about whom information is required and a factual statement regarding any of the conditions prescribed in divisions (B)(1) to (4) of this section that applies to the employee.

(E) A determination made by the board as described in division (B)(2) of this section or a termination, nonrenewal, resignation, or other separation described in divisions (B)(2) to (4) of this section does not create a presumption of the commission or lack of the commission by the employee of an act unbecoming to the teaching profession or an offense described in division (B)(2) or (C) of section 3319.31 or division (B)(1) of section 3319.39 of the Revised Code.

(F) No individual required to submit a report under division (B) of this section shall knowingly fail to comply with that division.

(G) An individual who provides information to the superintendent of public instruction in accordance with this section in good faith shall be immune from any civil liability that otherwise might be incurred or imposed for injury, death, or loss to person or property as a result of the provision of that information.

Sec. 5126.254. The superintendent of each county board of ~~mental retardation and~~ developmental disabilities shall require that the reports of any investigation by the board of an employee regarding whether the employee has committed an act or offense for which the superintendent is

required to make a report to the superintendent of public instruction under section 5126.253 of the Revised Code be kept in the employee's personnel file. If, after an investigation under division (A) of section 3319.311 of the Revised Code, the superintendent of public instruction determines that the results of that investigation do not warrant initiating action under section 3319.31 of the Revised Code, the superintendent of the county board shall require the reports of the board's investigation to be moved from the employee's personnel file to a separate public file.

Sec. 5126.26. Except as otherwise provided in this section and section 5126.27 of the Revised Code, no person shall be employed or compensated by a county board of ~~mental retardation and~~ developmental disabilities if ~~he~~ the person does not hold the certificate, evidence of registration, or license required for the position under the rules of the department or the department of education, but the superintendent of a county board may employ, and the board shall compensate, a person pending the issuance of an initial certificate or registration if ~~he~~ the person meets the requirements for certification or registration, ~~he~~ the person has applied for certification or registration, and the application has not been denied. A person's employment shall be terminated if a required license, certificate, or registration is denied, permanently revoked, or not renewed.

Sec. 5126.27. (A) A county board of ~~mental retardation and~~ developmental disabilities shall allow a professional employee hired by the board prior to July 17, 1990, who does not meet the standards for certification established under section 5126.25 of the Revised Code for the position he holds on July 17, 1990, to elect to do one of the following:

(1) Accept a position with the board, if such a position is available, for which ~~he~~ the employee meets the certification standards;

(2) Remain in the position ~~he~~ the employee holds on July 17, 1990, and comply with the provisions of a professional development plan prescribed by the director of ~~mental retardation and~~ developmental disabilities under division (B) of this section.

If the employee accepts a position under division (A)(1) of this section, ~~his~~ the employee's compensation shall be not less than the compensation ~~he~~ the employee received in the position ~~he~~ the employee held on July 17, 1990.

(B) If an employee elects the option described in division (A)(2) of this section, the board shall notify the department. The director shall issue a temporary certificate to the employee for the position ~~he~~ the employee holds and develop a professional development plan for ~~him~~ the employee. The temporary certificate shall be valid only during the period required for

completion of the professional development plan and only while the employee is employed by the board by which ~~he~~ the employee was employed on July 17, 1990. The plan shall specify the coursework the employee must successfully complete and any other requirements for certification and the schedule for completion of the plan, except:

(1) The plan shall not require that the employee complete more than six semester hours, or the equivalent, of coursework in any twelve-month period;

(2) All coursework must be completed at an accredited college or university recognized by the department;

(3) The plan shall not require the employee to complete more than sixty semester hours, or the equivalent, of coursework, or to obtain a bachelor's or higher degree if a greater number of hours of coursework would be required to do so.

Notwithstanding any standards for certification established by the director under section 5126.25 of the Revised Code, if the employee successfully completes the professional development plan within the time specified, the director shall grant ~~him~~ the employee the appropriate certificate for the position ~~he~~ the employer holds.

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

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

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

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

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

If the applicant does not present proof that the applicant has been a

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

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

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

(D) A county board superintendent may request any other state or federal agency to supply the board with a written report regarding the criminal record of each applicant. With regard to an applicant who becomes a board employee, if the employee holds an occupational or professional license or other credentials, the superintendent may request that the state or federal agency that regulates the employee's occupation or profession supply

the board with a written report of any information pertaining to the employee's criminal record that the agency obtains in the course of conducting an investigation or in the process of renewing the employee's license or other credentials.

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

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

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

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

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

(F) Prior to employing an applicant, the county board superintendent shall require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of this

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

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

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

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

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

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

section, the board shall pay the amount specified in section 4509.05 of the Revised Code.

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

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

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

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

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

Sec. 5126.281. (A) As used in this section:

(1) "Contracting entity" means an entity under contract with a county

board of ~~mental retardation and~~ developmental disabilities for the provision of specialized services to individuals with mental retardation or a developmental disability.

(2) "Direct services position" means an employment position in which the employee has physical contact with, the opportunity to be alone with, or exercises supervision or control over one or more individuals with mental retardation or a developmental disability.

(3) "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. If there is a question as to whether a contracting entity is providing specialized services, the contracting entity may request that the director of ~~mental retardation and~~ developmental disabilities make a determination. The director's determination is final.

(B)(1) Except as provided in division (B)(2) of this section, each contracting entity shall conduct background investigations in the same manner county boards conduct investigations under section 5126.28 of the Revised Code of all persons under final consideration for employment with the contracting entity in a direct services position. On request, the county board shall assist a contracting entity in obtaining reports from the bureau of criminal identification and investigation or any other state or federal agency and in obtaining abstracts from the registrar of motor vehicles.

(2) A contracting entity is not required to request a criminal records check for either of the following:

(a) An employee of the entity who is in a direct services position and being considered for a different direct services position or is returning after a leave of absence or seasonal break in employment, as long as the contracting entity has no reason to believe that the employee has committed any of the offenses listed or described in division (E) of section 5126.28 of the Revised Code;

(b) A person who will provide only respite care under a family support services program established under section 5126.11 of the Revised Code, if the person is selected by a family member of the individual with mental retardation or a developmental disability who is to receive the respite care.

(C) No contracting entity shall place a person in a direct services position if the person has been convicted of or pleaded guilty to any offense listed or described in division (E) of section 5126.28 of the Revised Code, unless the person meets the standards for rehabilitation established by rules adopted under section 5126.28 of the Revised Code.

(D) A contracting entity may place a person in a direct services position pending receipt of information concerning the person's background investigation from the bureau of criminal identification and investigation, the registrar of motor vehicles, or any other state or federal agency if the person submits to the contracting entity a statement with the person's signature that the person has not been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of section 5126.28 of the Revised Code. No contracting entity shall fail to terminate the placement of such person if the contracting entity is informed that the person has been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of section 5126.28 of the Revised Code.

(E) Prior to employing a person in a direct services position, the contracting entity shall require the person to submit a statement with the applicant's signature attesting that the applicant has not been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of section 5126.28 of the Revised Code. The contracting entity also shall require the person to sign an agreement to notify the contracting entity within fourteen calendar days if, while employed by the entity, the person is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed or described in division (E) of section 5126.28 of the Revised Code. The agreement shall inform the person that failure to report formal charges, a conviction, or a guilty plea may result in being dismissed from employment.

(F) A county board may take appropriate action against a contracting entity that violates this section, including terminating the contracting entity's contract with the board.

Sec. 5126.29. (A) No professional or management employee in a position that requires a license issued by the state board of education under sections 3319.22 to 3319.31 of the Revised Code or a certificate issued by the director of ~~mental retardation and~~ developmental disabilities under section 5126.25 of the Revised Code shall terminate the employee's employment contract with a county board of ~~mental retardation and~~ developmental disabilities without obtaining the written consent of the board prior to the termination or giving the board written notice of the termination at least thirty days before its effective date.

(B) Upon complaint by a county board of ~~mental retardation and~~ developmental disabilities that a person holding a license issued under sections 3319.22 to 3319.31 of the Revised Code has violated division (A) of this section, the state board of education shall investigate the complaint. If the state board determines that the person did violate division (A) of this

section, it may suspend the person's license for a period of time not exceeding one year as determined by the state board.

(C) Upon complaint by a county board of ~~mental retardation and~~ developmental disabilities that a person holding a certificate issued under section 5126.25 of the Revised Code has violated division (A) of this section, the director of ~~mental retardation and~~ developmental disabilities shall investigate the complaint. If the director determines that the person did violate division (A) of this section, the director may suspend the person's certificate for a period of time not exceeding one year as determined by the director.

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

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

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

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

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

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

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

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

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

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

neglect, or exploitation.

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

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

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

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

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

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

(M) "Board" means a county board of ~~mental retardation and~~ developmental disabilities.

Sec. 5126.31. (A) A county board of ~~mental retardation and~~ developmental disabilities shall review reports of abuse and neglect made under section 5123.61 of the Revised Code and reports referred to it under section 5101.611 of the Revised Code to determine whether the person who is the subject of the report is an adult with mental retardation or a developmental disability in need of services to deal with the abuse or neglect. The board shall give notice of each report to the registry office of the department of ~~mental retardation and~~ developmental disabilities established pursuant to section 5123.61 of the Revised Code on the first working day after receipt of the report. If the report alleges that there is a substantial risk to the adult of immediate physical harm or death, the board shall initiate review within twenty-four hours of its receipt of the report. If the board determines that the person is sixty years of age or older but does not have mental retardation or a developmental disability, it shall refer the case to the county department of job and family services. If the board determines that the person is an adult with mental retardation or a developmental disability, it shall continue its review of the case.

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

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

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

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

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

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

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

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

To arrange services, the board shall:

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

(2) In accordance with rules established by the director of ~~mental retardation~~ and developmental disabilities, obtain the consent of the adult or the adult's guardian to the provision of any of these services and obtain the signature of the adult or guardian on the individual service plan. An adult who has been found incompetent under Chapter 2111. of the Revised Code may consent to services. If the board is unable to obtain consent, it may seek, if the adult is incapacitated, a court order pursuant to section 5126.33 of the Revised Code authorizing the board to arrange these services.

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

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

Sec. 5126.311. (A) Notwithstanding the requirement of section 5126.31 of the Revised Code that a county board of ~~mental retardation and~~ developmental disabilities review reports of abuse and neglect, one of the following government entities, at the request of the county board or the department of ~~mental retardation and~~ developmental disabilities, shall review the report instead of the county board if circumstances specified in rules adopted under division (B) of this section exist:

- (1) Another county board of ~~mental retardation and~~ developmental disabilities;
- (2) The department;
- (3) A regional council of government established pursuant to Chapter 167. of the Revised Code;
- (4) Any other government entity authorized to investigate reports of abuse and neglect.

(B) The director of ~~mental retardation and~~ developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code specifying circumstances under which it is inappropriate for a county board to review reports of abuse and neglect.

Sec. 5126.313. (A) After reviewing a report of abuse or neglect under section 5126.31 of the Revised Code or a report of a major unusual incident made in accordance with rules adopted under section 5123.612 of the Revised Code, a county board of ~~mental retardation and~~ developmental disabilities shall conduct an investigation if circumstances specified in rules adopted under division (B) of this section exist. If the circumstances specified in the rules exist, the county board shall conduct the investigation in the manner specified by the rules.

(B) The director of ~~mental retardation and~~ developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code specifying circumstances under which a county board shall conduct

investigations under division (A) of this section and the manner in which the county board shall conduct the investigation.

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

- (1) The name, age, and address of the adult;
- (2) Facts describing the nature of the abuse, neglect, or exploitation and supporting the board's belief that services are needed;
- (3) The types of services proposed by the board, as set forth in the protective service plan described in division (J) of section 5126.30 of the Revised Code and filed with the complaint;
- (4) Facts showing the board's attempts to obtain the consent of the adult or the adult's guardian to the services.

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

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

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

- (a) The adult has been abused, neglected, or exploited;
- (b) The adult is incapacitated;
- (c) There is a substantial risk to the adult of immediate physical harm or death;
- (d) The adult is in need of the services;
- (e) No person authorized by law or court order to give consent for the adult is available or willing to consent to the services.

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

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

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

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

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

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

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

(a) A temporary protection order;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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.

(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.

(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.

(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.

Sec. 5126.333. Any person who has reason to believe that there is a substantial risk to an adult with mental retardation or a developmental disability of immediate physical harm or death and that the responsible

county board of ~~mental retardation and~~ developmental disabilities has failed to seek an order pursuant to section 5126.33 or 5126.331 of the Revised Code may notify the department of ~~mental retardation and~~ developmental disabilities. Within twenty-four hours of receipt of such notice, the department shall cause an investigation to be conducted regarding the notice. The department shall provide assistance to the county board to provide for the health and safety of the adult as permitted by law.

Sec. 5126.34. Each county board of ~~mental retardation and~~ developmental disabilities shall provide comprehensive, formal training for county board employees and other persons authorized to implement sections 5126.30 to 5126.34 of the Revised Code.

The department of ~~mental retardation and~~ developmental disabilities shall adopt rules establishing minimum standards for the training provided by county boards pursuant to this section. The training provided by the county boards shall meet the minimum standards prescribed by the rules.

Sec. 5126.36. (A) As used in this section, "health-related activities," "prescribed medication," and "tube feeding" have the same meanings as in section 5123.41 of the Revised Code.

(B) In accordance with sections 5123.42 and 5123.651 of the Revised Code, an employee of a county board of ~~mental retardation or~~ developmental disabilities or an entity under contract with the board who is not specifically authorized by other provisions of the Revised Code to administer prescribed medications, perform health-related activities, perform tube feedings, or provide assistance in the self-administration of prescribed medications may do so pursuant to the authority granted under those sections.

Sec. 5126.40. (A) Sections 5126.40 to 5126.47 of the Revised Code do not apply to medicaid-funded supported living.

(B) As used in sections 5126.40 to 5126.47 of the Revised Code, "provider" means a person or government entity certified by the director of ~~mental retardation and~~ developmental disabilities to provide supported living for individuals with mental retardation and developmental disabilities.

(C) On and after July 1, 1995, each county board shall plan and develop supported living for individuals with mental retardation and developmental disabilities who are residents of the county in accordance with sections 5126.41 to 5126.47 of the Revised Code.

Sec. 5126.41. The county board of ~~mental retardation and~~ developmental disabilities shall identify residents of the county for whom supported living is to be provided. Identification of the residents shall be made in accordance with the priorities set under section 5126.04 of the

Revised Code and the waiting list policies developed under section 5126.042 of the Revised Code. The board shall assist the residents in identifying their individual service needs.

To arrange supported living for an individual, the board shall assist the individual in developing an individual service plan. In developing the plan, the individual shall choose a residence that is appropriate according to local standards; the individuals, if any, with whom the individual will live in the residence; the services the individual needs to live in the individual's residence of choice; and the providers from which the services will be received. The choices available to an individual shall be based on available resources.

The board shall obtain the consent of the individual or the individual's guardian and the signature of the individual or guardian on the individual service plan. The county board shall ensure that the individual receives from the provider the services contracted for under section 5126.45 of the Revised Code.

An individual service plan for supported living shall be effective for a period of time agreed to by the county board and the individual. In determining that period, the county board and the individual shall consider the nature of the services to be provided and the manner in which they are customarily provided.

Sec. 5126.42. (A) A county board of ~~mental retardation and~~ developmental disabilities shall establish an advisory council composed of board members or employees of the board, providers, individuals receiving supported living, and advocates for individuals receiving supported living to provide on-going communication among all persons concerned with supported living.

(B) The board shall develop procedures for the resolution of grievances between the board and providers or between the board and an entity with which it has a shared funding agreement.

(C) The board shall develop and implement a provider selection system. Each system shall enable an individual to choose to continue receiving supported living from the same providers, to select additional providers, or to choose alternative providers. Annually, the board shall review its provider selection system to determine whether it has been implemented in a manner that allows individuals fair and equitable access to providers.

In developing a provider selection system, the county board shall create a pool of providers for individuals to use in choosing their providers of supported living. The pool shall be created by placing in the pool all providers on record with the board or by placing in the pool all providers

approved by the board through soliciting requests for proposals for supported living contracts. In either case, only providers that are certified by the director of ~~mental retardation and~~ developmental disabilities may be placed in the pool.

If the board places all providers on record in the pool, the board shall review the pool at least annually to determine whether each provider has continued interest in being a provider and has maintained its certification by the department. At any time, an interested and certified provider may make a request to the board that it be added to the pool, and the board shall add the provider to the pool not later than seven days after receiving the request.

If the board solicits requests for proposals for inclusion of providers in the pool, the board shall develop standards for selecting the providers to be included. Requests for proposals shall be solicited at least annually. When requests are solicited, the board shall cause legal notices to be published at least once each week for two consecutive weeks in a newspaper with general circulation within the county. The board's formal request for proposals shall include a description of any applicable contract terms, the standards that are used to select providers for inclusion in the pool, and the process the board uses to resolve disputes arising from the selection process. The board shall accept requests from any entity interested in being a provider of supported living for individuals served by the board. Requests shall be approved or denied according to the standards developed by the board. Providers that previously have been placed in the pool are not required to resubmit a request for proposal to be included in the pool, unless the board's standards have been changed.

In assisting an individual in choosing a provider, the county board shall provide the individual with uniform and consistent information pertaining to each provider in the pool. An individual may choose to receive supported living from a provider that is not included in the pool, if the provider is certified by the director of ~~mental retardation and~~ developmental disabilities.

Sec. 5126.43. (A) After receiving notice from the department of ~~mental retardation and~~ developmental disabilities of the amount of state funds to be distributed to it for planning, developing, contracting for, and providing supported living, the county board of ~~mental retardation and~~ developmental disabilities shall arrange for supported living on behalf of and with the consent of individuals based on their individual service plans developed under section 5126.41 of the Revised Code. With the state distribution and any other money designated by the board for supported living, the board shall arrange for supported living in one or more of the following ways:

- (1) By contracting under section 5126.45 of the Revised Code with

providers selected by the individual to be served;

(2) By entering into shared funding agreements with state agencies, local public agencies, or political subdivisions at rates negotiated by the board;

(3) By providing direct payment or vouchers to be used to purchase supported living, pursuant to a written contract in an amount determined by the board, to the individual or a person providing the individual with protective services as defined in section 5123.55 of the Revised Code.

(B) The board may arrange for supported living only with providers that are certified by the director of ~~mental retardation and~~ developmental disabilities.

When no certified provider is willing and able to provide supported living for an individual in accordance with the terms of the individual service plan for that individual, a county board may provide supported living directly if it is certified by the director of ~~mental retardation and~~ developmental disabilities to provide supported living.

A county board may, for a period not to exceed ninety days, contract for or provide supported living without meeting the requirements of this section for an individual it determines to be in emergency need of supported living. Thereafter, the individual shall choose providers in accordance with sections 5126.41 and 5126.42 of the Revised Code.

Sec. 5126.45. (A) A contract between a county board of ~~mental retardation and~~ developmental disabilities and a provider of supported living shall be in writing and shall be based on the individual service plan developed by the individual under section 5126.41 of the Revised Code. The plan may be submitted as an addendum to the contract. An individual receiving services pursuant to a contract shall be considered a third-party beneficiary to the contract.

(B) The contract shall be negotiated between the provider and the county board. The terms of the contract shall include at least the following:

- (1) The contract period and conditions for renewal;
- (2) The services to be provided pursuant to the individual service plan;
- (3) The rights and responsibilities of all parties to the contract;
- (4) The methods that will be used to evaluate the services delivered by the provider;
- (5) Procedures for contract modification that ensure all parties affected by the modification are involved and agree;
- (6) A process for resolving conflicts between individuals receiving services, the county board, and the provider, as applicable;
- (7) Procedures for the retention of applicable records;

(8) Provisions for contract termination by any party involved that include requirements for an appropriate notice of intent to terminate the contract;

(9) Methods to be used to document services provided;

(10) Procedures for submitting reports required by the county board as a condition of receiving payment under the contract;

(11) The method and schedule the board will use to make payments to the provider and whether periodic payment adjustments will be made to the provider;

(12) Provisions for conducting fiscal reconciliations for payments made through methods other than a fee-for-service arrangement.

(C) Payments to the provider under a supported living contract must be determined by the board to be reasonable in accordance with policies and procedures developed by the board. Goods or services provided without charge to the provider shall not be included as expenditures of the provider.

(D) The board shall establish procedures for reconciling expenditures and payments, other than those made under a fee-for-service arrangement, for the prior contract year when a contract is not renewed and shall reconcile expenditures and payments in accordance with these procedures.

(E) A provider or an entity with which the board has entered into a shared funding agreement may appeal a negotiated contract or proposed shared funding rate to the county board using the procedures established by the board under section 5126.42 of the Revised Code.

Sec. 5126.46. (A) No county board of ~~mental retardation and~~ developmental disabilities shall be obligated to use any money other than money in the community ~~mental retardation and~~ developmental disabilities residential services fund to furnish residential services.

(B) Except with respect to a child required to be provided services pursuant to section 121.38 of the Revised Code, no court or other entity of state or local government shall order or otherwise require a county board of ~~mental retardation and~~ developmental disabilities to use money from local sources for residential services for an individual with mental retardation or developmental disabilities or to arrange for residential services for such an individual unless a vacancy exists in an appropriate residential setting within the county.

Sec. 5126.47. A county board of ~~mental retardation and~~ developmental disabilities may, pursuant to a resolution adopted by an affirmative vote of the majority of its members, establish, by agreement with one or more other county boards of ~~mental retardation and~~ developmental disabilities, a residential services consortium to jointly provide residential services and

supported living. The agreement shall designate one board to assume the fiscal responsibilities for the consortium. The county auditor of the designated county shall establish a community ~~mental retardation and~~ developmental disabilities residential services fund for the consortium. Each board that is a member of the consortium shall cause to be deposited in the fund any state or federal money received for community residential services the county board has agreed to contribute to the consortium.

Sec. 5126.49. The county board of ~~mental retardation and~~ developmental disabilities may adopt a resolution requesting the board of county commissioners to implement a residential facility linked deposit program under sections 5126.51 to 5126.62 of the Revised Code if the county board of ~~mental retardation and~~ developmental disabilities finds all of the following:

(A) There is a shortage of residential facilities in the county for individuals with mental retardation or developmental disabilities.

(B) Eligible organizations, otherwise willing and able to develop residential facilities in the county, have been unable to do so because of high interest rates.

(C) Placement of residential facility linked deposits will assist in financing the development of residential facilities in the county that otherwise would not be developed because of high interest rates.

The board shall transmit a certified copy of the resolution to the board of county commissioners.

Sec. 5126.50. If the board of county commissioners adopts a resolution under sections 135.801 and 135.802 of the Revised Code implementing a residential facility linked deposit program, the county board of ~~mental retardation and~~ developmental disabilities shall adopt a resolution that does all of the following:

(A) Establishes standards for its review of applications and its approval or disapproval of proposed residential facilities under section 5126.55 of the Revised Code;

(B) Prescribes the form of applications under section 5126.54 of the Revised Code;

(C) Establishes standards for approval or disapproval of applications for linked deposit loans under section 5126.58 of the Revised Code.

Sec. 5126.54. An eligible organization that seeks a residential facility linked deposit loan to finance all or part of the development of a residential facility shall obtain approval of the proposed project from the county board of ~~mental retardation and~~ developmental disabilities of the county in which the facility will be developed. The application shall be in the form

prescribed by the board and include all of the following:

- (A) The organization's name, business address, and telephone number;
- (B) The name of an officer or employee of the organization who may be contacted with regard to the application;
- (C) A description of the residential facility and a timetable showing the time at which each phase of its development is expected to be completed;
- (D) The amount of the loan to be applied for;
- (E) Any other information the board considers necessary to successfully review the application.

Whoever knowingly makes a false statement on an application is guilty of the offense of falsification under section 2921.13 of the Revised Code.

Sec. 5126.55. The county board of ~~mental retardation and~~ developmental disabilities shall review each application filed under section 5126.54 of the Revised Code and adopt a resolution approving or disapproving development of the proposed residential facility. The board shall not approve development of the proposed residential facility unless it finds, based upon the application and its evaluation of the applicant, that development of the residential facility is consistent with its plan and priorities, under section 5126.05 of the Revised Code, for the provision of residential facilities for individuals with mental retardation or developmental disabilities residing in the county.

The resolution shall include specific findings of fact justifying the approval or disapproval.

The board shall transmit a certified copy of the resolution to the applicant and to the board of county commissioners.

Sec. 5126.57. In reviewing an application for a residential facility linked deposit loan, the eligible lending institution shall apply the same lending standards as it customarily applies to applications for loans for the development of residential property. The lending institution shall either approve or disapprove an application for a residential facility linked deposit loan within a reasonable time, in accordance with commercial practice.

If the lending institution approves an application, it shall prepare and transmit each of the following to the county board of ~~mental retardation and~~ developmental disabilities:

- (A) A certification that it is an eligible lending institution;
- (B) A statement that it has approved a residential facility linked deposit loan to the eligible organization and the amount of the loan;
- (C) A copy of the eligible organization's loan application and a copy of the resolution of the eligible organization's board of trustees included with the loan application;

(D) Any other information the board of county commissioners requires in the resolution adopted under sections 135.801 and 135.802 of the Revised Code.

If the lending institution does not approve an application for a residential facility linked deposit loan, it shall promptly notify the county board of ~~mental retardation and~~ developmental disabilities of such disapproval.

Sec. 5126.58. The county board of ~~mental retardation and~~ developmental disabilities shall adopt a resolution approving or disapproving an eligible organization's application for a residential facility linked deposit loan. The board shall disapprove an application unless it finds, based on the application and its evaluation of the applicant, each of the following:

(A) The applicant has fully complied with sections 5126.54 and 5126.56 of the Revised Code.

(B) Development of the residential facility will materially contribute to alleviating the shortage of residential facilities in the county for individuals with mental retardation or developmental disabilities.

(C) The applicant is ready to proceed with development of the residential facility, but is unable to do so because of high interest rates.

(D) The board of county commissioners has certified that public moneys of the county are currently available for placement of the residential facility linked deposit necessary to provide low-cost financing to the applicant.

(E) Placement of the residential facility linked deposit, considered in the aggregate with all other residential facility linked deposits under the county's residential facility linked deposit program, will not cause the total amount of the county's residential facility linked deposits to exceed an amount equal to ten per cent of the operating budget of the county board of ~~mental retardation and~~ developmental disabilities for the current year. If placement of the residential facility linked deposit would cause the total amount of the county's residential facility linked deposits to exceed the maximum established by this division, the board may accept the application but limit the amount of the residential facility linked deposit accordingly.

The resolution shall include specific findings of fact justifying acceptance or rejection of the application. If the board accepts the application, it shall specify the amount of the residential facility linked deposit in the resolution.

The board shall transmit a certified copy of the resolution to the applicant, the eligible lending institution, and the county's investing authority.

Sec. 5126.59. On acceptance of a residential facility linked deposit loan by the county board of ~~mental retardation and~~ developmental disabilities, the county's investing authority shall enter into a residential facility linked deposit agreement with the eligible lending institution. The agreement shall include all of the following terms:

(A) An agreement by the investing authority to place certificates of deposit with the eligible lending institution, in the amount of the residential facility linked deposit specified in the resolution, at an interest rate of up to five per cent per year below current annual market rates, for a term considered appropriate by the investing authority, not to exceed five years, and to renew the certificates of deposit for up to four additional terms, each additional term not to exceed five years;

(B) An agreement by the eligible lending institution to lend the value of the certificates of deposit placed with the institution to the eligible organization at an annual interest rate that is the same number of percentage points below the annual borrowing rate currently applicable to similar loans as the annual interest rate agreed to for certificates of deposit placed pursuant to division (A) of this section is below current annual market rates;

(C) An agreement by the eligible lending institution to pay interest on the certificates of deposit at times determined by the investing authority;

(D) The form in which the eligible lending institution is to make the certification required by section 5126.60 of the Revised Code;

(E) Any other terms necessary to carry out the purpose of sections 5126.51 to 5126.62 of the Revised Code.

The agreement may contain terms specifying the period of time during which the eligible lending institution is to lend funds upon placement of the residential facility linked deposit.

The investing authority shall determine current market rates under the agreement.

Sec. 5126.61. The county investing authority shall monitor the compliance with sections 5126.51 to 5126.62 of the Revised Code of eligible lending institutions and eligible organizations receiving residential facility linked deposits and loans.

The investing authority shall annually report to the board of county commissioners and county board of ~~mental retardation and~~ developmental disabilities with regard to the operation of the county's residential facility linked deposit program. The report shall list the eligible organizations receiving residential facility linked deposit loans under the residential facility linked deposit program.

Sec. 5126.62. The county, board of county commissioners, county board

of ~~mental retardation and~~ developmental disabilities, and county investing authority are not liable to any eligible lending institution in any manner for payment of the principal or interest on a loan to an eligible organization. Delay in payment or default on the part of an eligible organization does not in any manner affect the residential facility linked deposit agreement between the county investing authority and the eligible lending institution.

Sec. 5126.99. (A) Whoever violates division (B) of section 5126.044 of the Revised Code is guilty of a misdemeanor of the first degree.

(B) Whoever violates division (F) of section 5126.253 of the Revised Code shall be punished as follows:

(1) Except as otherwise provided in division (B)(2) of this section, the person is guilty of a misdemeanor of the fourth degree.

(2) The person is guilty of a misdemeanor of the first degree if both of the following conditions apply:

(a) The employee who is the subject of the report that the person fails to submit was required to be reported for the commission or alleged commission of an act or offense involving the infliction on a child of any physical or mental wound, injury, disability, or condition of a nature that constitutes abuse or neglect of the child;

(b) During the period between the violation of division (F) of section 5126.253 of the Revised Code and the conviction of or plea of guilty by the person for that violation, the employee who is the subject of the report that the person fails to submit inflicts on any child attending a school district, educational service center, public or nonpublic school, or county board of ~~mental retardation and~~ developmental disabilities where the employee works any physical or mental wound, injury, disability, or condition of a nature that constitutes abuse or neglect of the child.

Sec. 5139.08. The department of youth services may enter into an agreement with the director of rehabilitation and correction pursuant to which the department of youth services, in accordance with division (C)(2) of section 5139.06 and section 5120.162 of the Revised Code, may transfer to a correctional medical center established by the department of rehabilitation and correction, children who are within its custody for diagnosis or treatment of an illness, physical condition, or other medical problem. The department of youth services may enter into any other agreements with the director of job and family services, the director of mental health, the director of ~~mental retardation and~~ developmental disabilities, the director of rehabilitation and correction, with the courts having probation officers or other public officials, and with private agencies or institutions for separate care or special treatment of children subject to the

control of the department of youth services. The department of youth services may, upon the request of a juvenile court not having a regular probation officer, provide probation services for such court.

Upon request by the department of youth services, any public agency or group care facility established or administered by the state for the care and treatment of children and youth shall, consistent with its functions, accept and care for any child whose custody is vested in the department in the same manner as it would be required to do if custody had been vested by a court in such agency or group care facility. If the department has reasonable grounds to believe that any child or youth whose custody is vested in it is mentally ill or mentally retarded, the department may file an affidavit under section 5122.11 or 5123.76 of the Revised Code. The department's affidavit for admission of a child or youth to such institution shall be filed with the probate court of the county from which the child was committed to the department. Such court may request the probate court of the county in which the child is held to conduct the hearing on the application, in which case the court making such request shall bear the expenses of the proceeding. If the department files such an affidavit, the child or youth may be kept in such institution until a final decision on the affidavit is made by the appropriate court.

Sec. 5139.34. (A) Funds may be appropriated to the department of youth services for the purpose of granting state subsidies to counties. A county or the juvenile court that serves a county shall use state subsidies granted to the county pursuant to this section only in accordance with divisions (B)(2)(a) and (3)(a) of section 5139.43 of the Revised Code and the rules pertaining to the state subsidy funds that the department adopts pursuant to division (D) of section 5139.04 of the Revised Code. The department shall not grant financial assistance pursuant to this section for the provision of care and services for children in a placement facility unless the facility has been certified, licensed, or approved by a state or national agency with certification, licensure, or approval authority, including, but not limited to, the department of job and family services, department of education, department of mental health, department of ~~mental retardation~~ and developmental disabilities, or American ~~Correctional Association~~ correctional association. For the purposes of this section, placement facilities do not include a state institution or a county or district children's home.

The department also shall not grant financial assistance pursuant to this section for the provision of care and services for children, including, but not limited to, care and services in a detention facility, in another facility, or in

out-of-home placement, unless the minimum standards applicable to the care and services that the department prescribes in rules adopted pursuant to division (D) of section 5139.04 of the Revised Code have been satisfied.

(B) The department of youth services shall apply the following formula to determine the amount of the annual grant that each county is to receive pursuant to division (A) of this section, subject to the appropriation for this purpose to the department made by the general assembly:

(1) Each county shall receive a basic annual grant of fifty thousand dollars.

(2) The sum of the basic annual grants provided under division (B)(1) of this section shall be subtracted from the total amount of funds appropriated to the department of youth services for the purpose of making grants pursuant to division (A) of this section to determine the remaining portion of the funds appropriated. The remaining portion of the funds appropriated shall be distributed on a per capita basis to each county that has a population of more than twenty-five thousand for that portion of the population of the county that exceeds twenty-five thousand.

(C)(1) Prior to a county's receipt of an annual grant pursuant to this section, the juvenile court that serves the county shall prepare, submit, and file in accordance with division (B)(3)(a) of section 5139.43 of the Revised Code an annual grant agreement and application for funding that is for the combined purposes of, and that satisfies the requirements of, this section and section 5139.43 of the Revised Code. In addition to the subject matters described in division (B)(3)(a) of section 5139.43 of the Revised Code or in the rules that the department adopts to implement that division, the annual grant agreement and application for funding shall address fiscal accountability and performance matters pertaining to the programs, care, and services that are specified in the agreement and application and for which state subsidy funds granted pursuant to this section will be used.

(2) The county treasurer of each county that receives an annual grant pursuant to this section shall deposit the state subsidy funds so received into the county's felony delinquent care and custody fund created pursuant to division (B)(1) of section 5139.43 of the Revised Code. Subject to exceptions prescribed in section 5139.43 of the Revised Code that may apply to the disbursement, the department shall disburse the state subsidy funds to which a county is entitled in a lump sum payment that shall be made in July of each calendar year.

(3) Upon an order of the juvenile court that serves a county and subject to appropriation by the board of county commissioners of that county, a county treasurer shall disburse from the county's felony delinquent care and

custody fund the state subsidy funds granted to the county pursuant to this section for use only in accordance with this section, the applicable provisions of section 5139.43 of the Revised Code, and the county's approved annual grant agreement and application for funding.

(4) The moneys in a county's felony delinquent care and custody fund that represent state subsidy funds granted pursuant to this section are subject to appropriation by the board of county commissioners of the county; shall be disbursed by the county treasurer as required by division (C)(3) of this section; shall be used in the manners referred to in division (C)(3) of this section; shall not revert to the county general fund at the end of any fiscal year; shall carry over in the felony delinquent care and custody fund from the end of any fiscal year to the next fiscal year; shall be in addition to, and shall not be used to reduce, any usual annual increase in county funding that the juvenile court is eligible to receive or the current level of county funding of the juvenile court and of any programs, care, or services for alleged or adjudicated delinquent children, unruly children, or juvenile traffic offenders or for children who are at risk of becoming delinquent children, unruly children, or juvenile traffic offenders; and shall not be used to pay for the care and custody of felony delinquents who are in the care and custody of an institution pursuant to a commitment, recommitment, or revocation of a release on parole by the juvenile court of that county or who are in the care and custody of a community corrections facility pursuant to a placement by the department with the consent of the juvenile court as described in division (E) of section 5139.36 of the Revised Code.

(5) As a condition of the continued receipt of state subsidy funds pursuant to this section, each county and the juvenile court that serves each county that receives an annual grant pursuant to this section shall comply with divisions (B)(3)(b), (c), and (d) of section 5139.43 of the Revised Code.

Sec. 5145.18. Any printing or binding performed in a state correctional institution may be performed for the use of the institution, the departments of mental health, ~~mental retardation~~ and developmental disabilities, and rehabilitation and correction, the department of public safety in connection with the registration of motor vehicles, and for any other purpose authorized by division (B) of section 5145.03 and by sections 5145.16 and 5145.161 of the Revised Code.

Sec. 5153.16. (A) Except as provided in section 2151.422 of the Revised Code, in accordance with rules adopted under section 5153.166 of the Revised Code, and on behalf of children in the county whom the public children services agency considers to be in need of public care or protective

services, the public children services agency shall do all of the following:

(1) Make an investigation concerning any child alleged to be an abused, neglected, or dependent child;

(2) Enter into agreements with the parent, guardian, or other person having legal custody of any child, or with the department of job and family services, department of mental health, department of ~~mental retardation and~~ developmental disabilities, other department, any certified organization within or outside the county, or any agency or institution outside the state, having legal custody of any child, with respect to the custody, care, or placement of any child, or with respect to any matter, in the interests of the child, provided the permanent custody of a child shall not be transferred by a parent to the public children services agency without the consent of the juvenile court;

(3) Accept custody of children committed to the public children services agency by a court exercising juvenile jurisdiction;

(4) Provide such care as the public children services agency considers to be in the best interests of any child adjudicated to be an abused, neglected, or dependent child the agency finds to be in need of public care or service;

(5) Provide social services to any unmarried girl adjudicated to be an abused, neglected, or dependent child who is pregnant with or has been delivered of a child;

(6) Make available to the bureau for children with medical handicaps of the department of health at its request any information concerning a crippled child found to be in need of treatment under sections 3701.021 to 3701.028 of the Revised Code who is receiving services from the public children services agency;

(7) Provide temporary emergency care for any child considered by the public children services agency to be in need of such care, without agreement or commitment;

(8) Find certified foster homes, within or outside the county, for the care of children, including handicapped children from other counties attending special schools in the county;

(9) Subject to the approval of the board of county commissioners and the state department of job and family services, establish and operate a training school or enter into an agreement with any municipal corporation or other political subdivision of the county respecting the operation, acquisition, or maintenance of any children's home, training school, or other institution for the care of children maintained by such municipal corporation or political subdivision;

(10) Acquire and operate a county children's home, establish, maintain,

and operate a receiving home for the temporary care of children, or procure certified foster homes for this purpose;

(11) Enter into an agreement with the trustees of any district children's home, respecting the operation of the district children's home in cooperation with the other county boards in the district;

(12) Cooperate with, make its services available to, and act as the agent of persons, courts, the department of job and family services, the department of health, and other organizations within and outside the state, in matters relating to the welfare of children, except that the public children services agency shall not be required to provide supervision of or other services related to the exercise of parenting time rights granted pursuant to section 3109.051 or 3109.12 of the Revised Code or companionship or visitation rights granted pursuant to section 3109.051, 3109.11, or 3109.12 of the Revised Code unless a juvenile court, pursuant to Chapter 2151. of the Revised Code, or a common pleas court, pursuant to division (E)(6) of section 3113.31 of the Revised Code, requires the provision of supervision or other services related to the exercise of the parenting time rights or companionship or visitation rights;

(13) Make investigations at the request of any superintendent of schools in the county or the principal of any school concerning the application of any child adjudicated to be an abused, neglected, or dependent child for release from school, where such service is not provided through a school attendance department;

(14) Administer funds provided under Title IV-E of the "Social Security Act," 94 Stat. 501 (1980), 42 U.S.C.A. 671, as amended, in accordance with rules adopted under section 5101.141 of the Revised Code;

(15) In addition to administering Title IV-E adoption assistance funds, enter into agreements to make adoption assistance payments under section 5153.163 of the Revised Code;

(16) Implement a system of safety and risk assessment, in accordance with rules adopted by the director of job and family services, to assist the public children services agency in determining the risk of abuse or neglect to a child;

(17) Enter into a plan of cooperation with the board of county commissioners under section 307.983 of the Revised Code and comply with each fiscal agreement the board enters into under section 307.98 of the Revised Code that include family services duties of public children services agencies and contracts the board enters into under sections 307.981 and 307.982 of the Revised Code that affect the public children services agency;

(18) Make reasonable efforts to prevent the removal of an alleged or

adjudicated abused, neglected, or dependent child from the child's home, eliminate the continued removal of the child from the child's home, or make it possible for the child to return home safely, except that reasonable efforts of that nature are not required when a court has made a determination under division (A)(2) of section 2151.419 of the Revised Code;

(19) Make reasonable efforts to place the child in a timely manner in accordance with the permanency plan approved under division (E) of section 2151.417 of the Revised Code and to complete whatever steps are necessary to finalize the permanent placement of the child;

(20) Administer a Title IV-A program identified under division (A)(4)(c) or (f) of section 5101.80 of the Revised Code that the department of job and family services provides for the public children services agency to administer under the department's supervision pursuant to section 5101.801 of the Revised Code;

(21) Administer the kinship permanency incentive program created under section 5101.802 of the Revised Code under the supervision of the director of job and family services;

(22) Provide independent living services pursuant to sections 2151.81 to 2151.84 of the Revised Code.

(B) The public children services agency shall use the system implemented pursuant to division (A)(16) of this section in connection with an investigation undertaken pursuant to division (F)(1) of section 2151.421 of the Revised Code to assess both of the following:

(1) The ongoing safety of the child;

(2) The appropriateness of the intensity and duration of the services provided to meet child and family needs throughout the duration of a case.

(C) Except as provided in section 2151.422 of the Revised Code, in accordance with rules of the director of job and family services, and on behalf of children in the county whom the public children services agency considers to be in need of public care or protective services, the public children services agency may do the following:

(1) Provide or find, with other child serving systems, specialized foster care for the care of children in a specialized foster home, as defined in section 5103.02 of the Revised Code, certified under section 5103.03 of the Revised Code;

(2)(a) Except as limited by divisions (C)(2)(b) and (c) of this section, contract with the following for the purpose of assisting the agency with its duties:

(i) County departments of job and family services;

(ii) Boards of alcohol, drug addiction, and mental health services;

(iii) County boards of ~~mental retardation and~~ developmental disabilities;  
(iv) Regional councils of political subdivisions established under Chapter 167. of the Revised Code;

(v) Private and government providers of services;

(vi) Managed care organizations and prepaid health plans.

(b) A public children services agency contract under division (C)(2)(a) of this section regarding the agency's duties under section 2151.421 of the Revised Code may not provide for the entity under contract with the agency to perform any service not authorized by the department's rules.

(c) Only a county children services board appointed under section 5153.03 of the Revised Code that is a public children services agency may contract under division (C)(2)(a) of this section. If an entity specified in division (B) or (C) of section 5153.02 of the Revised Code is the public children services agency for a county, the board of county commissioners may enter into contracts pursuant to section 307.982 of the Revised Code regarding the agency's duties.

Sec. 5153.99. Whoever violates division (F) of section 5153.176 of the Revised Code shall be punished as follows:

(A) Except as otherwise provided in division (B) of this section, the person is guilty of a misdemeanor of the fourth degree.

(B) The person is guilty of a misdemeanor of the first degree if, during the period between the violation and the conviction of or plea of guilty by the person for that violation, the license holder who is the subject of the investigation about which the person fails to provide information inflicts on any child attending a school district, educational service center, public or nonpublic school, or county board of ~~mental retardation and~~ developmental disabilities where the license holder works any physical or mental wound, injury, disability, or condition of a nature that constitutes abuse or neglect of the child.

Sec. 5511.03. The director of transportation shall examine the existing highway facilities serving the several hospitals, educational institutions, and correctional and other similar institutions belonging to the state, and located outside municipal corporations. Where ~~he~~ the director finds that any such state institution is not located on a state highway or connected with a highway by a suitable road, affording in its present condition adequate transportation facilities to those having occasion to visit such institution, ~~he~~ the director may establish a state highway leading to such institution from a convenient point on an existing highway. Where ~~he~~ the director finds that any such institution is not served by adequate highway facilities connecting it with the railroad delivery point from which it principally obtains fuel,

provisions, and supplies, ~~he~~ the director may establish a highway connecting such institution and railroad delivery point. Limitations imposed on the mileage of state highways shall not apply to highways established under this section.

The director may construct at state expense all highways established under authority of this section and pay the entire cost thereof from the state highway operating fund. Such highways shall be maintained by the department of transportation and the cost shall be paid from the highway operating fund of the department.

The directors of transportation, mental health, ~~mental retardation and~~ developmental disabilities, and rehabilitation and correction may cooperate in the establishment, construction, reconstruction, maintenance, and repair of roads within the limits of state institutions. The cost shall be paid from funds appropriated for highway purposes and from the funds appropriated to the department of mental health, department of ~~mental retardation and~~ developmental disabilities, or the department of rehabilitation and correction for capital improvements or maintenance in such proportion as may be agreed upon by the directors of transportation, mental health, ~~mental retardation and~~ developmental disabilities, and rehabilitation and correction.

Sec. 5543.011. A county engineer may sell directly to a county board of ~~mental retardation and~~ developmental disabilities gasoline and diesel fuel that has been purchased for the use of the county engineer's office.

Sec. 5705.091. The board of county commissioners of each county shall establish a county ~~mental retardation and~~ developmental disabilities general fund. Notwithstanding section 5705.10 of the Revised Code, proceeds from levies under section 5705.222 and division (L) of section 5705.19 of the Revised Code shall be deposited to the credit of the county ~~mental retardation and~~ developmental disabilities general fund. Accounts shall be established within the county ~~mental retardation and~~ developmental disabilities general fund for each of the several particular purposes of the levies as specified in the resolutions under which the levies were approved, and proceeds from different levies that were approved for the same particular purpose shall be credited to accounts for that purpose. Other money received by the county for the purposes of Chapters 3323. and 5126. of the Revised Code and not required by state or federal law to be deposited to the credit of a different fund shall also be deposited to the credit of the county ~~mental retardation and~~ developmental disabilities general fund, in an account appropriate to the particular purpose for which the money was received. Unless otherwise provided by law, an unexpended balance at the end of a fiscal year in any account in the county ~~mental retardation and~~

developmental disabilities general fund shall be appropriated the next fiscal year to the same fund.

A county board of ~~mental retardation and~~ developmental disabilities may request, by resolution, that the board of county commissioners establish a county ~~mental retardation and~~ developmental disabilities capital fund for money to be used for acquisition, construction, or improvement of capital facilities or acquisition of capital equipment used in providing services to mentally retarded and developmentally disabled persons. The county board of ~~mental retardation and~~ developmental disabilities shall transmit a certified copy of the resolution to the board of county commissioners. Upon receiving the resolution, the board of county commissioners shall establish a county ~~mental retardation and~~ developmental disabilities capital fund.

Sec. 5705.14. No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows:

(A) The unexpended balance in a bond fund that is no longer needed for the purpose for which such fund was created shall be transferred to the sinking fund or bond retirement fund from which such bonds are payable.

(B) The unexpended balance in any specific permanent improvement fund, other than a bond fund, after the payment of all obligations incurred in the acquisition of such improvement, shall be transferred to the sinking fund or bond retirement fund of the subdivision; provided that if such money is not required to meet the obligations payable from such funds, it may be transferred to a special fund for the acquisition of permanent improvements, or, with the approval of the court of common pleas of the county in which such subdivision is located, to the general fund of the subdivision.

(C) The unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest, and other obligations for the payment of which such fund exists have been paid and retired, shall be transferred, in the case of the sinking fund, to the bond retirement fund, and in the case of the bond retirement fund, to the sinking fund; provided that if such transfer is impossible by reason of the nonexistence of the fund to receive the transfer, such unexpended balance, with the approval of the court of common pleas of the county in which such division is located, may be transferred to any other fund of the subdivision.

(D) The unexpended balance in any special fund, other than an improvement fund, existing in accordance with division (D), (F), or (G) of section 5705.09 or section 5705.12 of the Revised Code, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service, or other undertaking for which such special fund existed, but only after the payment of all obligations incurred

and payable from such special fund.

(E) Money may be transferred from the general fund to any other fund of the subdivision.

(F) Moneys retained or received by a county under section 4501.04 or division (A)(3) of section 5735.27 of the Revised Code may be transferred from the fund into which they were deposited to the sinking fund or bond retirement fund from which any principal, interest, or charges for which such moneys may be used is payable.

(G) Moneys retained or received by a municipal corporation under section 4501.04 or division (A)(1) or (2) of section 5735.27 of the Revised Code may be transferred from the fund into which they were deposited to the sinking fund or bond retirement fund from which any principal, interest, or charges for which such moneys may be used is payable.

(H)(1) Money may be transferred from the county ~~mental retardation and~~ developmental disabilities general fund to the county ~~mental retardation and~~ developmental disabilities capital fund established under section 5705.091 of the Revised Code or to any other fund created for the purposes of the county board of ~~mental retardation and~~ developmental disabilities, so long as money in the fund to which the money is transferred can be spent for the particular purpose of the transferred money. The county board of ~~mental retardation and~~ developmental disabilities may request, by resolution, that the board of county commissioners make the transfer. The county board of ~~mental retardation and~~ developmental disabilities shall transmit a certified copy of the resolution to the board of county commissioners. Upon receiving the resolution, the board of county commissioners may make the transfer. Money transferred to a fund shall be credited to an account appropriate to its particular purpose.

(2) An unexpended balance in an account in the county ~~mental retardation and~~ developmental disabilities capital fund or any other fund created for the purposes of the county board of ~~mental retardation and~~ developmental disabilities may be transferred back to the county ~~mental retardation and~~ developmental disabilities general fund. The transfer may be made if the unexpended balance is no longer needed for its particular purpose and all outstanding obligations have been paid. Money transferred back to the county ~~mental retardation and~~ developmental disabilities general fund shall be credited to an account for current expenses within that fund. The county board of ~~mental retardation and~~ developmental disabilities may request, by resolution, that the board of county commissioners make the transfer. The county board of ~~mental retardation and~~ developmental disabilities shall transmit a certified copy of the resolution to the board of

county commissioners. Upon receiving the resolution, the board of county commissioners may make the transfer.

Except in the case of transfer pursuant to division (E) of this section, transfers authorized by this section shall only be made by resolution of the taxing authority passed with the affirmative vote of two-thirds of the members.

Sec. 5705.191. The taxing authority of any subdivision, other than the board of education of a school district or the taxing authority of a county school financing district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes that may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the purposes in section 5705.19 of the Revised Code, or to supplement the general fund for the purpose of making appropriations for one or more of the following purposes: public assistance, human or social services, relief, welfare, hospitalization, health, and support of general hospitals, and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a general, primary, or special election to be held at a time therein specified. Such resolution shall not include a levy on the current tax list and duplicate unless such election is to be held at or prior to the general election day of the current tax year. Such resolution shall conform to the requirements of section 5705.19 of the Revised Code, except that a levy to supplement the general fund for the purposes of public assistance, human or social services, relief, welfare, hospitalization, health, or the support of general or tuberculosis hospitals may not be for a longer period than ten years. All other levies under this section may not be for a longer period than five years unless a longer period is permitted by section 5705.19 of the Revised Code, and the resolution shall specify the date of holding such election, which shall not be earlier than seventy-five days after the adoption and certification of such resolution. The resolution shall go into immediate effect upon its passage and no publication of the same is necessary other than that provided for in the notice of election. A copy of such resolution, immediately after its passage, shall be certified to the board of elections of the proper county or counties in the manner provided by section 5705.25 of the Revised Code, and such section shall govern the arrangements for the submission of such question and other matters with respect to such election, to which section 5705.25 of the Revised Code refers, excepting that such election shall be held on the date specified in the resolution, which shall be consistent with the requirements of section

3501.01 of the Revised Code, provided that only one special election for the submission of such question may be held in any one calendar year and provided that a special election may be held upon the same day a primary election is held. Publication of notice of that election shall be made in one or more newspapers of general circulation in the county once a week for two consecutive weeks prior to the election, and, if the board of elections operates and maintains a web site, the board of elections shall post notice of the election on its web site for thirty days prior to the election.

If a majority of the electors voting on the question vote in favor thereof, the taxing authority of the subdivision may make the necessary levy within such subdivision at the additional rate or at any lesser rate outside the ten-mill limitation on the tax list and duplicate for the purpose stated in the resolution. Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission.

After the approval of such a levy by the electors, the taxing authority of the subdivision may anticipate a fraction of the proceeds of such levy and issue anticipation notes. In the case of a continuing levy that is not levied for the purpose of current expenses, notes may be issued at any time after approval of the levy in an amount not more than fifty per cent of the total estimated proceeds of the levy for the succeeding ten years, less an amount equal to the fraction of the proceeds of the levy previously anticipated by the issuance of anticipation notes. In the case of a levy for a fixed period that is not for the purpose of current expenses, notes may be issued at any time after approval of the levy in an amount not more than fifty per cent of the total estimated proceeds of the levy throughout the remaining life of the levy, less an amount equal to the fraction of the proceeds of the levy previously anticipated by the issuance of anticipation notes. In the case of a levy for current expenses, notes may be issued after the approval of the levy by the electors and prior to the time when the first tax collection from the levy can be made. Such notes may be issued in an amount not more than fifty per cent of the total estimated proceeds of the levy throughout the term of the levy in the case of a levy for a fixed period, or fifty per cent of the total estimated proceeds for the first ten years of the levy in the case of a continuing levy.

No anticipation notes that increase the net indebtedness of a county may be issued without the prior consent of the board of county commissioners of that county. The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not exceeding the life of the levy anticipated, and may have a principal payment in the year of their issuance.

"Taxing authority" and "subdivision" have the same meanings as in section 5705.01 of the Revised Code.

~~"Human or social services" includes a county's contributions to a multicounty board of mental retardation and developmental disabilities of which the county is a member.~~

This section is supplemental to and not in derogation of sections 5705.20, 5705.21, and 5705.22 of the Revised Code.

Sec. 5705.222. (A) At any time the board of county commissioners of any county by a majority vote of the full membership may declare by resolution and certify to the board of elections of the county that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide the necessary requirements of the ~~single~~ county board of ~~mental retardation and~~ developmental disabilities established pursuant to Chapter 5126. of the Revised Code, ~~or the county's contribution to a multicounty board created under that chapter of which the county is a member,~~ and that it is necessary to levy a tax in excess of such limitation for the operation of programs and services by county boards of ~~mental retardation and~~ developmental disabilities and for the acquisition, construction, renovation, financing, maintenance, and operation of mental retardation and developmental disabilities facilities.

Such resolution shall conform to section 5705.19 of the Revised Code, except that the increased rate may be in effect for any number of years not exceeding ten or for a continuing period of time.

The resolution shall be certified and submitted in the manner provided in section 5705.25 of the Revised Code, except that it may be placed on the ballot in any election, and shall be certified to the board of elections not less than seventy-five days before the election at which it will be voted upon.

If the majority of the electors voting on a levy for the support of the programs and services of the county board of ~~mental retardation and~~ developmental disabilities vote in favor of the levy, the board of county commissioners may levy a tax within the county at the additional rate outside the ten-mill limitation during the specified or continuing period, for the purpose stated in the resolution. The county board of ~~mental retardation and~~ developmental disabilities, within its budget and with the approval of the board of county commissioners through annual appropriations, shall use the proceeds of a levy approved under this section solely for the purposes authorized by this section.

(B) When electors have approved a tax levy under this section, the county commissioners may anticipate a fraction of the proceeds of the levy

and issue anticipation notes in accordance with section 5705.191 or 5705.193 of the Revised Code.

(C) The county auditor, upon receipt of a resolution from the county board of ~~mental retardation and~~ developmental disabilities, shall establish a capital improvements account or a reserve balance account, or both, as specified in the resolution. The capital improvements account shall be a contingency account for the necessary acquisition, replacement, renovation, or construction of facilities and movable and fixed equipment. Upon the request of the county board of ~~mental retardation and~~ developmental disabilities, moneys not needed to pay for current expenses may be appropriated to this account, in amounts such that this account does not exceed twenty-five per cent of the replacement value of all capital facilities and equipment currently used by the county board of ~~mental retardation and~~ developmental disabilities for mental retardation and developmental disabilities programs and services. Other moneys available for current capital expenses from federal, state, or local sources may also be appropriated to this account.

The reserve balance account shall contain those moneys that are not needed to pay for current operating expenses and not deposited in the capital improvements account but that will be needed to pay for operating expenses in the future. Upon the request of a county board of ~~mental retardation and~~ developmental disabilities, the board of county commissioners may appropriate moneys to the reserve balance account.

Sec. 5705.28. (A) Except as provided in division (B)(1) or (2) of this section or in section 5705.281 of the Revised Code, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year:

(1) On or before the fifteenth day of January in the case of a school district;

(2) On or before the fifteenth day of July in the case of all other subdivisions and taxing units.

(B)(1) Before the first day of June in each year, the board of trustees of a school library district entitled to participate in any appropriation or revenue of a school district or to have a tax proposed by the board of education of a school district shall file with the board of education of the school district a tax budget for the ensuing fiscal year. On or before the fifteenth day of July in each year, the board of education of a school district to which a school library district tax budget was submitted under this division shall adopt such tax budget on behalf of the library district, but such budget shall not be part of the school district's tax budget.

(2)(a) The taxing authority of a taxing unit that does not levy a tax is not required to adopt a tax budget pursuant to division (A) of this section. Instead, on or before the fifteenth day of July each year, such taxing authority shall adopt an operating budget for the taxing unit for the ensuing fiscal year. The operating budget shall include an estimate of receipts from all sources, a statement of all taxing unit expenses that are anticipated to occur, and the amount required for debt charges during the fiscal year. The operating budget is not required to be filed with the county auditor or the county budget commission.

(b) Except for this section and sections 5705.36, 5705.38, 5705.40, 5705.41, 5705.43, 5705.44, and 5705.45 of the Revised Code, a taxing unit that does not levy a tax is not a taxing unit for purposes of Chapter 5705. of the Revised Code. Documents prepared in accordance with such sections are not required to be filed with the county auditor or county budget commission.

(c) The total appropriations from each fund of a taxing unit that does not levy a tax shall not exceed the total estimated revenue available for expenditures from the fund, and appropriations shall be made from each fund only for the purposes for which the fund is established.

(C)(1) To assist in the preparation of the tax budget, the head of each department, board, commission, and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority, or in the case of a municipal corporation, with its chief executive officer, before the forty-fifth day prior to the date on which the budget must be adopted, an estimate of contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision or by the auditor of state. The taxing authority shall include in its budget of expenditures the full amounts requested by district authorities, not to exceed the amount authorized by law, if such authorities may fix the amount of revenue they are to receive from the subdivision. In a municipal corporation in which a special levy for a municipal university has been authorized to be levied in excess of the ten-mill limitation, or is required by the charter of the municipal corporation, the taxing authority shall include an amount not less than the estimated yield of such levy, if such amount is requested by the board of directors of the municipal university.

(2) A county board of ~~mental-retardation and~~ developmental disabilities may include within its estimate of contemplated revenue and expenditures a reserve balance account in the community ~~mental-retardation and~~ developmental disabilities residential services fund. The account shall

contain money that is not needed to pay for current expenses for residential services and supported living but will be needed to pay for expenses for such services in the future or may be needed for unanticipated emergency expenses. On the request of the county board of ~~mental retardation and~~ developmental disabilities, the board of county commissioners shall include such an account in its budget of expenditures and appropriate money to the account from residential service moneys for the county board.

(D) The board of trustees of any public library desiring to participate in the distribution of the county public library fund shall adopt appropriate rules extending the benefits of the library service of such library to all the inhabitants of the county on equal terms, unless such library service is by law available to all such inhabitants, and shall certify a copy of such rules to the taxing authority with its estimate of contemplated revenue and expenditures. Where such rules have been so certified or where the adoption of such rules is not required, the taxing authority shall include in its budget of receipts such amounts as are specified by such board as contemplated revenue from the county public library fund, and in its budget of expenditures the full amounts requested therefrom by such board. No library association, incorporated or unincorporated, is entitled to participate in the proceeds of the county public library fund unless such association both was organized and operating prior to January 1, 1968, and participated in the distribution of the proceeds of the county public library fund prior to December 31, 2005.

Sec. 5705.44. When contracts or leases run beyond the termination of the fiscal year in which they are made, the fiscal officer of the taxing authority shall make a certification for the amount required to meet the obligation of such contract or lease maturing in such fiscal year. The amount of the obligation under such contract or lease remaining unfulfilled at the end of a fiscal year, and which will become payable during the next fiscal year, shall be included in the annual appropriation measure for the next year as a fixed charge.

The certificate required by section 5705.41 of the Revised Code as to money in the treasury shall not be required for contracts on which payments are to be made from the earnings of a publicly operated water works or public utility, but in the case of any such contract made without such certification, no payment shall be made on account thereof, and no claim or demand thereon shall be recoverable, except out of such earnings. That certificate also shall not be required if requiring the certificate makes it impossible for a county board of ~~mental retardation and~~ developmental disabilities to pay the nonfederal share of medicaid expenditures that the

county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay.

Sec. 5735.142. (A)(1) Any person who uses any motor fuel, on which the tax imposed by sections 5735.05, 5735.25, and 5735.29 of the Revised Code has been paid, for the purpose of operating a transit bus shall be reimbursed in the amount of the tax paid on motor fuel used by public transportation systems providing transit or paratransit service on a regular and continuing basis within the state;

(2) A city, exempted village, joint vocational, or local school district or educational service center that purchases any motor fuel for school district or service center operations, on which any tax imposed by section 5735.29 of the Revised Code that became effective on or after July 1, 2003, has been paid, may, if an application is filed under this section, be reimbursed in the amount of all but two cents per gallon of the total tax imposed by such section and paid on motor fuel.

(3) A county board of ~~mental retardation and~~ developmental disabilities that, on or after July 1, 2005, purchases any motor fuel for county board operations, on which any tax imposed by section 5735.29 of the Revised Code has been paid may, if an application is filed under this section, be reimbursed in the amount of all but two cents per gallon of the total tax imposed by such section and paid on motor fuel purchased on or after July 1, 2005.

(B) Such person, school district, educational service center, or county board shall file with the tax commissioner an application for refund within one year from the date of purchase, stating the quantity of fuel used for operating transit buses used by local transit systems in furnishing scheduled common carrier, public passenger land transportation service along regular routes primarily in one or more municipal corporations or for operating vehicles used for school district, service center, or county board operations. However, no claim shall be made for the tax on fewer than one hundred gallons of motor fuel. A school district, educational service center, or county board shall not apply for a refund for any tax paid on motor fuel that is sold by the district, service center, or county board. The application shall be accompanied by the statement described in section 5735.15 of the Revised Code showing the purchase, together with evidence of payment thereof.

(C) After consideration of the application and statement, the commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of

the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

The commissioner may require that the application be supported by the affidavit of the claimant. No refund shall be authorized or ordered for any single claim for the tax on fewer than one hundred gallons of motor fuel. No refund shall be authorized or ordered on motor fuel that is sold by a school district, educational service center, or county board.

(D) The refund authorized by this section or section 5703.70 of the Revised Code shall be reduced by the cents per gallon amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

(E) The right to receive any refund under this section or section 5703.70 of the Revised Code is not assignable. The payment of this refund shall not be made to any person or entity other than the person or entity originally entitled thereto who used the motor fuel upon which the claim for refund is based, except that the refund when allowed and certified, as provided in this section, may be paid to the executor, the administrator, the receiver, the trustee in bankruptcy, or the assignee in insolvency proceedings of the person.

Sec. 5815.28. (A) As used in this section:

(1) "Ascertainable standard" includes a standard in a trust instrument requiring the trustee to provide for the care, comfort, maintenance, welfare, education, or general well-being of the beneficiary.

(2) "Disability" means any substantial, medically determinable impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least twelve months, except that "disability" does not include an impairment that is the result of abuse of alcohol or drugs.

(3) "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.

(4) "Supplemental services" means services specified by rule of the department of mental health under section 5119.01 of the Revised Code or the department of ~~mental retardation and~~ developmental disabilities under section 5123.04 of the Revised Code that are provided to an individual with a disability in addition to services the individual is eligible to receive under programs authorized by federal or state law.

(B) Any person may create a trust under this section to provide funding for supplemental services for the benefit of another individual who meets

either of the following conditions:

(1) The individual has a physical or mental disability and is eligible to receive services through the department of ~~mental retardation and~~ developmental disabilities or a county board of ~~mental retardation and~~ developmental disabilities;

(2) The individual has a mental disability and is eligible to receive services through the department of mental health or a board of alcohol, drug addiction, and mental health services.

The trust may confer discretion upon the trustee and may contain specific instructions or conditions governing the exercise of the discretion.

(C) The general division of the court of common pleas and the probate court of the county in which the beneficiary of a trust authorized by division (B) of this section resides or is confined have concurrent original jurisdiction to hear and determine actions pertaining to the trust. In any action pertaining to the trust in a court of common pleas or probate court and in any appeal of the action, all of the following apply to the trial or appellate court:

(1) The court shall render determinations consistent with the testator's or other settlor's intent in creating the trust, as evidenced by the terms of the trust instrument.

(2) The court may order the trustee to exercise discretion that the trust instrument confers upon the trustee only if the instrument contains specific instructions or conditions governing the exercise of that discretion and the trustee has failed to comply with the instructions or conditions. In issuing an order pursuant to this division, the court shall require the trustee to exercise the trustee's discretion only in accordance with the instructions or conditions.

(3) The court may order the trustee to maintain the trust and distribute assets in accordance with rules adopted by the director of mental health under section 5119.01 of the Revised Code or the director of ~~mental retardation and~~ developmental disabilities under section 5123.04 of the Revised Code if the trustee has failed to comply with such rules.

(D) To the extent permitted by federal law and subject to the provisions of division (C)(2) of this section pertaining to the enforcement of specific instructions or conditions governing a trustee's discretion, a trust authorized by division (B) of this section that confers discretion upon the trustee shall not be considered an asset or resource of the beneficiary, the beneficiary's estate, the settlor, or the settlor's estate and shall be exempt from the claims of creditors, political subdivisions, the state, other governmental entities, and other claimants against the beneficiary, the beneficiary's estate, the

settlor, or the settlor's estate, including claims based on provisions of Chapters 5111., 5121., or 5123. of the Revised Code and claims sought to be satisfied by way of a civil action, subrogation, execution, garnishment, attachment, judicial sale, or other legal process, if all of the following apply:

(1) At the time the trust is created, the trust principal does not exceed the maximum amount determined under division (E) of this section;

(2) The trust instrument contains a statement of the settlor's intent, or otherwise clearly evidences the settlor's intent, that the beneficiary does not have authority to compel the trustee under any circumstances to furnish the beneficiary with minimal or other maintenance or support, to make payments from the principal of the trust or from the income derived from the principal, or to convert any portion of the principal into cash, whether pursuant to an ascertainable standard specified in the instrument or otherwise;

(3) The trust instrument provides that trust assets can be used only to provide supplemental services, as defined by rule of the director of mental health under section 5119.01 of the Revised Code or the director of ~~mental retardation~~ and developmental disabilities under section 5123.04 of the Revised Code, to the beneficiary;

(4) The trust is maintained and assets are distributed in accordance with rules adopted by the director of mental health under section 5119.01 of the Revised Code or the director of ~~mental retardation~~ and developmental disabilities under section 5123.04 of the Revised Code;

(5) The trust instrument provides that on the death of the beneficiary, a portion of the remaining assets of the trust, which shall be not less than fifty per cent of such assets, will be deposited to the credit of the services fund for individuals with mental illness created by section 5119.17 of the Revised Code or the services fund for individuals with mental retardation and developmental disabilities created by section 5123.40 of the Revised Code.

(E) In 1994, the trust principal maximum amount for a trust created under this section shall be two hundred thousand dollars. The maximum amount for a trust created under this section prior to November 11, 1994, may be increased to two hundred thousand dollars.

In 1995, the maximum amount for a trust created under this section shall be two hundred two thousand dollars. Each year thereafter, the maximum amount shall be the prior year's amount plus two thousand dollars.

(F) This section does not limit or otherwise affect the creation, validity, interpretation, or effect of any trust that is not created under this section.

(G) Once a trustee takes action on a trust created by a settlor under this section and disburses trust funds on behalf of the beneficiary of the trust,

then the trust may not be terminated or otherwise revoked by a particular event or otherwise without payment into the services fund created pursuant to section 5119.17 or 5123.40 of the Revised Code of an amount that is equal to the disbursements made on behalf of the beneficiary for medical care by the state from the date the trust vests but that is not more than fifty per cent of the trust corpus.

Sec. 5815.35. (A)(1) As used in this division, "fiduciary" means any person, association, or corporation, other than a trustee of a testamentary trust, an assignee or trustee for an insolvent debtor, or a guardian under Chapter 5905. of the Revised Code, that is appointed by and accountable to the probate court, and that is acting in a fiduciary capacity for another or charged with duties in relation to any property, interest, or estate for another's benefit. A fiduciary also includes an agency under contract with the department of ~~mental retardation and~~ developmental disabilities for the provision of protective service under sections 5123.55 to 5123.59 of the Revised Code, when appointed by and accountable to the probate court as a guardian or trustee for a mentally retarded or developmentally disabled person.

(2) A fiduciary who enters a contract as fiduciary on or after March 22, 1984, is not personally liable on that contract, unless the contract otherwise specifies, if the contract is within the fiduciary's authority and the fiduciary discloses that the contract is being entered into in a fiduciary capacity. In a contract, the words "fiduciary" or "as fiduciary" or other words that indicate one's fiduciary capacity following the name or signature of a fiduciary are sufficient disclosure for purposes of this division.

(B)(1) As used in this division, "partnership" includes a partnership composed of only general partners and a partnership composed of general and limited partners.

(2) Subject to division (D) of this section, an executor or administrator who acquires, in a fiduciary capacity, a general partnership interest upon the death of a general partner of a partnership is not personally liable for any debt, obligation, or liability of the partnership that arises from the executor's or administrator's actions, except as provided in this division, as a general partner, or for any debt, obligation, or liability of the partnership for which the executor or administrator otherwise would be personally liable because the executor or administrator holds the general partnership interest, if the executor or administrator discloses that the general partnership interest is held by the executor or administrator in a fiduciary capacity. This immunity does not apply if an executor or administrator causes loss or injury to a person who is not a partner in the partnership by a wrongful act or omission.

This immunity is not available to an executor or administrator who holds a general partnership interest in a fiduciary capacity if the spouse or any lineal descendants of the executor or administrator, or the executor or administrator other than in a fiduciary capacity, holds any interest in the partnership.

A partnership certificate that is filed pursuant to Chapter 1777. or another chapter of the Revised Code and that indicates that an executor or administrator holds a general partnership interest in a fiduciary capacity by the use following the name or signature of the executor or administrator of the words "executor under the will of (name of decedent)" or "administrator of the estate of (name of decedent)" or other words that indicate the executor's or administrator's fiduciary capacity constitutes a sufficient disclosure for purposes of this division.

If a partnership certificate is not required to be filed pursuant to Chapter 1776. or 1777. or another chapter of the Revised Code, a sufficient disclosure for purposes of this division can be made by an executor or administrator if a certificate that satisfies the following requirements is filed with the recorder of the county in which the partnership's principal office or place of business is situated and with the recorder of each county in which the partnership owns real estate:

(a) The certificate shall state in full the names of all persons holding interests in the partnership and their places of residence;

(b) The certificate shall be signed by all persons who are general partners in the partnership, and shall be acknowledged by a person authorized to take acknowledgements of deeds;

(c) The certificate shall use the words "executor under the will of (name of decedent)" or "administrator of the estate of (name of decedent)" or other words that indicate the executor's or administrator's fiduciary capacity, following the name or signature of the executor or administrator.

A contract or other written instrument delivered to a party that contracts with the partnership in which an executor or administrator holds a general partnership interest in a fiduciary capacity, that indicates that the executor or administrator so holds the interest, constitutes a disclosure for purposes of this division with respect to transactions between the party and the partnership. If a disclosure has been made by a certificate in accordance with this division, a disclosure for purposes of this division with respect to such transactions exists regardless of whether a contract or other instrument indicates the executor or administrator holds the general partnership interest in a fiduciary capacity.

If an executor or administrator acquires, in a fiduciary capacity, a

general partnership interest, the decedent's estate is liable for debts, obligations, or liabilities of the partnership.

(C) An estate that includes a general partnership interest is not liable for the debts, obligations, or liabilities of a partnership in which another estate has a general partnership interest, merely because the executor or administrator of the estates holds a general partnership interest in both of the partnerships in the executor's or administrator's fiduciary capacities.

(D) Divisions (B) and (C) of this section apply to general partnership interests held by executors or administrators in their fiduciary capacities prior to and on or after March 22, 1984. If an appropriate disclosure is made pursuant to division (B) of this section, the immunity acquired under that division extends only to debts, obligations, and liabilities of the partnership arising on and after the date of the disclosure and to debts, obligations, and liabilities of the partnership that arose prior to the acquisition of the general partnership interest by the executor or administrator becoming a general partner.

(E) The liability limitations in this section apply to fiduciaries as partners notwithstanding the broader personal liabilities otherwise imposed by any partnership law.

(F) If an estate or other fund held by a fiduciary is identified as a partner, the reference is deemed to be to, and the partner is, the current executor, administrator, or other fiduciary of the estate or other fund and their successors as executors, administrators, or other fiduciaries.

SECTION 2. That existing sections 9.239, 9.55, 101.37, 101.39, 107.12, 109.57, 109.572, 109.71, 109.77, 109.86, 117.102, 121.02, 121.03, 121.32, 121.36, 121.37, 123.01, 124.11, 124.23, 124.241, 124.27, 124.38, 124.381, 125.602, 125.603, 126.32, 127.16, 135.801, 135.802, 135.803, 140.01, 140.03, 140.05, 145.012, 145.297, 154.17, 154.20, 173.03, 305.14, 307.10, 307.86, 309.10, 319.16, 325.19, 329.06, 1751.01, 1751.02, 2108.521, 2109.01, 2109.04, 2111.01, 2111.02, 2111.10, 2133.25, 2151.011, 2151.421, 2903.33, 2919.271, 2921.36, 2921.38, 2930.061, 2935.03, 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, 2967.22, 3109.18, 3301.07, 3301.15, 3301.52, 3301.53, 3301.55, 3301.57, 3301.58, 3304.231, 3313.65, 3313.715, 3314.022, 3314.99, 3317.01, 3317.02, 3317.024, 3317.03, 3317.032, 3317.05, 3317.051, 3317.052, 3317.07, 3317.15, 3317.20, 3319.22, 3319.99, 3323.01, 3323.02, 3323.021, 3323.03, 3323.04, 3323.05, 3323.07, 3323.09, 3323.091, 3323.12, 3323.141, 3323.142, 3323.31, 3326.99, 3501.01, 3701.78, 3701.93, 3701.932, 3701.933, 3705.36, 3721.01, 3721.14, 3722.01, 3727.01, 3735.58, 4109.06, 4115.32, 4141.29, 4511.21,

4511.75, 4723.071, 5101.35, 5101.46, 5101.611, 5103.02, 5103.13, 5104.08, 5107.24, 5111.042, 5111.151, 5111.202, 5111.203, 5111.211, 5111.251, 5111.291, 5111.65, 5111.677, 5111.709, 5111.87, 5111.871, 5111.872, 5111.873, 5111.874, 5111.875, 5111.876, 5111.8710, 5111.915, 5112.30, 5112.32, 5112.37, 5112.371, 5119.16, 5119.221, 5119.51, 5120.07, 5120.135, 5121.01, 5121.02, 5121.03, 5121.04, 5121.05, 5121.051, 5121.06, 5121.061, 5121.07, 5121.08, 5121.09, 5121.10, 5121.11, 5121.12, 5123.01, 5123.012, 5123.02, 5123.021, 5123.03, 5123.031, 5123.032, 5123.033, 5123.04, 5123.042, 5123.043, 5123.044, 5123.046, 5123.047, 5123.048, 5123.049, 5123.0410, 5123.0411, 5123.0412, 5123.0413, 5123.0414, 5123.0415, 5123.0416, 5123.0417, 5123.05, 5123.051, 5123.06, 5123.07, 5123.08, 5123.081, 5123.082, 5123.083, 5123.09, 5123.091, 5123.092, 5123.093, 5123.10, 5123.11, 5123.12, 5123.122, 5123.13, 5123.14, 5123.15, 5123.16, 5123.161, 5123.162, 5123.163, 5123.164, 5123.166, 5123.167, 5123.168, 5123.169, 5123.17, 5123.171, 5123.172, 5123.18, 5123.181, 5123.19, 5123.191, 5123.194, 5123.195, 5123.196, 5123.198, 5123.21, 5123.211, 5123.22, 5123.221, 5123.23, 5123.24, 5123.25, 5123.26, 5123.27, 5123.28, 5123.29, 5123.30, 5123.31, 5123.33, 5123.34, 5123.35, 5123.351, 5123.352, 5123.36, 5123.37, 5123.371, 5123.372, 5123.373, 5123.374, 5123.375, 5123.38, 5123.40, 5123.41, 5123.42, 5123.421, 5123.43, 5123.44, 5123.45, 5123.451, 5123.47, 5123.50, 5123.51, 5123.52, 5123.53, 5123.54, 5123.541, 5123.542, 5123.55, 5123.56, 5123.57, 5123.58, 5123.59, 5123.60, 5123.601, 5123.602, 5123.604, 5123.61, 5123.611, 5123.612, 5123.613, 5123.614, 5123.63, 5123.64, 5123.65, 5123.71, 5123.711, 5123.72, 5123.73, 5123.74, 5123.75, 5123.76, 5123.801, 5123.81, 5123.811, 5123.82, 5123.85, 5123.86, 5123.89, 5123.90, 5123.96, 5126.01, 5126.02, 5126.028, 5126.029, 5126.0210, 5126.0211, 5126.0212, 5126.0213, 5126.0214, 5126.0215, 5126.0216, 5126.0217, 5126.0218, 5126.0219, 5126.0220, 5126.0221, 5126.0222, 5126.0223, 5126.0224, 5126.0225, 5126.0226, 5126.0227, 5126.0228, 5126.0229, 5126.03, 5126.031, 5126.032, 5126.033, 5126.034, 5126.037, 5126.038, 5126.04, 5126.041, 5126.042, 5126.044, 5126.045, 5126.046, 5126.05, 5126.051, 5126.052, 5126.054, 5126.055, 5126.056, 5126.058, 5126.059, 5126.0510, 5126.0511, 5126.0512, 5126.06, 5126.07, 5126.071, 5126.08, 5126.081, 5126.082, 5126.09, 5126.10, 5126.11, 5126.12, 5126.121, 5126.13, 5126.14, 5126.15, 5126.18, 5126.19, 5126.20, 5126.201, 5126.21, 5126.22, 5126.221, 5126.23, 5126.24, 5126.25, 5126.251, 5126.252, 5126.253, 5126.254, 5126.26, 5126.27, 5126.28, 5126.281, 5126.29, 5126.30, 5126.31, 5126.311, 5126.313, 5126.33, 5126.331, 5126.333, 5126.34, 5126.36, 5126.40, 5126.41, 5126.42, 5126.43,

5126.45, 5126.46, 5126.47, 5126.49, 5126.50, 5126.54, 5126.55, 5126.57, 5126.58, 5126.59, 5126.61, 5126.62, 5126.99, 5139.08, 5139.34, 5145.18, 5153.16, 5153.99, 5511.03, 5543.011, 5705.091, 5705.14, 5705.191, 5705.222, 5705.28, 5705.44, 5735.142, 5815.28, and 5815.35 and existing section 5123.011 as it results from Am. Sub. S.B. 156 of the 119th General Assembly and existing section 5123.011 of the Revised Code as it results from Am. Sub. S.B. 285 of the 121st General Assembly are hereby repealed.

That sections 5126.021, 5126.022, 5126.023, 5126.024, 5126.025, 5126.026, and 5126.027 of the Revised Code are hereby repealed.

SECTION 3. That Sections 209.60.40, 209.60.50, and 501.40 of H.B. 496 of the 127th General Assembly be amended to read as follows:

Sec. 209.60.40. The foregoing appropriations for the Department of Alcohol and Drug Addiction Services, C03801, Community Assistance Projects; Department of Mental Health, C58001, Community Assistance Projects; and Department of ~~Mental Retardation~~ and Developmental Disabilities, C59004, Community Assistance Projects, may be used on facilities constructed or to be constructed pursuant to Chapter 340., 3793., 5119., 5123., or 5126. of the Revised Code or the authority granted by section 154.20 of the Revised Code and the rules adopted pursuant to those chapters and that section and shall be distributed by the Department of Alcohol and Drug Addiction Services, the Department of Mental Health, and the Department of ~~Mental Retardation~~ and Developmental Disabilities, subject to Controlling Board approval.

Sec. 209.60.50. (A) No capital improvement appropriations made in Sections 201.60 and 201.60.10 to 201.60.40 of ~~this act~~ H.B. 496 of the 127th General Assembly shall be released for planning or for improvement, renovation, or construction or acquisition of capital facilities if a governmental agency, as defined in section 154.01 of the Revised Code, does not own the real property that constitutes the capital facilities or on which the capital facilities are or will be located. This restriction does not apply in any of the following circumstances:

(1) The governmental agency has a long-term (at least fifteen years) lease of, or other interest (such as an easement) in, the real property.

(2) In the case of an appropriation for capital facilities that, because of their unique nature or location, will be owned or be part of facilities owned by a separate nonprofit organization and made available to the governmental agency for its use, the nonprofit organization either owns or has a long-term

(at least fifteen years) lease of the real property or other capital facility to be improved, renovated, constructed, or acquired and has entered into a joint or cooperative use agreement, approved by the Department of Mental Health, Department of ~~Mental Retardation and~~ Developmental Disabilities, or Department of Alcohol and Drug Addiction Services, whichever is applicable, with the governmental agency for that agency's use of and right to use the capital facilities to be financed and, if applicable, improved, the value of such use or right to use being, as determined by the parties, reasonably related to the amount of the appropriation.

(B) In the case of capital facilities referred to in division (A)(2) of this section, the joint or cooperative use agreement shall include, as a minimum, provisions that:

(1) Specify the extent and nature of that joint or cooperative use, extending for not fewer than fifteen years, with the value of such use or right to use to be, as determined by the parties and approved by the applicable department, reasonably related to the amount of the appropriation;

(2) Provide for pro rata reimbursement to the state should the arrangement for joint or cooperative use by a governmental agency be terminated; and

(3) Provide that procedures to be followed during the capital improvement process will comply with appropriate applicable state statutes and rules, including provisions of ~~this act~~ H.B. 496 of the 127th General Assembly.

#### Sec. 501.40. AGENCY ADMINISTRATION OF CAPITAL FACILITIES PROJECTS

Notwithstanding sections 123.01 and 123.15 of the Revised Code, the Director of Administrative Services may authorize the Departments of Mental Health, ~~Mental Retardation and~~ Developmental Disabilities, Alcohol and Drug Addiction Services, Agriculture, Job and Family Services, Rehabilitation and Correction, Youth Services, Public Safety, Transportation, the Ohio Veterans' Home, and the Rehabilitation Services Commission to administer any capital facilities projects when the estimated cost, including design fees, construction, equipment, and contingency amounts, is less than \$1,500,000. Requests for authorization to administer capital facilities projects shall be made in writing to the Director of Administrative Services by the respective state agency within sixty days after the effective date of the act in which the General Assembly initially makes an appropriation for the project. Upon the release of funds for such projects by the Controlling Board or the Director of Budget and Management, the agency may administer the capital project or projects for

which agency administration has been authorized without the supervision, control, or approval of the Director of Administrative Services.

A state agency authorized by the Director of Administrative Services to administer capital facilities projects pursuant to this section shall comply with the applicable procedures and guidelines established in Chapter 153. of the Revised Code.

SECTION 4. That existing Sections 209.60.40, 209.60.50, and 501.40 of H.B. 496 of the 127th General Assembly are hereby repealed.

SECTION 5. That Section 201.60.30 of H.B. 496 of the 127th General Assembly, as amended by Am. Sub. H.B. 420 of the 127th General Assembly, be amended to read as follows:

Reappropriations

Sec. 201.60.30. ~~DMR~~ DDD DEPARTMENT OF ~~MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES~~ STATEWIDE PROJECTS

C59000	Asbestos Abatement	\$	999,637
C59004	Community Assistance Projects	\$	1,202,040
C59020	Kamp Dovetail Project at Rocky Fork Lake State Park	\$	100,000
C59022	Razing of Buildings	\$	80,595
C59024	Telecommunications Systems Improvement	\$	774,454
C59029	Emergency Generator Replacement	\$	1,049,606
C59034	Statewide Developmental Centers	\$	5,479,662
C59050	Emergency Improvements	\$	634,970
Total Statewide and Central Office Projects		\$	10,320,964

**COMMUNITY ASSISTANCE PROJECTS**

The foregoing appropriation item C59004, Community Assistance Projects, may be used to provide community assistance funds for the construction or renovation of facilities for day programs or residential programs that provide services to persons eligible for services from the Department of ~~Mental Retardation and~~ Developmental Disabilities or county boards of ~~mental retardation and~~ developmental disabilities. Any funds provided to nonprofit agencies for the construction or renovation of facilities for persons eligible for services from the Department of ~~Mental Retardation and~~ Developmental Disabilities and county boards of ~~mental retardation and~~ developmental disabilities are subject to the prevailing wage provisions in section 176.05 of the Revised Code.

Notwithstanding any other provision of law to the contrary, of the foregoing appropriation item C59004, Community Assistance Projects, \$75,000 shall be used for the Hanson Home.

STATEWIDE DEVELOPMENTAL CENTERS			
CAMBRIDGE DEVELOPMENTAL CENTER			
C59005	Residential Renovations - CAMDC	\$	41,398
C59023	HVAC Renovations - Residential Buildings	\$	1,000
C59025	Cambridge HVAC Upgrade - Activity Center	\$	3,538
C59046	Utility Upgrade Centerwide	\$	5,960
	Total Cambridge Developmental Center	\$	51,896
COLUMBUS DEVELOPMENTAL CENTER			
C59036	Columbus Developmental Center	\$	8,162
	Total Columbus Developmental Center	\$	8,162
GALLIPOLIS DEVELOPMENTAL CENTER			
C59027	HVAC Replacements	\$	4,873
C59037	Gallipolis Developmental Center	\$	21,849
	Total Gallipolis Developmental Center	\$	26,722
MONTGOMERY DEVELOPMENTAL CENTER			
C59038	Montgomery Developmental Center	\$	43,634
	Total Montgomery Developmental Center	\$	43,634
MOUNT VERNON DEVELOPMENTAL CENTER			
C59039	Mount Vernon Developmental Center	\$	160,353
	Total Mount Vernon Developmental Center	\$	160,353
NORTHWEST OHIO DEVELOPMENTAL CENTER			
C59030	Replace Chiller	\$	8,535
C59040	Northwest Ohio Developmental Center	\$	11,171
	Total Northwest Ohio Developmental Center	\$	19,706
SOUTHWEST OHIO DEVELOPMENTAL CENTER			
C59016	Residential Renovation - HVAC Upgrade	\$	23,075
C59041	Southwest Ohio Developmental Center	\$	14,566
C59048	Renovation Program and Support Services Building	\$	3,900
	Total Southwest Ohio Developmental Center	\$	41,541
TIFFIN DEVELOPMENTAL CENTER			
C59026	Roof and Exterior Renovations	\$	19,666
C59043	Tiffin Developmental Center	\$	20,696
	Total Tiffin Developmental Center	\$	40,362
WARRENSVILLE DEVELOPMENTAL CENTER			
C59017	Residential Renovations - WDC	\$	5,057
C59021	Water Line Replacement - WDC	\$	16,267
C59031	ADA Compliance - WDC	\$	3,628
C59044	Warrensville Developmental Center	\$	29,860
	Total Warrensville Developmental Center	\$	54,812
YOUNGSTOWN DEVELOPMENTAL CENTER			
C59045	Youngstown Developmental Center	\$	24,400
	Total Youngstown Developmental Center	\$	24,400
	TOTAL Department of <del>Mental Retardation</del> and Developmental Disabilities	\$	10,792,552
	TOTAL Mental Health Facilities Improvement Fund	\$	43,084,415

SECTION 6. That existing Section 201.60.30 of H.B. 496 of the 127th General Assembly, as amended by Am. Sub. H.B. 420 of the 127th General

Assembly is hereby repealed.

SECTION 7. That Sections 231.30.10, 231.30.20, and 253.10 of Am. Sub. H.B. 562 of the 127th General Assembly be amended to read as follows:

Sec. 231.30.10. The foregoing appropriations for the Department of Mental Health, C58001, Community Assistance Projects, and the Department of ~~Mental Retardation and~~ Developmental Disabilities, C59004, Community Assistance Projects, may be used for facilities constructed or to be constructed pursuant to Chapter 340., 3793., 5119., 5123., or 5126. of the Revised Code or the authority granted by section 154.20 of the Revised Code and the rules issued pursuant to those chapters and shall be distributed by the Department of Mental Health and the Department of ~~Mental Retardation and~~ Developmental Disabilities, all subject to Controlling Board approval.

Sec. 231.30.20. (A) No capital improvement appropriations made in Sections 231.10.10 to 231.30.10 of ~~this act~~ Am. Sub. H.B. 562 of the 127th General Assembly shall be released for planning or for improvement, renovation, or construction or acquisition of capital facilities if a governmental agency, as defined in section 154.01 of the Revised Code, does not own the real property that constitutes the capital facilities or on which the capital facilities are or will be located. This restriction does not apply in any of the following circumstances:

(1) The governmental agency has a long-term (at least fifteen years) lease of, or other interest (such as an easement) in, the real property.

(2) In the case of an appropriation for capital facilities that, because of their unique nature or location, will be owned or be part of facilities owned by a separate nonprofit organization and made available to the governmental agency for its use or operated by the nonprofit organization under contract with the governmental agency, the nonprofit organization either owns or has a long-term (at least fifteen years) lease of the real property or other capital facility to be improved, renovated, constructed, or acquired and has entered into a joint or cooperative use agreement, approved by the Department of Mental Health or the Department of ~~Mental Retardation and~~ Developmental Disabilities, whichever is applicable, with the governmental agency for that agency's use of and right to use the capital facilities to be financed and, if applicable, improved, the value of such use or right to use being, as determined by the parties, reasonably related to the amount of the appropriation.

(B) In the case of capital facilities referred to in division (A)(2) of this section, the joint or cooperative use agreement shall include, at a minimum, provisions that:

(1) Specify the extent and nature of that joint or cooperative use, extending for not fewer than fifteen years, with the value of such use or right to use to be, as determined by the parties and approved by the approving department, reasonably related to the amount of the appropriation;

(2) Provide for pro rata reimbursement to the state should the arrangement for joint or cooperative use by a governmental agency be terminated;

(3) Provide that procedures to be followed during the capital improvement process will comply with applicable state statutes and rules, including the provisions of ~~this act~~ Am. Sub. H.B. 562 of the 127th General Assembly.

#### Sec. 253.10. AGENCY ADMINISTRATION OF CAPITAL FACILITIES PROJECTS

Notwithstanding sections 123.01 and 123.15 of the Revised Code, the Director of Administrative Services may authorize the Departments of Mental Health, ~~Mental Retardation~~ and Developmental Disabilities, Agriculture, Job and Family Services, Rehabilitation and Correction, Youth Services, Public Safety, Transportation, and the Ohio Veterans' Home to administer any capital facilities projects, the estimated cost of which, including design fees, construction, equipment, and contingency amounts, is less than \$1,500,000. Requests for authorization to administer capital facilities projects shall be made in writing to the Director of Administrative Services by the applicable state agency within sixty days after the effective date of the section of law in which the General Assembly initially makes an appropriation for the project. Upon the release of funds for the projects by the Controlling Board or the Director of Budget and Management, the agency may administer the capital project or projects for which agency administration has been authorized without the supervision, control, or approval of the Director of Administrative Services.

A state agency authorized by the Director of Administrative Services to administer capital facilities projects pursuant to this section shall comply with the applicable procedures and guidelines established in Chapter 153. of the Revised Code.

SECTION 8. That existing Sections 231.30.10, 231.30.20, and 253.10 of Am. Sub. H.B. 562 of the 127th General Assembly are hereby repealed.

SECTION 9. That Section 231.20.30 of Am. Sub. H.B. 562 of the 127th General Assembly, as amended by Am. Sub. H.B. 420 of the 127th General Assembly, be amended to read as follows:

		Appropriations
Sec. 231.20.30.	<del>DMR</del> <u>DDD</u> DEPARTMENT OF <del>MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES</del>	
	STATEWIDE AND CENTRAL OFFICE PROJECTS	
C59004	Community Assistance Projects	\$ 13,551,537
C59022	Razing of Buildings	\$ 200,000
C59024	Telecommunications	\$ 400,000
C59029	Generator Replacement	\$ 1,000,000
C59034	Statewide Developmental Centers	\$ 4,294,237
C59050	Emergency Improvements	\$ 500,000
C59051	Energy Conservation	\$ 500,000
C59052	Guernsey County MRDD Boiler Replacement	\$ 275,000
C59054	Recreation Unlimited Life Center - Delaware	\$ 150,000
C59055	Camp McKinley Improvements	\$ 30,000
C59056	The Hope Learning Center	\$ 250,000
	Total Statewide and Central Office Projects	\$ 21,150,774
	TOTAL Department of <del>Mental Retardation and</del> Developmental Disabilities	\$ 21,150,774
	TOTAL Mental Health Facilities Improvement Fund	\$ 127,630,774

**COMMUNITY ASSISTANCE PROJECTS**

The foregoing appropriation item C59004, Community Assistance Projects, may be used to provide community assistance funds for the development, purchase, construction, or renovation of facilities for day programs or residential programs that provide services to persons eligible for services from the Department of ~~Mental Retardation and~~ Developmental Disabilities or county boards of ~~mental retardation and~~ developmental disabilities. Any funds provided to nonprofit agencies for the construction or renovation of facilities for persons eligible for services from the Department of ~~Mental Retardation and~~ Developmental Disabilities and county boards of ~~mental retardation and~~ developmental disabilities shall be governed by the prevailing wage provisions in section 176.05 of the Revised Code.

Of the foregoing appropriation item C59004, Community Assistance Projects, \$250,000 shall be used for North Olmsted Welcome House. Notwithstanding any provision of law to the contrary, North Olmsted Welcome House is not subject to the requirements of Chapter 153. of the Revised Code.

SECTION 10. That existing Section 231.20.30 of Am. Sub. H.B. 562 of the 127th General Assembly, as amended by Am. Sub. H.B. 420 of the

127th General Assembly is hereby repealed.

SECTION 11. That Section 4 of Am. Sub. H.B. 516 of the 125th General Assembly, as most recently amended by Am. Sub. H.B. 100 of the 127th General Assembly, be amended to read as follows:

Sec. 4. The following agencies shall be retained pursuant to division (D) of section 101.83 of the Revised Code and shall expire on December 31, 2010:

AGENCY NAME	REVISED CODE OR UNCODIFIED SECTION
Administrator, Interstate Compact on Mental Health	5119.50
Administrator, Interstate Compact on Placement of Children	5103.20
Advisory Board of Governor's Office of Faith-Based and Community Initiatives	107.12
Advisory Boards to the EPA for Air Pollution	121.13
Advisory Boards to the EPA for Water Pollution	121.13
Advisory Committee of the State Veterinary Medical Licensing Board	4741.03(D)(3)
Advisory Committee on Livestock Exhibitions	901.71
Advisory Council on Amusement Ride Safety	1711.51
Advisory Board of Directors for Prison Labor	5145.162
Advisory Council for Each Wild, Scenic, or Recreational River Area	1517.18
Advisory Councils or Boards for State Departments	107.18 or 121.13
Advisory Group to the Ohio Water Resources Council	1521.19(C)
Alzheimer's Disease Task Force	173.04(F)
AMBER Alert Advisory Committee	5502.521
Apprenticeship Council	4139.02
Armory Board of Control	5911.09
Automated Title Processing Board	4505.09(C)(1)
Banking Commission	1123.01
Board of Directors of the Ohio Health Reinsurance	3924.08

Program	
Board of Voting Machine Examiners	3506.05(B)
Brain Injury Advisory Committee	3304.231
Capitol Square Review and Advisory Board	105.41
Child Support Guideline Advisory Council	3119.024
Children's Trust Fund Board	3109.15
Citizens Advisory Committee (BMV)	4501.025
Citizen's Advisory Councils (Dept. of <del>Mental Retardation and</del> Developmental Disabilities)	5123.092
Clean Ohio Trail Advisory Board	1519.06
Coastal Resources Advisory Council	1506.12
Commission on African-American Males	4112.12
Commission on Hispanic-Latino Affairs	121.31
Commission on Minority Health	3701.78
Committee on Prescriptive Governance	4723.49
Commodity Advisory Commission	926.32
<del>Community Mental Retardation and Developmental Disabilities Trust Fund Advisory Council</del>	<del>5123.353</del>
Community Oversight Council	3311.77
Compassionate Care Task Force	Section 3, H.B. 474, 124th GA
Continuing Education Committee (for Sheriffs)	109.80
Coordinating Committee, Agricultural Commodity Marketing Programs	924.14
Council on Alcohol and Drug Addiction Services	3793.09
Council on Unreclaimed Strip Mined Lands	1513.29
Council to Advise on the Establishment and Implementation of the Birth Defects Information System	3705.34
County Sheriffs' Standard Car-Marking and Uniform Commission	311.25
Credit Union Council	1733.329
Criminal Sentencing Advisory Committee	181.22
Day-Care Advisory Council	5104.08
Dentist Loan Repayment Advisory Board	3702.92
Development Financing Advisory Council	122.40
Education Commission of the States (Interstate Compact for Education)	3301.48

Electrical Safety Inspector Advisory Committee	3783.08
Emergency Response Commission	3750.02
Engineering Experiment Station Advisory Committee	3335.27
Environmental Education Council	3745.21
EPA Advisory Boards or Councils	121.13
Farmland Preservation Advisory Board	901.23
Financial Planning & Supervision Commission for Municipal Corporation, County, or Township	118.05
Financial Planning & Supervision Commission for School District	3316.05
Forestry Advisory Council	1503.40
Governance Authority for a State University or College	3345.75
Governor's Advisory Council on Physical Fitness, Wellness, & Sports	3701.77
Governor's Council on People with Disabilities	3303.41
Governor's Residence Advisory Commission	107.40
Great Lakes Commission (Great Lakes Basin Compact)	6161.01
Gubernatorial Transition Committee	107.29
Head Start Partnership Study Council	Section 41.35, H.B. 95, 125th GA
Hemophilia Advisory Subcommittee	3701.0210
Housing Trust Fund Advisory Committee	175.25
Industrial Commission Nominating Council	4121.04
Industrial Technology and Enterprise Advisory Council	122.29
Infant Hearing Screening Subcommittee	3701.507
Insurance Agent Education Advisory Council	3905.483
Interagency Council on Hispanic/Latino Affairs	121.32(J)
Interstate Mining Commission (Interstate Mining Compact)	1514.30
Interstate Rail Passenger Advisory Council (Interstate High Speed Intercity Rail Passenger Network Compact)	4981.35
Joint Council on <del>MR/DD</del> <u>Developmental Disabilities</u>	101.37
Joint Select Committee on Volume Cap	133.021

Labor-Management Government Advisory Council	4121.70
Legal Rights Service Commission	5123.60
Legislative Task Force on Redistricting, Reapportionment, and Demographic Research	103.51
Maternal and Child Health Council	3701.025
Medically Handicapped Children's Medical Advisory Council	3701.025
Midwest Interstate Passenger Rail Compact Commission (Ohio members)	4981.361
Military Activation Task Force	5902.15
Milk Sanitation Board	917.03
Mine Subsidence Insurance Governing Board	3929.51
Minority Development Financing Board	122.72
Multi-Agency Radio Communications Systems Steering Committee	Sec. 21, H.B. 790, 120th GA
Multidisciplinary Council	3746.03
Muskingum River Advisory Council	1501.25
National Museum of Afro-American History and Culture Planning Committee	149.303
Ohio Advisory Council for the Aging	173.03
Ohio Aerospace & Defense Advisory Council	122.98
Ohio Arts Council	3379.02
Ohio Business Gateway Steering Committee	5703.57
Ohio Cemetery Dispute Resolution Commission	4767.05
Ohio Civil Rights Commission Advisory Agencies and Conciliation Councils	4112.04(B)
Ohio Commercial Insurance Joint Underwriting Association Board Of Governors	3930.03
Ohio Commercial Market Assistance Plan Executive Committee	3930.02
Ohio Commission on Dispute Resolution and Conflict Management	179.02
Ohio Commission to Reform Medicaid	Section 59.29, H.B. 95, 125th GA
Ohio Community Service Council	121.40
Ohio Council for Interstate Adult Offender Supervision	5149.22
Ohio Cultural Facilities Commission	3383.02
Ohio Developmental Disabilities Council	5123.35

Ohio Expositions Commission	991.02
Ohio Family and Children First Cabinet Council	121.37
Ohio Geology Advisory Council	1505.11
Ohio Grape Industries Committee	924.51
Ohio Hepatitis C Advisory Commission	3701.92
Ohio Historic Site Preservation Advisory Board	149.301
Ohio Historical Society Board of Trustees	149.30
Ohio Judicial Conference	105.91
Ohio Lake Erie Commission	1506.21
Ohio Medical Malpractice Commission	Section 4, S.B. 281, 124th GA and Section 3, S.B. 86, 125th GA
Ohio Medical Quality Foundation	3701.89
Ohio Parks and Recreation Council	1541.40
Ohio Peace Officer Training Commission	109.71
Ohio Public Defender Commission	120.01
Ohio Public Library Information Network Board	Sec. 69, H.B. 117, 121st GA, as amended by H.B. 284, 121st GA
Ohio Quarter Horse Development Commission	3769.086
Ohio Small Government Capital Improvements Commission	164.02
Ohio Soil and Water Conservation Commission	1515.02
Ohio Standardbred Development Commission	3769.085
Ohio Steel Industry Advisory Council	122.97
Ohio Teacher Education and Licensure Advisory Council	3319.28(D)
Ohio Thoroughbred Racing Advisory Committee	3769.084
Ohio Tuition Trust Authority	3334.03
Ohio University College of Osteopathic Medicine Advisory Committee	3337.10
Ohio Vendors Representative Committee	3304.34
Ohio War Orphans Scholarship Board	5910.02
Ohio Water Advisory Council	1521.031
Ohio Water Resources Council	1521.19

Ohioana Library Association, Martha Kinney Cooper Memorial	3375.62
Oil and Gas Commission	1509.35
Operating Committee, Agricultural Commodity Marketing Programs	924.07
Organized Crime Investigations Commission	177.01
Pharmacy and Therapeutics Committee of the Dept. of Job and Family Services	5111.81
Physician Loan Repayment Advisory Board	3702.81
Power Siting Board	4906.02
Prequalification Review Board	5525.07
Private Water Systems Advisory Council	3701.346
Public Employment Risk Reduction Advisory Commission	4167.02
Public Health Council	3701.33
Public Utilities Commission Nominating Council	4901.021
Public Utility Property Tax Study Committee	5727.85
Radiation Advisory Council	3748.20
Reclamation Commission	1513.05
Recreation and Resources Commission	1501.04
Recycling and Litter Prevention Advisory Council	1502.04
Rehabilitation Services Commission Consumer Advisory Committee	3304.24
Savings & Loans Associations & Savings Banks Board	1181.16
Schools and Ministerial Lands Divestiture Committee	501.041
Second Chance Trust Fund Advisory Committee	2108.17
Small Business Stationary Source Technical and Environmental Compliance Assistance Council	3704.19
Solid Waste Management Advisory Council	3734.51
State Agency Coordinating Group	1521.19
State Board of Emergency Medical Services Subcommittees	4765.04
State Council of Uniform State Laws	105.21
State Committee for the Purchase of Products and Services Provided by Persons with Severe Disabilities	4115.32
State Criminal Sentencing Commission	181.21
State Fire Commission	3737.81

State Racing Commission	3769.02
State Victims Assistance Advisory Committee	109.91
Student Tuition Recovery Authority	3332.081
Tax Credit Authority	122.17
Technical Advisory Committee to Assist the Director of the Ohio Coal Development Office	1551.35
Technical Advisory Council on Oil and Gas	1509.38
Transportation Review Advisory Council	5512.07
Unemployment Compensation Review Commission	4141.06
Unemployment Compensation Advisory Council	4141.08
Utility Radiological Safety Board	4937.02
Vehicle Management Commission	125.833
Veterans Advisory Committee	5902.02(K)
Volunteer Fire Fighters' Dependents Fund Boards (Private and Public)	146.02
Water and Sewer Commission	1525.11(C)
Waterways Safety Council	1547.73
Wildlife Council	1531.03
Workers' Compensation Board of Directors Nominating Committee	4121.123

SECTION 12. That existing Section 4 of Am. Sub. H.B. 516 of the 125th General Assembly, as most recently amended by Am. Sub. H.B. 100 of the 127th General Assembly, is hereby repealed.

SECTION 13. The Department of Developmental Disabilities and a county board of developmental disabilities may use their remaining supplies of papers, business cards, and other materials purchased in bulk that identify the Department as the Department of Mental Retardation and Developmental Disabilities and the county board as a county board of mental retardation and developmental disabilities until the Department, in the case of the Department's supplies, or the county board, in the case of the county board's supplies, exhausts its remaining supplies of the materials.

SECTION 14. The amendment of section 5120.07 of the Revised Code is not intended to supersede the earlier repeal, with delayed effective date, of that section.

SECTION 15. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the following sections, presented in this act as composites of the sections as amended by the acts indicated, are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act:

Section 109.57 of the Revised Code as amended by both Sub. H.B. 428 and Sub. S.B. 163 of the 127th General Assembly.

Section 109.572 of the Revised Code as amended by Sub. H.B. 195, Sub. H.B. 545, and Sub. S.B. 247, all of the 127th General Assembly.

Section 109.77 of the Revised Code as amended by Am. Sub. H.B. 490, Sub. H.B. 545, and H.B. 675, all of the 124th General Assembly.

Section 121.37 of the Revised Code as amended by both Sub. H.B. 289 and Am. Sub. H.B. 530 of the 126th General Assembly.

Section 325.19 of the Revised Code as amended by both Sub. H.B. 187 and Sub. S.B. 126 of the 126th General Assembly.

Section 1751.01 of the Revised Code as amended by both Am. Sub. H.B. 562 and Sub. S.B. 186 of the 127th General Assembly.

Section 3109.18 of the Revised Code as amended by both Am. Sub. H.B. 11 and Sub. S.B. 66 of the 125th General Assembly.

Section 5126.04 of the Revised Code as amended by both Am. Sub. H.B. 119 and Am. Sub. H.B. 214 of the 127th General Assembly.

Section 5815.35 of the Revised Code as amended by both Sub. H.B. 332 and Sub. H.B. 499 of the 127th General Assembly.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Sub. S. B. No. 79

128th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_