

As Introduced

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S. B. No. 270

Senators Skindell, Bacon

Cosponsors: Senators Tavares, Brown, Jones, Turner, Beagle

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A B I L L

To amend sections 5123.162, 5123.19, 5123.191, 1
5123.21, 5123.61, 5123.75, and 5123.76 of the 2
Revised Code to require copies of surveys 3
conducted by the Director of Developmental 4
Disabilities and related plans of correction to be 5
made available on the Department of Developmental 6
Disabilities' web site and to modify statutory 7
references to the Director's designee. 8

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

Section 1. That sections 5123.162, 5123.19, 5123.191, 9
5123.21, 5123.61, 5123.75, and 5123.76 of the Revised Code be 10
amended to read as follows: 11

Sec. 5123.162. (A) The director of developmental disabilities 12
may conduct surveys of persons and government entities that seek a 13
supported living certificate to determine whether the persons and 14
government entities meet the certification standards. The director 15
may also conduct surveys of providers to determine whether the 16
providers continue to meet the certification standards. The 17
director shall conduct the surveys in accordance with rules 18
adopted under section 5123.1610 of the Revised Code. 19

(B) Following each survey of a provider, the director shall 20
issue a report listing the date of the survey and any citations 21
issued as a result of the survey. Except when the director 22
initiates a proceeding to revoke a provider's certification, the 23
director shall do all of the following: 24

(1) Specify a date by which the provider may appeal any of 25
the citations; 26

(2) Specify a timetable within which the provider must submit 27
a plan of correction describing how the problems specified in the 28
citations will be corrected; 29

(3) When appropriate, specify a timetable within which the 30
provider must correct the problems specified in the citations. 31

(C) If the director initiates a proceeding to revoke a 32
provider's certification, the director shall include the report 33
required by division (B) of this section with the notice of the 34
proposed revocation the director sends the provider. In this 35
circumstance, the provider may not appeal the citations or submit 36
a plan of correction. 37

(D) After a plan of correction is submitted, the director 38
shall approve or disapprove the plan. If the plan of correction is 39
approved, a copy of the approved plan shall be provided, not later 40
than five business days after it is approved, to any person or 41
government entity that requests it and made available on the 42
internet web site maintained by the department of developmental 43
disabilities. If the plan of correction is not approved and the 44
director initiates a proceeding to revoke the provider's 45
certification, a copy of the survey report shall be provided to 46
any person or government entity that requests it and made 47
available on the internet web site maintained by the department. 48

The (E) In addition to survey reports described in this 49
section, all other records of associated with surveys conducted 50

under this section are public records for the purpose of section 51
149.43 of the Revised Code and shall be made available on the 52
request of any person or government entity. 53

Sec. 5123.19. (A) As used in sections 5123.19 to 5123.20 of 54
the Revised Code: 55

(1) "Independent living arrangement" means an arrangement in 56
which a mentally retarded or developmentally disabled person 57
resides in an individualized setting chosen by the person or the 58
person's guardian, which is not dedicated principally to the 59
provision of residential services for mentally retarded or 60
developmentally disabled persons, and for which no financial 61
support is received for rendering such service from any 62
governmental agency by a provider of residential services. 63

(2) "Licensee" means the person or government agency that has 64
applied for a license to operate a residential facility and to 65
which the license was issued under this section. 66

(3) "Political subdivision" means a municipal corporation, 67
county, or township. 68

(4) "Related party" has the same meaning as in section 69
5123.16 of the Revised Code except that "provider" as used in the 70
definition of "related party" means a person or government entity 71
that held or applied for a license to operate a residential 72
facility, rather than a person or government entity certified to 73
provide supported living. 74

(5)(a) Except as provided in division (A)(5)(b) of this 75
section, "residential facility" means a home or facility, 76
including an ICF/IID, in which an individual with mental 77
retardation or a developmental disability resides. 78

(b) "Residential facility" does not mean any of the 79
following: 80

(i) The home of a relative or legal guardian in which an individual with mental retardation or a developmental disability resides; 81
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(ii) A respite care home certified under section 5126.05 of the Revised Code; 84
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(iii) A county home or district home operated pursuant to Chapter 5155. of the Revised Code; 86
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(iv) A dwelling in which the only residents with mental retardation or developmental disabilities are in independent living arrangements or are being provided supported living. 88
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(B) Every person or government agency desiring to operate a residential facility shall apply for licensure of the facility to the director of developmental disabilities unless the residential facility is subject to section 3721.02, 5103.03, 5119.33, or division (A)(9)(b) of section 5119.34 of the Revised Code. 91
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(C) Subject to section 5123.196 of the Revised Code, the director of 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. 96
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(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 108
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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. 144

(5) If the director determines that two or more residential 145
facilities owned or operated by the same person or government 146
entity are not being operated in compliance with a provision of 147
this chapter that applies to residential facilities or the rules 148
adopted under such a provision, and the director's findings are 149
based on the same or a substantially similar action, practice, 150
circumstance, or incident that creates a substantial risk to the 151
health and safety of the residents, the director shall conduct a 152
survey as soon as practicable at each residential facility owned 153
or operated by that person or government entity. The director may 154
take any action authorized by this section with respect to any 155
facility found to be operating in violation of a provision of this 156
chapter that applies to residential facilities or the rules 157
adopted under such a provision. 158

(6) When the director initiates license revocation 159
proceedings, no opportunity for submitting a plan of correction 160
shall be given. The director shall notify the licensee by letter 161
of the initiation of the proceedings. The letter shall list the 162
deficiencies of the residential facility and inform the licensee 163
that no plan of correction will be accepted. The director shall 164
also send a copy of the letter to the county board of 165
developmental disabilities. The county board shall send a copy of 166
the letter to each of the following: 167

(a) Each resident who receives services from the licensee; 168

(b) The guardian of each resident who receives services from 169
the licensee if the resident has a guardian; 170

(c) The parent or guardian of each resident who receives 171
services from the licensee if the resident is a minor. 172

(7) Pursuant to rules which shall be adopted in accordance 173
with Chapter 119. of the Revised Code, the director may order the 174

immediate removal of residents from a residential facility 175
whenever conditions at the facility present an immediate danger of 176
physical or psychological harm to the residents. 177

(8) In determining whether a residential facility is being 178
operated in compliance with a provision of this chapter that 179
applies to residential facilities or the rules adopted under such 180
a provision, or whether conditions at a residential facility 181
present an immediate danger of physical or psychological harm to 182
the residents, the director may rely on information obtained by a 183
county board of developmental disabilities or other governmental 184
agencies. 185

(9) In proceedings initiated to deny, refuse to renew, or 186
revoke licenses, the director may deny, refuse to renew, or revoke 187
a license regardless of whether some or all of the deficiencies 188
that prompted the proceedings have been corrected at the time of 189
the hearing. 190

(E) The director shall establish a program under which public 191
notification may be made when the director has initiated license 192
revocation proceedings or has issued an order for the suspension 193
of admissions, placement of a monitor, or removal of residents. 194
The director shall adopt rules in accordance with Chapter 119. of 195
the Revised Code to implement this division. The rules shall 196
establish the procedures by which the public notification will be 197
made and specify the circumstances for which the notification must 198
be made. The rules shall require that public notification be made 199
if the director has taken action against the facility in the 200
eighteen-month period immediately preceding the director's latest 201
action against the facility and the latest action is being taken 202
for the same or a substantially similar violation of a provision 203
of this chapter that applies to residential facilities or the 204
rules adopted under such a provision. The rules shall specify a 205
method for removing or amending the public notification if the 206

director's action is found to have been unjustified or the 207
violation at the residential facility has been corrected. 208

(F)(1) Except as provided in division (F)(2) of this section, 209
appeals from proceedings initiated to impose a sanction under 210
division (D) of this section shall be conducted in accordance with 211
Chapter 119. of the Revised Code. 212

(2) Appeals from proceedings initiated to order the 213
suspension of admissions to a facility shall be conducted in 214
accordance with Chapter 119. of the Revised Code, unless the order 215
was issued before providing an opportunity for an adjudication, in 216
which case all of the following apply: 217

(a) The licensee may request a hearing not later than ten 218
days after receiving the notice specified in section 119.07 of the 219
Revised Code. 220

(b) If a timely request for a hearing that includes the 221
licensee's current address is made, the hearing shall commence not 222
later than thirty days after the department receives the request. 223

(c) After commencing, the hearing shall continue 224
uninterrupted, except for Saturdays, Sundays, and legal holidays, 225
unless other interruptions are agreed to by the licensee and the 226
director. 227

(d) If the hearing is conducted by a hearing examiner, the 228
hearing examiner shall file a report and recommendations not later 229
than ten days after the last of the following: 230

(i) The close of the hearing; 231

(ii) If a transcript of the proceedings is ordered, the 232
hearing examiner receives the transcript; 233

(iii) If post-hearing briefs are timely filed, the hearing 234
examiner receives the briefs. 235

(e) A copy of the written report and recommendation of the 236

hearing examiner shall be sent, by certified mail, to the licensee 237
and the licensee's attorney, if applicable, not later than five 238
days after the report is filed. 239

(f) Not later than five days after the hearing examiner files 240
the report and recommendations, the licensee may file objections 241
to the report and recommendations. 242

(g) Not later than fifteen days after the hearing examiner 243
files the report and recommendations, the director shall issue an 244
order approving, modifying, or disapproving the report and 245
recommendations. 246

(h) Notwithstanding the pendency of the hearing, the director 247
shall lift the order for the suspension of admissions when the 248
director determines that the violation that formed the basis for 249
the order has been corrected. 250

(G) Neither a person or government agency whose application 251
for a license to operate a residential facility is denied nor a 252
related party of the person or government agency may apply for a 253
license to operate a residential facility before the date that is 254
one year after the date of the denial. Neither a licensee whose 255
residential facility license is revoked nor a related party of the 256
licensee may apply for a residential facility license before the 257
date that is five years after the date of the revocation. 258

(H) In accordance with Chapter 119. of the Revised Code, the 259
director shall adopt and may amend and rescind rules for licensing 260
and regulating the operation of residential facilities. The rules 261
for residential facilities that are ICFs/IID may differ from those 262
for other residential facilities. The rules shall establish and 263
specify the following: 264

(1) Procedures and criteria for issuing and renewing 265
licenses, including procedures and criteria for determining the 266
length of the licensing period that the director must specify for 267

each license when it is issued or renewed;	268
(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;	269 270 271 272
(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;	273 274 275
(4) Procedures for surveying residential facilities;	276
(5) Requirements for the training of residential facility personnel;	277 278
(6) Classifications for the various types of residential facilities;	279 280
(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;	281 282 283 284
(8) The maximum number of persons who may be served in a particular type of residential facility;	285 286
(9) Uniform procedures for admission of persons to and transfers and discharges of persons from residential facilities;	287 288
(10) Other standards for the operation of residential facilities and the services provided at residential facilities;	289 290
(11) Procedures for waiving any provision of any rule adopted under this section.	291 292
(I)(1) 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	293 294 295 296 297

license is valid and may conduct additional inspections as needed. 298
A survey includes but is not limited to an on-site examination and 299
evaluation of the residential facility, its personnel, and the 300
services provided there. 301

(2) In conducting surveys, the director ~~or the director's~~ 302
~~designee~~ shall be given access to the residential facility; all 303
records, accounts, and any other documents related to the 304
operation of the facility; the licensee; the residents of the 305
facility; and all persons acting on behalf of, under the control 306
of, or in connection with the licensee. The licensee and all 307
persons on behalf of, under the control of, or in connection with 308
the licensee shall cooperate with the director ~~or the director's~~ 309
~~designee~~ in conducting the survey. 310

(3) Following each survey, ~~unless the director initiates a~~ 311
~~license revocation proceeding,~~ the director ~~or the director's~~ 312
~~designee~~ shall provide the licensee with a report listing the date 313
of the survey and any deficiencies, specifying citations issued as 314
a result of the survey. Except when the director initiates a 315
proceeding to revoke a license, the director shall do all of the 316
following: 317

(a) Specify a date by which the licensee may appeal any of 318
the citations; 319

(b) Specify a timetable within which the licensee shall must 320
submit a plan of correction describing how the ~~deficiencies~~ 321
problems specified in the citations will be corrected, ~~and, when;~~ 322

(c) When appropriate, specifying specify a timetable within 323
which the licensee must correct the ~~deficiencies~~ problems 324
specified in the citations. After 325

(4) If the director initiates a proceeding to revoke a 326
license, the director shall include the report required by 327
division (I)(3) of this section with the notice of the proposed 328

revocation the director sends the licensee. In this circumstance, 329
the licensee may not appeal the citations or submit a plan of 330
correction. 331

(5) After a plan of correction is submitted, the director ~~or~~ 332
the director's designee shall approve or disapprove the plan. A ~~If~~ 333
the plan of correction is approved, a copy of the ~~report and any~~ 334
approved plan ~~of correction~~ shall be provided, not later than five 335
business days after it is approved, to any person or government 336
entity who requests it and made available on the internet web site 337
maintained by the department of developmental disabilities. If the 338
plan of correction is not approved and the director initiates a 339
proceeding to revoke the license, a copy of the survey report 340
shall be provided to any person or government entity that requests 341
it and made available on the internet web site maintained by the 342
department. 343

(6) The director shall initiate disciplinary action against 344
any department employee who notifies or causes the notification to 345
any unauthorized person of an unannounced survey of a residential 346
facility by an authorized representative of the department. 347

(J) In addition to any other information which may be 348
required of applicants for a license pursuant to this section, the 349
director shall require each applicant to provide a copy of an 350
approved plan for a proposed residential facility pursuant to 351
section 5123.042 of the Revised Code. This division does not apply 352
to renewal of a license or to an applicant for an initial or 353
modified license who meets the requirements of section 5123.197 of 354
the Revised Code. 355

(K) A licensee shall notify the owner of the building in 356
which the licensee's residential facility is located of any 357
significant change in the identity of the licensee or management 358
contractor before the effective date of the change if the licensee 359
is not the owner of the building. 360

Pursuant to rules which shall be adopted in accordance with 361
Chapter 119. of the Revised Code, the director may require 362
notification to the department of any significant change in the 363
ownership of a residential facility or in the identity of the 364
licensee or management contractor. If the director determines that 365
a significant change of ownership is proposed, the director shall 366
consider the proposed change to be an application for development 367
by a new operator pursuant to section 5123.042 of the Revised Code 368
and shall advise the applicant within sixty days of the 369
notification that the current license shall continue in effect or 370
a new license will be required pursuant to this section. If the 371
director requires a new license, the director shall permit the 372
facility to continue to operate under the current license until 373
the new license is issued, unless the current license is revoked, 374
refused to be renewed, or terminated in accordance with Chapter 375
119. of the Revised Code. 376

(L) A county board of developmental disabilities and any 377
interested person may file complaints alleging violations of 378
statute or department rule relating to residential facilities with 379
the department. All complaints shall be in writing and shall state 380
the facts constituting the basis of the allegation. The department 381
shall not reveal the source of any complaint unless the 382
complainant agrees in writing to waive the right to 383
confidentiality or until so ordered by a court of competent 384
jurisdiction. 385

The department shall adopt rules in accordance with Chapter 386
119. of the Revised Code establishing procedures for the receipt, 387
referral, investigation, and disposition of complaints filed with 388
the department under this division. 389

(M) The department shall establish procedures for the 390
notification of interested parties of the transfer or interim care 391
of residents from residential facilities that are closing or are 392

losing their license. 393

(N) Before issuing a license under this section to a 394
residential facility that will accommodate at any time more than 395
one mentally retarded or developmentally disabled individual, the 396
director shall, by first class mail, notify the following: 397

(1) If the facility will be located in a municipal 398
corporation, the clerk of the legislative authority of the 399
municipal corporation; 400

(2) If the facility will be located in unincorporated 401
territory, the clerk of the appropriate board of county 402
commissioners and the fiscal officer of the appropriate board of 403
township trustees. 404

The director shall not issue the license for ten days after 405
mailing the notice, excluding Saturdays, Sundays, and legal 406
holidays, in order to give the notified local officials time in 407
which to comment on the proposed issuance. 408

Any legislative authority of a municipal corporation, board 409
of county commissioners, or board of township trustees that 410
receives notice under this division of the proposed issuance of a 411
license for a residential facility may comment on it in writing to 412
the director within ten days after the director mailed the notice, 413
excluding Saturdays, Sundays, and legal holidays. If the director 414
receives written comments from any notified officials within the 415
specified time, the director shall make written findings 416
concerning the comments and the director's decision on the 417
issuance of the license. If the director does not receive written 418
comments from any notified local officials within the specified 419
time, the director shall continue the process for issuance of the 420
license. 421

(O) Any person may operate a licensed residential facility 422
that provides room and board, personal care, habilitation 423

services, and supervision in a family setting for at least six but 424
not more than eight persons with mental retardation or a 425
developmental disability as a permitted use in any residential 426
district or zone, including any single-family residential district 427
or zone, of any political subdivision. These residential 428
facilities may be required to comply with area, height, yard, and 429
architectural compatibility requirements that are uniformly 430
imposed upon all single-family residences within the district or 431
zone. 432

(P) Any person may operate a licensed residential facility 433
that provides room and board, personal care, habilitation 434
services, and supervision in a family setting for at least nine 435
but not more than sixteen persons with mental retardation or a 436
developmental disability as a permitted use in any multiple-family 437
residential district or zone of any political subdivision, except 438
that a political subdivision that has enacted a zoning ordinance 439
or resolution establishing planned unit development districts may 440
exclude these residential facilities from those districts, and a 441
political subdivision that has enacted a zoning ordinance or 442
resolution may regulate these residential facilities in 443
multiple-family residential districts or zones as a conditionally 444
permitted use or special exception, in either case, under 445
reasonable and specific standards and conditions set out in the 446
zoning ordinance or resolution to: 447

(1) Require the architectural design and site layout of the 448
residential facility and the location, nature, and height of any 449
walls, screens, and fences to be compatible with adjoining land 450
uses and the residential character of the neighborhood; 451

(2) Require compliance with yard, parking, and sign 452
regulation; 453

(3) Limit excessive concentration of these residential 454
facilities. 455

(Q) This section does not prohibit a political subdivision 456
from applying to residential facilities nondiscriminatory 457
regulations requiring compliance with health, fire, and safety 458
regulations and building standards and regulations. 459

(R) Divisions (O) and (P) of this section are not applicable 460
to municipal corporations that had in effect on June 15, 1977, an 461
ordinance specifically permitting in residential zones licensed 462
residential facilities by means of permitted uses, conditional 463
uses, or special exception, so long as such ordinance remains in 464
effect without any substantive modification. 465

(S)(1) The director may issue an interim license to operate a 466
residential facility to an applicant for a license under this 467
section if either of the following is the case: 468

(a) The director determines that an emergency exists 469
requiring immediate placement of persons in a residential 470
facility, that insufficient licensed beds are available, and that 471
the residential facility is likely to receive a permanent license 472
under this section within thirty days after issuance of the 473
interim license. 474

(b) The director determines that the issuance of an interim 475
license is necessary to meet a temporary need for a residential 476
facility. 477

(2) To be eligible to receive an interim license, an 478
applicant must meet the same criteria that must be met to receive 479
a permanent license under this section, except for any differing 480
procedures and time frames that may apply to issuance of a 481
permanent license. 482

(3) An interim license shall be valid for thirty days and may 483
be renewed by the director for a period not to exceed one hundred 484
fifty days. 485

(4) The director shall adopt rules in accordance with Chapter 486

119. of the Revised Code as the director considers necessary to 487
administer the issuance of interim licenses. 488

(T) Notwithstanding rules adopted pursuant to this section 489
establishing the maximum number of persons who may be served in a 490
particular type of residential facility, a residential facility 491
shall be permitted to serve the same number of persons being 492
served by the facility on the effective date of the rules or the 493
number of persons for which the facility is authorized pursuant to 494
a current application for a certificate of need with a letter of 495
support from the department of developmental disabilities and 496
which is in the review process prior to April 4, 1986. 497

(U) The director ~~or the director's designee~~ may enter at any 498
time, for purposes of investigation, any home, facility, or other 499
structure that has been reported to the director or that the 500
director has reasonable cause to believe is being operated as a 501
residential facility without a license issued under this section. 502

The director may petition the court of common pleas of the 503
county in which an unlicensed residential facility is located for 504
an order enjoining the person or governmental agency operating the 505
facility from continuing to operate without a license. The court 506
may grant the injunction on a showing that the person or 507
governmental agency named in the petition is operating a 508
residential facility without a license. The court may grant the 509
injunction, regardless of whether the residential facility meets 510
the requirements for receiving a license under this section. 511

Sec. 5123.191. (A) The court of common pleas or a judge 512
thereof in the judge's county, or the probate court, may appoint a 513
receiver to take possession of and operate a residential facility 514
licensed by the department of developmental disabilities, in 515
causes pending in such courts respectively, when conditions 516
existing at the facility present a substantial risk of physical or 517

mental harm to residents and no other remedies at law are adequate 518
to protect the health, safety, and welfare of the residents. 519
Conditions at the facility that may present such risk of harm 520
include, but are not limited to, instances when any of the 521
following occur: 522

(1) The residential facility is in violation of state or 523
federal law or regulations. 524

(2) The facility has had its license revoked or procedures 525
for revocation have been initiated, or the facility is closing or 526
intends to cease operations. 527

(3) Arrangements for relocating residents need to be made. 528

(4) Insolvency of the operator, licensee, or landowner 529
threatens the operation of the facility. 530

(5) The facility or operator has demonstrated a pattern and 531
practice of repeated violations of state or federal laws or 532
regulations. 533

(B) A court in which a petition is filed pursuant to this 534
section shall notify the person holding the license for the 535
facility and the department of developmental disabilities of the 536
filing. The court shall order the department to notify the 537
facility owner, facility operator, county board of developmental 538
disabilities, facility residents, and residents' parents and 539
guardians of the filing of the petition. 540

The court shall provide a hearing on the petition within five 541
court days of the time it was filed, except that the court may 542
appoint a receiver prior to that time if it determines that the 543
circumstances necessitate such action. Following a hearing on the 544
petition, and upon a determination that the appointment of a 545
receiver is warranted, the court shall appoint a receiver and 546
notify the department of developmental disabilities and 547

appropriate persons of this action. 548

(C) A residential facility for which a receiver has been 549
named is deemed to be in compliance with section 5123.19 and 550
Chapter 3721. of the Revised Code for the duration of the 551
receivership. 552

(D) When the operating revenue of a residential facility in 553
receivership is insufficient to meet its operating expenses, 554
including the cost of bringing the facility into compliance with 555
state or federal laws or regulations, the court may order the 556
state to provide necessary funding, except as provided in division 557
(K) of this section. The state shall provide such funding, subject 558
to the approval of the controlling board. The court may also order 559
the appropriate authorities to expedite all inspections necessary 560
for the issuance of licenses or the certification of a facility, 561
and order a facility to be closed if it determines that reasonable 562
efforts cannot bring the facility into substantial compliance with 563
the law. 564

(E) In establishing a receivership, the court shall set forth 565
the powers and duties of the receiver. The court may generally 566
authorize the receiver to do all that is prudent and necessary to 567
safely and efficiently operate the residential facility within the 568
requirements of state and federal law, but shall require the 569
receiver to obtain court approval prior to making any single 570
expenditure of more than five thousand dollars to correct 571
deficiencies in the structure or furnishings of a facility. The 572
court shall closely review the conduct of the receiver it has 573
appointed and shall require regular and detailed reports. The 574
receivership shall be reviewed at least every sixty days. 575

(F) A receivership established pursuant to this section shall 576
be terminated, following notification of the appropriate parties 577
and a hearing, if the court determines either of the following: 578

(1) The residential facility has been closed and the former 579
residents have been relocated to an appropriate facility. 580

(2) Circumstances no longer exist at the facility that 581
present a substantial risk of physical or mental harm to 582
residents, and there is no deficiency in the facility that is 583
likely to create a future risk of harm. 584

Notwithstanding division (F)(2) of this section, the court 585
shall not terminate a receivership for a residential facility that 586
has previously operated under another receivership unless the 587
responsibility for the operation of the facility is transferred to 588
an operator approved by the court and the department of 589
developmental disabilities. 590

(G) The department of developmental disabilities may, upon 591
its own initiative or at the request of an owner, operator, or 592
resident of a residential facility, or at the request of a 593
resident's guardian or relative or a county board of developmental 594
disabilities, petition the court to appoint a receiver to take 595
possession of and operate a residential facility. When the 596
department has been requested to file a petition by any of the 597
parties listed above, it shall, within forty-eight hours of such 598
request, either file such a petition or notify the requesting 599
party of its decision not to file. If the department refuses to 600
file, the requesting party may file a petition with the court 601
requesting the appointment of a receiver to take possession of and 602
operate a residential facility. 603

Petitions filed pursuant to this division shall include the 604
following: 605

(1) A description of the specific conditions existing at the 606
facility which present a substantial risk of physical or mental 607
harm to residents; 608

(2) A statement of the absence of other adequate remedies at 609

law; 610

(3) The number of individuals residing at the facility; 611

(4) A statement that the facts have been brought to the 612
attention of the owner or licensee and that conditions have not 613
been remedied within a reasonable period of time or that the 614
conditions, though remedied periodically, habitually exist at the 615
facility as a pattern or practice; 616

(5) The name and address of the person holding the license 617
for the facility and the address of the department of 618
developmental disabilities. 619

The court may award to an operator appropriate costs and 620
expenses, including reasonable attorney's fees, if it determines 621
that a petitioner has initiated a proceeding in bad faith or 622
merely for the purpose of harassing or embarrassing the operator. 623

(H) Except for the department of developmental disabilities 624
or a county board of developmental disabilities, no party or 625
person interested in an action shall be appointed a receiver 626
pursuant to this section. 627

To assist the court in identifying persons qualified to be 628
named as receivers, the director of developmental disabilities ~~or~~ 629
~~the director's designee~~ shall maintain a list of the names of such 630
persons. The director shall, in accordance with Chapter 119. of 631
the Revised Code, establish standards for evaluating persons 632
desiring to be included on such a list. 633

(I) Before a receiver enters upon the duties of that person, 634
the receiver must be sworn to perform the duties of receiver 635
faithfully, and, with surety approved by the court, judge, or 636
clerk, execute a bond to such person, and in such sum as the court 637
or judge directs, to the effect that such receiver will faithfully 638
discharge the duties of receiver in the action, and obey the 639
orders of the court therein. 640

(J) Under the control of the appointing court, a receiver may 641
bring and defend actions in the receiver's own name as receiver 642
and take and keep possession of property. 643

The court shall authorize the receiver to do the following: 644

(1) Collect payment for all goods and services provided to 645
the residents or others during the period of the receivership at 646
the same rate as was charged by the licensee at the time the 647
petition for receivership was filed, unless a different rate is 648
set by the court; 649

(2) Honor all leases, mortgages, and secured transactions 650
governing all buildings, goods, and fixtures of which the receiver 651
has taken possession and continues to use, subject to the 652
following conditions: 653

(a) In the case of a rental agreement, only to the extent of 654
payments that are for the use of the property during the period of 655
the receivership; 656

(b) In the case of a purchase agreement only to the extent of 657
payments that come due during the period of the receivership. 658

(3) If transfer of residents is necessary, provide for the 659
orderly transfer of residents by doing the following: 660

(a) Cooperating with all appropriate state and local agencies 661
in carrying out the transfer of residents to alternative community 662
placements; 663

(b) Providing for the transportation of residents' belongings 664
and records; 665

(c) Helping to locate alternative placements and develop 666
discharge plans; 667

(d) Preparing residents for the trauma of discharge; 668

(e) Permitting residents or guardians to participate in 669
transfer or discharge planning except when an emergency exists and 670

immediate transfer is necessary. 671

(4) Make periodic reports on the status of the residential 672
program to the appropriate state agency, county board of 673
developmental disabilities, parents, guardians, and residents; 674

(5) Compromise demands or claims; 675

(6) Generally do such acts respecting the residential 676
facility as the court authorizes. 677

(K) Neither the receiver nor the department of developmental 678
disabilities is liable for debts incurred by the owner or operator 679
of a residential facility for which a receiver has been appointed. 680

(L) The department of developmental disabilities may contract 681
for the operation of a residential facility in receivership. The 682
department shall establish the conditions of a contract. 683
Notwithstanding any other provision of law, contracts that are 684
necessary to carry out the powers and duties of the receiver need 685
not be competitively bid. 686

(M) The department of developmental disabilities, the 687
department of job and family services, and the department of 688
health shall provide technical assistance to any receiver 689
appointed pursuant to this section. 690

Sec. 5123.21. The director of developmental disabilities ~~or~~ 691
~~the director's designee~~ may transfer or authorize the transfer of 692
an involuntary resident or a consenting voluntary resident from 693
one public institution to another or to an institution other than 694
a public institution or other facility, if the director determines 695
that it would be consistent with the habilitation needs of the 696
resident to do so. 697

Before an involuntary resident may be transferred to a more 698
restrictive setting, the managing officer of the institution shall 699
file a motion with the court requesting the court to amend its 700

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~~ director 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. 5123.61. (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 developmental disabilities shall 732
establish a registry office for the purpose of maintaining reports 733
of abuse, neglect, and other major unusual incidents made to the 734
department under this section and reports received from county 735
boards of developmental disabilities under section 5126.31 of the 736
Revised Code. The department shall establish committees to review 737
reports of abuse, neglect, and other major unusual incidents. 738

(C)(1) Any person listed in division (C)(2) of this section, 739
having reason to believe that a person with mental retardation or 740
a developmental disability has suffered or faces a substantial 741
risk of suffering any wound, injury, disability, or condition of 742
such a nature as to reasonably indicate abuse or neglect of that 743
person, shall immediately report or cause reports to be made of 744
such information to the entity specified in this division. Except 745
as provided in section 5120.173 of the Revised Code or as 746
otherwise provided in this division, the person making the report 747
shall make it to a law enforcement agency or to the county board 748
of developmental disabilities. If the report concerns a resident 749
of a facility operated by the department of developmental 750
disabilities the report shall be made either to a law enforcement 751
agency or to the department. If the report concerns any act or 752
omission of an employee of a county board of developmental 753
disabilities, the report immediately shall be made to the 754
department and to the county board. 755

(2) All of the following persons are required to make a 756
report under division (C)(1) of this section: 757

(a) Any physician, including a hospital intern or resident, 758
any dentist, podiatrist, chiropractor, practitioner of a limited 759
branch of medicine as specified in section 4731.15 of the Revised 760
Code, hospital administrator or employee of a hospital, nurse 761
licensed under Chapter 4723. of the Revised Code, employee of an 762
ambulatory health facility as defined in section 5101.61 of the 763

Revised Code, employee of a home health agency, employee of a 764
residential facility licensed under section 5119.34 of the Revised 765
Code that provides accommodations, supervision, and person care 766
services for three to sixteen unrelated adults, or employee of a 767
community mental health facility; 768

(b) Any school teacher or school authority, social worker, 769
psychologist, attorney, peace officer, coroner, or residents' 770
rights advocate as defined in section 3721.10 of the Revised Code; 771

(c) A superintendent, board member, or employee of a county 772
board of developmental disabilities; an administrator, board 773
member, or employee of a residential facility licensed under 774
section 5123.19 of the Revised Code; an administrator, board 775
member, or employee of any other public or private provider of 776
services to a person with mental retardation or a developmental 777
disability, or any MR/DD employee, as defined in section 5123.50 778
of the Revised Code; 779

(d) A member of a citizen's advisory council established at 780
an institution or branch institution of the department of 781
developmental disabilities under section 5123.092 of the Revised 782
Code; 783

(e) A member of the clergy who is employed in a position that 784
includes providing specialized services to an individual with 785
mental retardation or another developmental disability, while 786
acting in an official or professional capacity in that position, 787
or a person who is employed in a position that includes providing 788
specialized services to an individual with mental retardation or 789
another developmental disability and who, while acting in an 790
official or professional capacity, renders spiritual treatment 791
through prayer in accordance with the tenets of an organized 792
religion. 793

(3)(a) The reporting requirements of this division do not 794

apply to employees of the Ohio protection and advocacy system. 795

(b) An attorney or physician is not required to make a report 796
pursuant to division (C)(1) of this section concerning any 797
communication the attorney or physician receives from a client or 798
patient in an attorney-client or physician-patient relationship, 799
if, in accordance with division (A) or (B) of section 2317.02 of 800
the Revised Code, the attorney or physician could not testify with 801
respect to that communication in a civil or criminal proceeding, 802
except that the client or patient is deemed to have waived any 803
testimonial privilege under division (A) or (B) of section 2317.02 804
of the Revised Code with respect to that communication and the 805
attorney or physician shall make a report pursuant to division 806
(C)(1) of this section, if both of the following apply: 807

(i) The client or patient, at the time of the communication, 808
is a person with mental retardation or a developmental disability. 809

(ii) The attorney or physician knows or suspects, as a result 810
of the communication or any observations made during that 811
communication, that the client or patient has suffered or faces a 812
substantial risk of suffering any wound, injury, disability, or 813
condition of a nature that reasonably indicates abuse or neglect 814
of the client or patient. 815

(4) Any person who fails to make a report required under 816
division (C) of this section and who is an MR/DD employee, as 817
defined in section 5123.50 of the Revised Code, shall be eligible 818
to be included in the registry regarding misappropriation, abuse, 819
neglect, or other specified misconduct by MR/DD employees 820
established under section 5123.52 of the Revised Code. 821

(D) The reports required under division (C) of this section 822
shall be made forthwith by telephone or in person and shall be 823
followed by a written report. The reports shall contain the 824
following: 825

(1) The names and addresses of the person with mental 826
retardation or a developmental disability and the person's 827
custodian, if known; 828

(2) The age of the person with mental retardation or a 829
developmental disability; 830

(3) Any other information that would assist in the 831
investigation of the report. 832

(E) When a physician performing services as a member of the 833
staff of a hospital or similar institution has reason to believe 834
that a person with mental retardation or a developmental 835
disability has suffered injury, abuse, or physical neglect, the 836
physician shall notify the person in charge of the institution or 837
that person's designated delegate, who shall make the necessary 838
reports. 839

(F) Any person having reasonable cause to believe that a 840
person with mental retardation or a developmental disability has 841
suffered or faces a substantial risk of suffering abuse or neglect 842
may report or cause a report to be made of that belief to the 843
entity specified in this division. Except as provided in section 844
5120.173 of the Revised Code or as otherwise provided in this 845
division, the person making the report shall make it to a law 846
enforcement agency or the county board of developmental 847
disabilities. If the person is a resident of a facility operated 848
by the department of developmental disabilities, the report shall 849
be made to a law enforcement agency or to the department. If the 850
report concerns any act or omission of an employee of a county 851
board of developmental disabilities, the report immediately shall 852
be made to the department and to the county board. 853

(G)(1) Upon the receipt of a report concerning the possible 854
abuse or neglect of a person with mental retardation or a 855
developmental disability, the law enforcement agency shall inform 856

the county board of developmental disabilities or, if the person 857
is a resident of a facility operated by the department of 858
developmental disabilities, the ~~director of the~~ department ~~or the~~ 859
~~director's designee.~~ 860

(2) On receipt of a report under this section that includes 861
an allegation of action or inaction that may constitute a crime 862
under federal law or the law of this state, the department of 863
developmental disabilities shall notify the law enforcement 864
agency. 865

(3) When a county board of developmental disabilities 866
receives a report under this section that includes an allegation 867
of action or inaction that may constitute a crime under federal 868
law or the law of this state, the superintendent of the board or 869
an individual the superintendent designates under division (H) of 870
this section shall notify the law enforcement agency. The 871
superintendent or individual shall notify the department of 872
developmental disabilities when it receives any report under this 873
section. 874

(4) When a county board of developmental disabilities 875
receives a report under this section and believes that the degree 876
of risk to the person is such that the report is an emergency, the 877
superintendent of the board or an employee of the board the 878
superintendent designates shall attempt a face-to-face contact 879
with the person with mental retardation or a developmental 880
disability who allegedly is the victim within one hour of the 881
board's receipt of the report. 882

(H) The superintendent of the board may designate an 883
individual to be responsible for notifying the law enforcement 884
agency and the department when the county board receives a report 885
under this section. 886

(I) An adult with mental retardation or a developmental 887

disability about whom a report is made may be removed from the 888
adult's place of residence only by law enforcement officers who 889
consider that the adult's immediate removal is essential to 890
protect the adult from further injury or abuse or in accordance 891
with the order of a court made pursuant to section 5126.33 of the 892
Revised Code. 893

(J) A law enforcement agency shall investigate each report of 894
abuse or neglect it receives under this section. In addition, the 895
department, in cooperation with law enforcement officials, shall 896
investigate each report regarding a resident of a facility 897
operated by the department to determine the circumstances 898
surrounding the injury, the cause of the injury, and the person 899
responsible. The investigation shall be in accordance with the 900
memorandum of understanding prepared under section 5126.058 of the 901
Revised Code. The department shall determine, with the registry 902
office which shall be maintained by the department, whether prior 903
reports have been made concerning an adult with mental retardation 904
or a developmental disability or other principals in the case. If 905
the department finds that the report involves action or inaction 906
that may constitute a crime under federal law or the law of this 907
state, it shall submit a report of its investigation, in writing, 908
to the law enforcement agency. If the person with mental 909
retardation or a developmental disability is an adult, with the 910
consent of the adult, the department shall provide such protective 911
services as are necessary to protect the adult. The law 912
enforcement agency shall make a written report of its findings to 913
the department. 914

If the person is an adult and is not a resident of a facility 915
operated by the department, the county board of developmental 916
disabilities shall review the report of abuse or neglect in 917
accordance with sections 5126.30 to 5126.33 of the Revised Code 918
and the law enforcement agency shall make the written report of 919

its findings to the county board. 920

(K) Any person or any hospital, institution, school, health 921
department, or agency participating in the making of reports 922
pursuant to this section, any person participating as a witness in 923
an administrative or judicial proceeding resulting from the 924
reports, or any person or governmental entity that discharges 925
responsibilities under sections 5126.31 to 5126.33 of the Revised 926
Code shall be immune from any civil or criminal liability that 927
might otherwise be incurred or imposed as a result of such actions 928
except liability for perjury, unless the person or governmental 929
entity has acted in bad faith or with malicious purpose. 930

(L) No employer or any person with the authority to do so 931
shall discharge, demote, transfer, prepare a negative work 932
performance evaluation, reduce pay or benefits, terminate work 933
privileges, or take any other action detrimental to an employee or 934
retaliate against an employee as a result of the employee's having 935
made a report under this section. This division does not preclude 936
an employer or person with authority from taking action with 937
regard to an employee who has made a report under this section if 938
there is another reasonable basis for the action. 939

(M) Reports made under this section are not public records as 940
defined in section 149.43 of the Revised Code. Information 941
contained in the reports on request shall be made available to the 942
person who is the subject of the report, to the person's legal 943
counsel, and to agencies authorized to receive information in the 944
report by the department or by a county board of developmental 945
disabilities. 946

(N) Notwithstanding section 4731.22 of the Revised Code, the 947
physician-patient privilege shall not be a ground for excluding 948
evidence regarding the injuries or physical neglect of a person 949
with mental retardation or a developmental disability or the cause 950
thereof in any judicial proceeding resulting from a report 951

submitted pursuant to this section. 952

Sec. 5123.75. A respondent who is involuntarily placed in an 953
institution or other place as designated in section 5123.77 of the 954
Revised Code or with respect to whom proceedings have been 955
instituted under section 5123.71 of the Revised Code shall, on 956
request of the respondent, the respondent's guardian, or the 957
respondent's counsel, or upon the court's own motion, be afforded 958
a hearing to determine whether there is probable cause to believe 959
that the respondent is a mentally retarded person subject to 960
institutionalization by court order. 961

(A) The probable cause hearing shall be conducted within two 962
court days from the day on which the request is made. Failure to 963
conduct the probable cause hearing within this time shall effect 964
an immediate discharge of the respondent. If the proceedings are 965
not reinstated within thirty days, records of the proceedings 966
shall be expunged. 967

(B) The respondent shall be informed that the respondent may 968
retain counsel and have independent expert evaluation and, if the 969
respondent is an indigent person, be represented by court 970
appointed counsel and have independent expert evaluation at court 971
expense. 972

(C) The probable cause hearing shall be conducted in a manner 973
consistent with the procedures set forth in division (A) of 974
section 5123.76 of the Revised Code, except divisions (A)(10) and 975
(14) of that section, and the designee of the director of 976
developmental disabilities under section 5123.72 of the Revised 977
Code shall present evidence for the state. 978

(D) If the court does not find probable cause to believe that 979
the respondent is a mentally retarded person subject to 980
institutionalization by court order, it shall order immediate 981
release of the respondent and dismiss and expunge all record of 982

the proceedings under this chapter. 983

(E) On motion of the respondent or the respondent's counsel 984
and for good cause shown, the court may order a continuance of the 985
hearing. 986

(F) If the court finds probable cause to believe that the 987
respondent is a mentally retarded person subject to 988
institutionalization by court order, the court may issue an 989
interim order of placement and, where proceedings under section 990
5123.71 of the Revised Code have been instituted, shall order a 991
full hearing as provided in section 5123.76 of the Revised Code to 992
be held on the question of whether the respondent is a mentally 993
retarded person subject to institutionalization by court order. 994
Unless specifically waived by the respondent or the respondent's 995
counsel, the court shall schedule said hearing to be held as soon 996
as possible within ten days from the probable cause hearing. A 997
waiver of such full hearing at this point shall not preclude the 998
respondent from asserting the respondent's right to such hearing 999
under section 5123.76 of the Revised Code at any time prior to the 1000
mandatory hearing provided in division (H) of section 5123.76 of 1001
the Revised Code. In any case, if the respondent has waived the 1002
right to the full hearing, a mandatory hearing shall be held under 1003
division (H) of section 5123.76 of the Revised Code between the 1004
ninetieth and the one hundredth day after the original involuntary 1005
detention of the person unless the respondent has been discharged. 1006

(G) Whenever possible, the probable cause hearing shall be 1007
held before the respondent is taken into custody. 1008

Sec. 5123.76. (A) The full hearing shall be conducted in a 1009
manner consistent with the procedures outlined in this chapter and 1010
with due process of law. The hearing shall be held by a judge of 1011
the probate division or, upon transfer by the judge of the probate 1012
division, by another judge of the court of common pleas, or a 1013

referee designated by the judge of the probate division. Any 1014
referee designated by the judge of the probate division must be an 1015
attorney. 1016

(1) The following shall be made available to counsel for the 1017
respondent: 1018

(a) All relevant documents, information, and evidence in the 1019
custody or control of the state or prosecutor; 1020

(b) All relevant documents, information, and evidence in the 1021
custody or control of the institution, facility, or program in 1022
which the respondent currently is held or in which the respondent 1023
has been held pursuant to these proceedings; 1024

(c) With the consent of the respondent, all relevant 1025
documents, information, and evidence in the custody or control of 1026
any institution or person other than the state. 1027

(2) The respondent has the right to be represented by counsel 1028
of the respondent's choice and has the right to attend the hearing 1029
except if unusual circumstances of compelling medical necessity 1030
exist that render the respondent unable to attend and the 1031
respondent has not expressed a desire to attend. 1032

(3) If the respondent is not represented by counsel and the 1033
court determines that the conditions specified in division (A)(2) 1034
of this section justify the respondent's absence and the right to 1035
counsel has not been validly waived, the court shall appoint 1036
counsel forthwith to represent the respondent at the hearing, 1037
reserving the right to tax costs of appointed counsel to the 1038
respondent unless it is shown that the respondent is indigent. If 1039
the court appoints counsel, or if the court determines that the 1040
evidence relevant to the respondent's absence does not justify the 1041
absence, the court shall continue the case. 1042

(4) The respondent shall be informed of the right to retain 1043
counsel, to have independent expert evaluation, and, if an 1044

indigent person, to be represented by court appointed counsel and 1045
have expert independent evaluation at court expense. 1046

(5) The hearing may be closed to the public unless counsel 1047
for the respondent requests that the hearing be open to the 1048
public. 1049

(6) Unless objected to by the respondent, the respondent's 1050
counsel, or the designee of the director of developmental 1051
disabilities under section 5123.72 of the Revised Code, the court, 1052
for good cause shown, may admit persons having a legitimate 1053
interest in the proceedings. 1054

(7) The affiant under section 5123.71 of the Revised Code 1055
shall be subject to subpoena by either party. 1056

(8) The court shall examine the sufficiency of all documents 1057
filed and shall inform the respondent, if present, and the 1058
respondent's counsel of the nature of the content of the documents 1059
and the reason for which the respondent is being held or for which 1060
the respondent's placement is being sought. 1061

(9) The court shall receive only relevant, competent, and 1062
material evidence. 1063

(10) ~~The~~ In accordance with section 5123.72 of the Revised 1064
Code, the designee of the director shall present the evidence for 1065
the state. In proceedings under this chapter, the attorney general 1066
shall present the comprehensive evaluation, assessment, diagnosis, 1067
prognosis, record of habilitation and care, if any, and less 1068
restrictive habilitation plans, if any. The attorney general does 1069
not have a similar presentation responsibility in connection with 1070
a person who has been found not guilty by reason of insanity and 1071
who is the subject of a hearing under section 2945.40 of the 1072
Revised Code to determine whether the person is a mentally 1073
retarded person subject to institutionalization by court order. 1074

(11) The respondent has the right to testify and the 1075

respondent or the respondent's counsel has the right to subpoena 1076
witnesses and documents and to present and cross-examine 1077
witnesses. 1078

(12) The respondent shall not be compelled to testify and 1079
shall be so advised by the court. 1080

(13) On motion of the respondent or the respondent's counsel 1081
for good cause shown, or upon the court's own motion, the court 1082
may order a continuance of the hearing. 1083

(14) To an extent not inconsistent with this chapter, the 1084
Rules of Civil Procedure shall be applicable. 1085

(B) Unless, upon completion of the hearing, the court finds 1086
by clear and convincing evidence that the respondent named in the 1087
affidavit is a mentally retarded person subject to 1088
institutionalization by court order, it shall order the 1089
respondent's discharge forthwith. 1090

(C) If, upon completion of the hearing, the court finds by 1091
clear and convincing evidence that the respondent is a mentally 1092
retarded person subject to institutionalization by court order, 1093
the court may order the respondent's discharge or order the 1094
respondent, for a period not to exceed ninety days, to any of the 1095
following: 1096

(1) A public institution, provided that commitment of the 1097
respondent to the institution will not cause the institution to 1098
exceed its licensed capacity determined in accordance with section 1099
5123.19 of the Revised Code and provided that such a placement is 1100
indicated by the comprehensive evaluation report filed pursuant to 1101
section 5123.71 of the Revised Code; 1102

(2) A private institution; 1103

(3) A county mental retardation program; 1104

(4) Receive private habilitation and care; 1105

(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 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 1137
immediately shall notify the court, the respondent's counsel, and 1138
the designee of the director in writing of that fact by mail or 1139
otherwise, and, upon receipt of the notice, the court shall 1140
dismiss the case. 1141

(2) A person who is found incompetent to stand trial or not 1142
guilty by reason of insanity and who is committed pursuant to 1143
section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised 1144
Code shall not be voluntarily admitted to an institution pursuant 1145
to division (G)(1) of this section until after the termination of 1146
the commitment, as described in division (J) of section 2945.401 1147
of the Revised Code. 1148

(H) If, at the end of any commitment period, the respondent 1149
has not already been discharged or has not requested voluntary 1150
admission status, the director of the facility or program, or the 1151
person to whose care the respondent has been committed, shall 1152
discharge the respondent forthwith, unless at least ten days 1153
before the expiration of that period the designee of the director 1154
of developmental disabilities or the prosecutor files an 1155
application with the court requesting continued commitment. 1156

(1) An application for continued commitment shall include a 1157
written report containing a current comprehensive evaluation and 1158
assessment, a diagnosis, a prognosis, an account of progress and 1159
past habilitation, and a description of alternative habilitation 1160
settings and plans, including a habilitation setting that is the 1161
least restrictive setting consistent with the need for 1162
habilitation. A copy of the application shall be provided to 1163
respondent's counsel. The requirements for notice under section 1164
5123.73 of the Revised Code and the provisions of divisions (A) to 1165
(E) of this section apply to all hearings on such applications. 1166

(2) A hearing on the first application for continued 1167
commitment shall be held at the expiration of the first ninety-day 1168

period. The hearing shall be mandatory and may not be waived. 1169

(3) Subsequent periods of commitment not to exceed one 1170
hundred eighty days each may be ordered by the court if the 1171
designee of the director of developmental disabilities files an 1172
application for continued commitment, after a hearing is held on 1173
the application or without a hearing if no hearing is requested 1174
and no hearing required under division (H)(4) of this section is 1175
waived. Upon the application of a person involuntarily committed 1176
under this section, supported by an affidavit of a licensed 1177
physician alleging that the person is no longer a mentally 1178
retarded person subject to institutionalization by court order, 1179
the court for good cause shown may hold a full hearing on the 1180
person's continued commitment prior to the expiration of any 1181
subsequent period of commitment set by the court. 1182

(4) A mandatory hearing shall be held at least every two 1183
years after the initial commitment. 1184

(5) If the court, after a hearing upon a request to continue 1185
commitment, finds that the respondent is a mentally retarded 1186
person subject to institutionalization by court order, the court 1187
may make an order pursuant to divisions (C), (D), and (E) of this 1188
section. 1189

(I) Notwithstanding the provisions of division (H) of this 1190
section, no person who is found to be a mentally retarded person 1191
subject to institutionalization by court order pursuant to 1192
division (O)(2) of section 5123.01 of the Revised Code shall be 1193
held under involuntary commitment for more than five years. 1194

(J) The managing officer admitting a person pursuant to a 1195
judicial proceeding, within ten working days of the admission, 1196
shall make a report of the admission to the department. 1197

Section 2. That existing sections 5123.162, 5123.19, 1198
5123.191, 5123.21, 5123.61, 5123.75, and 5123.76 of the Revised 1199

Code are hereby repealed.

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