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Bill Analysis
Legislative Service Commission

S.B. 171

123rd General Assembly
(As Introduced)

Sens. Spada, Gardner, Kearns

BILL SUMMARY

- Creates a registry in the Department of Mental Retardation and Developmental Disabilities of MR/DD employees found to have abused, neglected, or misappropriated the property of individuals with mental retardation or a developmental disability.
- Establishes due process procedures governing the registry.
- Requires a public children services agency to notify the Department regarding certain reports of child abuse or neglect that involve children with mental retardation or a developmental disability.
- Requires the Department to review and make findings regarding certain reports that a child with mental retardation or a developmental disability has been abused or neglected.
- Limits the duty of the Department and county boards of mental retardation and developmental disabilities (MR/DD boards) to notify a law enforcement agency regarding reports of abuse or neglect.

CONTENT AND OPERATION

Registry of certain MR/DD employees

(secs. 5123.50 to 5123.53)

Under the bill, the Department of Mental Retardation and Developmental Disabilities must establish a registry of MR/DD employees found by the Department to have engaged in the abuse, neglect, or misappropriation of property of an individual with mental retardation or a developmental disability.

For the purposes of the bill, an MR/DD employee is an employee of the Department or county MR/DD board; an individual who provides services to county MR/DD board clients either as a volunteer or pursuant to a contract with the board; an individual employed by an intermediate care facility for the mentally retarded (ICF/MR) or who provides services pursuant to a contract or as a volunteer with an ICF/MR; or any other individual who operates programs or provides services to individuals with mental retardation or a developmental disability.

"Abuse" is defined for purposes of the bill as (1) knowingly causing physical harm or recklessly causing serious physical harm, (2) an act that under Ohio law constitutes rape, sexual battery, corruption of a minor, gross sexual imposition, sexual imposition, importuning, theft, aggravated theft, or unauthorized use of property, or (3) an act that could result in a finding under the Juvenile Code that a child is an abused child. "Neglect" is defined as (1) knowingly failing to provide an individual with any treatment, care, goods, or services that are necessary to maintain the health and safety of the individual when the failure results in physical harm, (2) recklessly failing to provide an individual with any treatment, care, goods, or services when the failure results in serious physical harm, or (3) an act that could result in a finding under the Juvenile Code that a child is a neglected child. "Misappropriation" means depriving, defrauding, or otherwise obtaining property by any means prohibited by the Revised Code.

Procedure for reviewing reports

(sec. 5123.51)

In addition to its current duties concerning reports of abuse and neglect of adults with mental retardation or a developmental disability, the Department is required by the bill to review each report it receives of abuse, neglect, or misappropriation of property of an individual (child or adult) with mental retardation or a developmental disability that includes an allegation that an MR/DD employee committed or was responsible for the abuse, neglect, or misappropriation. The Department must either investigate the allegation to determine whether there is a reasonable basis for it or adopt the findings of an investigation conducted by a county board of mental retardation and developmental disabilities (county MR/DD board). The Department must notify the MR/DD employee named in the allegation and afford the employee a reasonable opportunity for a hearing. For purposes of the hearing, the Department is authorized to issue subpoenas to compel the attendance of witnesses and the production of documents. If a person served with a subpoena fails to attend the hearing or produce documents or refuses to be sworn or answer any questions, the Department may apply for a contempt order to the common pleas court of the

county in which the person resides or in which the MR/DD employee is operating programs or providing services.

Information included in registry

(secs. 5123.51 and 5123.52)

After the hearing, the Department must make findings regarding each allegation in the report. If it finds that an MR/DD employee has abused or neglected an individual with mental retardation or a developmental disability or misappropriated the individual's property, the Department must include in the registry a statement detailing its findings and notify (1) the employee, (2) the entity that employs or contracts with the employee, (3) the Attorney General, county prosecutor, or other appropriate law enforcement agency, and (4) if the employee is a licensed health professional, the appropriate agency, board, department, or other entity responsible for regulating the employee's professional practice.¹ If a statement regarding an MR/DD employee is included in the registry, the employee may give the Department a statement disputing the Department's findings and explaining the circumstances of the allegation, which must be included in the registry with the Department's findings.

Expungement of unsubstantiated allegations

(sec. 5123.51)

If the Department finds that an allegation of abuse, neglect, or misappropriation of property cannot be substantiated, it must expunge all files and records of the investigation and notify the employee. Expungement includes removing and destroying all files and records, and deleting all index references, reporting to the employee the nature and extent of any information about the employee transmitted to any other person or government entity by the Department, and ensuring that any examination of files and records shows no record regarding the employee.

¹ For purposes of the bill, "licensed health professional" includes occupational therapists and occupational therapy assistants; physical therapists and physical therapy assistants; physicians; physician's assistants; registered and licensed practical nurses; social workers, independent social workers, and social work assistants; speech-language pathologists and audiologists; dentists and dental-hygienists; optometrists; pharmacists; psychologists; chiropractors; nursing home administrators; and professional counselors and professional clinical counselors.

Inquiries regarding the registry

(sec. 5123.52)

The information contained in the registry is a public record. When the Department receives an inquiry regarding an MR/DD employee about whom a statement is included in the registry, it must disclose the statement or a summary of the statement and also must disclose any statement, or a summary of the statement, included in the registry by the employee regarding the allegation. The Department is required to inform the person who made the request if there is nothing in the registry regarding the employee.

A provider is prohibited from using an individual as an MR/DD employee for more than four months without receiving information regarding the individual from the registry. The bill prohibits the Department and county MR/DD boards from entering into a new contract or renewing a contract with a provider who fails to comply with that requirement, until the Department or board is satisfied that the provider will comply.

Rule-making authority

(sec. 5123.53)

The bill requires the Director of Mental Retardation and Developmental Disabilities to adopt rules under the Administrative Procedure Act to implement the MR/DD employee registry. The rules are to include requirements for (1) notice to MR/DD employees that the Department is reviewing a report and (2) a hearing concerning the allegations contained in the report. The notice and hearing requirements are not subject to the Administrative Procedure Act (R.C. Chapter 119.), but the rules the Director adopts may require them to be conducted in accordance with that Act.

Reports of abuse or neglect of children with mental retardation or developmental disabilities

(sec. 2151.421)

Under current law, certain persons, when they are acting in their official or professional capacity, are required to report their knowledge or suspicion that a person under age 18 or a mentally or physically handicapped person under age 21 has suffered, or faces the threat of suffering, abuse or neglect.² The law also

² Persons required to report are attorneys; physicians; dentists; podiatrists; practitioners of a limited branch of medicine or surgery; registered and licensed practical nurses;

permits anyone with similar knowledge or suspicion to report that information. These reports may be made to the public children services agency (PCSA) or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect occurred. A peace officer who receives a report of child abuse or neglect, must refer the report to the appropriate PCSA.

The bill requires a PCSA, when it receives a report of child abuse or neglect that involves a child with mental retardation or a developmental disability and includes an allegation of abuse or neglect by an MR/DD employee, to immediately notify the Department of Mental Retardation and Developmental Disabilities of the report. This requirement does not absolve the PCSA of its responsibility to investigate the report, but permits the Department to review the report for the purpose of determining whether the information contained in the report should be included in the registry.³ (See "**Registry of certain MR/DD employees**," above.)

Limitation on notifying law enforcement of abuse or neglect reports

(secs. 5123.61 and 5123.31)

Similar to the mandatory reporting requirement regarding child abuse or neglect described above, existing law requires certain persons who have reason to believe that a mentally retarded or developmentally disabled adult has suffered any wound, injury, disability, or condition that reasonably indicates abuse or neglect to immediately report that information or cause it to be reported to a law enforcement agency or to the county MR/DD board.⁴ For the purposes of reporting, "abuse"

other health care professionals; psychologists; school psychologists; speech pathologists or audiologists; administrators or employees of a child day-care center, certified child care agency, or other public or private children services agency; school teachers, employees, and officials; social workers; professional counselors; and persons rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion.

³ *Under existing law, the Department of Mental Retardation and Developmental Disabilities investigates only reports concerning **adults** with mental retardation or a developmental disability.*

⁴ *This requirement applies to physicians, including hospital interns or residents; dentists; podiatrists; chiropractors; practitioners of a limited branch of medicine; hospital administrators and employees; nurses; employees of ambulatory health facilities; employees of home health agencies; employees of adult care facilities; employees of community mental health facilities; school teachers or school authorities; social workers; psychologists; attorneys; peace officers; coroners; clergymen; resident's rights advocates; superintendents, board members, or employees of a county MR/DD board; administrators, board members, or employees of residential facilities for mentally*

and "neglect" have the same meanings as for the MR/DD employee registry.⁵ If the report concerns a resident of a facility operated by the Department of Mental Retardation and Developmental Disabilities, the report must be made to either a law enforcement agency or the Department. The law also permits any person with reasonable cause to believe that a mentally retarded or developmentally disabled adult has suffered abuse or neglect to report that belief.

When the Department or the county MR/DD board receives a report of abuse or neglect, it is required to notify a law enforcement agency.⁶ A county MR/DD board must also notify the Department. The law enforcement agency must investigate all reports of abuse or neglect of adults with mental retardation or a developmental disability and make a report of its findings to the Department or county MR/DD board. The Department must investigate reports regarding residents of facilities it operates and submit a report of its investigation to the law enforcement agency. A county MR/DD board is required to review reports of abuse and neglect it receives and submit a report to the law enforcement agency responsible for investigating the report and to the Department.

Under the bill, the Department is required to notify a law enforcement agency and the county MR/DD board is required to notify the Department and a law enforcement agency of a report only if the report includes an allegation of abuse or neglect, as abuse and neglect are defined for the purposes of the MR/DD employee registry. Therefore, despite remaining required by existing law to investigate all reports of abuse or neglect received by the Department or a county MR/DD board, law enforcement agencies will no longer be required to be given notice of those reports.

Limitation on review of reports by county MR/DD board

(secs. 5126.30 and 5126.31)

retarded or developmentally disabled persons; administrators, board members, or employees of any other public or private provider of services to a mentally retarded or developmentally disabled adult; members of citizen's advisory councils established at an institution of the Department; and persons rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion. Members of the Legal Rights Service Commission and employees of the Legal Rights Service are exempt from the reporting requirement.

⁵ Ohio Administrative Code § 5123:2-17-02(C).

⁶ "Law enforcement agency" means the state highway patrol, the police department of a municipal corporation, or a county sheriff.

Under current law, county MR/DD boards are required to review reports of abuse and neglect and to provide services to adults with mental retardation or a developmental disability who are found to have been abused or neglected. For those purposes, "abuse" includes (1) an act or failure to act that results or could result in emotional or physical injury to an adult, (2) a sex offense, (3) insulting or coarse language or gestures directed toward an adult that subject the adult to humiliation or degradation, or (4) an act that deprives an adult of property by fraudulent or illegal means. "Neglect" is the failure of an adult or caretaker to provide goods or services necessary for the adult to avoid physical harm.

The bill limits the scope of a county MR/DD board's duty to review reports of abuse or neglect to those that involve abuse or neglect as defined for the purposes of the MR/DD registry or that involve misappropriation of property. The bill also limits a county MR/DD board's duty to submit a report of its investigation to a law enforcement agency to those reports that include a finding that a mentally retarded or developmentally disabled adult is a victim of abuse or neglect as defined for the purposes of the MR/DD employee registry.

HISTORY

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Introduced	07-13-99	p. 887

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