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*Bill Analysis*  
*Legislative Service Commission*

**Sub. S.B. 171**  
123rd General Assembly  
(As Passed by the Senate)

**Sens. Spada, Gardner, Kearns, Drake, Prentiss, Johnson, Fingerhut, Armbruster, Brady, DiDonato, Hottinger, Latell, Mumper, Schafrath, Wachtmann, Watts, Latta, Cupp, Nein, White, Espy, McLin, Herington**

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**BILL SUMMARY**

- Requires the Department of Mental Retardation and Developmental Disabilities to create a registry of MR/DD employees found to have abused, neglected, or misappropriated the property of individuals with mental retardation or a developmental disability.
- Defines an "MR/DD employee" as an individual who is employed by the Department, a county board of mental retardation and developmental disabilities (MR/DD board), or an intermediate care facility for the mentally retarded or employed in a position that involves providing specialized services or direct services to an individual with mental retardation or a developmental disability.
- Establishes due process procedures governing the registry.
- Prohibits a person or government entity from hiring, contracting with, or employing a person as an MR/DD employee who is included in the registry.
- Requires that suspected abuse or neglect of children with mental retardation and developmental disabilities be reported to, and investigated by, the Department or an MR/DD board.
- Requires the Department to maintain reports of major unusual incidents and unusual incidents.
- Requires the Department to establish committees to review and investigate reports of abuse, neglect, major unusual incidents and unusual incidents.

- Limits the duty of the Department and county MR/DD boards to notify a law enforcement agency regarding reports of abuse or neglect.
- Coordinates the definitions of abuse and neglect for purposes of reporting and investigation.

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## CONTENT AND OPERATION

### Registry of certain MR/DD employees

(secs. 5123.50 to 5123.54)

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, "MR/DD employee" means an employee of the Department or a county board of mental retardation and developmental disabilities (county MR/DD board); an individual who is employed by an intermediate care facility for the mentally retarded (ICF/MR) or provides services pursuant to a contract or as a volunteer with an ICF/MR; as individual who is employed in a position that includes providing specialized services to individuals with mental retardation or a developmental disability; or any other individual employed in a direct services position.<sup>1</sup>

"Abuse" is defined for purposes of the bill as (1) the use of physical force that can reasonably be expected to result in physical harm or serious physical harm, (2) unlawful sexual conduct or sexual contact, or (3) purposely using words to threaten, coerce, intimidate, harass, or humiliate an individual. "Neglect" is defined as, 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. "Misappropriation" means depriving, defrauding, or otherwise obtaining property by any means prohibited by the Revised Code.

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<sup>1</sup> *"Specialized services" means a program or service designed and operated to serve primarily individuals with mental retardation or a developmental disability. A "direct services position" is 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.*

**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 is prohibited from reviewing a report it receives from a public children services agency until the agency has completed its investigation of the report. The Department must either investigate the allegation to determine whether there is a reasonable basis for it or adopt the findings of an investigation or review conducted by another person or government entity. If the Department determines that there is a reasonable basis for the allegation, it must conduct an adjudication under Revised Code Chapter 119. (the Administrative Procedure Act). The Department must appoint an independent hearing officer to conduct the adjudication hearing under Chapter 119. and may not hold the hearing until any criminal proceeding or collective bargaining arbitration regarding the same allegation has concluded.

The bill provides that files and records of the Department's investigation are not public records, but the Department must provide copies of those files and records to the Attorney General, a county prosecutor, or a law enforcement agency on request.

**Inclusion in the registry**

(secs. 5123.51 and 5123.52)

With two exceptions, the bill requires the Director to include in the registry the name of an MR/DD employee that the Director determines by clear and convincing evidence has misappropriated the property of an individual with mental retardation or a developmental disability or has done any of the following:

- (1) Knowingly abused or neglected such an individual;
- (2) Recklessly abused or neglected such an individual (with resulting physical harm);
- (3) Negligently abused or neglected such an individual (with resulting serious physical harm).

If the Director includes an MR/DD employee in the registry, the Director must notify (1) the employee, (2) the provider that employs or contracts with the employee, (3) the individual who was the subject of that report and that individual's legal guardian, if any, (4) the Attorney General, county prosecutor, or other appropriate law enforcement agency, and (5) if the employee is licensed, certified, registered, or otherwise authorized to engage in a profession, the appropriate agency, board, department, or other entity responsible for regulating the employee's professional practice.

The Director is not required to include in the registry an MR/DD employee who has met the above criteria if the Director determines that there are extenuating circumstances. The bill requires that the Director consider as an extenuating circumstance whether the use of physical force by an MR/DD employee was necessary as self-defense. Additionally, the Director may not include in the registry an individual who has been found not guilty by a court or jury of an offense arising from the same facts.

**Prohibition on hiring, contracting with, or employing individuals included in the registry**

(secs. 5123.52 and 5126.28)

The bill prohibits any person or government entity from hiring, contracting with, or employing as an MR/DD employee an individual who is included in the registry established by the bill. The prohibition does not apply if a collective bargaining agreement that is in effect on the effective date of the bill provides otherwise, but prevails over subsequent collective bargaining agreements. Except in cases of gross negligence or willful or wanton misconduct, a provider who fails to hire or retain a person as an employee because the person is included in the registry is immune from civil liability. In addition, a person who is fired because the person is included in the registry is considered to be discharged for just cause for the purposes of unemployment compensation benefits.

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 the prohibition on hiring, contracting with, or employing such individuals, until the Department or board is satisfied that the provider will comply.

**Inquiries regarding the registry**

(sec. 5123.52)

The information contained in the registry is a public record. When the Department receives an inquiry regarding whether an individual is included in the

registry, it must inform the person making the inquiry whether the individual is included in the registry.

The bill requires providers to inquire whether an individual is included in the registry before hiring, contracting with, or employing the individual as an MR/DD employee.

**Removal from registry for good cause**

(sec. 5123.53)

An individual included in the registry may petition the Director for removal from the registry. The Director is authorized to remove an individual from the registry if good cause exists, which includes meeting rehabilitation standards the Department establishes by rule as required under the bill.

**Rule-making authority**

(sec. 5123.54)

The bill requires the Director to adopt rules under Revised Code Chapter 119. to implement the MR/DD employee registry. The rules must establish rehabilitation standards and specify other circumstances that constitute good cause for the purpose of removal from the registry.

**Registry office**

(sec. 5123.61)

Current law requires the Department to establish a registry office for the purpose of maintaining reports of abuse and neglect. The bill requires that the registry office also maintain reports of major unusual incidents and unusual incidents. The bill does not define those terms or give the Department the authority to define them. The Department is also required by the bill to establish committees to review reports of abuse, neglect, and other major unusual incidents and unusual incidents.

**Reporting and investigation of abuse or neglect**

(secs. 5123.61, 5123.31, 5126.32, and 5126.33)

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.<sup>2</sup> 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.<sup>3</sup> 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.

The bill adds MR/DD employees to the persons required to report abuse or neglect. It eliminates, as persons required to report abuse or neglect, board members of county MR/DD boards, board members of residential facilities for mentally retarded or developmentally disabled persons, and board members of any public or private provider of services to a mentally retarded or developmentally disabled adult. The bill expands mandatory reporting and the Department's

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<sup>2</sup> *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 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.*

<sup>3</sup> *"Law enforcement agency" means the state highway patrol, the police department of a municipal corporation, or a county sheriff.*

investigatory duties to include children with mental retardation or developmental disabilities. The Revised Code currently requires that the Department of Mental Retardation and Developmental Disabilities receive and investigate only reports of abuse and neglect that concern adults. Reports of abuse or neglect concerning children, including mentally or physically handicapped persons under age 21, are made to a public children services agency or county peace officer. The bill requires that reports involving such children be made, in addition, to a law enforcement agency or county MR/DD board and that the Department or county MR/DD board investigate such reports.<sup>4</sup>

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 an action or inaction that may be criminal under federal or Ohio law.

**Coordinating definitions for abuse and neglect reporting and investigations**

(secs. 5123.50, 5123.61, and 5126.30)

As described above, county MR/DD boards must review reports of abuse or neglect concerning adults with mental retardation or a developmental disability. The Department must investigate reports of abuse or neglect involving residents of facilities it operates. For purposes of the county MR/DD board reviews, current law defines "abuse" to mean any of the following:

- An act, or a failure to act, that results or could result in emotional or physical injury to an adult, unless the act is done in self defense or by accident;
- An act that constitutes sexual activity as defined in the Criminal Code for sex offenses and would constitute a sex offense;
- Insulting or coarse language or gestures directed toward an adult that subject him to humiliation or degradation;
- An act that deprives an adult of real or personal property by fraudulent or illegal means.

"Neglect" is defined as the failure of an adult or caretaker to provide goods and services necessary for an adult with mental retardation or a developmental

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<sup>4</sup> *If the law enforcement agency is also the county peace officer, the person would only have to make one report.*

disability to avoid physical harm. Current law does not provide a definition of abuse or neglect for purposes of the Department's investigations of abuse or neglect reports.

The bill establishes definitions for abuse and neglect that are applicable to investigations by the Department. The definitions are the same as those established under the bill for the MR/DD employee registry (as described above), with the exception that "abuse" includes misappropriation as defined under the bill for the registry. The bill also makes the definitions of abuse and neglect applicable to Department investigations applicable to county MR/DD board reviews with the definitions.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>	<b>JOURNAL ENTRY</b>
Introduced	07-13-99	p. 887
Reported, S. Health, Human Services & Aging	03-16-00	p. 1464
Passed Senate (33-0)	03-16-00	p. 1468

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