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BILL SUMMARY

- Enacts mechanisms for the taking and use in criminal proceedings and in delinquent child proceedings of depositions and videotaped depositions of a victim of specified offenses who is a functionally impaired person, the closed circuit telecast into the courtroom of testimony of such a victim that is taken outside the courtroom, the recording, for showing in the courtroom, of the testimony of such a victim, and, in criminal proceedings, the use of preliminary hearing testimony or recorded preliminary hearing testimony.
- Prohibits a caretaker from creating a substantial risk to the health or safety of a functionally impaired person under the caretaker's care, and designates a violation of this prohibition the offense of "endangering a functionally impaired person."
- Prohibits a person who owns, operates, or administers, or who is an agent or employee of, a care facility from creating a substantial risk to the health or safety of a functionally impaired person under the person's care, and designates a violation of this prohibition the offense of "patient endangerment."
- Requires the Director of the Department of Mental Retardation and Developmental Disabilities (DMRDD), prior to employing an applicant, and requires the superintendent of a county board of mental retardation and developmental disabilities, prior to employing an applicant, to require the applicant to sign an agreement under which the applicant agrees to not engage in any sexual conduct or sexual contact with an individual with mental retardation or a developmental disability in the applicant's care.

- Modifies the provisions regarding mandatory reporting of abuse or neglect of a person with mental retardation or a developmental disability by: (1) requiring a person in any profession that is subject to the reporting requirement to make a report when the person has reason to believe that a person with mental retardation or a developmental disability *faces the threat of suffering* any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect, (2) requiring a person in any profession that is subject to the reporting requirement who discovers or suspects that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect to immediately report that knowledge or suspicion to the public children services agency or a peace officer, (3) specifying that any person who fails to make a report under the reporting provisions is eligible to be included in the MR/DD employee registry, (4) requiring investigations of a mandatory or discretionary report by a law enforcement agency or DMRDD to be in accordance with the memorandum of understanding described in (6), below, (5) revising the penalties provided for specified violations of the reporting law and making the penalties apply to a person who violates the new provision described above in (2), and (6) requiring each county board of mental retardation and developmental disabilities to prepare a memorandum of understanding signed by specified persons, for specified purposes.
- Revises the provisions regarding reports of abuse, neglect, misappropriation of property by an MR/DD employee by: (1) requiring DMRDD to review a report it receives from a prosecutor when the person who is the subject of the report is charged, (2) repealing the prohibition against conducting an Administrative Procedure Act hearing regarding the report until any criminal proceeding or collective bargaining arbitration concerning the allegation has been concluded, (3) expanding the matters a hearing officer must determine at a hearing conducted regarding the report to also include, among other matters, determinations of whether the employee has created a substantial risk to the health and safety of an individual in their care or has engaged in a sexual relationship with an individual in their care, (4) repealing the prohibition against DMRDD's Director including in the registry of MR/DD employees an individual who has been found not guilty by a court or jury

of an offense arising from the same facts as the allegation in question, and (5) specifying that, if DMRDD generally is required by the Administrative Procedure Act to give notice of an opportunity for a hearing and if the employee subject to the notice does not timely request a hearing, DMRDD is not required to hold a hearing.

- Requires the prosecutor in any case against a person involving a victim that the prosecutor knows or reasonably should know has mental retardation or a developmental disability to send written notice upon the filing of charges against a person to DMRDD.
- In provisions that pertain to a county board of mental retardation and developmental disabilities' provision of services for the prevention, correction or discontinuance of abuse or neglect or of a condition resulting from abuse or neglect for an adult, replaces certain references to "services" and "service plans" with references to "protective services" and "protective service plans."
- Modifies provisions regarding a probate court's issuance of an order authorizing a county board of mental retardation and developmental disabilities to arrange services for an adult with mental retardation or a developmental disability by: (1) replacing certain references to "services" and "service plans" with references to "protective services" and "protective service plans," (2) extending from 14 days to six months the maximum period for the provision of services under the order and extending the possibility of renewal of the services from an additional 14 days to an additional six months, (3) enacting provisions regarding *ex parte* emergency orders for protective services, and (4) enacting provisions regarding temporary orders related to protective services.
- In a provision that currently requires specified health care, emergency, and law enforcement personnel to notify the office of the coroner when any person, including a child under two years of age, dies suddenly when in apparent good health, specifically identifies a person with mental retardation or a developmental disability, in addition to a child under two years of age, as a person to whom the provision applies.
- Expands the list of persons who may give written consent to an autopsy or post-mortem examination of a deceased person by adding, at the end of the list as the seventh option, and only in circumstances in which the deceased person had mental retardation or a developmental disability,

DMRDD or the county board of mental retardation and developmental disabilities.

- Modifies a provision that requires a court to appoint an interpreter to assist a party or witness to a legal proceeding who, because of a hearing, speech, or other impairment, cannot readily understand or communicate by specifying that: (1) the provision is not limited to a person who speaks a language other than English, (2) it also applies to the language and descriptions of any person, such as a person with mental retardation or a developmental disability, who cannot be reasonably understood, or who cannot understand questioning, without the aid of an interpreter, and (3) the interpreter may aid the parties in formulating methods of questioning the person with mental retardation.
- Expands the professions that are subject to the mandatory child abuse and neglect reporting provision to also include chiropractors; hospital administrators; employees of a hospital; employees of an ambulatory health facility; employees of a home health agency; employees of a licensed adult care facility; employees of a community mental health facility; superintendents, board members, and employees of a county board of mental retardation and developmental disabilities; administrators, board members, and employees of a licensed residential facility; administrators, board members, and employees of any other public or private provider of services to a person with mental retardation or a developmental disability; MR/DD employees; members of a citizen's advisory council established at an institution or branch institution of DMRDD; residents' rights advocates; members of the clergy, rabbis, priests, and regularly ordained, accredited, or licensed ministers of an established and legally cognizable church, denomination, or sect; and peace officers.

TABLE OF CONTENTS

Special testimonial procedures in criminal and delinquent child proceedings, regarding certain violations committed against a functionally impaired person.....	6
Deposition of a victim of a specified offense who is a functionally impaired person	6
Closed circuit telecast into the courtroom of testimony of a victim of a specified offense who is a functionally impaired person	10

Recording, for showing in the courtroom, of testimony of a victim of a specified offense who is a functionally impaired person	12
Entry of determinations on the record	13
Use of preliminary hearing, etc., testimony--in general and when given by a victim of a specified offense who is a functionally impaired person and videotaped	13
Definitions	16
Offense of "endangering a functionally impaired person"	16
Operation of the bill	16
Related existing provisions	17
Offense of "patient endangerment"	18
Operation of the bill	18
Related existing provisions	19
Agreement of MR/DD employee, or county board of mental retardation and developmental disabilities employee, to not engage in sexual activity with individual with mental retardation or a developmental disability in the applicant's care.....	20
Reports of abuse or neglect of a person with mental retardation or a developmental disability	20
Existing law.....	20
Operation of the bill	23
Abuse or neglect of a person with mental retardation or a developmental disability, or misappropriation of property, by DMRDD employee.....	26
Existing law.....	26
Operation of the bill	27
Prosecutor's report of filing of charges--victim with mental retardation or a developmental disability	28
County board of mental retardation and developmental disabilities--protective service order and plans regarding abuse and neglect of a person with mental retardation or a developmental disability.....	28
Provision of services for the prevention, correction or discontinuance of abuse or neglect or of a condition resulting from abuse or neglect for an adult	28
Probate court order for the arrangement of protective services for an adult with mental retardation or a developmental disability.....	29
Definitions	31
Notice to coroner regarding certain deaths.....	32
Existing law.....	32
Operation of the bill	33
Consent for autopsy or post-mortem examination of a deceased person, given in written instrument.....	33
Existing law.....	33
Operation of the bill	34

Appointment of an interpreter for a party to or witness in a legal proceeding	34
Existing law.....	34
Operation of the bill	35
Reports of child abuse or neglect--mandatory reporters.....	35
Existing law.....	35
Operation of the bill	36

CONTENT AND OPERATION

Special testimonial procedures in criminal and delinquent child proceedings, regarding certain violations committed against a functionally impaired person

The bill enacts mechanisms for the taking and use in criminal proceedings and in delinquent child proceedings of depositions and videotaped depositions of a "victim" (see *Definitions*," below) of specified offenses who is a "functionally impaired person" (see *Definitions*," below), the closed circuit telecast into the courtroom of testimony of such a victim that is taken outside the courtroom, the recording, for showing in the courtroom, of the testimony of such a victim, and, in criminal proceedings, the use of preliminary hearing testimony or recorded preliminary hearing testimony (see **COMMENT 1**). A summary of each of the mechanisms follows.

Deposition of a victim of a specified offense who is a functionally impaired person

Depositions in general. Under the bill, in any proceeding in the prosecution of a charge of any of the violations specified below or in juvenile court involving a complaint, indictment, or information in which a child is charged with any of those violations, and in which an alleged "victim" (see below) of the violation, offense, or act was a "functionally impaired person" (see below), the judge of the court hearing the prosecution or the juvenile judge, whichever is applicable, upon motion of the prosecution, must order that the testimony of the functionally impaired victim be taken by deposition. The prosecution also may request that the deposition be videotaped, as described below. The judge must notify the functionally impaired victim whose deposition is to be taken, the prosecution, and the attorney for the defendant or child charged with the violation, offense, or act of the date, time, and place for taking the deposition. The notice must identify the functionally impaired victim who is to be examined and indicate whether a request that the deposition be videotaped has been made. The defendant or child who is charged with the violation, offense, or act has the right to attend the deposition and to be represented by counsel. Depositions must be taken in the manner provided in civil cases, except that the judge must preside at the taking of the deposition and rule at that time on any objections of the prosecution or the

attorney for the defendant or child charged. The prosecution and the attorney for the defendant or child charged have the right, as at trial or an adjudication hearing, whichever is applicable, to full examination and cross-examination of the functionally impaired victim whose deposition is to be taken.

The violations to which this provision applies are: (1) for both criminal prosecutions and for delinquent child proceedings, violations of existing R.C. 2903.16 (the offenses of "knowingly failing to provide for a functionally impaired person" and "recklessly failing to provide for a functionally impaired person"), 2903.34 ("patient abuse," "gross patient abuse," and "patient neglect"), 2907.02 ("rape"), 2907.03 ("sexual battery"), 2907.05 ("gross sexual imposition"), 2907.21 ("compelling prostitution"), 2907.23 ("procuring"), 2907.24 ("soliciting" and "engaging in solicitation after a positive HIV test"), 2907.32 ("pandering obscenity"), 2907.321 ("pandering obscenity involving a minor"), 2907.322 ("pandering sexually oriented matter involving a minor"), and 2907.323 ("illegal use of a minor in a nudity-oriented material or performance"), violations of R.C. 2903.341 as enacted in the bill (that section sets forth the new offense of "patient endangerment"--see below), and "offenses of violence" (see **COMMENT 2**) or, regarding juveniles, acts that would be an offense of violence if committed by an adult, and (2) for criminal prosecutions, violations of R.C. 2905.03 ("unlawful restraint"), 2907.06 ("sexual imposition"), and 2907.09 ("public indecency").

If a deposition taken under this provision is intended to be offered as evidence in the proceeding, it must be filed in the court in which the action is pending and is admissible in the manner described below in "Use of depositions." If a deposition of a functionally impaired victim taken under this provision is admitted as evidence at the proceeding as described below in "Use of depositions." the functionally impaired victim cannot be required to testify in person at the proceeding.

At any time before the conclusion of the proceeding, the attorney for the defendant or child charged with the violation, offense, or act may file a motion with the judge requesting that another deposition of the functionally impaired victim be taken because new evidence material to the defense of the defendant or child charged has been discovered that the attorney for the defendant or child charged could not with reasonable diligence have discovered prior to the taking of the admitted deposition. Regarding delinquent child proceedings, any motion requesting another deposition must be accompanied by supporting affidavits, and, upon the filing of the motion and affidavits, the court may order that additional testimony of the functionally impaired victim relative to the new evidence be taken by another deposition. In any case, if the court orders the taking of another deposition under this provision, the deposition must be taken in the manner described above. If the admitted deposition was a videotaped deposition taken in

accordance with the provision described below in "Videotaped depositions," the new deposition also must be videotaped in accordance with that provision. In other cases, the new deposition may be videotaped in accordance with that provision. (R.C. 2152.821(B)(1) and 2945.482(B)(1).)

Videotaped depositions. If the prosecution requests that a deposition to be taken as described above in "Depositions in general" be videotaped, the involved judge must order that the deposition be videotaped as described in this paragraph and the next paragraph. If a judge issues an order to videotape the deposition, the judge must exclude from the room in which the deposition is to be taken every person except the functionally impaired victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the defendant or child charged with the violation, offense, or act, any person needed to operate the equipment to be used, one person chosen by the functionally impaired victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the functionally impaired victim giving the deposition. The person chosen by the functionally impaired victim cannot be a witness in the proceeding and, both before and during the deposition, cannot discuss the testimony of the victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment must be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror, so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the functionally impaired victim giving the deposition during the deposition.

The defendant or child charged with the violation, offense, or act must be permitted to observe and hear the testimony of the functionally impaired victim giving the deposition on a monitor, provided with an electronic means of immediate communication with his or her attorney during the testimony, and restricted to a location from which he or she cannot be seen or heard by the functionally impaired victim giving the deposition, except on a monitor provided for that purpose. The functionally impaired victim giving the deposition must be provided with a monitor on which he or she can observe, while giving testimony, the defendant or child charged with the violation, offense, or act. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken; if the judge presides by electronic means, the judge must be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person, and each person in the room must be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge.

A deposition videotaped under this provision must be taken and filed in the manner as described above in "Depositions in general" and is admissible in the manner described in this paragraph and "Use of depositions," below. If a deposition videotaped under this provision is admitted as evidence at the proceeding, the functionally impaired victim cannot be required to testify in person at the proceeding. No deposition videotaped under this provision may be admitted as evidence at any proceeding unless the provisions described below in "Use of depositions" are satisfied relative to the deposition and all of the following apply relative to the recording: (1) the recording is both aural and visual and is recorded on film or videotape, or by other electronic means, (2) the recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and it is not altered other than at the direction and under the supervision of the judge in the proceeding, (3) each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified, and (4) both the prosecution and the defendant or child charged with the violation, offense, or act are afforded an opportunity to view the recording before it is shown in the proceeding. (R.C. 2152.821(B)(2) and 2945.482(B)(2).)

The authority of a juvenile judge to close the taking of a deposition under this provision in a delinquent child proceeding is in addition to the authority of a judge to close a hearing pursuant to existing R.C. 2151.35, not in the bill (R.C. 2152.821(G)(1)).

Use of depositions. At any proceeding in relation to which a deposition was taken under the bill's provisions described above, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is "not excluded by the Hearsay Rule" and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. The bill provides that, for purposes of this provision, testimony is "not excluded by the Hearsay Rule" if the testimony is not hearsay under Evidence Rule 801; the testimony is within an exception to the Hearsay Rule set forth in Evidence Rule 803; the functionally impaired victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that Rule; or both of the following apply: (1) the defendant or child charged with the violation, offense, or act had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination, and (2) the judge determines that there is reasonable cause to believe that, if the functionally impaired victim who gave the testimony in the deposition were to testify in person at the proceeding, the functionally impaired victim would experience serious emotional trauma as a result of the functionally impaired victim's participation at the proceeding.

The bill provides that objections to receiving in evidence a deposition or a part of it under the provision described in the preceding paragraph must be made as provided in civil actions. It also provides that its provisions pertaining to the taking of depositions in general, to the videotaping of depositions, and to the use of the depositions are in addition to any other provisions of the Revised Code, the Rules of Juvenile Procedure, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a criminal proceeding or a juvenile court proceeding, whichever is applicable, and do not limit the admissibility under any of those other provisions of any deposition taken as described above regarding criminal proceedings or, regarding delinquent child proceedings, "taken under R.C. 2152.821(A)" of the bill (the meaning of this statement is unclear, since R.C. 2152.821 contains only definitions), or otherwise taken. (R.C. 2152.821(C) and 2945.482(C).)

Closed circuit telecast into the courtroom of testimony of a victim of a specified offense who is a functionally impaired person

Motion requesting, and issuance of order for, telecast. Under the bill, in any proceeding in a criminal prosecution or in a juvenile court proceeding involving a complaint, indictment, or information in which a criminal defendant or child is charged with any violation listed above in **'Depositions in general'** as a violation to which that provision applies or an "offense of violence" (see **COMMENT 2**) and in which an alleged victim of the violation or offense was a functionally impaired person, the prosecution may file a motion with the involved judge requesting the judge to order the testimony of the functionally impaired victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the defendant or child charged with the violation, offense, or act, the jury in a criminal case if applicable, and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the functionally impaired victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution must file a motion under this provision at least seven days before the date of the proceeding.

The judge may issue the order upon the motion of the prosecution, if the judge determines that the functionally impaired victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant or child charged with the violation, offense, or act for one or more of the reasons described below in **'Criteria for issuing order for telecast.'** If a judge issues an order of that nature, the judge must exclude from the room in which the testimony is to be taken every person except a person described above in **'Videotaped depositions'** as a person who is permitted to be present during the

videotaping of a deposition under that provision. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth above in "Videotaped depositions" regarding the videotaping of a deposition under that provision. To the extent feasible, any person operating the televising equipment must be hidden from the sight and hearing of the functionally impaired victim giving the testimony, in a manner similar to that described above in "Videotaped depositions" regarding the videotaping of a deposition under that provision. The defendant or child charged with the violation, offense, or act must be permitted to observe and hear the testimony of the functionally impaired victim giving the testimony on a monitor, provided with an electronic means of immediate communication with his or her attorney during the testimony, and restricted to a location from which he or she cannot be seen or heard by the functionally impaired victim giving the testimony, except on a monitor provided for that purpose. The functionally impaired victim giving the testimony must be provided with a monitor on which he or she can observe, while giving testimony, the defendant or child charged with the violation, offense, or act. (R.C. 2152.821(D) and 2945.482(D).)

If a judge issues an order pursuant to this provision that requires the testimony of a functionally impaired victim to be taken outside of the room in which the juvenile court proceeding is being conducted, the order must specifically identify the functionally impaired victim to whose testimony it applies, the order applies only during the testimony of that victim, and that victim cannot be required to testify at the proceeding other than in accordance with the order. Regarding delinquent child proceedings, the authority of a juvenile judge to close a proceeding under this provision is in addition to the authority of a judge to close a hearing pursuant to existing R.C. 2151.35, not in the bill. (R.C. 2152.821(G)(1) and 2945.482(G)(1).)

Criteria for issuing order for telecast. The bill provides that a judge may order the testimony of a functionally impaired victim to be taken outside of the room in which a proceeding is being conducted for telecast under this provision if the judge determines that the functionally impaired victim is unavailable to testify in the room in the physical presence of the defendant or child charged with the violation, offense, or act due to one or more of the following circumstances (R.C. 2152.821(F) and 2945.482(F)): (1) the persistent refusal of the functionally impaired victim to testify despite judicial requests to do so, (2) the inability of the functionally impaired victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason, or (3) the substantial likelihood that the functionally impaired victim will suffer serious emotional trauma from so testifying.

Recording, for showing in the courtroom, of testimony of a victim of a specified offense who is a functionally impaired person

Motion requesting, and issuance of order for, recording. Under the bill, in a criminal prosecution or in a juvenile court proceeding involving a complaint, indictment, or information in which a criminal defendant or child is charged with any violation listed above in "**Depositions in general**" as a violation to which that provision applies or an "offense of violence" (see COMMENT 2) and in which an alleged victim of the violation or offense was a functionally impaired person, the prosecution may file a motion with the involved judge requesting the judge to order the testimony of the functionally impaired victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the defendant or child charged with the violation, offense, or act, the jury in a criminal prosecution is applicable, and any other persons who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution must file a motion under this provision at least seven days before the date of the proceeding.

The judge may issue the order upon the motion of the prosecution, if the judge determines that the functionally impaired victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant or child charged with the violation, offense, or act, due to one or more of the reasons described below in "**Criteria for issuing order for recording.**" If a judge issues an order of that nature, the judge must exclude from the room in which the testimony is to be taken every person except a person described above in "**Videotaped depositions**" as a person who is permitted to be present during the videotaping of a deposition under that provision. To the extent feasible, any person operating the recording equipment must be hidden from the sight and hearing of the functionally impaired victim giving the testimony, in a manner similar to that set forth above in "**Videotaped depositions**" regarding the videotaping of a deposition under that provision. The defendant or child charged with the violation, offense, or act must be permitted to observe and hear the testimony of the functionally impaired victim giving the testimony on a monitor, provided with an electronic means of immediate communication with his or her attorney, and restricted to a location from which he or she cannot be seen or heard by the functionally impaired victim giving the testimony, except on a monitor provided for that purpose. The functionally impaired victim giving the testimony must be provided with a monitor on which the functionally impaired victim can observe, while giving testimony, the defendant or child charged with the violation, offense, or act. No order for the taking of testimony by recording may be issued under this provision unless the provisions described above in clauses (1) to (4) of

the last paragraph under "Videotaped depositions" apply to the recording of the testimony. (R.C. 2152.821(E) and 2945.482(E).)

If a judge issues an order pursuant to this provision that requires the testimony of a functionally impaired victim to be taken outside of the room in which the criminal or juvenile court proceeding is being conducted, the order must specifically identify the functionally impaired victim to whose testimony it applies, the order applies only during the testimony of that victim, and that victim cannot be required to testify at the proceeding other than in accordance with the order. Regarding delinquent child proceedings, the authority of a juvenile judge to close a proceeding under this provision is in addition to the authority of a judge to close a hearing pursuant to existing R.C. 2151.35, not in the bill. (R.C. 2152.821(G)(1).)

Criteria for issuing order for recording. The bill provides that a judge may order the testimony of a functionally impaired victim to be taken outside of the room in which a proceeding is being conducted for recording and shown under this provision if the judge determines that the functionally impaired victim is unavailable to testify in the room in the physical presence of the defendant or child charged with the violation, offense, or act due to one or more of the circumstances described above in "Criteria for issuing order for telecast" regarding the telecasting of a victims testimony under that provision (R.C. 2152.821(F) and 2945.482(F)).

Entry of determinations on the record

The bill specifies that a judge who makes any determination regarding the admissibility of a deposition, the videotaping of a deposition, or the taking of testimony outside of the room in which a proceeding is being conducted under any of the provisions of the bill described above must enter the determination and findings on the record in the proceeding (R.C. 2152.821(G)(2) and 2945.482(G)(2)).

Use of preliminary hearing, etc., testimony--in general and when given by a victim of a specified offense who is a functionally impaired person and videotaped

General use of preliminary hearing, prior trial, or deposition testimony.

Under the bill, regarding a criminal case, testimony taken at an examination or a preliminary hearing at which the defendant is present, or at a former trial of the cause, or taken by deposition at the instance of the defendant or the state, may be used whenever the witness giving the testimony dies or cannot for any reason be produced at the trial or whenever the witness has, since giving that testimony, become incapacitated to testify. If the former testimony is contained within an

authenticated transcript of the testimony, it must be proven by the transcript or by other testimony. (R.C. 2945.491(A)(3); note that this provision is identical to existing R.C. 2945.49(A)(2), which is not in the bill; the need for this provision is unclear.)

Use of videotaped preliminary hearing testimony given by a victim of a specified offense who is a functionally impaired person. Also under the bill, at a trial on a charge of any felony violation listed above in "**Depositions in general**" as a violation to which that provision applies regarding criminal defendants or delinquent children (*but not* the three additional violations that are specified regarding only criminal defendants) or an "offense of violence" (see **COMMENT 2**) and in which an alleged victim of the violation or offense was a functionally impaired person, the court, upon motion of the prosecutor in the case, may admit videotaped preliminary hearing testimony of the functionally impaired victim as evidence at the trial, in lieu of the functionally impaired victim appearing as a witness and testifying at trial, if all of the following apply: (1) the videotape of the testimony was made at the preliminary hearing at which probable cause of the violation charged was found, (2) the videotape of the testimony was made in accordance with R.C. 2937.11(C), not in the bill, and (3) the testimony in the videotape is not excluded by the Hearsay Rule and otherwise is admissible under the Rules of Evidence.

For purposes of clause (3) of the preceding paragraph, testimony is not excluded by the Hearsay Rule if the testimony is not hearsay under Evidence Rule 801, the testimony is within an exception to the Hearsay Rule set forth in Evidence Rule 803, the functionally impaired victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule, or both of the following apply: (a) the accused had an opportunity and similar motive at the preliminary hearing to develop the testimony of the functionally impaired victim by direct, cross, or redirect examination, and (b) the court determines that there is reasonable cause to believe that if the functionally impaired victim who gave the testimony at the preliminary hearing were to testify in person at the trial, the functionally impaired victim would experience serious emotional trauma as a result of the victim's participation at the trial.

If a functionally impaired victim of an alleged felony violation or offense identified in the second preceding paragraph testifies at the preliminary hearing in the case, if the testimony of the functionally impaired victim at the preliminary hearing was videotaped pursuant to R.C. 2937.11(C), not in the bill, and if the defendant in the case files a written objection to the use, pursuant to the provisions described in the second preceding paragraph, of the videotaped testimony at the trial, the court, immediately after the filing of the objection, must hold a hearing to determine whether the videotaped testimony of the functionally impaired victim

should be admissible at trial as described in the second preceding paragraph and, if it is admissible, whether the functionally impaired victim should be required to provide limited additional testimony of the type described in this paragraph. At the hearing, the defendant and the prosecutor in the case may present any evidence that is relevant to the issues to be determined at the hearing, but the functionally impaired victim cannot be required to testify at the hearing. After the hearing, the court cannot require the functionally impaired victim to testify at the trial, unless it determines that both of the following apply: (1) that the testimony of the functionally impaired victim at trial is necessary because evidence that was not available at the time of the testimony of the functionally impaired victim at the preliminary hearing has been discovered, or that the circumstances surrounding the case have changed sufficiently to necessitate that the functionally impaired victim testify at the trial, or both, and (2) that the testimony of the functionally impaired victim at the trial is necessary to protect the right of the defendant to a fair trial.

The court must enter its finding and the reasons for it in the journal. If the court requires the functionally impaired victim to testify at the trial, the testimony of the victim must be limited to the new evidence and changed circumstances, and the functionally impaired victim cannot otherwise be required to testify. The required testimony of the functionally impaired victim may be given in person or, upon motion of the prosecution, may be taken by deposition in accordance with the bill's provisions described above in "*Deposition of a victim of a specified offense who is a functionally impaired person*" provided the deposition is admitted as evidence as described in that portion of the analysis, may be taken outside of the courtroom and televised into the courtroom in accordance with the bill's provisions described above in "*Closed circuit telecast into the courtroom of testimony of a victim of a specified offense who is a functionally impaired person*," or may be taken outside of the courtroom and recorded for showing in the courtroom in accordance with the provisions described above in "*Recording, for showing in the courtroom, of testimony of a victim of a specified offense who is a functionally impaired person*."

If videotaped testimony of a functionally impaired victim is admitted at trial in accordance with the above-described provisions, the functionally impaired victim cannot be compelled in any way to appear as a witness at the trial, except as provided in those provisions. An order issued pursuant to the above-described provisions must specifically identify the functionally impaired victim concerning whose testimony it pertains, and it applies only during the testimony of the functionally impaired victim it specifically identifies. (R.C. 2945.491(B) and (C).)

Definitions

The bill defines "victim" and "functionally impaired person," for purposes of its provisions described above, as follows (R.C. 2152.821(A), 2945.482(A), and 2945.491(A)):

(1) "Functionally impaired person" means any person who has a physical or mental impairment that prevents the person from providing for the person's own care or protection or whose infirmities caused by aging prevent the person from providing for the person's own care or protection.

(2) "Victim" includes any functionally impaired person who was a victim of any violation listed above in "Depositions in general" as a violation to which that provision applies, an offense of violence regarding criminal defendants, or an act that would be an "offense of violence" (see COMMENT 2) if committed by an adult regarding delinquent children, or any functionally impaired person against whom was directed any conduct that constitutes, or that is an element of, any violation listed above in "Depositions in general" as a violation to which that provision applies, an offense of violence regarding criminal defendants, or an act that would be an offense of violence if committed by an adult regarding delinquent children. Regarding the preliminary hearing provisions, the meaning of the term is limited to felony violations.

Offense of "endangering a functionally impaired person"

Operation of the bill

The bill enacts a new offense related to the endangerment of a functionally impaired person by a caretaker. Specifically, the bill prohibits a "caretaker" (see below) from creating a substantial risk to the health or safety of a "functionally impaired person" (see below) under the caretaker's care. A violation of this prohibition is the offense of "endangering a functionally impaired person," a misdemeanor of the first degree, and the offender is eligible to be included in the existing MR/DD employee registry, described below in "Related existing provisions." (R.C. 2903.16(C) and (D)(3).)

As used in this provision, (R.C. 2903.10, not in the bill, which defines terms for use in R.C. 2903.13 and 2903.16):

(1) "Caretaker" means a person who assumes the duty to provide for the care and protection of a functionally impaired person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. "Caretaker" does not

include a person who owns, operates, or administers, or who is an agent or employee or, a care facility as defined in R.C. 2903.33.

(2) "Functionally impaired person" means any person who has a physical or mental impairment that prevents the person from providing for the person's own care or protection or whose infirmities caused by aging prevent the person from providing for the person's own care or protection.

Related existing provisions

Existing offenses. Related to the bill's new offense of endangering a functionally impaired person, existing law, unchanged by the bill, prohibits a caretaker from doing either of the following: (1) knowingly failing to provide a functionally impaired person under the caretaker's care with any treatment, care, goods, or service necessary to maintain the health or safety of the functionally impaired person when the failure results in physical harm or serious physical harm to the functionally impaired person, or (2) recklessly failing to provide a functionally impaired person under the caretaker's care with any treatment, care, goods, or service necessary to maintain the health or safety of the functionally impaired person when the failure results in serious physical harm to the functionally impaired person. A violation of the prohibition described in clause (1) if the offense of "knowingly failing to provide for a functionally impaired person"; that offense generally is a misdemeanor of the first degree, but it is a felony of the fourth degree if the functionally impaired person under the offender's care suffers serious physical harm as a result of the violation. A violation of the prohibition described in clause (2) is the offense of "recklessly failing to provide for a functionally impaired person"; that offense generally is a misdemeanor of the second degree, but it is a felony of the fourth degree if the functionally impaired person under the offender's care suffers serious physical harm as a result of the violation. The definitions of "caretaker" and "functionally impaired person" described above apply to these provisions. (R.C. 2903.10, and R.C. 2903.16(A), (B), and (C), which the bill redesignates as division (D).)

Registry of MR/DD employees. Existing law, unchanged by the bill requires the Department of Mental Retardation and Developmental Disabilities (DMRDD) to establish a registry of MR/DD employees consisting of the names of MR/DD employees included in the registry pursuant to existing R.C. 5123.51 (see "**Abuse, neglect, or misappropriation by Department employee**" under "**Abuse or neglect of person with mental retardation or developmental disability; misappropriation of property.**" below). Before a person or government entity hires, contracts with, or employs an individual as an MR/DD employee, the person or government entity must inquire whether the individual is included in the registry. When it receives an inquiry regarding whether an individual is included in the registry, DMRDD must inform the person making the inquiry whether the

individual is included in the registry. Information contained in the registry is a public record under the Public Records Law and is subject to inspection and copying under R.C. 1347.08. Regarding the registry: (1) except as otherwise provided in a collective bargaining agreement entered into under R.C. Chapter 4117. that was in effect on November 22, 2000, a person or government entity is prohibited from hiring, contracting with, or employing as an MR/DD employee an individual who is included in the registry, (2) notwithstanding R.C. 4117.08 and 4117.10, no agreement entered into under R.C. Chapter 4117. after November 22, 2000, may contain any provision that in any way limits the effect or operation of the registry provisions, (3) neither DMRDD nor any county board of mental retardation and developmental disabilities may enter into a new contract or renew a contract with a person or government entity that fails to comply with (1), above, until DMRDD or the board is satisfied that the person or government entity will comply, (4) a person or government entity that fails to hire or retain as an MR/DD employee a person because the person is included in the registry cannot be liable in damages in a civil action brought by the employee or applicant for employment, and (5) termination of employment pursuant to (1), above, constitutes a discharge for just cause for the purposes of R.C. 4141.29. (R.C. 5123.52--not in the bill.)

Offense of "patient endangerment"

Operation of the bill

The bill enacts a new offense related to the endangerment of a functionally impaired person by a person affiliated with a care facility. Specifically, the bill prohibits a person who owns, operates, or administers, or who is an agent or employee of, a "care facility" (see below) from creating a substantial risk to the health or safety of a "functionally impaired person" under the person's care. A violation of this prohibition is the offense of "patient endangerment." Patient endangerment generally is a misdemeanor of the first degree, but it is a felony of the fifth degree if the offender previously has been convicted of, or pleaded guilty to, patient endangerment.

The bill provides that a person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, cannot be considered "endangered" under the prohibition described in the preceding paragraph for that reason alone. The bill also provides that it is an affirmative defense to a charge of "patient endangerment" under that prohibition that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person with supervisory authority over the actor. (R.C. 2903.341.)

As used in this provision, "care facility" means any of the following (R.C. 2903.33, not in the bill, which defines terms for use in R.C. 2903.33 to 2903.36):

(1) any "home" as defined in R.C. 3721.10 or 5111.20, (2) any "residential facility" as defined in R.C. 5123.19, (3) any institution or facility operated or provided by DMRDD pursuant to R.C. 5119.02 and 5123.03, (4) any "residential facility" as defined in R.C. 5119.22, (5) any unit of any hospital, as defined in R.C. 3701.01, that provides the same services as a nursing home, as defined in 3721.01, (6) any institution, residence, or facility that provides, for a period of more than 24 hours, whether for a consideration or not, accommodations to one individual or two unrelated individuals who are dependent upon the services of others, (7) any "adult care facility" as defined in R.C. 3722.01, (8) any adult foster home certified by the Department of Aging or its designee under R.C. 173.36, or (9) any "community alternative home" as defined in R.C. 3724.01.

The bill does not define the term "functionally impaired person" as it is used in the offense, and the existing definition of that term does not apply to the section in which the bill locates the offense (the R.C. 2903.10 definition of "functionally impaired person" applies only to R.C. 2903.13 and 2903.16).

Related existing provisions

Related to the bill's new offense of patient endangerment, existing law, unchanged by the bill, prohibits a person who owns, operates, or administers, or who is an agent or employee of, a "care facility," from doing any of the following: (1) committing abuse against a resident or patient of the facility, (2) committing gross neglect against a resident or patient of the facility, or (3) committing neglect against a resident or patient of the facility. A violation of the prohibition described in clause (1) is the offense of "patient abuse"; it generally is a felony of the fourth degree, but it is a felony of the third degree if the offender previously has been convicted of any violation of R.C. 2903.34. A violation of the prohibition described in clause (2) is the offense of "gross patient neglect"; it generally is a misdemeanor of the first degree, but it is a felony of the fifth degree if the offender previously has been convicted of any violation of R.C. 2903.34. A violation of the prohibition described in clause (3) is the offense of "patient neglect"; it generally is a misdemeanor of the second degree, but it is a felony of the fifth degree if the offender previously has been convicted of any violation of R.C. 2903.34.

A person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, cannot be considered "neglected" under the prohibition described in clause (3) in the preceding paragraph for that reason alone. It is an affirmative defense to a charge of gross neglect or neglect under the prohibitions that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person with supervisory authority over the actor. The definition of "care facility" described above applies to these provisions. (R.C. 2903.34.)

Agreement of MR/DD employee, or county board of mental retardation and developmental disabilities employee, to not engage in sexual activity with individual with mental retardation or a developmental disability in the applicant's care

The bill enacts provisions that require DMRDD's Director, prior to employing an applicant, and require the superintendent of a county board of mental retardation and developmental disabilities, prior to employing an applicant, to require the applicant to sign an agreement under which the applicant agrees to not engage in any "sexual conduct" or "sexual contact" (see below) with an individual with mental retardation or a developmental disability in the applicant's care. The agreement must inform the applicant that the failure to comply with the agreement may result in the placement of the individual on the existing MR/DD employee registry, described above in "**Related existing provisions**" under "**Offense of "endangering a functionally impaired person"**." (R.C. 5123.084(B) and 5126.282(B).)

As used in these provisions (R.C. 5123.084(A), 5126.282(A), by reference to existing R.C. 2907.01--not in the bill):

(1) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(2) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

Reports of abuse or neglect of a person with mental retardation or a developmental disability

Existing law

Mandatory reports. Existing law lists certain categories of professions and prohibits any person in any of the categories, having reason to believe that a person with mental retardation or a developmental disability has suffered any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect of that person, from failing to immediately report or cause reports to be made of such information to a law enforcement agency or the county board of mental retardation and developmental disabilities, except that if the report

concerns a resident of a facility operated by DMRDD the report must be made either to a law enforcement agency or to DMRDD. The specified professions to which the mandatory reporting provision applies are: physicians, including hospital interns and residents; dentists; podiatrists; chiropractors; practitioner of a limited branch of medicine under R.C. 4731.15; hospital administrators and employees; nurses licensed under R.C. Chapter 4723.; employees of an ambulatory health facility, home health agency, adult care facility, or community mental health facility; school teachers or school authorities; social workers; psychologists; attorneys; peace officers; coroners; clergymen; residents' rights advocates under R.C. 3721.10; superintendents, board members, and employees of a county board of mental retardation and developmental disabilities; administrators, board members, and employees of a residential facility licensed under R.C. 5123.19 or of any other public or private provider of services to a person with mental retardation or a developmental disability; MR/DD employees as defined in R.C. 5123.50; members of a citizen's advisory council established at an institution or branch institution of DMRDD under R.C. 5123.092; and persons who, while acting in an official or professional capacity, render spiritual treatment through prayer in accordance with the tenets of an organized religion. The reporting requirements do not apply to members of the Legal Rights Service Commission or to employees of the legal rights service.

The reports must be made forthwith by telephone or in person, must be followed by a written report, and must contain names and addresses of the person with mental retardation or a developmental disability and the person's custodian, if known, the age of the person with mental retardation or a developmental disability, and any other information that would assist in the investigation. Existing law also requires a physician performing services as a member of the staff of a hospital or similar institution who has reason to believe that a person with mental retardation or a developmental disability has suffered injury, abuse, or physical neglect, to notify the person in charge of the institution or that person's designated delegate, who must make the necessary reports. (R.C. 5123.61(C) to (E).)

Discretionary reports. Existing law permits any person having reasonable cause to believe that a person with mental retardation or a developmental disability has suffered abuse or neglect to report the belief, or cause a report to be made, to a law enforcement agency or the county board of mental retardation and developmental disabilities, or, if the person is a resident of a facility operated by DMRDD, to a law enforcement agency or to DMRDD (R.C. 5123.61(F)).

Procedures regarding reports. Upon the receipt of a report concerning possible abuse or neglect of a person with mental retardation or a developmental disability, the law enforcement agency must inform the county board of mental

retardation and developmental disabilities or, if the person is a resident of a facility operated by DMRDD, the Department's Director. On receipt of a report that includes an allegation of action or inaction that may constitute a crime under federal law or Ohio law, DMRDD must notify the law enforcement agency. When a county board receives a report that includes an allegation of action or inaction that may constitute any such crime, the board's superintendent or the superintendent's designee must notify the law enforcement agency. The superintendent or designee must notify DMRDD when it receives any report.

A law enforcement agency must investigate each report it receives under the above-described provisions. In addition, DMRDD, in cooperation with law enforcement officials, must investigate each report regarding a resident of a facility operated by DMRDD to determine the circumstances surrounding the injury, the cause of the injury, and the person responsible. DMRDD must determine, with the registry office that must be maintained by DMRDD, whether prior reports have been made concerning an adult with mental retardation or a developmental disability or other principals in the case. If DMRDD finds that the report involves action or inaction that may constitute a crime under federal law or Ohio law, it must submit a report of its investigation, in writing, to the law enforcement agency. If the person with mental retardation or a developmental disability is an adult, with his or her consent, DMRDD must provide such protective services as are necessary. The law enforcement agency must make a written report of its findings to DMRDD. If the person is an adult and is not a resident of a facility operated by DMRDD, the county board must review the report of abuse or neglect, and the law enforcement agency must make the written report of its findings to the county board.

Existing law provides a qualified immunity from civil and criminal liability for persons, hospitals, institutions, schools, health departments, agencies, and other specified entities relative to the making of reports, and to involvement in related proceedings or conduct. It also provides a qualified protection from the taking of detrimental action or retaliation against any employee related to the making of a report.

Reports made under these provisions are not public records under the Public Records Law, but information they contain, on request, must be made available to the person who is the subject of the report, the person's legal counsel, and agencies authorized to receive information in the report by DMRDD or by a county board. The law specifies that the physician-patient privilege is not a ground for excluding evidence regarding the injuries or physical neglect of a person with mental retardation or a developmental disability or the cause thereof in any judicial proceeding resulting from a report submitted pursuant to this section.

Finally, existing law requires DMRDD to establish a registry office for the purpose of maintaining reports of abuse, neglect, and other major unusual incidents made to DMRDD under the above-described provisions and reports received from county boards of mental retardation and developmental disabilities under R.C. 5126.31. DMRDD must establish committees to review reports of abuse, neglect, and other major unusual incidents. (R.C. 5123.61(B) and (G) to (N).)

Penalties. Existing law provides that a person who violates the existing prohibition against failing to file a mandatory report, the existing provision requiring physicians who are staff at a hospital or similar institution to provide a notice to the head of the institution and requiring the head of the institution to file a report, or the existing provision requiring a county board that receives a report alleging specified criminal conduct to notify a law enforcement agency and requiring a county board that receives any report to notify DMRDD, must be fined not more than \$500 (R.C. 5123.99(B)).

Definitions. Under existing law, as used in the above-described reporting provisions (R.C. 5123.61(A)): (1) "law enforcement agency" means the State Highway Patrol, a municipal police department, or a county sheriff, (2) "abuse" has the same meaning as in R.C. 5123.50, except that it includes a misappropriation, as defined in that section, and (3) "neglect" has the same meaning as in R.C. 5123.50.

Operation of the bill

The bill modifies some of the existing provisions regarding mandatory reports of abuse or neglect of a person with mental retardation or a developmental disability, and some of the procedures related to mandatory reports and discretionary reports. A summary of the modifications follows.

(1) In addition to requiring a person in any of the specified categories of professions that is subject to the mandatory reporting requirement to make a report when the person has reason to believe that a person with mental retardation or a developmental disability *has suffered* any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect of that person, the bill requires a person in any of those categories to make a report when the person has reason to believe that a person with mental retardation or a developmental disability *faces the threat of suffering* any such wound, injury, disability, or condition (R.C. 5123.61(C)).

(2) It enacts a new provision requiring a person in any of the specified category of professions that is subject to the mandatory reporting requirement who discovers or suspects that a child under 18 years of age or a mentally retarded,

developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, to immediately report that knowledge or suspicion to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred (R.C. 5123.61(O)).

(3) It specifies that any person who fails to make a report under the mandatory reporting provisions is eligible to be included in the MR/DD employee registry established under existing law, as described above in "Registry of MR/DD employees" (R.C. 5123.61(C)(4)).

(4) Regarding investigations of a mandatory or discretionary report by a law enforcement agency or DMRDD, it requires that the investigation be in accordance with the memorandum of understanding prepared under its provisions, as described in (6), below (R.C. 5123.61(J)).

(5) It revises the existing penalties provided for specified violations of the reporting law, and also makes the penalties apply to a person who violates the new provision described above in (2). Under the bill, a person who violates the existing prohibition against failing to file a mandatory report, the existing provision requiring physicians who are staff at a hospital or similar institution to provide a notice to the head of the institution and requiring the head of the institution to file a report, the existing provision requiring a county board that receives a report alleging specified criminal conduct to notify a law enforcement agency and requiring a county board that receives any report to notify DMRDD, or the new provision described above in (2) is guilty of a misdemeanor of the fourth degree or, if the abuse or neglect constitutes a felony, a misdemeanor of the second degree. In addition, the offender is eligible to be included in the MR/DD employee registry established under existing law, as described above in "Registry of MR/DD employees." (R.C. 5123.99(B).)

(6) It requires each county board of mental retardation and developmental disabilities to prepare a memorandum of understanding signed by specified persons, for specified purposes, as follows (R.C. 5123.61(P)):

(a) The memorandum of understanding must be signed by all of the following: (i) if there is only one probate judge in the county, the probate judge of the county or the probate judge's representative, (ii) if there is more than one probate judge in the county, a probate judge or the probate judge's representative selected by the probate judges or, if they are unable to do so for any reason, the probate judge who is senior in point of service or the senior probate judge's representative, (iii) the county peace officer, all chief municipal peace officers

within the county, and other law enforcement officers handling abuse, neglect, and exploitation of mentally retarded and developmentally disabled persons in the county, (iv) the prosecuting attorney of the county, (v) the public children services agency, if the mentally retarded or developmentally disabled person is a child, and (vi) the coroner of the county.

(b) The memorandum of understanding must set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under R.C. 5123.61 and R.C. 313.12, 2151.421, 2903.16, 5126.31, and 5126.33 and must have as two of its primary goals the elimination of all unnecessary interviews of persons who are the subject of reports made pursuant to these provisions and, when feasible, providing for only one interview of a person who is the subject of a report. A failure to follow the procedure by the concerned officials is not grounds for, and cannot result in, the dismissal of any charge or complaint arising from any reported case of abuse, neglect, or exploitation or the suppression of any evidence obtained as a result of any reported abuse, neglect, or exploitation and does not give any rights or grounds for appeal or post-conviction relief to any person.

(c) The memorandum of understanding must include, but is not limited to, all of the following: (i) the roles and responsibilities for handling emergency and nonemergency cases of abuse, neglect, or exploitation, (ii) standards and procedures to be used in handling and coordinating investigations of reported cases of abuse, neglect, or exploitation and methods to be used in interviewing the person who is the subject of the report and who allegedly was abused, neglected, or exploited, (iii) standards and procedures addressing the categories of persons who may interview the person who is the subject of the report and who allegedly was abused, neglected, or exploited, (iv) standards and procedures to be used in providing victim services to mentally retarded and developmentally disabled persons pursuant to the existing Crime Victims Rights Law, and (v) standards and procedures for the filing of criminal charges against persons alleged to have abused, neglected, or exploited mentally retarded or developmentally disabled persons.

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

Abuse or neglect of a person with mental retardation or a developmental disability, or misappropriation of property, by DMRDD employee

Existing law

Existing law provides that, in addition to any other required action, DMRDD must review each report it receives of abuse or neglect of an individual with mental retardation or a developmental disability or misappropriation of an individual's property that includes an allegation that an MR/DD employee committed or was responsible for the abuse, neglect, or misappropriation. DMRDD must review a report it receives from a public children services agency only after the agency completes its investigation under R.C. 2151.421, as discussed below. DMRDD must do both of the following: (1) investigate the allegation or adopt the findings of an investigation or review conducted by another person or government entity and determine whether there is a reasonable basis for the allegation, and (2) if it determines there is a reasonable basis for the allegation, conduct an adjudication pursuant to the Administrative Procedure Act.

DMRDD, or DMRDD and a union representative in certain circumstances, must appoint an independent hearing officer to conduct any hearing pursuant to the provisions described in the preceding paragraph. No hearing may be conducted until any criminal proceeding or collective bargaining arbitration concerning the same allegation has concluded. In conducting a hearing, the hearing officer must do both of the following: (1) determine whether there is clear and convincing evidence that the MR/DD employee has misappropriated the property of an individual with mental retardation or a developmental disability, knowingly abused or neglected such an individual, recklessly abused or neglected such an individual with resulting physical harm, or negligently abused or neglected such an individual with resulting serious physical harm (hereafter, these are collectively referred to as "specified prohibited acts"), and (2) give weight to the decision in any collective bargaining arbitration regarding the same allegation. Unless DMRDD's Director determines there are extenuating circumstances (these include an employee's use of physical force that was necessary as self-defense) and subject to the exceptions described below, the Director must include in the registry of MR/DD employees established under R.C. 5123.52 the name of an MR/DD employee if the Director finds that there is clear and convincing evidence the employee has done one or more of the things described in clause (1). If the Director includes an MR/DD employee in the registry, the Director must notify the employee, the individual with mental retardation or a developmental disability who was the subject of the report, and certain other specified persons and entities.

DMRDD's Director cannot 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. Regarding an allegation concerning an employee of the Department, after the

hearing, the Director of Health or that Director's designee must review the hearing officer's decision to determine whether "the standard described in R.C. 5123.51(C)(2) has been met" (this reference is ambiguous and unclear). If the Director or designee determines that the standard has been met and that no extenuating circumstances exist, the Director or designee must notify DMRDD's Director that the MR/DD employee is to be included in the registry. If DMRDD's Director receives such notification, the Director must include the MR/DD employee in the registry, unless the individual has been found not guilty by a court or jury of an offense arising from the same facts, and must provide the related notification. Files and records of investigations conducted pursuant to these provisions are not public records under the Public Records Law, but, on request, DMRDD must provide copies to the Attorney General, a prosecuting attorney, or a law enforcement agency. (R.C. 5123.51.)

Operation of the bill

The bill revises the existing provisions regarding reports of abuse, neglect, misappropriation of property by an MR/DD employee in the following ways:

(1) It requires DMRDD to review a report it receives from a prosecutor pursuant to the provisions described below in **'Prosecutor's report of filing of charges--victim with mental retardation or a developmental disability'** when the person who is the subject of the report is charged (R.C. 5123.51(A));

(2) It repeals the prohibition against conducting an Administrative Procedure Act hearing until any criminal proceeding or collective bargaining arbitration concerning the same allegation has been concluded (repeal of existing R.C. 5123.51(C)(2));

(3) It expands the matters that a hearing officer must determine at a hearing conducted under the provisions to also include, in addition to the "specified prohibited acts" that must be determined under existing law, determinations of whether the MR/DD employee has done any of the following: (a) created a substantial risk to the health and safety of such an individual in their care, (b) engaged in a sexual relationship with such an individual in their care, or (c) failed to make a report pursuant to the provisions described above under **'Reports of abuse or neglect of a person with mental retardation or a developmental disability'** (R.C. 5123.51(C)(2));

(4) It repeals the prohibition against DMRDD's Director including in the registry of MR/DD employees an individual who has been found not guilty by a court or jury of an offense arising from the same facts as the allegation in question, and the related application to findings made by the Director of Health (repeal of existing R.C. 5123.51(D)(4), and R.C. 5123.51(D)(1) and (E));

(5) Finally, it enacts a provision that specifies that, if DMRDD is required by the Administrative Procedure Act to give notice of an opportunity for a hearing and if the MR/DD employee subject to the notice does not timely request a hearing in accordance with a specified provision of that Act, DMRDD is not required to hold a hearing. Unless DMRDD's Director determines there are extenuating circumstances, the Director must include in the registry of MR/DD employees the name of the MR/DD employee if the Director finds there is clear and convincing evidence that the employee has done any of the specified prohibited acts listed under existing law or the additional acts added by the bill and described in (3), above (R.C. 5123.51(F)).

Prosecutor's report of filing of charges--victim with mental retardation or a developmental disability

The bill enacts a provision that requires the "prosecutor" (see below) in any case against a person involving a victim that the prosecutor knows or reasonably should know has mental retardation or a developmental disability to send written notice upon the filing of charges against a person to DMRDD. The written notice must specifically identify the person charged. As used in this provision, "prosecutor" includes the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in courts inferior to courts of common pleas, includes the village solicitor, city director of law, or similar municipal chief legal officer, any assistants of the municipal chief legal officer, or any attorney designated by the prosecuting attorney of the county to appear for the prosecution of a given case. (R.C. 5123.511.)

County board of mental retardation and developmental disabilities--protective service order and plans regarding abuse and neglect of a person with mental retardation or a developmental disability

Provision of services for the prevention, correction or discontinuance of abuse or neglect or of a condition resulting from abuse or neglect for an adult

Existing law. Existing law requires a county board of mental retardation and developmental disabilities to review reports of abuse and neglect of a person with mental retardation or a developmental disability made under R.C. 5123.61, as described above, and reports referred to it under R.C. 5101.611 to determine whether the person who is the subject of the report is an adult with mental retardation or a developmental disability in need of services to deal with the abuse or neglect. The law specifies procedures that must be followed in the review, and imposes duties on the county board in performing it. The board must arrange for the provision of "services" for the prevention, correction, or discontinuance of abuse or neglect or of a condition resulting from abuse or neglect for any adult who has been determined to need the services and consents to receive them. The

"services" may include, but are not limited to, service and support administration, fiscal management, medical, mental health, home health care, homemaker, legal, and residential services and the provision of temporary accommodations and necessities such as food and clothing, but do not include acting as a guardian, trustee, or protector.

To arrange "services," the board must develop an individualized *service plan* identifying the types of services required for the adult, the goals for the services, and the persons or agencies that will provide them; and, in accordance with rules established by DMRDD's Director, obtain the consent of the adult or the adult's guardian to the provision of the services and obtain the signature of the adult or guardian on the individual service plan (an adult who has been found incompetent may consent to services; if the board is unable to obtain consent, it may seek a court order, under the provisions described below in **'Probate court order for the arrangement of protective services for an adult with mental retardation or a developmental disability'**, authorizing the board to arrange the services). The board must ensure that the adult receives the services it arranges from the provider and must have the services terminated if the adult withdraws consent. (R.C. 5126.31.)

Operation of the bill. The bill changes these provisions in only one regard. Under the bill, to arrange the "services," the board must develop an individualized *protective service plan* (see **'Definitions'**, below) identifying the types of services required for the adult, the goals for the services, and the persons or agencies that will provide them. (R.C. 5123.31.)

Probate court order for the arrangement of protective services for an adult with mental retardation or a developmental disability

Existing law. Under existing law, a county board of mental retardation and developmental disabilities may file a complaint with the probate court of the county in which an adult with mental retardation or a developmental disability resides for an order authorizing the board to arrange *services* described in the preceding part of this analysis for that adult if the board has been unable to secure consent. The complaint must include the adult's name, age, and address, facts describing the nature of the abuse or neglect and supporting the board's belief that services are needed, the types of services proposed by the board, as set forth in the individualized *service plan* prepared for the person and filed with the complaint, and facts showing the board's attempts to obtain the required consent to the services. The law specifies notice procedures that must be followed when a board files such a complaint, and procedures that must be followed at the hearing on the complaint.

The court must issue an order authorizing the board to arrange the *services* if it finds, by clear and convincing evidence, that the adult has been abused or neglected, the adult is incapacitated, there is a substantial risk to the adult of immediate physical harm or death, the adult is in need of the services, and no person authorized by law or court order to give consent for the adult is available or willing to consent to the services. In formulating the order, the court must consider the individual *service plan* and specifically designate the services that are necessary to deal with the abuse or neglect or condition resulting from abuse or neglect and that are available locally, and authorize the board to arrange for these services only. The court must limit the provision of these services to a period not exceeding 14 days, renewable for an additional 14-day period on a showing by the board that continuation of the order is necessary. The law sets forth certain limitations on the court, in issuing the order. The adult, the board, or any other person who received notice of the petition may file a motion for modification of the court order at any time. (R.C. 5126.33.)

Operation of the bill. The bill modifies these provisions in the following ways:

(1) It revises the existing provisions that refer to the board's arrangement of *services* for the adult and to the individualized *service plan* for the adult so that they instead refer to the arrangement of *protective services* for the adult and to the individualized *protective service plan* for the adult (R.C. 5126.33(A) and (D); see "**Definitions**," below). These changes are related to the change described in the preceding part of this analysis regarding the provision of protective services to an adult.

(2) It requires the board to develop a detailed *protective service plan* describing the *services* that the board will provide to the adult to prevent further abuse, neglect, or exploitation, requires the board to submit the plan to the court for approval, and specifies that the plan may be changed by court order (R.C. 5126.33(D)(2)).

(3) It revises the existing provision that requires the court, if it issues an order for services, to limit the provision of the services to a period not exceeding 14 days with the possibility of renewal for another 14 days to instead require the court to limit the provision of the services to a period not exceeding six months, renewable for an additional six-month period on a showing by the board that continuation of the order is necessary (R.C. 5126.33(D)(3)).

(4) It enacts provisions regarding *ex parte* emergency orders for protective services. Under the bill, upon the filing of a complaint for a protective services order, a probate judge may grant by telephone an *ex parte* emergency order authorizing the county board to provide emergency protective services to an adult

or to remove the adult from the adult's place of residence or legal settlement or the place where the abuse, neglect, or exploitation occurred, if there is reasonable cause to believe that the adult is mentally retarded or developmentally disabled or is incapacitated, and there is a substantial risk to the adult of immediate physical harm or death. If a judge or referee issues an *ex parte* emergency order to remove the adult from the adult's place of residence or legal settlement or the place where the abuse, neglect, or exploitation occurred, the court must hold a hearing to determine whether there is probable cause for the emergency order. The hearing must be held before the end of the next business day after the day on which the emergency order is issued, except that it cannot be held later than 72 hours after the emergency order is issued. (R.C. 5126.33(I) and (J).)

(5) It enacts provisions regarding temporary orders related to protective services. Under the bill, after the filing of a complaint for a protective services order, the court, prior to the final disposition, may enter any temporary order that the court finds necessary to protect the adult with mental retardation or a developmental disability from abuse, neglect, or exploitation including, but not limited to, the following: (a) a temporary protection order, (b) an order requiring the evaluation of the adult, or (c) an order requiring a party to vacate the adult's place of residence or legal settlement. The court may grant an *ex parte* order pursuant to this provision upon its own motion or if a party files a written motion or makes an oral motion requesting the issuance of the order and stating the reasons for it if it appears to the court that the best interest and the welfare of the adult require that the court issue the order immediately. The court, if acting on its own motion, or the person requesting the granting of an *ex parte* order, to the extent possible, must give notice of its intent or of the request to the adult, the adult's caretaker, the adult's legal counsel, if any, and the legal rights service. If the court issues an *ex parte* order, the court must hold a hearing to review the order within 72 hours after it is issued or before the end of the next day after the day on which it is issued, whichever occurs first. The court must give written notice of the hearing to all parties to the action. (R.C. 5126.33(K).)

Definitions

The following definitions, relevant to the bill, apply to the provisions discussed above in "**County board of mental retardation and developmental disabilities--protective service order and plans regarding abuse and neglect of a person with mental retardation or a developmental disability**":

(1) "Adult" means a person 18 years of age or older with mental retardation or a developmental disability (existing R.C. 5126.30(A), unchanged by the bill).

(2) "Abuse" and "neglect" have the same meanings as in existing R.C. 5123.50, except that "abuse" includes a misappropriation, as defined in that section (existing R.C. 5126.30(C) and (D), unchanged by the bill).

(3) "Incapacitated" means lacking understanding or capacity, with or without the assistance of a caretaker, to make and carry out decisions regarding food, clothing, shelter, health care, or other necessities, but does not include mere refusal to consent to the provision of services (existing R.C. 5126.30(F), unchanged by the bill).

(4) "Emergency protective services" means protective services furnished to a person with mental retardation or a developmental disability to prevent immediate physical harm (R.C. 5126.30(G), enacted by the bill).

(5) "Exploitation" means the unlawful or improper act of a caretaker using an adult or an adult's resources for monetary or personal benefit, profit, or gain, including misappropriation of an adult's resources (R.C. 5126.30(H), enacted by the bill).

(6) "Protective services" means services provided by the county board of mental retardation and developmental disabilities to an adult with mental retardation or a developmental disability for the prevention, correction, or discontinuance of an act of as well as conditions resulting from abuse, neglect, or exploitation (R.C. 5126.30(I), enacted by the bill).

(7) "Protective service plan" means an individualized plan developed by the county board of mental retardation and developmental disabilities to prevent the further abuse, neglect, or exploitation of an adult with mental retardation or a developmental disability (R.C. 5126.30(J), enacted by the bill).

(8) "Substantial risk" means a strong possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist (R.C. 5126.30(K), enacted by the bill).

Notice to coroner regarding certain deaths

Existing law

Existing law provides that, when a person dies as a result of criminal or other violent means, by casualty, by suicide, or in any suspicious or unusual manner, or when any person, including a child under two years of age, dies suddenly when in apparent good health, the physician called in attendance, or any member of an ambulance service, emergency squad, or law enforcement agency who obtains knowledge thereof arising from the person's duties, immediately must notify the office of the coroner of the known facts concerning the time, place,

manner, and circumstances of the death, and any other information required pursuant to R.C. 313.01 to 313.22 (the Coroner Law). In such cases, if a request is made for cremation, the funeral director called in attendance immediately must notify the coroner. (R.C. 313.12.)

Operation of the bill

In the portion of the coroner notification provision that currently requires the specified health care, emergency, and law enforcement personnel to immediately notify the office of the coroner when any person, including a child under two years of age, dies suddenly when in apparent good health, the bill specifically identifies a person with mental retardation or a developmental disability, in addition to a child under two years of age, as a person to whom the provision applies. Thus, under the bill, the entire provision specifies that, when any person dies as a result of criminal or other violent means, by casualty, by suicide, or in any suspicious or unusual manner, or when any person, including a child under two years of age *or a person with mental retardation or a developmental disability*, dies suddenly when in apparent good health, the physician called in attendance, or any member of an ambulance service, emergency squad, or law enforcement agency who obtains knowledge thereof arising from the person's duties, immediately must notify the office of the coroner of the known facts concerning the time, place, manner, and circumstances of the death, and any other information required pursuant to the Coroner Law. (R.C. 313.12.)

Consent for autopsy or post-mortem examination of a deceased person, given in written instrument

Existing law

Existing law provides that a licensed physician or surgeon may perform an autopsy or post-mortem examination upon the body of a deceased person if consent has been given *in the order named* by one of the following persons of sound mind and 18 years of age or older in a "written instrument" (defined as including a telegram or cablegram) executed by the person or on the person's behalf at the person's express direction: (1) the deceased person during the deceased person's lifetime, (2) the deceased person's spouse, (3) if there is no surviving spouse, if the surviving spouse's address is unknown or outside the United States, if the surviving spouse is physically or mentally unable or incapable of giving consent, or if the deceased person was separated and living apart from the surviving spouse, then a person having the first named degree of relationship in the following list in which a relative of the deceased person survives and is physically and mentally able and capable of giving consent may execute consent: children; parents; or brothers or sisters, (4) if there are no surviving persons of any

degree of relationship listed in clause (3) of this paragraph, any other relative or person who assumes custody of the body for burial, (5) a person authorized by written instrument executed by the deceased person to make arrangements for burial, or (6) a person who, at the time of the deceased person's death, was serving as guardian of the person for the deceased person. Consent to an autopsy or post-mortem examination may be revoked only by the person executing the consent and in the same manner as required for execution of consent under the provision described in this paragraph. (R.C. 2108.50.)

The requirements of the provision described in the preceding paragraph do not apply to a post-mortem or other examination performed under R.C. 313.01 to 313.22, or to medical, surgical, and anatomical study performed under R.C. 1713.34 to 1713.42 (R.C. 2108.52).

Operation of the bill

The bill expands the list of persons who may give consent in a written instrument to an autopsy or post-mortem examination of a deceased person by adding, at the end of the list as the seventh option, and only in circumstances in which the deceased person had mental retardation or a developmental disability, DMRDD or the county board of mental retardation and developmental disabilities. Note that the language in the introductory clause of the existing provision that specifies that the consent must be given "in the order named" and that specifies that the person giving the consent must be "of sound mind and 18 years of age or older" also applies regarding the authorization for giving consent added by the bill. (R.C. 2108.50.)

Appointment of an interpreter for a party to or witness in a legal proceeding

Existing law

Existing law provides that, whenever because of a hearing, speech, or other impairment a party to or witness in a legal proceeding cannot readily understand or communicate, the court must appoint a qualified interpreter to assist such person. Before entering upon his or her duties, the interpreter must take an oath that he or she will make a true interpretation of the proceedings to the party or witness, and that he or she will truly repeat the statements made by such party or witness to the court, to the best of his or her ability. The court is required to determine a reasonable fee for all such interpreter service which must be paid out of the same funds as witness fees. (R.C. 2311.14.)

Operation of the bill

The bill specifies that: (1) the existing interpreter-appointment provision described above is not limited to a person who speaks a language other than English, (2) the provision also applies to the language and descriptions of any person, such as a person with mental retardation or a developmental disability, who cannot be reasonably understood, or who cannot understand questioning, without the aid of an interpreter, and (3) the interpreter may aid the parties in formulating methods of questioning the person with mental retardation or a developmental disability and in interpreting the answers of the person. The bill also specifies that the existing "oath" requirement must be satisfied before the interpreter enters upon his or her "official duties," as opposed to his or her "duties" as under existing law. (R.C. 2311.14.)

Reports of child abuse or neglect--mandatory reporters

Existing law

Existing law lists certain categories of professions, and prohibits a person in any of the specified professions who is acting in an official or professional capacity and knows or suspects that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, from failing to immediately report that knowledge or suspicion to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. The specified professions to which the mandatory reporting provision applies are attorneys; physicians, including hospital interns and residents; dentists; podiatrists; practitioners of a limited branch of medicine as specified in R.C. 4731.15; registered, licensed practical, and visiting nurses; other health care professionals; licensed psychologists; licensed school psychologists; speech pathologists and audiologists; coroners; administrators and employees of a child day-care center, residential camp, child day camp, certified child care agency, or other public or private children services agency; school teachers, employees, and authorities; persons engaged in social work or the practice of professional counseling; and persons rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion. Attorneys and physicians are provided an exception from the mandatory reporting provision, in specified circumstances, concerning communications received from a client or patient in an attorney-client or physician-patient relationship. A violation of the prohibition against failing to make the mandatory report is a misdemeanor of the fourth degree. Existing law provides procedures for making the mandatory report, rules and procedures regarding follow-ups and investigations regarding the report,

a qualified civil immunity regarding the making of the report, rules regarding the use or confidentiality of the report, and rules and procedures regarding protective services based on the report. (R.C. 2151.421(A), (C) to (I), and (K) to (N); and R.C. 2151.99(A), not in the bill; see **COMMENT 3**.)

Operation of the bill

The bill expands the list of specified professions that are subject to the existing mandatory child abuse and neglect reporting provision. Under the bill, in addition to the professions to which the provision currently applies, the provision applies to chiropractors; hospital administrators; employees of a hospital; employees of an ambulatory health facility as defined in R.C. 5101.61; employees of a home health agency; employees of an adult care facility licensed under R.C. Chapter 3722.; employees of a community mental health facility; superintendents, board members, and employees of a county board of mental retardation and developmental disabilities; administrators, board members, and employees of a residential facility licensed under R.C. 5123.19; administrators, board members, and employees of any other public or private provider of services to a person with mental retardation or a developmental disability; MR/DD employees as defined in R.C. 5123.50; members of a citizen's advisory council established at an institution or branch institution of DMRDD under R.C. 5123.092; residents' rights advocates as defined in R.C. 3721.10; members of the clergy, rabbis, priests, and regularly ordained, accredited, or licensed ministers of an established and legally cognizable church, denomination, or sect; and peace officers as defined in R.C. 2935.01 (R.C. 2151.421(A)).

Thus, under the bill, a person in any of the professions identified in the preceding paragraph (as added by the bill), or in any of the professions specified under existing law, who is acting in an official or professional capacity and knows or suspects that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, is prohibited from failing to immediately report that knowledge or suspicion to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. The existing penalty for a violation of the prohibition against failing to make the mandatory report, and the existing procedures for making the mandatory report, rules and procedures regarding follow-ups and investigations regarding the report, qualified civil immunity regarding the making of the report, rules regarding the use or confidentiality of the report, and rules and procedures regarding protective services based on the report, all apply regarding persons in any of the professions identified in the preceding paragraph (as added by the bill)

and the reports they make. (R.C. 2151.421(A), (C) to (I), and (K) to (N); and R.C. 2151.99(A), not in the bill.)

COMMENT

1. Existing law (not in the bill) contains provisions that, in cases in a juvenile court or criminal court in which a person is charged with a violation of R.C. 2905.03, 2905.05, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.09, 2907.21, 2907.23, 2907.24, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, or 2919.22 or an act that would be an "offense of violence" if committed by an adult *and in which an alleged victim of the violation was a child who was less than 13 years of age* when the document charging the violation was filed, provide mechanisms for the taking and use in the proceedings of depositions and videotaped depositions of the child victim, the closed circuit telecast into the courtroom of testimony of the child victim that is taken outside the courtroom, the recording, for showing in the courtroom, of the testimony of the child victim, and the videotaping and use of preliminary hearing testimony of the child victim. The existing mechanisms are similar to those contained in the bill regarding cases in a juvenile court or criminal court in which a person is charged with one of the violations specified in the bill or an offense of violence and in which an alleged victim of the violation was a functionally impaired person. Existing law (not in the bill) also contains a provision that provides for the use of preliminary hearing, prior trial, or deposition testimony of a person, if the person giving the testimony has died, cannot be produced at trial, or has become incapacitated to testify; the existing provision appears to be identical to the provision contained in the bill at R.C. 2945.491(A)(3). (R.C. 2152.81, 2945.481, and 2945.49.)

2. Existing R.C. 2901.01 (not in the bill) provides that, as used in the Revised Code, "offense of violence" means any of the following: (a) a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, 2923.161, 2911.12(A)(1), (2), or (3), or 2919.22(B)(1), (2), (3), or (4) or felonious sexual penetration in violation of former R.C. 2907.12, (b) a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any section, division, or offense listed in clause (a) of this paragraph, (c) an offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons, or (d) a conspiracy or attempt to commit, or complicity in committing, any offense under clause (a), (b), or (c) of this paragraph.

3. Independent of the mandatory reporting provision described in "Reports of child abuse or neglect-mandatory reporters," in the **CONTENT AND OPERATION** portion of this analysis, existing law permits anyone who knows or suspects that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child, to report or cause reports to be made of that knowledge or suspicion to the public children services agency or to a municipal or county peace officer (R.C. 2151.421(B)). Reports made under this provision generally are subject to the same procedures and rules, etc., as are reports made under the mandatory reporting provision.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-23-03	p. 64

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