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125th General Assembly

(As Reported by S. Judiciary on Criminal Justice)

**Sens. Spada, Amstutz, Goodman, Jacobson, Harris**

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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 mentally retarded person or a developmentally disabled 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.
- Enacts MR/DD patient endangerment provisions that: (1) prohibit an "MR/DD caretaker" from creating a substantial risk to the health or safety of a mentally retarded person or a developmentally disabled person, by violating a duty of care, protection, or support, (2) prohibit a person who owns, operates, or administers a care facility, or who is an agent of a care facility, from condoning, or knowingly permitting, any conduct by an MR/DD caretaker employed by or under the control of the owner, operator, administrator, or agent that is in violation of clause (1) and that involves a mentally retarded person or a developmentally disabled person under the care of the owner, operator, administrator, or agent, (3) provide certain exemptions and affirmative defenses to the prohibitions, including exemptions regarding treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, (4) specifies that a violation of either prohibition is the offense of "patient endangerment," and (5) defines "MR/DD caretaker" as any "MR/DD

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*\* This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

employee" (see the next dotpoint) or any person who assumes the duty to provide for the care and protection of a mentally retarded person or a developmentally disabled 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, including a person who is an employee of a care facility and a person who is an employee of an entity under contract with a provider but not including a person who owns, operates, or administers, or who is an agent of, a care facility.

- Specifies that an "MR/DD employee" (an employee of the Department of Mental Retardation and Developmental Disabilities, or DMRDD, an employee of a county board of mental retardation and developmental disabilities, an "ICF/MR worker," or an individual employed in a position that includes providing specialized services to an individual with mental retardation or a developmental disability) cannot engage in any sexual conduct or have any sexual contact with an individual with mental retardation or another developmental disability who is in the MR/DD employee's care and who is not the MR/DD employee's spouse, requires DMRDD and each county board to notify each MR/DD employee who is an employee of DMRDD or the board of all changes made by the bill in the conduct for which an MR/DD employee may be included in the registry regarding misappropriation, abuse, neglect, or other misconduct by MR/DD employees, and requires DMRDD to ensure that each MR/DD employee who is not an employee of DMRDD or board is given this notice.
- Modifies the provisions regarding reporting of abuse or neglect of a person with mental retardation or a developmental disability by: (1) in addition to the circumstances in which a report currently is required, requiring a person in any profession 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 *faces a substantial risk of suffering* any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect, (2) revising the entity to which the mandatory reports must be made, or the discretionary reports may be made, in specified circumstances, so that they must be made immediately to DMRDD and to the county board of mental retardation and developmental disabilities if they concern any act or omission of an employee of a county board, and

must be made to the State Highway Patrol if they concern a person with mental retardation or a developmental disability who is an inmate in a state correctional institution, (3) limiting the application of the mandatory reporting provisions to clergymen and persons who render spiritual treatment through prayer to circumstances in which they are employed in a position that includes providing specialized services to an individual with mental retardation or another developmental disability and are acting in that capacity, (4) adding an exemption from the mandatory reporting requirement, in certain circumstances, for attorneys and physicians, (5) specifying that any person who fails to make a report under the mandatory reporting provisions is eligible to be included in the registry regarding abuse, neglect, etc., by MR/DD employees, (6) 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 the next dotpoint, (7) revising the penalties provided for specified violations of the reporting law, (8) requiring a county board that receives a report in circumstances it believes are an emergency to attempt a face-to-face contact with the alleged victim within one hour, and (9) requiring DMRDD to adopt rules under the Administrative Procedure Act that provide standards for the substantiation by DMRDD and by county boards of mental retardation of reports of abuse or neglect filed under the mandatory and discretionary reporting provisions.

- Requires county boards of mental retardation and developmental disabilities to prepare a memorandum of understanding that is developed and signed by specified persons, for specified purposes, related to abuse, neglect, and exploitation of mentally retarded and developmentally disabled persons in the county.
- Revises the provisions regarding reports of abuse, neglect, misappropriation of property by an MR/DD employee and the registry of employees who engage in such conduct 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) requiring DMRDD, if it determines that there is a reasonable basis for the allegation, to prepare a "reasonable basis determination report" that specifies that the reasonable basis determination has been made regarding the allegation against the employee and that further action on the matter will be held in abeyance pending the completion of any criminal proceeding or collective

bargaining arbitration concerning the same allegation, and to send the MR/DD employee a copy of the reasonable basis determination report and give the employee any notice required by the Administrative Procedure Act of an opportunity for a hearing, (3) specifying that a reasonable basis determination report prepared as described in clause (2) is a public record open for inspection under the Public Records Law and is not part of the MR/DD Registry, (4) modifying the matters a hearing officer must determine at a hearing conducted regarding the report by limiting the existing "misappropriation of property" matter of consideration to circumstances in which the involved property has a minimum value of \$100, expanding the matters that must be determined to also include determinations of whether the employee has recklessly neglected an individual in their care, creating a substantial risk of serious physical harm, engaged in a sexual relationship with an individual in their care, or failed to make a specified report, and requiring the hearing officer and Director to consider any affirmative defense the MR/DD employee established in any related criminal pleading or proceeding, (5) 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, (6) providing a qualified immunity for persons and government entities that fail to hire or retain a person based on a "reasonable basis report" being prepared for the person as described above, (7) specifying that the provisions create no new cause of action against a person or government entity that hires or retains a person for whom such a report was prepared, and (8) 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 and must proceed as if a hearing had been held.

- Requires the prosecutor in any case against a person involving a victim that the prosecutor knows is a mentally retarded person or a developmentally disabled person to send written notice of the charges to DMRDD.
- 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," and adding references to "exploitation" to the provisions, (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 by a probate court or magistrate upon receipt of a notice from a county board, an employee of a county board, or any other person, (4) enacting provisions regarding temporary orders related to protective services, and (5) providing procedures and guidelines regarding the orders.

- In existing provisions that require DMRDD, county boards of mental retardation and developmental disabilities, and entities under contract with a county board for the provision of specialized services to individuals with mental retardation or a developmental disability to request criminal records checks from the Bureau of Criminal Identification and Investigation with respect to each person under final consideration for appointment to or employment with the Department, board, or entity, and that generally bar appointing or employing the subject person if the records check shows a prior conviction identified in a list of "disqualifying offenses," expands the list of convictions for which the Bureau checks in conducting the records check and the list of disqualifying offenses to also include, in addition to the offenses currently included in the list, the offense of "patient endangerment" that the bill enacts.
- Enacts a mechanism to be used if the Governor announces an intent to close any developmental center of DMRDD, and provides in the mechanism for an independent study by the Office of Budget and Management, the appointment of an MRDD Developmental Center Closure Commission to conduct public hearings on and study the issue, and the Commission's preparation of a report to the Governor containing nonbinding recommendations as to the closure of any center or centers.
- Expands a provision that currently requires specified health care, emergency, and law enforcement personnel to notify the office of the coroner when a person dies in specified circumstances, to also require the notice to be provided when any mentally retarded or developmentally disabled person dies regardless of the circumstances.

- Provides that, if a mentally retarded person or a developmentally disabled person dies, if DMRDD or a county board of mental retardation and developmental disabilities has a good faith reason to believe that the deceased person's death occurred under suspicious circumstances, if the coroner was apprised of the circumstances of the death, and if the coroner after being so apprised declines to conduct an autopsy, DMRDD or the board may file a petition in a court of common pleas seeking an order authorizing an autopsy or post-mortem examination under this section, and the court must order the requested autopsy or post-mortem examination if it finds that, under the circumstances, DMRDD or the board has demonstrated a need for it.
- 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 mentally retarded person or developmentally disabled person who cannot be reasonably understood, or who cannot understand questioning, without the aid of an interpreter, (3) the evaluation standards the bill provides for interpreters appointed in the circumstances described in clause (2) must be complied with before the appointment, (4) interpreters appointed in those circumstances must take a special oath, and (5) 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 superintendents, board members, and employees of a county board of mental retardation and developmental disabilities, investigative agents contracted with by a county board of mental retardation, and employees of DMRDD.

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## CONTENT AND OPERATION

### *Special testimonial procedures in criminal and delinquent child proceedings, regarding certain violations committed against a mentally retarded person or a developmentally disabled 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 "mentally retarded person" or a "developmentally disabled 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 mentally retarded person or a developmentally disabled 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 "mentally retarded person" or a "developmentally disabled 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 mentally retarded or developmentally disabled victim be taken by deposition. The prosecution also may request that the deposition be videotaped, as described below. The judge must notify the mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled victim taken under this provision is admitted as evidence at the proceeding as described below in "*Use of depositions.*" the mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled victim giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the mentally retarded or developmentally disabled victim giving the deposition. The person chosen by the mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled victim giving the deposition, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled victim who gave the testimony in the deposition were to testify in person at the proceeding, the mentally retarded or developmentally disabled victim would experience serious emotional trauma as a result of the mentally retarded or developmentally disabled 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, 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 mentally retarded person or a developmentally disabled 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 mentally retarded person or a developmentally disabled person, the prosecution may file a motion with the involved judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled victim to be taken outside of the room in which the juvenile court proceeding is being conducted, the order must specifically identify the mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled victim to testify despite judicial requests to do so, (2) the inability of the mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded person or a developmentally disabled 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 mentally retarded person or a developmentally disabled person, the prosecution may file a motion with the involved judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled 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 if applicable, and any other persons who would have been present during the testimony of the mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony must be provided with a monitor on which the mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded person or a developmentally disabled person and videotaped**

**Use of videotaped preliminary hearing testimony given by a victim of a specified offense who is a mentally retarded person or a developmentally disabled person.** 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 mentally retarded person or a developmentally disabled person (see "**Definitions**," below), the court, upon motion of the prosecutor in the case, may admit videotaped preliminary hearing testimony of the mentally retarded or developmentally disabled victim as evidence at the trial, in lieu of the mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled victim by direct, cross, or redirect examination, and (b) the court determines that there is reasonable cause to believe that if the mentally retarded or developmentally

disabled victim who gave the testimony at the preliminary hearing were to testify in person at the trial, the mentally retarded or developmentally disabled victim would experience serious emotional trauma as a result of the victim's participation at the trial.

If a mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled victim should be admissible at trial as described in the second preceding paragraph and, if it is admissible, whether the mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled victim cannot be required to testify at the hearing. After the hearing, the court cannot require the mentally retarded or developmentally disabled victim to testify at the trial, unless it determines that both of the following apply: (1) that the testimony of the mentally retarded or developmentally disabled victim at trial is necessary because evidence that was not available at the time of the testimony of the mentally retarded or developmentally disabled victim at the preliminary hearing has been discovered, or that the circumstances surrounding the case have changed sufficiently to necessitate that the mentally retarded or developmentally disabled victim testify at the trial, or both, and (2) that the testimony of the mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled victim to testify at the trial, the testimony of the victim must be limited to the new evidence and changed circumstances, and the mentally retarded or developmentally disabled victim cannot otherwise be required to testify. The required testimony of the mentally retarded or developmentally disabled 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 mentally retarded person or a developmentally disabled 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 mentally retarded person or a developmentally disabled 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 mentally retarded person or a developmentally disabled person*."

If videotaped testimony of a mentally retarded or developmentally disabled victim is admitted at trial in accordance with the above-described provisions, the mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled victim concerning whose testimony it pertains, and it applies only during the testimony of the mentally retarded or developmentally disabled victim it specifically identifies. (R.C. 2945.491(B) and (C).)

### *Definitions*

The bill defines "mentally retarded or developmentally disabled victim," "mentally retarded person," and "developmentally disabled person," for purposes of its provisions described above, as follows (R.C. 2152.821(A), 2945.482(A), and 2945.491(A), and, by cross-reference R.C. 5123.01 (not in the bill)):

(1) "Mentally retarded or developmentally disabled victim" includes any mentally retarded or developmentally disabled 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 mentally retarded or developmentally disabled 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.

(2) "Mentally retarded person" means a person having significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior, manifested during the developmental period.

(3) "Developmentally disabled person" means a person with a developmental disability. As used in this definition, "developmental disability"

means a severe, chronic disability that is characterized by all of the following: (a) it is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness as defined in R.C. 5122.01, not in the bill, (b) it is manifested before age 22, (c) it is likely to continue indefinitely, (d) it results in one of the following: (i) in the case of a person under three years of age, at least one developmental delay or an established risk, (ii) in the case of a person at least three years of age but under six years of age, at least two developmental delays or an established risk, or (iii) in the case of a person six years of age or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is at least 16 years of age, capacity for economic self-sufficiency, and (e) it causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person. As used in this definition, "substantial functional limitation," "developmental delay," and "established risk" have the meanings established pursuant to R.C. 5123.011, not in the bill.

### **Offense of "patient endangerment"**

#### **Operation of the bill**

The bill enacts a new offense related to the endangerment of a mentally retarded person or a developmentally disabled person by a person who is involved with the care and protection of the mentally retarded person or developmentally disabled person. Specifically, the bill prohibits the following types of conduct:

(1) It prohibits an "MR/DD caretaker" (see below) from creating a "substantial risk" (see **COMMENT 3**) to the health or safety of a "mentally retarded person" or a "developmentally disabled person" (see below), by violating a duty of care, protection, or support. The bill states that it is not a violation of a duty of care, protection, or support under this provision when the MR/DD caretaker treats a physical or mental illness or defect of the mentally retarded person or developmentally disabled person by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body;

(2) It prohibits a person who owns, operates, or administers a "care facility" (see below), or who is an agent of a care facility, from condoning, or knowingly permitting, any conduct by an MR/DD caretaker who is employed by or under the control of the owner, operator, administrator, or agent that is in violation of clause (1) above and that involves a mentally retarded person or a developmentally disabled person who is under the care of the owner, operator,

administrator, or agent. The bill states 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 this provision for that reason alone.

A violation of either 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 the prohibition described above in (2) does not apply to a person who owns, operates, or administers a care facility, or who is an agent of a care facility, unless the owner, operator, administrator, or agent condones, or knowingly permits, the conduct of the MR/DD caretaker in question that is in violation of the prohibition in clause (1) above. The bill also provides that it is an affirmative defense to a charge of a violation of either prohibition described above 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. Finally, the bill provides that it is an affirmative defense to a charge of a violation of the prohibition described above in (2) that the person who owns, operates, or administers a care facility, or who is an agent of a care facility and who is charged with the violation is following the individual protective service plan for the involved mentally retarded person or a developmentally disabled person or when the admission, discharge, and transfer rule set forth in the Administrative Code is being followed. (R.C. 2903.341.)

As used in this provision:

(1) "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): (a) any "home" as defined in R.C. 3721.10 or 5111.20, (b) any "residential facility" as defined in R.C. 5123.19, (c) any institution or facility operated or provided by DMRDD pursuant to R.C. 5119.02 and 5123.03, (d) any "residential facility" as defined in R.C. 5119.22, (e) any unit of any hospital, as defined in R.C. 3701.01, that provides the same services as a nursing home, as defined in R.C. 3721.01, (f) 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, (g) any "adult care facility" as defined in R.C. 3722.01, (h) any adult foster home certified by the Department of Aging or its designee under R.C. 173.36, or (i) any "community alternative home" as defined in R.C. 3724.01.

(2) "MR/DD caretaker" means any "MR/DD employee" (see "**MR/DD Registry**," below) or any person who assumes the duty to provide for the care and

protection of a mentally retarded person or a developmentally disabled 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. "MR/DD caretaker" includes a person who is an employee of a care facility and a person who is an employee of an entity under contract with a provider but does not include a person who owns, operates, or administers, or who is an agent of, a care facility (R.C. 2903.341(A)(1)).

(3) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in R.C. 5123.01, as described above in "Definitions," under "Special testimonial procedures in criminal and delinquent child proceedings, regarding certain violations committed against a mentally retarded person or a developmentally disabled person" (R.C. 2903.341(A)(2)).

### Related existing provisions

Existing offenses. 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.)

Also related to the bill's new offense of patient endangerment, existing law, not in 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) is 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).)

**MR/DD Registry.** Existing law, unchanged by the bill requires the Department of Mental Retardation and Developmental Disabilities (DMRDD) to establish a registry regarding misappropriation, abuse, neglect, or other misconduct by MR/DD employees consisting of the names of MR/DD employees included in the registry pursuant to existing R.C. 5123.51 (see "**Abuse or neglect of a person with mental retardation or a developmental disability, or misappropriation of property; by MR/DD employee,**" 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.)

As used in these provisions, "MR/DD employee" means all of the following: (1) an employee of DMRDD, (2) an employee of a county board of mental retardation and developmental disabilities, (3) an "ICF/MR worker," as defined in R.C. 5123.193, and (4) an individual who is employed in a position that includes providing specialized services to an individual with mental retardation or a developmental disability (R.C. 5123.50).

**MR/DD employee prohibited from engaging in sexual activity with individual with mental retardation or a developmental disability in the applicant's care**

The bill enacts a provision that specifies that an "MR/DD employee" cannot engage in any "sexual conduct" or have any "sexual contact" with an individual with mental retardation or another developmental disability who is in the MR/DD employee's care and who is not the MR/DD employee's spouse (see below for definitions of terms in quotation marks). The bill requires DMRDD and each county board of mental retardation and developmental disabilities to notify each MR/DD employee who is an employee of DMRDD or the board, whichever is applicable, of all changes made by the bill in the conduct for which an MR/DD employee may be included in the existing registry regarding misappropriation, abuse, neglect, or other misconduct by MR/DD employees, described above in "Related existing provisions" under "Offense of "patient endangerment"." DMRDD must ensure that each MR/DD employee who is not an employee of the Department or board is given this notice.

Any MR/DD employee who violates the restriction described in the preceding paragraph is eligible to be included in the existing registry regarding misappropriation, abuse, neglect, or other specified misconduct by MR/DD employees established under section 5123.52 of the Revised Code, in addition to any other sanction or penalty authorized or required by law. (R.C. 5123.541.)

As used in these provisions (R.C. 5123.50; the definitions in (2), (3), and (4) are by reference to existing R.C. 2907.01--not in the bill):

(1) "MR/DD employee" means all of the following: (a) an employee of DMRDD, (b) an employee of a county board of mental retardation and developmental disabilities, (c) an "ICF/MR worker," as defined in R.C. 5123.193,

and (d) an individual who is employed in a position that includes providing specialized services to an individual with mental retardation or a developmental disability.

(2) "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.

(3) "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.

(4) "Spouse" means a person married to an offender at the time of an alleged offense, except that such person cannot be considered the spouse when any of the following applies: (a) when the parties have entered into a written separation agreement authorized by the Domestic Relations Law, (b) during the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation, or (c) in the case of an action for legal separation, after the effective date of the judgment for legal separation.

**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 are 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 a substantial risk* (see **COMMENT 3**) *of suffering* any such wound, injury, disability, or condition. The bill similarly expands the existing provisions regarding discretionary reports of abuse or neglect. (R.C. 5123.61(C) and (F).)

(2) It modifies the provisions describing the entities to which the mandatory reports must be made, and the discretionary reports may be made. Under the bill: (a) in general, as under existing law, the reports are to be made to a law enforcement agency or to the county board of mental retardation and developmental disabilities, (b) if the reports concern a resident of a facility operated by DMRDD, as under existing law, the reports are to be made either to a law enforcement agency or to DMRDD, (c) if the reports concern any act or omission of an employee of a county board of mental retardation and developmental disabilities, as added by the bill, the reports immediately must be

made to DMRDD and to the county board, and (d) if the reports concern a person with mental retardation or a developmental disability who is an inmate in a state correctional institution, as added by the bill, the reports are to be made to the State Highway Patrol (if the Patrol determines there is probable cause that the abuse or neglect occurred, it must report its findings to the Department of Rehabilitation and Correction, the sentencing court, and the Correctional Institution Inspection Committee Chairman and Vice-chairman (R.C. 5123.61(C)(1) and (F) and 5120.173).

(3) It modifies the portions of the specified categories of professions that are subject to the mandatory reporting requirement that include clergymen and, in specified circumstances, persons who render spiritual treatment through prayer. Under the bill: (a) a clergyman is included in the specified categories of professions only if the clergyman is *employed in a position that includes providing specialized services to an individual with mental retardation or another developmental disability and is acting in an official or professional capacity in that position*, and (b) a person who renders spiritual treatment through prayer is included in the specified categories of professions only if the person is *employed in a position that includes providing specialized services to an individual with mental retardation or another developmental disability* and the person, while acting in an official or professional capacity, renders spiritual treatment through prayer in accordance with the tenets of an organized religion. (R.C. 5123.61(C)(2)(b) and (e).)

(4) It adds an exemption from the mandatory reporting requirement, in certain circumstances, for attorneys and physicians. Under the bill, an attorney or physician is not required to make a report pursuant to the requirement concerning any communication the attorney or physician receives from a client or patient in an attorney-client or physician-patient relationship, if, in accordance with R.C. 2317.02(A) or (B), the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding, except that the client or patient is deemed to have waived any testimonial privilege under R.C. 2317.02(A) or (B) with respect to that communication and the attorney or physician must make a report under the requirement, if both of the following apply: (a) the client or patient, at the time of the communication, is a person with mental retardation or a developmental disability, and (b) the attorney or physician knows or suspects, as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect of the client or patient. (R.C. 5123.61(C)(3)(b).)

(5) It specifies that any person who fails to make a report required under the mandatory reporting provisions and who is an MR/DD employee, as defined in

R.C. 5123.50 (see "Offense of patient endangerment," above, for the definition of this term) is eligible to be included in the registry regarding misappropriation, abuse, neglect, or other misconduct by MR/DD employees established under existing law, as described above in "MR/DD registry" (R.C. 5123.61(C)(4)).

(6) 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 the bill's provisions, as described below in "County board--memorandum of understanding" (R.C. 5123.61(J)).

(7) It revises the existing penalties provided for specified violations of the reporting law. 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, 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 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, if the offender is an MR/DD employee, the offender is eligible to be included in the registry regarding misappropriation, abuse, neglect, or other misconduct by MR/DD employees established under existing law, as described above in "MR/DD registry." (R.C. 5123.99(B).)

(8) It enacts a provision that specifies that, when a county board receives a report under the reporting provisions and believes that the degree of risk to the person is such that the report is an emergency, the superintendent of the board or an employee of the board the superintendent designates must attempt a face-to-face contact with the person with mental retardation or a developmental disability who allegedly is the victim within one hour of the board's receipt of the report.

(9) In a provision of uncodified law, it requires DMRDD to adopt rules pursuant to the Administrative Procedure Act that provide standards for the substantiation by DMRDD and by county boards of mental retardation of reports of abuse or neglect filed under the mandatory and discretionary reporting provisions of R.C. 5123.61 (Section 3 of the bill).

**County board of mental retardation and developmental disabilities--  
memorandum of understanding**

The bill requires each county board of mental retardation and developmental disabilities to prepare a memorandum of understanding developed

and signed by specified persons, for specified purposes, as follows (R.C. 5126.058):

(1) The memorandum of understanding must be developed by all of the following and be signed by all of those persons except the judges specified in clauses (a) and (b): (a) if there is only one probate judge in the county, the probate judge of the county or the probate judge's representative, (b) 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, (c) 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, (d) the prosecuting attorney of the county, (e) the public children services agency, if the mentally retarded or developmentally disabled person is a child, and (f) the coroner of the county.

(2) 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 its primary goal the elimination of all unnecessary interviews of persons who are the subject of reports made pursuant to these provisions. 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.

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

(4) 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 MR/DD 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 (see "Offense of patient endangerment," above, for the definition of this term) 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, or 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 expands the duties of DMRDD, in certain circumstances, following its investigation of an allegation of abuse, neglect, or misappropriation of property by an MR/DD employee and enacts related provisions. Under the bill, if DMRDD determines following its investigation or its review of the investigation of another person or entity that there is a reasonable basis for the allegation, DMRDD must do all of the following: (a) prepare a "reasonable basis determination report" that identifies the MR/DD employee, specifies that the reasonable basis determination has been made, and specifies that, if any criminal proceeding or collective bargaining arbitration concerning the same allegation is pending, further action on the matter will be held in abeyance pending the completion of the proceeding or arbitration, (b) send the MR/DD employee a copy of the reasonable basis determination report and give the employee any notice required by the Administrative Procedure Act of an opportunity for a hearing, and (c) as under existing law, subject to the existing provision that prohibits conducting a hearing

during the pendency of any criminal proceeding or collective bargaining arbitration, conduct an adjudication pursuant to the Administrative Procedure Act. The bill specifies that a reasonable basis determination report prepared pursuant to this provision is a public record open for inspection under the existing Public Records Law and that the report is not part of the MR/DD Registry. (R.C. 5123.51(B)(2) and (G).)

(3) It modifies the matters that a hearing officer must determine at a hearing conducted under the provisions. First, it revises the existing "misappropriation of property" matter of consideration by adding a minimum value of \$100 for the involved property, so that the hearing officer must determine whether there is clear and convincing evidence that the MR/DD employee has misappropriated property *with a value of \$100 or greater* of an individual with mental retardation or a developmental disability. Second, it expands the matters the hearing officer must determine to also include, in addition to the "specified prohibited acts" specified under existing law, determinations of whether the MR/DD employee has done any of the following: (a) recklessly neglected such an individual, creating a "substantial risk" (see **COMMENT 3**) of "serious physical harm" (see **COMMENT 4**), (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)(3));

(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) 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, and DMRDD and its Director must proceed as if a hearing had been conducted (R.C. 5123.51(F)).

(6) It requires the hearing officer and Director to give weight to, or consider as an extenuating circumstance, respectively, any affirmative defense that the MR/DD employee established in any pleading or proceeding related to any criminal charge filed against the employee concerning the same allegation (R.C. 5123.51(C)(3)(b) and (D)(2)).

(7) It specifies that a person or government entity that fails to hire or retain as an MR/DD employee a person because DMRDD has determined pursuant to the

provision described above in (2) that there is a reasonable basis for an allegation against the person contained in a report made regarding the person or because a reasonable basis determination report has been prepared for the person as described above in (2) is not liable in a civil action based upon that failure to hire or retain brought by the employee or applicant for employment (R.C. 5123.51(H)(1)).

(8) Finally, it specifies that the provisions of R.C. 5123.51 do not create a new cause of action against any person or government entity that hires or retains as an MR/DD employee a person about whom the department has determined pursuant to the provision described above in (2) that there is a reasonable basis for an allegation against the person contained in a report as described above in (2) or for whom a reasonable basis determination report has been prepared (R.C. 5123.51(H)(2)).

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

The bill enacts a provision, in the existing Crime Victims Rights Law, that specifies that, if a person is charged in a complaint, indictment, or information with any crime or specified delinquent act or with any other violation of law, and if the case involves a victim that the prosecutor in the case knows is a mentally retarded person or a developmentally disabled person, in addition to any other notices required under that Law or under any other provision of law, the prosecutor in the case must send written notice of the charges to DMRDD. The written notice must specifically identify the person so charged. The bill specifies that the provisions of the existing Crime Victims Rights Law that govern the giving of notices to crime victims under that Law do not apply regarding a notice given under the provision added by the bill that is described in this paragraph.

As used in these provisions, "mentally retarded person" and "developmentally disabled person" have the same meanings as in R.C. 5123.01, as described above in "*Definitions*," under "*Special testimonial procedures in criminal and delinquent child proceedings, regarding certain violations committed against a mentally retarded person or a developmentally disabled person*." (R.C. 2930.03 and 2930.061.)

**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**

**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, and it adds references to

"exploitation" in those provisions to conform to the changes described in the next paragraph (R.C. 5126.33(A) and (D); see "Definitions," below).

(2) It requires the board to develop a detailed *protective service plan* describing the *services* that the board will provide, or arrange for the provision of, to the adult to prevent further abuse, neglect, or exploitation, requires the board to submit the plan to the court for approval, and specifies that the plan may be changed only 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 receipt of a notice from a county board of mental retardation and developmental disabilities, an authorized employee of such a board, or any other person that the board, employee, or person believes an emergency order is needed as described below, a probate judge or probate court magistrate 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 an *ex parte* emergency order is issued under this provision, the court must hold a hearing not later than 24 hours after the issuance of the order, or 72 hours on weekends and holidays, to determine whether there is probable cause for the order. At the hearing, the court must consider the adult's choice of residence and determine if protective services are the least restrictive alternative available for meeting the adult's needs. The court may issue temporary orders to protect the adult from immediate physical harm, including, but not limited to, temporary protection orders, evaluations, and orders requiring a party to vacate the adult's place of residence or legal settlement. The court may order emergency protective services. An *ex parte* emergency order is effective for 30 days. The court may renew the emergency order for an additional 30-day period. The board must prepare and maintain a protective services plan for the adult to whom the board is providing protective services, and must file the plan with the court. The protective services plan may be changed by court order. A judge or magistrate 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, (c) an order requiring a party to vacate the adult's place of residence or legal settlement, provided that, subject to clause (d) of this sentence, no operator of a residential facility licensed by DMRDD may be removed under this provision, or (d) in the circumstances described in, and in accordance with the procedures set forth in, existing R.C. 5123.191, not in the bill, an order of the type described in that section that appoints a receiver to take possession of and operate a residential facility licensed by DMRDD. 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(G), unchanged by the bill but relocated from division (F)).

(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(H), 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, as defined in R.C. 5123.50 (see "Abuse or neglect of a person with mental retardation or a developmental disability, or misappropriation of property, by MR/DD employee," above) of an adult's resources (R.C. 5126.30(E), 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" has the same meaning as in existing R.C. 2901.01 (see **COMMENT 3**) (R.C. 5126.30(K), enacted by the bill).

(9) "Party" means all of the following: (a) an adult who is the subject of a probate proceeding under R.C. 5126.30 to 5126.33, (b) a caretaker, unless otherwise ordered by, the probate court, and (c) any other person designated as a party by the probate court, including, but not limited to, the adult's spouse, custodian, guardian, parent, or person with probable cause to believe that the adult has been abused, neglected, or exploited if the county board of mental retardation and developmental disabilities has failed to act to prevent that abuse, neglect, or exploitation within 72 hours of receipt of that reasonable notice (R.C. 5126.50(L), enacted by the bill).

(10) "Board" has the same meaning as in existing R.C. 5126.02, not in the bill (R.C. 5126.50(M), enacted by the bill).

### **Criminal record checks**

#### **Existing law**

Existing law requires: (1) DMRDD's Director to request the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) to conduct a criminal records check with respect to each person who is under final consideration for appointment to or employment with DMRDD (an "applicant"), including, but not limited to a person who is being transferred to DMRDD and an employee who is being recalled or reemployed after a layoff, (2) the superintendent of a county board of mental retardation and developmental disabilities to request BCII's Superintendent to conduct a criminal records check with respect to any "applicant" (see above) who has applied to the board for employment in any position, and (3) the entity under contract with a county board for the provision of specialized services to individuals with mental retardation or a developmental disability to request BCII's Superintendent to conduct a criminal records check with respect to all persons under final consideration for employment with the entity in a direct services position with an entity contracting with a county board for employment. The criminal records checks are not required under clause (1) or (2) with respect to employees who are being considered for a different position or are returning after a leave of absence or seasonal break in employment, as long as the Director or county board superintendent has no reason to believe that the employee has committed any "disqualifying offense" (see below), and are not required under clause (3) in other specified circumstances. Existing law contains procedures regarding the manner of requesting BCII to conduct a criminal records check, and the manner in which BCII is to conduct a check.

On receipt of a request pursuant to the provisions described in clause (1) or (2) of the preceding paragraph with respect to an applicant for employment in any position with DMRDD or in any position with a county board of mental retardation and developmental disabilities, or pursuant to the provision described in clause (3) of the preceding paragraph with respect to an applicant for employment in a direct services position with an entity contracting with a county board for employment, a completed form prescribed pursuant to the specified request procedures, and a set of fingerprint impressions obtained in the manner described in the specified request procedures, BCII's Superintendent must conduct a criminal records check. The Superintendent must conduct the criminal records check in accordance with the specified procedures to determine whether any information exists that indicates that the person who is the subject of the request has been convicted of or pleaded guilty to any of the following: (1) a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16,

2903.21, 2903.34, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, or 3716.11, or (2) an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in clause (1) of this paragraph.

In general, the entity or person described in the second preceding paragraph who is required to request BCII's Superintendent to conduct a criminal records check with respect to an applicant cannot employ the applicant if the request was made under clause (1) or (2) of that paragraph or place the person in a direct services position if the request was made under clause (3) of that paragraph if the person has been convicted of or pleaded guilty to any of the following: (1) any offense identified in clause (1) of the preceding paragraph, (2) a violation of R.C. 2925.04, 2925.05, or 2925.06, a violation of R.C. 2919.23 that would have been a violation of R.C. 2905.04 as it existed prior to July 1, 1996, or a violation of R.C. 2925.11 that is not a minor drug possession offense, (3) a felony contained in the Revised Code that is not listed in clause (1) or (2) of this paragraph if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled, (4) any offense contained in the Revised Code that constitutes a misdemeanor of the first degree on the first offense and a felony on a subsequent offense if the offense bears a direct and substantial relationship to the duties and responsibilities of the position being filled and the nature of the services being provided, or (5) a violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in clauses (1) to (4) of this paragraph. The offenses included in this list generally are referred to as "disqualifying offenses." The law specifies circumstances, pertaining to provisional employment pending receipt of the report of the criminal records check and to employment of an applicant who satisfies specified "rehabilitation standards," in which the ban described in the first sentence of this paragraph does not apply. (R.C. 109.572(A)(2), (A)(6), and (B) through (E), 5123.081, 5126.28, and 5126.281.)

### **Operation of the bill**

The bill expands the list of convictions for which BCII's Superintendent must check in conducting a criminal records check under the above-described provisions, and the list of "disqualifying offenses" the conviction of which generally bars the employment or placement of an applicant in any of the specified positions, to also include, in addition to the offenses currently included in the list, the offense of "patient endangerment" that the bill enacts, as described above in

**"Offense of 'patient endangerment'"** (R.C. 109.572(A)(2), 5123.081(E)(1), and 5126.28(E)(1); due to a reference made in R.C. 5126.281, not in the bill, to the list contained in R.C. 5126.28(E), this expansion also applies regarding the provisions of R.C. 5126.281.)

**Mechanism for the closing of DMRDD developmental centers**

**In general**

The bill enacts a mechanism that is to be used regarding the closing of any developmental center of DMRDD. As used in the mechanism, "developmental center" means any institution or facility of DMRDD that, on the bill's effective date, is named, designated, or referred to as a developmental center. Under the bill, notwithstanding any other provision of law, on and after the bill's effective date, any closure of a developmental center is subject to and must occur in accordance with, the mechanism the bill enacts, as described below. Notwithstanding any other provision of law, if the Governor announced on or after January 1, 2003, and prior to the bill's effective date the intended closure of a developmental center and if the closure identified in the announcement has not occurred prior to the bill's effective date, the closure identified in the announcement is subject to the criteria set forth in the mechanism as if the announcement had been made on or after the bill's effective date (R.C. 5123.032(A) and (B)).

**Notice to General Assembly; OBM study**

Notwithstanding any other provision of law, on and after the bill's effective date, prior to making any official, public announcement that the Governor intends to close one or more developmental centers, the Governor must notify the General Assembly in writing that the Governor intends to close one or more developmental centers. The notice must identify by name each developmental center that the Governor intends to close or, if the Governor has not determined any specific developmental center to close, must state the Governor's general intent to close one or more developmental centers. When the Governor notifies the General Assembly as required by this provision, the Office of Budget and Management promptly must conduct an independent study of the DMRDD's developmental centers, and DMRDD's operation of the centers. The study must address relevant criteria and factors, including, but not limited to, all of the following:

(1) The manner in which the closure of developmental centers in general would affect the safety, health, well-being, and lifestyle of the centers' residents and their family members and would affect public safety and, if the Governor's notice identifies by name one or more developmental centers that the Governor intends to close, the manner in which the closure of each center so identified

would affect the safety, health, well-being, and lifestyle of the center's residents and their family members and would affect public safety;

(2) Whether there is a need to reduce the number of developmental centers in Ohio;

(3) The availability of alternate facilities;

(4) The cost effectiveness of the facilities identified for closure;

(5) A comparison of the cost of residing at a facility identified for closure and the cost of new living arrangements;

(6) The geographic factors associated with each facility and its proximity to other similar facilities;

(7) The impact of collective bargaining on facility operations;

(8) The utilization and maximization of resources;

(9) Continuity of the staff and ability to serve the facility population;

(10) Continuing costs following closure of a facility;

(11) The impact of the closure on the local economy;

(12) Alternatives and opportunities for consolidation with other facilities;

(13) How the closing of a facility identified for closure relates to DMRDD's plans for the future of developmental centers in Ohio.

The Office of Budget and Management must complete the study described above, and prepare a report that contains its findings, not later than 90 days after the Governor makes the official, public announcement that the Governor intends to close one or more developmental centers as described above. The Office must provide a copy of the report to each member of the General Assembly who requests a copy of the report. (R.C. 5123.032(C) and (D).)

**MRDD Developmental Center Closure Commission, report to Governor, and effect of recommendations**

Not later than the date on which the office is required to complete the report described in the preceding paragraph, the Mental Retardation and Developmental Disabilities Developmental Center Closure Commission is created by the bill as described below. The officials with the duties to appoint members of the Commission, as described below, must appoint the specified members of the

Commission, and, as soon as possible after the appointments, the Commission must meet for the purposes described below. Upon completion of the report and the creation of the Commission, the Office of Budget and Management promptly must provide a copy of the report to the Commission and must present the report as described below.

A Mental Retardation and Developmental Disabilities Developmental Center Closure Commission is created under the bill at the time and in the manner described in the preceding paragraph. The Commission consists of seven members. Two members must be members of the Senate appointed by the President of the Senate, none of the members so appointed may have a developmental center identified for closure by the Governor in the member's district, one member so appointed must be a member of the majority political party in the Senate, and one member so appointed must not be a member of the majority political party in the Senate. Two members must be members of the House of Representatives appointed by the Speaker of the House of Representatives, none of the members so appointed may have a developmental center identified for closure by the Governor in the member's district, one member so appointed must be a member of the majority political party in the House of Representatives, and one member so appointed must not be a member of the majority political party in the House of Representatives. Three members must be private executives with expertise in facility utilization, with one of these members appointed by the Speaker of the House of Representatives, one of them appointed by the President of the Senate, and one of them appointed by the Governor. The officials with the duties to appoint members of the Commission must make the appointments, and the Commission must meet, within the time periods specified above. The members of the Commission serve without compensation. At the Commission's first meeting, the members must organize and appoint a Chairperson and Vice-chairperson.

The Commission must meet as often as is necessary for the purpose of making the recommendations to the Governor that are described below. The Commission's meetings must be open to the public, and the Commission may accept public testimony. The Office of Budget and Management must appear before the Commission and present the report the Office prepared. The Commission must meet for the purpose of making recommendations to the Governor, which recommendations may include all of the following: (1) whether any developmental center should be closed, (2) if the recommendation described in (1) is that one or more developmental centers should be closed, which center or centers should be closed, and (3) if the Governor's notice described above identifies by name one or more developmental centers that the Governor intends to close, whether the center or centers so identified should be closed.



The Mental Retardation and Developmental Disabilities Developmental Center Closure Commission, not later than 90 days after it receives the report of the Office of Budget and Management, must prepare a report containing its recommendations to the Governor. The Commission must send a copy of the report to the Governor and to each member of the General Assembly who requests a copy of the report. Upon receipt of the Commission's report, if the Governor decides to close one or more centers, the Governor either must follow the Commission's recommendations or, if the recommendations differ from the Governor's official, public announcement described above as to the intended closure of one or more centers, must proceed with the closure or closures identified in that official, public announcement. The Governor may decide not to close any center.

The Governor's decision to follow the Commission's recommendations, to proceed with the closure or closures identified in the official, public announcement, or to not close any center is final. Upon the Governor's making of that decision, the Commission ceases to exist, provided that another Commission must be created under this provision if, and each time, the Governor subsequently makes an official, public announcement that the Governor intends to close one or more developmental centers.

### **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**

The bill expands the coroner notification provision to also require the specified health care, emergency, and law enforcement personnel to immediately notify the office of the coroner when any mentally retarded person or developmentally disabled person dies regardless of the circumstances. 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, when any person, including a child under two years of age, dies suddenly when in apparent good health, or when a mentally retarded person or developmentally disabled person dies regardless of the circumstances, 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. As used in this provision, "mentally retarded person" and "developmentally disabled person" have the same meanings as in R.C. 5123.01, as described above in "Definitions," under "Special testimonial procedures in criminal and delinquent child proceedings, regarding certain violations committed against a mentally retarded person or a developmentally disabled person" (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 enacts a new provision that pertains to an autopsy for a "mentally retarded person" or a "developmentally disabled person" who dies, and subjects the above-described existing provision to the new provision. Under the bill, if a mentally retarded person or a developmentally disabled person dies, if DMRDD or a county board of mental retardation and developmental disabilities has a good faith reason to believe that the deceased person's death occurred under suspicious circumstances, if the coroner was apprised of the circumstances of the death, and if the coroner after being so apprised of the circumstances declines to conduct an autopsy, DMRDD or the board may file a petition in a court of common pleas seeking an order authorizing an autopsy or post-mortem examination under R.C. 2108.521.

Upon the filing of a petition under this provision, the court may conduct, but is not required to conduct, a hearing on the petition. The court may determine whether to grant the petition without a hearing. DMRDD or the board, and all other interested parties, may submit information and statements to that court that are relevant to the petition, and, if the court conducts a hearing, may present evidence and testimony at the hearing. The court must order the requested autopsy or post-mortem examination if it finds that, under the circumstances, DMRDD or the board has demonstrated a need for the autopsy or post-mortem examination. The court must order an autopsy or post-mortem examination in the circumstances specified in this paragraph regardless of whether any consent has been given, or has been given and withdrawn, under R.C. 2108.50, as described above under "Existing law," and regardless of whether any information was presented to the coroner pursuant to a specified provision of the Coroner Law (existing R.C. 313.131, not in the bill) or to the court regarding an autopsy being contrary to the deceased person's religious beliefs.

An autopsy or post-mortem examination ordered under this provision may be performed upon the body of the deceased person by a licensed physician or surgeon. The court may identify in the order the person who is to perform the autopsy or post-mortem examination. If an autopsy or post-mortem examination is ordered under this provision, DMRDD or the board that requested the autopsy or examination must pay the physician or surgeon who performs the autopsy or examination for costs and expenses incurred in performing the autopsy or examination. (R.C. 2108.521.)

## *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 mentally retarded person or developmentally disabled person, 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 provides that, before appointing any interpreter under this provision for a party or witness who is a mentally retarded person or developmentally disabled person, the court must evaluate the qualifications of the interpreter and must make a determination as to the ability of the interpreter to effectively interpret on behalf of the party or witness that the interpreter will assist, and the court may appoint the interpreter only if the court is satisfied that the interpreter is able to effectively interpret on behalf of that party or witness. The bill 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. It also specifies that, if the interpreter is appointed to assist a mentally retarded person or developmentally disabled person, the oath also shall include an oath that the interpreter will not prompt, lead, suggest, or otherwise improperly influence the testimony of the witness or party. As used in this provision, "mentally retarded person" and "developmentally disabled person" have the same meanings as in R.C. 5123.01, as described above in "*Definitions*," under "*Special testimonial procedures in criminal and delinquent child proceedings, regarding certain violations committed against a mentally retarded person or a developmentally disabled person*." (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 5**.)

### **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 also applies to superintendents, board members, and employees of a county board of mental retardation, investigative agents contracted with by a county board of mental retardation, and employees of DMRDD (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.)

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## 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. Existing R.C. 2901.01 (not in the bill) provides that, as used in the Revised Code, "substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

4. Existing R.C. 2901.01 (not in the bill) provides that, as used in the Revised Code, "serious physical harm to persons" means any of the following: (a) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (b) any physical harm that carries a substantial risk of death, (c) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (d) any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement, or (e) any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

5. 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.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced Reported, S. Judiciary on Criminal Justice	01-23-03 ---	p. 64 ---

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