



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 49

130th General Assembly  
(As Introduced)

**Reps.** Dovilla and Retherford, Derickson, Thompson, Reece, Boyce, Stebelton, Pillich, Anielski, Ashford, Sprague, Antonio

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## BILL SUMMARY

- Modifies or adds definitions of "neglect," "exploitation," "financial harm," "home health agency," and other terms used in the adult protective services (APS) statutes.
- Expands and modifies the list of persons required to report to a county department of job and family services (CDJFS) that they have reasonable cause to believe that a person 60 or older who is handicapped by age-related infirmities or has certain physical or mental impairments (hereafter "adult") is being or has been abused, neglected, or exploited.
- Requires a CDJFS to transcribe all oral reports of suspected abuse, neglect, or exploitation of adults and to transmit copies of all reports to the Ohio Department of Job and Family Services (ODJFS) registry.
- Requires ODJFS, not later than two years after the bill's effective date, to establish a registry of reports of abuse, neglect, or exploitation of adults and to release information in the registry to a CDJFS that is investigating the need for protective services for an adult, and authorizes ODJFS to release information in the registry to law enforcement agencies through the Ohio Law Enforcement Gateway.
- Requires ODJFS to develop a plan to implement the registry, to provide an opportunity for public comment on the plan, and to present the plan to the Elder Abuse Commission within six months after the bill's effective date.
- Requires a CDJFS that is investigating a report of abuse, neglect, or exploitation of an adult or a similar case referred to it by a county board of developmental disabilities to request from the ODJFS registry any reports of prior abuse, neglect, or exploitation concerning the adult.

- Requires a CDJFS or its designated agency, in conjunction with the local area agency on aging, to prepare a memorandum of understanding (MOU) establishing the guidelines to be employed in the investigation of a report of adult abuse, neglect, or exploitation; sets forth the requirements for an MOU; and provides that a failure to follow the guidelines set forth in an MOU is not grounds for the dismissal of any charge or complaint arising from a report or the suppression of any evidence obtained as a result of a report and does not give any rights or grounds for appeal or post-conviction relief to any person.
- Authorizes an adult in need of protective services or a representative of the adult to file a complaint with the CDJFS or its designated agency alleging that protective services were not provided to the adult or that the protective services were inadequate to address the adult's needs; requires the CDJFS or agency to investigate and attempt to resolve the complaint; and requires the Director of ODJFS to adopt rules regarding the investigation and resolution of complaints.
- When a CDJFS seeks an emergency protective-services order for an adult, allows waiver of the usual 24-hour notice to an adult's closest relative and guardian upon a showing that delay will cause immediate and irreparable physical or financial harm to the adult and that reasonable attempts were made to notify the other persons.
- Creates a procedure for the issuance of an ex parte emergency protective-services order for an adult.
- Creates the Elder Abuse Commission to formulate and recommend strategies on matters related to elder abuse and to issue a biennial report on a plan of action that may be used by local communities to aid in the development of efforts to combat elder abuse.
- Makes ODJFS responsible for implementing the statutory provisions on adult protective services and specifies the educational, data-maintenance, and other duties of ODJFS in implementing the law.
- Requires each entity that employs or is responsible for licensing or regulating mandatory reporters of abuse, neglect, or exploitation of adults to ensure that those individuals have access to the relevant educational materials developed by ODJFS.
- Changes the definition of "home health agency" in the statute that shields certain entities from liability for the failure of a physician who is not an employee to obtain an informed consent from a patient prior to a surgical or medical procedure.
- Renumbers and rearranges portions of the APS statutes and makes various technical and clarifying amendments to the APS law.

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## CONTENT AND OPERATION

### Definitions related to abuse, neglect, or exploitation of adults

The Revised Code provides for the protection of adults from abuse, neglect, and exploitation. For this purpose, under current law an adult is defined as any person 60 years of age or older within Ohio who is handicapped by the infirmities of aging or who has a physical or mental impairment that prevents the person from providing for the person's own care or protection and who resides in an independent living arrangement. An "independent living arrangement" is defined as a domicile of a person's own choosing, including but not limited to a private home, apartment, trailer, or rooming house, and includes a licensed adult care facility but does not include any other state-licensed institution or facility or a facility in which a person resides as a result of voluntary, civil, or criminal commitment. The bill retains these definitions but relocates the definition of "independent living arrangement."<sup>1</sup>

The bill retains the existing definition of abuse (the infliction upon an adult by self or others of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish) but modifies the definitions of neglect and exploitation. Under existing law, "neglect" means the failure of an adult to provide for himself or herself the goods or services necessary to avoid physical harm,

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<sup>1</sup> R.C. 5101.60(C) and (N).



mental anguish, or mental illness or the failure of a caretaker to provide such goods or services. The bill adds abandonment as another form of neglect but otherwise retains the definition of "neglect." A "caretaker" is the person assuming responsibility for the care of an adult on a voluntary basis, by contract, through receipt of payment for care, as a result of a family relationship, or by court order. The bill inserts "primary" before "responsibility" in the definition of caretaker. The bill defines "abandonment" to mean desertion of an adult by a caretaker without having made provision for transfer of the adult's care.<sup>2</sup>

Current law defines "exploitation" to mean the unlawful or improper act of a *caretaker* using an adult or an adult's resources for monetary or personal benefit, profit, or gain. Under the bill, "exploitation" means the unlawful or improper act of a *person that has an ongoing relationship with an adult* using, in one or more transactions, an adult or an adult's resources for monetary or personal benefit, profit, or gain. The bill requires the Attorney General to adopt rules that establish the definition of "ongoing relationship."<sup>3</sup>

The bill modifies or adds other definitions for this area of law, and the modification and additions are discussed below when the relevant area of law is discussed.

## **Mandatory reporters of abuse, neglect, or exploitation**

Existing law requires specific individuals who, having reasonable cause to believe that an adult is being abused, neglected, or exploited, or is in a condition that is the result of abuse, neglect, or exploitation, to immediately report the belief to the county department of job and family services. The bill changes the list of individuals who must make such a report.<sup>4</sup>

### **Retained mandatory reporters**

With some changes in terminology, the bill retains the following list of mandatory reporters from existing law (substantive changes are indicated in italics in the list or are discussed following the list):<sup>5</sup>

*Attorneys admitted to the practice of law in Ohio;*

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<sup>2</sup> R.C. 5101.60(A), (E), and (P).

<sup>3</sup> R.C. 5101.60(J) and (Q) and 5101.61(B)(2).

<sup>4</sup> R.C. 5101.63(A) (renumbered existing R.C. 5101.61).

<sup>5</sup> R.C. 5101.63(A)(1) and (2).



Physicians (*changed to "an individual authorized under R.C. Chapter 4731. to practice medicine and surgery"*);

Osteopaths (*changed to "an individual authorized under R.C. Chapter 4731. to practice osteopathic medicine and surgery"*);

Podiatrists (*changed to "an individual authorized under R.C. Chapter 4731. to practice podiatric medicine and surgery"*);

Chiropractors (*changed to "an individual authorized under R.C. Chapter 4734. as a chiropractor"*);

Dentists (*changed to "an individual licensed under R.C. Chapter 4715. as a dentist"*);

Psychologists (*changed to "an individual authorized under R.C. Chapter 4732. as a psychologist"*);

Employees of a hospital as defined in R.C. 3701.01 (*changed by the bill to employees of a hospital as defined in R.C. 3727.01*);<sup>6</sup>

Any nurse licensed under R.C. Chapter 4723. *as a registered nurse or a licensed practical nurse*;

Employees of a home health agency *as defined in R.C. 3701.881*;<sup>7</sup>

Employees of a nursing home or residential care facility, as defined in R.C. 3721.01 (*employees of a home for the aging are deleted by the bill*);<sup>8</sup>

Senior service providers (*changed by the bill from any person who provides care or services to an adult to a person who provides care or specialized services to an adult but not including the state long-term care ombudsperson or a regional long-term care ombudsperson*);<sup>9</sup>

Peace officers;

Coroners;

Clergy;

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<sup>6</sup> R.C. 5101.63(A)(2)(l).

<sup>7</sup> R.C. 5101.63(A)(2)(j).

<sup>8</sup> R.C. 5101.63(A)(2)(n). Employees of a "home for the aging" are included in existing R.C. 5101.61(A).

<sup>9</sup> R.C. 5101.61(A)(1) (existing law) and 5101.60(W).

Social workers and counselors (*changed by the bill from any person engaged in social work or counseling to an individual licensed as a social worker, independent social worker, professional counselor, professional clinical counselor, marriage and family therapist, or independent marriage and family therapist*).<sup>10</sup>

### **Definitions for retained and deleted mandatory reporters**

The bill deletes three categories of individuals from the foregoing list of mandatory reporters: employees of an ambulatory health facility, employees of a community mental health facility, and employees of a home for the aging. However, it generally covers the same individuals under other designations.

***Ambulatory health facility and outpatient health facility.*** Existing law<sup>11</sup> defines "ambulatory health facility" as a nonprofit, public, or proprietary freestanding organization or a unit of such an agency or organization that:

(1) Provides preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished to an outpatient or ambulatory patient, by or under the direction of a physician or dentist in a facility which is not a part of a hospital, but which is organized and operated to provide medical care to outpatients;

(2) Has health and medical care policies that are developed with the advice of, and with the provision of review of such policies, an advisory committee of professional personnel, including one or more physicians, one or more dentists, if dental care is provided, and one or more registered nurses;

(3) Has a medical director, a dental director, if dental care is provided, and a nursing director responsible for the execution of such policies, and has physicians, dentists, nursing, and ancillary staff appropriate to the scope of services provided;

(4) Requires that the health care and medical care of every patient be under the supervision of a physician, provides for medical care in a case of emergency, has in effect a written agreement with one or more hospitals and other centers or clinics, and has an established patient referral system to other resources, and a utilization review plan and program;

(5) Maintains clinical records on all patients;

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<sup>10</sup> R.C. 5101.63(A)(2)(g).

<sup>11</sup> R.C. 5101.61(A)(2).

(6) Provides nursing services and other therapeutic services in accordance with programs and policies, with such services supervised by a registered professional nurse, and has a registered professional nurse on duty at all times of clinical operations;

(7) Provides approved methods and procedures for the dispensing and administration of drugs and biologicals;

(8) Has established an accounting and recordkeeping system to determine reasonable and allowable costs.

"Ambulatory health facility" also includes an alcoholism treatment facility approved by the Joint Commission on Accreditation of Healthcare Organizations as an alcoholism treatment facility or certified by the Department of Alcohol and Drug Addiction Services.

The bill eliminates "ambulatory health facility" and replaces it with "outpatient health facility," defined as a facility where medical care and preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services are provided to outpatients by or under the direction of a physician or dentist. (The bill makes the same change in the section of law that lists the mandatory reporters of reasonably suspected abuse or neglect of a person with mental retardation or a developmental disability.)<sup>12</sup>

*Community mental health facility and community mental health agency.* The bill replaces "community mental health facility" (a facility that provides community mental health services and is included in the comprehensive mental health plan for the alcohol, drug addiction, and mental health service district in which it is located) with "community mental health agency" (any agency, program, or facility with which a board of alcohol, drug addiction, and mental health services contracts to provide the mental health services listed in R.C. 340.09).<sup>13</sup>

*Home for the aging.* The bill does not replace "home for the aging" (under existing law, a home that provides services as a residential care facility and a nursing home, except that the home provides its services only to individuals who are dependent on the services of others by reason of both age and physical or mental impairment<sup>14</sup>). However, according to the Department of Health, "home for the aging" is an obsolete term.

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<sup>12</sup> R.C. 5101.60(R) and 5123.61(C)(2)(a).

<sup>13</sup> R.C. 5101.61(A)(3) (existing law) and 5101.60(F).

<sup>14</sup> R.C. 3721.01(A)(8) (not in the bill).

**Home health agency.** The bill uses the definition of "home health agency" given in R.C. 3701.881 rather than the one in current R.C. 5101.61.<sup>15</sup> As used in existing law,<sup>16</sup> "home health agency" means an institution or a distinct part of an institution operated in Ohio that:

(1) Is primarily engaged in providing home health services;

(2) Has home health policies that are established by a group of professional personnel, including one or more doctors of medicine or osteopathy and one or more registered professional nurses, to govern the home health services it provides and that includes a requirement that every patient must be under the care of a doctor of medicine or osteopathy;

(3) Is under the supervision of a doctor of medicine or osteopathy or a registered professional nurse who is responsible for the execution of the home health policies;

(4) Maintains comprehensive records on all patients;

(5) Is operated by the state, a political subdivision, or an agency of either, or is operated not for profit in Ohio and is licensed or registered, if required, pursuant to law by the appropriate department of the state, county, or municipality in which it furnishes services; or is operated for profit in Ohio, meets all the requirements specified in paragraphs (1) through (4), and is certified under Title XVIII of the federal Social Security Act.

As used in the bill, "home health agency" means a person or government entity, other than a nursing home, residential care facility, or hospice care program, that has the primary function of providing any of the following services to a patient at a place of residence used as the patient's home: skilled nursing care, physical therapy, speech-language pathology, occupational therapy, medical social services, or home health aide services.<sup>17</sup>

**Hospital.** The bill replaces the definition of "hospital" as set forth in R.C. 3701.01 with the one used in R.C. 3727.01.<sup>18</sup> R.C. 3701.01 defines "hospital" to include public health centers and general, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities,

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<sup>15</sup> R.C. 5101.63(A)(2)(j).

<sup>16</sup> R.C. 5101.61(A)(5) (existing law).

<sup>17</sup> R.C. 3701.881(A)(7) (not in the bill; incorporated by reference in R.C. 5101.63(A)(2)(j)).

<sup>18</sup> R.C. 5101.61(A) (existing law) and 5101.63(A)(2)(l).

extended care facilities, self-care units, and central service facilities operated in connection with hospitals, and also includes education and training facilities for health professions personnel operated as an integral part of a hospital, but not to include any hospital furnishing primarily domiciliary care.<sup>19</sup>

R.C. 3727.01 defines "hospital" as an institution classified as a hospital under R.C. 3701.07 (rules adopted by the Department of Health) in which are provided to inpatients diagnostic, medical, surgical, obstetrical, psychiatric, or rehabilitation care for a continuous period longer than 24 hours or a hospital operated by a health maintenance organization. "Hospital" does not include a facility licensed under R.C. Chapter 3721. (nursing homes and residential care facilities), a health care facility operated by the Department of Mental Health or the Department of Developmental Disabilities, a health maintenance organization that does not operate a hospital, the office of any private licensed health care professional, whether organized for individual or group practice, or a clinic that provides ambulatory patient services and where patients are not regularly admitted as inpatients. "Hospital" also does not include an institution for the sick that is operated exclusively for patients who use spiritual means for healing and for whom the acceptance of medical care is inconsistent with their religious beliefs, accredited by a national accrediting organization, exempt from federal income taxation, and providing 24-hour nursing care pursuant to the exemption from licensing for the care of the sick when done in connection with the practice of religious tenets of any church and by or for its members.<sup>20</sup>

### **New mandatory reporters**

In addition to retaining in modified form the current mandatory reporters, the bill adds the following individuals to the list:<sup>21</sup>

Pharmacists licensed under R.C. Chapter 4729.;

Dialysis technicians certificated under R.C. Chapter 4723.;

Employees of a hospital or public hospital, as defined in R.C. 5122.01 ("*Hospital*" means a hospital or inpatient unit licensed by the Department of Mental Health and any institution, hospital, or other place established, controlled, or supervised by the department; "*public hospital*" means a facility that is tax-supported and under the jurisdiction of the Department).

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<sup>19</sup> R.C. 3701.01(C) (not in the bill).

<sup>20</sup> R.C. 3727.01(B)(2).

<sup>21</sup> R.C. 5101.63(A)(2)(h), (i), (m), (p), (r), (s), (t), (u), (v), (z), (aa), (bb), (cc), (dd), and (ee).

Employees of a health department operated by city board of health or a general health district or the authority having the duties of a board of health;

Employees of a community mental health agency as defined in R.C. 5122.01;

Agents of a county humane society;

Firefighters for a lawfully constituted fire department;

Ambulance drivers for an emergency medical service organization;

First responders, emergency medical technicians-basic, emergency medical technicians-intermediate, and paramedics;

Officials employed by a local building department to conduct inspections of houses and other residential buildings;

Certified public accountants and registered public accountants under R.C. Chapter 4735.;

Licensed real estate brokers or real estate salespersons;

Notaries public;

Employees of a bank, savings bank, savings and loan association, or credit union;

Investment advisors, as defined in R.C. 1707.01;

Financial planners accredited by a national accreditation agency.

## **Reports to the CDJFS**

The bill modifies the handling of reports of abuse, neglect, or exploitation of adults, whether made by a mandatory reporter or voluntary reporter. Reports may still be made either orally or in writing, but the bill requires the CDJFS to transcribe all oral reports instead of requiring the reporter to submit a written report on the department's request. The bill also requires the CDJFS to transmit a copy of each report to the ODJFS registry (see "**Registry of reports**," below). The bill retains the requirement that information contained in a report be made available, on request, to the adult who is the subject of the report, to agencies authorized by the "department" to receive information contained in the report, and to legal counsel for the adult. It clarifies that the department referred to is the CDJFS. The bill adds that if the CDJFS determines that there is a risk of harm to a person who makes a report or to the adult who is the subject

of the report, it may redact the name and identifying information related to the person who made the report.<sup>22</sup>

## Registry of reports

The bill requires ODJFS, not later than two years after the bill's effective date, to establish a registry to maintain reports of abuse, neglect, or exploitation of adults, whether investigated or not, made to each CDJFS. ODJFS must release information in the registry to a CDJFS that is investigating the need for protective services for an adult and may release information in the registry to law enforcement agencies through the Ohio Law Enforcement Gateway established under R.C. 109.57.<sup>23</sup>

Under the bill, ODJFS must develop a plan to implement the registry and provide an opportunity for public comment on the plan. Not later than six months after the effective date of the bill, ODJFS must present its plan to the Elder Abuse Commission (see "**Elder Abuse Commission**," below).<sup>24</sup>

## Investigations

### On receipt of report

A CDJFS must investigate all reports of abuse, neglect, or exploitation of adults and all similar cases referred to it by a county board of developmental disabilities and must evaluate the need for and, to the extent of available funds (changed by the bill to *services*), must provide or arrange for the provision of protective services. The CDJFS may designate another agency to perform these duties. In conducting its investigation, the CDJFS must visit the adult who is the subject of the report and consult with the person who made the report, if feasible, and with agencies or persons who have information about the alleged abuse, neglect, or exploitation. The bill further requires the CDJFS to request from the ODJFS registry any reports of prior abuse, neglect, or exploitation concerning the adult.<sup>25</sup>

### Memorandum of understanding

The bill requires that each CDJFS or its designated agency, in conjunction with the area agency on aging (a public or private nonprofit entity designated under R.C.

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<sup>22</sup> R.C. 5101.63(C) and (F).

<sup>23</sup> R.C. 5101.631(A).

<sup>24</sup> R.C. 5101.631(B).

<sup>25</sup> R.C. 5101.65.



173.011 to administer programs on behalf of the Department of Aging<sup>26</sup>) that serves the region in which the county is located, prepare a memorandum of understanding (MOU) establishing the guidelines to be employed in the investigation of a report of adult abuse, neglect, or exploitation. The MOU must comply with the requirements established by R.C. 5101.65 for such investigations, including those set forth in the preceding paragraph as well as specified time limits, notices, and findings (not changed by the bill). The MOU's primary goal is the utilization of a structured and systematic investigation protocol regarding the reports. The MOU may be based on the model MOU developed by ODJFS (see "**Implementation of APS statutes**," below). If a CDJFS designates another agency to perform any of the CDJFS's investigatory duties, the MOU must include provisions that specify the duties of both the CDJFS and the designated agency.<sup>27</sup>

An MOU must be signed by all of the following:<sup>28</sup>

- (1) If there is only one probate judge serving the county, the probate judge of the county or the judge's representative;
- (2) If there is more than one probate judge serving the county, the probate judge with administrative responsibility or the judge's representative;
- (3) The county sheriff;
- (4) The chief municipal peace officer within the county;
- (5) Other law enforcement officers handling adult abuse, neglect, or exploitation in the county;
- (6) The county prosecuting attorney;
- (7) The county coroner;
- (8) The director of the CDJFS or a designee of the director who is directly responsible for protective services for adults;
- (9) The regional long-term care ombudsperson designated for the area;

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<sup>26</sup> R.C. 5101.60(D).

<sup>27</sup> R.C. 5101.651(A).

<sup>28</sup> R.C. 5101.651(B).



(10) A representative of the board of alcohol, drug addiction, and mental health services that serves the county;

(11) Entities responsible for investigating substandard housing;

(12) A representative of the area agency on aging that serves the region in which the county is located;

(13) A representative of a victim witness program that serves the county;

(14) A representative of a metropolitan housing authority that serves the county;

(15) Any other person or entity whose participation furthers the goals of the MOU.

An MOU must include provisions establishing an elder abuse interdisciplinary team. It must specify the membership of the team and establish guidelines to be used when coordinating investigations of reports of adult abuse, neglect, or exploitation. The MOU must describe the roles and responsibilities of team members, including team members' roles regarding the filing of criminal charges against persons alleged to have abused, neglected, or exploited adults and the provision of victim services to adults pursuant to R.C. Chapter 2930.<sup>29</sup>

Under the bill, a failure to follow the guidelines set forth in an MOU is not grounds for the dismissal of any charge or complaint arising from any report of abuse, neglect, or exploitation or the suppression of any evidence obtained as a result of a report and does not give any rights or grounds for appeal or post-conviction relief to any person.<sup>30</sup>

### **Inadequate services**

The bill authorizes an adult in need of protective services or a representative of such an adult to file a complaint with the CDJFS or its designated agency alleging that protective services were not provided to the adult or that the protective services were inadequate to address the adult's needs. The CDJFS or agency must investigate the complaint and attempt to resolve it. The bill requires the Director of ODJFS to adopt rules pursuant to R.C. 111.15 establishing procedures to be followed by a CDJFS or its designated agency regarding the investigation and resolution of complaints.<sup>31</sup>

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<sup>29</sup> R.C. 5101.651(C).

<sup>30</sup> R.C. 5101.651(D).

<sup>31</sup> R.C. 5101.72.



## Appeals of findings

Under the bill, a person alleged to have abused, neglected, or exploited an adult may appeal the findings of an investigation of a report of abuse, neglect, or exploitation to the CDJFS or its designated agency. The Director of ODJFS must adopt rules under R.C. 111.15 establishing procedures to be followed for hearing and deciding appeals.<sup>32</sup>

## Emergency orders for protective services

### Petition on notice

Existing law establishes a procedure by which a CDJFS may petition the probate court for an order authorizing the provision of protective services for an adult. The CDJFS must give the adult notice of the petition at least five working days before the hearing, written notice by certified mail to the adult's guardian, legal counsel, caretaker, and spouse, if any, or if the adult has none of these, to the adult's adult children or next of kin, if any, or to any other person as the court may require. Notice may not be waived. After the hearing, at which the adult has the right to counsel, the court issues its findings and, if appropriate, a protective-services order. These provisions are unchanged by the bill.<sup>33</sup>

A CDJFS may also petition the court for a protective-services order on an emergency basis. Notice of the petition must be given to the adult and the adult's spouse, or, if there is no spouse, to the adult's adult children or next of kin, and to the adult's guardian, if any. The notice must be given at least 24 hours before the hearing. The court may waive the 24-hour notice requirement upon a showing that (1) immediate and irreparable physical harm to the adult or others will result from the 24-hour delay, and (2) reasonable attempts have been made to notify the adult, the adult's spouse, or, if the adult has none, the adult's adult children or next of kin, if any, and the adult's guardian, if any.<sup>34</sup> "Financial harm" means impairing an adult's financial assets by unlawfully obtaining or exerting control over the adult's real or personal property in any of the following ways:<sup>35</sup>

(1) Without the adult's consent or the person authorized to give consent on the adult's behalf;

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<sup>32</sup> R.C. 5101.67.

<sup>33</sup> R.C. 5101.68, 5101.681, and 5101.682.

<sup>34</sup> R.C. 5101.70(B).

<sup>35</sup> R.C. 5101.60(K).

(2) Beyond the scope of the express or implied consent of the adult or the person authorized to give consent on the adult's behalf;

(3) By deception, threat, or force.

### **Ex parte petition**

The bill adds provisions allowing for ex parte protective-services orders. These are orders issued without prior notice to the adult. Under the bill, a court, through a probate judge or a magistrate under the direction of a probate judge, may issue by telephone an ex parte emergency order authorizing the provision of protective services to an adult on an emergency basis if all of the following are the case:<sup>36</sup>

(1) The court receives notice from the CDJFS or its authorized employee that the CDJFS or employee believes an emergency order is needed as described in this section.

(2) There is reasonable cause to believe that the adult is incapacitated.

(3) There is reasonable cause to believe that there is a substantial risk to the adult of immediate and irreparable physical harm, immediate and irreparable financial harm, or death.

An ex parte order may remain in effect for not longer than 24 hours, except that if the day following the day on which the order is issued is not a working day, the order remains in effect until the next working day. The CDJFS must file a regular petition for emergency court-ordered services within 24 hours after an ex parte order is issued or, if the day following the day on which the order was issued is not a working day, on the next working day.<sup>37</sup> The proceedings are then the same as for a regular emergency petition, except that the court must hold a hearing not later than 24 hours after the issuance of the ex parte order (or on the next working day if the day following the day on which the order is issued is not a working day) to determine whether there is probable cause for the order.<sup>38</sup> At the hearing, the court must determine whether protective services are the least restrictive alternative available for meeting the adult's needs.<sup>39</sup> At the hearing, the court may do any of the following:<sup>40</sup>

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<sup>36</sup> R.C. 5101.701(A).

<sup>37</sup> R.C. 5101.701(B) and (C).

<sup>38</sup> R.C. 5101.702(A).

<sup>39</sup> R.C. 5101.702(B)(1).

<sup>40</sup> R.C. 5101.701(B)(2), (3), and (4).

(1) Issue temporary orders to protect the adult from immediate and irreparable physical harm or immediate and irreparable financial 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;

(2) Order emergency services;

(3) Freeze the financial assets of the adult.

A temporary order is effective for 30 days. The court may renew the order for an additional 30-day period. Information contained in the order may be entered into the Law Enforcement Automated Data System.<sup>41</sup>

### **Elder Abuse Commission**

The bill creates the Elder Abuse Commission consisting of the following members:<sup>42</sup>

(1) Fifteen members appointed by the Attorney General (two representatives of national organizations that focus on elder abuse or sexual violence, one person who represents the interests of elder abuse victims, one person who represents the interests of elderly persons, and one representative each of the AARP, the Buckeye State Sheriffs' Association, the County Commissioners' Association of Ohio, the Ohio Association of Area Agencies on Aging, the Board of Nursing, the Ohio Coalition for Adult Protective Services, the Ohio Domestic Violence Network, the Ohio Prosecuting Attorneys Association, the Ohio Victim Witness Association, the Ohio Association of Chiefs of Police, and the Ohio Association of Probate Judges);

(2) The following ex officio members:

(a) One member of the House of Representatives, appointed by the Speaker, and one member of the Senate, appointed by the President of the Senate;

(b) The following officials or their designees: the Attorney General, the Chief Justice of the Supreme Court, the Governor, the Director of Aging, the Director of ODJFS, the Director of Health, the Director of Mental Health, the Director of Alcohol and Drug Addiction Services, the Director of Developmental Disabilities, the Superintendent of Insurance, the Director of Public Safety, and the State Long-Term Care Ombudsperson. (See **COMMENT 1**.)

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<sup>41</sup> R.C. 5101.702(C).

<sup>42</sup> R.C. 5101.74(A).

Appointed members serve at the pleasure of the Attorney General. Vacancies are filled in the same manner as original appointments.<sup>43</sup> (See **COMMENT 2**.)

All members of the Commission are voting members. The Attorney General selects the chairperson from the appointed members. The Commission meets at the call of the chairperson, but not less than four times per year. The chairperson may call special meetings and must call a special meeting at the Attorney General's request. The Commission may establish its own quorum requirements and procedures regarding the conduct of meetings and other affairs.<sup>44</sup>

Commission members serve without compensation, but they may be reimbursed for mileage and other actual and necessary expenses incurred in the performance of their official duties.<sup>45</sup>

The sunset review statutes, which provide for the expiration of state public bodies unless they are renewed following a review, do not apply to the Commission.<sup>46</sup>

The bill requires the Commission to formulate and recommend strategies on all of the following:<sup>47</sup>

- (1) Increasing awareness of and improving education on elder abuse;
- (2) Increasing research on elder abuse;
- (3) Improving policy, funding, and programming related to elder abuse;
- (4) Improving the judicial response to elder abuse victims;
- (5) Identifying ways to coordinate statewide efforts to address elder abuse.

The Commission must issue a biennial report on a plan of action that may be used by local communities to aid in the development of efforts to combat elder abuse.<sup>48</sup>

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<sup>43</sup> R.C. 5101.74(C).

<sup>44</sup> R.C. 5101.74(D).

<sup>45</sup> R.C. 5101.74(E).

<sup>46</sup> R.C. 5101.74(F).

<sup>47</sup> R.C. 5101.741(A).

<sup>48</sup> R.C. 5101.741(B).



The bill authorizes the Attorney General to adopt rules under R.C. 111.15 as necessary for the Commission to carry out its duties.<sup>49</sup>

## Implementation of APS statutes

The bill shifts from the CDJFSs to ODJFS the responsibility for implementing the statutory provisions on adult protective services and authorizes the Director of ODJFS to adopt rules in accordance with R.C. 111.15 governing the implementation of those provisions and their administration by CDJFSs. It also requires the Director to adopt rules in accordance with R.C. 111.15 that establish a definition of "ongoing relationship."<sup>50</sup> The bill requires ODJFS to do all of the following:<sup>51</sup>

(1) Identify the core services for interventions that are to be offered to adults in need of protective services;

(2) Maintain data by county on the implementation of the APS statutes;

(3) Provide a program of ongoing, comprehensive, formal training on the implementation of the statutes and require all protective services caseworkers and their supervisors to undergo the training (*a change from the optional "ongoing, formal training" that ODJFS may provide to county departments and other agencies that implement the statutes under current law*);

(4) Develop and make available educational materials for individuals who are required report abuse, neglect, and exploitation;

(5) Facilitate ongoing cooperation among state agencies on issues pertaining to the abuse, neglect, or exploitation of adults;

(6) Develop a model memorandum of understanding (see "**Memorandum of understanding**," above).

The bill charges county departments with "administering" rather than "implementing" the APS statutes, as under existing law. Current law authorizes but does not require ODJFS to reimburse county departments *to the extent of available funds* for all or part of the costs they incur in *implementing* the APS laws. The bill eliminates

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<sup>49</sup> R.C. 5101.741(C).

<sup>50</sup> R.C. 5101.61(A) and (B).

<sup>51</sup> R.C. 5101.62.

the phrase "to the extent of available funds" and changes "implementing" to "administering."<sup>52</sup>

The bill requires each entity that employs or is responsible for licensing or regulating mandatory reporters of abuse, neglect, or exploitation of adults (see "**Mandatory reporters of abuse, neglect, or exploitation**," above) to ensure that those individuals have access to the educational materials developed by ODJFS.<sup>53</sup>

## Miscellaneous

Existing law shields a hospital, home health agency, ambulatory surgical facility, or provider of a hospice care program against liability for a physician's failure to obtain an informed consent from the physician's patient prior to a surgical or medical procedure or course of procedures, unless the physician is an employee of the hospital, home health agency, ambulatory surgical facility, or provider of a hospice care program. The bill changes the definition of "home health agency" from the one set forth in current R.C. 5101.61 to the one used in R.C. 3701.881 (see "**Definitions for retained and deleted mandatory reporters**," above).<sup>54</sup>

Both existing law and the bill include provisions *requiring* certain persons to report abuse, neglect, or exploitation of an adult and *permitting* any person who, having reasonable cause to believe that an adult has suffered abuse, neglect, or exploitation, to report the abuse, neglect, or exploitation. Existing law penalizes with a fine anyone who violates either provision. The bill eliminates the penalty for a person who may, but is not required, to make a report.<sup>55</sup>

The bill also does the following:

- Renumbers 13 sections of the Revised Code;<sup>56</sup>
- Modifies the structure or wording of some sections. For example, in the section prohibiting retaliatory action by an employer for the reporting of

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<sup>52</sup> R.C. 5101.61(B)(1) and 5101.611.

<sup>53</sup> R.C. 5101.632.

<sup>54</sup> R.C. 2317.54(C).

<sup>55</sup> R.C. 5101.99(A).

<sup>56</sup> R.C. 5101.61 (5101.63), 5101.611 (5101.64), 5101.62 (5101.65), 5101.63 (5101.652), 5101.64 (5101.66), 5101.65 (5101.68), 5101.66 (5101.681), 5101.67 (5101.682), 5101.68 (5101.69), 5101.69 (5101.70), 5101.70 (5101.71), 5101.71 (5101.61), and 5101.72 (5101.611) (new numbers indicated in parentheses).

elder abuse by an employee, the bill puts the prohibited actions into a numbered list rather than a narrative sentence.<sup>57</sup>

- Moves some language without changing its substance. For example, the bill relocates some definitions that are currently in divisions with other definitions to divisions of their own.<sup>58</sup> The bill also changes some language to make it gender-neutral and changes cross-references to conform to the renumbering of sections.
- Amends some sections to make it clear that the "department" referred to is the *county* department of job and family services;<sup>59</sup>
- Replaces obsolete references to a county department of "human services" with references to a county departments of "job and family services."<sup>60</sup>

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## COMMENT

1. The new Revised Code section in the bill that creates the Elder Abuse Commission includes the directors of the Department of Mental Health and the Department of Alcohol and Drug Addiction Services or their designees as members. H.B. 59, the budget bill, proposes to merge these two departments. If that proposal is adopted and becomes law, the composition of the commission will have to be amended.

2. The new Revised Code section in the bill that creates the Elder Abuse Commission provides for three categories of members: those appointed by the Attorney General (15 members), those appointed by the presiding officers of the General Assembly (two members), and those who serve ex officio (12 members). The bill then states that members "who are appointed" serve at the pleasure of the Attorney General. This seems to put the tenure of the members appointed by the legislature's presiding officers at the pleasure of the Attorney General.<sup>61</sup>

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<sup>57</sup> R.C. 5101.63(E).

<sup>58</sup> R.C. 5101.60(I) (existing law) and R.C. 5101.60(V) ("reasonable decisions"); R.C. 5101.60(B) (existing law) and R.C. 5101.60(N) ("independent living arrangement").

<sup>59</sup> R.C. 5101.63(B) and (F), 5101.64, 5101.70(E)(4), and 5101.71.

<sup>60</sup> R.C. 5101.69(A) and 5101.70(A). References to the "department of human services" also appear in several Revised Code sections that are not in the bill.

<sup>61</sup> R.C. 5101.74(A) and (C).



3. The new Revised Code section in the bill that creates the Elder Abuse Commission skips from division (A) to division (C).

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## HISTORY

ACTION	DATE
Introduced	02-12-13

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