

Fiscal Note & Local Impact Statement

125th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Am. S.B. 178** DATE: **January 23, 2004**

STATUS: **As Enacted** SPONSOR: **Sen. Spada**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Implements the recommendations of the MR/DD Victims of Crime Task Force, makes related changes in the law, and provides a mechanism for the closing of developmental centers of the Department of Mental Retardation and Developmental Disabilities that involves independent studies and public hearings and declares an emergency**

State Fiscal Highlights

STATE FUND	FY 2004	FY 2005	FUTURE YEARS
General Revenue Fund (GRF)			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible annual gain
Expenditures	Minimal effect	Minimal effect	Minimal annual effect
Victims of Crime/Reparations Fund (Fund 402)			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible annual gain
Expenditures	-0-	-0-	-0-

Note: The state fiscal year is July 1 through June 30. For example, FY 2004 is July 1, 2003 – June 30, 2004.

- **MR/DD Abuser Registry.** The bill expands the list of professional occupations that must report suspicions of abuse, neglect, or sexual misconduct to include superintendents, board members, employees of county boards of MR/DD, and clergymen that provide specialized services to individuals with MR/DD. If these individuals unreasonably fail to report such cases when the employee knew or should have known that the failure would result in a substantial risk of harm to an individual with MR/DD, they are eligible for inclusion on the Department of Mental Retardation and Developmental Disabilities' (DMR) Abuser Registry. Consequently, there might be an increase in the number of persons deemed eligible for the Registry, which in turn could elevate the Department's administrative costs. However, any such costs would likely be minimal annually, if that.
- **Conduct notification.** The bill requires the following entities to annually provide a written notice to each of its MR/DD employees explaining the conduct for which an MR/DD employee may be included on the Registry: (1) Department of MR/DD, (2) county boards of MR/DD, (3) each contracting entity, (4) each owner, operator, or administrator of a residential facility, and (5) each owner, operator, or administrator of a program certified by the Department for supported living. The notice shall be in a form and provided in a manner prescribed by the Department. The form must be the same for all persons and entities. The fact that an MR/DD employee does not receive the notice does not exempt the employee from inclusion on the Registry. There would be administrative



costs associated with creating and distributing an annual written notice. However, these costs appear unlikely to exceed minimal.

- **MR/DD Registry hearings.** Under current law, before being put on DMR's Abuser Registry, an accused employee must have a public hearing pursuant to Chapter 119. of the Revised Code, even if the individual does not request one. The bill changes this requirement and allows DMR to put a person's name on the Registry without a hearing, if the individual does not request one and receives timely notification of the individual's right to a hearing. Thus, hearing costs could be reduced. It appears, however, that any annual savings resulting from this provision would be minimal, if that.
- **Sexual misconduct notification.** The bill requires DMR and all county boards of MR/DD to notify all employees within 30 days of the effective date of the bill that any sexual conduct or contact with an individual with MR/DD is strictly prohibited. This provision could increase administrative costs to both DMR and county boards of MR/DD depending on the type of notification, with the most noticeable burden being the one-time cost of notifying all existing DMR and county board of MR/DD employees within 30 days of the effective date of the bill. The cost of notifying future employees could simply be incorporated into ongoing human resource operations.
- **Autopsy or post-mortem examination costs.** Under current law, DMR and county boards of MR/DD do not have the authority to request an autopsy or post-mortem examination for individuals with MR/DD that die. Under the bill, DMR or a county board can file a petition in court seeking authorization for the procedure. If the court authorizes an autopsy or post-mortem examination, the bill mandates that DMR or the county board that requested the procedure pay the incurred expenses. Based on conversations with DMR and the Ohio State Coroners' Association (OSCA), it appears that this provision will not cause a significant increase in the number of autopsies or post-mortem examinations than would otherwise be performed under current law. Therefore, any fiscal impact of this provision on DMR seems unlikely to exceed minimal, if that, annually.
- **Closing of state-operated developmental centers.** The occasional one-time state administrative costs associated with the creation of a Mental Retardation and Developmental Disabilities Developmental Center Closure Commission and the subsequent performance of its duties appear unlikely to exceed minimal. The Closure Commission would, most likely, require some technical and support services from DMR and other state entities. There would be one-time costs to the Legislative Service Commission to prepare the report required by the bill. However, it seems likely that these support services would be provided using available resources.
- **Incarceration costs.** The number of additional offenders that might actually be sentenced to prison annually as a result of the bill appears likely to be relatively small. Thus, any related increase in the Department of Rehabilitation and Correction's GRF-funded incarceration and post-release control costs would be no more than minimal annually.
- **Court cost revenues.** Given the relatively small number of new convictions expected, any potential gain in annual court cost revenues deposited to the credit of the state's GRF and the Victims of Crime/Reparations Fund (Fund 402) is likely to be negligible.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2003	FY 2004	FUTURE YEARS
Counties and Municipalities			
Revenues	Potential increase, not likely to exceed minimal	Potential increase, not likely to exceed minimal	Potential increase, not likely to exceed minimal annually
Expenditures	Increase, possibly exceeding minimal in some jurisdictions	Increase, possibly exceeding minimal in some jurisdictions	Increase, possibly exceeding minimal annually in some jurisdictions

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **MOUs and county boards of MR/DD.** The bill requires a county board of MR/DD to prepare a memorandum of understanding (MOU) to coordinate investigations of abuse or neglect. The administrative burden in preparing the document would likely increase costs for county boards of MR/DD depending upon the infrastructure and level of cooperation already in place.
- **MOUs and local criminal justice systems generally.** Based on the experience of public children’s services agencies (PCSAs) that established MOUs some time ago, it appears very likely that the one-time expenses associated with establishing a MOU for some local criminal justice systems will exceed minimal, which means in excess of \$5,000. These local expenses are probably best viewed as largely an “opportunity cost.” It also seems likely that these MOUs will involve some local criminal justice systems in more investigations and prosecutions than would otherwise have been the case under current law and practice. Whether that level of activity will increase the annual expenditures of a given local criminal justice system more than minimally on an ongoing basis is uncertain.
- **Reports of abuse and neglect.** The bill expands the professions that are subject to the mandatory child abuse and neglect reporting provision to also include superintendents, board members, employees of a county board of MR/DD, investigative agents contracted with by a county board of MR/DD, and DMR employees, and modifies the provisions describing the entities to which such reports must or may be made. Consequently, the bill could increase the number of reports of abuse or neglect. The Department of Mental Retardation and Developmental Disabilities believes that the increased number of reports would not have a major fiscal impact since the Department and each county board already have investigative units in place. Based on conversations with some of the members of the MR/DD Victims of Crime Task Force, the increased number of reported suspicions of neglect, abuse, or exploitation should have, at most, a minimal annual fiscal impact on any PCSA or county board of MR/DD.
- **Conduct notification.** The bill requires the following entities to annually provide a written notice to each of its MR/DD employees explaining the conduct for which an MR/DD employee may be included on the Registry: (1) Department of MR/DD, (2) county boards of MR/DD, (3) each contracting entity, (4) each owner, operator, or administrator of a residential facility, and (5) each owner, operator, or administrator of a program certified by the Department for supported living. The notice shall be in a form and provided in a manner prescribed by the Department. The form must be the same for all persons and entities. The fact that an MR/DD employee does not receive the notice does not exempt the employee from inclusion on the Registry. There would be administrative costs associated with creating and distributing an annual written notice. However, these costs appear unlikely to exceed minimal.

- **Protective service plans.** The bill requires county boards of MR/DD to develop detailed protective service plans describing the services the county board will provide to prevent further abuse, neglect, or exploitation of individuals eligible for county board services. According to a number of superintendents of county boards of MR/DD, county boards are already providing these services pursuant to a person’s individual service plan. Based on this observation, this provision appears unlikely to create any direct and immediate fiscal effects for county boards or probate courts. However, if the county board of MR/DD fails to seek an order for adult protective services, any person who has reason to believe there is a substantial risk of immediate physical harm or death to a person with MR/DD may notify DMR. Upon notification, DMR is required to investigate the matter within 24 hours and to provide assistance to the county board and to the adult to assure the health and safety of the adult. According to DMR, this provision would give the Department the authority to step in and force a county board to investigate the matter. County boards and DMR could see a minimal increase in investigative and administrative costs. However, each county board already has an investigative unit in place and any fiscal impact appears unlikely to exceed minimal.
- **Sexual misconduct notification.** The bill requires DMR and all county boards of MR/DD to notify all employees within 30 days of the effective date of the bill that any sexual conduct or contact with an individual with MR/DD is strictly prohibited. This provision could increase administrative costs to both DMR and county boards of MR/DD depending on the type of notification, with the most noticeable burden being the one-time cost of notifying all existing DMR and county board of MR/DD employees within 30 days of the effective date of the bill. The cost of notifying future employees could simply be incorporated into ongoing human resource operations.
- **Criminal offenses.** Based on a number of conversations, it appears that the number of offenders that will be charged, prosecuted, and sanctioned for “endangerment” or “failure to report” as a result of the bill will be relatively small in any given local jurisdiction. Assuming that were true, then the annual costs for a county and municipal criminal justice system (investigation, prosecution, adjudication, indigent defense, and sanctioning) to dispose of these cases seems unlikely to exceed minimal.
- **Probate courts.** The bill’s modification of provisions regarding a probate court’s involvement in the issuance of an order authorizing a county board of MR/DD to arrange emergency services for an adult with mental retardation or a developmental disability appears likely to create little, if any, direct and immediate fiscal effects for the probate court of any given county.
- **Special testimonial procedures.** In the case of certain violations committed against children, the Revised Code currently provides special testimonial procedures in criminal and delinquent child proceedings. The bill enacts similar mechanisms where the victim of specified offenses is a functionally impaired person. As courts should already have these mechanisms in place for handling certain violations committed against children, it appears unlikely that the expansion of these special testimonial mechanisms would create more than a minimal annual cost for courts, if that.
- **Qualified interpreters.** The bill expands an existing provision requiring a court to appoint an interpreter to assist a party or witness to a legal proceeding that, because of an impairment, cannot readily understand or communicate. Under current law, the court determines a reasonable fee for all such interpreter services, which are paid out of the same funds as witness fees. As of this writing, the modification of this provision seems unlikely to generate more than a minimal, if that, annual cost for courts.

- **Court cost and fine revenues.** In the matter of local revenues, as the likely number of cases that could be created by the bill appears to be relatively small, any resulting gain in court cost and fine revenues for a given county or municipality annually would not be likely to exceed minimal.
- **County coroner notification.** The bill requires the physician, ambulance service, emergency squad, or law enforcement agency on the scene to notify the county coroner when an individual with MR/DD dies, regardless of the circumstances. No such requirement exists in current law. After conversations with the Ohio State Coroners' Association, it appears that this provision could significantly increase the number of coroner notifications. The county coroner, however, is still responsible for determining which cases warrant coroner investigation. Thus, even though the number of notifications will increase, the number of coroner cases will not necessarily increase. Counties could experience increased administrative costs if there are a number of additional coroner cases. However, it appears that any additional costs resulting from this provision would be minimal.
- **County coroner autopsies and post-mortem examinations.** The bill allows DMR or a county board of MR/DD to request an autopsy or post-mortem examination if an individual with MR/DD dies. Under current law, the county coroner makes the final decision on the necessity of an autopsy or post-mortem examination. If a county coroner does not conduct an autopsy or post-mortem examination, the bill allows DMR or a county board of MR/DD to file a petition in court seeking authorization. If the court authorizes an autopsy or post-mortem examination, the bill mandates that DMR or the county board that requested the procedure to pay the incurred expenses. Based on conversations with DMR and the Ohio State Coroners' Association, it appears that this provision will not cause a significant increase in the number of autopsies or post-mortem examinations than would otherwise be performed under current law. Consequently, any fiscal impact of this provision on a given county seems unlikely to exceed minimal, if that, annually.
- **Closing of state-operated developmental centers.** The bill's procedures for the closing of state-operated developmental centers in and of themselves should not create any immediate and direct local fiscal effects.

Detailed Fiscal Analysis

From a fiscal perspective, the bill contains two notable components as follows:

- (1) Implements recommendations made by the MR/DD Victims of Crime Task Force that will primarily affect: (1) on the state level, the Department of Mental Retardation and Developmental Disabilities (DMR), and (2) on the local level, principally county boards of MR/DD, and county and municipal criminal justice systems, including courts, law enforcement, and prosecutors. There appears to be limited data readily available statewide on the investigation and prosecution of individuals for creating a risk of harm or harming a person who has mental retardation or a developmental disability. Thus, in conducting this analysis, LSC fiscal staff has had to rely largely on qualitative information gleaned from conversations with various professionals who served on the MR/DD Victims of Crime Task Force.
- (2) Provides a mechanism for the closing of state-operated developmental centers, including the creation of the Mental Retardation and Developmental Disabilities Developmental Center Closure Commission.

DMR Abuser Registry

Under current law, the MR/DD Abuser Registry is used in cases in which there is “clear and convincing” evidence that a departmental employee committed or was responsible for the abuse, neglect, or misappropriation of an individual with MR/DD. Individuals put on the Registry go through the administrative hearing process outlined in Chapter 119. of the Revised Code. The Department of Mental Retardation and Developmental Disabilities is required to notify the accused employee of their right to request a hearing. Current law requires DMR to hold a hearing for all accused employees, even if the employee does not request one. Upon a guilty verdict, the employee’s name is then added to the Registry and is prohibited from working in the MR/DD system as long as the employee’s name remains on the Registry. Furthermore, current law requires DMR to wait until any criminal proceeding or collective bargaining arbitration concerning the same allegation has concluded. If the employee is found not guilty, DMR is prohibited from putting the employee’s name on the Registry.

The bill changes many of these requirements. Under the bill, DMR could include employees that are found not guilty in a criminal case or collective bargaining arbitration if there is “clear and convincing” evidence that the employee committed or was responsible for the abuse, neglect, or misappropriation of an individual with MR/DD. The bill requires DMR to give weight to any relevant facts presented at the administrative hearing. However, the bill requires that the disposition of a court proceeding or arbitration arising out of the same facts as the allegation that resulted in the individual’s placement on the Registry must be placed next to the individual’s name on the Registry. If an individual is charged in a complaint, indictment, or information with any crime or specified delinquent act or with any violation of law, and if the case involves a victim that the prosecutor knows is mentally retarded or developmentally disabled, the prosecutor must send a written notice to DMR. Upon receipt, DMR

must review the prosecutor's report. When DMR receives a report from a prosecutor concerning an MR/DD employee that has been charged with abuse, neglect, or misappropriation of an individual's property, the Department must suspend any action on the matter until any criminal or collective bargaining proceeding involving the same allegation is completed, unless the Department notifies the prosecutor responsible of its desire to conduct a hearing and the prosecutor consents to the hearing. However, the bill removes the provision requiring a hearing for each accused employee. If any accused MR/DD employee does not timely request a hearing after notification, the Director of DMR can put the employee's name on the Registry if the "clear and convincing" standard is met.

Thus, the bill could result in an increase in the number of names placed on the Registry, which would increase some administrative cost for the Department. However, according to DMR, these provisions will not necessarily increase the number of individuals on the registry, but could shorten the adjudication process. As a result, the Department could experience, at most, a minimal annual savings in hearing costs if the number of hearings is reduced. There would be administrative costs associated with reviewing the prosecutor's report. However, these costs appear unlikely to exceed minimal.

Conduct notification

The bill requires the following entities to annually provide a written notice to each of its MR/DD employees explaining the conduct for which an MR/DD employee may be included on the Registry: (1) Department of MR/DD, (2) county boards of MR/DD, (3) each contracting entity, (4) each owner, operator, or administrator of a residential facility, and (5) each owner, operator, or administrator of a program certified by the Department for supported living. The notice shall be in a form and provided in a manner prescribed by the Department. The form must be the same for all persons and entities. The fact that an MR/DD employee does not receive the notice does not exempt the employee from inclusion on the Registry. There would be administrative costs associated with creating and distributing an annual written notice. However, these costs appear unlikely to exceed minimal.

MOUs and county boards of MR/DD

The bill requires each county board of MR/DD to prepare a memorandum of understanding (MOU) to coordinate all investigations of abuse or neglect. The memorandum must set forth the normal operating procedure for all concerned parties in the execution of their respective duties. The MOU requires the involvement of local law enforcement, probate judges, prosecutors, coroners, public children's service agencies (PCSAs), and any other entity deemed necessary. Current law provides no such requirement.

Because the bill's requirement of a MOU is identical to that required of PCSAs, LSC fiscal staff discussed the administrative duties and time that would be involved in establishing and maintaining a MOU with the Public Children Services Association of Ohio (PCSAO). Based on a conversation with PCSAO, it appears that the time required and the administrative duty of coordinating all the entities involved in a MOU would likely increase costs for county boards of MR/DD. However, spokespersons for county boards of MR/DD state that county boards already have the infrastructure in place to handle this new requirement. LSC fiscal staff's conversation with various interested parties also suggested that the establishment of MOUs will improve the communication between the local MR/DD

and criminal justice systems and, as a result, likely will lead to more individuals being charged and successfully prosecuted for creating a risk of harm or harming a person who has mental retardation or a developmental disability.

Reports of abuse and neglect

Current law requires the reporting of all major unusual incidents (MUIs) to county boards of MR/DD and DMR. MUIs include abuse, neglect, hospitalization, death, and other events that may significantly affect an individual's life and quality of care. All reported incidents are required to be investigated and reviewed to help prevent reoccurrence. According to the DMR's MUI/Registry Unit, the number of MUIs reported has increased over the last few years from 3,983 in 1998 to 14,116 in 2001. According to the Department, this increase is attributable to a heightened awareness and increased emphasis on reporting. In 2001, DMR received 2,832 allegations of abuse, neglect, or theft. Of those allegations, 798 were substantiated administratively as follows: 285 cases of physical abuse, 79 cases of sexual abuse, 184 cases of neglect, 42 cases of exploitation, and 208 cases of misappropriation. According to DMR, there were 4,163 allegations of abuse (sexual, verbal, or physical) or neglect in FY 2002 with a substantiation rate of approximately 14%.

The bill expands the professions that are subject to the mandatory child abuse and neglect reporting provision to also include superintendents, board members, employees of a county board of MR/DD, investigative agents contracted with by a county board of MR/DD, and DMR employees, and modifies the provisions describing the entities to which such reports must or may be made. In general, under existing law, the reports are to be made to a law enforcement agency or to the county board of MR/DD, and if the reports concern a resident of a DMR-operated facility, the reports are to be made related to a law enforcement agency or DMR. Under the bill: (1) if the reports concern any act or omission of an employee of a county board of MR/DD, the report must be made to DMR and the county board of MR/DD, and (2) if the reports concern a person who is an inmate in a state correctional institution, the report must be made to the State Highway Patrol.

The bill also mandates that, when a county board receives a report, the superintendent of a county board or a person the superintendent designates must attempt to have a face-to-face meeting with a person with MR/DD who is allegedly the victim of abuse or neglect within one hour of the board's receipt of the report if the county board believes the degree of risk to the person constitutes an emergency.

The fact that a case is administratively substantiated as having occurred does not mean that enough evidence exists to justify prosecution. The Department of Mental Retardation and Developmental Disabilities has limited data on the number of cases that have been prosecuted to date.

The bill allows the Department to conduct an independent review of any reported major unusual incident or request that an independent review be conducted by a county board of MR/DD that is not implicated in the report, a regional council of government, or any other entity authorized to conduct such investigations. However, if a report of an allegation involves an employee of a county board of MR/DD, the Department must conduct an independent investigation or request another authorized entity to do so. According to a Department spokesperson, DMR, in most cases, already independently

investigates allegations of this nature. However, the Department exercises discretion in investigating based on the severity of the allegation. The Department estimates that the number of investigations under the Department's jurisdiction may rise. However, the Department does not believe the increase will have a major fiscal impact.

Based on conversations with some county boards of MR/DD, it appears that there could be an increase in annual investigation costs for both county boards of MR/DD and local law enforcement. The Department of Mental Retardation and Developmental Disabilities believes that the increased number of reports would not have a major fiscal impact since the Department and each county board already have investigative units in place. Based on conversations with some of the members of the MR/DD Victims of Crime Task Force, the increased number of reported suspicions of neglect, abuse, or exploitation should have, at most, a minimal annual fiscal impact on any PCSA or county board of MR/DD.

Sexual misconduct notification

The bill requires DMR and all county boards of MR/DD to notify all employees within 30 days of the effective date of the bill that any sexual conduct or contact with an individual with MR/DD is strictly prohibited. This provision could increase administrative costs to both DMR and county boards of MR/DD depending on the type of notification, with the most noticeable burden being the one-time cost of notifying all existing DMR and county board of MR/DD employees within 30 days of the effective date of the bill. The cost of notifying future employees could simply be incorporated into ongoing human resource operations.

If an employee violates this provision, the employee can be included on the MR/DD Abuser Registry. Thus, the bill could result in an increase in the number of names placed on the Registry, which would increase some administrative cost for the Department.

Protective service plan

Under current law, a probate court may issue an order authorizing a county board of MR/DD to arrange emergency services for an adult. The services are renewable for an additional 14 days if the county board of MR/DD can show that a continuation is necessary.

The bill requires county boards of MR/DD to develop detailed protective service plans describing the services the county board will provide to prevent further abuse, neglect, or exploitation of an adult that is eligible for county board services. The county board must submit the plan to the court for approval and the plan may only be changed by a court order. The bill extends the provision of these services to six months and allows the services to be renewed for an additional six months. According to a number of superintendents of county boards of MR/DD, county boards are already providing these services pursuant to a person's individual service plan. Based on this observation, this provision appears unlikely to create any direct and immediate fiscal effects for county boards or probate courts.

If the county board of MR/DD fails to seek an order for adult protective services, any person who has reason to believe there is a substantial risk of immediate physical harm or death to a person

with MR/DD may notify DMR. Upon notification, DMR is required to investigate the matter within 24 hours and to provide assistance to the county board and to the adult to assure the health and safety of the adult. According to DMR, this provision would give the Department the authority to step in and force a county board to investigate situations in which a county board of MR/DD fails to seek an order for adult protective services. County boards and DMR could see a minimal increase in investigative and administrative costs. However, each county board already has an investigative unit in place and any fiscal impact appears unlikely to exceed minimal.

Closing of state-operated developmental centers

In any instance where the Governor intends to close a state-operated developmental center that was in operation on or after January 1, 2003 the bill requires:

- The Governor to notify the General Assembly in writing at least ten days prior to making any official, public announcement that the Governor intends to close one or more developmental centers.
- Promptly after the Governor's notification of the General Assembly, the Legislative Service Commission (LSC) shall conduct an independent study of the developmental centers and DMR's operation of the centers. The study must be completed no later than 60 days after the Governor makes the official, public announcement of the closure.
- Not later than the date on which LSC is required to complete the report, a six-member Mental Retardation and Developmental Disabilities Developmental Center Closure Commission be created to make recommendations on the developmental center closure to the Governor. The Legislative Service Commission shall appear before the Closure Commission and present the report LSC prepared.
- The Closure Commission shall consist of the Directors of DMR and Health; one private executive with expertise in facility utilization, economics, or both; one member of the board of the Ohio Civil Service Employees' Association; one shall be either a family member of a resident of a developmental center or a representative of an MR/DD advocacy group; and a member of the law enforcement community, all of whom serve without compensation. The private executive with expertise in facility utilization and the family member or representative of an MR/DD advocacy group may not be members of the General Assembly or have a developmental center identified for closure in the county in which the member resides.
- Not later than 60 days after the Closure Commission receives LSC's report, the Closure Commission shall prepare a report containing the Closure Commission's recommendations and shall provide a copy to the Governor and each member of the General Assembly who requests a copy.
- Upon receipt of the Commission's report, the Governor may (1) follow the recommendation of the Commission, (2) close no developmental center, or (3) take other action the Governor determines is necessary for expenditure reductions or budget cuts and state the reasons for the action.
- Upon the Governor's final decision on the closure, the Closure Commission ceases to exist.

State fiscal effects

State expenditures. The creation of a Mental Retardation and Developmental Disabilities Developmental Center Closure Commission would in all likelihood produce no more than a minimal one-time increase in state expenditures principally associated with: (1) Closure Commission members performing their duties, and (2) state employees providing staff assistance.

(1) Commission members. The members of the Closure Commission serve without compensation. Although the bill is silent on the matter, it is possible that Closure Commission members could be eligible for and request reimbursement for expenses incurred during the performance of their Closure Commission duties for such items as travel, meals, and lodging.

(2) Staff assistance. The Closure Commission would, most likely, require some technical and support services from DMR and other state entities. There would be one-time costs to the Legislative Service Commission to prepare the report required by the bill. However, it seems likely that these support services would be provided using available resources.

Local fiscal effects

These state institutional facilities closure procedures, in and of themselves, should not create any immediate and/or direct local fiscal effects.

MOUs and local criminal justice systems generally

The bill will essentially require county and municipal criminal justice systems to establish and maintain formal agreements (MOUs) with county boards of MR/DD. These agreements will facilitate the sharing of information, with the intent of better protecting individuals with mental retardation or a developmental disability and improving the investigation and prosecution of persons who have harmed or endangered such individuals.

Based on the experience of PCSAs that established such agreements some time ago, it appears very likely that the one-time expenses associated with establishing a MOU for some local criminal justice systems will exceed minimal, which means in excess of \$5,000. These local expenses are probably best viewed as largely an “opportunity cost.” In other words, various local criminal justice participants will absorb this task within their existing mix of duties and responsibilities, and most likely will have to delay as appropriate the performance of some of those other duties and responsibilities. If one were able to then put a price (time spent) on that one-time involvement across all of the criminal justice participants, then, in some local jurisdictions, it likely would exceed minimal.

It also seems likely that these MOUs will involve some local criminal justice systems in more investigations and prosecutions than would otherwise have been the case under current law and practice. Whether that level of activity will increase the annual expenditures of a given local criminal justice system more than minimally on an ongoing basis is uncertain.

Criminal offenses

The bill makes the following notable changes to the state’s criminal law:

- (1) Creates the offense of “endangering a functionally impaired person,” a misdemeanor of the first degree.
- (2) Creates the offense of “patient endangerment,” a misdemeanor of the first degree. If the offender previously has been convicted of, or pleaded guilty to, such a violation, patient endangerment is a felony of the fourth degree. If the violation results in serious physical harm to the person with mental retardation or a developmental disability, patient endangerment is a felony of the third degree.
- (3) Revises existing penalties for specified violations of the reporting law and expands the persons to whom the reporting law applies. A violation is a misdemeanor of the fourth degree or, if the abuse or neglect constitutes a felony, a misdemeanor of the second degree.

The sentences and fines associated with those offense levels under current law, unchanged by the bill, are summarized in Table 1 below.

Offense Level	Maximum Fine	Maximum Term
Felony, 3rd degree	\$10,000	1-5 year definite prison term
Felony, 4th degree	\$5,000	6-18 month definite prison term
Misdemeanor, 1st degree	\$1,000	6 month jail stay
Misdemeanor, 2nd degree	\$750	90 day jail stay
Misdemeanor, 4th degree	\$250	30 day jail stay

According to a detective with the Columbus Police Department who investigates cases involving allegations that a person with mental retardation or a developmental disability has been victimized, current law does not cover caretaker recklessness. Thus, law enforcement can take no action unless physical harm occurs, regardless of the fact that the person may have been in danger. The bill addresses this issue by creating an offense that is comparable to the child endangerment statute.

The law currently requires certain individuals (“mandated reporters”), such as medical professionals, teachers, social workers, and MR/DD employees, to report suspected cases of abuse, neglect and exploitation. This statute differs from the children’s protective services statute in that it does not require mandated reporters to report when an individual with MR/DD faces a threat of physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect. The bill amends this provision to include these situations and enhances the penalties associated with the failure to report.

As noted, there must be proof of serious harm before a charge can be filed. By including language that makes placing a person at substantial risk a criminal act, law enforcement officials should

be able to charge an individual when there is no clear evidence of abuse. Prosecutors will then, theoretically, be able to more effectively prosecute such cases. Based on a conversation with the Ohio Prosecuting Attorneys Association, as well as the chief assistant prosecutor of Cuyahoga County, it appears that the number of offenders that will be charged, prosecuted, and sanctioned for “endangerment” or “failure to report” as a result of the bill will be relatively small in any given local jurisdiction. Assuming that were true, then the annual costs for a given county or municipal criminal justice system (investigation, prosecution, adjudication, indigent defense, and sanctioning) to dispose of these cases seems unlikely to exceed minimal. And in the matter of local revenues, as the likely number of cases that could be created by the bill appears to be relatively small, any resulting gain in court cost and fine revenues for a given county or municipality annually would not be likely to exceed minimal either.

State incarceration costs

It is possible as a result of the bill that a few more offenders could end up being sentenced to prison, which would increase the Department of Rehabilitation and Correction’s (DRC) annual incarceration and post-release control costs. The number of additional offenders, however, that might actually be sentenced to prison annually appears likely to be so small that any related increase in DRC’s GRF-funded incarceration and post-release control costs would be no more than minimal annually.

State court cost revenues

As a result of the bill, it is possible that some individuals, who may not have been prosecuted and convicted under existing law, will be prosecuted and sanctioned. This outcome creates the possibility that the state may gain locally collected court cost revenues that are deposited to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 402). As the number of affected offenders appears to be very small, the amount of court cost moneys that those state funds will gain annually is likely to be negligible.

Probate courts

The bill’s modification of provisions regarding a probate court’s involvement in the issuance of an order authorizing a county board of MR/DD to arrange emergency services for an adult with mental retardation or a developmental disability (i.e. emergency *ex parte* order) appears likely to create little, if any, direct and immediate fiscal effects for the probate court of any given county. The bill clarifies that, in order to issue an emergency *ex parte* order by telephone, there must be reasonable cause to believe that the person who is the subject of the notice is a mentally retarded or developmentally disabled person and that there is substantial risk to the person of immediate physical harm or death. The bill also clarifies that, subject to certain exceptions, the order is effective for 24 hours.

Special testimonial procedures

In the case of certain violations committed against children, the Revised Code currently provides special testimonial procedures in criminal and delinquent child proceedings. The bill enacts similar mechanisms where the victim of specified offenses is a functionally impaired person. As courts should

already have these mechanisms in place for handling certain violations committed against children, it appears unlikely that the expansion of these special testimonial mechanisms would create more than a minimal annual cost for courts, if that.

Qualified interpreters

The bill: (1) expands an existing provision requiring a court to appoint an interpreter to assist a party or witness to a legal proceeding that, because of an impairment, cannot readily understand or communicate, and (2) permits the court to appoint an interpreter only after the court evaluates that person's qualifications and determines to the court's satisfaction that the person can effectively interpret. Under current law, the court determines a reasonable fee for all such interpreter services that are paid out of the same funds as witness fees. The interpreter could be a family member or caretaker that is able to aid the parties in formulating methods of questioning the person and interpreting the person's answers. One example would be in the case of a person with autism. As of this writing, the modification of this provision seems unlikely to generate more than a minimal, if that, annual cost for courts.

County coroner notification

Under current law, when a county coroner is notified of a death, the coroner decides, based on the circumstances, whether the case should be investigated by the coroner's office. If a case is deemed a coroner's case, the county coroner must go into the field, examine the body, determine possible cause of death, and sign the death certificate. If a case is not deemed a coroner's case, the physician on the scene is responsible for the above responsibilities.

The bill requires that the county coroner be notified anytime a person with MR/DD dies, regardless of the circumstances. The physician called in attendance, emergency squad, or law enforcement officer who obtains knowledge of the death arising from the person's duties is responsible for notification. According to DMR, 735 individuals with MR/DD died in calendar year 2002. There are over 61,000 individuals with MR/DD in Ohio.

After conversations with the Ohio State Coroners' Association (OSCA), it appears that this provision could significantly increase the number of coroner notifications. The county coroner, however, is still responsible for determining which cases warrant further investigation by the coroner. Thus, even though the number of notifications will increase, the number of coroner cases will not necessarily increase. Counties could experience increased administrative costs if there are a number of additional coroner cases. However, it appears that any additional costs resulting from this provision would be minimal.

County coroner autopsies and post-mortem examinations

Section 313.131 of the Revised Code gives the county coroner authority to determine when an autopsy or post-mortem examination is necessary. The county in which the death occurred pays the costs associated with an autopsy or post-mortem examination. According to OSCA, the average cost

of an autopsy ranges between \$800 and \$1,500. The Department of Mental Retardation and Developmental Disabilities reported 15 adverse or accidental deaths in FY 2001 and 29 in FY 2002.

The bill requires that the county coroner be notified any time an individual with MR/DD dies. If a county coroner decides an autopsy or post-mortem examination is not necessary, DMR or a county board of MR/DD can file a petition in court seeking authorization for an autopsy or post-mortem examination. If the court authorizes an autopsy or post-mortem examination, the bill mandates that DMR or the county board that requested the procedure to pay the incurred expenses

Based on conversations with DMR and OSCA, it appears that this provision will not cause a significant increase in the number of autopsies or post-mortem examinations than would otherwise be performed under current law. Consequently, any fiscal impact of this provision on the Department or a given county seems unlikely to exceed minimal, if that, annually.

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