



*Synopsis of Senate Committee Amendments**

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Legislative Service Commission

Sub. H.B. 51

125th General Assembly
(S. Judiciary Civil Justice)

The Senate Judiciary Committee on Civil Justice adopted the following amendments:

An amendment that provides that an administrator or executor filing an account pursuant to the statute that specifies when accounts must be rendered must file with the probate court a certificate of service of account *prior to or simultaneously with the filing of the account*.

An amendment that provides that a reasonable fee charged by the probate judge for dispute resolution procedures must not exceed fifteen dollars and that the surplus moneys in the separate fund be used for other appropriate *judicial* expenses of the probate court.

An amendment that removes the provision that a person is not required to file an estate tax return if all property included in the value of the taxable estate is transferred to the decedent's surviving spouse in a transfer that would qualify for the marital deduction or the qualifying terminable interest property deduction.

A technical amendment.

An amendment to incorporate all of Sub. S.B. 4 except the facilities closure provisions, as Reported by H. Juvenile and Family Law, which does the following:

- Enacts mechanisms for taking and using in a criminal proceeding or delinquent child proceeding depositions, including videotaped depositions, of a victim of specified offenses who is a mentally retarded or developmentally disabled person.
- Provides for closed circuit telecast into the courtroom of testimony of such a victim that was taken outside the courtroom, recording the testimony of

* This synopsis does not address amendments that may have been adopted on the Senate floor.

the victim for showing in the courtroom, and, in criminal proceedings, use of preliminary hearing testimony.

- Creates the offense of patient endangerment, which prohibits an "MR/DD caretaker" from creating a substantial risk to the health or safety of a mentally retarded or developmentally disabled person and prohibits a person who owns, operates, administers, or is an agent of a care facility from condoning or knowingly permitting any such conduct by an MR/DD caretaker under that person's control.
- Provides certain exemptions and affirmative defenses to the patient endangerment offense, including exemptions regarding treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination.
- Specifies that an "MR/DD employee" cannot engage in any sexual conduct or have any sexual contact with a person with mental retardation or another developmental disability for whom the employee is employed or under a contract to provide care and who is not the MR/DD employee's spouse.
- Requires the Department of Mental Retardation and Developmental Disabilities (DMRDD), each county board of mental retardation and developmental disabilities, and other specified persons to annually notify each MR/DD employee of 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.
- Requires each county board of mental retardation and developmental disabilities to prepare a memorandum of understanding related to abuse, neglect, and exploitation of persons in the county who are mentally retarded or developmentally disabled.
- Modifies provisions of current law regarding reporting of abuse or neglect of a person with mental retardation or a developmental disability by: (1) requiring a person in any profession that is subject to the 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, (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 a limited exemption from the mandatory reporting requirement 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 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, (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 of reports of abuse or neglect filed under the mandatory and discretionary reporting provisions.

- Revises provisions of current law regarding reports of abuse, neglect, and misappropriation of property by an MR/DD employee and the registry of employees who have engaged in such conduct by: (1) requiring DMRDD to review a report it receives from a prosecutor when DMRDD receives it, (2) modifying the matters a hearing officer must determine at a hearing conducted regarding the report and requiring the hearing officer and Director to consider any relevant facts presented at the hearing, (3) repealing the prohibition against DMRDD's Director including in the registry of MR/DD employees an individual who has been found not guilty of an offense arising from the same facts as the allegation in question, (4) requiring that the disposition of a criminal proceeding regarding the same allegation be noted on the registry next to the employee's name, (5) providing qualified immunity for persons and government entities that fail to hire or retain a person based on a finding that there is a reasonable basis for the allegation in the report, (6) specifying that, if the Administrative Procedure Act requires DMRDD to give notice of an opportunity for a hearing and the employee subject to the notice does not timely request a hearing, DMRDD is not required to hold one.
- Requires the prosecutor, in any case involving a victim that the prosecutor knows is a mentally retarded or 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) extending the period for the provision of services under the order to six months and extending the possibility of renewal of the services to an additional six months, (2) enacting provisions



regarding *ex parte* emergency orders for protective services by a probate court or magistrate on receipt of a notice from the county board or an authorized employee of the county board, (3) enacting provisions regarding temporary orders related to protective services, and (4) providing procedures and guidelines regarding the orders.

- Expands the list of convictions for which the Bureau of Criminal Identification and Investigation checks when conducting a records check of persons under final consideration for appointment or employment with DMRDD, county boards of MR/DD, or entities under service contracts with a county board and the list of disqualifying offenses to include the offense of patient endangerment.
- Requires specified health care, emergency, and law enforcement personnel to notify the office of the coroner when any mentally retarded or developmentally disabled person dies.
- Permits DMRDD or a county board of MR/DD to seek a court order for an autopsy or post-mortem examination if a person with mental retardation or a developmental disability dies under circumstances DMRDD or the county board has a good faith reason to believe are suspicious and the coroner, after being apprised of the circumstances, declines to conduct an autopsy.
- Clarifies that a provision requiring a court to appoint an interpreter to assist a party or witness to a legal proceeding applies to the language and descriptions of any mentally retarded or developmentally disabled person who cannot be reasonably understood, or who cannot understand questioning, without the aid of an interpreter.
- Provides evaluation standards for the appointment of interpreters that must be complied with before the appointment, requires interpreters to take a special oath, and permits an interpreter to 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 include superintendents, board members, and employees of a county board of mental retardation and developmental disabilities, investigative agents contracted with by a county board, and employees of DMRDD.

