



## *Synopsis of House Committee Amendments\**

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### **Sub. S.B. 4**

125th General Assembly  
(H. Juvenile and Family Law)

Amendments adopted by the House committee modify the bill as passed by the Senate as follows:

#### **Patient endangerment**

Remove a provision requiring that the substantial risk that constitutes patient endangerment be the result of a violation of a duty of care, protection, or support.

Establish two new affirmative defenses to a charge of patient endangerment: one that the conduct was only committed because the actor was ordered to by a person with authority over the actor's conduct pursuant to a contract for services, and another for an actor who did not have a means to prevent the harm to or death of a person with mental retardation or a developmental disability ("person with MR/DD") readily available and took reasonable steps to summon aid.

Revise the penalties for patient endangerment by providing that if a violator has previously been convicted of or pleaded guilty to patient endangerment, it is a fourth degree felony and that if the violation results in serious physical harm to the person with MR/DD it is a third degree felony.

Specify that a person who owns, operates, or administers a care facility and personally provides care to persons with MR/DD qualifies as an MR/DD caretaker.

#### **MR/DD registry**

Remove provisions requiring the Department of Mental Retardation and Developmental Disabilities (DMRDD) to prepare a reasonable basis determination report and related provisions.

Provide that the disposition of a court proceeding or arbitration arising out of the same facts as the allegation resulting in a person's placement on the registry must be placed on the registry next to the person's name.

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

Permit DMRDD to proceed with an administrative hearing regarding an individual's placement on the registry even if there is a criminal proceeding concerning the same allegation pending if the prosecutor responsible for the criminal proceeding, after receiving notice, consents.

Specify that the misappropriation offense can involve the property of one or more persons with MR/DD and that the values of multiple items may be combined to reach the \$100 threshold and create a new category of misappropriation involving property such as checks and credit cards.

Provide that an MR/DD employee may be included in the registry for failure to make a mandatory report of abuse or neglect only if that failure is unreasonable and the employee knew or should have known that the failure would result in a substantial risk of harm to a person with MR/DD.

Eliminate existing law requiring a hearing officer to determine whether an MR/DD employee knowingly neglected a person with MR/DD.

Remove a provision of the bill requiring a hearing officer, when determining whether there is clear and convincing evidence that the MR/DD employee has committed any of the listed prohibited acts, to give weight to affirmative defenses, and instead require that the officer consider all relevant facts presented at the hearing.

Clarify that, when determining whether to place a person's name on the registry, the Director of DMRDD must consider all of the same things a hearing officer would.

Remove the bill's requirement that, if an MR/DD employee does not timely request an administrative hearing after being notified of the opportunity for one, DMRDD proceed as if a hearing had been conducted.

### **Emergency ex parte orders by telephone**

Provide that, to issue an emergency *ex parte* order by telephone, the court must receive notice from the county board of MR/DD or an authorized employee of that board.

Require that, to issue an *ex parte* order under these provisions, there must be reasonable cause to believe that (1) the adult who is the subject of the notice is eligible to receive services, and (2) there is a substantial risk to the adult of immediate physical harm or death.

Provide that an order cannot be issued under these provisions until the court is satisfied that reasonable efforts have been made to notify the adult and any person with whom the adult resides, unless the notification would jeopardize the physical or emotional safety of the adult or remove the adult from the court's jurisdiction.

Provide that an order issued under this provision is effective for 24 hours, unless the day following the issuance of the order is a weekend-day or holiday, in which case the order is effective until the next business day.

Require the county board or employee that provided notice to the court to file a complaint for services for the prevention, correction, or discontinuance of abuse, neglect, or condition resulting from abuse or neglect.

Permit the court to authorize the county board to arrange for the provision of protective services.

Provide that a temporary order issued at the hearing to determine whether there is probable cause for an order issued under these provisions is effective for 30 days, and may be renewed for an additional 30 days.

Provide that, if the county board has failed 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 DMRDD, and requires DMRDD to cause an investigation to be conducted regarding the notice within 24 hours and to provide assistance to the county board to provide for the health and safety of the adult.

Removes a provision requiring the involved county board to prepare, maintain, and file a protective services plan with the court.

### **Complaint for services**

Require that notice of the filing of a complaint be provided to all parties, the adult's legal counsel, and the Legal Rights Service.

Provide that all parties have the right to be present at the hearing, present evidence, and examine and cross-examine witnesses.

Provide that the Ohio Rules of Evidence apply to the hearing regarding the complaint.

Require that notice be provided to all parties if an *ex parte* order is requested, or if the court intends to issue one on its own motion, in a proceeding for services initiated by the filing of a complaint.

### **Closure of state facilities**

Establish procedures involving the creation of a State Facilities Closure Commission when the Governor proposes to close a state institutional facility for the purpose of expenditure reductions or budget cuts.

### **Sexual misconduct**

Prohibit an MR/DD employee from engaging in sexual conduct or having sexual contact with a person with MR/DD, other than the employee's spouse, for whom the employee is employed or under a contract to provide care.

Require mandatory reporters of abuse or neglect, and permits any other person, to report to DMRDD a belief that an MR/DD employee violated the prohibition against engaging in sexual conduct or having sexual contact with certain persons with MR/DD.

### **Review of major unusual incidents**

Authorize DMRDD to conduct, or request that certain entities conduct, an independent investigation or review of major unusual incidents reported to DMRDD.

Require DMRDD to conduct, or request that certain entities conduct, an independent investigation or review of a report of a major unusual incident concerning the health or safety of a person with MR/DD that involves an allegation that an employee of a county board of MR/DD created a substantial risk of serious physical harm to a person with MR/DD.

### **Notice to MR/DD employees**

Require certain employers to provide annual written notice to their MR/DD employees describing the conduct for which the employee may be placed on the registry and specify that the notice must be in a uniform form and manner proscribed by DMRDD.

Provide that the fact that an MR/DD employee does not receive the notice does not exempt the employee from inclusion in the registry.

### **Qualified immunity, causes of action**

Remove provisions providing immunity to employers who fail to hire or retain a person as an MR/DD employee because DMRDD has determined that there is a reasonable basis for an allegation contained in a report regarding that person.

Remove a provision specifying that the bill does not create a new cause of action against an employer who hires or retains a person as an MR/DD employee despite the fact that DMRDD has determined that there is a reasonable basis for an allegation contained in a report regarding that person.