

# AN ACT

To amend sections 1.02, 121.22, 121.37, 135.801, 145.01, 145.012, 145.298, 145.332, 149.431, 152.04, 173.25, 173.27, 173.38, 173.381, 305.07, 307.02, 313.12, 325.07, 711.23, 1751.01, 1751.14, 2101.17, 2101.24, 2108.521, 2109.01, 2111.01, 2111.10, 2111.49, 2151.011, 2151.281, 2151.353, 2151.414, 2151.415, 2151.421, 2151.425, 2151.651, 2152.02, 2152.12, 2152.14, 2152.51, 2152.52, 2152.54, 2152.56, 2152.811, 2305.111, 2311.14, 2317.021, 2503.37, 2721.05, 2744.01, 2901.13, 2903.341, 2905.32, 2907.24, 2919.23, 2929.01, 2929.04, 2929.06, 2930.061, 2930.16, 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, 2945.482, 2945.491, 2949.29, 2950.01, 2951.041, 2967.22, 3107.02, 3301.52, 3301.53, 3301.55, 3301.57, 3301.58, 3314.022, 3317.02, 3317.024, 3317.03, 3317.032, 3317.07, 3317.15, 3317.20, 3323.01, 3323.02, 3323.021, 3323.03, 3323.04, 3323.05, 3323.09, 3323.091, 3323.12, 3323.141, 3323.142, 3701.881, 3707.20, 3721.01, 3763.06, 3791.031, 3923.24, 3923.241, 4112.01, 4303.272, 4399.05, 4723.071, 4757.41, 4971.16, 5101.46, 5103.02, 5119.44, 5120.051, 5120.11, 5120.17, 5120.173, 5121.04, 5122.01, 5123.01, 5123.012, 5123.014, 5123.02, 5123.03, 5123.033, 5123.04, 5123.044, 5123.0410, 5123.0412, 5123.0413, 5123.0417, 5123.0418, 5123.081, 5123.092, 5123.093, 5123.122, 5123.165, 5123.169, 5123.17, 5123.171, 5123.18, 5123.19, 5123.196, 5123.20, 5123.27, 5123.34, 5123.35, 5123.351, 5123.36, 5123.37, 5123.374, 5123.375, 5123.40, 5123.41, 5123.42, 5123.421, 5123.422, 5123.43, 5123.44, 5123.441, 5123.45, 5123.451, 5123.47, 5123.50, 5123.51, 5123.52, 5123.541, 5123.542, 5123.55, 5123.57, 5123.58, 5123.601, 5123.61, 5123.611, 5123.612, 5123.614, 5123.62, 5123.63, 5123.64, 5123.65, 5123.651, 5123.67, 5123.69, 5123.701, 5123.71, 5123.74, 5123.75, 5123.76, 5123.79, 5123.80, 5123.81, 5123.82, 5123.83, 5123.84, 5123.85, 5123.86, 5123.87, 5123.88, 5123.89, 5123.91, 5123.92, 5123.93, 5123.95, 5123.96, 5123.99, 5126.01, 5126.022, 5126.023, 5126.04, 5126.041, 5126.042, 5126.043, 5126.046, 5126.05, 5126.051, 5126.054, 5126.055, 5126.058, 5126.059, 5126.0510, 5126.08, 5126.082, 5126.11, 5126.15, 5126.22, 5126.25, 5126.30, 5126.31, 5126.33, 5126.333, 5126.40, 5126.46, 5126.49, 5126.52, 5126.55, 5126.58, 5139.06, 5139.08, 5139.12, 5139.27, 5139.39, 5139.54, 5164.25, 5164.342, 5164.881, 5165.01, 5166.20, 5166.21, 5166.22, 5168.68, 5301.22, 5305.17, 5307.19, 5310.12, 5321.01, 5705.05, 5705.091, 5705.19, 5705.222, 5709.40, 5709.73, 5709.78, 5711.07, 5747.03, 5815.28, and 5815.35 of the Revised Code to replace

provisions containing the term "mental retardation" and its derivatives with corresponding provisions containing the term "intellectual disability" and its derivatives and to specify that an intellectual disability is a form of developmental disability.

*Be it enacted by the General Assembly of the State of Ohio:*

**SECTION 1.** That sections 1.02, 121.22, 121.37, 135.801, 145.01, 145.012, 145.298, 145.332, 149.431, 152.04, 173.25, 173.27, 173.38, 173.381, 305.07, 307.02, 313.12, 325.07, 711.23, 1751.01, 1751.14, 2101.17, 2101.24, 2108.521, 2109.01, 2111.01, 2111.10, 2111.49, 2151.011, 2151.281, 2151.353, 2151.414, 2151.415, 2151.421, 2151.425, 2151.651, 2152.02, 2152.12, 2152.14, 2152.51, 2152.52, 2152.54, 2152.56, 2152.811, 2305.111, 2311.14, 2317.021, 2503.37, 2721.05, 2744.01, 2901.13, 2903.341, 2905.32, 2907.24, 2919.23, 2929.01, 2929.04, 2929.06, 2930.061, 2930.16, 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, 2945.482, 2945.491, 2949.29, 2950.01, 2951.041, 2967.22, 3107.02, 3301.52, 3301.53, 3301.55, 3301.57, 3301.58, 3314.022, 3317.02, 3317.024, 3317.03, 3317.032, 3317.07, 3317.15, 3317.20, 3323.01, 3323.02, 3323.021, 3323.03, 3323.04, 3323.05, 3323.09, 3323.091, 3323.12, 3323.141, 3323.142, 3701.881, 3707.20, 3721.01, 3763.06, 3791.031, 3923.24, 3923.241, 4112.01, 4303.272, 4399.05, 4723.071, 4757.41, 4971.16, 5101.46, 5103.02, 5119.44, 5120.051, 5120.11, 5120.17, 5120.173, 5121.04, 5122.01, 5123.01, 5123.012, 5123.041, 5123.02, 5123.03, 5123.033, 5123.04, 5123.044, 5123.0410, 5123.0412, 5123.0413, 5123.0417, 5123.0418, 5123.081, 5123.092, 5123.093, 5123.122, 5123.165, 5123.169, 5123.17, 5123.171, 5123.18, 5123.19, 5123.196, 5123.20, 5123.27, 5123.34, 5123.35, 5123.351, 5123.36, 5123.37, 5123.374, 5123.375, 5123.40, 5123.41, 5123.42, 5123.421, 5123.422, 5123.43, 5123.44, 5123.441, 5123.45, 5123.451, 5123.47, 5123.50, 5123.51, 5123.52, 5123.541, 5123.542, 5123.55, 5123.57, 5123.58, 5123.601, 5123.61, 5123.611, 5123.612, 5123.614, 5123.62, 5123.63, 5123.64, 5123.65, 5123.651, 5123.67, 5123.69, 5123.701, 5123.71, 5123.74, 5123.75, 5123.76, 5123.79, 5123.80, 5123.81, 5123.82, 5123.83, 5123.84, 5123.85, 5123.86, 5123.87, 5123.88, 5123.89, 5123.91, 5123.92, 5123.93, 5123.95, 5123.96, 5123.99, 5126.01, 5126.022, 5126.023, 5126.04, 5126.041, 5126.042, 5126.043, 5126.046, 5126.05, 5126.051, 5126.054, 5126.055, 5126.058, 5126.059, 5126.0510, 5126.08, 5126.082, 5126.11, 5126.15, 5126.22, 5126.25, 5126.30, 5126.31, 5126.33, 5126.333, 5126.40, 5126.46, 5126.49, 5126.52, 5126.55, 5126.58, 5139.06, 5139.08, 5139.12, 5139.27, 5139.39, 5139.54, 5164.25, 5164.342, 5164.881, 5165.01, 5166.20, 5166.21, 5166.22, 5168.68, 5301.22, 5305.17, 5307.19, 5310.12, 5321.01, 5705.05, 5705.091, 5705.19, 5705.222, 5709.40, 5709.73, 5709.78, 5711.07, 5747.03, 5815.28, and 5815.35 of the Revised Code be amended to read as follows:

**Sec. 1.02.** As used in the Revised Code, unless the context otherwise requires:

(A) "Whoever" includes all persons, natural and artificial; partners; principals, agents, and employees; and all officials, public or private.

(B) "Another," when used to designate the owner of property which is the subject of an offense, includes not only natural persons but also every other owner of property.

(C) "Of unsound mind" includes all forms of ~~mental retardation or derangement or~~ intellectual disability.

(D) "Bond" includes an undertaking.

(E) "Undertaking" includes a bond.

(F) "And" may be read "or," and "or" may be read "and" if the sense requires it.

(G) "Registered mail" includes certified mail and "certified mail" includes registered mail.

**Sec. 121.22.** (A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

(B) As used in this section:

(1) "Public body" means any of the following:

(a) Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;

(b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section;

(c) A court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district pursuant to section 6115.10 of the Revised Code, if applicable, or for any other matter related to such a district other than litigation involving the district. As used in division (B)(1)(c) of this section, "court of jurisdiction" has the same meaning as "court" in section 6115.01 of the Revised Code.

(2) "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.

(3) "Regulated individual" means either of the following:

(a) A student in a state or local public educational institution;

(b) A person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness ~~or retardation~~, an intellectual disability, disease, disability, age, or other condition requiring custodial care.

(4) "Public office" has the same meaning as in section 149.011 of the Revised Code.

(C) All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section.

(D) This section does not apply to any of the following:

(1) A grand jury;

(2) An audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit;

(3) The adult parole authority when its hearings are conducted at a correctional institution for the sole purpose of interviewing inmates to determine parole or pardon;

(4) The organized crime investigations commission established under section 177.01 of the Revised Code;

(5) Meetings of a child fatality review board established under section 307.621 of the Revised Code, meetings related to a review conducted pursuant to guidelines established by the director of health under section 3701.70 of the Revised Code, and meetings conducted pursuant to sections 5153.171 to 5153.173 of the Revised Code;

(6) The state medical board when determining whether to suspend a certificate without a prior hearing pursuant to division (G) of either section 4730.25 or 4731.22 of the Revised Code;

(7) The board of nursing when determining whether to suspend a license or certificate without a prior hearing pursuant to division (B) of section 4723.281 of the Revised Code;

(8) The state board of pharmacy when determining whether to suspend a license without a prior hearing pursuant to division (D) of section 4729.16 of the Revised Code;

(9) The state chiropractic board when determining whether to suspend a license without a hearing pursuant to section 4734.37 of the Revised Code;

(10) The executive committee of the emergency response commission when determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce Chapter 3750. of the Revised Code;

(11) The board of directors of the nonprofit corporation formed under section 187.01 of the Revised Code or any committee thereof, and the board of directors of any subsidiary of that corporation or a committee thereof;

(12) An audit conference conducted by the audit staff of the department of job and family services with officials of the public office that is the subject of that audit under section 5101.37 of the Revised Code;

(13) The occupational therapy section of the occupational therapy, physical therapy, and athletic trainers board when determining whether to suspend a license or limited permit without a hearing pursuant to division (D) of section 4755.11 of the Revised Code;

(14) The physical therapy section of the occupational therapy, physical therapy, and athletic trainers board when determining whether to suspend a license without a hearing pursuant to division (E) of section 4755.47 of the Revised Code;

(15) The athletic trainers section of the occupational therapy, physical therapy, and athletic trainers board when determining whether to suspend a license without a hearing pursuant to division (D) of section 4755.64 of the Revised Code.

(E) The controlling board, the tax credit authority, or the minority development financing advisory board, when meeting to consider granting assistance pursuant to Chapter 122. or 166. of the Revised Code, in order to protect the interest of the applicant or the possible investment of public funds, by unanimous vote of all board or authority members present, may close the meeting during consideration of the following information confidentially received by the authority or board from the applicant:

- (1) Marketing plans;
- (2) Specific business strategy;
- (3) Production techniques and trade secrets;
- (4) Financial projections;

(5) Personal financial statements of the applicant or members of the applicant's immediate family, including, but not limited to, tax records or other similar information not open to public inspection.

The vote by the authority or board to accept or reject the application, as well as all proceedings of the authority or board not subject to this division, shall be open to the public and governed by this section.

(F) Every public body, by rule, shall establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting.

The rule shall provide that any person, upon request and payment of a reasonable fee, may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. Provisions for advance notification may include, but are not limited to, mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person.

(G) Except as provided in divisions (G)(8) and (J) of this section, the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

(1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office. If a public body holds an executive session pursuant to division (G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

(2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use division (G)(2) of this section as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.

If the minutes of the public body show that all meetings and deliberations of the public body have been conducted in compliance with this section, any instrument executed by the public body

purporting to convey, lease, or otherwise dispose of any right, title, or interest in any public property shall be conclusively presumed to have been executed in compliance with this section insofar as title or other interest of any bona fide purchasers, lessees, or transferees of the property is concerned.

(3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action;

(4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;

(5) Matters required to be kept confidential by federal law or regulations or state statutes;

(6) Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office;

(7) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code, a joint township hospital operated pursuant to Chapter 513. of the Revised Code, or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, to consider trade secrets, as defined in section 1333.61 of the Revised Code;

(8) To consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(a) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

(b) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project.

If a public body holds an executive session to consider any of the matters listed in divisions (G)(2) to (8) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session.

A public body specified in division (B)(1)(c) of this section shall not hold an executive session when meeting for the purposes specified in that division.

(H) A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section. A resolution, rule, or formal action adopted in an open meeting is invalid if the public body that adopted the resolution, rule, or formal action violated division (F) of this section.

(I)(1) Any person may bring an action to enforce this section. An action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened

violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

(2)(a) If the court of common pleas issues an injunction pursuant to division (I)(1) of this section, the court shall order the public body that it enjoins to pay a civil forfeiture of five hundred dollars to the party that sought the injunction and shall award to that party all court costs and, subject to reduction as described in division (I)(2) of this section, reasonable attorney's fees. The court, in its discretion, may reduce an award of attorney's fees to the party that sought the injunction or not award attorney's fees to that party if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of violation or threatened violation that was the basis of the injunction, a well-informed public body reasonably would believe that the public body was not violating or threatening to violate this section;

(ii) That a well-informed public body reasonably would believe that the conduct or threatened conduct that was the basis of the injunction would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(b) If the court of common pleas does not issue an injunction pursuant to division (I)(1) of this section and the court determines at that time that the bringing of the action was frivolous conduct, as defined in division (A) of section 2323.51 of the Revised Code, the court shall award to the public body all court costs and reasonable attorney's fees, as determined by the court.

(3) Irreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed upon proof of a violation or threatened violation of this section.

(4) A member of a public body who knowingly violates an injunction issued pursuant to division (I)(1) of this section may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the attorney general.

(J)(1) Pursuant to division (C) of section 5901.09 of the Revised Code, a veterans service commission shall hold an executive session for one or more of the following purposes unless an applicant requests a public hearing:

(a) Interviewing an applicant for financial assistance under sections 5901.01 to 5901.15 of the Revised Code;

(b) Discussing applications, statements, and other documents described in division (B) of section 5901.09 of the Revised Code;

(c) Reviewing matters relating to an applicant's request for financial assistance under sections 5901.01 to 5901.15 of the Revised Code.

(2) A veterans service commission shall not exclude an applicant for, recipient of, or former recipient of financial assistance under sections 5901.01 to 5901.15 of the Revised Code, and shall not exclude representatives selected by the applicant, recipient, or former recipient, from a meeting that the commission conducts as an executive session that pertains to the applicant's, recipient's, or former recipient's application for financial assistance.

(3) A veterans service commission shall vote on the grant or denial of financial assistance under sections 5901.01 to 5901.15 of the Revised Code only in an open meeting of the commission.

The minutes of the meeting shall indicate the name, address, and occupation of the applicant, whether the assistance was granted or denied, the amount of the assistance if assistance is granted, and the votes for and against the granting of assistance.

**Sec. 121.37.** (A)(1) There is hereby created the Ohio family and children first cabinet council. The council shall be composed of the superintendent of public instruction, the executive director of the opportunities for Ohioans with disabilities agency, the medicaid director, and the directors of youth services, job and family services, mental health and addiction services, health, developmental disabilities, aging, rehabilitation and correction, and budget and management. The chairperson of the council shall be the governor or the governor's designee and shall establish procedures for the council's internal control and management.

The purpose of the cabinet council is to help families seeking government services. This section shall not be interpreted or applied to usurp the role of parents, but solely to streamline and coordinate existing government services for families seeking assistance for their children.

(2) In seeking to fulfill its purpose, the council may do any of the following:

(a) Advise and make recommendations to the governor and general assembly regarding the provision of services to children;

(b) Advise and assess local governments on the coordination of service delivery to children;

(c) Hold meetings at such times and places as may be prescribed by the council's procedures and maintain records of the meetings, except that records identifying individual children are confidential and shall be disclosed only as provided by law;

(d) Develop programs and projects, including pilot projects, to encourage coordinated efforts at the state and local level to improve the state's social service delivery system;

(e) Enter into contracts with and administer grants to county family and children first councils, as well as other county or multicounty organizations to plan and coordinate service delivery between state agencies and local service providers for families and children;

(f) Enter into contracts with and apply for grants from federal agencies or private organizations;

(g) Enter into interagency agreements to encourage coordinated efforts at the state and local level to improve the state's social service delivery system. The agreements may include provisions regarding the receipt, transfer, and expenditure of funds;

(h) Identify public and private funding sources for services provided to alleged or adjudicated unruly children and children who are at risk of being alleged or adjudicated unruly children, including regulations governing access to and use of the services;

(i) Collect information provided by local communities regarding successful programs for prevention, intervention, and treatment of unruly behavior, including evaluations of the programs;

(j) Identify and disseminate publications regarding alleged or adjudicated unruly children and children who are at risk of being alleged or adjudicated unruly children and regarding programs serving those types of children;

(k) Maintain an inventory of strategic planning facilitators for use by government or nonprofit entities that serve alleged or adjudicated unruly children or children who are at risk of being alleged or adjudicated unruly children.

(3) The cabinet council shall provide for the following:

(a) Reviews of service and treatment plans for children for which such reviews are requested;  
(b) Assistance as the council determines to be necessary to meet the needs of children referred by county family and children first councils;

(c) Monitoring and supervision of a statewide, comprehensive, coordinated, multi-disciplinary, interagency system for infants and toddlers with developmental disabilities or delays and their families, as established pursuant to federal grants received and administered by the department of health for early intervention services under the "Individuals with Disabilities Education Act of 2004," 118 Stat. 2744, 20 U.S.C.A. 1400, as amended.

(4) The cabinet council shall develop and implement the following:

(a) An interagency process to select the indicators that will be used to measure progress toward increasing child well-being in the state and to update the indicators on an annual basis. The indicators shall focus on expectant parents and newborns thriving; infants and toddlers thriving; children being ready for school; children and youth succeeding in school; youth choosing healthy behaviors; and youth successfully transitioning into adulthood.

(b) An interagency system to offer guidance and monitor progress toward increasing child well-being in the state and in each county;

(c) An annual plan that identifies state-level agency efforts taken to ensure progress towards increasing child well-being in the state.

On an annual basis, the cabinet council shall submit to the governor and the general assembly a report on the status of efforts to increase child well-being in the state. This report shall be made available to any other person on request.

(B)(1) Each board of county commissioners shall establish a county family and children first council. The board may invite any local public or private agency or group that funds, advocates, or provides services to children and families to have a representative become a permanent or temporary member of its county council. Each county council must include the following individuals:

(a) At least three individuals who are not employed by an agency represented on the council and whose families are or have received services from an agency represented on the council or another county's council. Where possible, the number of members representing families shall be equal to twenty per cent of the council's membership.

(b) The director of the board of alcohol, drug addiction, and mental health services that serves the county, or, in the case of a county that has a board of alcohol and drug addiction services and a community mental health board, the directors of both boards. If a board of alcohol, drug addiction, and mental health services covers more than one county, the director may designate a person to participate on the county's council.

(c) The health commissioner, or the commissioner's designee, of the board of health of each city and general health district in the county. If the county has two or more health districts, the health commissioner membership may be limited to the commissioners of the two districts with the largest populations.

(d) The director of the county department of job and family services;

(e) The executive director of the public children services agency;

(f) The superintendent of the county board of developmental disabilities or, if the superintendent serves as superintendent of more than one county board of developmental disabilities,

the superintendent's designee;

(g) The superintendent of the city, exempted village, or local school district with the largest number of pupils residing in the county, as determined by the department of education, which shall notify each board of county commissioners of its determination at least biennially;

(h) A school superintendent representing all other school districts with territory in the county, as designated at a biennial meeting of the superintendents of those districts;

(i) A representative of the municipal corporation with the largest population in the county;

(j) The president of the board of county commissioners or an individual designated by the board;

(k) A representative of the regional office of the department of youth services;

(l) A representative of the county's head start agencies, as defined in section 3301.32 of the Revised Code;

(m) A representative of the county's early intervention collaborative established pursuant to the federal early intervention program operated under the "Individuals with Disabilities Education Act of 2004";

(n) A representative of a local nonprofit entity that funds, advocates, or provides services to children and families.

Notwithstanding any other provision of law, the public members of a county council are not prohibited from serving on the council and making decisions regarding the duties of the council, including those involving the funding of joint projects and those outlined in the county's service coordination mechanism implemented pursuant to division (C) of this section.

The cabinet council shall establish a state appeals process to resolve disputes among the members of a county council concerning whether reasonable responsibilities as members are being shared. The appeals process may be accessed only by a majority vote of the council members who are required to serve on the council. Upon appeal, the cabinet council may order that state funds for services to children and families be redirected to a county's board of county commissioners.

The county's juvenile court judge senior in service or another judge of the juvenile court designated by the administrative judge or, where there is no administrative judge, by the judge senior in service shall serve as the judicial advisor to the county family and children first council. The judge may advise the county council on the court's utilization of resources, services, or programs provided by the entities represented by the members of the county council and how those resources, services, or programs assist the court in its administration of justice. Service of a judge as a judicial advisor pursuant to this section is a judicial function.

(2) The purpose of the county council is to streamline and coordinate existing government services for families seeking services for their children. In seeking to fulfill its purpose, a county council shall provide for the following:

(a) Referrals to the cabinet council of those children for whom the county council cannot provide adequate services;

(b) Development and implementation of a process that annually evaluates and prioritizes services, fills service gaps where possible, and invents new approaches to achieve better results for families and children;

(c) Participation in the development of a countywide, comprehensive, coordinated, multi-

disciplinary, interagency system for infants and toddlers with developmental disabilities or delays and their families, as established pursuant to federal grants received and administered by the department of health for early intervention services under the "Individuals with Disabilities Education Act of 2004";

(d) Maintenance of an accountability system to monitor the county council's progress in achieving results for families and children;

(e) Establishment of a mechanism to ensure ongoing input from a broad representation of families who are receiving services within the county system.

(3) A county council shall develop and implement the following:

(a) An interagency process to establish local indicators and monitor the county's progress toward increasing child well-being in the county;

(b) An interagency process to identify local priorities to increase child well-being. The local priorities shall focus on expectant parents and newborns thriving; infants and toddlers thriving; children being ready for school; children and youth succeeding in school; youth choosing healthy behaviors; and youth successfully transitioning into adulthood and take into account the indicators established by the cabinet council under division (A)(4)(a) of this section.

(c) An annual plan that identifies the county's interagency efforts to increase child well-being in the county.

On an annual basis, the county council shall submit a report on the status of efforts by the county to increase child well-being in the county to the county's board of county commissioners and the cabinet council. This report shall be made available to any other person on request.

(4)(a) Except as provided in division (B)(4)(b) of this section, a county council shall comply with the policies, procedures, and activities prescribed by the rules or interagency agreements of a state department participating on the cabinet council whenever the county council performs a function subject to those rules or agreements.

(b) On application of a county council, the cabinet council may grant an exemption from any rules or interagency agreements of a state department participating on the council if an exemption is necessary for the council to implement an alternative program or approach for service delivery to families and children. The application shall describe the proposed program or approach and specify the rules or interagency agreements from which an exemption is necessary. The cabinet council shall approve or disapprove the application in accordance with standards and procedures it shall adopt. If an application is approved, the exemption is effective only while the program or approach is being implemented, including a reasonable period during which the program or approach is being evaluated for effectiveness.

(5)(a) Each county council shall designate an administrative agent for the council from among the following public entities: the board of alcohol, drug addiction, and mental health services, including a board of alcohol and drug addiction or a community mental health board if the county is served by separate boards; the board of county commissioners; any board of health of the county's city and general health districts; the county department of job and family services; the county agency responsible for the administration of children services pursuant to section 5153.15 of the Revised Code; the county board of developmental disabilities; any of the county's boards of education or governing boards of educational service centers; or the county's juvenile court. Any of the foregoing

public entities, other than the board of county commissioners, may decline to serve as the council's administrative agent.

A county council's administrative agent shall serve as the council's appointing authority for any employees of the council. The council shall file an annual budget with its administrative agent, with copies filed with the county auditor and with the board of county commissioners, unless the board is serving as the council's administrative agent. The council's administrative agent shall ensure that all expenditures are handled in accordance with policies, procedures, and activities prescribed by state departments in rules or interagency agreements that are applicable to the council's functions.

The administrative agent of a county council shall send notice of a member's absence if a member listed in division (B)(1) of this section has been absent from either three consecutive meetings of the county council or a county council subcommittee, or from one-quarter of such meetings in a calendar year, whichever is less. The notice shall be sent to the board of county commissioners that establishes the county council and, for the members listed in divisions (B)(1)(b), (c), (e), and (l) of this section, to the governing board overseeing the respective entity; for the member listed in division (B)(1)(f) of this section, to the county board of developmental disabilities that employs the superintendent; for a member listed in division (B)(1)(g) or (h) of this section, to the school board that employs the superintendent; for the member listed in division (B)(1)(i) of this section, to the mayor of the municipal corporation; for the member listed in division (B)(1)(k) of this section, to the director of youth services; and for the member listed in division (B)(1)(n) of this section, to that member's board of trustees.

The administrative agent for a county council may do any of the following on behalf of the council:

(i) Enter into agreements or administer contracts with public or private entities to fulfill specific council business. Such agreements and contracts are exempt from the competitive bidding requirements of section 307.86 of the Revised Code if they have been approved by the county council and they are for the purchase of family and child welfare or child protection services or other social or job and family services for families and children. The approval of the county council is not required to exempt agreements or contracts entered into under section 5139.34, 5139.41, or 5139.43 of the Revised Code from the competitive bidding requirements of section 307.86 of the Revised Code.

(ii) As determined by the council, provide financial stipends, reimbursements, or both, to family representatives for expenses related to council activity;

(iii) Receive by gift, grant, devise, or bequest any moneys, lands, or other property for the purposes for which the council is established. The agent shall hold, apply, and dispose of the moneys, lands, or other property according to the terms of the gift, grant, devise, or bequest. Any interest or earnings shall be treated in the same manner and are subject to the same terms as the gift, grant, devise, or bequest from which it accrues.

(b)(i) If the county council designates the board of county commissioners as its administrative agent, the board may, by resolution, delegate any of its powers and duties as administrative agent to an executive committee the board establishes from the membership of the county council. The board shall name to the executive committee at least the individuals described in divisions (B)(1)(b) to (h) of this section and may appoint the president of the board or another

individual as the chair of the executive committee. The executive committee must include at least one family county council representative who does not have a family member employed by an agency represented on the council.

(ii) The executive committee may, with the approval of the board, hire an executive director to assist the county council in administering its powers and duties. The executive director shall serve in the unclassified civil service at the pleasure of the executive committee. The executive director may, with the approval of the executive committee, hire other employees as necessary to properly conduct the county council's business.

(iii) The board may require the executive committee to submit an annual budget to the board for approval and may amend or repeal the resolution that delegated to the executive committee its authority as the county council's administrative agent.

(6) Two or more county councils may enter into an agreement to administer their county councils jointly by creating a regional family and children first council. A regional council possesses the same duties and authority possessed by a county council, except that the duties and authority apply regionally rather than to individual counties. Prior to entering into an agreement to create a regional council, the members of each county council to be part of the regional council shall meet to determine whether all or part of the members of each county council will serve as members of the regional council.

(7) A board of county commissioners may approve a resolution by a majority vote of the board's members that requires the county council to submit a statement to the board each time the council proposes to enter into an agreement, adopt a plan, or make a decision, other than a decision pursuant to section 121.38 of the Revised Code, that requires the expenditure of funds for two or more families. The statement shall describe the proposed agreement, plan, or decision.

Not later than fifteen days after the board receives the statement, it shall, by resolution approved by a majority of its members, approve or disapprove the agreement, plan, or decision. Failure of the board to pass a resolution during that time period shall be considered approval of the agreement, plan, or decision.

An agreement, plan, or decision for which a statement is required to be submitted to the board shall be implemented only if it is approved by the board.

(C) Each county shall develop a county service coordination mechanism. The county service coordination mechanism shall serve as the guiding document for coordination of services in the county. For children who also receive services under the help me grow program, the service coordination mechanism shall be consistent with rules adopted by the department of health under section 3701.61 of the Revised Code. All family service coordination plans shall be developed in accordance with the county service coordination mechanism. The mechanism shall be developed and approved with the participation of the county entities representing child welfare; ~~mental retardation and developmental disabilities~~; alcohol, drug addiction, and mental health services; health; juvenile judges; education; the county family and children first council; and the county early intervention collaborative established pursuant to the federal early intervention program operated under the "Individuals with Disabilities Education Act of 2004." The county shall establish an implementation schedule for the mechanism. The cabinet council may monitor the implementation and administration of each county's service coordination mechanism.

Each mechanism shall include all of the following:

(1) A procedure for an agency, including a juvenile court, or a family voluntarily seeking service coordination, to refer the child and family to the county council for service coordination in accordance with the mechanism;

(2) A procedure ensuring that a family and all appropriate staff from involved agencies, including a representative from the appropriate school district, are notified of and invited to participate in all family service coordination plan meetings;

(3) A procedure that permits a family to initiate a meeting to develop or review the family's service coordination plan and allows the family to invite a family advocate, mentor, or support person of the family's choice to participate in any such meeting;

(4) A procedure for ensuring that a family service coordination plan meeting is conducted for each child who receives service coordination under the mechanism and for whom an emergency out-of-home placement has been made or for whom a nonemergency out-of-home placement is being considered. The meeting shall be conducted within ten days of an emergency out-of-home placement. The meeting shall be conducted before a nonemergency out-of-home placement. The family service coordination plan shall outline how the county council members will jointly pay for services, where applicable, and provide services in the least restrictive environment.

(5) A procedure for monitoring the progress and tracking the outcomes of each service coordination plan requested in the county including monitoring and tracking children in out-of-home placements to assure continued progress, appropriateness of placement, and continuity of care after discharge from placement with appropriate arrangements for housing, treatment, and education;

(6) A procedure for protecting the confidentiality of all personal family information disclosed during service coordination meetings or contained in the comprehensive family service coordination plan;

(7) A procedure for assessing the needs and strengths of any child or family that has been referred to the council for service coordination, including a child whose parent or custodian is voluntarily seeking services, and for ensuring that parents and custodians are afforded the opportunity to participate;

(8) A procedure for development of a family service coordination plan described in division (D) of this section;

(9) A local dispute resolution process to serve as the process that must be used first to resolve disputes among the agencies represented on the county council concerning the provision of services to children, including children who are abused, neglected, dependent, unruly, alleged unruly, or delinquent children and under the jurisdiction of the juvenile court and children whose parents or custodians are voluntarily seeking services. The local dispute resolution process shall comply with sections 121.38, 121.381, and 121.382 of the Revised Code. The local dispute resolution process shall be used to resolve disputes between a child's parents or custodians and the county council regarding service coordination. The county council shall inform the parents or custodians of their right to use the dispute resolution process. Parents or custodians shall use existing local agency grievance procedures to address disputes not involving service coordination. The dispute resolution process is in addition to and does not replace other rights or procedures that parents or custodians may have under other sections of the Revised Code.

The cabinet council shall adopt rules in accordance with Chapter 119. of the Revised Code establishing an administrative review process to address problems that arise concerning the operation of a local dispute resolution process.

Nothing in division (C)(4) of this section shall be interpreted as overriding or affecting decisions of a juvenile court regarding an out-of-home placement, long-term placement, or emergency out-of-home placement.

(D) Each county shall develop a family service coordination plan that does all of the following:

(1) Designates service responsibilities among the various state and local agencies that provide services to children and their families, including children who are abused, neglected, dependent, unruly, or delinquent children and under the jurisdiction of the juvenile court and children whose parents or custodians are voluntarily seeking services;

(2) Designates an individual, approved by the family, to track the progress of the family service coordination plan, schedule reviews as necessary, and facilitate the family service coordination plan meeting process;

(3) Ensures that assistance and services to be provided are responsive to the strengths and needs of the family, as well as the family's culture, race, and ethnic group, by allowing the family to offer information and suggestions and participate in decisions. Identified assistance and services shall be provided in the least restrictive environment possible.

(4) Includes a process for dealing with a child who is alleged to be an unruly child. The process shall include methods to divert the child from the juvenile court system;

(5) Includes timelines for completion of goals specified in the plan with regular reviews scheduled to monitor progress toward those goals;

(6) Includes a plan for dealing with short-term crisis situations and safety concerns.

(E)(1) The process provided for under division (D)(4) of this section may include, but is not limited to, the following:

(a) Designation of the person or agency to conduct the assessment of the child and the child's family as described in division (C)(7) of this section and designation of the instrument or instruments to be used to conduct the assessment;

(b) An emphasis on the personal responsibilities of the child and the parental responsibilities of the parents, guardian, or custodian of the child;

(c) Involvement of local law enforcement agencies and officials.

(2) The method to divert a child from the juvenile court system that must be included in the service coordination process may include, but is not limited to, the following:

(a) The preparation of a complaint under section 2151.27 of the Revised Code alleging that the child is an unruly child and notifying the child and the parents, guardian, or custodian that the complaint has been prepared to encourage the child and the parents, guardian, or custodian to comply with other methods to divert the child from the juvenile court system;

(b) Conducting a meeting with the child, the parents, guardian, or custodian, and other interested parties to determine the appropriate methods to divert the child from the juvenile court system;

(c) A method to provide to the child and the child's family a short-term respite from a short-

term crisis situation involving a confrontation between the child and the parents, guardian, or custodian;

(d) A program to provide a mentor to the child or the parents, guardian, or custodian;

(e) A program to provide parenting education to the parents, guardian, or custodian;

(f) An alternative school program for children who are truant from school, repeatedly disruptive in school, or suspended or expelled from school;

(g) Other appropriate measures, including, but not limited to, any alternative methods to divert a child from the juvenile court system that are identified by the Ohio family and children first cabinet council.

(F) Each county may review and revise the service coordination process described in division (D) of this section based on the availability of funds under Title IV-A of the "Social Security Act," 110 Stat. 2113 (1996), 42 U.S.C.A. 601, as amended, or to the extent resources are available from any other federal, state, or local funds.

**Sec. 135.801.** (A) As used in sections 135.801 to 135.803 of the Revised Code, "eligible lending institution," "eligible organization," "investing authority," "residential facility," and "residential facility linked deposit program" have the same meanings as in section 5126.51 of the Revised Code.

(B) The board of county commissioners may adopt a resolution implementing a residential facility linked deposit program under sections 5126.51 to 5126.62 of the Revised Code if it finds each of the following:

(1) The county board of developmental disabilities has adopted a resolution under section 5126.49 of the Revised Code.

(2) There is a shortage of residential facilities in the county for individuals with ~~mental retardation~~ or developmental disabilities.

(3) Eligible organizations, otherwise willing and able to develop residential facilities in the county, have been unable to do so because of high interest rates.

(4) Placement of residential facility linked deposits will assist in financing the development of residential facilities in the county that otherwise would not be developed because of high interest rates.

(5) Public moneys of the county are available for purposes of the residential facility linked deposit program.

(6) At least one eligible lending institution has an office located within the territorial limits of the county into which the board may deposit the public moneys of the county.

**Sec. 145.01.** As used in this chapter:

(A) "Public employee" means:

(1) Any person holding an office, not elective, under the state or any county, township, municipal corporation, park district, conservancy district, sanitary district, health district, metropolitan housing authority, state retirement board, Ohio history connection, public library, county law library, union cemetery, joint hospital, institutional commissary, state university, or board, bureau, commission, council, committee, authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in division (A)(1) of this section, or employed and paid in whole or in part

by the state or any of the authorities named in division (A)(1) of this section in any capacity not covered by section 742.01, 3307.01, 3309.01, or 5505.01 of the Revised Code.

(2) A person who is a member of the public employees retirement system and who continues to perform the same or similar duties under the direction of a contractor who has contracted to take over what before the date of the contract was a publicly operated function. The governmental unit with which the contract has been made shall be deemed the employer for the purposes of administering this chapter.

(3) Any person who is an employee of a public employer, notwithstanding that the person's compensation for that employment is derived from funds of a person or entity other than the employer. Credit for such service shall be included as total service credit, provided that the employee makes the payments required by this chapter, and the employer makes the payments required by sections 145.48 and 145.51 of the Revised Code.

(4) A person who elects in accordance with section 145.015 of the Revised Code to remain a contributing member of the public employees retirement system.

(5) A person who is an employee of the legal rights service on September 30, 2012, and continues to be employed by the nonprofit entity established under Section 319.20 of Am. Sub. H.B. 153 of the 129th general assembly. The nonprofit entity is the employer for the purpose of this chapter.

In all cases of doubt, the public employees retirement board shall determine under section 145.036, 145.037, or 145.038 of the Revised Code whether any person is a public employee, and its decision is final.

(B) "Member" means any public employee, other than a public employee excluded or exempted from membership in the retirement system by section 145.03, 145.031, 145.032, 145.033, 145.034, 145.035, or 145.38 of the Revised Code. "Member" includes a PERS retirant who becomes a member under division (C) of section 145.38 of the Revised Code. "Member" also includes a disability benefit recipient.

(C) "Head of the department" means the elective or appointive head of the several executive, judicial, and administrative departments, institutions, boards, and commissions of the state and local government as the same are created and defined by the laws of this state or, in case of a charter government, by that charter.

(D) "Employer" or "public employer" means the state or any county, township, municipal corporation, park district, conservancy district, sanitary district, health district, metropolitan housing authority, state retirement board, Ohio history connection, public library, county law library, union cemetery, joint hospital, institutional commissary, state medical university, state university, or board, bureau, commission, council, committee, authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in this division not covered by section 742.01, 3307.01, 3309.01, or 5505.01 of the Revised Code. In addition, "employer" means the employer of any public employee.

(E) "Prior military service" also means all service credited for active duty with the armed forces of the United States as provided in section 145.30 of the Revised Code.

(F) "Contributor" means any person who has an account in the employees' savings fund created by section 145.23 of the Revised Code. When used in the sections listed in division (B) of

section 145.82 of the Revised Code, "contributor" includes any person participating in a PERS defined contribution plan.

(G) "Beneficiary" or "beneficiaries" means the estate or a person or persons who, as the result of the death of a member, contributor, or retirant, qualify for or are receiving some right or benefit under this chapter.

(H)(1) "Total service credit," except as provided in section 145.37 of the Revised Code, means all service credited to a member of the retirement system since last becoming a member, including restored service credit as provided by section 145.31 of the Revised Code; credit purchased under sections 145.293 and 145.299 of the Revised Code; all the member's military service credit computed as provided in this chapter; all service credit established pursuant to section 145.297 of the Revised Code; and any other service credited under this chapter. For the exclusive purpose of satisfying the service credit requirement and of determining eligibility for benefits under sections 145.32, 145.33, 145.331, 145.332, 145.35, 145.36, and 145.361 of the Revised Code, "five or more years of total service credit" means sixty or more calendar months of contributing service in this system.

(2) "One and one-half years of contributing service credit," as used in division (B) of section 145.45 of the Revised Code, also means eighteen or more calendar months of employment by a municipal corporation that formerly operated its own retirement plan for its employees or a part of its employees, provided that all employees of that municipal retirement plan who have eighteen or more months of such employment, upon establishing membership in the public employees retirement system, shall make a payment of the contributions they would have paid had they been members of this system for the eighteen months of employment preceding the date membership was established. When that payment has been made by all such employee members, a corresponding payment shall be paid into the employers' accumulation fund by that municipal corporation as the employer of the employees.

(3) Where a member also is a member of the state teachers retirement system or the school employees retirement system, or both, except in cases of retirement on a combined basis pursuant to section 145.37 of the Revised Code or as provided in section 145.383 of the Revised Code, service credit for any period shall be credited on the basis of the ratio that contributions to the public employees retirement system bear to total contributions in all state retirement systems.

(4) Not more than one year of credit may be given for any period of twelve months.

(5) "Ohio service credit" means credit for service that was rendered to the state or any of its political subdivisions or any employer.

(I) "Regular interest" means interest at any rates for the respective funds and accounts as the public employees retirement board may determine from time to time.

(J) "Accumulated contributions" means the sum of all amounts credited to a contributor's individual account in the employees' savings fund together with any interest credited to the contributor's account under section 145.471 or 145.472 of the Revised Code.

(K)(1) "Final average salary" means the greater of the following:

(a) The sum of the member's earnable salaries for the appropriate number of calendar years of contributing service, determined under section 145.017 of the Revised Code, in which the member's earnable salary was highest, divided by the same number of calendar years or, if the member has

fewer than the appropriate number of calendar years of contributing service, the total of the member's earnable salary for all years of contributing service divided by the number of calendar years of the member's contributing service;

(b) The sum of a member's earnable salaries for the appropriate number of consecutive months, determined under section 145.017 of the Revised Code, that were the member's last months of service, up to and including the last month, divided by the appropriate number of years or, if the time between the first and final months of service is less than the appropriate number of consecutive months, the total of the member's earnable salary for all months of contributing service divided by the number of years between the first and final months of contributing service, including any fraction of a year, except that the member's final average salary shall not exceed the member's highest earnable salary for any twelve consecutive months.

(2) If contributions were made in only one calendar year, "final average salary" means the member's total earnable salary.

(L) "Annuity" means payments for life derived from contributions made by a contributor and paid from the annuity and pension reserve fund as provided in this chapter. All annuities shall be paid in twelve equal monthly installments.

(M) "Annuity reserve" means the present value, computed upon the basis of the mortality and other tables adopted by the board, of all payments to be made on account of any annuity, or benefit in lieu of any annuity, granted to a retiree as provided in this chapter.

(N)(1) "Disability retirement" means retirement as provided in section 145.36 of the Revised Code.

(2) "Disability allowance" means an allowance paid on account of disability under section 145.361 of the Revised Code.

(3) "Disability benefit" means a benefit paid as disability retirement under section 145.36 of the Revised Code, as a disability allowance under section 145.361 of the Revised Code, or as a disability benefit under section 145.37 of the Revised Code.

(4) "Disability benefit recipient" means a member who is receiving a disability benefit.

(O) "Age and service retirement" means retirement as provided in sections 145.32, 145.33, 145.331, 145.332, 145.37, and 145.46 and former section 145.34 of the Revised Code.

(P) "Pensions" means annual payments for life derived from contributions made by the employer that at the time of retirement are credited into the annuity and pension reserve fund from the employers' accumulation fund and paid from the annuity and pension reserve fund as provided in this chapter. All pensions shall be paid in twelve equal monthly installments.

(Q) "Retirement allowance" means the pension plus that portion of the benefit derived from contributions made by the member.

(R)(1) Except as otherwise provided in division (R) of this section, "earnable salary" means all salary, wages, and other earnings paid to a contributor by reason of employment in a position covered by the retirement system. The salary, wages, and other earnings shall be determined prior to determination of the amount required to be contributed to the employees' savings fund under section 145.47 of the Revised Code and without regard to whether any of the salary, wages, or other earnings are treated as deferred income for federal income tax purposes. "Earnable salary" includes the following:

(a) Payments made by the employer in lieu of salary, wages, or other earnings for sick leave, personal leave, or vacation used by the contributor;

(b) Payments made by the employer for the conversion of sick leave, personal leave, and vacation leave accrued, but not used if the payment is made during the year in which the leave is accrued, except that payments made pursuant to section 124.383 or 124.386 of the Revised Code are not earnable salary;

(c) Allowances paid by the employer for maintenance, consisting of housing, laundry, and meals, as certified to the retirement board by the employer or the head of the department that employs the contributor;

(d) Fees and commissions paid under section 507.09 of the Revised Code;

(e) Payments that are made under a disability leave program sponsored by the employer and for which the employer is required by section 145.296 of the Revised Code to make periodic employer and employee contributions;

(f) Amounts included pursuant to former division (K)(3) and former division (Y) of this section and section 145.2916 of the Revised Code.

(2) "Earnable salary" does not include any of the following:

(a) Fees and commissions, other than those paid under section 507.09 of the Revised Code, paid as sole compensation for personal services and fees and commissions for special services over and above services for which the contributor receives a salary;

(b) Amounts paid by the employer to provide life insurance, sickness, accident, endowment, health, medical, hospital, dental, or surgical coverage, or other insurance for the contributor or the contributor's family, or amounts paid by the employer to the contributor in lieu of providing the insurance;

(c) Incidental benefits, including lodging, food, laundry, parking, or services furnished by the employer, or use of the employer's property or equipment, or amounts paid by the employer to the contributor in lieu of providing the incidental benefits;

(d) Reimbursement for job-related expenses authorized by the employer, including moving and travel expenses and expenses related to professional development;

(e) Payments for accrued but unused sick leave, personal leave, or vacation that are made at any time other than in the year in which the sick leave, personal leave, or vacation was accrued;

(f) Payments made to or on behalf of a contributor that are in excess of the annual compensation that may be taken into account by the retirement system under division (a)(17) of section 401 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 401(a)(17), as amended;

(g) Payments made under division (B), (C), or (E) of section 5923.05 of the Revised Code, Section 4 of Substitute Senate Bill No. 3 of the 119th general assembly, Section 3 of Amended Substitute Senate Bill No. 164 of the 124th general assembly, or Amended Substitute House Bill No. 405 of the 124th general assembly;

(h) Anything of value received by the contributor that is based on or attributable to retirement or an agreement to retire, except that payments made on or before January 1, 1989, that are based on or attributable to an agreement to retire shall be included in earnable salary if both of the following apply:

(i) The payments are made in accordance with contract provisions that were in effect prior to January 1, 1986;

(ii) The employer pays the retirement system an amount specified by the retirement board equal to the additional liability resulting from the payments.

(i) The portion of any amount included in section 145.2916 of the Revised Code that represents employer contributions.

(3) The retirement board shall determine by rule whether any compensation not enumerated in division (R) of this section is earnable salary, and its decision shall be final.

(S) "Pension reserve" means the present value, computed upon the basis of the mortality and other tables adopted by the board, of all payments to be made on account of any retirement allowance or benefit in lieu of any retirement allowance, granted to a member or beneficiary under this chapter.

(T) "Contributing service" means both of the following:

(1) All service credited to a member of the system since January 1, 1935, for which contributions are made as required by sections 145.47, 145.48, and 145.483 of the Revised Code. In any year subsequent to 1934, credit for any service shall be allowed in accordance with section 145.016 of the Revised Code.

(2) Service credit received by election of the member under section 145.814 of the Revised Code.

(U) "State retirement board" means the public employees retirement board, the school employees retirement board, or the state teachers retirement board.

(V) "Retirant" means any former member who retires and is receiving a monthly allowance as provided in sections 145.32, 145.33, 145.331, 145.332, and 145.46 and former section 145.34 of the Revised Code.

(W) "Employer contribution" means the amount paid by an employer as determined under section 145.48 of the Revised Code.

(X) "Public service terminates" means the last day for which a public employee is compensated for services performed for an employer or the date of the employee's death, whichever occurs first.

(Y) "Five years of service credit," for the exclusive purpose of satisfying the service credit requirements and of determining eligibility under section 145.33 or 145.332 of the Revised Code, means employment covered under this chapter or under a former retirement plan operated, recognized, or endorsed by the employer prior to coverage under this chapter or under a combination of the coverage.

(Z) "Deputy sheriff" means any person who is commissioned and employed as a full-time peace officer by the sheriff of any county, and has been so employed since on or before December 31, 1965; any person who is or has been commissioned and employed as a peace officer by the sheriff of any county since January 1, 1966, and who has received a certificate attesting to the person's satisfactory completion of the peace officer training school as required by section 109.77 of the Revised Code; or any person deputized by the sheriff of any county and employed pursuant to section 2301.12 of the Revised Code as a criminal bailiff or court constable who has received a certificate attesting to the person's satisfactory completion of the peace officer training school as required by section 109.77 of the Revised Code.

(AA) "Township constable or police officer in a township police department or district" means any person who is commissioned and employed as a full-time peace officer pursuant to Chapter 505. or 509. of the Revised Code, who has received a certificate attesting to the person's satisfactory completion of the peace officer training school as required by section 109.77 of the Revised Code.

(BB) "Drug agent" means any person who is either of the following:

(1) Employed full time as a narcotics agent by a county narcotics agency created pursuant to section 307.15 of the Revised Code and has received a certificate attesting to the satisfactory completion of the peace officer training school as required by section 109.77 of the Revised Code;

(2) Employed full time as an undercover drug agent as defined in section 109.79 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(CC) "Department of public safety enforcement agent" means a full-time employee of the department of public safety who is designated under section 5502.14 of the Revised Code as an enforcement agent and who is in compliance with section 109.77 of the Revised Code.

(DD) "Natural resources law enforcement staff officer" means a full-time employee of the department of natural resources who is designated a natural resources law enforcement staff officer under section 1501.013 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(EE) "Park officer" means a full-time employee of the department of natural resources who is designated a park officer under section 1541.10 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(FF) "Forest officer" means a full-time employee of the department of natural resources who is designated a forest officer under section 1503.29 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(GG) "Preserve officer" means a full-time employee of the department of natural resources who is designated a preserve officer under section 1517.10 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(HH) "Wildlife officer" means a full-time employee of the department of natural resources who is designated a wildlife officer under section 1531.13 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(II) "State watercraft officer" means a full-time employee of the department of natural resources who is designated a state watercraft officer under section 1547.521 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(JJ) "Park district police officer" means a full-time employee of a park district who is designated pursuant to section 511.232 or 1545.13 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(KK) "Conservancy district officer" means a full-time employee of a conservancy district who is designated pursuant to section 6101.75 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(LL) "Municipal police officer" means a member of the organized police department of a municipal corporation who is employed full time, is in compliance with section 109.77 of the Revised Code, and is not a member of the Ohio police and fire pension fund.

(MM) "Veterans' home police officer" means any person who is employed at a veterans' home as a police officer pursuant to section 5907.02 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(NN) "Special police officer for a mental health institution" means any person who is designated as such pursuant to section 5119.08 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(OO) "Special police officer for an institution for ~~the developmentally disabled persons with~~ intellectual disabilities" means any person who is designated as such pursuant to section 5123.13 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(PP) "State university law enforcement officer" means any person who is employed full time as a state university law enforcement officer pursuant to section 3345.04 of the Revised Code and who is in compliance with section 109.77 of the Revised Code.

(QQ) "House sergeant at arms" means any person appointed by the speaker of the house of representatives under division (B)(1) of section 101.311 of the Revised Code who has arrest authority under division (E)(1) of that section.

(RR) "Assistant house sergeant at arms" means any person appointed by the house sergeant at arms under division (C)(1) of section 101.311 of the Revised Code.

(SS) "Regional transit authority police officer" means a person who is employed full time as a regional transit authority police officer under division (Y) of section 306.35 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(TT) "State highway patrol police officer" means a special police officer employed full time and designated by the superintendent of the state highway patrol pursuant to section 5503.09 of the Revised Code or a person serving full time as a special police officer pursuant to that section on a permanent basis on October 21, 1997, who is in compliance with section 109.77 of the Revised Code.

(UU) "Municipal public safety director" means a person who serves full time as the public safety director of a municipal corporation with the duty of directing the activities of the municipal corporation's police department and fire department.

(VV) Notwithstanding section 2901.01 of the Revised Code, "PERS law enforcement officer" means a sheriff or any of the following whose primary duties are to preserve the peace, protect life and property, and enforce the laws of this state: a deputy sheriff, township constable or police officer in a township police department or district, drug agent, department of public safety enforcement agent, natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, state watercraft officer, park district police officer, conservancy district officer, veterans' home police officer, special police officer for a mental health institution, special police officer for an institution for ~~the developmentally disabled persons with~~ developmental disabilities, state university law enforcement officer, municipal police officer, house sergeant at arms, assistant house sergeant at arms, regional transit authority police officer, or state highway patrol police officer. "PERS law enforcement officer" also includes a person serving as a municipal public safety director at any time during the period from September 29, 2005, to March 24, 2009, if the duties of that service were to preserve the peace, protect life and property, and enforce the laws of this state.

(WW) "Hamilton county municipal court bailiff" means a person appointed by the clerk of

courts of the Hamilton county municipal court under division (A)(3) of section 1901.32 of the Revised Code who is employed full time as a bailiff or deputy bailiff, who has received a certificate attesting to the person's satisfactory completion of the peace officer basic training described in division (D)(1) of section 109.77 of the Revised Code.

(XX) "PERS public safety officer" means a Hamilton county municipal court bailiff, or any of the following whose primary duties are other than to preserve the peace, protect life and property, and enforce the laws of this state: a deputy sheriff, township constable or police officer in a township police department or district, drug agent, department of public safety enforcement agent, natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, state watercraft officer, park district police officer, conservancy district officer, veterans' home police officer, special police officer for a mental health institution, special police officer for an institution ~~for the developmentally disabled persons with developmental disabilities~~, state university law enforcement officer, municipal police officer, house sergeant at arms, assistant house sergeant at arms, regional transit authority police officer, or state highway patrol police officer. "PERS public safety officer" also includes a person serving as a municipal public safety director at any time during the period from September 29, 2005, to March 24, 2009, if the duties of that service were other than to preserve the peace, protect life and property, and enforce the laws of this state.

(YY) "Fiduciary" means a person who does any of the following:

- (1) Exercises any discretionary authority or control with respect to the management of the system or with respect to the management or disposition of its assets;
- (2) Renders investment advice for a fee, direct or indirect, with respect to money or property of the system;
- (3) Has any discretionary authority or responsibility in the administration of the system.

(ZZ) "Actuary" means an individual who satisfies all of the following requirements:

- (1) Is a member of the American academy of actuaries;
- (2) Is an associate or fellow of the society of actuaries;
- (3) Has a minimum of five years' experience in providing actuarial services to public retirement plans.

(AAA) "PERS defined benefit plan" means the plan described in sections 145.201 to 145.79 of the Revised Code.

(BBB) "PERS defined contribution plans" means the plan or plans established under section 145.81 of the Revised Code.

**Sec. 145.012.** (A) "Public employee," as defined in division (A) of section 145.01 of the Revised Code, does not include any person:

- (1) Who is employed by a private, temporary-help service and performs services under the direction of a public employer or is employed on a contractual basis as an independent contractor under a personal service contract with a public employer;
- (2) Who is an emergency employee serving on a temporary basis in case of fire, snow, earthquake, flood, or other similar emergency;
- (3) Who is employed in a program established pursuant to the "Job Training Partnership Act," 96 Stat. 1322 (1982), 29 U.S.C.A. 1501;
- (4) Who is an appointed member of either the motor vehicle salvage dealers board or the

motor vehicle dealer's board whose rate and method of payment are determined pursuant to division (J) of section 124.15 of the Revised Code;

(5) Who is employed as an election worker and paid less than six hundred dollars per calendar year for that service;

(6) Who is employed as a firefighter in a position requiring satisfactory completion of a firefighter training course approved under former section 3303.07 or section 4765.55 of the Revised Code or conducted under section 3737.33 of the Revised Code except for the following:

(a) Any firefighter who has elected under section 145.013 of the Revised Code to remain a contributing member of the public employees retirement system;

(b) Any firefighter who was eligible to transfer from the public employees retirement system to the Ohio police and fire pension fund under section 742.51 or 742.515 of the Revised Code and did not elect to transfer;

(c) Any firefighter who has elected under section 742.516 of the Revised Code to transfer from the Ohio police and fire pension fund to the public employees retirement system.

(7) Who is a member of the board of health of a city or general health district, which pursuant to sections 3709.051 and 3709.07 of the Revised Code includes a combined health district, and whose compensation for attendance at meetings of the board is set forth in division (B) of section 3709.02 or division (B) of section 3709.05 of the Revised Code, as appropriate;

(8) Who participates in an alternative retirement plan established under Chapter 3305. of the Revised Code;

(9) Who is a member of the board of directors of a sanitary district established under Chapter 6115. of the Revised Code;

(10) Who is a member of the unemployment compensation advisory council;

(11) Who is an employee, officer, or governor-appointed member of the board of directors of the nonprofit corporation formed under section 187.01 of the Revised Code;

(12) Who is employed by the nonprofit entity established to provide advocacy services and a client assistance program for people with disabilities under Section 319.20 of Am. Sub. H.B. 153 of the 129th general assembly and whose employment begins on or after October 1, 2012.

(B) No inmate of a correctional institution operated by the department of rehabilitation and correction, no patient in a hospital for the mentally ill or criminally insane operated by the department of mental health and addiction services, no resident in an institution for ~~the mentally retarded~~ persons with intellectual disabilities operated by the department of developmental disabilities, no resident admitted as a patient of a veterans' home operated under Chapter 5907. of the Revised Code, and no resident of a county home shall be considered as a public employee for the purpose of establishing membership or calculating service credit or benefits under this chapter. Nothing in this division shall be construed to affect any service credit attained by any person who was a public employee before becoming an inmate, patient, or resident at any institution listed in this division, or the payment of any benefit for which such a person or such a person's beneficiaries otherwise would be eligible.

**Sec. 145.298.** (A) As used in this section:

(1) "State employing unit" means an employing unit described in division (A)(2) of section 145.297 of the Revised Code, except that it does not mean an employing unit with fifty or fewer

employees.

(2) "State institution" means a state correctional facility, a state institution for the mentally ill, or a state institution for the care, treatment, and training of ~~the mentally retarded~~persons with intellectual disabilities.

(B)(1) Prior to July 17, 2009, in the event of a proposal to close a state institution or lay off, within a six-month period, a number of persons employed at an institution that equals or exceeds the lesser of fifty or ten per cent of the persons employed at the institution, the employing unit responsible for the institution's operation shall establish a retirement incentive plan for persons employed at the institution.

(2) On and after July 17, 2009, in the event of a proposal to close a state institution or lay off, within a six-month period, a number of persons employed at an institution that equals or exceeds the lesser of three hundred fifty or forty per cent of the persons employed at the institution, the employing unit responsible for the institution's operation shall establish a retirement incentive plan for persons employed at the institution.

(C)(1) Prior to July 17, 2009, in the event of a proposal, other than the proposals described in division (B) of this section, to lay off, within a six-month period, a number of employees of a state employing unit that equals or exceeds the lesser of fifty or ten per cent of the employing unit's employees, the employing unit shall establish a retirement incentive plan for employees of the employing unit.

(2) On and after July 17, 2009, in the event of a proposal, other than the proposals described in division (B) of this section, to lay off, within a six-month period, a number of employees of a state employing unit that equals or exceeds the lesser of three hundred fifty or forty per cent of the employing unit's employees, the employing unit shall establish a retirement incentive plan for employees of the employing unit.

(D)(1) A retirement incentive plan established under this section shall be consistent with the requirements of section 145.297 of the Revised Code, except that the plan shall go into effect at the time the layoffs or proposed closings are announced and shall remain in effect until the date of the layoffs or closings.

(2) If the employing unit already has a retirement incentive plan in effect, the plan shall remain in effect at least until the date of the layoffs or closings. The employing unit may revise the existing plan to provide greater benefits, but if it revises the plan, it shall give written notice of the changes to all employees who have elected to participate in the original plan, and it shall provide the greater benefits to all employees who participate in the plan, whether their elections to participate were made before or after the date of the revision.

**Sec. 145.332.** Eligibility of members of the public employees retirement system, other than those subject to section 145.32 of the Revised Code, for age and service retirement shall be determined under this section.

(A) A member of the public employees retirement system is eligible for age and service retirement under this division if, not later than five years after ~~the effective date of this section~~ January 7, 2013, the member meets one of the following requirements:

(1) Has attained age forty-eight and has at least twenty-five years of total service credit as a PERS law enforcement officer;

(2) Has attained age fifty-two and has at least twenty-five years of total service credit as a PERS public safety officer or has service as a PERS public safety officer and service as a PERS law enforcement officer that when combined equal at least twenty-five years of total service credit;

(3) Has attained age sixty-two and has at least fifteen years of total service credit as a PERS law enforcement officer or PERS public safety officer.

(B)(1) A member who would be eligible to retire not later than ten years after ~~the effective date of this amendment~~ January 7, 2013, if the requirements of section 145.33 of the Revised Code as they existed immediately prior to ~~the effective date of this amendment~~ January 7, 2013, were still in effect is eligible to retire under this division if the member meets one of the following requirements:

(a) Has attained age fifty and has at least twenty-five years of total service credit as a PERS law enforcement officer;

(b) Has attained age fifty-four and has at least twenty-five years of total service credit as a PERS public safety officer or has service as a PERS public safety officer and service as a PERS law enforcement officer that when combined equal at least twenty-five years of total service credit;

(c) Has attained age sixty-four and has at least fifteen years of total service credit as a PERS law enforcement officer or PERS public safety officer.

(2) A member who on ~~the effective date of this amendment~~ January 7, 2013, has twenty or more years of total service credit is eligible for age and service retirement under this division on meeting one of the requirements of division (B)(1) of this section, regardless of when the member meets the requirement unless, between ~~the effective date of this section~~ January 7, 2013, and the date the member meets the requirement, the member receives a refund of accumulated contributions under section 145.40 of the Revised Code.

(C) A member who is not eligible for age and service retirement under division (A) or (B) of this section is eligible under this division if the member meets one of the following requirements:

(1) Has attained age fifty-two and has at least twenty-five years of total service credit as a PERS law enforcement officer;

(2) Has attained age fifty-six and has at least twenty-five years of total service credit as a PERS public safety officer or has service as a PERS public safety officer and service as a PERS law enforcement officer that when combined equal at least twenty-five years of total service credit;

(3) Has attained age sixty-four and has at least fifteen years of total service credit as a PERS law enforcement officer or PERS public safety officer.

(D) Service credit purchased or obtained under this chapter shall be used in determining whether a member has the number of years of total service credit required under division (A) or (B) of this section only if the member was a member on ~~the effective date of this section~~ January 7, 2013, or obtains credit under section 145.483 of the Revised Code that would have made the member a member on that date and one of the following applies:

(1) Except in the case of service credit that has been or will be purchased or obtained under section 145.295 or 145.37 of the Revised Code or is for service covered by the Cincinnati retirement system:

(a) For division (A) of this section, the service credit purchase is completed or the service credit is obtained not later than five years after ~~the effective date of this section~~ January 7, 2013;

(b) For division (B) of this section, the service credit purchase is completed or the service

credit is obtained not later than ten years after ~~the effective date of this section~~ January 7, 2013.

(2) In the case of service credit that has been or will be purchased or obtained under section 145.295 or 145.37 of the Revised Code or is for service covered by the Cincinnati retirement system:

(a) For division (A) of this section, the service for which the credit has been or will be purchased or obtained occurs not later than five years after ~~the effective date of this section~~ January 7, 2013;

(b) For division (B) of this section, the service for which the credit has been or will be purchased or obtained occurs not later than ten years after ~~the effective date of this section~~ January 7, 2013.

(E)(1) A member with at least twenty-five years of total service credit who would be eligible to retire under division (B)(1)(a) of this section had the member attained age fifty and who voluntarily resigns or is discharged for any reason except death, dishonesty, cowardice, intemperate habits, or conviction of a felony, on or after attaining age forty-eight, but before attaining age fifty, may elect to receive a reduced benefit. The benefit shall be the actuarial equivalent of the allowance calculated under division (F) of this section adjusted for age.

(2) A member with at least twenty-five years of total service credit who would be eligible to retire under division (C)(1) of this section had the member attained age fifty-two and who voluntarily resigns or is discharged for any reason except death, dishonesty, cowardice, intemperate habits, or conviction of a felony, on or after attaining age forty-eight, but before attaining age fifty-two, may elect to receive a reduced benefit. The benefit shall be the actuarial equivalent of the allowance calculated under division (F) of this section adjusted for age.

(3) A member with at least twenty-five years of total service credit who would be eligible to retire under division (A)(2) of this section had the member attained age fifty-two and who voluntarily resigns or is discharged for any reason except death, dishonesty, cowardice, intemperate habits, or conviction of a felony, on or after attaining age forty-eight, but before attaining age fifty-two, may elect to receive a reduced benefit.

(a) If eligibility to make the election under division (E)(3) of this section occurs not later than five years after ~~the effective date of this section~~ January 7, 2013, the benefit shall be calculated in accordance with the following schedule:

Attained Age	Reduced Benefit
48	75% of the benefit payable under division (F) of this section
49	80% of the benefit payable under division (F) of this section
50	86% of the benefit payable under division (F) of this section
51	93% of the benefit payable under division (F) of this section

(b) If eligibility to make the election occurs after the date determined under division (E)(3)(a)

of this section, the benefit shall be the actuarial equivalent of the allowance calculated under division (F) of this section adjusted for age.

(4) A member with at least twenty-five years of total service credit who would be eligible to retire under division (B)(1)(b) of this section had the member attained age fifty-four and who voluntarily resigns or is discharged for any reason except death, dishonesty, cowardice, intemperate habits, or conviction of a felony, on or after attaining age forty-eight, but before attaining age fifty-four, may elect to receive a reduced benefit. The benefit shall be the actuarial equivalent of the allowance calculated under division (F) of this section adjusted for age.

(5) A member with at least twenty-five years of total service credit who would be eligible to retire under division (C)(2) of this section had the member attained age fifty-six and who voluntarily resigns or is discharged for any reason except death, dishonesty, cowardice, intemperate habits, or conviction of a felony, on or after attaining age fifty-two, but before attaining age fifty-six, may elect to receive a reduced benefit. The benefit shall be the actuarial equivalent of the allowance calculated under division (F) of this section adjusted for age.

(6) If a member elects to receive a reduced benefit under division (E)(1), (2), (3), (4), or (5) of this section, the reduced benefit shall be based on the member's age on the member's most recent birthday. Once a member elects to receive a reduced benefit and has received a payment, the member may not change that election.

(F) A benefit paid under division (A), (B), or (C) of this section shall consist of an annual single lifetime allowance equal to the sum of two and one-half per cent of the member's final average salary multiplied by the first twenty-five years of the member's total service credit plus two and one-tenth per cent of the member's final average salary multiplied by the number of years of the member's total service credit in excess of twenty-five years.

(G) A member with at least fifteen years of total service credit as a PERS law enforcement officer or PERS public safety officer who voluntarily resigns or is discharged for any reason except death, dishonesty, cowardice, intemperate habits, or conviction of a felony may apply for an age and service retirement benefit, which shall consist of an annual single lifetime allowance equal to one and one-half per cent of the member's final average salary multiplied by the number of years of the member's total service credit.

(1) If the member will attain age fifty-two not later than ten years after ~~the effective date of this section~~ January 7, 2013, the retirement allowance shall commence on the first day of the calendar month following the month in which application is filed with the board on or after the member's attainment of age fifty-two.

(2) If the member will not attain age fifty-two on or before the date determined under division (G)(1) of this section, the retirement allowance shall commence on the first day of the calendar month following the month in which application is filed with the board on or after the member's attainment of age fifty-six.

(H) A benefit paid under this section shall not exceed the lesser of ninety per cent of the member's final average salary or the limit established by section 415 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 415, as amended.

(I) A member with service credit as a PERS law enforcement officer or PERS public safety officer and other service credit under this chapter may elect one of the following:

(1) To have all the member's service credit under this chapter, including credit for service as a PERS law enforcement officer or PERS public safety officer, used in calculating a retirement allowance under section 145.33 of the Revised Code if the member qualifies for an allowance under that section;

(2) If the member qualifies for an allowance under division (A)(1), (B)(1), (C)(1), or (E)(1) or (2) of this section, to receive all of the following:

(a) A benefit under division (A)(1), (B)(1), (C)(1), or (E)(1) or (2) of this section for the member's service credit as a PERS law enforcement officer;

(b) A single life annuity having a reserve equal to the amount of the member's accumulated contributions for all service other than PERS law enforcement service;

(c) A pension equal to the annuity provided under division (I)(2)(b) of this section, excluding amounts of the member's accumulated contributions deposited under former division (Y) of section 145.01 or former sections 145.02, 145.29, 145.292, and 145.42, or sections 145.20, 145.201, 145.28, 145.291, 145.292, 145.293, 145.299, 145.2916, 145.301, 145.47, and 145.814 of the Revised Code for the purchase of service credit.

(3) If the member qualifies for an allowance under division (A)(2), (B)(2), (C)(2), or (E)(3), (4), or (5) of this section, to receive all of the following:

(a) A benefit under division (A)(2), (B)(2), (C)(2), or (E)(3), (4), or (5) of this section for the member's service credit as a PERS law enforcement officer or PERS public safety officer;

(b) A single life annuity having a reserve equal to the amount of the member's accumulated contributions for all service other than PERS law enforcement service or PERS public safety officer service;

(c) A pension equal to the annuity provided under division (I)(3)(b) of this section, excluding amounts of the member's accumulated contributions deposited under former division (Y) of section 145.01 or former sections 145.02, 145.29, 145.292, and 145.42, or sections 145.20, 145.201, 145.28, 145.291, 145.292, 145.293, 145.299, 145.2916, 145.301, 145.47, and 145.814 of the Revised Code for the purchase of service credit.

(J) For the purposes of this section, "total service credit" includes credit for military service to the extent permitted by division (K) of this section and credit for service as a police officer or state highway patrol trooper to the extent permitted by division (L) of this section.

(K) Notwithstanding sections 145.01 and 145.30 of the Revised Code, not more than four years of military service credit granted or purchased under section 145.30 of the Revised Code and five years of military service credit purchased under section 145.301 or 145.302 of the Revised Code shall be used in calculating service as a PERS law enforcement officer or PERS public safety officer or the total service credit of that person.

(L)(1) Only credit for the member's service as a PERS law enforcement officer, PERS public safety officer, or service credit obtained as a police officer or state highway patrol trooper shall be used in computing the benefit of a member who qualifies for a benefit under this section for the following:

(a) Any person who originally is commissioned and employed as a deputy sheriff by the sheriff of any county, or who originally is elected sheriff, on or after January 1, 1975;

(b) Any deputy sheriff who originally is employed as a criminal bailiff or court constable on

or after April 16, 1993;

(c) Any person who originally is appointed as a township constable or police officer in a township police department or district on or after January 1, 1981;

(d) Any person who originally is employed as a county narcotics agent on or after September 26, 1984;

(e) Any person who originally is employed as an undercover drug agent as defined in section 109.79 of the Revised Code, department of public safety enforcement agent who prior to June 30, 1999, was a liquor control investigator, park officer, forest officer, wildlife officer, state watercraft officer, park district police officer, conservancy district officer, veterans' home police officer, special police officer for a mental health institution, special police officer for an institution for ~~the developmentally disabled~~ persons with developmental disabilities, or municipal police officer on or after December 15, 1988;

(f) Any person who originally is employed as a state university law enforcement officer on or after November 6, 1996;

(g) Any person who is originally employed as a state university law enforcement officer by the university of Akron on or after September 16, 1998;

(h) Any person who originally is employed as a preserve officer on or after March 18, 1999;

(i) Any person who originally is employed as a natural resources law enforcement staff officer on or after March 18, 1999;

(j) Any person who is originally employed as a department of public safety enforcement agent on or after June 30, 1999;

(k) Any person who is originally employed as a house sergeant at arms or assistant house sergeant at arms on or after September 5, 2001;

(l) Any person who is originally appointed as a regional transit authority police officer or state highway patrol police officer on or after February 1, 2002;

(m) Any person who is originally employed as a municipal public safety director on or after September 29, 2005, but not later than March 24, 2009.

(2) Only credit for a member's service as a PERS public safety officer or service credit obtained as a PERS law enforcement officer, police officer, or state highway patrol trooper shall be used in computing the benefit of a member who qualifies for a benefit under division (B)(1)(b) or (c), (B)(2), (C)(1)(b) or (c), or (C)(2) of this section for any person who originally is employed as a Hamilton county municipal court bailiff on or after November 6, 1996.

(M) For purposes of this section, service prior to June 30, 1999, as a food stamp trafficking agent under former section 5502.14 of the Revised Code shall be considered service as a law enforcement officer.

(N) Retirement allowances determined under this section shall be paid as provided in section 145.46 of the Revised Code.

(O) A member seeking to retire under this section shall file an application with the public employees retirement board.

Service retirement shall be effective as provided in division (E) of section 145.32 of the Revised Code.

(P) If fewer than one per cent of the retirement system's members are contributing as public

safety officers, the board, pursuant to a rule it adopts, may treat service as a public safety officer as service as a law enforcement officer.

**Sec. 149.431.** (A) Except as provided in sections 9.833 and 2744.081 of the Revised Code, any governmental entity or agency and any nonprofit corporation or association, except a corporation organized pursuant to Chapter 1719. of the Revised Code prior to January 1, 1980 or organized pursuant to Chapter 3941. of the Revised Code, that enters into a contract or other agreement with the federal government, a unit of state government, or a political subdivision or taxing unit of this state for the provision of services shall keep accurate and complete financial records of any moneys expended in relation to the performance of the services pursuant to such contract or agreement according to generally accepted accounting principles. Such contract or agreement and such financial records shall be deemed to be public records as defined in division (A)(1) of section 149.43 of the Revised Code and are subject to the requirements of division (B) of that section, except that:

(1) Any information directly or indirectly identifying a present or former individual patient or client or such an individual patient's or client's diagnosis, prognosis, or medical treatment, treatment for a mental or emotional disorder, treatment for ~~mental retardation~~ or a developmental disability, treatment for drug abuse or alcoholism, or counseling for personal or social problems is not a public record;

(2) If disclosure of the contract or agreement or financial records is requested at a time when confidential professional services are being provided to a patient or client whose confidentiality might be violated if disclosure were made at that time, disclosure may be deferred if reasonable times are established when the contract or agreement or financial records will be disclosed.

(3) Any nonprofit corporation or association that receives both public and private funds in fulfillment of any such contract or other agreement is not required to keep as public records the financial records of any private funds expended in relation to the performance of services pursuant to the contract or agreement.

(B) Any nonprofit corporation or association that receives more than fifty per cent of its gross receipts excluding moneys received pursuant to Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, in a calendar year in fulfillment of a contract or other agreement for services with a governmental entity shall maintain information setting forth the compensation of any individual serving the nonprofit corporation or association in an executive or administrative capacity. Such information shall be deemed to be public records as defined in division (A)(1) of section 149.43 of the Revised Code and is subject to the requirements of division (B) of that section.

Nothing in this section shall be construed to otherwise limit the provisions of section 149.43 of the Revised Code.

**Sec. 152.04.** The Ohio building authority may purchase, construct, reconstruct, equip, furnish, improve, alter, enlarge, maintain, repair, and operate buildings, facilities, and other properties on one or more sites within the state for use and occupancy by persons who meet all the following conditions:

(A) Are eligible to receive old age, survivors', or disability insurance payments under Title II of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 401, or under any laws which may hereafter amend or supersede such chapters or title;

(B) Have been, after September 27, 1963, discharged by the head of a hospital pursuant to

section 5122.21 of the Revised Code or by the head of an institution pursuant to section 5123.79 of the Revised Code;

(C) Are determined by the authority not to need the care and treatment provided in a hospital or other institution;

(D) Are determined by the authority to be unable, as a result of mental illness, ~~mental retardation~~, or developmental disability, to provide complete care for themselves or obtain and hold employment sufficient to provide the costs of living.

The authority may also provide living facilities for administrative, professional, and other personnel and their families necessary to maintain or operate the facilities and to carry out the purposes of the authority.

**Sec. 173.25.** The office of the state long-term care ombudsman program shall, in carrying out the provisions and purposes of sections 173.14 to 173.26 of the Revised Code, advise, consult, and cooperate with any agency, program, or other entity related to the purposes of the office. Any agency, program, or other entity related to the purposes of the office shall advise, consult, and cooperate with the office.

The office shall attempt to establish effective coordination with government-sponsored programs that provide legal services to the elderly and with protective and advocacy programs for individuals with developmental disabilities, ~~mental retardation~~, or mental illness.

**Sec. 173.27.** (A) As used in this section:

(1) "Applicant" means a person who is under final consideration for employment by a responsible party in a full-time, part-time, or temporary position that involves providing ombudsman services to residents and recipients. "Applicant" includes a person who is under final consideration for employment as the state long-term care ombudsman or the head of a regional long-term care ombudsman program. "Applicant" does not include a person seeking to provide ombudsman services to residents and recipients as a volunteer without receiving or expecting to receive any form of remuneration other than reimbursement for actual expenses.

(2) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(3) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (e) of section 109.572 of the Revised Code.

(4) "Employee" means a person employed by a responsible party in a full-time, part-time, or temporary position that involves providing ombudsman services to residents and recipients. "Employee" includes the person employed as the state long-term care ombudsman and a person employed as the head of a regional long-term care ombudsman program. "Employee" does not include a person who provides ombudsman services to residents and recipients as a volunteer without receiving or expecting to receive any form of remuneration other than reimbursement for actual expenses.

(5) "Responsible party" means the following:

(a) In the case of an applicant who is under final consideration for employment as the state long-term care ombudsman or the person employed as the state long-term care ombudsman, the director of aging;

(b) In the case of any other applicant who is under final consideration for employment with

the state long-term care ombudsman program or any other employee of the state long-term care ombudsman program, the state long-term care ombudsman;

(c) In the case of an applicant who is under final consideration for employment with a regional long-term care ombudsman program (including as the head of the regional program) or an employee of a regional long-term care ombudsman program (including the head of a regional program), the regional long-term care ombudsman program.

(B) A responsible party may not employ an applicant or continue to employ an employee in a position that involves providing ombudsman services to residents and recipients if any of the following apply:

(1) A review of the databases listed in division (D) of this section reveals any of the following:

(a) That the applicant or employee is included in one or more of the databases listed in divisions (D)(1) to (5) of this section;

(b) That there is in the state nurse aide registry established under section 3721.32 of the Revised Code a statement detailing findings by the director of health that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident;

(c) That the applicant or employee is included in one or more of the databases, if any, specified in rules adopted under this section and the rules prohibit the responsible party from employing an applicant or continuing to employ an employee included in such a database in a position that involves providing ombudsman services to residents and recipients.

(2) After the applicant or employee is provided, pursuant to division (E)(2)(a) of this section, a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard impression sheet prescribed pursuant to division (C)(2) of that section, the applicant or employee fails to complete the form or provide the applicant's or employee's fingerprint impressions on the standard impression sheet.

(3) Unless the applicant or employee meets standards specified in rules adopted under this section, the applicant or employee is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(C) A responsible party or a responsible party's designee shall inform each applicant of both of the following at the time of the applicant's initial application for employment in a position that involves providing ombudsman services to residents and recipients:

(1) That a review of the databases listed in division (D) of this section will be conducted to determine whether the responsible party is prohibited by division (B)(1) of this section from employing the applicant in the position;

(2) That, unless the database review reveals that the applicant may not be employed in the position, a criminal records check of the applicant will be conducted and the applicant is required to provide a set of the applicant's fingerprint impressions as part of the criminal records check.

(D) As a condition of any applicant's being employed by a responsible party in a position that involves providing ombudsman services to residents and recipients, the responsible party or designee shall conduct a database review of the applicant in accordance with rules adopted under this section.

If rules adopted under this section so require, the responsible party or designee shall conduct a database review of an employee in accordance with the rules as a condition of the responsible party continuing to employ the employee in a position that involves providing ombudsman services to residents and recipients. A database review shall determine whether the applicant or employee is included in any of the following:

(1) The excluded parties list system that is maintained by the United States general services administration pursuant to subpart 9.4 of the federal acquisition regulation and available at the federal web site known as the system for award management;

(2) The list of excluded individuals and entities maintained by the office of inspector general in the United States department of health and human services pursuant to section 1128 of the "Social Security Act," 94 Stat. 2619 (1980), 42 U.S.C. 1320a-7, as amended, and section 1156 of the "Social Security Act," 96 Stat. 388 (1982), 42 U.S.C. 1320c-5, as amended;

(3) The registry of ~~MR/DD~~ developmental disabilities employees established under section 5123.52 of the Revised Code;

(4) The internet-based sex offender and child-victim offender database established under division (A)(11) of section 2950.13 of the Revised Code;

(5) The internet-based database of inmates established under section 5120.66 of the Revised Code;

(6) The state nurse aide registry established under section 3721.32 of the Revised Code;

(7) Any other database, if any, specified in rules adopted under this section.

(E)(1) As a condition of any applicant's being employed by a responsible party in a position that involves providing ombudsman services to residents and recipients, the responsible party or designee shall request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of the applicant. If rules adopted under this section so require, the responsible party or designee shall request that the superintendent conduct a criminal records check of an employee at times specified in the rules as a condition of the responsible party continuing to employ the employee in a position that involves providing ombudsman services to residents and recipients. However, the responsible party or designee is not required to request the criminal records check of the applicant or employee if the responsible party is prohibited by division (B)(1) of this section from employing the applicant or continuing to employ the employee in a position that involves providing ombudsman services to residents and recipients. If an applicant or employee for whom a criminal records check request is required by this section does not present proof of having been a resident of this state for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the superintendent has requested information about the applicant or employee from the federal bureau of investigation in a criminal records check, the responsible party or designee shall request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check. Even if an applicant or employee for whom a criminal records check request is required by this section presents proof of having been a resident of this state for the five-year period, the responsible party or designee may request that the superintendent include information from the federal bureau of investigation in the criminal records check.

(2) A responsible party or designee shall do all of the following:

(a) Provide to each applicant and employee for whom a criminal records check request is required by this section a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a standard impression sheet prescribed pursuant to division (C)(2) of that section;

(b) Obtain the completed form and standard impression sheet from the applicant or employee;

(c) Forward the completed form and standard impression sheet to the superintendent.

(3) A responsible party shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check the responsible party or the responsible party's designee requests under this section. The responsible party may charge an applicant a fee not exceeding the amount the responsible party pays to the bureau under this section if the responsible party or designee notifies the applicant at the time of initial application for employment of the amount of the fee.

(F)(1) A responsible party may employ conditionally an applicant for whom a criminal records check is required by this section prior to obtaining the results of the criminal records check if both of the following apply:

(a) The responsible party is not prohibited by division (B)(1) of this section from employing the applicant in a position that involves providing ombudsman services to residents and recipients;

(b) The responsible party or designee requests the criminal records check in accordance with division (E) of this section not later than five business days after the applicant begins conditional employment.

(2) A responsible party shall terminate the employment of an applicant employed conditionally under division (F)(1) of this section if the results of the criminal records check, other than the results of any request for information from the federal bureau of investigation, are not obtained within the period ending sixty days after the date the request for the criminal records check is made. Regardless of when the results of the criminal records check are obtained, if the results indicate that the applicant has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, the responsible party shall terminate the applicant's employment unless the applicant meets standards specified in rules adopted under this section that permit the responsible party to employ the applicant and the responsible party chooses to employ the applicant. Termination of employment under this division shall be considered just cause for discharge for purposes of division (D)(2) of section 4141.29 of the Revised Code if the applicant makes any attempt to deceive the responsible party or designee about the applicant's criminal record.

(G) The report of any criminal records check conducted pursuant to a request made under this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:

(1) The applicant or employee who is the subject of the criminal records check or the applicant's or employee's representative;

(2) The responsible party or designee;

(3) In the case of a criminal records check conducted for an applicant who is under final consideration for employment with a regional long-term care ombudsman program (including as the head of the regional program) or an employee of a regional long-term care ombudsman program (including the head of a regional program), the state long-term care ombudsman or a representative

of the office of the state long-term care ombudsman program who is responsible for monitoring the regional program's compliance with this section;

(4) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

(a) A denial of employment of the applicant or employee;

(b) Employment or unemployment benefits of the applicant or employee;

(c) A civil or criminal action regarding the medicaid program or a program the department of aging administers.

(H) In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by an applicant or employee who a responsible party employs in a position that involves providing ombudsman services to residents and recipients, all of the following shall apply:

(1) If the responsible party employed the applicant or employee in good faith and reasonable reliance on the report of a criminal records check requested under this section, the responsible party shall not be found negligent solely because of its reliance on the report, even if the information in the report is determined later to have been incomplete or inaccurate.

(2) If the responsible party employed the applicant in good faith on a conditional basis pursuant to division (F) of this section, the responsible party shall not be found negligent solely because it employed the applicant prior to receiving the report of a criminal records check requested under this section.

(3) If the responsible party in good faith employed the applicant or employee because the applicant or employee meets standards specified in rules adopted under this section, the responsible party shall not be found negligent solely because the applicant or employee has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(I) The state long-term care ombudsman may not act as the director of aging's designee for the purpose of this section. The head of a regional long-term care ombudsman program may not act as the regional program's designee for the purpose of this section if the head is the employee for whom a database review or criminal records check is being conducted.

(J) The director of aging shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section.

(1) The rules may do the following:

(a) Require employees to undergo database reviews and criminal records checks under this section;

(b) If the rules require employees to undergo database reviews and criminal records checks under this section, exempt one or more classes of employees from the requirements;

(c) For the purpose of division (D)(7) of this section, specify other databases that are to be checked as part of a database review conducted under this section.

(2) The rules shall specify all of the following:

(a) The procedures for conducting database reviews under this section;

(b) If the rules require employees to undergo database reviews and criminal records checks under this section, the times at which the database reviews and criminal records checks are to be

conducted;

(c) If the rules specify other databases to be checked as part of the database reviews, the circumstances under which a responsible party is prohibited from employing an applicant or continuing to employ an employee who is found by a database review to be included in one or more of those databases;

(d) Standards that an applicant or employee must meet for a responsible party to be permitted to employ the applicant or continue to employ the employee in a position that involves providing ombudsman services to residents and recipients if the applicant or employee is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

**Sec. 173.38.** (A) As used in this section:

(1) "Applicant" means a person who is under final consideration for employment with a responsible party in a full-time, part-time, or temporary direct-care position or is referred to a responsible party by an employment service for such a position. "Applicant" does not include a person being considered for a direct-care position as a volunteer.

(2) "Area agency on aging" has the same meaning as in section 173.14 of the Revised Code.

(3) "Chief administrator of a responsible party" includes a consumer when the consumer is a responsible party.

(4) "Community-based long-term care services" means community-based long-term care services, as defined in section 173.14 of the Revised Code, that are provided under a program the department of aging administers.

(5) "Consumer" means an individual who receives community-based long-term care services.

(6) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(7)(a) "Direct-care position" means an employment position in which an employee has either or both of the following:

(i) In-person contact with one or more consumers;

(ii) Access to one or more consumers' personal property or records.

(b) "Direct-care position" does not include a person whose sole duties are transporting individuals under Chapter 306. of the Revised Code.

(8) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (e) of section 109.572 of the Revised Code.

(9) "Employee" means a person employed by a responsible party in a full-time, part-time, or temporary direct-care position and a person who works in such a position due to being referred to a responsible party by an employment service. "Employee" does not include a person who works in a direct-care position as a volunteer.

(10) "PASSPORT administrative agency" has the same meaning as in section 173.42 of the Revised Code.

(11) "Provider" has the same meaning as in section 173.39 of the Revised Code.

(12) "Responsible party" means the following:

(a) An area agency on aging in the case of either of the following:

(i) A person who is an applicant because the person is under final consideration for

employment with the agency in a full-time, part-time, or temporary direct-care position or is referred to the agency by an employment service for such a position;

(ii) A person who is an employee because the person is employed by the agency in a full-time, part-time, or temporary direct-care position or works in such a position due to being referred to the agency by an employment service.

(b) A PASSPORT administrative agency in the case of either of the following:

(i) A person who is an applicant because the person is under final consideration for employment with the agency in a full-time, part-time, or temporary direct-care position or is referred to the agency by an employment service for such a position;

(ii) A person who is an employee because the person is employed by the agency in a full-time, part-time, or temporary direct-care position or works in such a position due to being referred to the agency by an employment service.

(c) A provider in the case of either of the following:

(i) A person who is an applicant because the person is under final consideration for employment with the provider in a full-time, part-time, or temporary direct-care position or is referred to the provider by an employment service for such a position;

(ii) A person who is an employee because the person is employed by the provider in a full-time, part-time, or temporary direct-care position or works in such a position due to being referred to the provider by an employment service.

(d) A subcontractor in the case of either of the following:

(i) A person who is an applicant because the person is under final consideration for employment with the subcontractor in a full-time, part-time, or temporary direct-care position or is referred to the subcontractor by an employment service for such a position;

(ii) A person who is an employee because the person is employed by the subcontractor in a full-time, part-time, or temporary direct-care position or works in such a position due to being referred to the subcontractor by an employment service.

(e) A consumer in the case of either of the following:

(i) A person who is an applicant because the person is under final consideration for employment with the consumer in a full-time, part-time, or temporary direct-care position for which the consumer, as the employer of record, is to direct the person in the provision of community-based long-term care services the person is to provide the consumer or is referred to the consumer by an employment service for such a position;

(ii) A person who is an employee because the person is employed by the consumer in a full-time, part-time, or temporary direct-care position for which the consumer, as the employer of record, directs the person in the provision of community-based long-term care services the person provides to the consumer or who works in such a position due to being referred to the consumer by an employment service.

(13) "Subcontractor" has the meaning specified in rules adopted under this section.

(14) "Volunteer" means a person who serves in a direct-care position without receiving or expecting to receive any form of remuneration other than reimbursement for actual expenses.

(15) "Waiver agency" has the same meaning as in section 5164.342 of the Revised Code.

(B) This section does not apply to any individual who is subject to a database review or

criminal records check under section 173.381 or 3701.881 of the Revised Code or to any individual who is subject to a criminal records check under section 3721.121 of the Revised Code. If a provider or subcontractor also is a waiver agency, the provider or subcontractor may provide for applicants and employees to undergo database reviews and criminal records checks in accordance with section 5164.342 of the Revised Code rather than this section.

(C) No responsible party shall employ an applicant or continue to employ an employee in a direct-care position if any of the following apply:

(1) A review of the databases listed in division (E) of this section reveals any of the following:

(a) That the applicant or employee is included in one or more of the databases listed in divisions (E)(1) to (5) of this section;

(b) That there is in the state nurse aide registry established under section 3721.32 of the Revised Code a statement detailing findings by the director of health that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident;

(c) That the applicant or employee is included in one or more of the databases, if any, specified in rules adopted under this section and the rules prohibit the responsible party from employing an applicant or continuing to employ an employee included in such a database in a direct-care position.

(2) After the applicant or employee is provided, pursuant to division (F)(2)(a) of this section, a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard impression sheet prescribed pursuant to division (C)(2) of that section, the applicant or employee fails to complete the form or provide the applicant's or employee's fingerprint impressions on the standard impression sheet.

(3) Unless the applicant or employee meets standards specified in rules adopted under this section, the applicant or employee is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(D) Except as provided by division (G) of this section, the chief administrator of a responsible party shall inform each applicant of both of the following at the time of the applicant's initial application for employment or referral to the responsible party by an employment service for a direct-care position:

(1) That a review of the databases listed in division (E) of this section will be conducted to determine whether the responsible party is prohibited by division (C)(1) of this section from employing the applicant in the direct-care position;

(2) That, unless the database review reveals that the applicant may not be employed in the direct-care position, a criminal records check of the applicant will be conducted and the applicant is required to provide a set of the applicant's fingerprint impressions as part of the criminal records check.

(E) As a condition of employing any applicant in a direct-care position, the chief administrator of a responsible party shall conduct a database review of the applicant in accordance with rules adopted under this section. If rules adopted under this section so require, the chief

administrator of a responsible party shall conduct a database review of an employee in accordance with the rules as a condition of continuing to employ the employee in a direct-care position. However, a chief administrator is not required to conduct a database review of an applicant or employee if division (G) of this section applies. A database review shall determine whether the applicant or employee is included in any of the following:

(1) The excluded parties list system that is maintained by the United States general services administration pursuant to subpart 9.4 of the federal acquisition regulation and available at the federal web site known as the system for award management;

(2) The list of excluded individuals and entities maintained by the office of inspector general in the United States department of health and human services pursuant to the "Social Security Act," sections 1128 and 1156, 42 U.S.C. 1320a-7 and 1320c-5;

(3) The registry of ~~MR/DD~~ developmental disabilities employees established under section 5123.52 of the Revised Code;

(4) The internet-based sex offender and child-victim offender database established under division (A)(11) of section 2950.13 of the Revised Code;

(5) The internet-based database of inmates established under section 5120.66 of the Revised Code;

(6) The state nurse aide registry established under section 3721.32 of the Revised Code;

(7) Any other database, if any, specified in rules adopted under this section.

(F)(1) As a condition of employing any applicant in a direct-care position, the chief administrator of a responsible party shall request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of the applicant. If rules adopted under this section so require, the chief administrator of a responsible party shall request that the superintendent conduct a criminal records check of an employee at times specified in the rules as a condition of continuing to employ the employee in a direct-care position. However, the chief administrator is not required to request the criminal records check of the applicant or employee if division (G) of this section applies or the responsible party is prohibited by division (C)(1) of this section from employing the applicant or continuing to employ the employee in a direct-care position. If an applicant or employee for whom a criminal records check request is required by this section does not present proof of having been a resident of this state for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the superintendent has requested information about the applicant or employee from the federal bureau of investigation in a criminal records check, the chief administrator shall request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check. Even if an applicant or employee for whom a criminal records check request is required by this section presents proof of having been a resident of this state for the five-year period, the chief administrator may request that the superintendent include information from the federal bureau of investigation in the criminal records check.

(2) The chief administrator shall do all of the following:

(a) Provide to each applicant and employee for whom a criminal records check request is required by this section a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a standard impression sheet prescribed pursuant to division (C)(2) of that

section;

- (b) Obtain the completed form and standard impression sheet from the applicant or employee;
- (c) Forward the completed form and standard impression sheet to the superintendent.

(3) A responsible party shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check the responsible party requests under this section. A responsible party may charge an applicant a fee not exceeding the amount the responsible party pays to the bureau under this section if both of the following apply:

(a) The responsible party notifies the applicant at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the applicant will not be considered for employment.

(b) The medicaid program does not pay the responsible party for the fee it pays to the bureau under this section.

(G) Divisions (D) to (F) of this section do not apply with regard to an applicant or employee if the applicant or employee is referred to a responsible party by an employment service that supplies full-time, part-time, or temporary staff for direct-care positions and both of the following apply:

(1) The chief administrator of the responsible party receives from the employment service confirmation that a review of the databases listed in division (E) of this section was conducted of the applicant or employee.

(2) The chief administrator of the responsible party receives from the employment service, applicant, or employee a report of the results of a criminal records check of the applicant or employee that has been conducted by the superintendent within the one-year period immediately preceding the following:

(a) In the case of an applicant, the date of the applicant's referral by the employment service to the responsible party;

(b) In the case of an employee, the date by which the responsible party would otherwise have to request a criminal records check of the employee under division (F) of this section.

(H)(1) A responsible party may employ conditionally an applicant for whom a criminal records check request is required by this section prior to obtaining the results of the criminal records check if the responsible party is not prohibited by division (C)(1) of this section from employing the applicant in a direct-care position and either of the following applies:

(a) The chief administrator of the responsible party requests the criminal records check in accordance with division (F) of this section not later than five business days after the applicant begins conditional employment.

(b) The applicant is referred to the responsible party by an employment service, the employment service or the applicant provides the chief administrator of the responsible party a letter that is on the letterhead of the employment service, the letter is dated and signed by a supervisor or another designated official of the employment service, and the letter states all of the following:

(i) That the employment service has requested the superintendent to conduct a criminal records check regarding the applicant;

(ii) That the requested criminal records check is to include a determination of whether the applicant has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of

conviction for a disqualifying offense;

(iii) That the employment service has not received the results of the criminal records check as of the date set forth on the letter;

(iv) That the employment service promptly will send a copy of the results of the criminal records check to the chief administrator of the responsible party when the employment service receives the results.

(2) If a responsible party employs an applicant conditionally pursuant to division (H)(1)(b) of this section, the employment service, on its receipt of the results of the criminal records check, promptly shall send a copy of the results to the chief administrator of the responsible party.

(3) A responsible party that employs an applicant conditionally pursuant to division (H)(1)(a) or (b) of this section shall terminate the applicant's employment if the results of the criminal records check, other than the results of any request for information from the federal bureau of investigation, are not obtained within the period ending sixty days after the date the request for the criminal records check is made. Regardless of when the results of the criminal records check are obtained, if the results indicate that the applicant has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, the responsible party shall terminate the applicant's employment unless the applicant meets standards specified in rules adopted under this section that permit the responsible party to employ the applicant and the responsible party chooses to employ the applicant. Termination of employment under this division shall be considered just cause for discharge for purposes of division (D)(2) of section 4141.29 of the Revised Code if the applicant makes any attempt to deceive the responsible party about the applicant's criminal record.

(1) The report of any criminal records check conducted pursuant to a request made under this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:

(1) The applicant or employee who is the subject of the criminal records check or the applicant's or employee's representative;

(2) The chief administrator of the responsible party requesting the criminal records check or the administrator's representative;

(3) The administrator of any other facility, agency, or program that provides community-based long-term care services that is owned or operated by the same entity that owns or operates the responsible party that requested the criminal records check;

(4) The employment service that requested the criminal records check;

(5) The director of aging or a person authorized by the director to monitor a responsible party's compliance with this section;

(6) The medicaid director and the staff of the department of medicaid who are involved in the administration of the medicaid program if any of the following apply:

(a) In the case of a criminal records check requested by a provider or subcontractor, the provider or subcontractor also is a waiver agency;

(b) In the case of a criminal records check requested by an employment service, the employment service makes the request for an applicant or employee the employment service refers to a provider or subcontractor that also is a waiver agency;

(c) The criminal records check is requested by a consumer who is acting as a responsible

party.

(7) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

- (a) A denial of employment of the applicant or employee;
- (b) Employment or unemployment benefits of the applicant or employee;
- (c) A civil or criminal action regarding the medicaid program or a program the department of aging administers.

(J) In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by an applicant or employee who a responsible party employs in a direct-care position, all of the following shall apply:

(1) If the responsible party employed the applicant or employee in good faith and reasonable reliance on the report of a criminal records check requested under this section, the responsible party shall not be found negligent solely because of its reliance on the report, even if the information in the report is determined later to have been incomplete or inaccurate.

(2) If the responsible party employed the applicant in good faith on a conditional basis pursuant to division (H) of this section, the responsible party shall not be found negligent solely because it employed the applicant prior to receiving the report of a criminal records check requested under this section.

(3) If the responsible party in good faith employed the applicant or employee because the applicant or employee meets standards specified in rules adopted under this section, the responsible party shall not be found negligent solely because the applicant or employee has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(K) The director of aging shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section.

(1) The rules may do the following:

(a) Require employees to undergo database reviews and criminal records checks under this section;

(b) If the rules require employees to undergo database reviews and criminal records checks under this section, exempt one or more classes of employees from the requirements;

(c) For the purpose of division (E)(7) of this section, specify other databases that are to be checked as part of a database review conducted under this section.

(2) The rules shall specify all of the following:

(a) The meaning of the term "subcontractor";

(b) The procedures for conducting database reviews under this section;

(c) If the rules require employees to undergo database reviews and criminal records checks under this section, the times at which the database reviews and criminal records checks are to be conducted;

(d) If the rules specify other databases to be checked as part of the database reviews, the circumstances under which a responsible party is prohibited from employing an applicant or continuing to employ an employee who is found by a database review to be included in one or more of those databases;

(e) Standards that an applicant or employee must meet for a responsible party to be permitted to employ the applicant or continue to employ the employee in a direct-care position if the applicant or employee is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

**Sec. 173.381.** (A) As used in this section:

(1) "Community-based long-term care services" means community-based long-term care services, as defined in section 173.14 of the Revised Code, that are provided under a program the department of aging administers.

(2) "Community-based long-term care services certificate" means a certificate issued under section 173.391 of the Revised Code.

(3) "Community-based long-term care services contract or grant" means a contract or grant awarded under section 173.392 of the Revised Code.

(4) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(5) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (e) of section 109.572 of the Revised Code.

(6) "Provider" has the same meaning as in section 173.39 of the Revised Code.

(7) "Self-employed provider" means a provider who works for the provider's self and has no employees.

(B) This section does not apply to any individual who is subject to a database review or criminal records check under section 3701.881 of the Revised Code.

(C)(1) The department of aging or its designee shall take the following actions when the circumstances specified in division (C)(2) of this section apply:

(a) Refuse to issue a community-based long-term care services certificate to a self-employed provider;

(b) Revoke a self-employed provider's community-based long-term care services certificate;

(c) Refuse to award a community-based long-term care services contract or grant to a self-employed provider;

(d) Terminate a self-employed provider's community-based long-term care services contract or grant awarded on or after ~~the effective date of this section~~ September 15, 2014.

(2) The following are the circumstances that require the department of aging or its designee to take action under division (C)(1) of this section:

(a) A review of the databases listed in division (E) of this section reveals any of the following:

(i) That the self-employed provider is included in one or more of the databases listed in divisions (E)(1) to (5) of this section;

(ii) That there is in the state nurse aide registry established under section 3721.32 of the Revised Code a statement detailing findings by the director of health that the self-employed provider neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident;

(iii) That the self-employed provider is included in one or more of the databases, if any,

specified in rules adopted under this section and the rules require the department or its designee to take action under division (C)(1) of this section if a self-employed provider is included in such a database.

(b) After the self-employed provider is provided, pursuant to division (F)(2)(a) of this section, a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard impression sheet prescribed pursuant to division (C)(2) of that section, the self-employed provider fails to complete the form or provide the self-employed provider's fingerprint impressions on the standard impression sheet.

(c) Unless the self-employed provider meets standards specified in rules adopted under this section, the self-employed provider is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(D) The department of aging or its designee shall inform each self-employed provider of both of the following at the time of the self-employed provider's initial application for a community-based long-term care services certificate or initial bid for a community-based long-term care services contract or grant:

(1) That a review of the databases listed in division (E) of this section will be conducted to determine whether the department or its designee is required by division (C) of this section to refuse to issue or award a community-based long-term care services certificate or community-based long-term care services contract or grant to the self-employed provider;

(2) That, unless the database review reveals that the department or its designee is required to refuse to issue or award a community-based long-term care services certificate or community-based long-term care services contract or grant to the self-employed provider, a criminal records check of the self-employed provider will be conducted and the self-employed provider is required to provide a set of the self-employed provider's fingerprint impressions as part of the criminal records check.

(E) As a condition of issuing or awarding a community-based long-term care services certificate or community-based long-term care services contract or grant to a self-employed provider, the department of aging or its designee shall conduct a database review of the self-employed provider in accordance with rules adopted under this section. If rules adopted under this section so require, the department or its designee shall conduct a database review of a self-employed provider in accordance with the rules as a condition of not revoking or terminating the self-employed provider's community-based long-term care services certificate or community-based long-term care services contract or grant. A database review shall determine whether the self-employed provider is included in any of the following:

(1) The excluded parties list system that is maintained by the United States general services administration pursuant to subpart 9.4 of the federal acquisition regulation and available at the federal web site known as the system for award management;

(2) The list of excluded individuals and entities maintained by the office of inspector general in the United States department of health and human services pursuant to the "Social Security Act," 42 U.S.C. 1320a-7 and 1320c-5;

(3) The registry of ~~MR/DD~~ developmental disabilities employees established under section 5123.52 of the Revised Code;

(4) The internet-based sex offender and child-victim offender database established under division (A)(11) of section 2950.13 of the Revised Code;

(5) The internet-based database of inmates established under section 5120.66 of the Revised Code;

(6) The state nurse aide registry established under section 3721.32 of the Revised Code;

(7) Any other database, if any, specified in rules adopted under this section.

(F)(1) As a condition of issuing or awarding a community-based long-term care services certificate or community-based long-term care services contract or grant to a self-employed provider, the department of aging or its designee shall request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of the self-employed provider. If rules adopted under this section so require, the department or its designee shall request that the superintendent conduct a criminal records check of a self-employed provider at times specified in the rules as a condition of not revoking or terminating the self-employed provider's community-based long-term care services certificate or community-based long-term care services contract or grant. However, the department or its designee is not required to request the criminal records check of the self-employed provider if the department or its designee, because of circumstances specified in division (C)(2)(a) of this section, is required to refuse to issue or award a community-based long-term care services certificate or community-based long-term care services contract or grant to the self-employed provider or to revoke or terminate the self-employed provider's certificate or contract or grant.

If a self-employed provider for whom a criminal records check request is required by this section does not present proof of having been a resident of this state for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the superintendent has requested information about the self-employed provider from the federal bureau of investigation in a criminal records check, the department or its designee shall request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check. Even if a self-employed provider for whom a criminal records check request is required by this section presents proof of having been a resident of this state for the five-year period, the department or its designee may request that the superintendent include information from the federal bureau of investigation in the criminal records check.

(2) The department or its designee shall do all of the following:

(a) Provide to each self-employed provider for whom a criminal records check request is required by this section a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a standard impression sheet prescribed pursuant to division (C)(2) of that section;

(b) Obtain the completed form and standard impression sheet from the self-employed provider;

(c) Forward the completed form and standard impression sheet to the superintendent.

(3) The department or its designee shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check of a self-employed provider the department or its designee requests under this section. The department or its designee may charge the self-employed provider a fee that

does not exceed the amount the department or its designee pays to the bureau.

(G) The report of any criminal records check of a self-employed provider conducted pursuant to a request made under this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:

(1) The self-employed provider or the self-employed provider's representative;

(2) The department of aging, the department's designee, or a representative of the department or its designee;

(3) The medicaid director and the staff of the department of medicaid who are involved in the administration of the medicaid program if the self-employed provider is to provide, or provides, community-based long-term care services under a component of the medicaid program that the department of aging administers;

(4) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

(a) A refusal to issue or award a community-based long-term services certificate or community-based long-term care services contract or grant to the self-employed provider;

(b) A revocation or termination of the self-employed provider's community-based long-term care services certificate or community-based long-term care services contract or grant;

(c) A civil or criminal action regarding a program the department of aging administers.

(H) In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by a self-employed provider, both of the following shall apply:

(1) If the department of aging or its designee, in good faith and reasonable reliance on the report of a criminal records check requested under this section, issued or awarded a community-based long-term care services certificate or community-based long-term care services contract or grant to the self-employed provider or did not revoke or terminate the self-employed provider's certificate or contract or grant, the department and its designee shall not be found negligent solely because of its reliance on the report, even if the information in the report is determined later to have been incomplete or inaccurate.

(2) If the department or its designee in good faith issued or awarded a community-based long-term care services certificate or community-based long-term care services contract or grant to the self-employed provider or did not revoke or terminate the self-employed provider's certificate or contract or grant because the self-employed provider meets standards specified in rules adopted under this section, the department and its designee shall not be found negligent solely because the self-employed provider has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(I) The director of aging shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section.

(1) The rules may do the following:

(a) Require self-employed providers who have been issued or awarded community-based long-term care services certificates or community-based long-term care services contracts or grants to undergo database reviews and criminal records checks under this section;

(b) If the rules require self-employed providers who have been issued or awarded community-based long-term care services certificates or community-based long-term care services

contracts or grants to undergo database reviews and criminal records checks under this section, exempt one or more classes of such self-employed providers from the requirements;

(c) For the purpose of division (E)(7) of this section, specify other databases that are to be checked as part of a database review conducted under this section.

(2) The rules shall specify all of the following:

(a) The procedures for conducting database reviews under this section;

(b) If the rules require self-employed providers who have been issued or awarded community-based long-term care services certificates or community-based long-term care services contracts or grants to undergo database reviews and criminal records checks under this section, the times at which the database reviews and criminal records checks are to be conducted;

(c) If the rules specify other databases to be checked as part of the database reviews, the circumstances under which the department of aging or its designee is required to refuse to issue or award a community-based long-term care services certificate or community-based long-term care services contract or grant to a self-employed provider or to revoke or terminate a self-employed provider's certificate or contract or grant when the self-employed provider is found by a database review to be included in one or more of those databases;

(d) Standards that a self-employed provider must meet for the department or its designee to be permitted to issue or award a community-based long-term care services certificate or community-based long-term care services contract or grant to the self-employed provider or not to revoke or terminate the self-employed provider's certificate or contract or grant if the self-employed provider is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

**Sec. 305.07.** (A) Special sessions of the board of county commissioners may be held as often as the commissioners deem it necessary. At a regular or special session, the board may make any necessary order or contract in relation to the building, furnishing, repairing, or insuring of public buildings or bridges; the employment of janitors; the improvements or enclosure of public grounds; the maintenance or support of ~~mentally retarded or developmentally disabled~~ persons with developmental disabilities or of the mentally ill; the expenditure of any fund; or the board may provide for the reconstruction or repair of any bridge destroyed by fire, flood, or otherwise. The board shall comply with division (F) of section 121.22 of the Revised Code. The board may do any other official act not, by law, restricted to a particular regular session.

(B) The board of county commissioners may provide by resolution for the holding of special sessions of the board at a location in the county other than the usual office of the board at the county seat. The adoption of the resolution and the location where the sessions will be held shall be entered on the journal of the board. The board shall give reasonable public notice of its action taken pursuant to this division, in accordance with division (F) of section 121.22 of the Revised Code.

**Sec. 307.02.** The board of county commissioners of any county, in addition to its other powers, may purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish a courthouse, county offices, jail, county home, juvenile court building, detention facility, public market houses, retail store rooms and offices, if located in a building acquired to house county offices, for which store rooms or offices the board of county commissioners may establish and collect

rents or enter into leases as provided in section 307.09 of the Revised Code, county children's home, community mental health facility, community ~~mental retardation or developmental disability~~ disabilities facility, facilities for senior citizens, alcohol treatment and control center, other necessary buildings, public stadiums, public auditorium, exhibition hall, zoological park, public library buildings, golf courses, and off-street parking facilities determined by the board of county commissioners to be so situated as to be useful for any of such purposes or any combination of such purposes, for the use of which parking facilities the board of county commissioners may establish and collect rates, charges, or rents, and sites therefor, such real estate adjoining an existing site as is necessary for any of such purposes, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress, and egress; such copies of any public records of such county, made or reproduced by miniature photography or microfilm, as are necessary for the protection and preservation of public records of such county.

The board of county commissioners of any county may lease for a period not to exceed forty years, pursuant to a contract providing for the construction thereof under a lease-purchase plan, those buildings, structures, and other improvements enumerated in the first paragraph of this section, and in conjunction therewith, may grant leases, easements, or licenses for lands under the control of the county for a period not to exceed forty years. Such lease-purchase plan shall provide that at the end of the lease period such buildings, structures, and related improvements, together with the land on which they are situated, shall become the property of the county without cost.

Whenever any building, structure or other improvement is to be so leased by a county, the board of county commissioners shall file in the office of the board, if the board has a full-time clerk, or in the office of the county auditor such basic plans, specifications, bills of materials, and estimates of cost with sufficient detail to afford bidders all needed information, or alternatively, shall file the following plans, details, bills of materials, and specifications:

(A) Full and accurate plans, suitable for the use of mechanics and other builders in such construction, improvement, addition, alteration, or installation;

(B) Details to scale and full sized, so drawn and represented as to be easily understood;

(C) Accurate bills showing the exact quantity of different kinds of material necessary to the construction;

(D) Definite and complete specifications of the work to be performed, together with such directions as will enable a competent mechanic or other builder to carry them out and afford bidders all needed information;

(E) A full and accurate estimate of each item of expense and of the aggregate cost thereof.

The board of county commissioners shall invite bids in the manner prescribed in sections 307.86 to 307.92 of the Revised Code. Such bids shall contain the terms upon which the builder would propose to lease the building, structure, or other improvement to the county. The form of the bid approved by the board of county commissioners shall be used and a bid shall be invalid and not considered unless such form is used without change, alteration, or addition.

Before submitting bids pursuant to this section, any builder shall have complied with sections 153.50 to 153.52 of the Revised Code.

On the day and at the place named for receiving bids for entering into lease agreements with the county, the board of county commissioners shall open the bids, and shall publicly proceed

immediately to tabulate the bids. No such lease agreement shall be entered into until the bureau of workers' compensation has certified that the corporation, partnership, or person to be awarded the lease agreement has complied with Chapter 4123. of the Revised Code, and until, if the builder submitting the lowest and best bid is a foreign corporation, the secretary of state has certified that such corporation is authorized to do business in this state, and until, if the builder submitting the lowest and best bid is a person or partnership nonresident of this state, such person or partnership has filed with the secretary of state a power of attorney designating the secretary of state as its agent for the purpose of accepting service of summons in any action brought under Chapter 4123. of the Revised Code, and until the agreement is submitted to the county prosecutor and the county prosecutor's approval certified thereon. Within thirty days after the day on which the bids are received, the board of county commissioners shall investigate the bids received and shall determine that the bureau and the secretary of state have made the certifications required by this section of the builder who has submitted the lowest and best bid. Within ten days of the completion of the investigation of the bids the board of county commissioners may award the lease agreement to the builder who has submitted the lowest and best bid and who has been certified by the bureau and secretary of state as required by this section. If bidding for the lease agreement has been conducted upon the basis of basic plans, specifications, bills of materials, and estimates of costs, upon the award to the builder, the board of county commissioners, or the builder with the approval of the board of county commissioners, shall appoint an architect or engineer licensed in Ohio to prepare such further detailed plans, specifications, and bills of materials as are required to construct the buildings, structures, and other improvements enumerated in the first paragraph of this section. The board of county commissioners may reject any bid. Where there is reason to believe there is collusion or combination among the bidders, the bids of those concerned therein shall be rejected.

**Sec. 313.12.** (A) When any person dies as a result of criminal or other violent means, by casualty, by suicide, or in any suspicious or unusual manner, when any person, including a child under two years of age, dies suddenly when in apparent good health, or when any ~~mentally retarded person or developmentally disabled person~~ with a developmental disability dies regardless of the circumstances, the physician called in attendance, or any member of an ambulance service, emergency squad, or law enforcement agency who obtains knowledge thereof arising from the person's duties, shall immediately notify the office of the coroner of the known facts concerning the time, place, manner, and circumstances of the death, and any other information that is required pursuant to sections 313.01 to 313.22 of the Revised Code. In such cases, if a request is made for cremation, the funeral director called in attendance shall immediately notify the coroner.

(B) As used in this section, "~~mentally retarded person~~" and "~~developmentally disabled person~~developmental disability" ~~have~~ has the same ~~meanings~~ meaning as in section 5123.01 of the Revised Code.

**Sec. 325.07.** In addition to the compensation and salary provided by section 325.06 of the Revised Code, the board of county commissioners shall make allowances monthly to each sheriff for ~~his~~ the actual and necessary expenses incurred and expended by the sheriff in pursuing within or without the state or transporting persons accused or convicted of crimes and offenses, for any expenses incurred in conveying and transferring persons to or from any state hospital for the mentally ill, any institution for ~~the mentally retarded persons with intellectual disabilities~~, any institution

operated by the youth commission, children's homes, county homes, and all similar institutions, and for all expenses of maintaining transportation facilities necessary to the proper administration of the duties of ~~his~~ the sheriff's office.

The board shall allow the sheriff ~~his~~ the actual transportation expense and telephone tolls expended by the sheriff in serving civil processes and subpoenaing witnesses in civil and criminal cases and before the grand jury, and it may allow any other necessary transportation expense for the proper administration of the duties of ~~his~~ the sheriff's office. Each sheriff shall file under oath a monthly report containing a full, accurate, and itemized account of all ~~his~~ the sheriff's actual and necessary expenses, including telephone tolls and any other transportation expense mentioned in this section, before the expense is allowed by the board. The statement shall show the number of the case, the court in which the service was rendered, and the point from which a transportation vehicle was used.

For the purpose of making available to the sheriff funds necessary in the performance of the duties required of ~~him~~ under this section, the board may authorize, as an advancement to the sheriff, a sum not exceeding fifty per cent of ~~his~~ the sheriff's annual salary, from appropriations made to ~~him~~ the sheriff by the board for pursuing prisoners within or without the state or for transporting the prisoners to correctional institutions, or both, and for transporting persons to the institutions enumerated in this section, from which sum of money so advanced the necessary expenses for the transportation or pursuance may be paid by the sheriff. The county auditor shall draw ~~his~~ a warrant upon the county treasurer, in favor of the sheriff, as authorized by the board.

After the itemized monthly report provided for in this section has been filed by the sheriff and approved and allowed by the board, the board shall restore to the fund the amount expended and disbursed by the sheriff, as approved and allowed by the board.

Any unexpended balance of such fund remaining in the hands of the sheriff, at the end of each succeeding fiscal year, shall be returned and paid into the county treasury by the sheriff.

**Sec. 711.23.** As used in this section, "incompetent person" means a person who is so mentally impaired, as a result of a mental or physical illness or disability, ~~or mental retardation~~ as a result of intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.

If the court of common pleas is of the opinion that any person owning a lot in a plat, addition, or part thereof proposed to be vacated or altered, and not assenting to such vacation or alteration, will sustain damage thereby, it may proceed to hear proof in reference thereto, and may render judgment against the petitioners for such damages as it thinks proper and just, to be assessed ratably against the petitioners by the court, according to the value of the property owned by the petitioners as it stands taxed on the tax list of the county. When necessary, the court shall appoint a guardian ad litem for all minors or incompetent persons interested in the premises. The judgment of the court vacating such plat, addition, or parts thereof, shall be conditioned upon the payment of the damages thus assessed.

**Sec. 1751.01.** As used in this chapter:

(A)(1) "Basic health care services" means the following services when medically necessary:

(a) Physician's services, except when such services are supplemental under division (B) of this section;

- (b) Inpatient hospital services;
- (c) Outpatient medical services;
- (d) Emergency health services;
- (e) Urgent care services;
- (f) Diagnostic laboratory services and diagnostic and therapeutic radiologic services;
- (g) Diagnostic and treatment services, other than prescription drug services, for biologically based mental illnesses;
- (h) Preventive health care services, including, but not limited to, voluntary family planning services, infertility services, periodic physical examinations, prenatal obstetrical care, and well-child care;
- (i) Routine patient care for patients enrolled in an eligible cancer clinical trial pursuant to section 3923.80 of the Revised Code.

"Basic health care services" does not include experimental procedures.

Except as provided by divisions (A)(2) and (3) of this section in connection with the offering of coverage for diagnostic and treatment services for biologically based mental illnesses, a health insuring corporation shall not offer coverage for a health care service, defined as a basic health care service by this division, unless it offers coverage for all listed basic health care services. However, this requirement does not apply to the coverage of beneficiaries enrolled in medicare pursuant to a medicare contract, or to the coverage of beneficiaries enrolled in the federal employee health benefits program pursuant to 5 U.S.C.A. 8905, or to the coverage of medicaid recipients, or to the coverage of beneficiaries under any federal health care program regulated by a federal regulatory body, or to the coverage of beneficiaries under any contract covering officers or employees of the state that has been entered into by the department of administrative services.

(2) A health insuring corporation may offer coverage for diagnostic and treatment services for biologically based mental illnesses without offering coverage for all other basic health care services. A health insuring corporation may offer coverage for diagnostic and treatment services for biologically based mental illnesses alone or in combination with one or more supplemental health care services. However, a health insuring corporation that offers coverage for any other basic health care service shall offer coverage for diagnostic and treatment services for biologically based mental illnesses in combination with the offer of coverage for all other listed basic health care services.

(3) A health insuring corporation that offers coverage for basic health care services is not required to offer coverage for diagnostic and treatment services for biologically based mental illnesses in combination with the offer of coverage for all other listed basic health care services if all of the following apply:

(a) The health insuring corporation submits documentation certified by an independent member of the American academy of actuaries to the superintendent of insurance showing that incurred claims for diagnostic and treatment services for biologically based mental illnesses for a period of at least six months independently caused the health insuring corporation's costs for claims and administrative expenses for the coverage of basic health care services to increase by more than one per cent per year.

(b) The health insuring corporation submits a signed letter from an independent member of the American academy of actuaries to the superintendent of insurance opining that the increase in

costs described in division (A)(3)(a) of this section could reasonably justify an increase of more than one per cent in the annual premiums or rates charged by the health insuring corporation for the coverage of basic health care services.

(c) The superintendent of insurance makes the following determinations from the documentation and opinion submitted pursuant to divisions (A)(3)(a) and (b) of this section:

(i) Incurred claims for diagnostic and treatment services for biologically based mental illnesses for a period of at least six months independently caused the health insuring corporation's costs for claims and administrative expenses for the coverage of basic health care services to increase by more than one per cent per year.

(ii) The increase in costs reasonably justifies an increase of more than one per cent in the annual premiums or rates charged by the health insuring corporation for the coverage of basic health care services.

Any determination made by the superintendent under this division is subject to Chapter 119. of the Revised Code.

(B)(1) "Supplemental health care services" means any health care services other than basic health care services that a health insuring corporation may offer, alone or in combination with either basic health care services or other supplemental health care services, and includes:

- (a) Services of facilities for intermediate or long-term care, or both;
- (b) Dental care services;
- (c) Vision care and optometric services including lenses and frames;
- (d) Podiatric care or foot care services;
- (e) Mental health services, excluding diagnostic and treatment services for biologically based mental illnesses;
- (f) Short-term outpatient evaluative and crisis-intervention mental health services;
- (g) Medical or psychological treatment and referral services for alcohol and drug abuse or addiction;
- (h) Home health services;
- (i) Prescription drug services;
- (j) Nursing services;
- (k) Services of a dietitian licensed under Chapter 4759. of the Revised Code;
- (l) Physical therapy services;
- (m) Chiropractic services;
- (n) Any other category of services approved by the superintendent of insurance.

(2) If a health insuring corporation offers prescription drug services under this division, the coverage shall include prescription drug services for the treatment of biologically based mental illnesses on the same terms and conditions as other physical diseases and disorders.

(C) "Specialty health care services" means one of the supplemental health care services listed in division (B) of this section, when provided by a health insuring corporation on an outpatient-only basis and not in combination with other supplemental health care services.

(D) "Biologically based mental illnesses" means schizophrenia, schizoaffective disorder, major depressive disorder, bipolar disorder, paranoia and other psychotic disorders, obsessive-compulsive disorder, and panic disorder, as these terms are defined in the most recent edition of the

diagnostic and statistical manual of mental disorders published by the American psychiatric association.

(E) "Closed panel plan" means a health care plan that requires enrollees to use participating providers.

(F) "Compensation" means remuneration for the provision of health care services, determined on other than a fee-for-service or discounted-fee-for-service basis.

(G) "Contractual periodic prepayment" means the formula for determining the premium rate for all subscribers of a health insuring corporation.

(H) "Corporation" means a corporation formed under Chapter 1701. or 1702. of the Revised Code or the similar laws of another state.

(I) "Emergency health services" means those health care services that must be available on a seven-days-per-week, twenty-four-hours-per-day basis in order to prevent jeopardy to an enrollee's health status that would occur if such services were not received as soon as possible, and includes, where appropriate, provisions for transportation and indemnity payments or service agreements for out-of-area coverage.

(J) "Enrollee" means any natural person who is entitled to receive health care benefits provided by a health insuring corporation.

(K) "Evidence of coverage" means any certificate, agreement, policy, or contract issued to a subscriber that sets out the coverage and other rights to which such person is entitled under a health care plan.

(L) "Health care facility" means any facility, except a health care practitioner's office, that provides preventive, diagnostic, therapeutic, acute convalescent, rehabilitation, mental health, ~~mental retardation~~ intellectual disability, intermediate care, or skilled nursing services.

(M) "Health care services" means basic, supplemental, and specialty health care services.

(N) "Health delivery network" means any group of providers or health care facilities, or both, or any representative thereof, that have entered into an agreement to offer health care services in a panel rather than on an individual basis.

(O) "Health insuring corporation" means a corporation, as defined in division (H) of this section, that, pursuant to a policy, contract, certificate, or agreement, pays for, reimburses, or provides, delivers, arranges for, or otherwise makes available, basic health care services, supplemental health care services, or specialty health care services, or a combination of basic health care services and either supplemental health care services or specialty health care services, through either an open panel plan or a closed panel plan.

"Health insuring corporation" does not include a limited liability company formed pursuant to Chapter 1705. of the Revised Code, an insurer licensed under Title XXXIX of the Revised Code if that insurer offers only open panel plans under which all providers and health care facilities participating receive their compensation directly from the insurer, a corporation formed by or on behalf of a political subdivision or a department, office, or institution of the state, or a public entity formed by or on behalf of a board of county commissioners, a county board of developmental disabilities, an alcohol and drug addiction services board, a board of alcohol, drug addiction, and mental health services, or a community mental health board, as those terms are used in Chapters 340. and 5126. of the Revised Code. Except as provided by division (D) of section 1751.02 of the Revised

Code, or as otherwise provided by law, no board, commission, agency, or other entity under the control of a political subdivision may accept insurance risk in providing for health care services. However, nothing in this division shall be construed as prohibiting such entities from purchasing the services of a health insuring corporation or a third-party administrator licensed under Chapter 3959. of the Revised Code.

(P) "Intermediary organization" means a health delivery network or other entity that contracts with licensed health insuring corporations or self-insured employers, or both, to provide health care services, and that enters into contractual arrangements with other entities for the provision of health care services for the purpose of fulfilling the terms of its contracts with the health insuring corporations and self-insured employers.

(Q) "Intermediate care" means residential care above the level of room and board for patients who require personal assistance and health-related services, but who do not require skilled nursing care.

(R) "Medical record" means the personal information that relates to an individual's physical or mental condition, medical history, or medical treatment.

(S)(1) "Open panel plan" means a health care plan that provides incentives for enrollees to use participating providers and that also allows enrollees to use providers that are not participating providers.

(2) No health insuring corporation may offer an open panel plan, unless the health insuring corporation is also licensed as an insurer under Title XXXIX of the Revised Code, the health insuring corporation, on June 4, 1997, holds a certificate of authority or license to operate under Chapter 1736. or 1740. of the Revised Code, or an insurer licensed under Title XXXIX of the Revised Code is responsible for the out-of-network risk as evidenced by both an evidence of coverage filing under section 1751.11 of the Revised Code and a policy and certificate filing under section 3923.02 of the Revised Code.

(T) "Osteopathic hospital" means a hospital registered under section 3701.07 of the Revised Code that advocates osteopathic principles and the practice and perpetuation of osteopathic medicine by doing any of the following:

(1) Maintaining a department or service of osteopathic medicine or a committee on the utilization of osteopathic principles and methods, under the supervision of an osteopathic physician;

(2) Maintaining an active medical staff, the majority of which is comprised of osteopathic physicians;

(3) Maintaining a medical staff executive committee that has osteopathic physicians as a majority of its members.

(U) "Panel" means a group of providers or health care facilities that have joined together to deliver health care services through a contractual arrangement with a health insuring corporation, employer group, or other payor.

(V) "Person" has the same meaning as in section 1.59 of the Revised Code, and, unless the context otherwise requires, includes any insurance company holding a certificate of authority under Title XXXIX of the Revised Code, any subsidiary and affiliate of an insurance company, and any government agency.

(W) "Premium rate" means any set fee regularly paid by a subscriber to a health insuring

corporation. A "premium rate" does not include a one-time membership fee, an annual administrative fee, or a nominal access fee, paid to a managed health care system under which the recipient of health care services remains solely responsible for any charges accessed for those services by the provider or health care facility.

(X) "Primary care provider" means a provider that is designated by a health insuring corporation to supervise, coordinate, or provide initial care or continuing care to an enrollee, and that may be required by the health insuring corporation to initiate a referral for specialty care and to maintain supervision of the health care services rendered to the enrollee.

(Y) "Provider" means any natural person or partnership of natural persons who are licensed, certified, accredited, or otherwise authorized in this state to furnish health care services, or any professional association organized under Chapter 1785. of the Revised Code, provided that nothing in this chapter or other provisions of law shall be construed to preclude a health insuring corporation, health care practitioner, or organized health care group associated with a health insuring corporation from employing certified nurse practitioners, certified nurse anesthetists, clinical nurse specialists, certified nurse-midwives, dietitians, physician assistants, dental assistants, dental hygienists, optometric technicians, or other allied health personnel who are licensed, certified, accredited, or otherwise authorized in this state to furnish health care services.

(Z) "Provider sponsored organization" means a corporation, as defined in division (H) of this section, that is at least eighty per cent owned or controlled by one or more hospitals, as defined in section 3727.01 of the Revised Code, or one or more physicians licensed to practice medicine or surgery or osteopathic medicine and surgery under Chapter 4731. of the Revised Code, or any combination of such physicians and hospitals. Such control is presumed to exist if at least eighty per cent of the voting rights or governance rights of a provider sponsored organization are directly or indirectly owned, controlled, or otherwise held by any combination of the physicians and hospitals described in this division.

(AA) "Solicitation document" means the written materials provided to prospective subscribers or enrollees, or both, and used for advertising and marketing to induce enrollment in the health care plans of a health insuring corporation.

(BB) "Subscriber" means a person who is responsible for making payments to a health insuring corporation for participation in a health care plan, or an enrollee whose employment or other status is the basis of eligibility for enrollment in a health insuring corporation.

(CC) "Urgent care services" means those health care services that are appropriately provided for an unforeseen condition of a kind that usually requires medical attention without delay but that does not pose a threat to the life, limb, or permanent health of the injured or ill person, and may include such health care services provided out of the health insuring corporation's approved service area pursuant to indemnity payments or service agreements.

**Sec. 1751.14.** (A) Notwithstanding section 3901.71 of the Revised Code, any policy, contract, or agreement for health care services authorized by this chapter that is issued, delivered, or renewed in this state and that provides that coverage of an unmarried dependent child will terminate upon attainment of the limiting age for dependent children specified in the policy, contract, or agreement, shall also provide in substance both of the following:

(1) Once an unmarried child has attained the limiting age for dependent children, as provided

in the policy, contract, or agreement, upon the request of the subscriber, the health insuring corporation shall offer to cover the unmarried child until the child attains twenty-six years of age if all of the following are true:

- (a) The child is the natural child, stepchild, or adopted child of the subscriber.
- (b) The child is a resident of this state or a full-time student at an accredited public or private institution of higher education.
- (c) The child is not employed by an employer that offers any health benefit plan under which the child is eligible for coverage.
- (d) The child is not eligible for coverage under the medicaid program or the medicare program.

(2) That attainment of the limiting age for dependent children shall not operate to terminate the coverage of a dependent child if the child is and continues to be both of the following:

(a) Incapable of self-sustaining employment by reason of ~~mental retardation or physical handicap or intellectual disability~~;

(b) Primarily dependent upon the subscriber for support and maintenance.

(B) Proof of incapacity and dependence for purposes of division (A)(2) of this section shall be furnished to the health insuring corporation within thirty-one days of the child's attainment of the limiting age. Upon request, but not more frequently than annually, the health insuring corporation may require proof satisfactory to it of the continuance of such incapacity and dependency.

(C) Nothing in this section shall do any of the following:

(1) Require that any policy, contract, or agreement offer coverage for dependent children or provide coverage for an unmarried dependent child's children as dependents on the policy, contract, or agreement;

(2) Require an employer to pay for any part of the premium for an unmarried dependent child that has attained the limiting age for dependents, as provided in the policy, contract, or agreement;

(3) Require an employer to offer health insurance coverage to the dependents of any employee.

(D) This section does not apply to any health insuring corporation policy, contract, or agreement offering only supplemental health care services or specialty health care services.

(E) As used in this section, "health benefit plan" has the same meaning as in section 3924.01 of the Revised Code and also includes both of the following:

(1) A public employee benefit plan;

(2) A health benefit plan as regulated under the "Employee Retirement Income Security Act of 1974," 29 U.S.C. 1001, et seq.

**Sec. 2101.17.** The fees enumerated in this section shall be paid to the probate court from the county treasury upon the warrant of the county auditor which shall issue upon the certificate of the probate judge and shall be in full for all services rendered in the respective proceedings as follows:

(A) For each hearing to determine if a person

is a mentally ill individual subject to

hospitalization when the person is committed

to a state hospital or to relatives

- ..... \$ 12.00;
- (B) When the person is discharged  
..... 7.00;
- (C) For order of return of a mentally ill person  
to a state hospital or removal therefrom  
..... 2.00;
- (D) For proceedings for committing a person to an  
institution for ~~the mentally retarded~~  
persons with intellectual disabilities  
..... 10.00;
- (E) For habeas corpus proceedings when a person  
is confined under color of proceedings in a  
criminal case and is discharged  
..... 10.00;
- (F) When acting as a juvenile judge, for each  
case filed against a ~~delinquency delinquent,~~  
dependent, unruly, or neglected child, or a  
juvenile traffic offender  
..... 5.00;
- (G) For proceedings to take a child from parents  
or other persons having control thereof  
..... 5.00.

**Sec. 2101.24.** (A)(1) Except as otherwise provided by law, the probate court has exclusive jurisdiction:

(a) To take the proof of wills and to admit to record authenticated copies of wills executed, proved, and allowed in the courts of any other state, territory, or country. If the probate judge is unavoidably absent, any judge of the court of common pleas may take proof of wills and approve bonds to be given, but the record of these acts shall be preserved in the usual records of the probate court.

(b) To grant and revoke letters testamentary and of administration;

(c) To direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates;

(d) To appoint the attorney general to serve as the administrator of an estate pursuant to section 2113.06 of the Revised Code;

- (e) To appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts;
- (f) To grant marriage licenses;
- (g) To make inquests respecting persons who are so mentally impaired, as a result of a mental or physical illness or disability, ~~or mental retardation~~ as a result of intellectual disability, or as a result of chronic substance abuse, that they are unable to manage their property and affairs effectively, subject to guardianship;
- (h) To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts;
- (i) To authorize the sale of lands, equitable estates, or interests in lands or equitable estates, and the assignments of inchoate dower in such cases of sale, on petition by executors, administrators, and guardians;
- (j) To authorize the completion of real property contracts on petition of executors and administrators;
- (k) To construe wills;
- (l) To render declaratory judgments, including, but not limited to, those rendered pursuant to section 2107.084 of the Revised Code;
- (m) To direct and control the conduct of fiduciaries and settle their accounts;
- (n) To authorize the sale or lease of any estate created by will if the estate is held in trust, on petition by the trustee;
- (o) To terminate a testamentary trust in any case in which a court of equity may do so;
- (p) To hear and determine actions to contest the validity of wills;
- (q) To make a determination of the presumption of death of missing persons and to adjudicate the property rights and obligations of all parties affected by the presumption;
- (r) To hear and determine an action commenced pursuant to section 3107.41 of the Revised Code to obtain the release of information pertaining to the birth name of the adopted person and the identity of the adopted person's biological parents and biological siblings;
- (s) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;
- (t) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;
- (u) To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122.141 or 5122.15 of the Revised Code;
- (v) To hear and determine actions relating to durable powers of attorney for health care as described in division (D) of section 1337.16 of the Revised Code;
- (w) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;
- (x) To hear and determine complaints that pertain to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with certain patients allegedly in a terminal condition or in a permanently unconscious state pursuant to division (E) of section 2133.08 of the Revised Code, in accordance with that division;
- (y) To hear and determine applications that pertain to the withholding or withdrawal of

nutrition and hydration from certain patients allegedly in a permanently unconscious state pursuant to section 2133.09 of the Revised Code, in accordance with that section;

(z) To hear and determine applications of attending physicians in accordance with division (B) of section 2133.15 of the Revised Code;

(aa) To hear and determine actions relative to the use or continuation of comfort care in connection with certain principals under durable powers of attorney for health care, declarants under declarations, or patients in accordance with division (E) of either section 1337.16 or 2133.12 of the Revised Code;

(bb) To hear and determine applications for an order relieving an estate from administration under section 2113.03 of the Revised Code;

(cc) To hear and determine applications for an order granting a summary release from administration under section 2113.031 of the Revised Code;

(dd) To hear and determine actions relating to the exercise of the right of disposition, in accordance with section 2108.90 of the Revised Code;

(ee) To hear and determine actions relating to the disinterment and reinterment of human remains under section 517.23 of the Revised Code;

(ff) To hear and determine petitions for an order for treatment of a person suffering from alcohol and other drug abuse filed under section 5119.93 of the Revised Code and to order treatment of that nature in accordance with, and take other actions afforded to the court under, sections 5119.90 to 5119.98 of the Revised Code.

(2) In addition to the exclusive jurisdiction conferred upon the probate court by division (A) (1) of this section, the probate court shall have exclusive jurisdiction over a particular subject matter if both of the following apply:

(a) Another section of the Revised Code expressly confers jurisdiction over that subject matter upon the probate court.

(b) No section of the Revised Code expressly confers jurisdiction over that subject matter upon any other court or agency.

(B)(1) The probate court has concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the court of common pleas to issue writs and orders, and to hear and determine actions as follows:

(a) If jurisdiction relative to a particular subject matter is stated to be concurrent in a section of the Revised Code or has been construed by judicial decision to be concurrent, any action that involves that subject matter;

(b) Any action that involves an inter vivos trust; a trust created pursuant to section 5815.28 of the Revised Code; a charitable trust or foundation; subject to divisions (A)(1)(u) and (z) of this section, a power of attorney, including, but not limited to, a durable power of attorney; the medical treatment of a competent adult; or a writ of habeas corpus;

(c) Subject to section 2101.31 of the Revised Code, any action with respect to a probate estate, guardianship, trust, or post-death dispute that involves any of the following:

(i) A designation or removal of a beneficiary of a life insurance policy, annuity contract, retirement plan, brokerage account, security account, bank account, real property, or tangible personal property;

(ii) A designation or removal of a payable-on-death beneficiary or transfer-on-death beneficiary;

(iii) A change in the title to any asset involving a joint and survivorship interest;

(iv) An alleged gift;

(v) The passing of assets upon the death of an individual otherwise than by will, intestate succession, or trust.

(2) Any action that involves a concurrent jurisdiction subject matter and that is before the probate court may be transferred by the probate court, on its order, to the general division of the court of common pleas.

(C) The probate court has plenary power at law and in equity to dispose fully of any matter that is properly before the court, unless the power is expressly otherwise limited or denied by a section of the Revised Code.

(D) The jurisdiction acquired by a probate court over a matter or proceeding is exclusive of that of any other probate court, except when otherwise provided by law.

**Sec. 2108.521.** (A) If a ~~mentally retarded person or a developmentally disabled person~~ with a developmental disability dies, if the department of developmental disabilities or a county board of developmental disabilities has a good faith reason to believe that the deceased person's death occurred under suspicious circumstances, if the coroner was apprised of the circumstances of the death, and if the coroner after being so apprised of the circumstances declines to conduct an autopsy, the department or the board may file a petition in a court of common pleas seeking an order authorizing an autopsy or post-mortem examination under this section.

(B) Upon the filing of a petition under division (A) of this section, the court may conduct, but is not required to conduct, a hearing on the petition. The court may determine whether to grant the petition without a hearing. The department or board, and all other interested parties, may submit information and statements to the court that are relevant to the petition, and, if the court conducts a hearing, may present evidence and testimony at the hearing. The court shall order the requested autopsy or post-mortem examination if it finds that, under the circumstances, the department or board has demonstrated a need for the autopsy or post-mortem examination. The court shall order an autopsy or post-mortem examination in the circumstances specified in this division regardless of whether any consent has been given, or has been given and withdrawn, under section 2108.50 of the Revised Code, and regardless of whether any information was presented to the coroner pursuant to section 313.131 of the Revised Code or to the court under this section regarding an autopsy being contrary to the deceased person's religious beliefs.

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

**Sec. 2109.01.** "Fiduciary," as used in Chapters 2101. to 2131. of the Revised Code, means any person, other than an assignee or trustee for an insolvent debtor or a guardian under sections 5905.01 to 5905.19 of the Revised Code, appointed by and accountable to the probate court and

acting in a fiduciary capacity for any person, or charged with duties in relation to any property, interest, trust, or estate for the benefit of another; and includes an agency under contract with the department of developmental disabilities for the provision of protective service under sections 5123.55 to 5123.59 of the Revised Code, appointed by and accountable to the probate court as guardian or trustee with respect to ~~mentally retarded or developmentally disabled persons with~~ developmental disabilities.

**Sec. 2111.01.** As used in Chapters 2101. to 2131. of the Revised Code:

(A) "Guardian," other than a guardian under sections 5905.01 to 5905.19 of the Revised Code, means any person, association, or corporation appointed by the probate court to have the care and management of the person, the estate, or both of an incompetent or minor. When applicable, "guardian" includes, but is not limited to, a limited guardian, an interim guardian, a standby guardian, and an emergency guardian appointed pursuant to division (B) of section 2111.02 of the Revised Code. "Guardian" also includes an agency under contract with the department of developmental disabilities for the provision of protective service under sections 5123.55 to 5123.59 of the Revised Code when appointed by the probate court to have the care and management of the person of an incompetent.

(B) "Ward" means any person for whom a guardian is acting or for whom the probate court is acting pursuant to section 2111.50 of the Revised Code.

(C) "Resident guardian" means a guardian appointed by a probate court to have the care and management of property in this state that belongs to a nonresident ward.

(D) "Incompetent" means ~~any either of the following:~~

(1) ~~Any person who is so mentally impaired, as a result of a mental or physical illness or disability, or mental retardation as a result of intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide, or any;~~

(2) Any person confined to a correctional institution within this state.

(E) "Next of kin" means any person who would be entitled to inherit from a ward under Chapter 2105. of the Revised Code if the ward dies intestate.

(F) "Conservator" means a conservator appointed by the probate court in an order of conservatorship issued pursuant to section 2111.021 of the Revised Code.

(G) "Parent" means a natural parent or adoptive parent of a minor child whose parental rights and responsibilities have not been terminated by a juvenile court or another court.

(H) "Financial harm" means impairment of an individual's financial assets by unlawfully obtaining or exerting control over the individual's real or personal property in any of the following ways:

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

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

(3) By deception;

(4) By threat;

- (5) By intimidation;
- (6) By fraud;
- (7) By undue influence.

**Sec. 2111.10.** As used in this section, "~~mentally retarded person~~" and "~~developmentally disabled person~~developmental disability" ~~have~~ has the same ~~meanings~~ meaning as in section 5123.01 of the Revised Code.

Any appointment of a corporation as guardian shall apply to the estate only and not to the person, except that a nonprofit corporation organized under the laws of this state and entitled to tax exempt status under section 501(a) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended, that has a contract with the department of developmental disabilities to provide protective services may be appointed as a guardian of ~~the person of a mentally retarded or developmentally disabled~~ a person with a developmental disability and may serve as guardian pursuant to sections 5123.55 to 5123.59 of the Revised Code.

**Sec. 2111.49.** (A)(1) Subject to division (A)(3) of this section, the guardian of an incompetent person shall file a guardian's report with the court two years after the date of the issuance of the guardian's letters of appointment and biennially after that time, or at any other time upon the motion or a rule of the probate court. The report shall be in a form prescribed by the court and shall include all of the following.

- (a) The present address of the place of residence of the ward;
- (b) The present address of the guardian;
- (c) If the place of residence of the ward is not the ward's personal home, the name of the facility at which the ward resides and the name of the person responsible for the ward's care;
- (d) The approximate number of times during the period covered by the report that the guardian has had contact with the ward, the nature of those contacts, and the date that the ward was last seen by the guardian;
- (e) Any major changes in the physical or mental condition of the ward observed by the guardian;
- (f) The opinion of the guardian as to the necessity for the continuation of the guardianship;
- (g) The opinion of the guardian as to the adequacy of the present care of the ward;
- (h) The date that the ward was last examined or otherwise seen by a physician and the purpose of that visit;
- (i) A statement by a licensed physician, licensed clinical psychologist, licensed independent social worker, licensed professional clinical counselor, or ~~mental retardation~~ developmental disability team that has evaluated or examined the ward within three months prior to the date of the report as to the need for continuing the guardianship.

(2) The court shall review a report filed pursuant to division (A)(1) of this section to determine if a continued necessity for the guardianship exists. The court may direct a probate court investigator to verify aspects of the report.

(3) Division (A)(1) of this section applies to guardians appointed prior to, as well as on or after, the effective date of this section. A guardian appointed prior to that date shall file the first report in accordance with any applicable court rule or motion, or, in the absence of such a rule or motion, upon the next occurring date on which a report would have been due if division (A)(1) of this section

had been in effect on the date of appointment as guardian, and shall file all subsequently due reports biennially after that time.

(B) If, upon review of any report required by division (A)(1) of this section, the court finds that it is necessary to intervene in a guardianship, the court shall take any action that it determines is necessary, including, but not limited to, terminating or modifying the guardianship.

(C) Except as provided in this division, for any guardianship, upon written request by the ward, the ward's attorney, or any other interested party made at any time after the expiration of one hundred twenty days from the date of the original appointment of the guardian, a hearing shall be held in accordance with section 2111.02 of the Revised Code to evaluate the continued necessity of the guardianship. Upon written request, the court shall conduct a minimum of one hearing under this division in the calendar year in which the guardian was appointed, and upon written request, shall conduct a minimum of one hearing in each of the following calendar years. Upon its own motion or upon written request, the court may, in its discretion, conduct a hearing within the first one hundred twenty days after appointment of the guardian or conduct more than one hearing in a calendar year. If the ward alleges competence, the burden of proving incompetence shall be upon the applicant for guardianship or the guardian, by clear and convincing evidence.

**Sec. 2151.011.** (A) As used in the Revised Code:

(1) "Juvenile court" means whichever of the following is applicable that has jurisdiction under this chapter and Chapter 2152. of the Revised Code:

(a) The division of the court of common pleas specified in section 2101.022 or 2301.03 of the Revised Code as having jurisdiction under this chapter and Chapter 2152. of the Revised Code or as being the juvenile division or the juvenile division combined with one or more other divisions;

(b) The juvenile court of Cuyahoga county or Hamilton county that is separately and independently created by section 2151.08 or Chapter 2153. of the Revised Code and that has jurisdiction under this chapter and Chapter 2152. of the Revised Code;

(c) If division (A)(1)(a) or (b) of this section does not apply, the probate division of the court of common pleas.

(2) "Juvenile judge" means a judge of a court having jurisdiction under this chapter.

(3) "Private child placing agency" means any association, as defined in section 5103.02 of the Revised Code, that is certified under section 5103.03 of the Revised Code to accept temporary, permanent, or legal custody of children and place the children for either foster care or adoption.

(4) "Private noncustodial agency" means any person, organization, association, or society certified by the department of job and family services that does not accept temporary or permanent legal custody of children, that is privately operated in this state, and that does one or more of the following:

(a) Receives and cares for children for two or more consecutive weeks;

(b) Participates in the placement of children in certified foster homes;

(c) Provides adoption services in conjunction with a public children services agency or private child placing agency.

(B) As used in this chapter:

(1) "Adequate parental care" means the provision by a child's parent or parents, guardian, or custodian of adequate food, clothing, and shelter to ensure the child's health and physical safety and

the provision by a child's parent or parents of specialized services warranted by the child's physical or mental needs.

(2) "Adult" means an individual who is eighteen years of age or older.

(3) "Agreement for temporary custody" means a voluntary agreement authorized by section 5103.15 of the Revised Code that transfers the temporary custody of a child to a public children services agency or a private child placing agency.

(4) "Alternative response" means the public children services agency's response to a report of child abuse or neglect that engages the family in a comprehensive evaluation of child safety, risk of subsequent harm, and family strengths and needs and that does not include a determination as to whether child abuse or neglect occurred.

(5) "Certified foster home" means a foster home, as defined in section 5103.02 of the Revised Code, certified under section 5103.03 of the Revised Code.

(6) "Child" means a person who is under eighteen years of age, except that the juvenile court has jurisdiction over any person who is adjudicated an unruly child prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated an unruly child shall be deemed a "child" until the person attains twenty-one years of age.

(7) "Child day camp," "child care," "child day-care center," "part-time child day-care center," "type A family day-care home," "licensed type B family day-care home," "type B family day-care home," "administrator of a child day-care center," "administrator of a type A family day-care home," and "in-home aide" have the same meanings as in section 5104.01 of the Revised Code.

(8) "Child care provider" means an individual who is a child-care staff member or administrator of a child day-care center, a type A family day-care home, or a type B family day-care home, or an in-home aide or an individual who is licensed, is regulated, is approved, operates under the direction of, or otherwise is certified by the department of job and family services, department of developmental disabilities, or the early childhood programs of the department of education.

(9) "Chronic truant" has the same meaning as in section 2152.02 of the Revised Code.

(10) "Commit" means to vest custody as ordered by the court.

(11) "Counseling" includes both of the following:

(a) General counseling services performed by a public children services agency or shelter for victims of domestic violence to assist a child, a child's parents, and a child's siblings in alleviating identified problems that may cause or have caused the child to be an abused, neglected, or dependent child.

(b) Psychiatric or psychological therapeutic counseling services provided to correct or alleviate any mental or emotional illness or disorder and performed by a licensed psychiatrist, licensed psychologist, or a person licensed under Chapter 4757. of the Revised Code to engage in social work or professional counseling.

(12) "Custodian" means a person who has legal custody of a child or a public children services agency or private child placing agency that has permanent, temporary, or legal custody of a child.

(13) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(14) "Detention" means the temporary care of children pending court adjudication or

disposition, or execution of a court order, in a public or private facility designed to physically restrict the movement and activities of children.

(15) "Developmental disability" has the same meaning as in section 5123.01 of the Revised Code.

(16) "Differential response approach" means an approach that a public children services agency may use to respond to accepted reports of child abuse or neglect with either an alternative response or a traditional response.

(17) "Foster caregiver" has the same meaning as in section 5103.02 of the Revised Code.

(18) "Guardian" means a person, association, or corporation that is granted authority by a probate court pursuant to Chapter 2111. of the Revised Code to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights of the child's parents.

(19) "Habitual truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for five or more consecutive school days, seven or more school days in one school month, or twelve or more school days in a school year.

(20) "Intellectual disability" has the same meaning as in section 5123.01 of the Revised Code.

(21) "Juvenile traffic offender" has the same meaning as in section 2152.02 of the Revised Code.

~~(21)-(22)~~ "Legal custody" means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

~~(22)-(23)~~ A "legitimate excuse for absence from the public school the child is supposed to attend" includes, but is not limited to, any of the following:

(a) The fact that the child in question has enrolled in and is attending another public or nonpublic school in this or another state;

(b) The fact that the child in question is excused from attendance at school for any of the reasons specified in section 3321.04 of the Revised Code;

(c) The fact that the child in question has received an age and schooling certificate in accordance with section 3331.01 of the Revised Code.

~~(23)-(24)~~ "Mental illness" and ~~"mentally ill person subject to court order"~~ have the same ~~meanings~~ meaning as in section 5122.01 of the Revised Code.

~~(24)-(25)~~ "Mental injury" means any behavioral, cognitive, emotional, or mental disorder in a child caused by an act or omission that is described in section 2919.22 of the Revised Code and is committed by the parent or other person responsible for the child's care.

~~(25)~~ ~~"Mentally retarded person" has the same meaning as in section 5123.01 of the Revised Code.~~

(26) "Nonsecure care, supervision, or training" means care, supervision, or training of a child

in a facility that does not confine or prevent movement of the child within the facility or from the facility.

(27) "Of compulsory school age" has the same meaning as in section 3321.01 of the Revised Code.

(28) "Organization" means any institution, public, semipublic, or private, and any private association, society, or agency located or operating in the state, incorporated or unincorporated, having among its functions the furnishing of protective services or care for children, or the placement of children in certified foster homes or elsewhere.

(29) "Out-of-home care" means detention facilities, shelter facilities, certified children's crisis care facilities, certified foster homes, placement in a prospective adoptive home prior to the issuance of a final decree of adoption, organizations, certified organizations, child day-care centers, type A family day-care homes, type B family day-care homes, child care provided by in-home aides, group home providers, group homes, institutions, state institutions, residential facilities, residential care facilities, residential camps, day camps, private, nonprofit therapeutic wilderness camps, public schools, chartered nonpublic schools, educational service centers, hospitals, and medical clinics that are responsible for the care, physical custody, or control of children.

(30) "Out-of-home care child abuse" means any of the following when committed by a person responsible for the care of a child in out-of-home care:

- (a) Engaging in sexual activity with a child in the person's care;
- (b) Denial to a child, as a means of punishment, of proper or necessary subsistence, education, medical care, or other care necessary for a child's health;
- (c) Use of restraint procedures on a child that cause injury or pain;
- (d) Administration of prescription drugs or psychotropic medication to the child without the written approval and ongoing supervision of a licensed physician;
- (e) Commission of any act, other than by accidental means, that results in any injury to or death of the child in out-of-home care or commission of any act by accidental means that results in an injury to or death of a child in out-of-home care and that is at variance with the history given of the injury or death.

(31) "Out-of-home care child neglect" means any of the following when committed by a person responsible for the care of a child in out-of-home care:

- (a) Failure to provide reasonable supervision according to the standards of care appropriate to the age, mental and physical condition, or other special needs of the child;
- (b) Failure to provide reasonable supervision according to the standards of care appropriate to the age, mental and physical condition, or other special needs of the child, that results in sexual or physical abuse of the child by any person;
- (c) Failure to develop a process for all of the following:
  - (i) Administration of prescription drugs or psychotropic drugs for the child;
  - (ii) Assuring that the instructions of the licensed physician who prescribed a drug for the child are followed;
  - (iii) Reporting to the licensed physician who prescribed the drug all unfavorable or dangerous side effects from the use of the drug.
- (d) Failure to provide proper or necessary subsistence, education, medical care, or other

individualized care necessary for the health or well-being of the child;

- (e) Confinement of the child to a locked room without monitoring by staff;
- (f) Failure to provide ongoing security for all prescription and nonprescription medication;
- (g) Isolation of a child for a period of time when there is substantial risk that the isolation, if continued, will impair or retard the mental health or physical well-being of the child.

(32) "Permanent custody" means a legal status that vests in a public children services agency or a private child placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of all parental rights, privileges, and obligations, including all residual rights and obligations.

(33) "Permanent surrender" means the act of the parents or, if a child has only one parent, of the parent of a child, by a voluntary agreement authorized by section 5103.15 of the Revised Code, to transfer the permanent custody of the child to a public children services agency or a private child placing agency.

(34) "Person" means an individual, association, corporation, or partnership and the state or any of its political subdivisions, departments, or agencies.

(35) "Person responsible for a child's care in out-of-home care" means any of the following:

- (a) Any foster caregiver, in-home aide, or provider;
- (b) Any administrator, employee, or agent of any of the following: a public or private detention facility; shelter facility; certified children's crisis care facility; organization; certified organization; child day-care center; type A family day-care home; licensed type B family day-care home; group home; institution; state institution; residential facility; residential care facility; residential camp; day camp; school district; community school; chartered nonpublic school; educational service center; hospital; or medical clinic;
- (c) Any person who supervises or coaches children as part of an extracurricular activity sponsored by a school district, public school, or chartered nonpublic school;
- (d) Any other person who performs a similar function with respect to, or has a similar relationship to, children.

(36) ~~Physically impaired~~ Physical impairment means having one or more of the following conditions that substantially limit one or more of an individual's major life activities, including self-care, receptive and expressive language, learning, mobility, and self-direction:

- (a) A substantial impairment of vision, speech, or hearing;
- (b) A congenital orthopedic impairment;
- (c) An orthopedic impairment caused by disease, rheumatic fever or any other similar chronic or acute health problem, or amputation or another similar cause.

(37) "Placement for adoption" means the arrangement by a public children services agency or a private child placing agency with a person for the care and adoption by that person of a child of whom the agency has permanent custody.

(38) "Placement in foster care" means the arrangement by a public children services agency or a private child placing agency for the out-of-home care of a child of whom the agency has temporary custody or permanent custody.

(39) "Planned permanent living arrangement" means an order of a juvenile court pursuant to which both of the following apply:

(a) The court gives legal custody of a child to a public children services agency or a private child placing agency without the termination of parental rights.

(b) The order permits the agency to make an appropriate placement of the child and to enter into a written agreement with a foster care provider or with another person or agency with whom the child is placed.

(40) "Practice of social work" and "practice of professional counseling" have the same meanings as in section 4757.01 of the Revised Code.

(41) "Private, nonprofit therapeutic wilderness camp" has the same meaning as in section 5103.02 of the Revised Code.

(42) "Sanction, service, or condition" means a sanction, service, or condition created by court order following an adjudication that a child is an unruly child that is described in division (A)(4) of section 2152.19 of the Revised Code.

(43) "Protective supervision" means an order of disposition pursuant to which the court permits an abused, neglected, dependent, or unruly child to remain in the custody of the child's parents, guardian, or custodian and stay in the child's home, subject to any conditions and limitations upon the child, the child's parents, guardian, or custodian, or any other person that the court prescribes, including supervision as directed by the court for the protection of the child.

(44) "Psychiatrist" has the same meaning as in section 5122.01 of the Revised Code.

(45) "Psychologist" has the same meaning as in section 4732.01 of the Revised Code.

(46) "Residential camp" means a program in which the care, physical custody, or control of children is accepted overnight for recreational or recreational and educational purposes.

(47) "Residential care facility" means an institution, residence, or facility that is licensed by the department of mental health and addiction services under section 5119.34 of the Revised Code and that provides care for a child.

(48) "Residential facility" means a home or facility that is licensed by the department of developmental disabilities under section 5123.19 of the Revised Code and in which a child with a developmental disability resides.

(49) "Residual parental rights, privileges, and responsibilities" means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including, but not necessarily limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

(50) "School day" means the school day established by the board of education of the applicable school district pursuant to section 3313.481 of the Revised Code.

(51) "School year" has the same meaning as in section 3313.62 of the Revised Code.

(52) "Secure correctional facility" means a facility under the direction of the department of youth services that is designed to physically restrict the movement and activities of children and used for the placement of children after adjudication and disposition.

(53) "Sexual activity" has the same meaning as in section 2907.01 of the Revised Code.

(54) "Shelter" means the temporary care of children in physically unrestricted facilities pending court adjudication or disposition.

(55) "Shelter for victims of domestic violence" has the same meaning as in section 3113.33 of the Revised Code.

(56) "Temporary custody" means legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement.

(57) "Traditional response" means a public children services agency's response to a report of child abuse or neglect that encourages engagement of the family in a comprehensive evaluation of the child's current and future safety needs and a fact-finding process to determine whether child abuse or neglect occurred and the circumstances surrounding the alleged harm or risk of harm.

(C) For the purposes of this chapter, a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.

**Sec. 2151.281.** (A) The court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged or adjudicated delinquent child or unruly child when either of the following applies:

(1) The child has no parent, guardian, or legal custodian.

(2) The court finds that there is a conflict of interest between the child and the child's parent, guardian, or legal custodian.

(B)(1) Except as provided in division (K) of this section, the court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged abused or neglected child and in any proceeding held pursuant to section 2151.414 of the Revised Code. The guardian ad litem so appointed shall not be the attorney responsible for presenting the evidence alleging that the child is an abused or neglected child and shall not be an employee of any party in the proceeding.

(2) Except in any proceeding concerning a dependent child involving the permanent custody of an infant under the age of six months for the sole purpose of placement for adoption by a private child placing agency, the court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged dependent child if any of the following applies:

(a) The parent of the child appears to be mentally incompetent or is under eighteen years of age.

(b) There is a conflict of interest between the child and the child's parents, guardian, or custodian.

(c) The court believes that the parent of the child is not capable of representing the best interest of the child.

(3) Except in any proceeding concerning a dependent child involving the permanent custody of an infant under the age of six months for the sole purpose of placement for adoption by a private child placing agency, the court may appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of the child in any other proceeding concerning an alleged dependent child.

(4) The guardian ad litem appointed for an alleged or adjudicated abused or neglected child may bring a civil action against any person who is required by division (A)(1) or (4) of section 2151.421 of the Revised Code to file a report of child abuse or child neglect that is known or

reasonably suspected or believed to have occurred if that person knows, or has reasonable cause to suspect or believe based on facts that would cause a reasonable person in a similar position to suspect or believe, as applicable, that the child for whom the guardian ad litem is appointed is the subject of child abuse or child neglect and does not file the required report and if the child suffers any injury or harm as a result of the child abuse or child neglect that is known or reasonably suspected or believed to have occurred or suffers additional injury or harm after the failure to file the report.

(C) In any proceeding concerning an alleged or adjudicated delinquent, unruly, abused, neglected, or dependent child in which the parent appears to be mentally incompetent or is under eighteen years of age, the court shall appoint a guardian ad litem to protect the interest of that parent.

(D) The court shall require the guardian ad litem to faithfully discharge the guardian ad litem's duties and, upon the guardian ad litem's failure to faithfully discharge the guardian ad litem's duties, shall discharge the guardian ad litem and appoint another guardian ad litem. The court may fix the compensation for the service of the guardian ad litem, which compensation shall be paid from the treasury of the county, subject to rules adopted by the supreme court.

(E) A parent who is eighteen years of age or older and not mentally incompetent shall be deemed sui juris for the purpose of any proceeding relative to a child of the parent who is alleged or adjudicated to be an abused, neglected, or dependent child.

(F) In any case in which a parent of a child alleged or adjudicated to be an abused, neglected, or dependent child is under eighteen years of age, the parents of that parent shall be summoned to appear at any hearing respecting the child, who is alleged or adjudicated to be an abused, neglected, or dependent child.

(G) Except as provided in division (K) of this section, in any case in which a guardian ad litem is to be appointed for an alleged or adjudicated abused, neglected, or dependent child or in any case involving an agreement for the voluntary surrender of temporary or permanent custody of a child that is made in accordance with section 5103.15 of the Revised Code, the court shall appoint the guardian ad litem in each case as soon as possible after the complaint is filed, the request for an extension of the temporary custody agreement is filed with the court, or the request for court approval of the permanent custody agreement is filed. The guardian ad litem or the guardian ad litem's replacement shall continue to serve until any of the following occur:

(1) The complaint is dismissed or the request for an extension of a temporary custody agreement or for court approval of the permanent custody agreement is withdrawn or denied;

(2) All dispositional orders relative to the child have terminated;

(3) The legal custody of the child is granted to a relative of the child, or to another person;

(4) The child is placed in an adoptive home or, at the court's discretion, a final decree of adoption is issued with respect to the child;

(5) The child reaches the age of eighteen if the child ~~is does not mentally retarded, developmentally disabled,~~ have a developmental disability or physically impaired physical impairment or the child reaches the age of twenty-one if the child ~~is mentally retarded, developmentally disabled,~~ has a developmental disability or physically impaired physical impairment;

(6) The guardian ad litem resigns or is removed by the court and a replacement is appointed by the court.

If a guardian ad litem ceases to serve a child pursuant to division (G)(4) of this section and

the petition for adoption with respect to the child is denied or withdrawn prior to the issuance of a final decree of adoption or prior to the date an interlocutory order of adoption becomes final, the juvenile court shall reappoint a guardian ad litem for that child. The public children services agency or private child placing agency with permanent custody of the child shall notify the juvenile court if the petition for adoption is denied or withdrawn.

(H) If the guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child is an attorney admitted to the practice of law in this state, the guardian ad litem also may serve as counsel to the ward. Until the supreme court adopts rules regarding service as a guardian ad litem that regulate conflicts between a person's role as guardian ad litem and as counsel, if a person is serving as guardian ad litem and counsel for a child and either that person or the court finds that a conflict may exist between the person's roles as guardian ad litem and as counsel, the court shall relieve the person of duties as guardian ad litem and appoint someone else as guardian ad litem for the child. If the court appoints a person who is not an attorney admitted to the practice of law in this state to be a guardian ad litem, the court also may appoint an attorney admitted to the practice of law in this state to serve as counsel for the guardian ad litem.

(I) The guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child shall perform whatever functions are necessary to protect the best interest of the child, including, but not limited to, investigation, mediation, monitoring court proceedings, and monitoring the services provided the child by the public children services agency or private child placing agency that has temporary or permanent custody of the child, and shall file any motions and other court papers that are in the best interest of the child in accordance with rules adopted by the supreme court.

The guardian ad litem shall be given notice of all hearings, administrative reviews, and other proceedings in the same manner as notice is given to parties to the action.

(J)(1) When the court appoints a guardian ad litem pursuant to this section, it shall appoint a qualified volunteer or court appointed special advocate whenever one is available and the appointment is appropriate.

(2) Upon request, the department of job and family services shall provide for the training of volunteer guardians ad litem.

(K) A guardian ad litem shall not be appointed for a child who is under six months of age in any proceeding in which a private child placing agency is seeking permanent custody of the child or seeking approval of a voluntary permanent custody surrender agreement for the sole purpose of the adoption of the child.

**Sec. 2151.353.** (A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

(1) Place the child in protective supervision;

(2) Commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home, or in any other home approved by the court;

(3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. A person identified in a complaint or motion filed by a party to the

proceedings as a proposed legal custodian shall be awarded legal custody of the child only if the person identified signs a statement of understanding for legal custody that contains at least the following provisions:

(a) That it is the intent of the person to become the legal custodian of the child and the person is able to assume legal responsibility for the care and supervision of the child;

(b) That the person understands that legal custody of the child in question is intended to be permanent in nature and that the person will be responsible as the custodian for the child until the child reaches the age of majority. Responsibility as custodian for the child shall continue beyond the age of majority if, at the time the child reaches the age of majority, the child is pursuing a diploma granted by the board of education or other governing authority, successful completion of the curriculum of any high school, successful completion of an individualized education program developed for the student by any high school, or an age and schooling certificate. Responsibility beyond the age of majority shall terminate when the child ceases to continuously pursue such an education, completes such an education, or is excused from such an education under standards adopted by the state board of education, whichever occurs first.

(c) That the parents of the child have residual parental rights, privileges, and responsibilities, including, but not limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support;

(d) That the person understands that the person must be present in court for the dispositional hearing in order to affirm the person's intention to become legal custodian, to affirm that the person understands the effect of the custodianship before the court, and to answer any questions that the court or any parties to the case may have.

(4) Commit the child to the permanent custody of a public children services agency or private child placing agency, if the court determines in accordance with division (E) of section 2151.414 of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D)(1) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child. If the court grants permanent custody under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding.

(5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if a public children services agency or private child placing agency requests the court to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to section 2151.35 of the Revised Code.

(b) The child is sixteen years of age or older, the parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division

(D)(1) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.

(c) The child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, and is unwilling to accept or unable to adapt to a permanent placement.

(6) Order the removal from the child's home until further order of the court of the person who committed abuse as described in section 2151.031 of the Revised Code against the child, who caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child's siblings.

(B)(1) When making a determination on whether to place a child in a planned permanent living arrangement pursuant to division (A)(5)(b) or (c) of this section, the court shall consider all relevant information that has been presented to the court, including information gathered from the child, the child's guardian ad litem, and the public children services agency or private child placing agency.

(2) A child who is placed in a planned permanent living arrangement pursuant to division (A)(5)(b) or (c) of this section shall be placed in an independent living setting or in a family setting in which the caregiver has been provided by the agency that has custody of the child with a notice that addresses the following:

(a) The caregiver understands that the planned permanent living arrangement is intended to be permanent in nature and that the caregiver will provide a stable placement for the child through the child's emancipation or until the court releases the child from the custody of the agency, whichever occurs first.

(b) The caregiver is expected to actively participate in the youth's independent living case plan, attend agency team meetings and court hearings as appropriate, complete training, as provided in division (B) of section 5103.035 of the Revised Code, related to providing the child independent living services, and assist in the child's transition into adulthood.

(3) The department of job and family services shall develop a model notice to be provided by an agency that has custody of a child to a caregiver under division (B)(2) of this section. The agency may modify the model notice to apply to the needs of the agency.

(C) No order for permanent custody or temporary custody of a child or the placement of a child in a planned permanent living arrangement shall be made pursuant to this section unless the complaint alleging the abuse, neglect, or dependency contains a prayer requesting permanent custody, temporary custody, or the placement of the child in a planned permanent living arrangement as desired, the summons served on the parents of the child contains as is appropriate a full explanation that the granting of an order for permanent custody permanently divests them of their parental rights, a full explanation that an adjudication that the child is an abused, neglected, or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests the parents of their parental rights, or a full explanation that the granting of an order for a planned permanent living arrangement will result in the removal of the child from their legal custody if any of the conditions listed in divisions (A)(5)(a) to (c) of this section are found to exist, and the summons served on the parents contains a full explanation of their right to be represented by counsel

and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent.

If after making disposition as authorized by division (A)(2) of this section, a motion is filed that requests permanent custody of the child, the court may grant permanent custody of the child to the movant in accordance with section 2151.414 of the Revised Code.

(D) If the court issues an order for protective supervision pursuant to division (A)(1) of this section, the court may place any reasonable restrictions upon the child, the child's parents, guardian, or custodian, or any other person, including, but not limited to, any of the following:

(1) Order a party, within forty-eight hours after the issuance of the order, to vacate the child's home indefinitely or for a specified period of time;

(2) Order a party, a parent of the child, or a physical custodian of the child to prevent any particular person from having contact with the child;

(3) Issue an order restraining or otherwise controlling the conduct of any person which conduct would not be in the best interest of the child.

(E) As part of its dispositional order, the court shall journalize a case plan for the child. The journalized case plan shall not be changed except as provided in section 2151.412 of the Revised Code.

(F)(1) The court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section or pursuant to section 2151.414 or 2151.415 of the Revised Code until the child attains the age of eighteen years if the child ~~is does not mentally retarded, developmentally disabled, have a developmental disability or physically impaired~~physical impairment, the child attains the age of twenty-one years if the child ~~is mentally retarded, developmentally disabled, has a developmental disability or physically impaired~~physical impairment, or the child is adopted and a final decree of adoption is issued, except that the court may retain jurisdiction over the child and continue any order of disposition under division (A) of this section or under section 2151.414 or 2151.415 of the Revised Code for a specified period of time to enable the child to graduate from high school or vocational school. The court shall make an entry continuing its jurisdiction under this division in the journal.

(2) Any public children services agency, any private child placing agency, the department of job and family services, or any party, other than any parent whose parental rights with respect to the child have been terminated pursuant to an order issued under division (A)(4) of this section, by filing a motion with the court, may at any time request the court to modify or terminate any order of disposition issued pursuant to division (A) of this section or section 2151.414 or 2151.415 of the Revised Code. The court shall hold a hearing upon the motion as if the hearing were the original dispositional hearing and shall give all parties to the action and the guardian ad litem notice of the hearing pursuant to the Juvenile Rules. If applicable, the court shall comply with section 2151.42 of the Revised Code.

(G) Any temporary custody order issued pursuant to division (A) of this section shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, except that, upon the filing of a motion pursuant to section 2151.415 of the Revised Code, the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section. In resolving the motion, the court shall not order an existing temporary custody order to continue beyond two years after the date on which the

complaint was filed or the child was first placed into shelter care, whichever date is earlier, regardless of whether any extensions have been previously ordered pursuant to division (D) of section 2151.415 of the Revised Code.

(H)(1) No later than one year after the earlier of the date the complaint in the case was filed or the child was first placed in shelter care, a party may ask the court to extend an order for protective supervision for six months or to terminate the order. A party requesting extension or termination of the order shall file a written request for the extension or termination with the court and give notice of the proposed extension or termination in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. If a public children services agency or private child placing agency requests termination of the order, the agency shall file a written status report setting out the facts supporting termination of the order at the time it files the request with the court. If no party requests extension or termination of the order, the court shall notify the parties that the court will extend the order for six months or terminate it and that it may do so without a hearing unless one of the parties requests a hearing. All parties and the guardian ad litem shall have seven days from the date a notice is sent pursuant to this division to object to and request a hearing on the proposed extension or termination.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall extend the order for six months.

(b) If it does not receive a timely request for a hearing, the court may extend the order for six months or terminate it without a hearing and shall journalize the order of extension or termination not later than fourteen days after receiving the request for extension or termination or after the date the court notifies the parties that it will extend or terminate the order. If the court does not extend or terminate the order, it shall schedule a hearing to be held no later than thirty days after the expiration of the applicable fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the child's guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall issue an order extending the order for protective supervision six months.

(2) If the court grants an extension of the order for protective supervision pursuant to division (H)(1) of this section, a party may, prior to termination of the extension, file with the court a request for an additional extension of six months or for termination of the order. The court and the parties shall comply with division (H)(1) of this section with respect to extending or terminating the order.

(3) If a court grants an extension pursuant to division (H)(2) of this section, the court shall terminate the order for protective supervision at the end of the extension.

(I) The court shall not issue a dispositional order pursuant to division (A) of this section that removes a child from the child's home unless the court complies with section 2151.419 of the Revised Code and includes in the dispositional order the findings of fact required by that section.

(J) If a motion or application for an order described in division (A)(6) of this section is made,

the court shall not issue the order unless, prior to the issuance of the order, it provides to the person all of the following:

- (1) Notice and a copy of the motion or application;
- (2) The grounds for the motion or application;
- (3) An opportunity to present evidence and witnesses at a hearing regarding the motion or application;
- (4) An opportunity to be represented by counsel at the hearing.

(K) The jurisdiction of the court shall terminate one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, the date of the latest further action subsequent to the award, if the court awards legal custody of a child to either of the following:

- (1) A legal custodian who, at the time of the award of legal custody, resides in a county of this state other than the county in which the court is located;
- (2) A legal custodian who resides in the county in which the court is located at the time of the award of legal custody, but moves to a different county of this state prior to one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, one year after the date of the latest further action subsequent to the award.

The court in the county in which the legal custodian resides then shall have jurisdiction in the matter.

**Sec. 2151.414.** (A)(1) Upon the filing of a motion pursuant to section 2151.413 of the Revised Code for permanent custody of a child, the court shall schedule a hearing and give notice of the filing of the motion and of the hearing, in accordance with section 2151.29 of the Revised Code, to all parties to the action and to the child's guardian ad litem. The notice also shall contain a full explanation that the granting of permanent custody permanently divests the parents of their parental rights, a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent, and the name and telephone number of the court employee designated by the court pursuant to section 2151.314 of the Revised Code to arrange for the prompt appointment of counsel for indigent persons.

The court shall conduct a hearing in accordance with section 2151.35 of the Revised Code to determine if it is in the best interest of the child to permanently terminate parental rights and grant permanent custody to the agency that filed the motion. The adjudication that the child is an abused, neglected, or dependent child and any dispositional order that has been issued in the case under section 2151.353 of the Revised Code pursuant to the adjudication shall not be readjudicated at the hearing and shall not be affected by a denial of the motion for permanent custody.

(2) The court shall hold the hearing scheduled pursuant to division (A)(1) of this section not later than one hundred twenty days after the agency files the motion for permanent custody, except that, for good cause shown, the court may continue the hearing for a reasonable period of time beyond the one-hundred-twenty-day deadline. The court shall issue an order that grants, denies, or otherwise disposes of the motion for permanent custody, and journalize the order, not later than two hundred days after the agency files the motion.

If a motion is made under division (D)(2) of section 2151.413 of the Revised Code and no dispositional hearing has been held in the case, the court may hear the motion in the dispositional hearing required by division (B) of section 2151.35 of the Revised Code. If the court issues an order

pursuant to section 2151.353 of the Revised Code granting permanent custody of the child to the agency, the court shall immediately dismiss the motion made under division (D)(2) of section 2151.413 of the Revised Code.

The failure of the court to comply with the time periods set forth in division (A)(2) of this section does not affect the authority of the court to issue any order under this chapter and does not provide any basis for attacking the jurisdiction of the court or the validity of any order of the court.

(B)(1) Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

(a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

(b) The child is abandoned.

(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.

(e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

For the purposes of division (B)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

(2) With respect to a motion made pursuant to division (D)(2) of section 2151.413 of the Revised Code, the court shall grant permanent custody of the child to the movant if the court determines in accordance with division (E) of this section that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D) of this section that permanent custody is in the child's best interest.

(C) In making the determinations required by this section or division (A)(4) of section 2151.353 of the Revised Code, a court shall not consider the effect the granting of permanent custody

to the agency would have upon any parent of the child. A written report of the guardian ad litem of the child shall be submitted to the court prior to or at the time of the hearing held pursuant to division (A) of this section or section 2151.35 of the Revised Code but shall not be submitted under oath.

If the court grants permanent custody of a child to a movant under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding. The court shall not deny an agency's motion for permanent custody solely because the agency failed to implement any particular aspect of the child's case plan.

(D)(1) In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) or (5) of section 2151.353 or division (C) of section 2151.415 of the Revised Code, the court shall consider all relevant factors, including, but not limited to, the following:

(a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

(c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

(d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

For the purposes of division (D)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

(2) If all of the following apply, permanent custody is in the best interest of the child, and the court shall commit the child to the permanent custody of a public children services agency or private child placing agency:

(a) The court determines by clear and convincing evidence that one or more of the factors in division (E) of this section exist and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

(b) The child has been in an agency's custody for two years or longer, and no longer qualifies for temporary custody pursuant to division (D) of section 2151.415 of the Revised Code.

(c) The child does not meet the requirements for a planned permanent living arrangement pursuant to division (A)(5) of section 2151.353 of the Revised Code.

(d) Prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in, a motion for legal custody of the child.

(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A) (4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

(2) Chronic mental illness, chronic emotional illness, ~~mental retardation~~ intellectual disability, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;

(3) The parent committed any abuse as described in section 2151.031 of the Revised Code against the child, caused the child to suffer any neglect as described in section 2151.03 of the Revised Code, or allowed the child to suffer any neglect as described in section 2151.03 of the Revised Code between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody;

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

(5) The parent is incarcerated for an offense committed against the child or a sibling of the child;

(6) The parent has been convicted of or pleaded guilty to an offense under division (A) or (C) of section 2919.22 or under section 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.03, 2905.04, 2905.05, 2907.07, 2907.08, 2907.09, 2907.12, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, or 3716.11 of the Revised Code, and the child or a sibling of the child was a victim of the offense, or the parent has been convicted of or pleaded guilty to an offense under section 2903.04 of the Revised Code, a sibling of the child was the victim of the offense, and the parent who committed the offense poses an ongoing danger to the child or a sibling of the child.

(7) The parent has been convicted of or pleaded guilty to one of the following:

(a) An offense under section 2903.01, 2903.02, or 2903.03 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;

(b) An offense under section 2903.11, 2903.12, or 2903.13 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(c) An offense under division (B)(2) of section 2919.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;

(d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(e) An offense under section 2905.32, 2907.21, or 2907.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(f) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a), (d), or (e) of this section.

(8) The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.

(9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

(10) The parent has abandoned the child.

(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

(12) The parent is incarcerated at the time of the filing of the motion for permanent custody or the dispositional hearing of the child and will not be available to care for the child for at least

eighteen months after the filing of the motion for permanent custody or the dispositional hearing.

(13) The parent is repeatedly incarcerated, and the repeated incarceration prevents the parent from providing care for the child.

(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

(15) The parent has committed abuse as described in section 2151.031 of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, and the court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.

(16) Any other factor the court considers relevant.

(F) The parents of a child for whom the court has issued an order granting permanent custody pursuant to this section, upon the issuance of the order, cease to be parties to the action. This division is not intended to eliminate or restrict any right of the parents to appeal the granting of permanent custody of their child to a movant pursuant to this section.

**Sec. 2151.415.** (A) Except for cases in which a motion for permanent custody described in division (D)(1) of section 2151.413 of the Revised Code is required to be made, a public children services agency or private child placing agency that has been given temporary custody of a child pursuant to section 2151.353 of the Revised Code, not later than thirty days prior to the earlier of the date for the termination of the custody order pursuant to division (H) of section 2151.353 of the Revised Code or the date set at the dispositional hearing for the hearing to be held pursuant to this section, shall file a motion with the court that issued the order of disposition requesting that any of the following orders of disposition of the child be issued by the court:

(1) An order that the child be returned home and the custody of the child's parents, guardian, or custodian without any restrictions;

(2) An order for protective supervision;

(3) An order that the child be placed in the legal custody of a relative or other interested individual;

(4) An order permanently terminating the parental rights of the child's parents;

(5) An order that the child be placed in a planned permanent living arrangement;

(6) In accordance with division (D) of this section, an order for the extension of temporary custody.

(B) Upon the filing of a motion pursuant to division (A) of this section, the court shall hold a dispositional hearing on the date set at the dispositional hearing held pursuant to section 2151.35 of the Revised Code, with notice to all parties to the action in accordance with the Juvenile Rules. After the dispositional hearing or at a date after the dispositional hearing that is not later than one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, the court, in accordance with the best interest of the child as supported by the evidence presented at the dispositional hearing, shall issue an order of disposition as set forth in division (A) of this section, except that all orders for permanent custody shall be made in accordance with sections 2151.413 and 2151.414 of the Revised Code. In issuing an order of disposition under this section, the court shall comply with section 2151.42 of the Revised Code.

(C)(1) If an agency pursuant to division (A) of this section requests the court to place a child into a planned permanent living arrangement, the agency shall present evidence to indicate why a planned permanent living arrangement is appropriate for the child, including, but not limited to, evidence that the agency has tried or considered all other possible dispositions for the child. A court shall not place a child in a planned permanent living arrangement, unless it finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care.

(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D)(1) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative;

(c) The child is sixteen years of age or older, has been counseled on the permanent placement options available, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing for independent living.

(2) If the court issues an order placing a child in a planned permanent living arrangement, both of the following apply:

(a) The court shall issue a finding of fact setting forth the reasons for its finding;

(b) The agency may make any appropriate placement for the child and shall develop a case plan for the child that is designed to assist the child in finding a permanent home outside of the home of the parents.

(D)(1) If an agency pursuant to division (A) of this section requests the court to grant an extension of temporary custody for a period of up to six months, the agency shall include in the motion an explanation of the progress on the case plan of the child and of its expectations of reunifying the child with the child's family, or placing the child in a permanent placement, within the extension period. The court shall schedule a hearing on the motion, give notice of its date, time, and location to all parties and the guardian ad litem of the child, and at the hearing consider the evidence presented by the parties and the guardian ad litem. The court may extend the temporary custody order of the child for a period of up to six months, if it determines at the hearing, by clear and convincing evidence, that the extension is in the best interest of the child, there has been significant progress on the case plan of the child, and there is reasonable cause to believe that the child will be reunified with one of the parents or otherwise permanently placed within the period of extension. In determining whether to extend the temporary custody of the child pursuant to this division, the court shall comply with section 2151.42 of the Revised Code. If the court extends the temporary custody of the child pursuant to this division, upon request it shall issue findings of fact.

(2) Prior to the end of the extension granted pursuant to division (D)(1) of this section, the agency that received the extension shall file a motion with the court requesting the issuance of one of the orders of disposition set forth in divisions (A)(1) to (5) of this section or requesting the court to extend the temporary custody order of the child for an additional period of up to six months. If the agency requests the issuance of an order of disposition under divisions (A)(1) to (5) of this section or does not file any motion prior to the expiration of the extension period, the court shall conduct a

hearing in accordance with division (B) of this section and issue an appropriate order of disposition. In issuing an order of disposition, the court shall comply with section 2151.42 of the Revised Code.

If the agency requests an additional extension of up to six months of the temporary custody order of the child, the court shall schedule and conduct a hearing in the manner set forth in division (D)(1) of this section. The court may extend the temporary custody order of the child for an additional period of up to six months if it determines at the hearing, by clear and convincing evidence, that the additional extension is in the best interest of the child, there has been substantial additional progress since the original extension of temporary custody in the case plan of the child, there has been substantial additional progress since the original extension of temporary custody toward reunifying the child with one of the parents or otherwise permanently placing the child, and there is reasonable cause to believe that the child will be reunified with one of the parents or otherwise placed in a permanent setting before the expiration of the additional extension period. In determining whether to grant an additional extension, the court shall comply with section 2151.42 of the Revised Code. If the court extends the temporary custody of the child for an additional period pursuant to this division, upon request it shall issue findings of fact.

(3) Prior to the end of the extension of a temporary custody order granted pursuant to division (D)(2) of this section, the agency that received the extension shall file a motion with the court requesting the issuance of one of the orders of disposition set forth in divisions (A)(1) to (5) of this section. Upon the filing of the motion by the agency or, if the agency does not file the motion prior to the expiration of the extension period, upon its own motion, the court, prior to the expiration of the extension period, shall conduct a hearing in accordance with division (B) of this section and issue an appropriate order of disposition. In issuing an order of disposition, the court shall comply with section 2151.42 of the Revised Code.

(4) No court shall grant an agency more than two extensions of temporary custody pursuant to division (D) of this section and the court shall not order an existing temporary custody order to continue beyond two years after the date on which the complaint was filed or the child was first placed into shelter care, whichever date is earlier, regardless of whether any extensions have been previously ordered pursuant to division (D) of this section.

(E) After the issuance of an order pursuant to division (B) of this section, the court shall retain jurisdiction over the child until the child attains the age of eighteen if the child ~~is~~ does not mentally retarded, developmentally disabled, have a developmental disability or physically impaired physical impairment, the child attains the age of twenty-one if the child ~~is mentally retarded, developmentally disabled, has a developmental disability or physically impaired~~ physical impairment, or the child is adopted and a final decree of adoption is issued, unless the court's jurisdiction over the child is extended pursuant to division (F) of section 2151.353 of the Revised Code.

(F) The court, on its own motion or the motion of the agency or person with legal custody of the child, the child's guardian ad litem, or any other party to the action, may conduct a hearing with notice to all parties to determine whether any order issued pursuant to this section should be modified or terminated or whether any other dispositional order set forth in divisions (A)(1) to (5) of this section should be issued. After the hearing and consideration of all the evidence presented, the court, in accordance with the best interest of the child, may modify or terminate any order issued pursuant to this section or issue any dispositional order set forth in divisions (A)(1) to (5) of this section. In

rendering a decision under this division, the court shall comply with section 2151.42 of the Revised Code.

(G) If the court places a child in a planned permanent living arrangement with a public children services agency or a private child placing agency pursuant to this section, the agency with which the child is placed in a planned permanent living arrangement shall not remove the child from the residential placement in which the child is originally placed pursuant to the case plan for the child or in which the child is placed with court approval pursuant to this division, unless the court and the guardian ad litem are given notice of the intended removal and the court issues an order approving the removal or unless the removal is necessary to protect the child from physical or emotional harm and the agency gives the court notice of the removal and of the reasons why the removal is necessary to protect the child from physical or emotional harm immediately after the removal of the child from the prior setting.

(H) If the hearing held under this section takes the place of an administrative review that otherwise would have been held under section 2151.416 of the Revised Code, the court at the hearing held under this section shall do all of the following in addition to any other requirements of this section:

- (1) Determine the continued necessity for and the appropriateness of the child's placement;
- (2) Determine the extent of compliance with the child's case plan;
- (3) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating the child's placement in foster care;
- (4) Project a likely date by which the child may be returned to the child's home or placed for adoption or legal guardianship;
- (5) Approve the permanency plan for the child consistent with section 2151.417 of the Revised Code.

**Sec. 2151.421.** (A)(1)(a) No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age, or a ~~mentally retarded, developmentally disabled, or physically impaired child-person~~ under twenty-one years of age with a developmental disability or physical impairment, has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section 5120.173 of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Division (A)(1)(a) of this section applies to any person who is an attorney; physician, including a hospital intern or resident; dentist; podiatrist; practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code; registered nurse; licensed practical nurse; visiting nurse; other health care professional; licensed psychologist; licensed school psychologist; independent marriage and family therapist or marriage and family therapist; speech pathologist or

audiologist; coroner; administrator or employee of a child day-care center; administrator or employee of a residential camp, child day camp, or private, nonprofit therapeutic wilderness camp; administrator or employee of a certified child care agency or other public or private children services agency; school teacher; school employee; school authority; person engaged in social work or the practice of professional counseling; agent of a county humane society; person, other than a cleric, rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; employee of a county department of job and family services who is a professional and who works with children and families; superintendent or regional administrator employed by the department of youth services; superintendent, board member, or employee of a county board of developmental disabilities; investigative agent contracted with by a county board of developmental disabilities; employee of the department of developmental disabilities; employee of a facility or home that provides respite care in accordance with section 5123.171 of the Revised Code; employee of a home health agency; employee of an entity that provides homemaker services; a person performing the duties of an assessor pursuant to Chapter 3107. or 5103. of the Revised Code; third party employed by a public children services agency to assist in providing child or family related services; court appointed special advocate; or guardian ad litem.

(2) Except as provided in division (A)(3) of this section, an attorney or a physician is not required to make a report pursuant to division (A)(1) of this section concerning any communication the attorney or physician receives from a client or patient in an attorney-client or physician-patient relationship, if, in accordance with division (A) or (B) of section 2317.02 of the Revised Code, the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding.

(3) The client or patient in an attorney-client or physician-patient relationship described in division (A)(2) of this section is deemed to have waived any testimonial privilege under division (A) or (B) of section 2317.02 of the Revised Code with respect to any communication the attorney or physician receives from the client or patient in that attorney-client or physician-patient relationship, and the attorney or physician shall make a report pursuant to division (A)(1) of this section with respect to that communication, if all of the following apply:

(a) The client or patient, at the time of the communication, is ~~either a child under eighteen years of age or is a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age~~ with a developmental disability or physical impairment.

(b) The attorney or physician knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar position to suspect, as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient.

(c) The abuse or neglect does not arise out of the client's or patient's attempt to have an abortion without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code.

(4)(a) No cleric and no person, other than a volunteer, designated by any church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith who is acting in an official or professional capacity, who knows, or has reasonable cause to

believe based on facts that would cause a reasonable person in a similar position to believe, that a child under eighteen years of age, or a ~~mentally retarded, developmentally disabled, or physically impaired child-person~~ under twenty-one years of age with a developmental disability or physical impairment, has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, and who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that another cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith caused, or poses the threat of causing, the wound, injury, disability, or condition that reasonably indicates abuse or neglect shall fail to immediately report that knowledge or reasonable cause to believe to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section 5120.173 of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Except as provided in division (A)(4)(c) of this section, a cleric is not required to make a report pursuant to division (A)(4)(a) of this section concerning any communication the cleric receives from a penitent in a cleric-penitent relationship, if, in accordance with division (C) of section 2317.02 of the Revised Code, the cleric could not testify with respect to that communication in a civil or criminal proceeding.

(c) The penitent in a cleric-penitent relationship described in division (A)(4)(b) of this section is deemed to have waived any testimonial privilege under division (C) of section 2317.02 of the Revised Code with respect to any communication the cleric receives from the penitent in that cleric-penitent relationship, and the cleric shall make a report pursuant to division (A)(4)(a) of this section with respect to that communication, if all of the following apply:

(i) The penitent, at the time of the communication, is ~~either a child under eighteen years of age or is a mentally retarded, developmentally disabled, or physically impaired person~~ under twenty-one years of age with a developmental disability or physical impairment.

(ii) The cleric knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, as a result of the communication or any observations made during that communication, the penitent has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the penitent.

(iii) The abuse or neglect does not arise out of the penitent's attempt to have an abortion performed upon a child under eighteen years of age or upon a ~~mentally retarded, developmentally disabled, or physically impaired person~~ under twenty-one years of age with a developmental disability or physical impairment without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code.

(d) Divisions (A)(4)(a) and (c) of this section do not apply in a cleric-penitent relationship when the disclosure of any communication the cleric receives from the penitent is in violation of the sacred trust.

(e) As used in divisions (A)(1) and (4) of this section, "cleric" and "sacred trust" have the same meanings as in section 2317.02 of the Revised Code.

(B) Anyone who knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar circumstances to suspect, that a child under eighteen years of age, or a ~~mentally retarded, developmentally disabled, or physically impaired~~ person under twenty-one years of age with a developmental disability or physical impairment, has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child may report or cause reports to be made of that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the public children services agency or to a municipal or county peace officer. In the circumstances described in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the entity specified in that section.

(C) Any report made pursuant to division (A) or (B) of this section shall be made forthwith either by telephone or in person and shall be followed by a written report, if requested by the receiving agency or officer. The written report shall contain:

(1) The names and addresses of the child and the child's parents or the person or persons having custody of the child, if known;

(2) The child's age and the nature and extent of the child's injuries, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist, including any evidence of previous injuries, abuse, or neglect;

(3) Any other information that might be helpful in establishing the cause of the injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist.

Any person, who is required by division (A) of this section to report child abuse or child neglect that is known or reasonably suspected or believed to have occurred, may take or cause to be taken color photographs of areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child.

(D) As used in this division, "children's advocacy center" and "sexual abuse of a child" have the same meanings as in section 2151.425 of the Revised Code.

(1) When a municipal or county peace officer receives a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, upon receipt of the report, the municipal or county peace officer who receives the report shall refer the report to the appropriate public children services agency.

(2) When a public children services agency receives a report pursuant to this division or division (A) or (B) of this section, upon receipt of the report, the public children services agency shall do both of the following:

(a) Comply with section 2151.422 of the Revised Code;

(b) If the county served by the agency is also served by a children's advocacy center and the

report alleges sexual abuse of a child or another type of abuse of a child that is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, comply regarding the report with the protocol and procedures for referrals and investigations, with the coordinating activities, and with the authority or responsibility for performing or providing functions, activities, and services stipulated in the interagency agreement entered into under section 2151.428 of the Revised Code relative to that center.

(E) No township, municipal, or county peace officer shall remove a child about whom a report is made pursuant to this section from the child's parents, stepparents, or guardian or any other persons having custody of the child without consultation with the public children services agency, unless, in the judgment of the officer, and, if the report was made by physician, the physician, immediate removal is considered essential to protect the child from further abuse or neglect. The agency that must be consulted shall be the agency conducting the investigation of the report as determined pursuant to section 2151.422 of the Revised Code.

(F)(1) Except as provided in section 2151.422 of the Revised Code or in an interagency agreement entered into under section 2151.428 of the Revised Code that applies to the particular report, the public children services agency shall investigate, within twenty-four hours, each report of child abuse or child neglect that is known or reasonably suspected or believed to have occurred and of a threat of child abuse or child neglect that is known or reasonably suspected or believed to exist that is referred to it under this section to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible. The investigation shall be made in cooperation with the law enforcement agency and in accordance with the memorandum of understanding prepared under division (J) of this section. A representative of the public children services agency shall, at the time of initial contact with the person subject to the investigation, inform the person of the specific complaints or allegations made against the person. The information shall be given in a manner that is consistent with division (H)(1) of this section and protects the rights of the person making the report under this section.

A failure to make the investigation in accordance with the memorandum is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from the report or the suppression of any evidence obtained as a result of the report and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person. The public children services agency shall report each case to the uniform statewide automated child welfare information system that the department of job and family services shall maintain in accordance with section 5101.13 of the Revised Code. The public children services agency shall submit a report of its investigation, in writing, to the law enforcement agency.

(2) The public children services agency shall make any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention.

(G)(1)(a) Except as provided in division (H)(3) of this section, anyone or any hospital, institution, school, health department, or agency participating in the making of reports under division (A) of this section, anyone or any hospital, institution, school, health department, or agency participating in good faith in the making of reports under division (B) of this section, and anyone

participating in good faith in a judicial proceeding resulting from the reports, shall be immune from any civil or criminal liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of the making of the reports or the participation in the judicial proceeding.

(b) Notwithstanding section 4731.22 of the Revised Code, the physician-patient privilege shall not be a ground for excluding evidence regarding a child's injuries, abuse, or neglect, or the cause of the injuries, abuse, or neglect in any judicial proceeding resulting from a report submitted pursuant to this section.

(2) In any civil or criminal action or proceeding in which it is alleged and proved that participation in the making of a report under this section was not in good faith or participation in a judicial proceeding resulting from a report made under this section was not in good faith, the court shall award the prevailing party reasonable attorney's fees and costs and, if a civil action or proceeding is voluntarily dismissed, may award reasonable attorney's fees and costs to the party against whom the civil action or proceeding is brought.

(H)(1) Except as provided in divisions (H)(4) and (N) of this section, a report made under this section is confidential. The information provided in a report made pursuant to this section and the name of the person who made the report shall not be released for use, and shall not be used, as evidence in any civil action or proceeding brought against the person who made the report. Nothing in this division shall preclude the use of reports of other incidents of known or suspected abuse or neglect in a civil action or proceeding brought pursuant to division (M) of this section against a person who is alleged to have violated division (A)(1) of this section, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker of the report is not the defendant or an agent or employee of the defendant, has been redacted. In a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure.

(2) No person shall permit or encourage the unauthorized dissemination of the contents of any report made under this section.

(3) A person who knowingly makes or causes another person to make a false report under division (B) of this section that alleges that any person has committed an act or omission that resulted in a child being an abused child or a neglected child is guilty of a violation of section 2921.14 of the Revised Code.

(4) If a report is made pursuant to division (A) or (B) of this section and the child who is the subject of the report dies for any reason at any time after the report is made, but before the child attains eighteen years of age, the public children services agency or municipal or county peace officer to which the report was made or referred, on the request of the child fatality review board or the director of health pursuant to guidelines established under section 3701.70 of the Revised Code, shall submit a summary sheet of information providing a summary of the report to the review board of the county in which the deceased child resided at the time of death or to the director. On the request of the review board or director, the agency or peace officer may, at its discretion, make the report available to the review board or director. If the county served by the public children services agency is also served by a children's advocacy center and the report of alleged sexual abuse of a child or another type of abuse of a child is specified in the memorandum of understanding that creates the

center as being within the center's jurisdiction, the agency or center shall perform the duties and functions specified in this division in accordance with the interagency agreement entered into under section 2151.428 of the Revised Code relative to that advocacy center.

(5) A public children services agency shall advise a person alleged to have inflicted abuse or neglect on a child who is the subject of a report made pursuant to this section, including a report alleging sexual abuse of a child or another type of abuse of a child referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, in writing of the disposition of the investigation. The agency shall not provide to the person any information that identifies the person who made the report, statements of witnesses, or police or other investigative reports.

(I) Any report that is required by this section, other than a report that is made to the state highway patrol as described in section 5120.173 of the Revised Code, shall result in protective services and emergency supportive services being made available by the public children services agency on behalf of the children about whom the report is made, in an effort to prevent further neglect or abuse, to enhance their welfare, and, whenever possible, to preserve the family unit intact. The agency required to provide the services shall be the agency conducting the investigation of the report pursuant to section 2151.422 of the Revised Code.

(J)(1) Each public children services agency shall prepare a memorandum of understanding that is signed by all of the following:

(a) If there is only one juvenile judge in the county, the juvenile judge of the county or the juvenile judge's representative;

(b) If there is more than one juvenile judge in the county, a juvenile judge or the juvenile judges' representative selected by the juvenile judges or, if they are unable to do so for any reason, the juvenile judge who is senior in point of service or the senior juvenile judge's representative;

(c) The county peace officer;

(d) All chief municipal peace officers within the county;

(e) Other law enforcement officers handling child abuse and neglect cases in the county;

(f) The prosecuting attorney of the county;

(g) If the public children services agency is not the county department of job and family services, the county department of job and family services;

(h) The county humane society;

(i) If the public children services agency participated in the execution of a memorandum of understanding under section 2151.426 of the Revised Code establishing a children's advocacy center, each participating member of the children's advocacy center established by the memorandum.

(2) A memorandum of understanding shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and division (C) of section 2919.21, division (B)(1) of section 2919.22, division (B) of section 2919.23, and section 2919.24 of the Revised Code and shall have as two of its primary goals the elimination of all unnecessary interviews of children who are the subject of reports made pursuant to division (A) or (B) of this section and, when feasible, providing for only one interview of a child who is the subject of any report made pursuant to division (A) or (B) of this section. A failure to follow the procedure set forth in the memorandum by the concerned officials is not grounds for,

and shall not result in, the dismissal of any charges or complaint arising from any reported case of abuse or neglect or the suppression of any evidence obtained as a result of any reported child abuse or child neglect and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person.

(3) A memorandum of understanding shall include all of the following:

(a) The roles and responsibilities for handling emergency and nonemergency cases of abuse and neglect;

(b) Standards and procedures to be used in handling and coordinating investigations of reported cases of child abuse and reported cases of child neglect, methods to be used in interviewing the child who is the subject of the report and who allegedly was abused or neglected, and standards and procedures addressing the categories of persons who may interview the child who is the subject of the report and who allegedly was abused or neglected.

(4) If a public children services agency participated in the execution of a memorandum of understanding under section 2151.426 of the Revised Code establishing a children's advocacy center, the agency shall incorporate the contents of that memorandum in the memorandum prepared pursuant to this section.

(5) The clerk of the court of common pleas in the county may sign the memorandum of understanding prepared under division (J)(1) of this section. If the clerk signs the memorandum of understanding, the clerk shall execute all relevant responsibilities as required of officials specified in the memorandum.

(K)(1) Except as provided in division (K)(4) of this section, a person who is required to make a report pursuant to division (A) of this section may make a reasonable number of requests of the public children services agency that receives or is referred the report, or of the children's advocacy center that is referred the report if the report is referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, to be provided with the following information:

(a) Whether the agency or center has initiated an investigation of the report;

(b) Whether the agency or center is continuing to investigate the report;

(c) Whether the agency or center is otherwise involved with the child who is the subject of the report;

(d) The general status of the health and safety of the child who is the subject of the report;

(e) Whether the report has resulted in the filing of a complaint in juvenile court or of criminal charges in another court.

(2) A person may request the information specified in division (K)(1) of this section only if, at the time the report is made, the person's name, address, and telephone number are provided to the person who receives the report.

When a municipal or county peace officer or employee of a public children services agency receives a report pursuant to division (A) or (B) of this section the recipient of the report shall inform the person of the right to request the information described in division (K)(1) of this section. The recipient of the report shall include in the initial child abuse or child neglect report that the person making the report was so informed and, if provided at the time of the making of the report, shall include the person's name, address, and telephone number in the report.

Each request is subject to verification of the identity of the person making the report. If that person's identity is verified, the agency shall provide the person with the information described in division (K)(1) of this section a reasonable number of times, except that the agency shall not disclose any confidential information regarding the child who is the subject of the report other than the information described in those divisions.

(3) A request made pursuant to division (K)(1) of this section is not a substitute for any report required to be made pursuant to division (A) of this section.

(4) If an agency other than the agency that received or was referred the report is conducting the investigation of the report pursuant to section 2151.422 of the Revised Code, the agency conducting the investigation shall comply with the requirements of division (K) of this section.

(L) The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The department of job and family services may enter into a plan of cooperation with any other governmental entity to aid in ensuring that children are protected from abuse and neglect. The department shall make recommendations to the attorney general that the department determines are necessary to protect children from child abuse and child neglect.

(M) Whoever violates division (A) of this section is liable for compensatory and exemplary damages to the child who would have been the subject of the report that was not made. A person who brings a civil action or proceeding pursuant to this division against a person who is alleged to have violated division (A)(1) of this section may use in the action or proceeding reports of other incidents of known or suspected abuse or neglect, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker is not the defendant or an agent or employee of the defendant, has been redacted.

(N)(1) As used in this division:

(a) "Out-of-home care" includes a nonchartered nonpublic school if the alleged child abuse or child neglect, or alleged threat of child abuse or child neglect, described in a report received by a public children services agency allegedly occurred in or involved the nonchartered nonpublic school and the alleged perpetrator named in the report holds a certificate, permit, or license issued by the state board of education under section 3301.071 or Chapter 3319. of the Revised Code.

(b) "Administrator, director, or other chief administrative officer" means the superintendent of the school district if the out-of-home care entity subject to a report made pursuant to this section is a school operated by the district.

(2) No later than the end of the day following the day on which a public children services agency receives a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall provide written notice of the allegations contained in and the person named as the alleged perpetrator in the report to the administrator, director, or other chief administrative officer of the out-of-home care entity that is the subject of the report unless the administrator, director, or other chief administrative officer is named as an alleged perpetrator in the report. If the administrator, director, or other chief administrative officer of an out-of-home care entity is named as an alleged perpetrator in a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved the out-of-home care entity, the agency

shall provide the written notice to the owner or governing board of the out-of-home care entity that is the subject of the report. The agency shall not provide witness statements or police or other investigative reports.

(3) No later than three days after the day on which a public children services agency that conducted the investigation as determined pursuant to section 2151.422 of the Revised Code makes a disposition of an investigation involving a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall send written notice of the disposition of the investigation to the administrator, director, or other chief administrative officer and the owner or governing board of the out-of-home care entity. The agency shall not provide witness statements or police or other investigative reports.

(O) As used in this section, "investigation" means the public children services agency's response to an accepted report of child abuse or neglect through either an alternative response or a traditional response.

**Sec. 2151.425.** As used in sections 2151.426 to 2151.428 of the Revised Code:

(A) "Children's advocacy center" means a center operated by participating entities within a county or two or more contiguous counties to perform functions and activities and provide services, in accordance with the interagency agreement entered into under section 2151.428 of the Revised Code, regarding reports received under section 2151.421 of the Revised Code of alleged sexual abuse of a child or another type of abuse of a child that is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction and regarding the children who are the subjects of the report.

(B) "Sexual abuse of a child" means unlawful sexual conduct or sexual contact, as those terms are defined in section 2907.01 of the Revised Code, with a person under eighteen years of age or a ~~mentally retarded, developmentally disabled, or physically impaired~~ person under twenty-one years of age with a developmental disability or physical impairment.

**Sec. 2151.651.** The board of county commissioners of a county which, either separately or as part of a district, is planning to establish a school, forestry camp, or other facility under section 2151.65 of the Revised Code, to be used exclusively for the rehabilitation of children between the ages of twelve to eighteen years, other than psychotic ~~children~~ or ~~mentally retarded~~ children with intellectual disabilities, who are designated delinquent children, as defined in section 2152.02 of the Revised Code, or unruly children, as defined in section 2151.022 of the Revised Code, by order of a juvenile court, may make application to the department of youth services, created under section 5139.01 of the Revised Code, for financial assistance in defraying the county's share of the cost of acquisition or construction of such school, camp, or other facility, as provided in section 5139.27 of the Revised Code. Such application shall be made on forms prescribed and furnished by the department.

**Sec. 2152.02.** As used in this chapter:

(A) "Act charged" means the act that is identified in a complaint, indictment, or information alleging that a child is a delinquent child.

(B) "Admitted to a department of youth services facility" includes admission to a facility operated, or contracted for, by the department and admission to a comparable facility outside this

state by another state or the United States.

(C)(1) "Child" means a person who is under eighteen years of age, except as otherwise provided in divisions (C)(2) to (8) of this section.

(2) Subject to division (C)(3) of this section, any person who violates a federal or state law or a municipal ordinance prior to attaining eighteen years of age shall be deemed a "child" irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held.

(3) Any person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains twenty-one years of age is not a child in relation to that act.

(4) Except as otherwise provided in divisions (C)(5) and (7) of this section, any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code shall be deemed after the transfer not to be a child in the transferred case.

(5) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code and who subsequently is convicted of or pleads guilty to a felony in that case, unless a serious youthful offender dispositional sentence is imposed on the child for that offense under division (B)(2) or (3) of section 2152.121 of the Revised Code and the adult portion of that sentence is not invoked pursuant to section 2152.14 of the Revised Code, and any person who is adjudicated a delinquent child for the commission of an act, who has a serious youthful offender dispositional sentence imposed for the act pursuant to section 2152.13 of the Revised Code, and whose adult portion of the dispositional sentence is invoked pursuant to section 2152.14 of the Revised Code, shall be deemed after the conviction, plea, or invocation not to be a child in any case in which a complaint is filed against the person.

(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided in this division, a person who is so adjudicated a delinquent child or juvenile traffic offender shall be deemed a "child" until the person attains twenty-one years of age. If a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under this chapter, at any time after the person attains twenty-one years of age, the places at which the person may be held under that disposition are not limited to places authorized under this chapter solely for confinement of children, and the person may be confined under that disposition, in accordance with division (F)(2) of section 2152.26 of the Revised Code, in places other than those authorized under this chapter solely for confinement of children.

(7) The juvenile court has jurisdiction over any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in division (F)(1) or (4) of section 2152.26 of the Revised Code unless the person is convicted of or pleads guilty to a felony in the adult court.

(8) Any person who, while eighteen years of age, violates division (A)(1) or (2) of section 2919.27 of the Revised Code by violating a protection order issued or consent agreement approved under section 2151.34 or 3113.31 of the Revised Code shall be considered a child for the purposes of that violation of section 2919.27 of the Revised Code.

(D) "Chronic truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one school month, or fifteen or more school days in a school year.

(E) "Community corrections facility," "public safety beds," "release authority," and "supervised release" have the same meanings as in section 5139.01 of the Revised Code.

(F) "Delinquent child" includes any of the following:

(1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;

(2) Any child who violates any lawful order of the court made under this chapter or under Chapter 2151. of the Revised Code other than an order issued under section 2151.87 of the Revised Code;

(3) Any child who violates division (C) of section 2907.39, division (A) of section 2923.211, or division (C)(1) or (D) of section 2925.55 of the Revised Code;

(4) Any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant;

(5) Any child who is a chronic truant.

(G) "Discretionary serious youthful offender" means a person who is eligible for a discretionary SYO and who is not transferred to adult court under a mandatory or discretionary transfer.

(H) "Discretionary SYO" means a case in which the juvenile court, in the juvenile court's discretion, may impose a serious youthful offender disposition under section 2152.13 of the Revised Code.

(I) "Discretionary transfer" means that the juvenile court has discretion to transfer a case for criminal prosecution under division (B) of section 2152.12 of the Revised Code.

(J) "Drug abuse offense," "felony drug abuse offense," and "minor drug possession offense" have the same meanings as in section 2925.01 of the Revised Code.

(K) "Electronic monitoring" and "electronic monitoring device" have the same meanings as in section 2929.01 of the Revised Code.

(L) "Economic loss" means any economic detriment suffered by a victim of a delinquent act or juvenile traffic offense as a direct and proximate result of the delinquent act or juvenile traffic offense and includes any loss of income due to lost time at work because of any injury caused to the victim and any property loss, medical cost, or funeral expense incurred as a result of the delinquent act or juvenile traffic offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(M) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(N) "Intellectual disability" has the same meaning as in section 5123.01 of the Revised Code.

(O) "Juvenile traffic offender" means any child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or any political subdivision of this state, other than a resolution, ordinance, or regulation of a political subdivision of this state the violation of which is required to be handled by a parking violations bureau or a joint parking violations bureau

pursuant to Chapter 4521. of the Revised Code.

~~(O)~~~~(P)~~ A "legitimate excuse for absence from the public school the child is supposed to attend" has the same meaning as in section 2151.011 of the Revised Code.

~~(P)~~~~(Q)~~ "Mandatory serious youthful offender" means a person who is eligible for a mandatory SYO and who is not transferred to adult court under a mandatory or discretionary transfer and also includes, for purposes of imposition of a mandatory serious youthful dispositional sentence under section 2152.13 of the Revised Code, a person upon whom a juvenile court is required to impose such a sentence under division (B)(3) of section 2152.121 of the Revised Code.

~~(Q)~~~~(R)~~ "Mandatory SYO" means a case in which the juvenile court is required to impose a mandatory serious youthful offender disposition under section 2152.13 of the Revised Code.

~~(R)~~~~(S)~~ "Mandatory transfer" means that a case is required to be transferred for criminal prosecution under division (A) of section 2152.12 of the Revised Code.

~~(S)~~~~(T)~~ "Mental illness" has the same meaning as in section 5122.01 of the Revised Code.

~~(T)~~ "Mentally retarded person" has the same meaning as in section 5123.01 of the Revised Code.

(U) "Monitored time" and "repeat violent offender" have the same meanings as in section 2929.01 of the Revised Code.

(V) "Of compulsory school age" has the same meaning as in section 3321.01 of the Revised Code.

(W) "Public record" has the same meaning as in section 149.43 of the Revised Code.

(X) "Serious youthful offender" means a person who is eligible for a mandatory SYO or discretionary SYO but who is not transferred to adult court under a mandatory or discretionary transfer and also includes, for purposes of imposition of a mandatory serious youthful dispositional sentence under section 2152.13 of the Revised Code, a person upon whom a juvenile court is required to impose such a sentence under division (B)(3) of section 2152.121 of the Revised Code.

(Y) "Sexually oriented offense," "juvenile offender registrant," "child-victim oriented offense," "tier I sex offender/child-victim offender," "tier II sex offender/child-victim offender," "tier III sex offender/child-victim offender," and "public registry-qualified juvenile offender registrant" have the same meanings as in section 2950.01 of the Revised Code.

(Z) "Traditional juvenile" means a case that is not transferred to adult court under a mandatory or discretionary transfer, that is eligible for a disposition under sections 2152.16, 2152.17, 2152.19, and 2152.20 of the Revised Code, and that is not eligible for a disposition under section 2152.13 of the Revised Code.

(AA) "Transfer" means the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be an offense if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense.

(BB) "Category one offense" means any of the following:

- (1) A violation of section 2903.01 or 2903.02 of the Revised Code;
- (2) A violation of section 2923.02 of the Revised Code involving an attempt to commit aggravated murder or murder.

(CC) "Category two offense" means any of the following:

- (1) A violation of section 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11 of the

Revised Code;

(2) A violation of section 2903.04 of the Revised Code that is a felony of the first degree;

(3) A violation of section 2907.12 of the Revised Code as it existed prior to September 3, 1996.

(DD) "Non-economic loss" means nonpecuniary harm suffered by a victim of a delinquent act or juvenile traffic offense as a result of or related to the delinquent act or juvenile traffic offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

**Sec. 2152.12.** (A)(1)(a) After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, the juvenile court at a hearing shall transfer the case if either of the following applies:

(i) The child was sixteen or seventeen years of age at the time of the act charged and there is probable cause to believe that the child committed the act charged.

(ii) The child was fourteen or fifteen years of age at the time of the act charged, section 2152.10 of the Revised Code provides that the child is eligible for mandatory transfer, and there is probable cause to believe that the child committed the act charged.

(b) After a complaint has been filed alleging that a child is a delinquent child by reason of committing a category two offense, the juvenile court at a hearing shall transfer the case if the child was sixteen or seventeen years of age at the time of the act charged and either of the following applies:

(i) Division (A)(2)(a) of section 2152.10 of the Revised Code requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

(ii) Division (A)(2)(b) of section 2152.10 of the Revised Code requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

(2) The juvenile court also shall transfer a case in the circumstances described in division (C) (5) of section 2152.02 of the Revised Code or if either of the following applies:

(a) A complaint is filed against a child who is eligible for a discretionary transfer under section 2152.10 of the Revised Code and who previously was convicted of or pleaded guilty to a felony in a case that was transferred to a criminal court.

(b) A complaint is filed against a child who is domiciled in another state alleging that the child is a delinquent child for committing an act that would be a felony if committed by an adult, and, if the act charged had been committed in that other state, the child would be subject to criminal prosecution as an adult under the law of that other state without the need for a transfer of jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court.

(3) If a complaint is filed against a child alleging that the child is a delinquent child and the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of this section and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined in accordance with section 2152.121 of the Revised Code.

(B) Except as provided in division (A) of this section, after a complaint has been filed

alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court at a hearing may transfer the case if the court finds all of the following:

(1) The child was fourteen years of age or older at the time of the act charged.

(2) There is probable cause to believe that the child committed the act charged.

(3) The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In making its decision under this division, the court shall consider whether the applicable factors under division (D) of this section indicating that the case should be transferred outweigh the applicable factors under division (E) of this section indicating that the case should not be transferred. The record shall indicate the specific factors that were applicable and that the court weighed.

(C) Before considering a transfer under division (B) of this section, the juvenile court shall order an investigation into the child's social history, education, family situation, and any other factor bearing on whether the child is amenable to juvenile rehabilitation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The investigation shall be completed and a report on the investigation shall be submitted to the court as soon as possible but not more than forty-five calendar days after the court orders the investigation. The court may grant one or more extensions for a reasonable length of time. The child may waive the examination required by this division if the court finds that the waiver is competently and intelligently made. Refusal to submit to a mental examination by the child constitutes a waiver of the examination.

(D) In considering whether to transfer a child under division (B) of this section, the juvenile court shall consider the following relevant factors, and any other relevant factors, in favor of a transfer under that division:

(1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.

(2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.

(3) The child's relationship with the victim facilitated the act charged.

(4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.

(5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of section 2923.12 of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.

(6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction.

(7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system.

(8) The child is emotionally, physically, or psychologically mature enough for the transfer.

(9) There is not sufficient time to rehabilitate the child within the juvenile system.

(E) In considering whether to transfer a child under division (B) of this section, the juvenile

court shall consider the following relevant factors, and any other relevant factors, against a transfer under that division:

- (1) The victim induced or facilitated the act charged.
- (2) The child acted under provocation in allegedly committing the act charged.
- (3) The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person.
- (4) The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged.
- (5) The child previously has not been adjudicated a delinquent child.
- (6) The child is not emotionally, physically, or psychologically mature enough for the transfer.

(7) The child has a mental illness or ~~is a mentally retarded person~~ intellectual disability.

(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.

(F) If one or more complaints are filed alleging that a child is a delinquent child for committing two or more acts that would be offenses if committed by an adult, if a motion is made alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred ~~for~~, and if a motion also is made requesting that the case or cases involving one or more of the acts charged be transferred pursuant to division (B) of this section, the juvenile court, in deciding the motions, shall proceed in the following manner:

(1) Initially, the court shall decide the motion alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred.

(2) If the court determines that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred, the court shall transfer the case or cases in accordance with that division. After the transfer pursuant to division (A) of this section, the court shall decide, in accordance with division (B) of this section, whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division. Notwithstanding division (B) of this section, prior to transferring a case pursuant to division (A) of this section, the court is not required to consider any factor specified in division (D) or (E) of this section or to conduct an investigation under division (C) of this section.

(3) If the court determines that division (A) of this section does not require that the case or cases involving one or more of the acts charged be transferred, the court shall decide in accordance with division (B) of this section whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division.

(4) No report on an investigation conducted pursuant to division (C) of this section shall include details of the alleged offense as reported by the child.

(G) The court shall give notice in writing of the time, place, and purpose of any hearing held pursuant to division (A) or (B) of this section to the child's parents, guardian, or other custodian and to the child's counsel at least three days prior to the hearing.

(H) No person, either before or after reaching eighteen years of age, shall be prosecuted as an adult for an offense committed prior to becoming eighteen years of age, unless the person has been transferred as provided in division (A) or (B) of this section or unless division (J) of this section

applies. Any prosecution that is had in a criminal court on the mistaken belief that the person who is the subject of the case was eighteen years of age or older at the time of the commission of the offense shall be deemed a nullity, and the person shall not be considered to have been in jeopardy on the offense.

(I) Upon the transfer of a case under division (A) or (B) of this section, the juvenile court shall state the reasons for the transfer on the record, and shall order the child to enter into a recognizance with good and sufficient surety for the child's appearance before the appropriate court for any disposition that the court is authorized to make for a similar act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be discontinued in the juvenile court, and the case then shall be within the jurisdiction of the court to which it is transferred as described in division (H) of section 2151.23 of the Revised Code.

(J) If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, divisions (A) and (B) of this section do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case as it has in other criminal cases in that court.

**Sec. 2152.14.** (A)(1) The director of youth services may request the prosecuting attorney of the county in which is located the juvenile court that imposed a serious youthful offender dispositional sentence upon a person under section 2152.121 or 2152.13 of the Revised Code to file a motion with that juvenile court to invoke the adult portion of the dispositional sentence if all of the following apply to the person:

- (a) The person is at least fourteen years of age.
- (b) The person is in the institutional custody, or an escapee from the custody, of the department of youth services.
- (c) The person is serving the juvenile portion of the serious youthful offender dispositional sentence.

(2) The motion shall state that there is reasonable cause to believe that either of the following misconduct has occurred and shall state that at least one incident of misconduct of that nature occurred after the person reached fourteen years of age:

- (a) The person committed an act that is a violation of the rules of the institution and that could be charged as any felony or as a first degree misdemeanor offense of violence if committed by an adult.
- (b) The person has engaged in conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim.

(B) If a person is at least fourteen years of age, is serving the juvenile portion of a serious youthful offender dispositional sentence imposed under section 2152.121 or 2152.13 of the Revised

Code, and is on parole or aftercare from a department of youth services facility, or on community control, the director of youth services, the juvenile court that imposed the serious youthful offender dispositional sentence on the person, or the probation department supervising the person may request the prosecuting attorney of the county in which is located the juvenile court to file a motion with the juvenile court to invoke the adult portion of the dispositional sentence. The prosecuting attorney may file a motion to invoke the adult portion of the dispositional sentence even if no request is made. The motion shall state that there is reasonable cause to believe that either of the following occurred and shall state that at least one incident of misconduct of that nature occurred after the person reached fourteen years of age:

(1) The person committed an act that is a violation of the conditions of supervision and that could be charged as any felony or as a first degree misdemeanor offense of violence if committed by an adult.

(2) The person has engaged in conduct that creates a substantial risk to the safety or security of the community or of the victim.

(C) If the prosecuting attorney declines a request to file a motion that was made by the department of youth services or the supervising probation department under division (A) or (B) of this section or fails to act on a request made under either division by the department within a reasonable time, the department of youth services or the supervising probation department may file a motion of the type described in division (A) or (B) of this section with the juvenile court to invoke the adult portion of the serious youthful offender dispositional sentence. If the prosecuting attorney declines a request to file a motion that was made by the juvenile court under division (B) of this section or fails to act on a request from the court under that division within a reasonable time, the juvenile court may hold the hearing described in division (D) of this section on its own motion.

(D) Upon the filing of a motion described in division (A), (B), or (C) of this section, the juvenile court may hold a hearing to determine whether to invoke the adult portion of a person's serious juvenile offender dispositional sentence. The juvenile court shall not invoke the adult portion of the dispositional sentence without a hearing. At the hearing the person who is the subject of the serious youthful offender disposition has the right to be present, to receive notice of the grounds upon which the adult sentence portion is sought to be invoked, to be represented by counsel including counsel appointed under Juvenile Rule 4(A), to be advised on the procedures and protections set forth in the Juvenile Rules, and to present evidence on the person's own behalf, including evidence that the person has a mental illness or ~~is a mentally retarded person~~ intellectual disability. The person may not waive the right to counsel. The hearing shall be open to the public. If the person presents evidence that the person has a mental illness or ~~is a mentally retarded person~~ intellectual disability, the juvenile court shall consider that evidence in determining whether to invoke the adult portion of the serious youthful offender dispositional sentence.

(E)(1) The juvenile court may invoke the adult portion of a person's serious youthful offender dispositional sentence if the juvenile court finds all of the following on the record by clear and convincing evidence:

(a) The person is serving the juvenile portion of a serious youthful offender dispositional sentence.

(b) The person is at least fourteen years of age and has been admitted to a department of

youth services facility, or criminal charges are pending against the person.

(c) The person engaged in the conduct or acts charged under division (A), (B), or (C) of this section, and the person's conduct demonstrates that the person is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction.

(2) The court may modify the adult sentence the court invokes to consist of any lesser prison term that could be imposed for the offense and, in addition to the prison term or in lieu of the prison term if the prison term was not mandatory, any community control sanction that the offender was eligible to receive at sentencing.

(F) If a juvenile court issues an order invoking the adult portion of a serious youthful offender dispositional sentence under division (E) of this section, the juvenile portion of the dispositional sentence shall terminate, and the department of youth services shall transfer the person to the department of rehabilitation and correction or place the person under another sanction imposed as part of the sentence. The juvenile court shall state in its order the total number of days that the person has been held in detention or in a facility operated by, or under contract with, the department of youth services under the juvenile portion of the dispositional sentence. The time the person must serve on a prison term imposed under the adult portion of the dispositional sentence shall be reduced by the total number of days specified in the order plus any additional days the person is held in a juvenile facility or in detention after the order is issued and before the person is transferred to the custody of the department of rehabilitation and correction. In no case shall the total prison term as calculated under this division exceed the maximum prison term available for an adult who is convicted of violating the same sections of the Revised Code.

Any community control imposed as part of the adult sentence or as a condition of a judicial release from prison shall be under the supervision of the entity that provides adult probation services in the county. Any post-release control imposed after the offender otherwise is released from prison shall be supervised by the adult parole authority.

**Sec. 2152.51.** (A) As used in sections 2152.51 to 2152.59 of the Revised Code:

(1) "Competent" and "competency" refer to a child's ability to understand the nature and objectives of a proceeding against the child and to assist in the child's defense. A child is incompetent if, due to mental illness, ~~intellectual disability, or due to developmental disability,~~ or otherwise due to a lack of mental capacity, the child is presently incapable of understanding the nature and objective of proceedings against the child or of assisting in the child's defense.

(2) "Delinquent child proceeding" means any proceeding under this chapter.

(3) ~~"A person who is at least moderately intellectually disabled" means "a person who is at least moderately mentally retarded," as defined in section 5123.01 of the Revised Code.~~

(4) ~~"Person with intellectual disability" has the same meaning as in section 2951.041-Developmental disability, "intellectual disability," and "moderate level of intellectual disability" have the same meanings as in section 5123.01 of the Revised Code.~~

(B) Each juvenile court shall adopt rules to expedite proceedings under sections 2152.51 to 2152.59 of the Revised Code. The rules shall include provisions for giving notice of any hearings held under those sections and for staying any proceedings on the underlying complaint pending the determinations under those sections.

(C) At a competency-related hearing held under section 2152.53 or 2152.58 of the Revised

Code, the child shall be represented by an attorney. If the child is indigent and cannot obtain counsel, the court shall appoint an attorney under Chapter 120. of the Revised Code or the Rules of Juvenile Procedure.

**Sec. 2152.52.** (A)(1) In any proceeding under this chapter other than a proceeding alleging that a child is an unruly child or a juvenile traffic offender, any party or the court may move for a determination regarding the child's competency to participate in the proceeding.

(2) In any proceeding under this chapter other than a proceeding alleging that a child is an unruly child or a juvenile traffic offender, if the child who is the subject of the proceeding is fourteen years of age or older and if the child is not otherwise found to ~~be mentally ill, intellectually disabled, or developmentally disabled~~ have a mental illness or developmental disability, it is rebuttably presumed that the child does not have a lack of mental capacity. This presumption applies only in making a determination as to whether the child has a lack of mental capacity and shall not be used or applicable for any other purpose.

(B) The court may find a child incompetent to proceed without ordering an evaluation of the child's competency or holding a hearing to determine the child's competency if either of the following applies:

(1) The prosecuting attorney, the child's attorney, and at least one of the child's parents, guardians, or custodians agree to the determination.

(2) The court relies on a prior court determination that the child was incompetent and could not attain competency even if the child were to participate in competency attainment services.

**Sec. 2152.54.** (A) An evaluation of a child who does not appear to the court to ~~be a person who is~~ have at least moderately intellectually disabled a moderate level of intellectual disability shall be made by an evaluator who is one of the following:

(1) A professional employed by a psychiatric facility or center certified by the department of mental health and addiction services to provide forensic services and appointed by the director of the facility or center to conduct the evaluation;

(2) A psychiatrist or a licensed clinical psychologist who satisfies the criteria of division (I) of section 5122.01 of the Revised Code and has specialized education, training, or experience in forensic evaluations of children or adolescents.

(B) An evaluation of a child who appears to the court to ~~be a person who is~~ have at least moderately intellectually disabled a moderate level of intellectual disability shall be made by a psychiatrist or licensed clinical psychologist who satisfies the criteria of division (I) of section 5122.01 of the Revised Code and has specialized education, training, or experience in forensic evaluations of children or adolescents ~~who have with~~ intellectual disabilitydisabilities.

(C) If an evaluation is conducted by an evaluator of the type described in division (A)(1) or (2) of this section and the evaluator concludes that the child ~~is a person who is~~ has at least moderately intellectually disabled a moderate level of intellectual disability, the evaluator shall discontinue the evaluation and notify the court within one business day after reaching the conclusion. Within two business days after receiving notification, the court shall order the child to undergo an evaluation by an evaluator of the type described in division (B) of this section. Within two business days after the appointment of the new evaluator, the original evaluator shall deliver to the new evaluator all information relating to the child obtained during the original evaluation.

**Sec. 2152.56.** (A) Upon completing an evaluation ordered pursuant to section 2152.53 of the Revised Code, an evaluator shall submit to the court a written competency assessment report. The report shall include the evaluator's opinion as to whether the child, due to mental illness, ~~intellectual disability, or~~ due to developmental disability, or otherwise due to a lack of mental capacity, is currently incapable of understanding the nature and objective of the proceedings against the child or of assisting in the child's defense. The report shall not include any opinion as to the child's sanity at the time of the alleged offense, details of the alleged offense as reported by the child, or an opinion as to whether the child actually committed the offense or could have been culpable for committing the offense.

(B) A competency assessment report shall address the child's capacity to do all of the following:

- (1) Comprehend and appreciate the charges or allegations against the child;
- (2) Understand the adversarial nature of the proceedings, including the role of the judge, defense counsel, prosecuting attorney, guardian ad litem or court-appointed special assistant, and witnesses;
- (3) Assist in the child's defense and communicate with counsel;
- (4) Comprehend and appreciate the consequences that may be imposed or result from the proceedings.

(C) A competency assessment report shall include the evaluator's opinion regarding the extent to which the child's competency may be impaired by the child's failure to meet one or more of the criteria listed in division (B) of this section. If the evaluator concludes that the child's competency is impaired but that the child may be enabled to understand the nature and objectives of the proceeding against the child and to assist in the child's defense with reasonable accommodations, the report shall include recommendations for those reasonable accommodations that the court might make. If the evaluator concludes that the child's competency is so impaired that the child would not be able to understand the nature and objectives of the proceeding against the child or to assist in the child's defense, the report shall include an opinion as to the likelihood that the child could attain competency within the periods set forth in division (D)(2) of section 2152.59 of the Revised Code.

(D) If the evaluator concludes that the child could likely attain competency within the periods set forth in division (D)(2) of section 2152.59 of the Revised Code, the competency assessment report shall include both of the following:

- (1) A recommendation as to the least restrictive setting for child competency attainment services that is consistent with the child's ability to attain competency and the safety of both the child and the community;
- (2) A list of the providers of child competency attainment services known to the evaluator that are located most closely to the child's current residence.

(E) If the evaluator is unable, within the maximum allowable time for submission of a competency assessment report under division (A) of section 2152.57 of the Revised Code, to form an opinion regarding the extent to which the child's competency may be impaired by the child's failure to meet one or more of the criteria listed in division (B) of this section, the evaluator shall so state in the report. The evaluator shall also include recommendations for services to support the safety of the child or the community.

**Sec. 2152.811.** (A) As used in this section:

(1) "~~Mentally retarded person~~" and "~~developmentally disabled person~~Developmental disability" ~~have has~~ the same meanings ~~meaning~~ as in section 5123.01 of the Revised Code.

(2) "~~Mentally retarded or developmentally disabled victim~~Victim with a developmental disability" includes any of the following persons:

(a) A ~~mentally retarded person or developmentally disabled person with a developmental disability~~ who was a victim of a violation identified in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult;

(b) A ~~mentally retarded person or developmentally disabled person with a developmental disability~~ against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult.

(B)(1) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation of section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or act was a ~~mentally retarded person or developmentally disabled person with a developmental disability~~, the juvenile judge, upon motion of the prosecution, shall order that the testimony of the ~~mentally retarded or developmentally disabled victim with a developmental disability~~ be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (B)(2) of this section. The judge shall notify the ~~mentally retarded or developmentally disabled victim with a developmental disability~~ whose deposition is to be taken, the prosecution, and the attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition. The notice shall identify the ~~mentally retarded or developmentally disabled victim with a developmental disability~~ who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The child who is charged with the violation or act shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge in the proceeding shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the child charged with the violation or act. The prosecution and the attorney for the child charged with the violation or act shall have the right, as at an adjudication hearing, to full examination and cross-examination of the ~~mentally retarded or developmentally disabled victim with a developmental disability~~ whose deposition is to be taken.

If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the juvenile court in which the action is pending and is admissible in the manner described in division (C) of this section. If a deposition of a ~~mentally retarded or developmentally disabled victim with a developmental disability~~ taken under this division is admitted as evidence at the proceeding under division (C) of this section, the ~~mentally retarded or developmentally disabled victim with a developmental disability~~ shall not be required to testify in person at the proceeding.

At any time before the conclusion of the proceeding, the attorney for the child charged with the violation or act may file a motion with the judge requesting that another deposition of the

~~mentally retarded or developmentally disabled~~ victim with a developmental disability be taken because new evidence material to the defense of the child charged has been discovered that the attorney for the child charged could not with reasonable diligence have discovered prior to the taking of the admitted deposition. Any motion requesting another deposition shall be accompanied by supporting affidavits. Upon the filing of the motion and affidavits, the court may order that additional testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division. If the admitted deposition was a videotaped deposition taken in accordance with division (B)(2) of this section, the new deposition also shall be videotaped in accordance with that division. In other cases, the new deposition may be videotaped in accordance with that division.

(2) If the prosecution requests that a deposition to be taken under division (B)(1) of this section be videotaped, the juvenile judge shall order that the deposition be videotaped in accordance with this division. If a juvenile judge issues an order to video tape the deposition, the judge shall exclude from the room in which the deposition is to be taken every person except the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the child who is charged with the violation or act, any person needed to operate the equipment to be used, one person chosen by the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the deposition. The person chosen by the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability shall not be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the deposition during the deposition.

The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the deposition, except on a monitor provided for that purpose. The ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the deposition shall be provided with a monitor on which the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability can observe, while giving testimony, the child who is charged with the violation or act. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be

taken; if the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person in that room, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (B)(1) of this section and is admissible in the manner described in this division and division (C) of this section. If a deposition that is videotaped under this division is admitted as evidence at the proceeding, the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (C) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the child who is charged with the violation or act are afforded an opportunity to view the recording before it is shown in the proceeding.

(C)(1) At any proceeding in relation to which a deposition was taken under division (B) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or both of the following apply:

(a) The child who is charged with the violation or act had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability who gave the testimony in the deposition were to testify in person at the proceeding, the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability would experience serious emotional trauma as a result of the ~~mentally retarded or developmentally disabled~~ victim's participation of the victim with a developmental disability at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (C) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (B) and (C) of this section are in addition to any other

provisions of the Revised Code, the Rules of Juvenile Procedure, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a juvenile court proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (B) of this section or otherwise taken.

(D) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a ~~mentally retarded or developmentally disabled person~~ with a developmental disability, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the ~~mentally retarded or developmentally disabled victim~~ with a developmental disability to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the child who is charged with the violation or act and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the ~~mentally retarded or developmentally disabled victim~~ with a developmental disability had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the ~~mentally retarded or developmentally disabled victim~~ with a developmental disability is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act for one or more of the reasons set forth in division (F) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (B)(2) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the ~~mentally retarded or developmentally disabled victim~~ with a developmental disability giving the testimony, in a manner similar to that described in division (B)(2) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the ~~mentally retarded or developmentally disabled victim~~ with a developmental disability giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the ~~mentally retarded or developmentally disabled victim~~ with a developmental disability giving the testimony, except on a monitor provided for that purpose. The ~~mentally retarded or developmentally disabled victim~~ with a developmental disability giving the testimony shall be provided with a monitor on which the ~~mentally retarded or developmentally disabled victim~~ with a developmental disability can observe, while giving testimony, the child who is charged with the violation or act.

(E) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or

offense was a ~~mentally retarded or developmentally disabled~~ person with a developmental disability, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the child who is charged with the violation or act, and any other persons who would have been present during the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act, due to one or more of the reasons set forth in division (F) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the testimony, in a manner similar to that described in division (B)(2) of this section. The child who is charged with the violation or act shall be permitted to observe and hear the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the child who is charged with the violation or act during the testimony, and shall be restricted to a location from which the child who is charged with the violation or act cannot be seen or heard by the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the testimony, except on a monitor provided for that purpose. The ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the testimony shall be provided with a monitor on which the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability can observe, while giving testimony, the child who is charged with the violation or act. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (B)(2)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(F) For purposes of divisions (D) and (E) of this section, a juvenile judge may order the testimony of a ~~mentally retarded or developmentally disabled~~ victim with a developmental disability to be taken outside of the room in which a proceeding is being conducted if the judge determines that the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability is unavailable to testify in the room in the physical presence of the child charged with the violation or act due to one or more of the following circumstances:

(1) The persistent refusal of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability to testify despite judicial requests to do so;

(2) The inability of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability to communicate about the alleged violation or offense because of extreme

fear, failure of memory, or another similar reason;

(3) The substantial likelihood that the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability will suffer serious emotional trauma from so testifying.

(G)(1) If a juvenile judge issues an order pursuant to division (D) or (E) of this section that requires the testimony of a ~~mentally retarded or developmentally disabled~~ victim with a developmental disability in a juvenile court proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability to whose testimony it applies, the order applies only during the testimony of the specified ~~mentally retarded or developmentally disabled~~ victim with a developmental disability, and the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the testimony shall not be required to testify at the proceeding other than in accordance with the order. The authority of a judge to close the taking of a deposition under division (B)(2) of this section or a proceeding under division (D) or (E) of this section is in addition to the authority of a judge to close a hearing pursuant to section 2151.35 of the Revised Code.

(2) A juvenile judge who makes any determination regarding the admissibility of a deposition under divisions (B) and (C) of this section, the videotaping of a deposition under division (B)(2) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (D) or (E) of this section shall enter the determination and findings on the record in the proceeding.

**Sec. 2305.111.** (A) As used in this section:

(1) "Childhood sexual abuse" means any conduct that constitutes any of the violations identified in division (A)(1)(a) or (b) of this section and would constitute a criminal offense under the specified section or division of the Revised Code, if the victim of the violation is at the time of the violation a child under eighteen years of age or a ~~mentally retarded, developmentally disabled, or physically impaired~~ child with a developmental disability or physical impairment under twenty-one years of age. The court need not find that any person has been convicted of or pleaded guilty to the offense under the specified section or division of the Revised Code in order for the conduct that is the violation constituting the offense to be childhood sexual abuse for purposes of this division. This division applies to any of the following violations committed in the following specified circumstances:

(a) A violation of section 2907.02 or of division (A)(1), (5), (6), (7), (8), (9), (10), (11), or (12) of section 2907.03 of the Revised Code;

(b) A violation of section 2907.05 or 2907.06 of the Revised Code if, at the time of the violation, any of the following apply:

(i) The actor is the victim's natural parent, adoptive parent, or stepparent or the guardian, custodian, or person in loco parentis of the victim.

(ii) The victim is in custody of law or a patient in a hospital or other institution, and the actor has supervisory or disciplinary authority over the victim.

(iii) The actor is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the victim is enrolled in or attends that school,

and the actor is not enrolled in and does not attend that school.

(iv) The actor is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the victim is enrolled in or attends that institution.

(v) The actor is the victim's athletic or other type of coach, is the victim's instructor, is the leader of a scouting troop of which the victim is a member, or is a person with temporary or occasional disciplinary control over the victim.

(vi) The actor is a mental health professional, the victim is a mental health client or patient of the actor, and the actor induces the victim to submit by falsely representing to the victim that the sexual contact involved in the violation is necessary for mental health treatment purposes.

(vii) The victim is confined in a detention facility, and the actor is an employee of that detention facility.

(viii) The actor is a cleric, and the victim is a member of, or attends, the church or congregation served by the cleric.

(2) "Cleric" has the same meaning as in section 2317.02 of the Revised Code.

(3) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.

(4) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.

(5) "Sexual contact" has the same meaning as in section 2907.01 of the Revised Code.

(6) "Victim" means, except as provided in division (B) of this section, a victim of childhood sexual abuse.

(B) Except as provided in section 2305.115 of the Revised Code and subject to division (C) of this section, an action for assault or battery shall be brought within one year after the cause of the action accrues. For purposes of this section, a cause of action for assault or battery accrues upon the later of the following:

(1) The date on which the alleged assault or battery occurred;

(2) If the plaintiff did not know the identity of the person who allegedly committed the assault or battery on the date on which it allegedly occurred, the earlier of the following dates:

(a) The date on which the plaintiff learns the identity of that person;

(b) The date on which, by the exercise of reasonable diligence, the plaintiff should have learned the identity of that person.

(C) An action for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse, or an action brought by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse, shall be brought within twelve years after the cause of action accrues. For purposes of this section, a cause of action for assault or battery based on childhood sexual abuse, or a cause of action for a claim resulting from childhood sexual abuse, accrues upon the date on which the victim reaches the age of majority. If the defendant in an action brought by a victim of childhood sexual abuse asserting a claim resulting from childhood sexual abuse that occurs on or after ~~the effective date of this act~~ August 3, 2006, has fraudulently concealed from the plaintiff facts that form the basis of the claim, the running of the limitations period with regard to that claim is tolled until the time when the plaintiff discovers or in the exercise of due diligence should have discovered those facts.

**Sec. 2311.14.** (A)(1) Whenever because of a hearing, speech, or other impairment a party to or witness in a legal proceeding cannot readily understand or communicate, the court shall appoint a qualified interpreter to assist such person.

(2) This section is not limited to a person who speaks a language other than English. It also applies to the language and descriptions of any ~~mentally retarded person or developmentally disabled person~~ with a developmental disability who cannot be reasonably understood, or who cannot understand questioning, without the aid of an interpreter. The interpreter may aid the parties in formulating methods of questioning the person with ~~mental retardation or a developmental disability~~ and in interpreting the answers of the person.

(B) Before entering upon official duties, the interpreter shall take an oath that the interpreter will make a true interpretation of the proceedings to the party or witness, and that the interpreter will truly repeat the statements made by such party or witness to the court, to the best of the interpreter's ability. If the interpreter is appointed to assist a ~~mentally retarded person or developmentally disabled person~~ with a developmental disability as described in division (A)(2) of this section, the oath also shall include an oath that the interpreter will not prompt, lead, suggest, or otherwise improperly influence the testimony of the witness or party.

(C) The court shall determine a reasonable fee for all such interpreter service which shall be paid out of the same funds as witness fees. If the party taxed with costs is indigent, the court shall not tax the interpreter's fees as costs, and the county or, if the court is a municipal court that is not a county-operated municipal court, the municipal corporation in which the court is located shall pay the interpreter's fees.

(D) As used in this section, "~~mentally retarded person~~" and "~~developmentally disabled person~~" developmental disability ~~have~~ has the same ~~meanings~~ meaning as in section 5123.01 of the Revised Code.

**Sec. 2317.021.** (A) As used in division (A) of section 2317.02 of the Revised Code:

"Client" means a person, firm, partnership, corporation, or other association that, directly or through any representative, consults an attorney for the purpose of retaining the attorney or securing legal service or advice from the attorney in the attorney's professional capacity, or consults an attorney employee for legal service or advice, and who communicates, either directly or through an agent, employee, or other representative, with such attorney; and includes an incompetent person whose guardian so consults the attorney in behalf of the incompetent person.

Where a corporation or association is a client having the privilege and it has been dissolved, the privilege shall extend to the last board of directors, their successors or assigns, or to the trustees, their successors or assigns.

This section shall be construed as in addition to, and not in limitation of, other laws affording protection to communications under the attorney-client privilege.

(B) As used in this section and in sections 2317.02 and 2317.03 of the Revised Code, "incompetent" or "incompetent person" means a person who is so mentally impaired, as a result of a mental or physical illness or disability, ~~or mental retardation~~ as a result of an intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.

**Sec. 2503.37.** Cases commenced in or taken to the supreme court shall be entered on the docket in the order in which they are commenced, received, or filed. They shall be disposed of in the same order, except that the court may dispose of the following classes of cases in advance of their order on the docket:

- (A) Proceedings in quo warranto, mandamus, procedendo, prohibition, or habeas corpus;
- (B) Cases in which the person seeking relief has been convicted of felony;
- (C) Cases involving the validity of a tax levy or assessment;
- (D) Cases involving the construction or constitutionality of a statute, or a question of practice, in which the questions arising are of general public interest;
- (E) Cases of general interest to the public, if two or more of the courts of appeals have held the law directly opposite upon like facts;
- (F) Cases in which the relief sought is damages for personal injury, or for death caused by negligence, and in which the person injured makes affidavit that the person's livelihood is dependent upon daily labor, or, in case of death, in which the surviving spouse or any of the next of kin of the deceased makes an affidavit that the surviving spouse or next of kin was dependent for livelihood upon the person's or the decedent's daily labor;
- (G) Cases in which a trust fund for the care, support, or education of a minor, or care or support of a ~~mentally retarded person~~ with an intellectual disability, is in question;
- (H) Cases involving controversies or questions arising in the administration of the estate of a deceased person under the laws of this state;
- (I) Cases involving the construction of a statute for the annexation of territory to a municipal corporation.

**Sec. 2721.05.** As used in this section, "incompetent person" means a person who is so mentally impaired, as a result of a mental or physical illness or disability, ~~or mental retardation~~ as a result of an intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.

Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, an incompetent person, or an insolvent person, may have a declaration of rights or legal relations in respect thereto in any of the following cases:

- (A) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;
- (B) To direct the executors, administrators, trustees, or other fiduciaries to do or abstain from doing any particular act in their fiduciary capacity;
- (C) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

**Sec. 2744.01.** As used in this chapter:

(A) "Emergency call" means a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.

(B) "Employee" means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's,

agent's, employee's, or servant's employment for a political subdivision. "Employee" does not include an independent contractor and does not include any individual engaged by a school district pursuant to section 3319.301 of the Revised Code. "Employee" includes any elected or appointed official of a political subdivision. "Employee" also includes a person who has been convicted of or pleaded guilty to a criminal offense and who has been sentenced to perform community service work in a political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile court pursuant to section 2152.19 or 2152.20 of the Revised Code to perform community service or community work in a political subdivision.

(C)(1) "Governmental function" means a function of a political subdivision that is specified in division (C)(2) of this section or that satisfies any of the following:

(a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;

(b) A function that is for the common good of all citizens of the state;

(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.

(2) A "governmental function" includes, but is not limited to, the following:

(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;

(c) The provision of a system of public education;

(d) The provision of a free public library system;

(e) The regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds;

(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;

(g) The construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses;

(h) The design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code;

(i) The enforcement or nonperformance of any law;

(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;

(k) The collection and disposal of solid wastes, as defined in section 3734.01 of the Revised Code, including, but not limited to, the operation of solid waste disposal facilities, as "facilities" is defined in that section, and the collection and management of hazardous waste generated by households. As used in division (C)(2)(k) of this section, "hazardous waste generated by households"

means solid waste originally generated by individual households that is listed specifically as hazardous waste in or exhibits one or more characteristics of hazardous waste as defined by rules adopted under section 3734.12 of the Revised Code, but that is excluded from regulation as a hazardous waste by those rules.

(l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;

(m) The operation of a job and family services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;

(n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a "governmental function" does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;

(o) The operation of mental health facilities, ~~mental retardation or developmental disabilities~~ facilities, alcohol treatment and control centers, and children's homes or agencies;

(p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;

(q) Urban renewal projects and the elimination of slum conditions, including the performance of any activity that a county land reutilization corporation is authorized to perform under Chapter 1724. or 5722. of the Revised Code;

(r) Flood control measures;

(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;

(t) The issuance of revenue obligations under section 140.06 of the Revised Code;

(u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any school athletic facility, school auditorium, or gymnasium or any recreational area or facility, including, but not limited to, any of the following:

(i) A park, playground, or playfield;

(ii) An indoor recreational facility;

(iii) A zoo or zoological park;

(iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;

(v) A golf course;

(vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;

(vii) A rope course or climbing walls;

(viii) An all-purpose vehicle facility in which all-purpose vehicles, as defined in section 4519.01 of the Revised Code, are contained, maintained, or operated for recreational activities.

(v) The provision of public defender services by a county or joint county public defender's office pursuant to Chapter 120. of the Revised Code;

(w)(i) At any time before regulations prescribed pursuant to 49 U.S.C.A 20153 become effective, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in a zone within a municipal corporation in which, by ordinance, the legislative authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells;

(ii) On and after the effective date of regulations prescribed pursuant to 49 U.S.C.A. 20153, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in such a zone or of a supplementary safety measure, as defined in 49 U.S.C.A 20153, at or for a public road rail crossing, if and to the extent that the public road rail crossing is excepted, pursuant to subsection (c) of that section, from the requirement of the regulations prescribed under subsection (b) of that section.

(x) A function that the general assembly mandates a political subdivision to perform.

(D) "Law" means any provision of the constitution, statutes, or rules of the United States or of this state; provisions of charters, ordinances, resolutions, and rules of political subdivisions; and written policies adopted by boards of education. When used in connection with the "common law," this definition does not apply.

(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.

(F) "Political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under section 339.14 of the Revised Code, board of hospital commissioners appointed for a municipal hospital under section 749.04 of the Revised Code, board of hospital trustees appointed for a municipal hospital under section 749.22 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code, community school established under Chapter 3314. of the Revised Code, county land reutilization corporation organized under Chapter 1724. of the Revised Code, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under sections 2301.51 to 2301.58 of the Revised Code, a community-based correctional facility and program or district community-based correctional facility and program that is so

established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated.

(G)(1) "Proprietary function" means a function of a political subdivision that is specified in division (G)(2) of this section or that satisfies both of the following:

(a) The function is not one described in division (C)(1)(a) or (b) of this section and is not one specified in division (C)(2) of this section;

(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

(2) A "proprietary function" includes, but is not limited to, the following:

(a) The operation of a hospital by one or more political subdivisions;

(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;

(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;

(d) The maintenance, destruction, operation, and upkeep of a sewer system;

(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.

(H) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. "Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.

(I) "State" means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, colleges and universities, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.

**Sec. 2901.13.** (A)(1) Except as provided in division (A)(2), (3), or (4) of this section or as otherwise provided in this section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:

(a) For a felony, six years;

(b) For a misdemeanor other than a minor misdemeanor, two years;

(c) For a minor misdemeanor, six months.

(2) There is no period of limitation for the prosecution of a violation of section 2903.01 or 2903.02 of the Revised Code.

(3) Except as otherwise provided in divisions (B) to (J) of this section, a prosecution of any of the following offenses shall be barred unless it is commenced within twenty years after the offense is committed:

(a) A violation of section 2903.03, 2903.04, 2905.01, 2905.32, 2907.04, 2907.05, 2907.21, 2909.02, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, or 2917.02 of the Revised Code, a violation of section 2903.11 or 2903.12 of the Revised Code if the victim is a peace officer, a violation of section 2903.13 of the Revised Code that

is a felony, or a violation of former section 2907.12 of the Revised Code;

(b) A conspiracy to commit, attempt to commit, or complicity in committing a violation set forth in division (A)(3)(a) of this section.

(4) Except as otherwise provided in divisions (D) to (L) of this section, a prosecution of a violation of section 2907.02 or 2907.03 of the Revised Code or a conspiracy to commit, attempt to commit, or complicity in committing a violation of either section shall be barred unless it is commenced within twenty-five years after the offense is committed.

(B)(1) Except as otherwise provided in division (B)(2) of this section, if the period of limitation provided in division (A)(1) or (3) of this section has expired, prosecution shall be commenced for an offense of which an element is fraud or breach of a fiduciary duty, within one year after discovery of the offense either by an aggrieved person, or by the aggrieved person's legal representative who is not a party to the offense.

(2) If the period of limitation provided in division (A)(1) or (3) of this section has expired, prosecution for a violation of section 2913.49 of the Revised Code shall be commenced within five years after discovery of the offense either by an aggrieved person or the aggrieved person's legal representative who is not a party to the offense.

(C)(1) If the period of limitation provided in division (A)(1) or (3) of this section has expired, prosecution shall be commenced for the following offenses during the following specified periods of time:

(a) For an offense involving misconduct in office by a public servant, at any time while the accused remains a public servant, or within two years thereafter;

(b) For an offense by a person who is not a public servant but whose offense is directly related to the misconduct in office of a public servant, at any time while that public servant remains a public servant, or within two years thereafter.

(2) As used in this division:

(a) An "offense is directly related to the misconduct in office of a public servant" includes, but is not limited to, a violation of section 101.71, 101.91, 121.61 or 2921.13, division (F) or (H) of section 102.03, division (A) of section 2921.02, division (A) or (B) of section 2921.43, or division (F) or (G) of section 3517.13 of the Revised Code, that is directly related to an offense involving misconduct in office of a public servant.

(b) "Public servant" has the same meaning as in section 2921.01 of the Revised Code.

(D)(1) If a DNA record made in connection with the criminal investigation of the commission of a violation of section 2907.02 or 2907.03 of the Revised Code is determined to match another DNA record that is of an identifiable person and if the time of the determination is later than twenty-five years after the offense is committed, prosecution of that person for a violation of the section may be commenced within five years after the determination is complete.

(2) If a DNA record made in connection with the criminal investigation of the commission of a violation of section 2907.02 or 2907.03 of the Revised Code is determined to match another DNA record that is of an identifiable person and if the time of the determination is within twenty-five years after the offense is committed, prosecution of that person for a violation of the section may be commenced within the longer of twenty-five years after the offense is committed or five years after the determination is complete.

(3) As used in this division, "DNA record" has the same meaning as in section 109.573 of the Revised Code.

(E) An offense is committed when every element of the offense occurs. In the case of an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until such course of conduct or the accused's accountability for it terminates, whichever occurs first.

(F) A prosecution is commenced on the date an indictment is returned or an information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same. A prosecution is not commenced upon issuance of a warrant, summons, citation, or other process, unless reasonable diligence is exercised to execute the same.

(G) The period of limitation shall not run during any time when the corpus delicti remains undiscovered.

(H) The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused departed this state or concealed the accused's identity or whereabouts is prima-facie evidence of the accused's purpose to avoid prosecution.

(I) The period of limitation shall not run during any time a prosecution against the accused based on the same conduct is pending in this state, even though the indictment, information, or process that commenced the prosecution is quashed or the proceedings on the indictment, information, or process are set aside or reversed on appeal.

(J) The period of limitation for a violation of any provision of Title XXIX of the Revised Code that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under eighteen years of age or of a ~~mentally retarded, developmentally disabled, or physically impaired~~ child with a developmental disability or physical impairment under twenty-one years of age shall not begin to run until either of the following occurs:

(1) The victim of the offense reaches the age of majority.

(2) A public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has been notified that abuse or neglect is known, suspected, or believed to have occurred.

(K) As used in this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(L) The amendments to divisions (A) and (D) of this section apply to a violation of section 2907.02 or 2907.03 of the Revised Code committed on and after ~~the effective date of those amendments July 16, 2015,~~ and apply to a violation of either of those sections committed prior to ~~the effective date of the amendments July 16, 2015,~~ if prosecution for that violation was not barred under this section as it existed on the day prior to ~~the effective date of the amendments July 16, 2015.~~

**Sec. 2903.341.** (A) As used in this section:

(1) "~~MR/DD~~ Developmental disabilities caretaker" means any ~~MR/DD~~ developmental disabilities employee or any person who assumes the duty to provide for the care and protection of a ~~mentally retarded person or a developmentally disabled person~~ with a developmental disability on a

voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. "~~MR/DD-Developmental disabilities~~ caretaker" includes a person who is an employee of a care facility and a person who is an employee of an entity under contract with a provider. "~~MR/DD-Developmental disabilities~~ caretaker" does not include a person who owns, operates, or administers a care facility or who is an agent of a care facility unless that person also personally provides care to ~~persons~~ a person with mental retardation or a developmental disability.

(2) "~~Mentally retarded person~~" and "~~developmentally disabled person~~" have the same meanings as in section 5123.01 of the Revised Code.

(3) "~~MR/DD-Developmental disabilities~~ employee" has the same meaning as in section 5123.50 of the Revised Code.

(3) "Developmental disability" has the same meaning as in section 5123.01 of the Revised Code.

(B) No ~~MR/DD-developmental disabilities~~ caretaker shall create a substantial risk to the health or safety of a ~~mentally retarded person or a developmentally disabled person with a developmental disability~~. ~~An MR/DD-A developmental disabilities~~ caretaker does not create a substantial risk to the health or safety of a ~~mentally retarded person or a developmentally disabled person with a developmental disability~~ under this division when the ~~MR/DD-developmental disabilities~~ caretaker treats a physical or mental illness or defect of the ~~mentally retarded person or developmentally disabled person with a developmental disability~~ by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(C) No person who owns, operates, or administers a care facility or who is an agent of a care facility shall condone, or knowingly permit, any conduct by ~~an MR/DD-a developmental disabilities~~ caretaker who is employed by or under the control of the owner, operator, administrator, or agent that is in violation of division (B) of this section and that involves a ~~mentally retarded person or a developmentally disabled person with a developmental disability~~ who is under the care of the owner, operator, administrator, or agent. A person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, shall not be considered endangered under this division for that reason alone.

(D)(1) It is an affirmative defense to a charge of a violation of division (B) or (C) of this section that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person to whom one of the following applies:

(a) The person has supervisory authority over the actor.

(b) The person has authority over the actor's conduct pursuant to a contract for the provision of services.

(2) It is an affirmative defense to a charge of a violation of division (C) of this section that the person who owns, operates, or administers a care facility or who is an agent of a care facility and who is charged with the violation is following the individual service plan for the involved ~~mentally retarded person or a developmentally disabled person with a developmental disability~~ or that the admission, discharge, and transfer rule set forth in the Administrative Code is being followed.

(3) It is an affirmative defense to a charge of a violation of division (C) of this section that the actor did not have readily available a means to prevent either the harm to the person with ~~mental~~

~~retardation~~ or a developmental disability or the death of such a person and the actor took reasonable steps to summon aid.

(E)(1) Except as provided in division (E)(2) or (E)(3) of this section, whoever violates division (B) or (C) of this section is guilty of patient endangerment, a misdemeanor of the first degree.

(2) If the offender previously has been convicted of, or pleaded guilty to, a violation of this section, patient endangerment is a felony of the fourth degree.

(3) 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.

**Sec. 2905.32.** (A) No person shall knowingly recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, or knowingly attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person if any of the following applies:

(1) The offender knows that the other person will be subjected to involuntary servitude or be compelled to engage in sexual activity for hire, engage in a performance that is obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.

(2) The other person is less than sixteen years of age or is a ~~developmentally disabled person~~ with a developmental disability whom the offender knows or has reasonable cause to believe is a ~~developmentally disabled person with a developmental disability~~, and either the offender knows that the other person will be subjected to involuntary servitude or the offender's knowing recruitment, luring, enticement, isolation, harboring, transportation, provision, obtaining, or maintenance of the other person or knowing attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the other person is for any of the following purposes:

(a) To engage in sexual activity for hire;

(b) To engage in a performance for hire that is obscene, sexually oriented, or nudity oriented;

(c) To be a model or participant for hire in the production of material that is obscene, sexually oriented, or nudity oriented.

(3) The other person is sixteen or seventeen years of age, either the offender knows that the other person will be subjected to involuntary servitude or the offender's knowing recruitment, luring, enticement, isolation, harboring, transportation, provision, obtaining, or maintenance of the other person or knowing attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the other person is for any purpose described in divisions (A)(2)(a) to (c) of this section, and the circumstances described in division (A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) of section 2907.03 of the Revised Code apply with respect to the offender and the other person.

(B) For a prosecution under division (A)(1) of this section, the element "compelled" does not require that the compulsion be openly displayed or physically exerted. The element "compelled" has been established if the state proves that the victim's will was overcome by force, fear, duress, intimidation, or fraud.

(C) In a prosecution under this section, proof that the defendant engaged in sexual activity with any person, or solicited sexual activity with any person, whether or not for hire, without more, does not constitute a violation of this section.

(D) A prosecution for a violation of this section does not preclude a prosecution of a violation

of any other section of the Revised Code. One or more acts, a series of acts, or a course of behavior that can be prosecuted under this section or any other section of the Revised Code may be prosecuted under this section, the other section of the Revised Code, or both sections. However, if an offender is convicted of or pleads guilty to a violation of this section and also is convicted of or pleads guilty to a violation of section 2907.21 of the Revised Code based on the same conduct involving the same victim that was the basis of the violation of this section, or is convicted of or pleads guilty to any other violation of Chapter 2907. of the Revised Code based on the same conduct involving the same victim that was the basis of the violation of this section, the two offenses are allied offenses of similar import under section 2941.25 of the Revised Code.

(E) Whoever violates this section is guilty of trafficking in persons, a felony of the first degree. Notwithstanding division (A)(1) of section 2929.14 of the Revised Code, the court shall sentence the offender to a definite prison term of ten, eleven, twelve, thirteen, fourteen, or fifteen years.

(F) As used in this section:

(1) "~~Developmentally disabled person~~Person with a developmental disability" means a person whose ability to resist or consent to an act is substantially impaired because of a mental or physical condition or because of advanced age.

(2) "Sexual activity for hire," "performance for hire," and "model or participant for hire" mean an implicit or explicit agreement to provide sexual activity, engage in an obscene, sexually oriented, or nudity oriented performance, or be a model or participant in the production of obscene, sexually oriented, or nudity oriented material, whichever is applicable, in exchange for anything of value paid to any of the following:

(a) The person engaging in such sexual activity, performance, or modeling or participation;

(b) Any person who recruits, lures, entices, isolates, harbors, transports, provides, obtains, or maintains, or attempts to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the person described in division (F)(2)(a) of this section;

(c) Any person associated with a person described in division (F)(2)(a) or (b) of this section.

(3) "Material that is obscene, sexually oriented, or nudity oriented" and "performance that is obscene, sexually oriented, or nudity oriented" have the same meanings as in section 2929.01 of the Revised Code.

**Sec. 2907.24.** (A)(1) No person shall solicit another who is eighteen years of age or older to engage with such other person in sexual activity for hire.

(2) No person shall solicit another to engage with such other person in sexual activity for hire if the other person is sixteen or seventeen years of age and the offender knows that the other person is sixteen or seventeen years of age or is reckless in that regard.

(3) No person shall solicit another to engage with such other person in sexual activity for hire if either of the following applies:

(a) The other person is less than sixteen years of age, whether or not the offender knows the age of the other person.

(b) The other person is a ~~developmentally disabled person~~ with a developmental disability and the offender knows or has reasonable cause to believe the other person is a ~~developmentally disabled person~~ with a developmental disability.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall engage in conduct in violation of division (A) of this section.

(C)(1) Whoever violates division (A) of this section is guilty of soliciting. A violation of division (A)(1) of this section is a misdemeanor of the third degree. A violation of division (A)(2) of this section is a felony of the fifth degree. A violation of division (A)(3) of this section is a felony of the third degree.

(2) Whoever violates division (B) of this section is guilty of engaging in solicitation after a positive HIV test. If the offender commits the violation prior to July 1, 1996, engaging in solicitation after a positive HIV test is a felony of the second degree. If the offender commits the violation on or after July 1, 1996, engaging in solicitation after a positive HIV test is a felony of the third degree.

(D) If a person is convicted of or pleads guilty to a violation of any provision of this section, an attempt to commit a violation of any provision of this section, or a violation of or an attempt to commit a violation of a municipal ordinance that is substantially equivalent to any provision of this section and if the person, in committing or attempting to commit the violation, was in, was on, or used a motor vehicle, the court, in addition to or independent of all other penalties imposed for the violation, may impose upon the offender a class six suspension of the person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(6) of section 4510.02 of the Revised Code. In lieu of imposing upon the offender the class six suspension, the court instead may require the offender to perform community service for a number of hours determined by the court.

(E) As used in this section:

(1) "~~Developmentally disabled person~~ Person with a developmental disability" has the same meaning as in section 2905.32 of the Revised Code.

(2) "Sexual activity for hire" means an implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual activity, to any person trafficking that person, or to any person associated with either such person.

**Sec. 2919.23.** (A) No person, knowing the person is without privilege to do so or being reckless in that regard, shall entice, take, keep, or harbor a person identified in division (A)(1), (2), or (3) of this section from the parent, guardian, or custodian of the person identified in division (A)(1), (2), or (3) of this section:

(1) A child under the age of eighteen, or a mentally or physically handicapped child under the age of twenty-one;

(2) A person committed by law to an institution for delinquent, unruly, neglected, abused, or dependent children;

(3) A person committed by law to an institution for the mentally ill or ~~mentally retarded~~ an institution for persons with intellectual disabilities.

(B) No person shall aid, abet, induce, cause, or encourage a child or a ward of the juvenile court who has been committed to the custody of any person, department, or public or private institution to leave the custody of that person, department, or institution without legal consent.

(C) It is an affirmative defense to a charge of enticing or taking under division (A)(1) of this section, that the actor reasonably believed that the actor's conduct was necessary to preserve the

child's health or safety. It is an affirmative defense to a charge of keeping or harboring under division (A) of this section, that the actor in good faith gave notice to law enforcement or judicial authorities within a reasonable time after the child or committed person came under the actor's shelter, protection, or influence.

(D)(1) Whoever violates this section is guilty of interference with custody.

(2) Except as otherwise provided in this division, a violation of division (A)(1) of this section is a misdemeanor of the first degree. If the child who is the subject of a violation of division (A)(1) of this section is removed from the state or if the offender previously has been convicted of an offense under this section, a violation of division (A)(1) of this section is a felony of the fifth degree. If the child who is the subject of a violation of division (A)(1) of this section suffers physical harm as a result of the violation, a violation of division (A)(1) of this section is a felony of the fourth degree.

(3) A violation of division (A)(2) or (3) of this section is a misdemeanor of the third degree.

(4) A violation of division (B) of this section is a misdemeanor of the first degree. Each day of violation of division (B) of this section is a separate offense.

**Sec. 2929.01.** As used in this chapter:

(A)(1) "Alternative residential facility" means, subject to division (A)(2) of this section, any facility other than an offender's home or residence in which an offender is assigned to live and that satisfies all of the following criteria:

(a) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.

(b) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency that is responsible for licensing or certifying that type of education, training, treatment, habilitation, or service.

(2) "Alternative residential facility" does not include a community-based correctional facility, jail, halfway house, or prison.

(B) "Basic probation supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the parole board pursuant to section 2967.28 of the Revised Code. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.

(C) "Cocaine," "hashish," "L.S.D.," and "unit dose" have the same meanings as in section 2925.01 of the Revised Code.

(D) "Community-based correctional facility" means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to sections 2301.51 to 2301.58 of the Revised Code.

(E) "Community control sanction" means a sanction that is not a prison term and that is described in section 2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code or a sanction that is not a jail term and that is described in section 2929.26, 2929.27, or 2929.28 of the Revised Code. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004.

(F) "Controlled substance," "marihuana," "schedule I," and "schedule II" have the same

meanings as in section 3719.01 of the Revised Code.

(G) "Curfew" means a requirement that an offender during a specified period of time be at a designated place.

(H) "Day reporting" means a sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

(I) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(J) "Drug and alcohol use monitoring" means a program under which an offender agrees to submit to random chemical analysis of the offender's blood, breath, or urine to determine whether the offender has ingested any alcohol or other drugs.

(K) "Drug treatment program" means any program under which a person undergoes assessment and treatment designed to reduce or completely eliminate the person's physical or emotional reliance upon alcohol, another drug, or alcohol and another drug and under which the person may be required to receive assessment and treatment on an outpatient basis or may be required to reside at a facility other than the person's home or residence while undergoing assessment and treatment.

(L) "Economic loss" means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(M) "Education or training" includes study at, or in conjunction with a program offered by, a university, college, or technical college or vocational study and also includes the completion of primary school, secondary school, and literacy curricula or their equivalent.

(N) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(O) "Halfway house" means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to section 2967.14 of the Revised Code as a suitable facility for the care and treatment of adult offenders.

(P) "House arrest" means a period of confinement of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board pursuant to section 2967.28 of the Revised Code and during which all of the following apply:

(1) The offender is required to remain in the offender's home or other specified premises for the specified period of confinement, except for periods of time during which the offender is at the offender's place of employment or at other premises as authorized by the sentencing court or by the parole board.

(2) The offender is required to report periodically to a person designated by the court or parole board.

(3) The offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board.

(Q) "Intensive probation supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to section 2967.28 of

the Revised Code, to supervise the offender while the offender is seeking or maintaining necessary employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.

(R) "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.

(S) "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to section 2929.24 or 2929.25 of the Revised Code or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

(T) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of section 1547.99 of the Revised Code, division (E) of section 2903.06 or division (D) of section 2903.08 of the Revised Code, division (E) or (G) of section 2929.24 of the Revised Code, division (B) of section 4510.14 of the Revised Code, or division (G) of section 4511.19 of the Revised Code or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

(U) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(V) "License violation report" means a report that is made by a sentencing court, or by the parole board pursuant to section 2967.28 of the Revised Code, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do business in this state and that specifies that the offender has been convicted of or pleaded guilty to an offense that may violate the conditions under which the offender's professional license or license or permit to do business in this state was granted or an offense for which the offender's professional license or license or permit to do business in this state may be revoked or suspended.

(W) "Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one thousand grams of hashish; at least one hundred grams of cocaine; at least two thousand five hundred unit doses or two hundred fifty grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; at least fifty grams of a controlled substance analog; or at least one hundred times the amount of any other schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to section 2925.03, 2925.04, 2925.05, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

(X) "Mandatory prison term" means any of the following:

(1) Subject to division (X)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (18) of section 2929.13 and division (B) of section 2929.14 of the Revised Code. Except as provided in sections 2925.02, 2925.03, 2925.04, 2925.05, and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 or 2929.142 of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required

to impose for a third or fourth degree felony OVI offense pursuant to division (G)(2) of section 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code.

(3) The term in prison imposed pursuant to division (A) of section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code or pursuant to division (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

(Y) "Monitored time" means a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.

(Z) "Offender" means a person who, in this state, is convicted of or pleads guilty to a felony or a misdemeanor.

(AA) "Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction but does not include a violation sanction center operated under authority of section 2967.141 of the Revised Code.

(BB) "Prison term" includes either of the following sanctions for an offender:

(1) A stated prison term;

(2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.143, 2929.20, 2967.26, 5120.031, 5120.032, or 5120.073 of the Revised Code.

(CC) "Repeat violent offender" means a person about whom both of the following apply:

(1) The person is being sentenced for committing or for complicity in committing any of the following:

(a) Aggravated murder, murder, any felony of the first or second degree that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a felony of the first or second degree;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense described in division (CC)(1)(a) of this section.

(2) The person previously was convicted of or pleaded guilty to an offense described in division (CC)(1)(a) or (b) of this section.

(DD) "Sanction" means any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. "Sanction" includes any sanction imposed pursuant to any provision of sections 2929.14 to 2929.18 or 2929.24 to 2929.28 of the Revised Code.

(EE) "Sentence" means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.

(FF) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14, 2929.142, or 2971.03 of the Revised Code or under section 2919.25 of the Revised Code. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to section 2967.193 of the Revised

Code. If an offender is serving a prison term as a risk reduction sentence under sections 2929.143 and 5120.036 of the Revised Code, "stated prison term" includes any period of time by which the prison term imposed upon the offender is shortened by the offender's successful completion of all assessment and treatment or programming pursuant to those sections.

(GG) "Victim-offender mediation" means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.

(HH) "Fourth degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the fourth degree.

(II) "Mandatory term of local incarceration" means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court may impose upon a person who is convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of section 2929.13 of the Revised Code and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code.

(JJ) "Designated homicide, assault, or kidnapping offense," "violent sex offense," "sexual motivation specification," "sexually violent offense," "sexually violent predator," and "sexually violent predator specification" have the same meanings as in section 2971.01 of the Revised Code.

(KK) "Sexually oriented offense," "child-victim oriented offense," and "tier III sex offender/child-victim offender" have the same meanings as in section 2950.01 of the Revised Code.

(LL) An offense is "committed in the vicinity of a child" if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

(MM) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(NN) "Motor vehicle" and "manufactured home" have the same meanings as in section 4501.01 of the Revised Code.

(OO) "Detention" and "detention facility" have the same meanings as in section 2921.01 of the Revised Code.

(PP) "Third degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the third degree.

(QQ) "Random drug testing" has the same meaning as in section 5120.63 of the Revised Code.

(RR) "Felony sex offense" has the same meaning as in section 2967.28 of the Revised Code.

(SS) "Body armor" has the same meaning as in section 2941.1411 of the Revised Code.

(TT) "Electronic monitoring" means monitoring through the use of an electronic monitoring device.

(UU) "Electronic monitoring device" means any of the following:

(1) Any device that can be operated by electrical or battery power and that conforms with all of the following:

(a) The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in division (UU)(1)(b) of this section if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.

(b) The device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in division (UU)(1)(a) of this section, can transmit continuously those signals by a wireless or landline telephone connection to a central monitoring computer of the type described in division (UU)(1)(c) of this section, and can transmit continuously an appropriate signal to that central monitoring computer if the device has been turned off or altered without prior court approval or otherwise tampered with. The device is designed specifically for use in electronic monitoring, is not a converted wireless phone or another tracking device that is clearly not designed for electronic monitoring, and provides a means of text-based or voice communication with the person.

(c) The device has a central monitoring computer that can receive continuously the signals transmitted by a wireless or landline telephone connection by a receiver of the type described in division (UU)(1)(b) of this section and can monitor continuously the person to whom an electronic monitoring device of the type described in division (UU)(1)(a) of this section is attached.

(2) Any device that is not a device of the type described in division (UU)(1) of this section and that conforms with all of the following:

(a) The device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means.

(b) The device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to the electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

(3) Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

(VV) "Non-economic loss" means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

(WW) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(XX) "Continuous alcohol monitoring" means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.

(YY) A person is "adjudicated a sexually violent predator" if the person is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that violent sex offense or if the person is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.

(ZZ) An offense is "committed in proximity to a school" if the offender commits the offense in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises, regardless of whether the offender knows the offense is being committed in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises.

(AAA) "Human trafficking" means a scheme or plan to which all of the following apply:

(1) Its object is one or more of the following:

(a) To subject a victim or victims to involuntary servitude, as defined in section 2905.31 of the Revised Code or to compel a victim or victims to engage in sexual activity for hire, to engage in a performance that is obscene, sexually oriented, or nudity oriented, or to be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented;

(b) To facilitate, encourage, or recruit a victim who is less than sixteen years of age or is a ~~developmentally disabled person with a developmental disability~~, or victims who are less than sixteen years of age or are ~~developmentally disabled persons with developmental disabilities~~, for any purpose listed in divisions (A)(2)(a) to (c) of section 2905.32 of the Revised Code;

(c) To facilitate, encourage, or recruit a victim who is sixteen or seventeen years of age, or victims who are sixteen or seventeen years of age, for any purpose listed in divisions (A)(2)(a) to (c) of section 2905.32 of the Revised Code, if the circumstances described in division (A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) of section 2907.03 of the Revised Code apply with respect to the person engaging in the conduct and the victim or victims.

(2) It involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply:

(a) Each of the felony offenses is a violation of section 2905.01, 2905.02, 2905.32, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code or is a violation of a law of any state other than this state that is substantially similar to any of the sections or divisions of the Revised Code identified in this division.

(b) At least one of the felony offenses was committed in this state.

(c) The felony offenses are related to the same scheme or plan and are not isolated instances.

(BBB) "Material," "nudity," "obscene," "performance," and "sexual activity" have the same meanings as in section 2907.01 of the Revised Code.

(CCC) "Material that is obscene, sexually oriented, or nudity oriented" means any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

(DDD) "Performance that is obscene, sexually oriented, or nudity oriented" means any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

**Sec. 2929.04.** (A) Imposition of the death penalty for aggravated murder is precluded unless one or more of the following is specified in the indictment or count in the indictment pursuant to section 2941.14 of the Revised Code and proved beyond a reasonable doubt:

(1) The offense was the assassination of the president of the United States or a person in line of succession to the presidency, the governor or lieutenant governor of this state, the president-elect or vice president-elect of the United States, the governor-elect or lieutenant governor-elect of this state, or a candidate for any of the offices described in this division. For purposes of this division, a person is a candidate if the person has been nominated for election according to law, if the person has filed a petition or petitions according to law to have the person's name placed on the ballot in a primary or general election, or if the person campaigns as a write-in candidate in a primary or general election.

(2) The offense was committed for hire.

(3) The offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender.

(4) The offense was committed while the offender was under detention or while the offender was at large after having broken detention. As used in division (A)(4) of this section, "detention" has the same meaning as in section 2921.01 of the Revised Code, except that detention does not include hospitalization, institutionalization, or confinement in a mental health facility or ~~mental retardation and developmentally disabled intellectual disabilities~~ facility unless at the time of the commission of the offense either of the following circumstances apply:

(a) The offender was in the facility as a result of being charged with a violation of a section of the Revised Code.

(b) The offender was under detention as a result of being convicted of or pleading guilty to a violation of a section of the Revised Code.

(5) Prior to the offense at bar, the offender was convicted of an offense an essential element of which was the purposeful killing of or attempt to kill another, or the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.

(6) The victim of the offense was a law enforcement officer, as defined in section 2911.01 of the Revised Code, whom the offender had reasonable cause to know or knew to be a law enforcement officer as so defined, and either the victim, at the time of the commission of the offense, was engaged in the victim's duties, or it was the offender's specific purpose to kill a law enforcement officer as so defined.

(7) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary, and either the offender was the principal offender in the

commission of the aggravated murder or, if not the principal offender, committed the aggravated murder with prior calculation and design.

(8) The victim of the aggravated murder was a witness to an offense who was purposely killed to prevent the victim's testimony in any criminal proceeding and the aggravated murder was not committed during the commission, attempted commission, or flight immediately after the commission or attempted commission of the offense to which the victim was a witness, or the victim of the aggravated murder was a witness to an offense and was purposely killed in retaliation for the victim's testimony in any criminal proceeding.

(9) The offender, in the commission of the offense, purposefully caused the death of another who was under thirteen years of age at the time of the commission of the offense, and either the offender was the principal offender in the commission of the offense or, if not the principal offender, committed the offense with prior calculation and design.

(10) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit terrorism.

(B) If one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment or count in the indictment and proved beyond a reasonable doubt, and if the offender did not raise the matter of age pursuant to section 2929.023 of the Revised Code or if the offender, after raising the matter of age, was found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court, trial jury, or panel of three judges shall consider, and weigh against the aggravating circumstances proved beyond a reasonable doubt, the nature and circumstances of the offense, the history, character, and background of the offender, and all of the following factors:

(1) Whether the victim of the offense induced or facilitated it;

(2) Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation;

(3) Whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law;

(4) The youth of the offender;

(5) The offender's lack of a significant history of prior criminal convictions and delinquency adjudications;

(6) If the offender was a participant in the offense but not the principal offender, the degree of the offender's participation in the offense and the degree of the offender's participation in the acts that led to the death of the victim;

(7) Any other factors that are relevant to the issue of whether the offender should be sentenced to death.

(C) The defendant shall be given great latitude in the presentation of evidence of the factors listed in division (B) of this section and of any other factors in mitigation of the imposition of the sentence of death.

The existence of any of the mitigating factors listed in division (B) of this section does not preclude the imposition of a sentence of death on the offender but shall be weighed pursuant to divisions (D)(2) and (3) of section 2929.03 of the Revised Code by the trial court, trial jury, or the

panel of three judges against the aggravating circumstances the offender was found guilty of committing.

**Sec. 2929.06.** (A) If a sentence of death imposed upon an offender is set aside, nullified, or vacated because the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court, in cases in which the supreme court reviews the sentence upon appeal, could not affirm the sentence of death under the standards imposed by section 2929.05 of the Revised Code, is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of death that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional, is set aside, nullified, or vacated pursuant to division (C) of section 2929.05 of the Revised Code, or is set aside, nullified, or vacated because a court has determined that the offender is ~~mentally retarded~~ a person with an intellectual disability under standards set forth in decisions of the supreme court of this state or the United States supreme court, the trial court that sentenced the offender shall conduct a hearing to resentence the offender. At the resentencing hearing, the court shall impose upon the offender a sentence of life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of section 2929.03 of the Revised Code, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section, the court shall impose the sentence so required. In all other cases, the sentences of life imprisonment that are available at the hearing, and from which the court shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under section 2909.24 of the Revised Code at the time the offender committed the offense for which the sentence of death was imposed. Nothing in this division regarding the resentencing of an offender shall affect the operation of section 2971.03 of the Revised Code.

(B) Whenever any court of this state or any federal court sets aside, nullifies, or vacates a sentence of death imposed upon an offender because of error that occurred in the sentencing phase of the trial and if division (A) of this section does not apply, the trial court that sentenced the offender shall conduct a new hearing to resentence the offender. If the offender was tried by a jury, the trial court shall impanel a new jury for the hearing. If the offender was tried by a panel of three judges, that panel or, if necessary, a new panel of three judges shall conduct the hearing. At the hearing, the court or panel shall follow the procedure set forth in division (D) of section 2929.03 of the Revised Code in determining whether to impose upon the offender a sentence of death, a sentence of life imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment. If, pursuant to that procedure, the court or panel determines that it will impose a sentence other than a sentence of death, the court or panel shall impose upon the offender one of the sentences of life imprisonment that could have been imposed at the time the offender committed the offense for which the sentence of death was imposed, determined as specified in this division, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of section 2929.03

of the Revised Code, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section, the court or panel shall impose the sentence so required. In all other cases, the sentences of life imprisonment that are available at the hearing, and from which the court or panel shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under section 2909.24 of the Revised Code at the time the offender committed the offense for which the sentence of death was imposed.

(C) If a sentence of life imprisonment without parole imposed upon an offender pursuant to section 2929.021 or 2929.03 of the Revised Code is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of life imprisonment without parole that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional, the trial court that sentenced the offender shall conduct a hearing to resentence the offender to life imprisonment with parole eligibility after serving twenty-five full years of imprisonment or to life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(D) Nothing in this section limits or restricts the rights of the state to appeal any order setting aside, nullifying, or vacating a conviction or sentence of death, when an appeal of that nature otherwise would be available.

(E) This section, as amended by H.B. 184 of the 125th general assembly, shall apply to all offenders who have been sentenced to death for an aggravated murder that was committed on or after October 19, 1981, or for terrorism that was committed on or after May 15, 2002. This section, as amended by H.B. 184 of the 125th general assembly, shall apply equally to all such offenders sentenced to death prior to, on, or after March 23, 2005, including offenders who, on March 23, 2005, are challenging their sentence of death and offenders whose sentence of death has been set aside, nullified, or vacated by any court of this state or any federal court but who, as of March 23, 2005, have not yet been resentenced.

**Sec. 2930.061.** (A) If a person is charged in a complaint, indictment, or information with any crime or specified delinquent act or with any other violation of law, and if the case involves a victim that the prosecutor in the case knows is a ~~mentally retarded person or a developmentally disabled person~~ person with a developmental disability, in addition to any other notices required under this chapter or under any other provision of law, the prosecutor in the case shall send written notice of the charges to the department of developmental disabilities. The written notice shall specifically identify the person so charged.

(B) As used in this section, "~~mentally retarded person~~" and "~~developmentally disabled person~~" developmental disability ~~have~~ has the same ~~meanings~~ meaning as in section 5123.01 of the Revised Code.

**Sec. 2930.16.** (A) If a defendant is incarcerated, a victim in a case who has requested to receive notice under this section shall be given notice of the incarceration of the defendant. If an alleged juvenile offender is committed to the temporary custody of a school, camp, institution, or other facility operated for the care of delinquent children or to the legal custody of the department of

youth services, a victim in a case who has requested to receive notice under this section shall be given notice of the commitment. Promptly after sentence is imposed upon the defendant or the commitment of the alleged juvenile offender is ordered, the prosecutor in the case shall notify the victim of the date on which the defendant will be released from confinement or the prosecutor's reasonable estimate of that date or the date on which the alleged juvenile offender will have served the minimum period of commitment or the prosecutor's reasonable estimate of that date. The prosecutor also shall notify the victim of the name of the custodial agency of the defendant or alleged juvenile offender and tell the victim how to contact that custodial agency. If the custodial agency is the department of rehabilitation and correction, the prosecutor shall notify the victim of the services offered by the office of victims' services pursuant to section 5120.60 of the Revised Code. If the custodial agency is the department of youth services, the prosecutor shall notify the victim of the services provided by the office of victims' services within the release authority of the department pursuant to section 5139.55 of the Revised Code and the victim's right pursuant to section 5139.56 of the Revised Code to submit a written request to the release authority to be notified of actions the release authority takes with respect to the alleged juvenile offender. The victim shall keep the custodial agency informed of the victim's current address and telephone number.

(B)(1) Upon the victim's request or in accordance with division (D) of this section, the prosecutor promptly shall notify the victim of any hearing for judicial release of the defendant pursuant to section 2929.20 of the Revised Code, of any hearing for release of the defendant pursuant to section 2967.19 of the Revised Code, or of any hearing for judicial release or early release of the alleged juvenile offender pursuant to section 2151.38 of the Revised Code and of the victim's right to make a statement under those sections. The court shall notify the victim of its ruling in each of those hearings and on each of those applications.

(2) If an offender is sentenced to a prison term pursuant to division (A)(3) or (B) of section 2971.03 of the Revised Code, upon the request of the victim of the crime or in accordance with division (D) of this section, the prosecutor promptly shall notify the victim of any hearing to be conducted pursuant to section 2971.05 of the Revised Code to determine whether to modify the requirement that the offender serve the entire prison term in a state correctional facility in accordance with division (C) of that section, whether to continue, revise, or revoke any existing modification of that requirement, or whether to terminate the prison term in accordance with division (D) of that section. The court shall notify the victim of any order issued at the conclusion of the hearing.

(C) Upon the victim's request made at any time before the particular notice would be due or in accordance with division (D) of this section, the custodial agency of a defendant or alleged juvenile offender shall give the victim any of the following notices that is applicable:

(1) At least sixty days before the adult parole authority recommends a pardon or commutation of sentence for the defendant or at least sixty days prior to a hearing before the adult parole authority regarding a grant of parole to the defendant, notice of the victim's right to submit a statement regarding the impact of the defendant's release in accordance with section 2967.12 of the Revised Code and, if applicable, of the victim's right to appear at a full board hearing of the parole board to give testimony as authorized by section 5149.101 of the Revised Code;

(2) At least sixty days before the defendant is transferred to transitional control under section 2967.26 of the Revised Code, notice of the pendency of the transfer and of the victim's right under

that section to submit a statement regarding the impact of the transfer;

(3) At least sixty days before the release authority of the department of youth services holds a release review, release hearing, or discharge review for the alleged juvenile offender, notice of the pendency of the review or hearing, of the victim's right to make an oral or written statement regarding the impact of the crime upon the victim or regarding the possible release or discharge, and, if the notice pertains to a hearing, of the victim's right to attend and make statements or comments at the hearing as authorized by section 5139.56 of the Revised Code;

(4) Prompt notice of the defendant's or alleged juvenile offender's escape from a facility of the custodial agency in which the defendant was incarcerated or in which the alleged juvenile offender was placed after commitment, of the defendant's or alleged juvenile offender's absence without leave from a mental health or ~~mental retardation and developmental disabilities~~ facility or from other custody, and of the capture of the defendant or alleged juvenile offender after an escape or absence;

(5) Notice of the defendant's or alleged juvenile offender's death while in confinement or custody;

(6) Notice of the filing of a petition by the director of rehabilitation and correction pursuant to section 2967.19 of the Revised Code requesting the early release under that section of the defendant;

(7) Notice of the defendant's or alleged juvenile offender's release from confinement or custody and the terms and conditions of the release.

(D)(1) If a defendant is incarcerated for the commission of aggravated murder, murder, or an offense of violence that is a felony of the first, second, or third degree or is under a sentence of life imprisonment or if an alleged juvenile offender has been charged with the commission of an act that would be aggravated murder, murder, or an offense of violence that is a felony of the first, second, or third degree or be subject to a sentence of life imprisonment if committed by an adult, except as otherwise provided in this division, the notices described in divisions (B) and (C) of this section shall be given regardless of whether the victim has requested the notification. The notices described in divisions (B) and (C) of this section shall not be given under this division to a victim if the victim has requested pursuant to division (B)(2) of section 2930.03 of the Revised Code that the victim not be provided the notice. Regardless of whether the victim has requested that the notices described in division (C) of this section be provided or not be provided, the custodial agency shall give notice similar to those notices to the prosecutor in the case, to the sentencing court, to the law enforcement agency that arrested the defendant or alleged juvenile offender if any officer of that agency was a victim of the offense, and to any member of the victim's immediate family who requests notification. If the notice given under this division to the victim is based on an offense committed prior to ~~the effective date of this amendment~~ March 22, 2013, and if the prosecutor or custodial agency has not previously successfully provided any notice to the victim under this division or division (B) or (C) of this section with respect to that offense and the offender who committed it, the notice also shall inform the victim that the victim may request that the victim not be provided any further notices with respect to that offense and the offender who committed it and shall describe the procedure for making that request. If the notice given under this division to the victim pertains to a hearing regarding a grant of a parole to the defendant, the notice also shall inform the victim that the victim, a member of

the victim's immediate family, or the victim's representative may request a victim conference, as described in division (E) of this section, and shall provide an explanation of a victim conference.

The prosecutor or custodial agency may give the notices to which this division applies by any reasonable means, including regular mail, telephone, and electronic mail. If the prosecutor or custodial agency attempts to provide notice to a victim under this division but the attempt is unsuccessful because the prosecutor or custodial agency is unable to locate the victim, is unable to provide the notice by its chosen method because it cannot determine the mailing address, telephone number, or electronic mail address at which to provide the notice, or, if the notice is sent by mail, the notice is returned, the prosecutor or custodial agency shall make another attempt to provide the notice to the victim. If the second attempt is unsuccessful, the prosecutor or custodial agency shall make at least one more attempt to provide the notice. If the notice is based on an offense committed prior to ~~the effective date of this amendment~~ March 22, 2013, in each attempt to provide the notice to the victim, the notice shall include the opt-out information described in the preceding paragraph. The prosecutor or custodial agency, in accordance with division (D)(2) of this section, shall keep a record of all attempts to provide the notice, and of all notices provided, under this division.

Division (D)(1) of this section, and the notice-related provisions of divisions (E)(2) and (K) of section 2929.20, division (H) of section 2967.12, division (E)(1)(b) of section 2967.19, division (A)(3)(b) of section 2967.26, division (D)(1) of section 2967.28, and division (A)(2) of section 5149.101 of the Revised Code enacted in the act in which division (D)(1) of this section was enacted, shall be known as "Roberta's Law."

(2) Each prosecutor and custodial agency that attempts to give any notice to which division (D)(1) of this section applies shall keep a record of all attempts to give the notice. The record shall indicate the person who was to be the recipient of the notice, the date on which the attempt was made, the manner in which the attempt was made, and the person who made the attempt. If the attempt is successful and the notice is given, the record shall indicate that fact. The record shall be kept in a manner that allows public inspection of attempts and notices given to persons other than victims without revealing the names, addresses, or other identifying information relating to victims. The record of attempts and notices given to victims is not a public record, but the prosecutor or custodial agency shall provide upon request a copy of that record to a prosecuting attorney, judge, law enforcement agency, or member of the general assembly. The record of attempts and notices given to persons other than victims is a public record. A record kept under this division may be indexed by offender name, or in any other manner determined by the prosecutor or the custodial agency. Each prosecutor or custodial agency that is required to keep a record under this division shall determine the procedures for keeping the record and the manner in which it is to be kept, subject to the requirements of this division.

(E) The adult parole authority shall adopt rules under Chapter 119. of the Revised Code providing for a victim conference, upon request of the victim, a member of the victim's immediate family, or the victim's representative, prior to a parole hearing in the case of a prisoner who is incarcerated for the commission of aggravated murder, murder, or an offense of violence that is a felony of the first, second, or third degree or is under a sentence of life imprisonment. The rules shall provide for, but not be limited to, all of the following:

(1) Subject to division (E)(3) of this section, attendance by the victim, members of the

victim's immediate family, the victim's representative, and, if practicable, other individuals;

(2) Allotment of up to one hour for the conference;

(3) A specification of the number of persons specified in division (E)(1) of this section who may be present at any single victim conference, if limited by the department pursuant to division (F) of this section.

(F) The department may limit the number of persons specified in division (E)(1) of this section who may be present at any single victim conference, provided that the department shall not limit the number of persons who may be present at any single conference to fewer than three. If the department limits the number of persons who may be present at any single victim conference, the department shall permit and schedule, upon request of the victim, a member of the victim's immediate family, or the victim's representative, multiple victim conferences for the persons specified in division (E)(1) of this section.

(G) As used in this section, "victim's immediate family" has the same meaning as in section 2967.12 of the Revised Code.

**Sec. 2945.37.** (A) As used in sections 2945.37 to 2945.402 of the Revised Code:

(1) "Prosecutor" means a prosecuting attorney or a city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has authority to prosecute a criminal case that is before the court or the criminal case in which a defendant in a criminal case has been found incompetent to stand trial or not guilty by reason of insanity.

(2) "Examiner" means either of the following:

(a) A psychiatrist or a licensed clinical psychologist who satisfies the criteria of division (I) of section 5122.01 of the Revised Code or is employed by a certified forensic center designated by the department of mental health and addiction services to conduct examinations or evaluations.

(b) For purposes of a separate ~~mental-retardation-intellectual disability~~ evaluation that is ordered by a court pursuant to division (H) of section 2945.371 of the Revised Code, a psychologist designated by the director of developmental disabilities pursuant to that section to conduct that separate ~~mental-retardation-intellectual disability~~ evaluation.

(3) "Nonsecured status" means any unsupervised, off-grounds movement or trial visit from a hospital or institution, or any conditional release, that is granted to a person who is found incompetent to stand trial and is committed pursuant to section 2945.39 of the Revised Code or to a person who is found not guilty by reason of insanity and is committed pursuant to section 2945.40 of the Revised Code.

(4) "Unsupervised, off-grounds movement" includes only off-grounds privileges that are unsupervised and that have an expectation of return to the hospital or institution on a daily basis.

(5) "Trial visit" means a patient privilege of a longer stated duration of unsupervised community contact with an expectation of return to the hospital or institution at designated times.

(6) "Conditional release" means a commitment status under which the trial court at any time may revoke a person's conditional release and order the rehospitalization or reinstitutionalization of the person as described in division (A) of section 2945.402 of the Revised Code and pursuant to which a person who is found incompetent to stand trial or a person who is found not guilty by reason of insanity lives and receives treatment in the community for a period of time that does not exceed the maximum prison term or term of imprisonment that the person could have received for the

offense in question had the person been convicted of the offense instead of being found incompetent to stand trial on the charge of the offense or being found not guilty by reason of insanity relative to the offense.

(7) "Licensed clinical psychologist," "mentally ill person subject to court order," and "psychiatrist" have the same meanings as in section 5122.01 of the Revised Code.

(8) "~~Mentally retarded person~~ Person with an intellectual disability subject to institutionalization by court order" has the same meaning as in section 5123.01 of the Revised Code.

(B) In a criminal action in a court of common pleas, a county court, or a municipal court, the court, prosecutor, or defense may raise the issue of the defendant's competence to stand trial. If the issue is raised before the trial has commenced, the court shall hold a hearing on the issue as provided in this section. If the issue is raised after the trial has commenced, the court shall hold a hearing on the issue only for good cause shown or on the court's own motion.

(C) The court shall conduct the hearing required or authorized under division (B) of this section within thirty days after the issue is raised, unless the defendant has been referred for evaluation in which case the court shall conduct the hearing within ten days after the filing of the report of the evaluation or, in the case of a defendant who is ordered by the court pursuant to division (H) of section 2945.371 of the Revised Code to undergo a separate ~~mental retardation~~ intellectual disability evaluation conducted by a psychologist designated by the director of developmental disabilities, within ten days after the filing of the report of the separate ~~mental retardation~~ intellectual disability evaluation under that division. A hearing may be continued for good cause.

(D) The defendant shall be represented by counsel at the hearing conducted under division (C) of this section. If the defendant is unable to obtain counsel, the court shall appoint counsel under Chapter 120. of the Revised Code or under the authority recognized in division (C) of section 120.06, division (E) of section 120.16, division (E) of section 120.26, or section 2941.51 of the Revised Code before proceeding with the hearing.

(E) The prosecutor and defense counsel may submit evidence on the issue of the defendant's competence to stand trial. A written report of the evaluation of the defendant may be admitted into evidence at the hearing by stipulation, but, if either the prosecution or defense objects to its admission, the report may be admitted under sections 2317.36 to 2317.38 of the Revised Code or any other applicable statute or rule.

(F) The court shall not find a defendant incompetent to stand trial solely because the defendant is receiving or has received treatment as a voluntary or involuntary mentally ill patient under Chapter 5122. or a voluntary or involuntary ~~mentally retarded~~ resident with an intellectual disability under Chapter 5123. of the Revised Code or because the defendant is receiving or has received psychotropic drugs or other medication, even if the defendant might become incompetent to stand trial without the drugs or medication.

(G) A defendant is presumed to be competent to stand trial. If, after a hearing, the court finds by a preponderance of the evidence that, because of the defendant's present mental condition, the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the court shall find the defendant incompetent to stand trial and shall enter an order authorized by section 2945.38 of the Revised Code.

(H) Municipal courts shall follow the procedures set forth in sections 2945.37 to 2945.402 of

the Revised Code. Except as provided in section 2945.371 of the Revised Code, a municipal court shall not order an evaluation of the defendant's competence to stand trial or the defendant's mental condition at the time of the commission of the offense to be conducted at any hospital operated by the department of mental health and addiction services. Those evaluations shall be performed through community resources including, but not limited to, certified forensic centers, court probation departments, and community mental health services providers. All expenses of the evaluations shall be borne by the legislative authority of the municipal court, as defined in section 1901.03 of the Revised Code, and shall be taxed as costs in the case. If a defendant is found incompetent to stand trial or not guilty by reason of insanity, a municipal court may commit the defendant as provided in sections 2945.38 to 2945.402 of the Revised Code.

**Sec. 2945.371.** (A) If the issue of a defendant's competence to stand trial is raised or if a defendant enters a plea of not guilty by reason of insanity, the court may order one or more evaluations of the defendant's present mental condition or, in the case of a plea of not guilty by reason of insanity, of the defendant's mental condition at the time of the offense charged. An examiner shall conduct the evaluation.

(B) If the court orders more than one evaluation under division (A) of this section, the prosecutor and the defendant may recommend to the court an examiner whom each prefers to perform one of the evaluations. If a defendant enters a plea of not guilty by reason of insanity and if the court does not designate an examiner recommended by the defendant, the court shall inform the defendant that the defendant may have independent expert evaluation and that, if the defendant is unable to obtain independent expert evaluation, it will be obtained for the defendant at public expense if the defendant is indigent.

(C) If the court orders an evaluation under division (A) of this section, the defendant shall be available at the times and places established by the examiners who are to conduct the evaluation. The court may order a defendant who has been released on bail or recognizance to submit to an evaluation under this section. If a defendant who has been released on bail or recognizance refuses to submit to a complete evaluation, the court may amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to a center, program, or facility operated or certified by the department of mental health and addiction services or the department of developmental disabilities where the defendant may be held for evaluation for a reasonable period of time not to exceed twenty days.

(D) A defendant who has not been released on bail or recognizance may be evaluated at the defendant's place of detention. Upon the request of the examiner, the court may order the sheriff to transport the defendant to a program or facility operated or certified by the department of mental health and addiction services or the department of developmental disabilities, where the defendant may be held for evaluation for a reasonable period of time not to exceed twenty days, and to return the defendant to the place of detention after the evaluation. A municipal court may make an order under this division only upon the request of a certified forensic center examiner.

(E) If a court orders the evaluation to determine a defendant's mental condition at the time of the offense charged, the court shall inform the examiner of the offense with which the defendant is charged.

(F) In conducting an evaluation of a defendant's mental condition at the time of the offense

charged, the examiner shall consider all relevant evidence. If the offense charged involves the use of force against another person, the relevant evidence to be considered includes, but is not limited to, any evidence that the defendant suffered, at the time of the commission of the offense, from the "battered woman syndrome."

(G) The examiner shall file a written report with the court within thirty days after entry of a court order for evaluation, and the court shall provide copies of the report to the prosecutor and defense counsel. The report shall include all of the following:

(1) The examiner's findings;  
(2) The facts in reasonable detail on which the findings are based;  
(3) If the evaluation was ordered to determine the defendant's competence to stand trial, all of the following findings or recommendations that are applicable:

(a) Whether the defendant is capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense;

(b) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, whether the defendant presently is mentally ill or ~~mentally retarded~~ has an intellectual disability and, if the examiner's opinion is that the defendant presently is ~~mentally retarded~~ has an intellectual disability, whether the defendant appears to be a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order;

(c) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the examiner's opinion as to the likelihood of the defendant becoming capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense within one year if the defendant is provided with a course of treatment;

(d) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that the defendant presently is mentally ill or ~~mentally retarded~~ has an intellectual disability, the examiner's recommendation as to the least restrictive placement or commitment alternative, consistent with the defendant's treatment needs for restoration to competency and with the safety of the community.

(4) If the evaluation was ordered to determine the defendant's mental condition at the time of the offense charged, the examiner's findings as to whether the defendant, at the time of the offense charged, did not know, as a result of a severe mental disease or defect, the wrongfulness of the defendant's acts charged.

(H) If the examiner's report filed under division (G) of this section indicates that in the examiner's opinion the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that in the examiner's opinion the defendant appears to be a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, the court shall order the defendant to undergo a separate ~~mental retardation~~ intellectual disability evaluation conducted by a psychologist designated by the director of developmental disabilities. Divisions (C) to (F) of this section apply in relation to a separate ~~mental retardation~~ intellectual disability evaluation conducted under this division. The psychologist

appointed under this division to conduct the separate ~~mental-retardation-intellectual disability~~ evaluation shall file a written report with the court within thirty days after the entry of the court order requiring the separate ~~mental-retardation-intellectual disability~~ evaluation, and the court shall provide copies of the report to the prosecutor and defense counsel. The report shall include all of the information described in divisions (G)(1) to (4) of this section. If the court orders a separate ~~mental-retardation-intellectual disability~~ evaluation of a defendant under this division, the court shall not conduct a hearing under divisions (B) to (H) of section 2945.37 of the Revised Code regarding that defendant until a report of the separate ~~mental-retardation-intellectual disability~~ evaluation conducted under this division has been filed. Upon the filing of that report, the court shall conduct the hearing within the period of time specified in division (C) of section 2945.37 of the Revised Code.

(I) An examiner appointed under divisions (A) and (B) of this section or under division (H) of this section to evaluate a defendant to determine the defendant's competence to stand trial also may be appointed to evaluate a defendant who has entered a plea of not guilty by reason of insanity, but an examiner of that nature shall prepare separate reports on the issue of competence to stand trial and the defense of not guilty by reason of insanity.

(J) No statement that a defendant makes in an evaluation or hearing under divisions (A) to (H) of this section relating to the defendant's competence to stand trial or to the defendant's mental condition at the time of the offense charged shall be used against the defendant on the issue of guilt in any criminal action or proceeding, but, in a criminal action or proceeding, the prosecutor or defense counsel may call as a witness any person who evaluated the defendant or prepared a report pursuant to a referral under this section. Neither the appointment nor the testimony of an examiner appointed under this section precludes the prosecutor or defense counsel from calling other witnesses or presenting other evidence on competency or insanity issues.

(K) Persons appointed as examiners under divisions (A) and (B) of this section or under division (H) of this section shall be paid a reasonable amount for their services and expenses, as certified by the court. The certified amount shall be paid by the county in the case of county courts and courts of common pleas and by the legislative authority, as defined in section 1901.03 of the Revised Code, in the case of municipal courts.

**Sec. 2945.38.** (A) If the issue of a defendant's competence to stand trial is raised and if the court, upon conducting the hearing provided for in section 2945.37 of the Revised Code, finds that the defendant is competent to stand trial, the defendant shall be proceeded against as provided by law. If the court finds the defendant competent to stand trial and the defendant is receiving psychotropic drugs or other medication, the court may authorize the continued administration of the drugs or medication or other appropriate treatment in order to maintain the defendant's competence to stand trial, unless the defendant's attending physician advises the court against continuation of the drugs, other medication, or treatment.

(B)(1)(a) If, after taking into consideration all relevant reports, information, and other evidence, the court finds that the defendant is incompetent to stand trial and that there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court shall order the defendant to undergo treatment. If the defendant has been charged with a felony offense and if, after taking into consideration all relevant reports, information, and other evidence, the court finds that the defendant is incompetent to stand

trial, but the court is unable at that time to determine whether there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court shall order continuing evaluation and treatment of the defendant for a period not to exceed four months to determine whether there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment.

(b) The court order for the defendant to undergo treatment or continuing evaluation and treatment under division (B)(1)(a) of this section shall specify that the defendant, if determined to require mental health treatment or continuing evaluation and treatment, either shall be committed to the department of mental health and addiction services for treatment or continuing evaluation and treatment at a hospital, facility, or agency, as determined to be clinically appropriate by the department of mental health and addiction services or shall be committed to a facility certified by the department of mental health and addiction services as being qualified to treat mental illness, to a public or community mental health facility, or to a psychiatrist or another mental health professional for treatment or continuing evaluation and treatment. Prior to placing the defendant, the department of mental health and addiction services shall obtain court approval for that placement following a hearing. The court order for the defendant to undergo treatment or continuing evaluation and treatment under division (B)(1)(a) of this section shall specify that the defendant, if determined to require treatment or continuing evaluation and treatment for ~~mental retardation~~ an intellectual disability, shall receive treatment or continuing evaluation and treatment at an institution or facility operated by the department of developmental disabilities, at a facility certified by the department of developmental disabilities as being qualified to treat ~~mental retardation~~ intellectual disabilities, at a public or private ~~mental retardation~~ intellectual disabilities facility, or by a psychiatrist or another ~~mental retardation~~ intellectual disabilities professional. In any case, the order may restrict the defendant's freedom of movement as the court considers necessary. The prosecutor in the defendant's case shall send to the chief clinical officer of the hospital, facility, or agency where the defendant is placed by the department of mental health and addiction services, or to the managing officer of the institution, the director of the program or facility, or the person to which the defendant is committed, copies of relevant police reports and other background information that pertains to the defendant and is available to the prosecutor unless the prosecutor determines that the release of any of the information in the police reports or any of the other background information to unauthorized persons would interfere with the effective prosecution of any person or would create a substantial risk of harm to any person.

In determining the place of commitment, the court shall consider the extent to which the person is a danger to the person and to others, the need for security, and the type of crime involved and shall order the least restrictive alternative available that is consistent with public safety and treatment goals. In weighing these factors, the court shall give preference to protecting public safety.

(c) If the defendant is found incompetent to stand trial, if the chief clinical officer of the hospital, facility, or agency where the defendant is placed, or the managing officer of the institution, the director of the program or facility, or the person to which the defendant is committed for treatment or continuing evaluation and treatment under division (B)(1)(b) of this section determines that medication is necessary to restore the defendant's competency to stand trial, and if the defendant

lacks the capacity to give informed consent or refuses medication, the chief clinical officer of the hospital, facility, or agency where the defendant is placed, or the managing officer of the institution, the director of the program or facility, or the person to which the defendant is committed for treatment or continuing evaluation and treatment may petition the court for authorization for the involuntary administration of medication. The court shall hold a hearing on the petition within five days of the filing of the petition if the petition was filed in a municipal court or a county court regarding an incompetent defendant charged with a misdemeanor or within ten days of the filing of the petition if the petition was filed in a court of common pleas regarding an incompetent defendant charged with a felony offense. Following the hearing, the court may authorize the involuntary administration of medication or may dismiss the petition.

(2) If the court finds that the defendant is incompetent to stand trial and that, even if the defendant is provided with a course of treatment, there is not a substantial probability that the defendant will become competent to stand trial within one year, the court shall order the discharge of the defendant, unless upon motion of the prosecutor or on its own motion, the court either seeks to retain jurisdiction over the defendant pursuant to section 2945.39 of the Revised Code or files an affidavit in the probate court for the civil commitment of the defendant pursuant to Chapter 5122. or 5123. of the Revised Code alleging that the defendant is a mentally ill person subject to court order or a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order. If an affidavit is filed in the probate court, the trial court shall send to the probate court copies of all written reports of the defendant's mental condition that were prepared pursuant to section 2945.371 of the Revised Code.

The trial court may issue the temporary order of detention that a probate court may issue under section 5122.11 or 5123.71 of the Revised Code, to remain in effect until the probable cause or initial hearing in the probate court. Further proceedings in the probate court are civil proceedings governed by Chapter 5122. or 5123. of the Revised Code.

(C) No defendant shall be required to undergo treatment, including any continuing evaluation and treatment, under division (B)(1) of this section for longer than whichever of the following periods is applicable:

(1) One year, if the most serious offense with which the defendant is charged is one of the following offenses:

(a) Aggravated murder, murder, or an offense of violence for which a sentence of death or life imprisonment may be imposed;

(b) An offense of violence that is a felony of the first or second degree;

(c) A conspiracy to commit, an attempt to commit, or complicity in the commission of an offense described in division (C)(1)(a) or (b) of this section if the conspiracy, attempt, or complicity is a felony of the first or second degree.

(2) Six months, if the most serious offense with which the defendant is charged is a felony other than a felony described in division (C)(1) of this section;

(3) Sixty days, if the most serious offense with which the defendant is charged is a misdemeanor of the first or second degree;

(4) Thirty days, if the most serious offense with which the defendant is charged is a misdemeanor of the third or fourth degree, a minor misdemeanor, or an unclassified misdemeanor.

(D) Any defendant who is committed pursuant to this section shall not voluntarily admit the defendant or be voluntarily admitted to a hospital or institution pursuant to section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised Code.

(E) Except as otherwise provided in this division, a defendant who is charged with an offense and is committed by the court under this section to the department of mental health and addiction services or is committed to an institution or facility for the treatment of ~~mental-retardation-intellectual disabilities~~ shall not be granted unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status except in accordance with the court order. The court may grant a defendant supervised off-grounds movement to obtain medical treatment or specialized habilitation treatment services if the person who supervises the treatment or the continuing evaluation and treatment of the defendant ordered under division (B)(1)(a) of this section informs the court that the treatment or continuing evaluation and treatment cannot be provided at the hospital or facility where the defendant is placed by the department of mental health and addiction services or the institution or facility to which the defendant is committed. The chief clinical officer of the hospital or facility where the defendant is placed by the department of mental health and addiction services or the managing officer of the institution or director of the facility to which the defendant is committed, or a designee of any of those persons, may grant a defendant movement to a medical facility for an emergency medical situation with appropriate supervision to ensure the safety of the defendant, staff, and community during that emergency medical situation. The chief clinical officer of the hospital or facility where the defendant is placed by the department of mental health and addiction services or the managing officer of the institution or director of the facility to which the defendant is committed shall notify the court within twenty-four hours of the defendant's movement to the medical facility for an emergency medical situation under this division.

(F) The person who supervises the treatment or continuing evaluation and treatment of a defendant ordered to undergo treatment or continuing evaluation and treatment under division (B)(1)(a) of this section shall file a written report with the court at the following times:

(1) Whenever the person believes the defendant is capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense;

(2) For a felony offense, fourteen days before expiration of the maximum time for treatment as specified in division (C) of this section and fourteen days before the expiration of the maximum time for continuing evaluation and treatment as specified in division (B)(1)(a) of this section, and, for a misdemeanor offense, ten days before the expiration of the maximum time for treatment, as specified in division (C) of this section;

(3) At a minimum, after each six months of treatment;

(4) Whenever the person who supervises the treatment or continuing evaluation and treatment of a defendant ordered under division (B)(1)(a) of this section believes that there is not a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense even if the defendant is provided with a course of treatment.

(G) A report under division (F) of this section shall contain the examiner's findings, the facts in reasonable detail on which the findings are based, and the examiner's opinion as to the defendant's capability of understanding the nature and objective of the proceedings against the defendant and of

assisting in the defendant's defense. If, in the examiner's opinion, the defendant remains incapable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense and there is a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense if the defendant is provided with a course of treatment, if in the examiner's opinion the defendant remains mentally ill or ~~mentally retarded~~ continues to have an intellectual disability, and if the maximum time for treatment as specified in division (C) of this section has not expired, the report also shall contain the examiner's recommendation as to the least restrictive placement or commitment alternative that is consistent with the defendant's treatment needs for restoration to competency and with the safety of the community. The court shall provide copies of the report to the prosecutor and defense counsel.

(H) If a defendant is committed pursuant to division (B)(1) of this section, within ten days after the treating physician of the defendant or the examiner of the defendant who is employed or retained by the treating facility advises that there is not a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense even if the defendant is provided with a course of treatment, within ten days after the expiration of the maximum time for treatment as specified in division (C) of this section, within ten days after the expiration of the maximum time for continuing evaluation and treatment as specified in division (B)(1)(a) of this section, within thirty days after a defendant's request for a hearing that is made after six months of treatment, or within thirty days after being advised by the treating physician or examiner that the defendant is competent to stand trial, whichever is the earliest, the court shall conduct another hearing to determine if the defendant is competent to stand trial and shall do whichever of the following is applicable:

(1) If the court finds that the defendant is competent to stand trial, the defendant shall be proceeded against as provided by law.

(2) If the court finds that the defendant is incompetent to stand trial, but that there is a substantial probability that the defendant will become competent to stand trial if the defendant is provided with a course of treatment, and the maximum time for treatment as specified in division (C) of this section has not expired, the court, after consideration of the examiner's recommendation, shall order that treatment be continued, may change the facility or program at which the treatment is to be continued, and shall specify whether the treatment is to be continued at the same or a different facility or program.

(3) If the court finds that the defendant is incompetent to stand trial, if the defendant is charged with an offense listed in division (C)(1) of this section, and if the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment, or if the maximum time for treatment relative to that offense as specified in division (C) of this section has expired, further proceedings shall be as provided in sections 2945.39, 2945.401, and 2945.402 of the Revised Code.

(4) If the court finds that the defendant is incompetent to stand trial, if the most serious offense with which the defendant is charged is a misdemeanor or a felony other than a felony listed in division (C)(1) of this section, and if the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of

treatment, or if the maximum time for treatment relative to that offense as specified in division (C) of this section has expired, the court shall dismiss the indictment, information, or complaint against the defendant. A dismissal under this division is not a bar to further prosecution based on the same conduct. The court shall discharge the defendant unless the court or prosecutor files an affidavit in probate court for civil commitment pursuant to Chapter 5122. or 5123. of the Revised Code. If an affidavit for civil commitment is filed, the court may detain the defendant for ten days pending civil commitment. All of the following provisions apply to persons charged with a misdemeanor or a felony other than a felony listed in division (C)(1) of this section who are committed by the probate court subsequent to the court's or prosecutor's filing of an affidavit for civil commitment under authority of this division:

(a) The chief clinical officer of the entity, hospital, or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed or admitted shall do all of the following:

(i) Notify the prosecutor, in writing, of the discharge of the defendant, send the notice at least ten days prior to the discharge unless the discharge is by the probate court, and state in the notice the date on which the defendant will be discharged;

(ii) Notify the prosecutor, in writing, when the defendant is absent without leave or is granted unsupervised, off-grounds movement, and send this notice promptly after the discovery of the absence without leave or prior to the granting of the unsupervised, off-grounds movement, whichever is applicable;

(iii) Notify the prosecutor, in writing, of the change of the defendant's commitment or admission to voluntary status, send the notice promptly upon learning of the change to voluntary status, and state in the notice the date on which the defendant was committed or admitted on a voluntary status.

(b) Upon receiving notice that the defendant will be granted unsupervised, off-grounds movement, the prosecutor either shall re-indict the defendant or promptly notify the court that the prosecutor does not intend to prosecute the charges against the defendant.

(1) If a defendant is convicted of a crime and sentenced to a jail or workhouse, the defendant's sentence shall be reduced by the total number of days the defendant is confined for evaluation to determine the defendant's competence to stand trial or treatment under this section and sections 2945.37 and 2945.371 of the Revised Code or by the total number of days the defendant is confined for evaluation to determine the defendant's mental condition at the time of the offense charged.

**Sec. 2945.39.** (A) If a defendant who is charged with an offense described in division (C)(1) of section 2945.38 of the Revised Code is found incompetent to stand trial, after the expiration of the maximum time for treatment as specified in division (C) of that section or after the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment, one of the following applies:

(1) The court or the prosecutor may file an affidavit in probate court for civil commitment of the defendant in the manner provided in Chapter 5122. or 5123. of the Revised Code. If the court or prosecutor files an affidavit for civil commitment, the court may detain the defendant for ten days pending civil commitment. If the probate court commits the defendant subsequent to the court's or prosecutor's filing of an affidavit for civil commitment, the chief clinical officer of the entity,

hospital, or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed or admitted shall send to the prosecutor the notices described in divisions (H)(4)(a)(i) to (iii) of section 2945.38 of the Revised Code within the periods of time and under the circumstances specified in those divisions.

(2) On the motion of the prosecutor or on its own motion, the court may retain jurisdiction over the defendant if, at a hearing, the court finds both of the following by clear and convincing evidence:

(a) The defendant committed the offense with which the defendant is charged.

(b) The defendant is a mentally ill person subject to court order or a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order.

(B) In making its determination under division (A)(2) of this section as to whether to retain jurisdiction over the defendant, the court may consider all relevant evidence, including, but not limited to, any relevant psychiatric, psychological, or medical testimony or reports, the acts constituting the offense charged, and any history of the defendant that is relevant to the defendant's ability to conform to the law.

(C) If the court conducts a hearing as described in division (A)(2) of this section and if the court does not make both findings described in divisions (A)(2)(a) and (b) of this section by clear and convincing evidence, the court shall dismiss the indictment, information, or complaint against the defendant. Upon the dismissal, the court shall discharge the defendant unless the court or prosecutor files an affidavit in probate court for civil commitment of the defendant pursuant to Chapter 5122. or 5123. of the Revised Code. If the court or prosecutor files an affidavit for civil commitment, the court may order that the defendant be detained for up to ten days pending the civil commitment. If the probate court commits the defendant subsequent to the court's or prosecutor's filing of an affidavit for civil commitment, the chief clinical officer of the entity, hospital, or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed or admitted shall send to the prosecutor the notices described in divisions (H)(4)(a)(i) to (iii) of section 2945.38 of the Revised Code within the periods of time and under the circumstances specified in those divisions. A dismissal of charges under this division is not a bar to further criminal proceedings based on the same conduct.

(D)(1) If the court conducts a hearing as described in division (A)(2) of this section and if the court makes the findings described in divisions (A)(2)(a) and (b) of this section by clear and convincing evidence, the court shall commit the defendant, if determined to require mental health treatment, either to the department of mental health and addiction services for treatment at a hospital, facility, or agency as determined clinically appropriate by the department of mental health and addiction services or to another medical or psychiatric facility, as appropriate. Prior to placing the defendant, the department of mental health and addiction services shall obtain court approval for that placement. If the court conducts such a hearing and if it makes those findings by clear and convincing evidence, the court shall commit the defendant, if determined to require treatment for ~~mental retardation~~ an intellectual disability, to a facility operated by the department of developmental disabilities, or another facility, as appropriate. In determining the place of commitment, the court shall consider the extent to which the person is a danger to the person and to others, the need for security, and the type of crime involved and shall order the least restrictive alternative available that

is consistent with public safety and the welfare of the defendant. In weighing these factors, the court shall give preference to protecting public safety.

(2) If a court makes a commitment of a defendant under division (D)(1) of this section, the prosecutor shall send to the hospital, facility, or agency where the defendant is placed by the department of mental health and addiction services or to the defendant's place of commitment all reports of the defendant's current mental condition and, except as otherwise provided in this division, any other relevant information, including, but not limited to, a transcript of the hearing held pursuant to division (A)(2) of this section, copies of relevant police reports, and copies of any prior arrest and conviction records that pertain to the defendant and that the prosecutor possesses. The prosecutor shall send the reports of the defendant's current mental condition in every case of commitment, and, unless the prosecutor determines that the release of any of the other relevant information to unauthorized persons would interfere with the effective prosecution of any person or would create a substantial risk of harm to any person, the prosecutor also shall send the other relevant information. Upon admission of a defendant committed under division (D)(1) of this section, the place of commitment shall send to the board of alcohol, drug addiction, and mental health services or the community mental health board serving the county in which the charges against the defendant were filed a copy of all reports of the defendant's current mental condition and a copy of the other relevant information provided by the prosecutor under this division, including, if provided, a transcript of the hearing held pursuant to division (A)(2) of this section, the relevant police reports, and the prior arrest and conviction records that pertain to the defendant and that the prosecutor possesses.

(3) If a court makes a commitment under division (D)(1) of this section, all further proceedings shall be in accordance with sections 2945.401 and 2945.402 of the Revised Code.

**Sec. 2945.40.** (A) If a person is found not guilty by reason of insanity, the verdict shall state that finding, and the trial court shall conduct a full hearing to determine whether the person is a mentally ill person subject to court order or a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order. Prior to the hearing, if the trial judge believes that there is probable cause that the person found not guilty by reason of insanity is a mentally ill person subject to court order or ~~mentally retarded~~ a person with an intellectual disability subject to institutionalization by court order, the trial judge may issue a temporary order of detention for that person to remain in effect for ten court days or until the hearing, whichever occurs first.

Any person detained pursuant to a temporary order of detention issued under this division shall be held in a suitable facility, taking into consideration the place and type of confinement prior to and during trial.

(B) The court shall hold the hearing under division (A) of this section to determine whether the person found not guilty by reason of insanity is a mentally ill person subject to court order or a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order within ten court days after the finding of not guilty by reason of insanity. Failure to conduct the hearing within the ten-day period shall cause the immediate discharge of the respondent, unless the judge grants a continuance for not longer than ten court days for good cause shown or for any period of time upon motion of the respondent.

(C) If a person is found not guilty by reason of insanity, the person has the right to attend all hearings conducted pursuant to sections 2945.37 to 2945.402 of the Revised Code. At any hearing

conducted pursuant to one of those sections, the court shall inform the person that the person has all of the following rights:

(1) The right to be represented by counsel and to have that counsel provided at public expense if the person is indigent, with the counsel to be appointed by the court under Chapter 120. of the Revised Code or under the authority recognized in division (C) of section 120.06, division (E) of section 120.16, division (E) of section 120.26, or section 2941.51 of the Revised Code;

(2) The right to have independent expert evaluation and to have that independent expert evaluation provided at public expense if the person is indigent;

(3) The right to subpoena witnesses and documents, to present evidence on the person's behalf, and to cross-examine witnesses against the person;

(4) The right to testify in the person's own behalf and to not be compelled to testify;

(5) The right to have copies of any relevant medical or mental health document in the custody of the state or of any place of commitment other than a document for which the court finds that the release to the person of information contained in the document would create a substantial risk of harm to any person.

(D) The hearing under division (A) of this section shall be open to the public, and the court shall conduct the hearing in accordance with the Rules of Civil Procedure. The court shall make and maintain a full transcript and record of the hearing proceedings. The court may consider all relevant evidence, including, but not limited to, any relevant psychiatric, psychological, or medical testimony or reports, the acts constituting the offense in relation to which the person was found not guilty by reason of insanity, and any history of the person that is relevant to the person's ability to conform to the law.

(E) Upon completion of the hearing under division (A) of this section, if the court finds there is not clear and convincing evidence that the person is a mentally ill person subject to court order or a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, the court shall discharge the person, unless a detainer has been placed upon the person by the department of rehabilitation and correction, in which case the person shall be returned to that department.

(F) If, at the hearing under division (A) of this section, the court finds by clear and convincing evidence that the person is a mentally ill person subject to court order, the court shall commit the person either to the department of mental health and addiction services for treatment in a hospital, facility, or agency as determined clinically appropriate by the department of mental health and addiction services or to another medical or psychiatric facility, as appropriate. Prior to placing the defendant, the department of mental health and addiction services shall obtain court approval for that placement. If, at the hearing under division (A) of this section, the court determines by clear and convincing evidence that the person requires treatment for ~~mental retardation~~ an intellectual disability, it shall commit the person to a facility operated by the department of developmental disabilities or another facility, as appropriate. Further proceedings shall be in accordance with sections 2945.401 and 2945.402 of the Revised Code. In determining the place of commitment, the court shall consider the extent to which the person is a danger to the person and to others, the need for security, and the type of crime involved and shall order the least restrictive alternative available that is consistent with public safety and the welfare of the person. In weighing these factors, the court

shall give preference to protecting public safety.

(G) If a court makes a commitment of a person under division (F) of this section, the prosecutor shall send to the hospital, facility, or agency where the person is placed by the department of mental health and addiction services or to the defendant's place of commitment all reports of the person's current mental condition, and, except as otherwise provided in this division, any other relevant information, including, but not limited to, a transcript of the hearing held pursuant to division (A) of this section, copies of relevant police reports, and copies of any prior arrest and conviction records that pertain to the person and that the prosecutor possesses. The prosecutor shall send the reports of the person's current mental condition in every case of commitment, and, unless the prosecutor determines that the release of any of the other relevant information to unauthorized persons would interfere with the effective prosecution of any person or would create a substantial risk of harm to any person, the prosecutor also shall send the other relevant information. Upon admission of a person committed under division (F) of this section, the place of commitment shall send to the board of alcohol, drug addiction, and mental health services or the community mental health board serving the county in which the charges against the person were filed a copy of all reports of the person's current mental condition and a copy of the other relevant information provided by the prosecutor under this division, including, if provided, a transcript of the hearing held pursuant to division (A) of this section, the relevant police reports, and the prior arrest and conviction records that pertain to the person and that the prosecutor possesses.

(H) A person who is committed pursuant to this section shall not voluntarily admit the person or be voluntarily admitted to a hospital or institution pursuant to section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised Code.

**Sec. 2945.401.** (A) A defendant found incompetent to stand trial and committed pursuant to section 2945.39 of the Revised Code or a person found not guilty by reason of insanity and committed pursuant to section 2945.40 of the Revised Code shall remain subject to the jurisdiction of the trial court pursuant to that commitment, and to the provisions of this section, until the final termination of the commitment as described in division (J)(1) of this section. If the jurisdiction is terminated under this division because of the final termination of the commitment resulting from the expiration of the maximum prison term or term of imprisonment described in division (J)(1)(b) of this section, the court or prosecutor may file an affidavit for the civil commitment of the defendant or person pursuant to Chapter 5122. or 5123. of the Revised Code.

(B) A hearing conducted under any provision of sections 2945.37 to 2945.402 of the Revised Code shall not be conducted in accordance with Chapters 5122. and 5123. of the Revised Code. Any person who is committed pursuant to section 2945.39 or 2945.40 of the Revised Code shall not voluntarily admit the person or be voluntarily admitted to a hospital or institution pursuant to section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised Code. All other provisions of Chapters 5122. and 5123. of the Revised Code regarding hospitalization or institutionalization shall apply to the extent they are not in conflict with this chapter. A commitment under section 2945.39 or 2945.40 of the Revised Code shall not be terminated and the conditions of the commitment shall not be changed except as otherwise provided in division (D)(2) of this section with respect to a ~~mentally-retarded~~ person with an intellectual disability subject to institutionalization by court order or except by order of the trial court.

(C) The department of mental health and addiction services or the institution, facility, or program to which a defendant or person has been committed under section 2945.39 or 2945.40 of the Revised Code shall report in writing to the trial court, at the times specified in this division, as to whether the defendant or person remains a mentally ill person subject to court order or a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order and, in the case of a defendant committed under section 2945.39 of the Revised Code, as to whether the defendant remains incompetent to stand trial. The department, institution, facility, or program shall make the reports after the initial six months of treatment and every two years after the initial report is made. The trial court shall provide copies of the reports to the prosecutor and to the counsel for the defendant or person. Within thirty days after its receipt pursuant to this division of a report from the department, institution, facility, or program, the trial court shall hold a hearing on the continued commitment of the defendant or person or on any changes in the conditions of the commitment of the defendant or person. The defendant or person may request a change in the conditions of confinement, and the trial court shall conduct a hearing on that request if six months or more have elapsed since the most recent hearing was conducted under this section.

(D)(1) Except as otherwise provided in division (D)(2) of this section, when a defendant or person has been committed under section 2945.39 or 2945.40 of the Revised Code, at any time after evaluating the risks to public safety and the welfare of the defendant or person, the designee of the department of mental health and addiction services or the managing officer of the institution or director of the facility or program to which the defendant or person is committed may recommend a termination of the defendant's or person's commitment or a change in the conditions of the defendant's or person's commitment.

Except as otherwise provided in division (D)(2) of this section, if the designee of the department of mental health and addiction services recommends on-grounds unsupervised movement, off-grounds supervised movement, or nonsecured status for the defendant or person or termination of the defendant's or person's commitment, the following provisions apply:

(a) If the department's designee recommends on-grounds unsupervised movement or off-grounds supervised movement, the department's designee shall file with the trial court an application for approval of the movement and shall send a copy of the application to the prosecutor. Within fifteen days after receiving the application, the prosecutor may request a hearing on the application and, if a hearing is requested, shall so inform the department's designee. If the prosecutor does not request a hearing within the fifteen-day period, the trial court shall approve the application by entering its order approving the requested movement or, within five days after the expiration of the fifteen-day period, shall set a date for a hearing on the application. If the prosecutor requests a hearing on the application within the fifteen-day period, the trial court shall hold a hearing on the application within thirty days after the hearing is requested. If the trial court, within five days after the expiration of the fifteen-day period, sets a date for a hearing on the application, the trial court shall hold the hearing within thirty days after setting the hearing date. At least fifteen days before any hearing is held under this division, the trial court shall give the prosecutor written notice of the date, time, and place of the hearing. At the conclusion of each hearing conducted under this division, the trial court either shall approve or disapprove the application and shall enter its order accordingly.

(b) If the department's designee recommends termination of the defendant's or person's

commitment at any time or if the department's designee recommends the first of any nonsecured status for the defendant or person, the department's designee shall send written notice of this recommendation to the trial court and to the local forensic center. The local forensic center shall evaluate the committed defendant or person and, within thirty days after its receipt of the written notice, shall submit to the trial court and the department's designee a written report of the evaluation. The trial court shall provide a copy of the department's designee's written notice and of the local forensic center's written report to the prosecutor and to the counsel for the defendant or person. Upon the local forensic center's submission of the report to the trial court and the department's designee, all of the following apply:

(i) If the forensic center disagrees with the recommendation of the department's designee, it shall inform the department's designee and the trial court of its decision and the reasons for the decision. The department's designee, after consideration of the forensic center's decision, shall either withdraw, proceed with, or modify and proceed with the recommendation. If the department's designee proceeds with, or modifies and proceeds with, the recommendation, the department's designee shall proceed in accordance with division (D)(1)(b)(iii) of this section.

(ii) If the forensic center agrees with the recommendation of the department's designee, it shall inform the department's designee and the trial court of its decision and the reasons for the decision, and the department's designee shall proceed in accordance with division (D)(1)(b)(iii) of this section.

(iii) If the forensic center disagrees with the recommendation of the department's designee and the department's designee proceeds with, or modifies and proceeds with, the recommendation or if the forensic center agrees with the recommendation of the department's designee, the department's designee shall work with community mental health services providers, programs, facilities, or boards of alcohol, drug addiction, and mental health services or community mental health boards to develop a plan to implement the recommendation. If the defendant or person is on medication, the plan shall include, but shall not be limited to, a system to monitor the defendant's or person's compliance with the prescribed medication treatment plan. The system shall include a schedule that clearly states when the defendant or person shall report for a medication compliance check. The medication compliance checks shall be based upon the effective duration of the prescribed medication, taking into account the route by which it is taken, and shall be scheduled at intervals sufficiently close together to detect a potential increase in mental illness symptoms that the medication is intended to prevent.

The department's designee, after consultation with the board of alcohol, drug addiction, and mental health services or the community mental health board serving the area, shall send the recommendation and plan developed under division (D)(1)(b)(iii) of this section, in writing, to the trial court, the prosecutor, and the counsel for the committed defendant or person. The trial court shall conduct a hearing on the recommendation and plan developed under division (D)(1)(b)(iii) of this section. Divisions (D)(1)(c) and (d) and (E) to (J) of this section apply regarding the hearing.

(c) If the department's designee's recommendation is for nonsecured status or termination of commitment, the prosecutor may obtain an independent expert evaluation of the defendant's or person's mental condition, and the trial court may continue the hearing on the recommendation for a period of not more than thirty days to permit time for the evaluation.

The prosecutor may introduce the evaluation report or present other evidence at the hearing in accordance with the Rules of Evidence.

(d) The trial court shall schedule the hearing on a department's designee's recommendation for nonsecured status or termination of commitment and shall give reasonable notice to the prosecutor and the counsel for the defendant or person. Unless continued for independent evaluation at the prosecutor's request or for other good cause, the hearing shall be held within thirty days after the trial court's receipt of the recommendation and plan.

(2)(a) Division (D)(1) of this section does not apply to on-grounds unsupervised movement of a defendant or person who has been committed under section 2945.39 or 2945.40 of the Revised Code, who is a ~~mentally-retarded~~ person with an intellectual disability subject to institutionalization by court order, and who is being provided residential habilitation, care, and treatment in a facility operated by the department of developmental disabilities.

(b) If, pursuant to section 2945.39 of the Revised Code, the trial court commits a defendant who is found incompetent to stand trial and who is a ~~mentally-retarded~~ person with an intellectual disability subject to institutionalization by court order, if the defendant is being provided residential habilitation, care, and treatment in a facility operated by the department of developmental disabilities, if an individual who is conducting a survey for the department of health to determine the facility's compliance with the certification requirements of the medicaid program cites the defendant's receipt of the residential habilitation, care, and treatment in the facility as being inappropriate under the certification requirements, if the defendant's receipt of the residential habilitation, care, and treatment in the facility potentially jeopardizes the facility's continued receipt of federal medicaid moneys, and if as a result of the citation the chief clinical officer of the facility determines that the conditions of the defendant's commitment should be changed, the department of developmental disabilities may cause the defendant to be removed from the particular facility and, after evaluating the risks to public safety and the welfare of the defendant and after determining whether another type of placement is consistent with the certification requirements, may place the defendant in another facility that the department selects as an appropriate facility for the defendant's continued receipt of residential habilitation, care, and treatment and that is a no less secure setting than the facility in which the defendant had been placed at the time of the citation. Within three days after the defendant's removal and alternative placement under the circumstances described in division (D)(2)(b) of this section, the department of developmental disabilities shall notify the trial court and the prosecutor in writing of the removal and alternative placement.

The trial court shall set a date for a hearing on the removal and alternative placement, and the hearing shall be held within twenty-one days after the trial court's receipt of the notice from the department of developmental disabilities. At least ten days before the hearing is held, the trial court shall give the prosecutor, the department of developmental disabilities, and the counsel for the defendant written notice of the date, time, and place of the hearing. At the hearing, the trial court shall consider the citation issued by the individual who conducted the survey for the department of health to be prima-facie evidence of the fact that the defendant's commitment to the particular facility was inappropriate under the certification requirements of the medicaid program and potentially jeopardizes the particular facility's continued receipt of federal medicaid moneys. At the conclusion of the hearing, the trial court may approve or disapprove the defendant's removal and alternative

placement. If the trial court approves the defendant's removal and alternative placement, the department of developmental disabilities may continue the defendant's alternative placement. If the trial court disapproves the defendant's removal and alternative placement, it shall enter an order modifying the defendant's removal and alternative placement, but that order shall not require the department of developmental disabilities to replace the defendant for purposes of continued residential habilitation, care, and treatment in the facility associated with the citation issued by the individual who conducted the survey for the department of health.

(E) In making a determination under this section regarding nonsecured status or termination of commitment, the trial court shall consider all relevant factors, including, but not limited to, all of the following:

(1) Whether, in the trial court's view, the defendant or person currently represents a substantial risk of physical harm to the defendant or person or others;

(2) Psychiatric and medical testimony as to the current mental and physical condition of the defendant or person;

(3) Whether the defendant or person has insight into the defendant's or person's condition so that the defendant or person will continue treatment as prescribed or seek professional assistance as needed;

(4) The grounds upon which the state relies for the proposed commitment;

(5) Any past history that is relevant to establish the defendant's or person's degree of conformity to the laws, rules, regulations, and values of society;

(6) If there is evidence that the defendant's or person's mental illness is in a state of remission, the medically suggested cause and degree of the remission and the probability that the defendant or person will continue treatment to maintain the remissive state of the defendant's or person's illness should the defendant's or person's commitment conditions be altered.

(F) At any hearing held pursuant to division (C) or (D)(1) or (2) of this section, the defendant or the person shall have all the rights of a defendant or person at a commitment hearing as described in section 2945.40 of the Revised Code.

(G) In a hearing held pursuant to division (C) or (D)(1) of this section, the prosecutor has the burden of proof as follows:

(1) For a recommendation of termination of commitment, to show by clear and convincing evidence that the defendant or person remains a mentally ill person subject to court order or a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order;

(2) For a recommendation for a change in the conditions of the commitment to a less restrictive status, to show by clear and convincing evidence that the proposed change represents a threat to public safety or a threat to the safety of any person.

(H) In a hearing held pursuant to division (C) or (D)(1) or (2) of this section, the prosecutor shall represent the state or the public interest.

(I) At the conclusion of a hearing conducted under division (D)(1) of this section regarding a recommendation from the designee of the department of mental health and addiction services, managing officer of the institution, or director of a facility or program, the trial court may approve, disapprove, or modify the recommendation and shall enter an order accordingly.

(J)(1) A defendant or person who has been committed pursuant to section 2945.39 or 2945.40

of the Revised Code continues to be under the jurisdiction of the trial court until the final termination of the commitment. For purposes of division (J) of this section, the final termination of a commitment occurs upon the earlier of one of the following:

(a) The defendant or person no longer is a mentally ill person subject to court order or a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, as determined by the trial court;

(b) The expiration of the maximum prison term or term of imprisonment that the defendant or person could have received if the defendant or person had been convicted of the most serious offense with which the defendant or person is charged or in relation to which the defendant or person was found not guilty by reason of insanity;

(c) The trial court enters an order terminating the commitment under the circumstances described in division (J)(2)(a)(ii) of this section.

(2)(a) If a defendant is found incompetent to stand trial and committed pursuant to section 2945.39 of the Revised Code, if neither of the circumstances described in divisions (J)(1)(a) and (b) of this section applies to that defendant, and if a report filed with the trial court pursuant to division (C) of this section indicates that the defendant presently is competent to stand trial or if, at any other time during the period of the defendant's commitment, the prosecutor, the counsel for the defendant, or the designee of the department of mental health and addiction services or the managing officer of the institution or director of the facility or program to which the defendant is committed files an application with the trial court alleging that the defendant presently is competent to stand trial and requesting a hearing on the competency issue or the trial court otherwise has reasonable cause to believe that the defendant presently is competent to stand trial and determines on its own motion to hold a hearing on the competency issue, the trial court shall schedule a hearing on the competency of the defendant to stand trial, shall give the prosecutor, the counsel for the defendant, and the department's designee or the managing officer of the institution or the director of the facility to which the defendant is committed notice of the date, time, and place of the hearing at least fifteen days before the hearing, and shall conduct the hearing within thirty days of the filing of the application or of its own motion. If, at the conclusion of the hearing, the trial court determines that the defendant presently is capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense, the trial court shall order that the defendant is competent to stand trial and shall be proceeded against as provided by law with respect to the applicable offenses described in division (C)(1) of section 2945.38 of the Revised Code and shall enter whichever of the following additional orders is appropriate:

(i) If the trial court determines that the defendant remains a mentally ill person subject to court order or a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, the trial court shall order that the defendant's commitment to the department of mental health and addiction services or to an institution, facility, or program for the treatment of ~~mental retardation~~ intellectual disabilities be continued during the pendency of the trial on the applicable offenses described in division (C)(1) of section 2945.38 of the Revised Code.

(ii) If the trial court determines that the defendant no longer is a mentally ill person subject to court order or a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, the trial court shall order that the defendant's commitment to the department of mental

health and addiction services or to an institution, facility, or program for the treatment of ~~mental retardation~~ intellectual disabilities shall not be continued during the pendency of the trial on the applicable offenses described in division (C)(1) of section 2945.38 of the Revised Code. This order shall be a final termination of the commitment for purposes of division (J)(1)(c) of this section.

(b) If, at the conclusion of the hearing described in division (J)(2)(a) of this section, the trial court determines that the defendant remains incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the trial court shall order that the defendant continues to be incompetent to stand trial, that the defendant's commitment to the department of mental health and addiction services or to an institution, facility, or program for the treatment of ~~mental retardation~~ intellectual disabilities shall be continued, and that the defendant remains subject to the jurisdiction of the trial court pursuant to that commitment, and to the provisions of this section, until the final termination of the commitment as described in division (J)(1) of this section.

**Sec. 2945.482.** (A) As used in this section:

(1) "~~Mentally retarded person~~" and "~~developmentally disabled person~~Developmental disability" ~~have~~ has the same ~~meanings~~ meaning as in section 5123.01 of the Revised Code.

(2) "~~Mentally retarded or developmentally disabled victim~~Victim with a developmental disability" includes a ~~mentally retarded or developmentally disabled person~~ with a developmental disability who was a victim of a violation identified in division (B)(1) of this section or an offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (B)(1) of this section or an offense of violence.

(B)(1) In any proceeding in the prosecution of a charge of a violation of section 2903.16, 2903.34, 2903.341, 2905.03, 2907.02, 2907.03, 2907.05, 2907.06, 2907.09, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an offense of violence and in which an alleged victim of the violation or offense was a ~~mentally retarded or developmentally disabled person~~ with a developmental disability, the judge of the court in which the prosecution is being conducted, upon motion of an attorney for the prosecution, shall order that the testimony of the ~~mentally retarded or developmentally disabled victim~~ with a developmental disability be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (B)(2) of this section. The judge shall notify the ~~mentally retarded or developmentally disabled victim~~ with a developmental disability whose deposition is to be taken, the prosecution, and the defense of the date, time, and place for taking the deposition. The notice shall identify the ~~mentally retarded or developmentally disabled victim~~ with a developmental disability who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The defendant shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge shall preside at the taking of the deposition and shall rule at the time on any objections of the prosecution or the attorney for the defense. The prosecution and the attorney for the defense shall have the right, as at trial, to full examination and cross-examination of the ~~mentally retarded or developmentally disabled victim~~ with a developmental disability whose deposition is to be taken. If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the court in which the action is pending and is admissible in the manner described in division (C) of this section.

If a deposition of a ~~mentally retarded or developmentally disabled~~ victim with a developmental disability taken under this division is admitted as evidence at the proceeding under division (C) of this section, the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability shall not be required to testify in person at the proceeding.

At any time before the conclusion of the proceeding, the attorney for the defense may file a motion with the judge requesting that another deposition of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability be taken because new evidence material to the defense has been discovered that the attorney for the defense could not with reasonable diligence have discovered prior to the taking of the admitted deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division. If the admitted deposition was a videotaped deposition taken in accordance with division (B)(2) of this section, the new deposition shall be videotaped in accordance with that division. In other cases, the new deposition may be videotaped in accordance with that division.

(2) If the prosecution requests that a deposition to be taken under division (B)(2) of this section be videotaped, the judge shall order that the deposition be videotaped in accordance with this division. If a judge issues an order that the deposition be videotaped, the judge shall exclude from the room in which the deposition is to be taken every person except the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the defense, any person needed to operate the equipment to be used, one person chosen by the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the deposition, and any person whose presence the judge determines would contribute to the welfare and well-being of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the deposition. The person chosen by the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability shall not be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror, so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the deposition during the deposition.

The defendant shall be permitted to observe and hear the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the deposition, except on a monitor provided for that purpose. The ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the deposition shall be provided with a monitor on which the victim can observe, during the testimony, the defendant. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken. If the judge presides by electronic

means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (B)(1) of this section and is admissible in the manner described in this division and division (C) of this section, and, if a deposition that is videotaped under this division is admitted as evidence at the proceeding, the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (C) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

(a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.

(b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under the supervision of the judge in the proceeding.

(c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.

(d) Both the prosecution and the defendant are afforded an opportunity to view the recording before it is shown in the proceeding.

(C)(1) At any proceeding in a prosecution in relation to which a deposition was taken under division (B) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or both of the following apply:

(a) The defendant had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability who gave the testimony in the deposition were to testify in person at the proceeding, the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability would experience serious emotional trauma as a result of the ~~mentally retarded or developmentally disabled~~ victim's participation of the victim with a developmental disability at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (C) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (B) and (C) of this section are in addition to any other provisions of the Revised Code, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a criminal proceeding and do not limit the

admissibility under any of those other provisions of any deposition taken under division (B) of this section or otherwise taken.

(D) In any proceeding in the prosecution of any charge of a violation listed in division (B)(1) of this section or an offense of violence and in which an alleged victim of the violation or offense was a ~~mentally retarded or developmentally disabled~~ person with a developmental disability, the prosecution may file a motion with the judge requesting the judge to order the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the jury, if applicable, the defendant, and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The judge may issue the order upon the motion of the prosecution filed under this section, if the judge determines that the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant for one or more of the reasons set forth in division (F) of this section. If a judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (B)(2) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the testimony, in a manner similar to that described in division (B)(2) of this section. The defendant shall be permitted to observe and hear the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the testimony, except on a monitor provided for that purpose. The ~~mentally retarded or developmentally disabled~~ victim with a developmental disability giving the testimony shall be provided with a monitor on which the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability can observe, during the testimony, the defendant.

(E) In any proceeding in the prosecution of any charge of a violation listed in division (B)(1) of this section or an offense of violence and in which an alleged victim of the violation or offense was a ~~mentally retarded or developmentally disabled~~ victim with a developmental disability, the prosecution may file a motion with the judge requesting the judge to order the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the jury, if applicable, the defendant, and any other persons who would have been present during the testimony of the ~~mentally~~

~~retarded or developmentally disabled~~-victim with a developmental disability had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the ~~mentally retarded or developmentally disabled~~-victim with a developmental disability is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant, for one or more of the reasons set forth in division (F) of this section. If a judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (B)(2) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the ~~mentally retarded or developmentally disabled~~-victim with a developmental disability giving the testimony, in a manner similar to that described in division (B)(2) of this section. The defendant shall be permitted to observe and hear the testimony of the ~~mentally retarded or developmentally disabled~~-victim with a developmental disability who is giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the ~~mentally retarded or developmentally disabled~~-victim with a developmental disability giving the testimony, except on a monitor provided for that purpose. The ~~mentally retarded or developmentally disabled~~-victim with a developmental disability giving the testimony shall be provided with a monitor on which the victim can observe, during the testimony, the defendant. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (B)(2)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(F) For purposes of divisions (D) and (E) of this section, a judge may order the testimony of a ~~mentally retarded or developmentally disabled~~-victim with a developmental disability to be taken outside the room in which the proceeding is being conducted if the judge determines that the ~~mentally retarded or developmentally disabled~~-victim with a developmental disability is unavailable to testify in the room in the physical presence of the defendant due to one or more of the following:

- (1) The persistent refusal of the ~~mentally retarded or developmentally disabled~~-victim with a developmental disability to testify despite judicial requests to do so;
- (2) The inability of the ~~mentally retarded or developmentally disabled~~-victim with a developmental disability to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;
- (3) The substantial likelihood that the ~~mentally retarded or developmentally disabled~~-victim with a developmental disability will suffer serious emotional trauma from so testifying.

(G)(1) If a judge issues an order pursuant to division (D) or (E) of this section that requires the testimony of a ~~mentally retarded or developmentally disabled~~-victim with a developmental disability in a criminal proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the ~~mentally retarded or developmentally disabled~~-victim with a developmental disability to whose testimony it applies, the order applies only during the testimony of the specified ~~mentally retarded or developmentally disabled~~-victim with a developmental disability, and the ~~mentally retarded or developmentally disabled~~-victim with a

developmental disability giving the testimony shall not be required to testify at the proceeding other than in accordance with the order.

(2) A judge who makes any determination regarding the admissibility of a deposition under divisions (B) and (C) of this section, the videotaping of a deposition under division (B)(2) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (D) or (E) of this section shall enter the determination and findings on the record in the proceeding.

**Sec. 2945.491.** (A) As used in this section:

(1) "~~Mentally retarded person~~" and "~~developmentally disabled person~~Developmental disability" ~~have~~has the same meanings ~~meaning~~ as in section 5123.01 of the Revised Code.

(2) "~~Mentally retarded or developmentally disabled victim~~Victim with a developmental disability" includes a ~~mentally retarded or developmentally disabled person with a developmental disability~~ who was a victim of a felony violation identified in division (B)(1) of this section or a felony offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a felony violation identified in division (B)(1) of this section or a felony offense of violence.

(B)(1) At a trial on a charge of a felony violation of section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an offense of violence and in which an alleged victim of the violation or offense was a ~~mentally retarded or developmentally disabled person with a developmental disability~~, the court, upon motion of the prosecutor in the case, may admit videotaped preliminary hearing testimony of the ~~mentally retarded or developmentally disabled victim with a developmental disability~~ as evidence at the trial, in lieu of the ~~mentally retarded or developmentally disabled victim with a developmental disability~~ appearing as a witness and testifying at trial, if all of the following apply:

(a) The videotape of the testimony was made at the preliminary hearing at which probable cause of the violation charged was found.

(b) The videotape of the testimony was made in accordance with division (C) of section 2937.11 of the Revised Code.

(c) The testimony in the videotape is not excluded by the hearsay rule and otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801, the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803, the ~~mentally retarded or developmentally disabled victim with a developmental disability~~ who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule, or both of the following apply:

(i) The accused had an opportunity and similar motive at the preliminary hearing to develop the testimony of the ~~mentally retarded or developmentally disabled victim with a developmental disability~~ by direct, cross, or redirect examination.

(ii) The court determines that there is reasonable cause to believe that if the ~~mentally retarded or developmentally disabled victim with a developmental disability~~ who gave the testimony at the preliminary hearing were to testify in person at the trial, the ~~mentally retarded or developmentally~~

~~disabled~~ victim with a developmental disability would experience serious emotional trauma as a result of the victim's participation at the trial.

(2) If a ~~mentally retarded or developmentally disabled~~ victim with a developmental disability of an alleged felony violation of section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an alleged felony offense of violence testifies at the preliminary hearing in the case, if the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability at the preliminary hearing was videotaped pursuant to division (C) of section 2937.11 of the Revised Code, and if the defendant in the case files a written objection to the use, pursuant to division (B)(1) of this section, of the videotaped testimony at the trial, the court, immediately after the filing of the objection, shall hold a hearing to determine whether the videotaped testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability should be admissible at trial under division (B)(1) of this section and, if it is admissible, whether the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability should be required to provide limited additional testimony of the type described in this division. At the hearing held pursuant to this division, the defendant and the prosecutor in the case may present any evidence that is relevant to the issues to be determined at the hearing, but the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability shall not be required to testify at the hearing.

After the hearing, the court shall not require the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability to testify at the trial, unless it determines that both of the following apply:

(a) That the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability at trial is necessary for one or more of the following reasons:

(i) Evidence that was not available at the time of the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability at the preliminary hearing has been discovered.

(ii) The circumstances surrounding the case have changed sufficiently to necessitate that the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability testify at the trial.

(b) That the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability at the trial is necessary to protect the right of the defendant to a fair trial.

The court shall enter its finding and the reasons for it in the journal. If the court requires the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability to testify at the trial, the testimony of the victim shall be limited to the new evidence and changed circumstances, and the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability shall not otherwise be required to testify at the trial. The required testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability may be given in person or, upon motion of the prosecution, may be taken by deposition in accordance with division (B) of section 2945.482 of the Revised Code provided the deposition is admitted as evidence under division (C) of that section, may be taken outside of the courtroom and televised into the courtroom in accordance with division (D) of that section, or may be taken outside of the courtroom and recorded for showing in the courtroom in accordance with division (E) of that section.

(3) If videotaped testimony of a ~~mentally retarded or developmentally disabled~~ victim with a developmental disability is admitted at trial in accordance with division (B)(1) of this section, the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability shall not be compelled in any way to appear as a witness at the trial, except as provided in division (B)(2) of this section.

(C) An order issued pursuant to division (B) of this section shall specifically identify the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability concerning whose testimony it pertains. The order shall apply only during the testimony of the ~~mentally retarded or developmentally disabled~~ victim with a developmental disability it specifically identifies.

**Sec. 2949.29.** (A) The prosecuting attorney, the convict, and the convict's counsel shall attend an inquiry commenced as provided in section 2949.28 of the Revised Code. The prosecuting attorney and the convict or the convict's counsel may produce, examine, and cross-examine witnesses, and all findings shall be in writing signed by the judge. If it is found that the convict is not insane, the sentence shall be executed at the time previously appointed, unless that time has passed pending completion of the inquiry, in which case the judge conducting the inquiry, if authorized by the supreme court, shall appoint a time for execution of the sentence to be effective fifteen days from the date of the entry of the judge's findings in the inquiry.

(B) If it is found that the convict is insane and if authorized by the supreme court, the judge shall continue any stay of execution of the sentence previously issued, order the convict to be confined in the area at which other convicts sentenced to death are confined or in a maximum security medical or psychiatric facility operated by the department of rehabilitation and correction, and order treatment of the convict. Thereafter, the court at any time may conduct and, on motion of the prosecuting attorney, shall conduct a hearing pursuant to division (A) of this section to continue the inquiry into the convict's insanity and, as provided in section 2949.28 of the Revised Code, may appoint one or more psychiatrists or psychologists to make a further examination of the convict and to submit a report to the court. If the court finds at the hearing that the convict is not insane and if the time previously appointed for execution of the sentence has not passed, the sentence shall be executed at the previously appointed time. If the court finds at the hearing that the convict is not insane and if the time previously appointed for execution of the sentence has passed, the judge who conducts the hearing, if authorized by the supreme court, shall appoint a new time for execution of the sentence to be effective fifteen days from the date of the entry of the judge's findings in the hearing.

(C) In all proceedings under this section, the convict is presumed not to be insane, and the court shall find that the convict is not insane unless the court finds by a preponderance of the evidence that the convict is insane.

(D) Proceedings for inquiry into the insanity of any convict sentenced to death shall be exclusively pursuant to this section, section 2949.28 of the Revised Code, and the Rules of Evidence. Neither Chapter 5122. or 5123. of the Revised Code nor any other provision of the Revised Code nor any other rule concerning mentally ill persons, ~~mentally retarded~~ persons with intellectual disabilities, or insane persons applies to any proceeding for inquiry into the insanity of any convict sentenced to death.

**Sec. 2950.01.** As used in this chapter, unless the context clearly requires otherwise:

(A) "Sexually oriented offense" means any of the following violations or offenses committed by a person, regardless of the person's age:

(1) A violation of section 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.21, 2907.22, 2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code;

(2) A violation of section 2907.04 of the Revised Code when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code;

(3) A violation of section 2907.04 of the Revised Code when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code;

(4) A violation of section 2903.01, 2903.02, or 2903.11 of the Revised Code when the violation was committed with a sexual motivation;

(5) A violation of division (A) of section 2903.04 of the Revised Code when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(6) A violation of division (A)(3) of section 2903.211 of the Revised Code;

(7) A violation of division (A)(1), (2), (3), or (5) of section 2905.01 of the Revised Code when the offense is committed with a sexual motivation;

(8) A violation of division (A)(4) of section 2905.01 of the Revised Code;

(9) A violation of division (B) of section 2905.01 of the Revised Code when the victim of the offense is under eighteen years of age and the offender is not a parent of the victim of the offense;

(10) A violation of division (B) of section 2903.03, of division (B) of section 2905.02, of division (B) of section 2905.03, of division (B) of section 2905.05, or of division (B)(5) of section 2919.22 of the Revised Code;

(11) A violation of section 2905.32 of the Revised Code when any of the following applies:

(a) The violation is a violation of division (A)(1) of that section and the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person knowing that the person would be compelled to engage in sexual activity for hire, engage in a performance that was obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that was obscene, sexually oriented, or nudity oriented.

(b) The violation is a violation of division (A)(2) of that section and the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain a person who is less than sixteen years of age or is a ~~developmentally disabled~~ person with a developmental disability whom the offender knows or has reasonable cause to believe is a ~~developmentally disabled~~ person with a developmental disability for any purpose listed in divisions

(A)(2)(a) to (c) of that section.

(c) The violation is a violation of division (A)(3) of that section, the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain a person who is sixteen or seventeen years of age for any purpose listed in divisions (A)(2)(a) to (c) of that section, and the circumstances described in division (A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) of section 2907.03 of the Revised Code apply with respect to the offender and the other person.

(12) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) of this section;

(13) A violation of division (A)(3) of section 2907.24 of the Revised Code;

(14) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), or (13) of this section.

(B)(1) "Sex offender" means, subject to division (B)(2) of this section, a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any sexually oriented offense.

(2) "Sex offender" does not include a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing a sexually oriented offense if the offense involves consensual sexual conduct or consensual sexual contact and either of the following applies:

(a) The victim of the sexually oriented offense was eighteen years of age or older and at the time of the sexually oriented offense was not under the custodial authority of the person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing the sexually oriented offense.

(b) The victim of the offense was thirteen years of age or older, and the person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing the sexually oriented offense is not more than four years older than the victim.

(C) "Child-victim oriented offense" means any of the following violations or offenses committed by a person, regardless of the person's age, when the victim is under eighteen years of age and is not a child of the person who commits the violation:

(1) A violation of division (A)(1), (2), (3), or (5) of section 2905.01 of the Revised Code when the violation is not included in division (A)(7) of this section;

(2) A violation of division (A) of section 2905.02, division (A) of section 2905.03, or division (A) of section 2905.05 of the Revised Code;

(3) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that

is or was substantially equivalent to any offense listed in division (C)(1) or (2) of this section;

(4) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (C)(1), (2), or (3) of this section.

(D) "Child-victim offender" means a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any child-victim oriented offense.

(E) "Tier I sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(a) A violation of section 2907.06, 2907.07, 2907.08, 2907.22, or 2907.32 of the Revised Code;

(b) A violation of section 2907.04 of the Revised Code when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code;

(c) A violation of division (A)(1), (2), (3), or (5) of section 2907.05 of the Revised Code;

(d) A violation of division (A)(3) of section 2907.323 of the Revised Code;

(e) A violation of division (A)(3) of section 2903.211, of division (B) of section 2905.03, or of division (B) of section 2905.05 of the Revised Code;

(f) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (E)(1)(a), (b), (c), (d), or (e) of this section;

(g) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (E)(1)(a), (b), (c), (d), (e), or (f) of this section.

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a child-victim oriented offense and who is not within either category of child-victim offender described in division (F)(2) or (G)(2) of this section.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier I sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and who a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier I sex offender/child-victim offender relative to the offense.

(F) "Tier II sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(a) A violation of section 2907.21, 2907.321, or 2907.322 of the Revised Code;

(b) A violation of section 2907.04 of the Revised Code when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or former section 2907.12 of the Revised Code;

(c) A violation of division (A)(4) of section 2907.05, of division (A)(3) of section 2907.24, or of division (A)(1) or (2) of section 2907.323 of the Revised Code;

(d) A violation of division (A)(1), (2), (3), or (5) of section 2905.01 of the Revised Code when the offense is committed with a sexual motivation;

(e) A violation of division (A)(4) of section 2905.01 of the Revised Code when the victim of the offense is eighteen years of age or older;

(f) A violation of division (B) of section 2905.02 or of division (B)(5) of section 2919.22 of the Revised Code;

(g) A violation of section 2905.32 of the Revised Code that is described in division (A)(11) (a), (b), or (c) of this section;

(h) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (F)(1)(a), (b), (c), (d), (e), (f), or (g) of this section;

(i) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (F)(1)(a), (b), (c), (d), (e), (f), (g), or (h) of this section;

(j) Any sexually oriented offense that is committed after the sex offender previously has been convicted of, pleaded guilty to, or has been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier I sex offender/child-victim offender.

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any child-victim oriented offense when the child-victim oriented offense is committed after the child-victim offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier I sex offender/child-victim offender.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier II sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and whom a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier II sex offender/child-victim offender relative to the current offense.

(5) A sex offender or child-victim offender who is not in any category of tier II sex offender/child-victim offender set forth in division (F)(1), (2), (3), or (4) of this section, who prior to January 1, 2008, was adjudicated a delinquent child for committing a sexually oriented offense or

child-victim oriented offense, and who prior to that date was determined to be a habitual sex offender or determined to be a habitual child-victim offender, unless either of the following applies:

(a) The sex offender or child-victim offender is reclassified pursuant to section 2950.031 or 2950.032 of the Revised Code as a tier I sex offender/child-victim offender or a tier III sex offender/child-victim offender relative to the offense.

(b) A juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies the child a tier I sex offender/child-victim offender or a tier III sex offender/child-victim offender relative to the offense.

(G) "Tier III sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(a) A violation of section 2907.02 or 2907.03 of the Revised Code;

(b) A violation of division (B) of section 2907.05 of the Revised Code;

(c) A violation of section 2903.01, 2903.02, or 2903.11 of the Revised Code when the violation was committed with a sexual motivation;

(d) A violation of division (A) of section 2903.04 of the Revised Code when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(e) A violation of division (A)(4) of section 2905.01 of the Revised Code when the victim of the offense is under eighteen years of age;

(f) A violation of division (B) of section 2905.01 of the Revised Code when the victim of the offense is under eighteen years of age and the offender is not a parent of the victim of the offense;

(g) A violation of division (B) of section 2903.03 of the Revised Code;

(h) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (G)(1)(a), (b), (c), (d), (e), (f), or (g) of this section;

(i) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (G)(1)(a), (b), (c), (d), (e), (f), (g), or (h) of this section;

(j) Any sexually oriented offense that is committed after the sex offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier II sex offender/child-victim offender or a tier III sex offender/child-victim offender.

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any child-victim oriented offense when the child-victim oriented offense is committed after the child-victim offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier II sex offender/child-victim offender or a tier III sex offender/child-victim offender.

(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court,

pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier III sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any child-victim oriented offense and whom a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies a tier III sex offender/child-victim offender relative to the current offense.

(5) A sex offender or child-victim offender who is not in any category of tier III sex offender/child-victim offender set forth in division (G)(1), (2), (3), or (4) of this section, who prior to January 1, 2008, was convicted of or pleaded guilty to a sexually oriented offense or child-victim oriented offense or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense and classified a juvenile offender registrant, and who prior to that date was adjudicated a sexual predator or adjudicated a child-victim predator, unless either of the following applies:

(a) The sex offender or child-victim offender is reclassified pursuant to section 2950.031 or 2950.032 of the Revised Code as a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender relative to the offense.

(b) The sex offender or child-victim offender is a delinquent child, and a juvenile court, pursuant to section 2152.82, 2152.83, 2152.84, or 2152.85 of the Revised Code, classifies the child a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender relative to the offense.

(6) A sex offender who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense, if the sexually oriented offense and the circumstances in which it was committed are such that division (F) of section 2971.03 of the Revised Code automatically classifies the offender as a tier III sex offender/child-victim offender;

(7) A sex offender or child-victim offender who is convicted of, pleads guilty to, was convicted of, pleaded guilty to, is adjudicated a delinquent child for committing, or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim offense in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States if both of the following apply:

(a) Under the law of the jurisdiction in which the offender was convicted or pleaded guilty or the delinquent child was adjudicated, the offender or delinquent child is in a category substantially equivalent to a category of tier III sex offender/child-victim offender described in division (G)(1), (2), (3), (4), (5), or (6) of this section.

(b) Subsequent to the conviction, plea of guilty, or adjudication in the other jurisdiction, the offender or delinquent child resides, has temporary domicile, attends school or an institution of higher education, is employed, or intends to reside in this state in any manner and for any period of time that subjects the offender or delinquent child to a duty to register or provide notice of intent to reside under section 2950.04 or 2950.041 of the Revised Code.

(H) "Confinement" includes, but is not limited to, a community residential sanction imposed pursuant to section 2929.16 or 2929.26 of the Revised Code.

(I) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(J) "Supervised release" means a release of an offender from a prison term, a term of

imprisonment, or another type of confinement that satisfies either of the following conditions:

(1) The release is on parole, a conditional pardon, under a community control sanction, under transitional control, or under a post-release control sanction, and it requires the person to report to or be supervised by a parole officer, probation officer, field officer, or another type of supervising officer.

(2) The release is any type of release that is not described in division (J)(1) of this section and that requires the person to report to or be supervised by a probation officer, a parole officer, a field officer, or another type of supervising officer.

(K) "Sexually violent predator specification," "sexually violent predator," "sexually violent offense," "sexual motivation specification," "designated homicide, assault, or kidnapping offense," and "violent sex offense" have the same meanings as in section 2971.01 of the Revised Code.

(L) "Post-release control sanction" and "transitional control" have the same meanings as in section 2967.01 of the Revised Code.

(M) "Juvenile offender registrant" means a person who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense, who is fourteen years of age or older at the time of committing the offense, and who a juvenile court judge, pursuant to an order issued under section 2152.82, 2152.83, 2152.84, 2152.85, or 2152.86 of the Revised Code, classifies a juvenile offender registrant and specifies has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code. "Juvenile offender registrant" includes a person who prior to January 1, 2008, was a "juvenile offender registrant" under the definition of the term in existence prior to January 1, 2008, and a person who prior to July 31, 2003, was a "juvenile sex offender registrant" under the former definition of that former term.

(N) "Public registry-qualified juvenile offender registrant" means a person who is adjudicated a delinquent child and on whom a juvenile court has imposed a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code before, on, or after January 1, 2008, and to whom all of the following apply:

(1) The person is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing one of the following acts:

(a) A violation of section 2907.02 of the Revised Code, division (B) of section 2907.05 of the Revised Code, or section 2907.03 of the Revised Code if the victim of the violation was less than twelve years of age;

(b) A violation of section 2903.01, 2903.02, or 2905.01 of the Revised Code that was committed with a purpose to gratify the sexual needs or desires of the child;

(c) A violation of division (B) of section 2903.03 of the Revised Code.

(2) The person was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act.

(3) A juvenile court judge, pursuant to an order issued under section 2152.86 of the Revised Code, classifies the person a juvenile offender registrant, specifies the person has a duty to comply with sections 2950.04, 2950.05, and 2950.06 of the Revised Code, and classifies the person a public registry-qualified juvenile offender registrant, and the classification of the person as a public registry-qualified juvenile offender registrant has not been terminated pursuant to division (D) of section

2152.86 of the Revised Code.

(O) "Secure facility" means any facility that is designed and operated to ensure that all of its entrances and exits are locked and under the exclusive control of its staff and to ensure that, because of that exclusive control, no person who is institutionalized or confined in the facility may leave the facility without permission or supervision.

(P) "Out-of-state juvenile offender registrant" means a person who is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing a sexually oriented offense or a child-victim oriented offense, who on or after January 1, 2002, moves to and resides in this state or temporarily is domiciled in this state for more than five days, and who has a duty under section 2950.04 or 2950.041 of the Revised Code to register in this state and the duty to otherwise comply with that applicable section and sections 2950.05 and 2950.06 of the Revised Code. "Out-of-state juvenile offender registrant" includes a person who prior to January 1, 2008, was an "out-of-state juvenile offender registrant" under the definition of the term in existence prior to January 1, 2008, and a person who prior to July 31, 2003, was an "out-of-state juvenile sex offender registrant" under the former definition of that former term.

(Q) "Juvenile court judge" includes a magistrate to whom the juvenile court judge confers duties pursuant to division (A)(15) of section 2151.23 of the Revised Code.

(R) "Adjudicated a delinquent child for committing a sexually oriented offense" includes a child who receives a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code for committing a sexually oriented offense.

(S) "School" and "school premises" have the same meanings as in section 2925.01 of the Revised Code.

(T) "Residential premises" means the building in which a residential unit is located and the grounds upon which that building stands, extending to the perimeter of the property. "Residential premises" includes any type of structure in which a residential unit is located, including, but not limited to, multi-unit buildings and mobile and manufactured homes.

(U) "Residential unit" means a dwelling unit for residential use and occupancy, and includes the structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or two or more persons who maintain a common household. "Residential unit" does not include a halfway house or a community-based correctional facility.

(V) "Multi-unit building" means a building in which is located more than twelve residential units that have entry doors that open directly into the unit from a hallway that is shared with one or more other units. A residential unit is not considered located in a multi-unit building if the unit does not have an entry door that opens directly into the unit from a hallway that is shared with one or more other units or if the unit is in a building that is not a multi-unit building as described in this division.

(W) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(X) "Halfway house" and "community-based correctional facility" have the same meanings as in section 2929.01 of the Revised Code.

**Sec. 2951.041.** (A)(1) If an offender is charged with a criminal offense, including but not limited to a violation of section 2913.02, 2913.03, 2913.11, 2913.21, 2913.31, or 2919.21 of the

Revised Code, and the court has reason to believe that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged or that, at the time of committing that offense, the offender had a mental illness, was a person with an intellectual disability, or was a victim of a violation of section 2905.32 of the Revised Code and that the mental illness, status as a person with intellectual disability, or fact that the offender was a victim of a violation of section 2905.32 of the Revised Code was a factor leading to the offender's criminal behavior, the court may accept, prior to the entry of a guilty plea, the offender's request for intervention in lieu of conviction. The request shall include a statement from the offender as to whether the offender is alleging that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged or is alleging that, at the time of committing that offense, the offender had a mental illness, was a person with an intellectual disability, or was a victim of a violation of section 2905.32 of the Revised Code and that the mental illness, status as a person with an intellectual disability, or fact that the offender was a victim of a violation of section 2905.32 of the Revised Code was a factor leading to the criminal offense with which the offender is charged. The request also shall include a waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment against the offender, and arraignment, unless the hearing, indictment, or arraignment has already occurred. The court may reject an offender's request without a hearing. If the court elects to consider an offender's request, the court shall conduct a hearing to determine whether the offender is eligible under this section for intervention in lieu of conviction and shall stay all criminal proceedings pending the outcome of the hearing. If the court schedules a hearing, the court shall order an assessment of the offender for the purpose of determining the offender's eligibility for intervention in lieu of conviction and recommending an appropriate intervention plan.

If the offender alleges that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged, the court may order that the offender be assessed by a community addiction services provider or a properly credentialed professional for the purpose of determining the offender's eligibility for intervention in lieu of conviction and recommending an appropriate intervention plan. The community addiction services provider or the properly credentialed professional shall provide a written assessment of the offender to the court.

(2) The victim notification provisions of division (C) of section 2930.06 of the Revised Code apply in relation to any hearing held under division (A)(1) of this section.

(B) An offender is eligible for intervention in lieu of conviction if the court finds all of the following:

(1) The offender previously has not been convicted of or pleaded guilty to a felony offense of violence or previously has been convicted of or pleaded guilty to any felony that is not an offense of violence and the prosecuting attorney recommends that the offender be found eligible for participation in intervention in lieu of treatment under this section, previously has not been through intervention in lieu of conviction under this section or any similar regimen, and is charged with a felony for which the court, upon conviction, would impose a community control sanction on the offender under division (B)(2) of section 2929.13 of the Revised Code or with a misdemeanor.

(2) The offense is not a felony of the first, second, or third degree, is not an offense of violence, is not a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code, is not a

violation of division (A)(1) of section 2903.08 of the Revised Code, is not a violation of division (A) of section 4511.19 of the Revised Code or a municipal ordinance that is substantially similar to that division, and is not an offense for which a sentencing court is required to impose a mandatory prison term, a mandatory term of local incarceration, or a mandatory term of imprisonment in a jail.

(3) The offender is not charged with a violation of section 2925.02, 2925.04, or 2925.06 of the Revised Code, is not charged with a violation of section 2925.03 of the Revised Code that is a felony of the first, second, third, or fourth degree, and is not charged with a violation of section 2925.11 of the Revised Code that is a felony of the first, second, or third degree.

(4) If an offender alleges that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged, the court has ordered that the offender be assessed by a community addiction services provider or a properly credentialed professional for the purpose of determining the offender's eligibility for intervention in lieu of conviction and recommending an appropriate intervention plan, the offender has been assessed by a community addiction services provider of that nature or a properly credentialed professional in accordance with the court's order, and the community addiction services provider or properly credentialed professional has filed the written assessment of the offender with the court.

(5) If an offender alleges that, at the time of committing the criminal offense with which the offender is charged, the offender had a mental illness, was a person with an intellectual disability, or was a victim of a violation of section 2905.32 of the Revised Code and that the mental illness, status as a person with an intellectual disability, or fact that the offender was a victim of a violation of section 2905.32 of the Revised Code was a factor leading to that offense, the offender has been assessed by a psychiatrist, psychologist, independent social worker, licensed professional clinical counselor, or independent marriage and family therapist for the purpose of determining the offender's eligibility for intervention in lieu of conviction and recommending an appropriate intervention plan.

(6) The offender's drug usage, alcohol usage, mental illness, or intellectual disability, or the fact that the offender was a victim of a violation of section 2905.32 of the Revised Code, whichever is applicable, was a factor leading to the criminal offense with which the offender is charged, intervention in lieu of conviction would not demean the seriousness of the offense, and intervention would substantially reduce the likelihood of any future criminal activity.

(7) The alleged victim of the offense was not sixty-five years of age or older, permanently and totally disabled, under thirteen years of age, or a peace officer engaged in the officer's official duties at the time of the alleged offense.

(8) If the offender is charged with a violation of section 2925.24 of the Revised Code, the alleged violation did not result in physical harm to any person, and the offender previously has not been treated for drug abuse.

(9) The offender is willing to comply with all terms and conditions imposed by the court pursuant to division (D) of this section.

(10) The offender is not charged with an offense that would result in the offender being disqualified under Chapter 4506. of the Revised Code from operating a commercial motor vehicle or would subject the offender to any other sanction under that chapter.

(C) At the conclusion of a hearing held pursuant to division (A) of this section, the court shall enter its determination as to whether the offender is eligible for intervention in lieu of conviction and

as to whether to grant the offender's request. If the court finds under division (B) of this section that the offender is eligible for intervention in lieu of conviction and grants the offender's request, the court shall accept the offender's plea of guilty and waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment against the offender, and arraignment, unless the hearing, indictment, or arraignment has already occurred. In addition, the court then may stay all criminal proceedings and order the offender to comply with all terms and conditions imposed by the court pursuant to division (D) of this section. If the court finds that the offender is not eligible or does not grant the offender's request, the criminal proceedings against the offender shall proceed as if the offender's request for intervention in lieu of conviction had not been made.

(D) If the court grants an offender's request for intervention in lieu of conviction, the court shall place the offender under the general control and supervision of the county probation department, the adult parole authority, or another appropriate local probation or court services agency, if one exists, as if the offender was subject to a community control sanction imposed under section 2929.15, 2929.18, or 2929.25 of the Revised Code. The court shall establish an intervention plan for the offender. The terms and conditions of the intervention plan shall require the offender, for at least one year from the date on which the court grants the order of intervention in lieu of conviction, to abstain from the use of illegal drugs and alcohol, to participate in treatment and recovery support services, and to submit to regular random testing for drug and alcohol use and may include any other treatment terms and conditions, or terms and conditions similar to community control sanctions, which may include community service or restitution, that are ordered by the court.

(E) If the court grants an offender's request for intervention in lieu of conviction and the court finds that the offender has successfully completed the intervention plan for the offender, including the requirement that the offender abstain from using illegal drugs and alcohol for a period of at least one year from the date on which the court granted the order of intervention in lieu of conviction, the requirement that the offender participate in treatment and recovery support services, and all other terms and conditions ordered by the court, the court shall dismiss the proceedings against the offender. Successful completion of the intervention plan and period of abstinence under this section shall be without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime, and the court may order the sealing of records related to the offense in question in the manner provided in sections 2953.31 to 2953.36 of the Revised Code.

(F) If the court grants an offender's request for intervention in lieu of conviction and the offender fails to comply with any term or condition imposed as part of the intervention plan for the offender, the supervising authority for the offender promptly shall advise the court of this failure, and the court shall hold a hearing to determine whether the offender failed to comply with any term or condition imposed as part of the plan. If the court determines that the offender has failed to comply with any of those terms and conditions, it shall enter a finding of guilty and shall impose an appropriate sanction under Chapter 2929. of the Revised Code. If the court sentences the offender to a prison term, the court, after consulting with the department of rehabilitation and correction regarding the availability of services, may order continued court-supervised activity and treatment of the offender during the prison term and, upon consideration of reports received from the department

concerning the offender's progress in the program of activity and treatment, may consider judicial release under section 2929.20 of the Revised Code.

(G) As used in this section:

(1) "Community addiction services provider" has the same meaning as in section 5119.01 of the Revised Code.

(2) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(3) "Intervention in lieu of conviction" means any court-supervised activity that complies with this section.

(4) "Intellectual disability" has the same meaning as in section 5123.01 of the Revised Code.

(5) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

~~(5)-(6) "Mental illness" and "psychiatrist" have the same meanings as in section 5122.01 of the Revised Code.~~

~~(6) "Person with intellectual disability" means a person having significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior, manifested during the developmental period.~~

(7) "Psychologist" has the same meaning as in section 4732.01 of the Revised Code.

~~(H) Whenever the term "mentally retarded person" is used in any statute, rule, contract, grant, or other document, the reference shall be deemed to include a "person with intellectual disability," as defined in this section.~~

**Sec. 2967.22.** Whenever it is brought to the attention of the adult parole authority or a department of probation that a parolee, person under a community control sanction, person under transitional control, or releasee appears to be a mentally ill person subject to court order, as defined in section 5122.01 of the Revised Code, or a ~~mentally retarded person~~ with an intellectual disability subject to institutionalization by court order, as defined in section 5123.01 of the Revised Code, the parole or probation officer, subject to the approval of the chief of the adult parole authority, the designee of the chief of the adult parole authority, or the chief probation officer, may file an affidavit under section 5122.11 or 5123.71 of the Revised Code. A parolee, person under a community control sanction, or releasee who is involuntarily detained under Chapter 5122. or 5123. of the Revised Code shall receive credit against the period of parole or community control or the term of post-release control for the period of involuntary detention.

If a parolee, person under a community control sanction, person under transitional control, or releasee escapes from an institution or facility within the department of mental health and addiction services or the department of developmental disabilities, the superintendent of the institution immediately shall notify the chief of the adult parole authority or the chief probation officer. Notwithstanding the provisions of section 5122.26 of the Revised Code, the procedure for the apprehension, detention, and return of the parolee, person under a community control sanction, person under transitional control, or releasee is the same as that provided for the apprehension, detention, and return of persons who escape from institutions operated by the department of rehabilitation and correction. If the escaped parolee, person under transitional control, or releasee is not apprehended and returned to the custody of the department of mental health and addiction services or the department of developmental disabilities within ninety days after the escape, the

parolee, person under transitional control, or releasee shall be discharged from the custody of the department of mental health and addiction services or the department of developmental disabilities and returned to the custody of the department of rehabilitation and correction. If the escaped person under a community control sanction is not apprehended and returned to the custody of the department of mental health and addiction services or the department of developmental disabilities within ninety days after the escape, the person under a community control sanction shall be discharged from the custody of the department of mental health and addiction services or the department of developmental disabilities and returned to the custody of the court that sentenced that person.

**Sec. 3107.02.** (A) Any minor may be adopted.

(B) An adult may be adopted under any of the following conditions:

- (1) If the adult is totally or permanently disabled;
- (2) If the adult is determined to be a ~~mentally retarded~~ person with an intellectual disability;
- (3) If the adult had established a child-foster caregiver, kinship caregiver, or child-stepparent relationship with the petitioners as a minor, and the adult consents to the adoption;
- (4) If the adult was, at the time of the adult's eighteenth birthday, in the permanent custody of or in a planned permanent living arrangement with a public children services agency or a private child placing agency, and the adult consents to the adoption;
- (5) If the adult is the child of the spouse of the petitioner, and the adult consents to the adoption.

(C) When proceedings to adopt a minor are initiated by the filing of a petition, and the eighteenth birthday of the minor occurs prior to the decision of the court, the court shall require the person who is to be adopted to submit a written statement of consent or objection to the adoption. If an objection is submitted, the petition shall be dismissed, and if a consent is submitted, the court shall proceed with the case, and may issue an interlocutory order or final decree of adoption.

(D) Any physical examination of the individual to be adopted as part of or in contemplation of a petition to adopt may be conducted by any health professional authorized by the Revised Code to perform physical examinations, including a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife. Any written documentation of the physical examination shall be completed by the healthcare professional who conducted the examination.

(E) An adult who consents to an adoption pursuant to division (B)(4) of this section shall provide the court with the name and contact information of the public children services agency or private child placing agency that had permanent custody of or a planned permanent living arrangement with that adult. The petitioner shall request verification from the agency as to whether the adult was or was not in the permanent custody of or in a planned permanent living arrangement with that agency at the time of the adult's eighteenth birthday and provide the verification to the court.

(F) As used in this section:

- (1) "Developmental disability" has the same meaning as in section 5123.01 of the Revised Code.
- (2) "Kinship caregiver" has the same meaning as in section 5101.85 of the Revised Code.
- ~~(2) "Mentally retarded person" has the same meaning as in section 5123.01 of the Revised Code.~~

(3) "Permanent custody" and "planned permanent living arrangement" have the same meanings as in section 2151.011 of the Revised Code.

**Sec. 3301.52.** As used in sections 3301.52 to 3301.59 of the Revised Code:

(A) "Preschool program" means either of the following:

(1) A child care program for preschool children that is operated by a school district board of education or an eligible nonpublic school.

(2) A child care program for preschool children age three or older that is operated by a county ~~DD~~ board of developmental disabilities or a community school.

(B) "Preschool child" or "child" means a child who has not entered kindergarten and is not of compulsory school age.

(C) "Parent, guardian, or custodian" means the person or government agency that is or will be responsible for a child's school attendance under section 3321.01 of the Revised Code.

(D) "Superintendent" means the superintendent of a school district or the chief administrative officer of a community school or an eligible nonpublic school.

(E) "Director" means the director, head teacher, elementary principal, or site administrator who is the individual on site and responsible for supervision of a preschool program.

(F) "Preschool staff member" means a preschool employee whose primary responsibility is care, teaching, or supervision of preschool children.

(G) "Nonteaching employee" means a preschool program or school child program employee whose primary responsibilities are duties other than care, teaching, and supervision of preschool children or school children.

(H) "Eligible nonpublic school" means a nonpublic school chartered as described in division (B)(8) of section 5104.02 of the Revised Code or chartered by the state board of education for any combination of grades one through twelve, regardless of whether it also offers kindergarten.

~~(I) "County DD board" means a county board of developmental disabilities.~~

~~(J)~~ "School child program" means a child care program for only school children that is operated by a school district board of education, county ~~DD~~ board of developmental disabilities, community school, or eligible nonpublic school.

~~(K)~~ "School child" means a child who is enrolled in or is eligible to be enrolled in a grade of kindergarten or above but is less than fifteen years old.

~~(L)~~ "School child program staff member" means an employee whose primary responsibility is the care, teaching, or supervision of children in a school child program.

~~(M)~~ "Child care" means administering to the needs of infants, toddlers, preschool children, and school children outside of school hours by persons other than their parents or guardians, custodians, or relatives by blood, marriage, or adoption for any part of the twenty-four-hour day in a place or residence other than a child's own home.

~~(N)~~ "Child day-care center," "publicly funded child care," and "school-age child care center" have the same meanings as in section 5104.01 of the Revised Code.

~~(O)~~ "Community school" means either of the following:

(1) A community school established under Chapter 3314. of the Revised Code that is sponsored by an entity that is rated "exemplary" under section 3314.016 of the Revised Code.

(2) A community school established under Chapter 3314. of the Revised Code that has

received, on its most recent report card, either of the following:

(a) If the school offers any of grade levels four through twelve, a grade of "C" or better for the overall value-added progress dimension under division (C)(1)(e) of section 3302.03 of the Revised Code and for the performance index score under division (C)(1)(b) of section 3302.03 of the Revised Code;

(b) If the school does not offer a grade level higher than three, a grade of "C" or better for making progress in improving literacy in grades kindergarten through three under division (C)(1)(g) of section 3302.03 of the Revised Code.

**Sec. 3301.53.** (A) The state board of education, in consultation with the director of job and family services, shall formulate and prescribe by rule adopted under Chapter 119. of the Revised Code minimum standards to be applied to preschool programs operated by school district boards of education, county ~~DD~~ boards of developmental disabilities, community schools, or eligible nonpublic schools. The rules shall include the following:

(1) Standards ensuring that the preschool program is located in a safe and convenient facility that accommodates the enrollment of the program, is of the quality to support the growth and development of the children according to the program objectives, and meets the requirements of section 3301.55 of the Revised Code;

(2) Standards ensuring that supervision, discipline, and programs will be administered according to established objectives and procedures;

(3) Standards ensuring that preschool staff members and nonteaching employees are recruited, employed, assigned, evaluated, and provided inservice education without discrimination on the basis of age, color, national origin, race, or sex; and that preschool staff members and nonteaching employees are assigned responsibilities in accordance with written position descriptions commensurate with their training and experience;

(4) A requirement that boards of education intending to establish a preschool program demonstrate a need for a preschool program prior to establishing the program;

(5) Requirements that children participating in preschool programs have been immunized to the extent considered appropriate by the state board to prevent the spread of communicable disease;

(6) Requirements that the parents of preschool children complete the emergency medical authorization form specified in section 3313.712 of the Revised Code.

(B) The state board of education in consultation with the director of job and family services shall ensure that the rules adopted by the state board under sections 3301.52 to 3301.58 of the Revised Code are consistent with and meet or exceed the requirements of Chapter 5104. of the Revised Code with regard to child day-care centers. The state board and the director of job and family services shall review all such rules at least once every five years.

(C) The state board of education, in consultation with the director of job and family services, shall adopt rules for school child programs that are consistent with and meet or exceed the requirements of the rules adopted for school-age child care centers under Chapter 5104. of the Revised Code.

**Sec. 3301.55.** (A) A school district, county ~~DD~~ board of developmental disabilities, community school, or eligible nonpublic school operating a preschool program shall house the program in buildings that meet the following requirements:

(1) The building is operated by the district, county ~~DD~~board of developmental disabilities, community school, or eligible nonpublic school and has been approved by the division of industrial compliance in the department of commerce or a certified municipal, township, or county building department for the purpose of operating a program for preschool children. Any such structure shall be constructed, equipped, repaired, altered, and maintained in accordance with applicable provisions of Chapters 3781. and 3791. and with rules adopted by the board of building standards under Chapter 3781. of the Revised Code for the safety and sanitation of structures erected for this purpose.

(2) The building is in compliance with fire and safety laws and regulations as evidenced by reports of annual school fire and safety inspections as conducted by appropriate local authorities.

(3) The school is in compliance with rules established by the state board of education regarding school food services.

(4) The facility includes not less than thirty-five square feet of indoor space for each child in the program. Safe play space, including both indoor and outdoor play space, totaling not less than sixty square feet for each child using the space at any one time, shall be regularly available and scheduled for use.

(5) First aid facilities and space for temporary placement or isolation of injured or ill children are provided.

(B) Each school district, county ~~DD~~board of developmental disabilities, community school, or eligible nonpublic school that operates, or proposes to operate, a preschool program shall submit a building plan including all information specified by the state board of education to the board not later than the first day of September of the school year in which the program is to be initiated. The board shall determine whether the buildings meet the requirements of this section and section 3301.53 of the Revised Code, and notify the superintendent of its determination. If the board determines, on the basis of the building plan or any other information, that the buildings do not meet those requirements, it shall cause the buildings to be inspected by the department of education. The department shall make a report to the superintendent specifying any aspects of the building that are not in compliance with the requirements of this section and section 3301.53 of the Revised Code and the time period that will be allowed the district, county ~~DD~~board of developmental disabilities, or school to meet the requirements.

**Sec. 3301.57.** (A) For the purpose of improving programs, facilities, and implementation of the standards promulgated by the state board of education under section 3301.53 of the Revised Code, the state department of education shall provide consultation and technical assistance to school districts, county ~~DD~~boards of developmental disabilities, community schools, and eligible nonpublic schools operating preschool programs or school child programs, and inservice training to preschool staff members, school child program staff members, and nonteaching employees.

(B) The department and the school district board of education, county ~~DD~~board of developmental disabilities, community school, or eligible nonpublic school shall jointly monitor each preschool program and each school child program.

If the program receives any grant or other funding from the state or federal government, the department annually shall monitor all reports on attendance, financial support, and expenditures according to provisions for use of the funds.

(C) The department of education, at least once during every twelve-month period of

operation of a preschool program or a licensed school child program, shall inspect the program and provide a written inspection report to the superintendent of the school district, county ~~DD~~-board of developmental disabilities, community school, or eligible nonpublic school. The department may inspect any program more than once, as considered necessary by the department, during any twelve-month period of operation. All inspections may be unannounced. No person shall interfere with any inspection conducted pursuant to this division or to the rules adopted pursuant to sections 3301.52 to 3301.59 of the Revised Code.

Upon receipt of any complaint that a preschool program or a licensed school child program is out of compliance with the requirements in sections 3301.52 to 3301.59 of the Revised Code or the rules adopted under those sections, the department shall investigate and may inspect the program.

(D) If a preschool program or a licensed school child program is determined to be out of compliance with the requirements of sections 3301.52 to 3301.59 of the Revised Code or the rules adopted under those sections, the department of education shall notify the appropriate superintendent, county ~~DD~~-board of developmental disabilities, community school, or eligible nonpublic school in writing regarding the nature of the violation, what must be done to correct the violation, and by what date the correction must be made. If the correction is not made by the date established by the department, it may commence action under Chapter 119. of the Revised Code to close the program or to revoke the license of the program. If a program does not comply with an order to cease operation issued in accordance with Chapter 119. of the Revised Code, the department shall notify the attorney general, the prosecuting attorney of the county in which the program is located, or the city attorney, village solicitor, or other chief legal officer of the municipal corporation in which the program is located that the program is operating in violation of sections 3301.52 to 3301.59 of the Revised Code or the rules adopted under those sections and in violation of an order to cease operation issued in accordance with Chapter 119. of the Revised Code. Upon receipt of the notification, the attorney general, prosecuting attorney, city attorney, village solicitor, or other chief legal officer shall file a complaint in the court of common pleas of the county in which the program is located requesting the court to issue an order enjoining the program from operating. The court shall grant the requested injunctive relief upon a showing that the program named in the complaint is operating in violation of sections 3301.52 to 3301.59 of the Revised Code or the rules adopted under those sections and in violation of an order to cease operation issued in accordance with Chapter 119. of the Revised Code.

(E) The department of education shall prepare an annual report on inspections conducted under this section. The report shall include the number of inspections conducted, the number and types of violations found, and the steps taken to address the violations. The department shall file the report with the governor, the president and minority leader of the senate, and the speaker and minority leader of the house of representatives on or before the first day of January of each year, beginning in 1999.

**Sec. 3301.58.** (A) The department of education is responsible for the licensing of preschool programs and school child programs and for the enforcement of sections 3301.52 to 3301.59 of the Revised Code and of any rules adopted under those sections. No school district board of education, county ~~DD~~-board of developmental disabilities, community school, or eligible nonpublic school shall operate, establish, manage, conduct, or maintain a preschool program without a license issued under this section. A school district board of education, county ~~DD~~-board of developmental disabilities,

community school, or eligible nonpublic school may obtain a license under this section for a school child program. The school district board of education, county ~~DD~~-board of developmental disabilities, community school, or eligible nonpublic school shall post the license for each preschool program and licensed school child program it operates, establishes, manages, conducts, or maintains in a conspicuous place in the preschool program or licensed school child program that is accessible to parents, custodians, or guardians and employees and staff members of the program at all times when the program is in operation.

(B) Any school district board of education, county ~~DD~~-board of developmental disabilities, community school, or eligible nonpublic school that desires to operate, establish, manage, conduct, or maintain a preschool program shall apply to the department of education for a license on a form that the department shall prescribe by rule. Any school district board of education, county ~~DD~~-board of developmental disabilities, community school, or eligible nonpublic school that desires to obtain a license for a school child program shall apply to the department for a license on a form that the department shall prescribe by rule. The department shall provide at no charge to each applicant for a license under this section a copy of the requirements under sections 3301.52 to 3301.59 of the Revised Code and any rules adopted under those sections. The department may establish application fees by rule adopted under Chapter 119. of the Revised Code, and all applicants for a license shall pay any fee established by the department at the time of making an application for a license. All fees collected pursuant to this section shall be paid into the state treasury to the credit of the general revenue fund.

(C) Upon the filing of an application for a license, the department of education shall investigate and inspect the preschool program or school child program to determine the license capacity for each age category of children of the program and to determine whether the program complies with sections 3301.52 to 3301.59 of the Revised Code and any rules adopted under those sections. When, after investigation and inspection, the department of education is satisfied that sections 3301.52 to 3301.59 of the Revised Code and any rules adopted under those sections are complied with by the applicant, the department of education shall issue the program a provisional license as soon as practicable in the form and manner prescribed by the rules of the department. The provisional license shall be valid for one year from the date of issuance unless revoked.

(D) The department of education shall investigate and inspect a preschool program or school child program that has been issued a provisional license at least once during operation under the provisional license. If, after the investigation and inspection, the department of education determines that the requirements of sections 3301.52 to 3301.59 of the Revised Code and any rules adopted under those sections are met by the provisional licensee, the department of education shall issue the program a license. The license shall remain valid unless revoked or the program ceases operations.

(E) The department of education annually shall investigate and inspect each preschool program or school child program licensed under division (D) of this section to determine if the requirements of sections 3301.52 to 3301.59 of the Revised Code and any rules adopted under those sections are met by the program, and shall notify the program of the results.

(F) The license or provisional license shall state the name of the school district board of education, county ~~DD~~-board of developmental disabilities, community school, or eligible nonpublic school that operates the preschool program or school child program and the license capacity of the

program.

(G) The department of education may revoke the license of any preschool program or school child program that is not in compliance with the requirements of sections 3301.52 to 3301.59 of the Revised Code and any rules adopted under those sections.

(H) If the department of education revokes a license, the department shall not issue a license to the program within two years from the date of the revocation. All actions of the department with respect to licensing preschool programs and school child programs shall be in accordance with Chapter 119. of the Revised Code.

**Sec. 3314.022.** The governing authority of any community school established under this chapter may contract with the governing authority of another community school, the board of education of a school district, the governing board of an educational service center, a county ~~DD~~ board of developmental disabilities, or the administrative authority of a nonpublic school for provision of services for any disabled student enrolled at the school. Any school district board of education or educational service center governing board shall negotiate with a community school governing authority that seeks to contract for the provision of services for a disabled student under this section in the same manner as it would with the board of education of a school district that seeks to contract for such services.

**Sec. 3317.02.** As used in this chapter:

(A)(1) "Category one career-technical education ADM" means the enrollment of students during the school year on a full-time equivalency basis in career-technical education programs described in division (A) of section 3317.014 of the Revised Code and certified under division (B) (11) or (D)(2)(h) of section 3317.03 of the Revised Code.

(2) "Category two career-technical education ADM" means the enrollment of students during the school year on a full-time equivalency basis in career-technical education programs described in division (B) of section 3317.014 of the Revised Code and certified under division (B)(12) or (D)(2) (i) of section 3317.03 of the Revised Code.

(3) "Category three career-technical education ADM" means the enrollment of students during the school year on a full-time equivalency basis in career-technical education programs described in division (C) of section 3317.014 of the Revised Code and certified under division (B) (13) or (D)(2)(j) of section 3317.03 of the Revised Code.

(4) "Category four career-technical education ADM" means the enrollment of students during the school year on a full-time equivalency basis in career-technical education programs described in division (D) of section 3317.014 of the Revised Code and certified under division (B)(14) or (D)(2) (k) of section 3317.03 of the Revised Code.

(5) "Category five career-technical education ADM" means the enrollment of students during the school year on a full-time equivalency basis in career-technical education programs described in division (E) of section 3317.014 of the Revised Code and certified under division (B)(15) or (D)(2)(l) of section 3317.03 of the Revised Code.

(B)(1) "Category one limited English proficient ADM" means the full-time equivalent number of limited English proficient students described in division (A) of section 3317.016 of the Revised Code and certified under division (B)(16) or (D)(2)(m) of section 3317.03 of the Revised Code.

(2) "Category two limited English proficient ADM" means the full-time equivalent number of limited English proficient students described in division (B) of section 3317.016 of the Revised Code and certified under division (B)(17) or (D)(2)(n) of section 3317.03 of the Revised Code.

(3) "Category three limited English proficient ADM" means the full-time equivalent number of limited English proficient students described in division (C) of section 3317.016 of the Revised Code and certified under division (B)(18) or (D)(2)(o) of section 3317.03 of the Revised Code.

(C)(1) "Category one special education ADM" means the full-time equivalent number of children with disabilities receiving special education services for the disability specified in division (A) of section 3317.013 of the Revised Code and certified under division (B)(5) or (D)(2)(b) of section 3317.03 of the Revised Code.

(2) "Category two special education ADM" means the full-time equivalent number of children with disabilities receiving special education services for those disabilities specified in division (B) of section 3317.013 of the Revised Code and certified under division (B)(6) or (D)(2)(c) of section 3317.03 of the Revised Code.

(3) "Category three special education ADM" means the full-time equivalent number of students receiving special education services for those disabilities specified in division (C) of section 3317.013 of the Revised Code, and certified under division (B)(7) or (D)(2)(d) of section 3317.03 of the Revised Code.

(4) "Category four special education ADM" means the full-time equivalent number of students receiving special education services for those disabilities specified in division (D) of section 3317.013 of the Revised Code and certified under division (B)(8) or (D)(2)(e) of section 3317.03 of the Revised Code.

(5) "Category five special education ADM" means the full-time equivalent number of students receiving special education services for the disabilities specified in division (E) of section 3317.013 of the Revised Code and certified under division (B)(9) or (D)(2)(f) of section 3317.03 of the Revised Code.

(6) "Category six special education ADM" means the full-time equivalent number of students receiving special education services for the disabilities specified in division (F) of section 3317.013 of the Revised Code and certified under division (B)(10) or (D)(2)(g) of section 3317.03 of the Revised Code.

~~(D) "County DD board" means a county board of developmental disabilities.~~

~~(E)~~ "Economically disadvantaged index for a school district" means the square of the quotient of that district's percentage of students in its total ADM who are identified as economically disadvantaged as defined by the department of education, divided by the percentage of students in the statewide total ADM identified as economically disadvantaged. For purposes of this calculation:

(1) For a city, local, or exempted village school district, the "statewide total ADM" equals the sum of the total ADM for all city, local, and exempted village school districts combined.

(2) For a joint vocational school district, the "statewide total ADM" equals the sum of the formula ADM for all joint vocational school districts combined.

~~(F)~~~~(E)~~(1) "Formula ADM" means, for a city, local, or exempted village school district, the enrollment reported under division (A) of section 3317.03 of the Revised Code, as verified by the superintendent of public instruction and adjusted if so ordered under division (K) of that section, and

as further adjusted by the department of education, as follows:

(a) Count only twenty per cent of the number of joint vocational school district students counted under division (A)(3) of section 3317.03 of the Revised Code;

(b) Add twenty per cent of the number of students who are entitled to attend school in the district under section 3313.64 or 3313.65 of the Revised Code and are enrolled in another school district under a career-technical education compact.

(2) "Formula ADM" means, for a joint vocational school district, the final number verified by the superintendent of public instruction, based on the enrollment reported and certified under division (D) of section 3317.03 of the Revised Code, as adjusted, if so ordered, under division (K) of that section.

~~(G)~~(F) "Formula amount" means \$5,900, for fiscal year 2016, and \$6,000, for fiscal year 2017.

~~(H)~~(G) "FTE basis" means a count of students based on full-time equivalency, in accordance with rules adopted by the department of education pursuant to section 3317.03 of the Revised Code. In adopting its rules under this division, the department shall provide for counting any student in category one, two, three, four, five, or six special education ADM or in category one, two, three, four, or five career technical education ADM in the same proportion the student is counted in formula ADM.

~~(I)~~(H) "Internet- or computer-based community school" has the same meaning as in section 3314.02 of the Revised Code.

~~(J)~~(I) "Medically fragile child" means a child to whom all of the following apply:

(1) The child requires the services of a doctor of medicine or osteopathic medicine at least once a week due to the instability of the child's medical condition.

(2) The child requires the services of a registered nurse on a daily basis.

(3) The child is at risk of institutionalization in a hospital, skilled nursing facility, or intermediate care facility for individuals with intellectual disabilities.

~~(K)~~(J)(1) A child may be identified as having an "other health impairment-major" if the child's condition meets the definition of "other health impaired" established in rules previously adopted by the state board of education and if either of the following apply:

(a) The child is identified as having a medical condition that is among those listed by the superintendent of public instruction as conditions where a substantial majority of cases fall within the definition of "medically fragile child."

(b) The child is determined by the superintendent of public instruction to be a medically fragile child. A school district superintendent may petition the superintendent of public instruction for a determination that a child is a medically fragile child.

(2) A child may be identified as having an "other health impairment-minor" if the child's condition meets the definition of "other health impaired" established in rules previously adopted by the state board of education but the child's condition does not meet either of the conditions specified in division (K)(1)(a) or (b) of this section.

~~(L)~~(K) "Preschool child with a disability" means a child with a disability, as defined in section 3323.01 of the Revised Code, who is at least age three but is not of compulsory school age, as defined in section 3321.01 of the Revised Code, and who is not currently enrolled in kindergarten.

~~(M)~~(L) "Preschool scholarship ADM" means the number of preschool children with disabilities certified under division (B)(3)(h) of section 3317.03 of the Revised Code.

~~(N)~~(M) "Related services" includes:

(1) Child study, special education supervisors and coordinators, speech and hearing services, adaptive physical development services, occupational or physical therapy, teacher assistants for children with disabilities whose disabilities are described in division (B) of section 3317.013 or division (B)(3) of this section, behavioral intervention, interpreter services, work study, nursing services, and specialized integrative services as those terms are defined by the department;

(2) Speech and language services provided to any student with a disability, including any student whose primary or only disability is a speech and language disability;

(3) Any related service not specifically covered by other state funds but specified in federal law, including but not limited to, audiology and school psychological services;

(4) Any service included in units funded under former division (O)(1) of section 3317.024 of the Revised Code;

(5) Any other related service needed by children with disabilities in accordance with their individualized education programs.

~~(O)~~(N) "School district," unless otherwise specified, means city, local, and exempted village school districts.

~~(P)~~(O) "State education aid" has the same meaning as in section 5751.20 of the Revised Code.

~~(Q)~~(P) "State share index" means the state share index calculated for a district under section 3317.017 of the Revised Code.

~~(R)~~(Q) "Taxes charged and payable" means the taxes charged and payable against real and public utility property after making the reduction required by section 319.301 of the Revised Code, plus the taxes levied against tangible personal property.

~~(S)~~(R)(1) For purposes of section 3317.017 of the Revised Code, "three-year average valuation" means the average of total taxable value for tax years 2012, 2013, and 2014.

(2) For purposes of section 3317.018 of the Revised Code, "three-year average valuation" means the following:

(a) For fiscal year 2016, the average of total taxable value for tax years 2013, 2014, and 2015;

(b) For fiscal year 2017, the average of total taxable value for tax years 2014, 2015, and 2016.

(3) For purposes of sections 3317.0217, 3317.0218, and 3317.16 of the Revised Code, "three-year average valuation" means the following:

(a) For fiscal year 2016, the average of total taxable value for tax years 2012, 2013, and 2014;

(b) For fiscal year 2017, the average of total taxable value for tax years 2013, 2014, and 2015.

~~(T)~~(S) "Total ADM" means, for a city, local, or exempted village school district, the enrollment reported under division (A) of section 3317.03 of the Revised Code, as verified by the superintendent of public instruction and adjusted if so ordered under division (K) of that section.

~~(U)~~~~(T)~~ "Total special education ADM" means the sum of categories one through six special education ADM.

~~(V)~~~~(U)~~ "Total taxable value" means the sum of the amounts certified for a city, local, exempted village, or joint vocational school district under divisions (A)(1) and (2) of section 3317.021 of the Revised Code.

**Sec. 3317.024.** The following shall be distributed monthly, quarterly, or annually as may be determined by the state board of education:

(A) An amount for each island school district and each joint state school district for the operation of each high school and each elementary school maintained within such district and for capital improvements for such schools. Such amounts shall be determined on the basis of standards adopted by the state board of education. However, for fiscal years 2012 and 2013, an island district shall receive the lesser of its actual cost of operation, as certified to the department of education, or ninety-three per cent of the amount the district received in state operating funding for fiscal year 2011. If an island district received no funding for fiscal year 2011, it shall receive no funding for either of fiscal year 2012 or 2013.

(B) An amount for each school district required to pay tuition for a child in an institution maintained by the department of youth services pursuant to section 3317.082 of the Revised Code, provided the child was not included in the calculation of the district's formula ADM, as that term is defined in section 3317.02 of the Revised Code, for the preceding school year.

(C) An amount for the approved cost of transporting eligible pupils with disabilities attending a special education program approved by the department of education whom it is impossible or impractical to transport by regular school bus in the course of regular route transportation provided by the school district or educational service center. No district or service center is eligible to receive a payment under this division for the cost of transporting any pupil whom it transports by regular school bus and who is included in the district's transportation ADM. The state board of education shall establish standards and guidelines for use by the department of education in determining the approved cost of such transportation for each district or service center.

(D) An amount to each school district, including each cooperative education school district, pursuant to section 3313.81 of the Revised Code to assist in providing free lunches to needy children. The amounts shall be determined on the basis of rules adopted by the state board of education.

(E) An amount to each school district, for each pupil attending a chartered nonpublic elementary or high school within the district. The amount shall equal the amount appropriated for the implementation of section 3317.06 of the Revised Code divided by the average daily membership in grades kindergarten through twelve in nonpublic elementary and high schools within the state as determined as of the last day of October of each school year.

(F) An amount for each county ~~DD~~board of developmental disabilities, distributed on the basis of standards adopted by the state board of education, for the approved cost of transportation required for children attending special education programs operated by the county ~~DD~~ board under section 3323.09 of the Revised Code;

(G) An amount to each institution defined under section 3317.082 of the Revised Code providing elementary or secondary education to children other than children receiving special education under section 3323.091 of the Revised Code. This amount for any institution in any fiscal

year shall equal the total of all tuition amounts required to be paid to the institution under division (A)(1) of section 3317.082 of the Revised Code.

The state board of education or any other board of education or governing board may provide for any resident of a district or educational service center territory any educational service for which funds are made available to the board by the United States under the authority of public law, whether such funds come directly or indirectly from the United States or any agency or department thereof or through the state or any agency, department, or political subdivision thereof.

**Sec. 3317.03.** (A) The superintendent of each city, local, and exempted village school district shall report to the state board of education as of the last day of October, March, and June of each year the enrollment of students receiving services from schools under the superintendent's supervision, and the numbers of other students entitled to attend school in the district under section 3313.64 or 3313.65 of the Revised Code the superintendent is required to report under this section, so that the department of education can calculate the district's formula ADM, total ADM, category one through five career-technical education ADM, category one through three limited English proficient ADM, category one through six special education ADM, preschool scholarship ADM, transportation ADM, and, for purposes of provisions of law outside of Chapter 3317. of the Revised Code, average daily membership.

(1) The enrollment reported by the superintendent during the reporting period shall consist of the number of students in grades kindergarten through twelve receiving any educational services from the district, except that the following categories of students shall not be included in the determination:

- (a) Students enrolled in adult education classes;
- (b) Adjacent or other district students enrolled in the district under an open enrollment policy pursuant to section 3313.98 of the Revised Code;
- (c) Students receiving services in the district pursuant to a compact, cooperative education agreement, or a contract, but who are entitled to attend school in another district pursuant to section 3313.64 or 3313.65 of the Revised Code;
- (d) Students for whom tuition is payable pursuant to sections 3317.081 and 3323.141 of the Revised Code;
- (e) Students receiving services in the district through a scholarship awarded under either section 3310.41 or sections 3310.51 to 3310.64 of the Revised Code.

When reporting students under division (A)(1) of this section, the superintendent also shall report the district where each student is entitled to attend school pursuant to sections 3313.64 and 3313.65 of the Revised Code.

(2) The department of education shall compile a list of all students reported to be enrolled in a district under division (A)(1) of this section and of the students entitled to attend school in the district pursuant to section 3313.64 or 3313.65 of the Revised Code on an FTE basis but receiving educational services in grades kindergarten through twelve from one or more of the following entities:

- (a) A community school pursuant to Chapter 3314. of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in such community school;

(b) An alternative school pursuant to sections 3313.974 to 3313.979 of the Revised Code as described in division (I)(2)(a) or (b) of this section;

(c) A college pursuant to Chapter 3365. of the Revised Code, except when the student is enrolled in the college while also enrolled in a community school pursuant to Chapter 3314., a science, technology, engineering, and mathematics school established under Chapter 3326., or a college-preparatory boarding school established under Chapter 3328. of the Revised Code;

(d) An adjacent or other school district under an open enrollment policy adopted pursuant to section 3313.98 of the Revised Code;

(e) An educational service center or cooperative education district;

(f) Another school district under a cooperative education agreement, compact, or contract;

(g) A chartered nonpublic school with a scholarship paid under section 3310.08 of the Revised Code, if the students qualified for the scholarship under section 3310.03 of the Revised Code;

(h) An alternative public provider or a registered private provider with a scholarship awarded under either section 3310.41 or sections 3310.51 to 3310.64 of the Revised Code.

As used in this section, "alternative public provider" and "registered private provider" have the same meanings as in section 3310.41 or 3310.51 of the Revised Code, as applicable.

(i) A science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in the school;

(j) A college-preparatory boarding school established under Chapter 3328. of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in the school.

(3) The department also shall compile a list of the students entitled to attend school in the district under section 3313.64 or 3313.65 of the Revised Code who are enrolled in a joint vocational school district or under a career-technical education compact, excluding any students so entitled to attend school in the district who are enrolled in another school district through an open enrollment policy as reported under division (A)(2)(d) of this section and then enroll in a joint vocational school district or under a career-technical education compact.

The department shall provide each city, local, and exempted village school district with an opportunity to review the list of students compiled under divisions (A)(2) and (3) of this section to ensure that the students reported accurately reflect the enrollment of students in the district.

(B) To enable the department of education to obtain the data needed to complete the calculation of payments pursuant to this chapter, each superintendent shall certify from the reports provided by the department under division (A) of this section all of the following:

(1) The total student enrollment in regular learning day classes included in the report under division (A)(1) or (2) of this section for each of the individual grades kindergarten through twelve in schools under the superintendent's supervision;

(2) The unduplicated count of the number of preschool children with disabilities enrolled in the district for whom the district is eligible to receive funding under section 3317.0213 of the Revised Code adjusted for the portion of the year each child is so enrolled, in accordance with the disability categories prescribed in section 3317.013 of the Revised Code;

(3) The number of children entitled to attend school in the district pursuant to section 3313.64 or 3313.65 of the Revised Code who are:

(a) Participating in a pilot project scholarship program established under sections 3313.974 to 3313.979 of the Revised Code as described in division (I)(2)(a) or (b) of this section;

(b) Enrolled in a college under Chapter 3365. of the Revised Code, except when the student is enrolled in the college while also enrolled in a community school pursuant to Chapter 3314. of the Revised Code, a science, technology, engineering, and mathematics school established under Chapter 3326., or a college-preparatory boarding school established under Chapter 3328. of the Revised Code;

(c) Enrolled in an adjacent or other school district under section 3313.98 of the Revised Code;

(d) Enrolled in a community school established under Chapter 3314. of the Revised Code that is not an internet- or computer-based community school as defined in section 3314.02 of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in such community school;

(e) Enrolled in an internet- or computer-based community school, as defined in section 3314.02 of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in the school;

(f) Enrolled in a chartered nonpublic school with a scholarship paid under section 3310.08 of the Revised Code and who qualified for the scholarship under section 3310.03 of the Revised Code;

(g) Enrolled in kindergarten through grade twelve in an alternative public provider or a registered private provider with a scholarship awarded under section 3310.41 of the Revised Code;

(h) Enrolled as a preschool child with a disability in an alternative public provider or a registered private provider with a scholarship awarded under section 3310.41 of the Revised Code;

(i) Participating in a program operated by a county ~~DD~~-board of developmental disabilities or a state institution;

(j) Enrolled in a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in the school;

(k) Enrolled in a college-preparatory boarding school established under Chapter 3328. of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in the school;

(l) Enrolled in an alternative public provider or a registered private provider with a scholarship awarded under sections 3310.51 to 3310.64 of the Revised Code.

(4) The total enrollment of pupils in joint vocational schools;

(5) The combined enrollment of children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for the category one disability described in division (A) of section 3317.013 of the Revised Code, including children attending a special education program operated by an alternative public provider or a registered private provider with a scholarship awarded under sections 3310.51 to 3310.64 of the Revised Code;

(6) The combined enrollment of children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for category two disabilities described in

division (B) of section 3317.013 of the Revised Code, including children attending a special education program operated by an alternative public provider or a registered private provider with a scholarship awarded under sections 3310.51 to 3310.64 of the Revised Code;

(7) The combined enrollment of children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for category three disabilities described in division (C) of section 3317.013 of the Revised Code, including children attending a special education program operated by an alternative public provider or a registered private provider with a scholarship awarded under sections 3310.51 to 3310.64 of the Revised Code;

(8) The combined enrollment of children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for category four disabilities described in division (D) of section 3317.013 of the Revised Code, including children attending a special education program operated by an alternative public provider or a registered private provider with a scholarship awarded under sections 3310.51 to 3310.64 of the Revised Code;

(9) The combined enrollment of children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for the category five disabilities described in division (E) of section 3317.013 of the Revised Code, including children attending a special education program operated by an alternative public provider or a registered private provider with a scholarship awarded under sections 3310.51 to 3310.64 of the Revised Code;

(10) The combined enrollment of children with disabilities reported under division (A)(1) or (2) and under division (B)(3)(h) of this section receiving special education services for category six disabilities described in division (F) of section 3317.013 of the Revised Code, including children attending a special education program operated by an alternative public provider or a registered private provider with a scholarship awarded under either section 3310.41 or sections 3310.51 to 3310.64 of the Revised Code;

(11) The enrollment of pupils reported under division (A)(1) or (2) of this section on a full-time equivalency basis in category one career-technical education programs or classes, described in division (A) of section 3317.014 of the Revised Code, operated by the school district or by another district that is a member of the district's career-technical planning district, other than a joint vocational school district, or by an educational service center, notwithstanding division ~~(H)~~(G) of section 3317.02 of the Revised Code and division (C)(3) of this section;

(12) The enrollment of pupils reported under division (A)(1) or (2) of this section on a full-time equivalency basis in category two career-technical education programs or services, described in division (B) of section 3317.014 of the Revised Code, operated by the school district or another school district that is a member of the district's career-technical planning district, other than a joint vocational school district, or by an educational service center, notwithstanding division ~~(H)~~(G) of section 3317.02 of the Revised Code and division (C)(3) of this section;

(13) The enrollment of pupils reported under division (A)(1) or (2) of this section on a full-time equivalency basis in category three career-technical education programs or services, described in division (C) of section 3317.014 of the Revised Code, operated by the school district or another school district that is a member of the district's career-technical planning district, other than a joint vocational school district, or by an educational service center, notwithstanding division ~~(H)~~(G) of section 3317.02 of the Revised Code and division (C)(3) of this section;

(14) The enrollment of pupils reported under division (A)(1) or (2) of this section on a full-time equivalency basis in category four career-technical education programs or services, described in division (D) of section 3317.014 of the Revised Code, operated by the school district or another school district that is a member of the district's career-technical planning district, other than a joint vocational school district, or by an educational service center, notwithstanding division ~~(H)-(G)~~ of section 3317.02 of the Revised Code and division (C)(3) of this section;

(15) The enrollment of pupils reported under division (A)(1) or (2) of this section on a full-time equivalency basis in category five career-technical education programs or services, described in division (E) of section 3317.014 of the Revised Code, operated by the school district or another school district that is a member of the district's career-technical planning district, other than a joint vocational school district, or by an educational service center, notwithstanding division ~~(H)-(G)~~ of section 3317.02 of the Revised Code and division (C)(3) of this section;

(16) The enrollment of pupils reported under division (A)(1) or (2) of this section who are limited English proficient students described in division (A) of section 3317.016 of the Revised Code, excluding any student reported under division (B)(3)(e) of this section as enrolled in an internet- or computer-based community school;

(17) The enrollment of pupils reported under division (A)(1) or (2) of this section who are limited English proficient students described in division (B) of section 3317.016 of the Revised Code, excluding any student reported under division (B)(3)(e) of this section as enrolled in an internet- or computer-based community school;

(18) The enrollment of pupils reported under division (A)(1) or (2) of this section who are limited English proficient students described in division (C) of section 3317.016 of the Revised Code, excluding any student reported under division (B)(3)(e) of this section as enrolled in an internet- or computer-based community school;

(19) The average number of children transported during the reporting period by the school district on board-owned or contractor-owned and -operated buses, reported in accordance with rules adopted by the department of education;

(20)(a) The number of children, other than preschool children with disabilities, the district placed with a county ~~DD~~ board of developmental disabilities in fiscal year 1998. Division (B)(20)(a) of this section does not apply after fiscal year 2013.

(b) The number of children with disabilities, other than preschool children with disabilities, placed with a county ~~DD~~ board of developmental disabilities in the current fiscal year to receive special education services for the category one disability described in division (A) of section 3317.013 of the Revised Code;

(c) The number of children with disabilities, other than preschool children with disabilities, placed with a county ~~DD~~ board of developmental disabilities in the current fiscal year to receive special education services for category two disabilities described in division (B) of section 3317.013 of the Revised Code;

(d) The number of children with disabilities, other than preschool children with disabilities, placed with a county ~~DD~~ board of developmental disabilities in the current fiscal year to receive special education services for category three disabilities described in division (C) of section 3317.013 of the Revised Code;

(e) The number of children with disabilities, other than preschool children with disabilities, placed with a county ~~DD~~-board of developmental disabilities in the current fiscal year to receive special education services for category four disabilities described in division (D) of section 3317.013 of the Revised Code;

(f) The number of children with disabilities, other than preschool children with disabilities, placed with a county ~~DD~~-board of developmental disabilities in the current fiscal year to receive special education services for the category five disabilities described in division (E) of section 3317.013 of the Revised Code;

(g) The number of children with disabilities, other than preschool children with disabilities, placed with a county ~~DD~~-board of developmental disabilities in the current fiscal year to receive special education services for category six disabilities described in division (F) of section 3317.013 of the Revised Code.

(21) The enrollment of students who are economically disadvantaged, as defined by the department, excluding any student reported under division (B)(3)(e) of this section as enrolled in an internet- or computer-based community school. A student shall not be categorically excluded from the number reported under division (B)(21) of this section based on anything other than family income.

(C)(1) The state board of education shall adopt rules necessary for implementing divisions (A), (B), and (D) of this section.

(2) A student enrolled in a community school established under Chapter 3314., a science, technology, engineering, and mathematics school established under Chapter 3326., or a college-preparatory boarding school established under Chapter 3328. of the Revised Code shall be counted in the formula ADM and, if applicable, the category one, two, three, four, five, or six special education ADM of the school district in which the student is entitled to attend school under section 3313.64 or 3313.65 of the Revised Code for the same proportion of the school year that the student is counted in the enrollment of the community school, the science, technology, engineering, and mathematics school, or the college-preparatory boarding school for purposes of section 3314.08, 3326.33, or 3328.24 of the Revised Code. Notwithstanding the enrollment of students certified pursuant to division (B)(3)(d), (e), (j), or (k) of this section, the department may adjust the formula ADM of a school district to account for students entitled to attend school in the district under section 3313.64 or 3313.65 of the Revised Code who are enrolled in a community school, a science, technology, engineering, and mathematics school, or a college-preparatory boarding school for only a portion of the school year.

(3) No child shall be counted as more than a total of one child in the sum of the enrollment of students of a school district under division (A), divisions (B)(1) to (22), or division (D) of this section, except as follows:

(a) A child with a disability described in section 3317.013 of the Revised Code may be counted both in formula ADM and in category one, two, three, four, five, or six special education ADM and, if applicable, in category one, two, three, four, or five career-technical education ADM. As provided in division ~~(H)~~-(G) of section 3317.02 of the Revised Code, such a child shall be counted in category one, two, three, four, five, or six special education ADM in the same proportion that the child is counted in formula ADM.

(b) A child enrolled in career-technical education programs or classes described in section 3317.014 of the Revised Code may be counted both in formula ADM and category one, two, three, four, or five career-technical education ADM and, if applicable, in category one, two, three, four, five, or six special education ADM. Such a child shall be counted in category one, two, three, four, or five career-technical education ADM in the same proportion as the percentage of time that the child spends in the career-technical education programs or classes.

(4) Based on the information reported under this section, the department of education shall determine the total student count, as defined in section 3301.011 of the Revised Code, for each school district.

(D)(1) The superintendent of each joint vocational school district shall report and certify to the superintendent of public instruction as of the last day of October, March, and June of each year the enrollment of students receiving services from schools under the superintendent's supervision so that the department can calculate the district's formula ADM, total ADM, category one through five career-technical education ADM, category one through three limited English proficient ADM, category one through six special education ADM, and for purposes of provisions of law outside of Chapter 3317. of the Revised Code, average daily membership.

The enrollment reported and certified by the superintendent, except as otherwise provided in this division, shall consist of the the number of students in grades six through twelve receiving any educational services from the district, except that the following categories of students shall not be included in the determination:

- (a) Students enrolled in adult education classes;
- (b) Adjacent or other district joint vocational students enrolled in the district under an open enrollment policy pursuant to section 3313.98 of the Revised Code;
- (c) Students receiving services in the district pursuant to a compact, cooperative education agreement, or a contract, but who are entitled to attend school in a city, local, or exempted village school district whose territory is not part of the territory of the joint vocational district;
- (d) Students for whom tuition is payable pursuant to sections 3317.081 and 3323.141 of the Revised Code.

(2) To enable the department of education to obtain the data needed to complete the calculation of payments pursuant to this chapter, each superintendent shall certify from the report provided under division (D)(1) of this section the enrollment for each of the following categories of students:

- (a) Students enrolled in each individual grade included in the joint vocational district schools;
- (b) Children with disabilities receiving special education services for the category one disability described in division (A) of section 3317.013 of the Revised Code;
- (c) Children with disabilities receiving special education services for the category two disabilities described in division (B) of section 3317.013 of the Revised Code;
- (d) Children with disabilities receiving special education services for category three disabilities described in division (C) of section 3317.013 of the Revised Code;
- (e) Children with disabilities receiving special education services for category four disabilities described in division (D) of section 3317.013 of the Revised Code;
- (f) Children with disabilities receiving special education services for the category five

disabilities described in division (E) of section 3317.013 of the Revised Code;

(g) Children with disabilities receiving special education services for category six disabilities described in division (F) of section 3317.013 of the Revised Code;

(h) Students receiving category one career-technical education services, described in division (A) of section 3317.014 of the Revised Code;

(i) Students receiving category two career-technical education services, described in division (B) of section 3317.014 of the Revised Code;

(j) Students receiving category three career-technical education services, described in division (C) of section 3317.014 of the Revised Code;

(k) Students receiving category four career-technical education services, described in division (D) of section 3317.014 of the Revised Code;

(l) Students receiving category five career-technical education services, described in division (E) of section 3317.014 of the Revised Code;

(m) Limited English proficient students described in division (A) of section 3317.016 of the Revised Code;

(n) Limited English proficient students described in division (B) of section 3317.016 of the Revised Code;

(o) Limited English proficient students described in division (C) of section 3317.016 of the Revised Code;

(p) Students who are economically disadvantaged, as defined by the department. A student shall not be categorically excluded from the number reported under division (D)(2)(p) of this section based on anything other than family income.

The superintendent of each joint vocational school district shall also indicate the city, local, or exempted village school district in which each joint vocational district pupil is entitled to attend school pursuant to section 3313.64 or 3313.65 of the Revised Code.

(E) In each school of each city, local, exempted village, joint vocational, and cooperative education school district there shall be maintained a record of school enrollment, which record shall accurately show, for each day the school is in session, the actual enrollment in regular day classes. For the purpose of determining the enrollment of students, the enrollment figure of any school shall not include any pupils except those pupils described by division (A) of this section. The record of enrollment for each school shall be maintained in such manner that no pupil shall be counted as enrolled prior to the actual date of entry in the school and also in such manner that where for any cause a pupil permanently withdraws from the school that pupil shall not be counted as enrolled from and after the date of such withdrawal. There shall not be included in the enrollment of any school any of the following:

(1) Any pupil who has graduated from the twelfth grade of a public or nonpublic high school;

(2) Any pupil who is not a resident of the state;

(3) Any pupil who was enrolled in the schools of the district during the previous school year when assessments were administered under section 3301.0711 of the Revised Code but did not take one or more of the assessments required by that section and was not excused pursuant to division (C) (1) or (3) of that section;

(4) Any pupil who has attained the age of twenty-two years, except for veterans of the armed

services whose attendance was interrupted before completing the recognized twelve-year course of the public schools by reason of induction or enlistment in the armed forces and who apply for reenrollment in the public school system of their residence not later than four years after termination of war or their honorable discharge;

(5) Any pupil who has a high school equivalence diploma as defined in section 5107.40 of the Revised Code.

If, however, any veteran described by division (E)(4) of this section elects to enroll in special courses organized for veterans for whom tuition is paid under the provisions of federal laws, or otherwise, that veteran shall not be included in the enrollment of students determined under this section.

Notwithstanding division (E)(3) of this section, the enrollment of any school may include a pupil who did not take an assessment required by section 3301.0711 of the Revised Code if the superintendent of public instruction grants a waiver from the requirement to take the assessment to the specific pupil and a parent is not paying tuition for the pupil pursuant to section 3313.6410 of the Revised Code. The superintendent may grant such a waiver only for good cause in accordance with rules adopted by the state board of education.

The formula ADM, total ADM, category one through five career-technical education ADM, category one through three limited English proficient ADM, category one through six special education ADM, preschool scholarship ADM, transportation ADM, and, for purposes of provisions of law outside of Chapter 3317. of the Revised Code, average daily membership of any school district shall be determined in accordance with rules adopted by the state board of education.

(F)(1) If a student attending a community school under Chapter 3314., a science, technology, engineering, and mathematics school established under Chapter 3326., or a college-preparatory boarding school established under Chapter 3328. of the Revised Code is not included in the formula ADM calculated for the school district in which the student is entitled to attend school under section 3313.64 or 3313.65 of the Revised Code, the department of education shall adjust the formula ADM of that school district to include the student in accordance with division (C)(2) of this section, and shall recalculate the school district's payments under this chapter for the entire fiscal year on the basis of that adjusted formula ADM.

(2) If a student awarded an educational choice scholarship is not included in the formula ADM of the school district from which the department deducts funds for the scholarship under section 3310.08 of the Revised Code, the department shall adjust the formula ADM of that school district to include the student to the extent necessary to account for the deduction, and shall recalculate the school district's payments under this chapter for the entire fiscal year on the basis of that adjusted formula ADM.

(3) If a student awarded a scholarship under the Jon Peterson special needs scholarship program is not included in the formula ADM of the school district from which the department deducts funds for the scholarship under section 3310.55 of the Revised Code, the department shall adjust the formula ADM of that school district to include the student to the extent necessary to account for the deduction, and shall recalculate the school district's payments under this chapter for the entire fiscal year on the basis of that adjusted formula ADM.

(G)(1)(a) The superintendent of an institution operating a special education program pursuant

to section 3323.091 of the Revised Code shall, for the programs under such superintendent's supervision, certify to the state board of education, in the manner prescribed by the superintendent of public instruction, both of the following:

(i) The unduplicated count of the number of all children with disabilities other than preschool children with disabilities receiving services at the institution for each category of disability described in divisions (A) to (F) of section 3317.013 of the Revised Code adjusted for the portion of the year each child is so enrolled;

(ii) The unduplicated count of the number of all preschool children with disabilities in classes or programs for whom the district is eligible to receive funding under section 3317.0213 of the Revised Code adjusted for the portion of the year each child is so enrolled, reported according to the categories prescribed in section 3317.013 of the Revised Code.

(b) The superintendent of an institution with career-technical education units approved under section 3317.05 of the Revised Code shall, for the units under the superintendent's supervision, certify to the state board of education the enrollment in those units, in the manner prescribed by the superintendent of public instruction.

(2) The superintendent of each county ~~DD~~ board of developmental disabilities that maintains special education classes under section 3317.20 of the Revised Code or provides services to preschool children with disabilities pursuant to an agreement between the ~~DD~~ county board and the appropriate school district shall do both of the following:

(a) Certify to the state board, in the manner prescribed by the board, the enrollment in classes under section 3317.20 of the Revised Code for each school district that has placed children in the classes;

(b) Certify to the state board, in the manner prescribed by the board, the unduplicated count of the number of all preschool children with disabilities enrolled in classes for which the DD board is eligible to receive funding under section 3317.0213 of the Revised Code adjusted for the portion of the year each child is so enrolled, reported according to the categories prescribed in section 3317.013 of the Revised Code, and the number of those classes.

(H) Except as provided in division (I) of this section, when any city, local, or exempted village school district provides instruction for a nonresident pupil whose attendance is unauthorized attendance as defined in section 3327.06 of the Revised Code, that pupil's enrollment shall not be included in that district's enrollment figure used in calculating the district's payments under this chapter. The reporting official shall report separately the enrollment of all pupils whose attendance in the district is unauthorized attendance, and the enrollment of each such pupil shall be credited to the school district in which the pupil is entitled to attend school under division (B) of section 3313.64 or section 3313.65 of the Revised Code as determined by the department of education.

(I)(1) A city, local, exempted village, or joint vocational school district admitting a scholarship student of a pilot project district pursuant to division (C) of section 3313.976 of the Revised Code may count such student in its enrollment.

(2) In any year for which funds are appropriated for pilot project scholarship programs, a school district implementing a state-sponsored pilot project scholarship program that year pursuant to sections 3313.974 to 3313.979 of the Revised Code may count in its enrollment:

(a) All children residing in the district and utilizing a scholarship to attend kindergarten in

any alternative school, as defined in section 3313.974 of the Revised Code;

(b) All children who were enrolled in the district in the preceding year who are utilizing a scholarship to attend an alternative school.

(J) The superintendent of each cooperative education school district shall certify to the superintendent of public instruction, in a manner prescribed by the state board of education, the applicable enrollments for all students in the cooperative education district, also indicating the city, local, or exempted village district where each pupil is entitled to attend school under section 3313.64 or 3313.65 of the Revised Code.

(K) If the superintendent of public instruction determines that a component of the enrollment certified or reported by a district superintendent, or other reporting entity, is not correct, the superintendent of public instruction may order that the formula ADM used for the purposes of payments under any section of Title XXXIII of the Revised Code be adjusted in the amount of the error.

**Sec. 3317.032.** Each city, local, exempted village, and cooperative education school district, each educational service center, each county ~~DD~~-board\_of\_developmental\_disabilities, and each institution operating a special education program pursuant to section 3323.091 of the Revised Code shall, in accordance with procedures adopted by the state board of education, maintain a record of district membership of all preschool children with disabilities who are served by a special education program.

**Sec. 3317.07.** If the department of education determines that a county ~~DD~~-board\_of\_developmental\_disabilities no longer needs a school bus because the board no longer transports children to a special education program operated by the board, or if the department determines that a school district no longer needs a school bus to transport pupils to a nonpublic school or special education program, the department may reassign a bus that was funded with payments provided pursuant to the version of this section in effect prior to the effective date of this amendment for the purpose of transporting such pupils. The department may reassign a bus to a county ~~DD~~-board\_of\_developmental\_disabilities or school district that transports children to a special education program designated in the children's individualized education plans/programs, or to a school district that transports pupils to a nonpublic school, and needs an additional school bus.

**Sec. 3317.15.** (A) As used in this section, "child with a disability" has the same meaning as in section 3323.01 of the Revised Code.

(B) Each city, exempted village, local, and joint vocational school district shall continue to comply with all requirements of federal statutes and regulations, the Revised Code, and rules adopted by the state board of education governing education of children with disabilities, including, but not limited to, requirements that children with disabilities be served by appropriately licensed or certificated education personnel.

(C) Each city, exempted village, local, and joint vocational school district shall consult with the educational service center serving the county in which the school district is located and, if it elects to participate pursuant to section 5126.04 of the Revised Code, the county ~~DD~~-board\_of\_developmental\_disabilities of that county, in providing services that serve the best interests of children with disabilities.

(D) Each school district shall annually provide documentation to the department of education

that it employs the appropriate number of licensed or certificated personnel to serve the district's students with disabilities.

(E) The department annually shall audit a sample of school districts to ensure that children with disabilities are being appropriately reported.

(F) Each school district shall provide speech-language pathology services at a ratio of one speech-language pathologist per two thousand students receiving any educational services from the district other than adult education. Each district shall provide school psychological services at a ratio of one school psychologist per two thousand five hundred students receiving any educational services from the district other than adult education. A district may obtain the services of speech-language pathologists and school psychologists by any means permitted by law, including contracting with an educational service center. If, however, a district is unable to obtain the services of the required number of speech-language pathologists or school psychologists, the district may request from the superintendent of public instruction, and the superintendent may grant, a waiver of this provision for a period of time established by the superintendent.

**Sec. 3317.20.** This section does not apply to preschool children with disabilities.

(A) As used in this section:

(1) "Applicable special education amount" means the amount specified in section 3317.013 of the Revised Code for a disability described in that section.

(2) "Child's school district" means the school district in which a child is entitled to attend school pursuant to section 3313.64 or 3313.65 of the Revised Code.

(3) "State share index" means the state share index of the child's school district.

(B) The department shall annually pay each county ~~DD~~ board of developmental disabilities for each child with a disability, other than a preschool child with a disability, for whom the county ~~DD~~ board provides special education and related services an amount equal to the formula amount + (state share index X the applicable special education amount).

(C) Each county ~~DD~~ board of developmental disabilities shall report to the department, in the manner specified by the department, the name of each child for whom the county ~~DD~~ board of developmental disabilities provides special education and related services and the child's school district.

(D)(1) For the purpose of verifying the accuracy of the payments under this section, the department may request from either of the following entities the data verification code assigned under division (D)(2) of section 3301.0714 of the Revised Code to any child who is placed with a county ~~DD~~ board of developmental disabilities:

(a) The child's school district;

(b) The independent contractor engaged to create and maintain data verification codes.

(2) Upon a request by the department under division (D)(1) of this section for the data verification code of a child, the child's school district shall submit that code to the department in the manner specified by the department. If the child has not been assigned a code, the district shall assign a code to that child and submit the code to the department by a date specified by the department. If the district does not assign a code to the child by the specified date, the department shall assign a code to the child.

The department annually shall submit to each school district the name and data verification

code of each child residing in the district for whom the department has assigned a code under this division.

(3) The department shall not release any data verification code that it receives under division (D) of this section to any person except as provided by law.

(E) Any document relative to special education and related services provided by a county ~~DD~~ board of developmental disabilities that the department holds in its files that contains both a student's name or other personally identifiable information and the student's data verification code shall not be a public record under section 149.43 of the Revised Code.

**Sec. 3323.01.** As used in this chapter:

(A) "Child with a disability" means a child who is at least three years of age and less than twenty-two years of age; who has ~~mental retardation~~ an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability (including dyslexia), deaf-blindness, or multiple disabilities; and who, by reason thereof, needs special education and related services.

A "child with a disability" may include a child who is at least three years of age and less than six years of age; who is experiencing developmental delays, as defined by standards adopted by the state board of education and as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services.

(B) "~~County DD board~~" means a county board of developmental disabilities.

~~(C)~~ "Free appropriate public education" means special education and related services that meet all of the following:

(1) Are provided at public expense, under public supervision and direction, and without charge;

(2) Meet the standards of the state board of education;

(3) Include an appropriate preschool, elementary, or secondary education as otherwise provided by the law of this state;

(4) Are provided for each child with a disability in conformity with the child's individualized education program.

~~(C)~~ "Homeless children" means "homeless children and youths" as defined in section 725 of the "McKinney-Vento Homeless Assistance Act," 42 U.S.C. 11434a.

~~(D)~~ "Individualized education program" or "IEP" means the written statement described in section 3323.011 of the Revised Code.

~~(E)~~ "Individualized education program team" or "IEP team" means a group of individuals composed of:

(1) The parents of a child with a disability;

(2) At least one regular education teacher of the child, if the child is or may be participating in the regular education environment;

(3) At least one special education teacher, or where appropriate, at least one special education provider of the child;

- (4) A representative of the school district who meets all of the following:
- (a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - (b) Is knowledgeable about the general education curriculum;
  - (c) Is knowledgeable about the availability of resources of the school district.
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team as described in divisions ~~(F)~~(E)(2) to (4) of this section;
- (6) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;
- (7) Whenever appropriate, the child with a disability.
- ~~(G)~~(F) "Instruction in braille reading and writing" means the teaching of the system of reading and writing through touch commonly known as standard English braille.
- ~~(H)~~(G) "Other educational agency" means a department, division, bureau, office, institution, board, commission, committee, authority, or other state or local agency, which is not a city, local, or exempted village school district or an agency administered by the department of developmental disabilities, that provides or seeks to provide special education or related services to children with disabilities. The term "other educational agency" includes a joint vocational school district.
- ~~(I)~~(H) "Parent" of a child with a disability, except as used in sections 3323.09 and 3323.141 of the Revised Code, means:
- (1) A natural or adoptive parent of a child but not a foster parent of a child;
  - (2) A guardian, but not the state if the child is a ward of the state;
  - (3) An individual acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare;
  - (4) An individual assigned to be a surrogate parent, provided the individual is not prohibited by this chapter from serving as a surrogate parent for a child.
- ~~(J)~~(I) "Preschool child with a disability" means a child with a disability who is at least three years of age but is not of compulsory school age, as defined under section 3321.01 of the Revised Code, and who is not currently enrolled in kindergarten.
- ~~(K)~~(J) "Related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, school health services, social work services in schools, and parent counseling and training, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. "Related services" does not include a medical device that is surgically implanted, or the replacement of such device.
- ~~(L)~~(K) "School district" means a city, local, or exempted village school district.

~~(M)~~(L) "School district of residence," as used in sections 3323.09, 3323.091, 3323.13, and 3323.14 of the Revised Code, means:

- (1) The school district in which the child's natural or adoptive parents reside;
- (2) If the school district specified in division ~~(M)~~(L)(1) of this section cannot be determined, the last school district in which the child's natural or adoptive parents are known to have resided if the parents' whereabouts are unknown;
- (3) If the school district specified in division (M)(2) of this section cannot be determined, the school district determined under section 2151.362 of the Revised Code, or if no district has been so determined, the school district as determined by the probate court of the county in which the child resides.

(4) Notwithstanding divisions (M)(1) to (3) of this section, if a school district is required by section 3313.65 of the Revised Code to pay tuition for a child, that district shall be the child's school district of residence.

~~(N)~~(M) "Special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. "Special education" includes instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, including an early childhood education setting, and instruction in physical education.

~~(O)~~(N) "Student with a visual impairment" means any person who is less than twenty-two years of age and who has a visual impairment as that term is defined in this section.

~~(P)~~(O) "Transition services" means a coordinated set of activities for a child with a disability that meet all of the following:

- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education; vocational education; integrated employment (including supported employment); continuing and adult education; adult services; independent living; or community participation;
- (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests;
- (3) Includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

"Transition services" for children with disabilities may be special education, if provided as specially designed instruction, or may be a related service, if required to assist a child with a disability to benefit from special education.

~~(Q)~~(P) "Visual impairment" for any individual means that one of the following applies to the individual:

- (1) The individual has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision in the better eye such that the widest diameter subtends an angular distance of no greater than twenty degrees.
- (2) The individual has a medically indicated expectation of meeting the requirements of division ~~(Q)~~(P)(1) of this section over a period of time.
- (3) The individual has a medically diagnosed and medically uncorrectable limitation in visual

functioning that adversely affects the individual's ability to read and write standard print at levels expected of the individual's peers of comparable ability and grade level.

~~(R)~~(Q) "Ward of the state" has the same meaning as in section 602(36) of the "Individuals with Disabilities Education Improvement Act of 2004," 20 U.S.C. 1401(36).

**Sec. 3323.02.** As used in this section, "IDEIA" means the "Individuals with Disabilities Education Improvement Act of 2004," Pub. L. No. 108-446.

It is the purpose of this chapter to ensure that all children with disabilities residing in this state who are at least three years of age and less than twenty-two years of age, including children with disabilities who have been suspended or expelled from school, have available to them a free appropriate public education. No school district, county ~~DD~~-board of developmental disabilities, or other educational agency shall receive state or federal funds for special education and related services unless those services for children with disabilities are provided in accordance with IDEIA and related provisions of the Code of Federal Regulations, the provisions of this chapter, rules and standards adopted by the state board of education, and any procedures or guidelines issued by the superintendent of public instruction. Any options or discretion provided to the state by IDEIA may be exercised in state law or in rules or standards adopted by the state board of education.

The state board of education shall establish rules or standards for the provision of special education and related services for all children with disabilities who are at least three years of age and less than twenty-two years of age residing in the state, regardless of the severity of their disabilities, including children with disabilities who have been suspended or expelled from school. The state law and the rules or standards of the state board of education may impose requirements that are not required by IDEIA or related provisions of the Code of Federal Regulations. The school district of residence is responsible, in all instances, for ensuring that the requirements of Part B of IDEIA are met for every eligible child in its jurisdiction, regardless of whether services are provided by another school district, other educational agency, or other agency, department, or entity, unless IDEIA or related provisions of the Code of Federal Regulations, another section of this chapter, or a rule adopted by the state board of education specifies that another school district, other educational agency, or other agency, department, or entity is responsible for ensuring compliance with Part B of IDEIA.

Notwithstanding division (A)(4) of section 3301.53 of the Revised Code and any rules adopted pursuant to that section and division (A) of section 3313.646 of the Revised Code, a board of education of a school district may provide special education and related services for preschool children with disabilities in accordance with this chapter and section 3301.52, divisions (A)(1) to (3) and (A)(5) and (6) of section 3301.53, and sections 3301.54 to 3301.59 of the Revised Code.

The superintendent of public instruction may require any state or local agency to provide documentation that special education and related services for children with disabilities provided by the agency are in compliance with the requirements of this chapter.

Not later than the first day of February of each year the superintendent of public instruction shall furnish the chairpersons of the education committees of the house of representatives and the senate with a report on the status of implementation of special education and related services for children with disabilities required by this chapter. The report shall include but shall not be limited to the following items: the most recent available figures on the number of children identified as children

with disabilities and the number of identified children receiving special education and related services. The information contained in these reports shall be public information.

**Sec. 3323.021.** As used in this section, "participating county ~~DD~~board of developmental disabilities" means a county board of developmental disabilities electing to participate in the provision of or contracting for educational services for children under division (D) of section 5126.05 of the Revised Code.

(A) When a school district, educational service center, or participating county ~~DD~~board of developmental disabilities enters into an agreement or contract with another school district, educational service center, or participating county ~~DD~~board of developmental disabilities to provide educational services to a disabled child during a school year, both of the following shall apply:

(1) Beginning with fiscal year 1999, if the provider of the services intends to increase the amount it charges for some or all of those services during the next school year or if the provider intends to cease offering all or part of those services during the next school year, the provider shall notify the entity for which the services are provided of these intended changes no later than the first day of March of the current fiscal year.

(2) Beginning with fiscal year 1999, if the entity for which services are provided intends to cease obtaining those services from the provider for the next school year or intends to change the type or amount of services it obtains from the provider for the next school year, the entity shall notify the service provider of these intended changes no later than the first day of March of the current fiscal year.

(B) School districts, educational service centers, participating county ~~DD~~boards of developmental disabilities, and other applicable governmental entities shall collaborate where possible to maximize federal sources of revenue to provide additional funds for special education related services for disabled children. Annually, each school district shall report to the department of education any amounts of such federal revenue the district received.

(C) The state board of education, the department of developmental disabilities, and the department of medicaid shall develop working agreements for pursuing additional funds for services for disabled children.

**Sec. 3323.03.** The state board of education shall, in consultation with the department of health, the department of mental health and addiction services, and the department of developmental disabilities, establish standards and procedures for the identification, location, and evaluation of all children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services. The state board shall develop and implement a practical method to determine which children with disabilities are currently receiving needed special education and related services.

In conducting the evaluation, the board of education of each school district shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the child's parent. The board of education of each school district, in consultation with the county ~~DD~~board of developmental disabilities, the county family and children first council, and the board of alcohol, drug addiction, and mental health services of each county in which the school district has territory, shall identify, locate,

and evaluate all children with disabilities residing within the district to determine which children with disabilities are not receiving appropriate special education and related services. In addition, the board of education of each school district, in consultation with such county boards or council, shall identify, locate, and evaluate all children with disabilities who are enrolled by their parents in nonpublic elementary and secondary schools located within the public school district, without regard to where those children reside in accordance with rules of the state board of education or guidelines of the superintendent of public instruction.

Each county ~~DD~~ board of developmental disabilities, county family and children first council, and board of alcohol, drug addiction, and mental health services and the board's or council's contract agencies may transmit to boards of education the names and addresses of children with disabilities who are not receiving appropriate special education and related services.

**Sec. 3323.04.** The state board of education, in consultation with the department of mental health and addiction services and the department of developmental disabilities, shall establish procedures and standards for the development of individualized education programs for children with disabilities.

The state board shall require the board of education of each school district to develop an individualized education program for each child with a disability who is at least three years of age and less than twenty-two years of age residing in the district in a manner that is in accordance with rules of the state board.

Prior to the placement of a child with a disability in a program operated under section 3323.09 of the Revised Code, the district board of education shall consult the county ~~DD~~ board of developmental disabilities of the county in which the child resides regarding the proposed placement.

A child with a disability enrolled in a nonpublic school or facility shall be provided special education and related services, in accordance with an individualized education program, at no cost for those services, if the child is placed in, or referred to, that nonpublic school or facility by the department of education or a school district.

The IEP team shall review the individualized education program of each child with a disability periodically, but at least annually, to determine whether the annual goals for the child are being achieved, and shall revise the individualized education program as appropriate.

The state board shall establish procedures and standards to assure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, shall be educated with children who are not disabled. Special classes, separate schools, or other removal of children with disabilities from the regular educational environment shall be used only when the nature or severity of a child's disability is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily.

If an agency directly affected by a placement decision objects to such decision, an impartial hearing officer, appointed by the department of education from a list prepared by the department, shall conduct a hearing to review the placement decision. The agencies that are parties to a hearing shall divide the costs of such hearing equally. The decision of the hearing officer shall be final, except that any party to the hearing who is aggrieved by the findings or the decision of the hearing officer may appeal the findings or decision in accordance with division (H) of section 3323.05 of the Revised Code or the parent of any child affected by such decision may present a complaint in

accordance with that section.

**Sec. 3323.05.** The state board of education shall establish procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards under this chapter with respect to a free appropriate public education.

The procedures shall include, but need not be limited to:

(A) An opportunity for the parents of a child with a disability to examine all records related to the child and to participate in meetings with respect to identification, evaluation, and educational placement of the child, and to obtain an independent educational evaluation of the child;

(B) Procedures to protect the rights of the child whenever the parents of the child are not known, an agency after making reasonable efforts cannot find the parents, or the child is a ward of the state, including the assignment of an individual to act as a surrogate for the parents made by the school district or other educational agency responsible for educating the child or by the court with jurisdiction over the child's custody. Such assignment shall be made in accordance with section 3323.051 of the Revised Code.

(C) Prior written notice to the child's parents of a school district's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate education for the child. The procedures established under this division shall:

(1) Be designed to ensure that the written prior notice is in the native language of the parents, unless it clearly is not feasible to do so.

(2) Specify that the prior written notice shall include:

(a) A description of the action proposed or refused by the district;

(b) An explanation of why the district proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action;

(c) A statement that the parents of a child with a disability have protection under the procedural safeguards and, if the notice is not in regard to an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(d) Sources for parents to contact to obtain assistance in understanding the provisions of Part B of the "Individuals with Disabilities Education Improvement Act of 2004";

(e) A description of other options considered by the IEP team and the reason why those options were rejected;

(f) A description of the factors that are relevant to the agency's proposal or refusal.

(D) An opportunity for the child's parents to present complaints to the superintendent of the child's school district of residence with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education under this chapter.

Within twenty school days after receipt of a complaint, the district superintendent or the superintendent's designee, without undue delay and at a time and place convenient to all parties, shall review the case, may conduct an administrative review, and shall notify all parties in writing of the superintendent's or designee's decision. Where the child is placed in a program operated by a county ~~DD~~ board of developmental disabilities or other educational agency, the superintendent shall consult with the administrator of that county ~~DD~~ board or agency.

Any party aggrieved by the decision of the district superintendent or the superintendent's designee may file a complaint with the state board as provided under division (E) of this section, request mediation as provided under division (F) of this section, or present a due process complaint notice and request for a due process hearing in writing to the superintendent of the district, with a copy to the state board, as provided under division (G) of this section.

(E) An opportunity for a party to file a complaint with the state board of education with respect to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. The department of education shall review and, where appropriate, investigate the complaint and issue findings.

(F) An opportunity for parents and a school district to resolve through mediation disputes involving any matter.

(1) The procedures established under this section shall ensure that the mediation process is voluntary on the part of the parties, is not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under this chapter, and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) A school district may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party to encourage the use, and explain the benefits, of the mediation process to the parents. The disinterested party shall be an individual who is under contract with a parent training and information center or community parent resource center in the state or is under contract with an appropriate alternative dispute resolution entity.

(3) The department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(4) The department shall bear the cost of the mediation process, including the costs of meetings described in division (F)(2) of this section.

(5) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(6) Discussions that occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.

(7) In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth the resolution and that:

(a) States that all discussions that occurred during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding;

(b) Is signed by both the parent and a representative for the school district who has the authority to bind the district;

(c) Is enforceable in any state court of competent jurisdiction or in a district court of the United States.

(G)(1) An opportunity for parents or a school district to present a due process complaint and request for a due process hearing to the superintendent of the school district of the child's residence with respect to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. The party presenting the due process complaint

and request for a due process hearing shall provide due process complaint notice to the other party and forward a copy of the notice to the state board. The due process complaint notice shall include:

(a) The name of the child, the address of the residence of the child, or the available contact information in the case of a homeless child, and the name of the school the child is attending;

(b) A description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to the problem;

(c) A proposed resolution of the problem to the extent known and available to the party at the time.

A party shall not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirement for filing a due process complaint notice.

A due process hearing shall be conducted by an impartial hearing officer in accordance with standards and procedures adopted by the state board. A hearing officer shall not be an employee of the state board or any agency involved in the education or care of the child or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing. A hearing officer shall possess knowledge of, and the ability to understand, the provisions of the "Individuals with Disabilities Education Improvement Act of 2004," federal and state regulations pertaining to that act, and legal interpretations of that act by federal and state courts; possess the knowledge and ability to conduct hearings in accordance with appropriate standard legal practice; and possess the knowledge and ability to render and write decisions in accordance with appropriate standard legal practice. The due process requirements of section 615 of the "Individuals with Disabilities Education Improvement Act of 2004," 20 U.S.C. 1415, apply to due process complaint notices and requests for due process hearings and to due process hearings held under division (G) of this section, including, but not limited to, timelines for requesting hearings, requirements for sufficient complaint notices, resolution sessions, and sufficiency and hearing decisions.

(2) Discussions that occur during a resolution session shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding. If a resolution to the dispute is reached at a resolution session, the parties must execute a legally binding written settlement agreement which shall state that all discussions that occurred during the resolution process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.

(3) A party to a hearing under division (G) of this section shall be accorded:

(a) The right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(b) The right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) The right to a written or electronic verbatim record of the hearing;

(d) The right to written findings of fact and decisions, which findings of fact and decisions shall be made available to the public consistent with the requirements relating to the confidentiality of personally identifiable data, information, and records collected and maintained by state educational agencies and local educational agencies; and shall be transmitted to the advisory panel established and maintained by the department for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the state.

(H) An opportunity for any party aggrieved by the findings and decision rendered in a hearing under division (G) of this section to appeal within forty-five days of notification of the decision to the state board, which shall appoint a state level officer who shall review the case and issue a final order. The state level officer shall be appointed and shall review the case in accordance with standards and procedures adopted by the state board.

Any party aggrieved by the final order of the state level officer may appeal the final order, in accordance with Chapter 119. of the Revised Code, within forty-five days after notification of the order to the court of common pleas of the county in which the child's school district of residence is located, or to a district court of the United States within ninety days after the date of the decision of the state level review officer, as provided in section 615(i)(2) of the "Individuals with Disabilities Education Improvement Act of 2004," 20 U.S.C. 1415(i)(2).

**Sec. 3323.09.** (A) As used in this section:

(1) "Home" has the meaning given in section 3313.64 of the Revised Code.

(2) "Preschool child" means a child who is at least age three but under age six on the thirtieth day of September of an academic year.

(B) Each county ~~DD~~-board of developmental disabilities shall establish special education programs for all children with disabilities who in accordance with section 3323.04 of the Revised Code have been placed in special education programs operated by the county board and for preschool children who are developmentally delayed or at risk of being developmentally delayed. The board annually shall submit to the department of education a plan for the provision of these programs. The superintendent of public instruction shall review the plan and approve or modify it in accordance with rules adopted by the state board of education under section 3301.07 of the Revised Code. The superintendent of public instruction shall compile the plans submitted by county boards and shall submit a comprehensive plan to the state board.

A county ~~DD~~-board of developmental disabilities may combine transportation for children enrolled in classes funded under sections 3317.0213 or 3317.20 with transportation for children and adults enrolled in programs and services offered by the board under Chapter 5126. of the Revised Code.

(C) A county ~~DD~~-board of developmental disabilities that during the school year provided special education pursuant to this section for any child with mental disabilities under twenty-two years of age shall prepare and submit the following reports and statements:

(1) The board shall prepare a statement for each child who at the time of receiving such special education was a resident of a home and was not in the legal or permanent custody of an Ohio resident or a government agency in this state, and whose natural or adoptive parents are not known to have been residents of this state subsequent to the child's birth. The statement shall contain the child's name, the name of the child's school district of residence, the name of the county board providing the special education, and the number of months, including any fraction of a month, it was provided. Not later than the thirtieth day of June, the board shall forward a certified copy of such statement to both the director of developmental disabilities and to the home.

Within thirty days after its receipt of a statement, the home shall pay tuition to the county board computed in the manner prescribed by section 3323.141 of the Revised Code.

(2) The board shall prepare a report for each school district that is the school district of

residence of one or more of such children for whom statements are not required by division (C)(1) of this section. The report shall contain the name of the county board providing special education, the name of each child receiving special education, the number of months, including fractions of a month, that the child received it, and the name of the child's school district of residence. Not later than the thirtieth day of June, the board shall forward certified copies of each report to the school district named in the report, the superintendent of public instruction, and the director of developmental disabilities.

**Sec. 3323.091.** (A) The department of mental health and addiction services, the department of developmental disabilities, the department of youth services, and the department of rehabilitation and correction shall establish and maintain special education programs for children with disabilities in institutions under their jurisdiction according to standards adopted by the state board of education.

(B) The superintendent of each state institution required to provide services under division (A) of this section may apply to the department of education for special education and related services funding for children with disabilities other than preschool children with disabilities, calculated in accordance with section 3317.201 of the Revised Code.

Each county ~~DD~~ board of developmental disabilities providing special education for children with disabilities other than preschool children with disabilities may apply to the department of education for opportunity funds and special education and related services funding calculated in accordance with section 3317.20 of the Revised Code.

(C) In addition to the authorization to apply for state funding described in division (B) of this section, each state institution required to provide services under division (A) of this section is entitled to tuition payments calculated in the manner described in division (C) of this section.

On or before the thirtieth day of June of each year, the superintendent of each institution that during the school year provided special education pursuant to this section shall prepare a statement for each child with a disability under twenty-two years of age who has received special education. The statement shall contain the child's data verification code assigned pursuant to division (D)(2) of section 3301.0714 of the Revised Code and the name of the child's school district of residence. Within sixty days after receipt of such statement, the department of education shall perform one of the following:

(1) For any child except a preschool child with a disability described in division (C)(2) of this section, pay to the institution submitting the statement an amount equal to the tuition calculated under division (A) of section 3317.08 of the Revised Code for the period covered by the statement, and deduct the same from the amount of state funds, if any, payable under Chapter 3317. of the Revised Code, to the child's school district of residence or, if the amount of such state funds is insufficient, require the child's school district of residence to pay the institution submitting the statement an amount equal to the amount determined under this division.

(2) For any preschool child with a disability, perform the following:

(a) Pay to the institution submitting the statement an amount equal to the tuition calculated under division (B) of section 3317.08 of the Revised Code for the period covered by the statement, except that in calculating the tuition under that section the operating expenses of the institution submitting the statement under this section shall be used instead of the operating expenses of the school district of residence;

(b) Deduct from the amount of state funds, if any, payable under Chapter 3317. of the Revised Code to the child's school district of residence an amount equal to the amount paid under division (C)(2)(a) of this section.

**Sec. 3323.12.** The board of education of a school district shall provide home instruction for children with disabilities who are at least three years of age and less than twenty-two years of age and who are unable to attend school, even with the help of special transportation. The board may arrange for the provision of home instruction for a child by a cooperative agreement or contract with a county ~~DD~~-board of developmental disabilities or other educational agency. For the purposes of determining formula ADM under section 3317.03 of the Revised Code, five hours of home instruction shall be equivalent to attendance for five school days.

**Sec. 3323.141.** (A) When a child who is not in the legal or permanent custody of an Ohio resident or a government agency in this state and whose natural or adoptive parents are not known to have been residents of this state subsequent to the child's birth is a resident of a home as defined in section 3313.64 of the Revised Code and receives special education and related services from a school district or county ~~DD~~-board of developmental disabilities, the home shall pay tuition to the board providing the special education.

(B) In the case of a child described in division (A) of this section who receives special education and related services from a school district, tuition shall be the amount determined under division (B)(1) or (2) of this section.

(1) For a child other than a child described in division (B)(2) of this section the tuition shall be an amount equal to the sum of the following:

(a) Tuition as determined in the manner provided for by division (B) of section 3317.081 of the Revised Code for the district that provides the special education;

(b) Such excess cost as is determined by using a formula established by rule of the department of education. The excess cost computed in this section shall not be used as excess cost computed under section 3323.14 of the Revised Code.

(2) For a child who is a preschool child with a disability, the tuition shall be computed as follows:

(a) Determine the amount of the tuition of the district providing the education for the child as calculated under division (B) of section 3317.08 of the Revised Code;

(b) For each type of special education service included in the computation of the amount of tuition under division (B)(2)(a) of this section, divide the amount determined for that computation under division (B)(2) of section 3317.08 of the Revised Code by the total number of preschool children with disabilities used for that computation under division (B)(3) of section 3317.08 of the Revised Code;

(c) Determine the sum of the quotients obtained under division (B)(2)(b) of this section;

(d) Determine the sum of the amounts determined under divisions (B)(2)(a) and (c) of this section.

(C) In the case of a child described in division (A) of this section who receives special education and related services from a county ~~DD~~-board of developmental disabilities, tuition shall be the amount determined under division (C)(1) or (2) of this section.

(1) For a child other than a child described in division (C)(2) of this section, the tuition shall

be an amount equal to such board's per capita cost of providing special education and related services for children at least three but less than twenty-two years of age as determined by using a formula established by rule of the department of developmental disabilities.

(2) For a child who is a preschool child with a disability, the tuition shall equal the sum of the amounts of each such board's per capita cost of providing each of the special education or related service that the child receives. The calculation of tuition shall be made by using a formula established by rule of the department of developmental disabilities. The formula for the calculation of per capita costs under division (C)(2) of this section shall be based only on each such ~~DD~~-county board's cost of providing each type of special education or related service to preschool children with disabilities.

(D) If a home fails to pay the tuition required under this section, the board of education or county ~~DD~~-board of developmental disabilities providing the education may recover in a civil action the tuition and the expenses incurred in prosecuting the action, including court costs and reasonable attorney's fees. If the prosecuting attorney or city director of law represents the board in such action, costs and reasonable attorney's fees awarded by the court, based upon the time spent preparing and presenting the case by the prosecuting attorney, director, or a designee of either, shall be deposited in the county or city general fund.

**Sec. 3323.142.** As used in this section, "per pupil amount" for a preschool child with a disability included in such an approved unit means the amount determined by dividing the amount received for the classroom unit in which the child has been placed by the number of children in the unit. For any other child, "per pupil amount" means the amount paid for the child under section 3317.20 of the Revised Code.

When a school district places or has placed a child with a county ~~DD~~-board of developmental disabilities for special education, but another district is responsible for tuition under section 3313.64 or 3313.65 of the Revised Code and the child is not a resident of the territory served by the county ~~DD~~-board of developmental disabilities, the board may charge the district responsible for tuition with the educational costs in excess of the per pupil amount received by the board under Chapter 3317. of the Revised Code. The amount of the excess cost shall be determined by the formula established by rule of the department of education under section 3323.14 of the Revised Code, and the payment for such excess cost shall be made by the school district directly to the county ~~DD~~-board of developmental disabilities.

A school district board of education and the county ~~DD~~board of developmental disabilities that serves the school district may negotiate and contract, at or after the time of placement, for payments by the board of education to the county ~~DD~~-board for additional services provided to a child placed with the county ~~DD~~-board and whose individualized education program established pursuant to section 3323.08 of the Revised Code requires additional services that are not routinely provided children in the county ~~DD~~-board's program but are necessary to maintain the child's enrollment and participation in the program. Additional services may include, but are not limited to, specialized supplies and equipment for the benefit of the child and instruction, training, or assistance provided by staff members other than staff members for which funding is received under Chapter 3317. of the Revised Code.

**Sec. 3701.881.** (A) As used in this section:

(1) "Applicant" means a person who is under final consideration for employment with a

home health agency in a full-time, part-time, or temporary position that involves providing direct care to an individual or is referred to a home health agency by an employment service for such a position.

(2) "Community-based long-term care provider" means a provider as defined in section 173.39 of the Revised Code.

(3) "Community-based long-term care subcontractor" means a subcontractor as defined in section 173.38 of the Revised Code.

(4) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(5) "Direct care" means any of the following:

(a) Any service identified in divisions (A)(8)(a) to (f) of this section that is provided in a patient's place of residence used as the patient's home;

(b) Any activity that requires the person performing the activity to be routinely alone with a patient or to routinely have access to a patient's personal property or financial documents regarding a patient;

(c) For each home health agency individually, any other routine service or activity that the chief administrator of the home health agency designates as direct care.

(6) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (e) of section 109.572 of the Revised Code.

(7) "Employee" means a person employed by a home health agency in a full-time, part-time, or temporary position that involves providing direct care to an individual and a person who works in such a position due to being referred to a home health agency by an employment service.

(8) "Home health agency" means a person or government entity, other than a nursing home, residential care facility, hospice care program, or pediatric respite 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:

(a) Skilled nursing care;

(b) Physical therapy;

(c) Speech-language pathology;

(d) Occupational therapy;

(e) Medical social services;

(f) Home health aide services.

(9) "Home health aide services" means any of the following services provided by an employee of a home health agency:

(a) Hands-on bathing or assistance with a tub bath or shower;

(b) Assistance with dressing, ambulation, and toileting;

(c) Catheter care but not insertion;

(d) Meal preparation and feeding.

(10) "Hospice care program" and "pediatric respite care program" have the same meanings as in section 3712.01 of the Revised Code.

(11) "Medical social services" means services provided by a social worker under the direction of a patient's attending physician.

(12) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

(13) "Nursing home," "residential care facility," and "skilled nursing care" have the same meanings as in section 3721.01 of the Revised Code.

(14) "Occupational therapy" has the same meaning as in section 4755.04 of the Revised Code.

(15) "Physical therapy" has the same meaning as in section 4755.40 of the Revised Code.

(16) "Social worker" means a person licensed under Chapter 4757. of the Revised Code to practice as a social worker or independent social worker.

(17) "Speech-language pathology" has the same meaning as in section 4753.01 of the Revised Code.

(18) "Waiver agency" has the same meaning as in section 5164.342 of the Revised Code.

(B) No home health agency shall employ an applicant or continue to employ an employee in a position that involves providing direct care to an individual if any of the following apply:

(1) A review of the databases listed in division (D) of this section reveals any of the following:

(a) That the applicant or employee is included in one or more of the databases listed in divisions (D)(1) to (5) of this section;

(b) That there is in the state nurse aide registry established under section 3721.32 of the Revised Code a statement detailing findings by the director of health that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident;

(c) That the applicant or employee is included in one or more of the databases, if any, specified in rules adopted under this section and the rules prohibit the home health agency from employing an applicant or continuing to employ an employee included in such a database in a position that involves providing direct care to an individual.

(2) After the applicant or employee is provided, pursuant to division (E)(2)(a) of this section, a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard impression sheet prescribed pursuant to division (C)(2) of that section, the applicant or employee fails to complete the form or provide the applicant's or employee's fingerprint impressions on the standard impression sheet.

(3) Except as provided in rules adopted under this section, the applicant or employee is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(C) Except as provided by division (F) of this section, the chief administrator of a home health agency shall inform each applicant of both of the following at the time of the applicant's initial application for employment or referral to the home health agency by an employment service for a position that involves providing direct care to an individual:

(1) That a review of the databases listed in division (D) of this section will be conducted to determine whether the home health agency is prohibited by division (B)(1) of this section from employing the applicant in the position;

(2) That, unless the database review reveals that the applicant may not be employed in the

position, a criminal records check of the applicant will be conducted and the applicant is required to provide a set of the applicant's fingerprint impressions as part of the criminal records check.

(D) As a condition of employing any applicant in a position that involves providing direct care to an individual, the chief administrator of a home health agency shall conduct a database review of the applicant in accordance with rules adopted under this section. If rules adopted under this section so require, the chief administrator of a home health agency shall conduct a database review of an employee in accordance with the rules as a condition of continuing to employ the employee in a position that involves providing direct care to an individual. However, the chief administrator is not required to conduct a database review of an applicant or employee if division (F) of this section applies. A database review shall determine whether the applicant or employee is included in any of the following:

(1) The excluded parties list system that is maintained by the United States general services administration pursuant to subpart 9.4 of the federal acquisition regulation and available at the federal web site known as the system for award management;

(2) The list of excluded individuals and entities maintained by the office of inspector general in the United States department of health and human services pursuant to the "Social Security Act," sections 1128 and 1156, 42 U.S.C. 1320a-7 and 1320c-5;

(3) The registry of ~~MR/DD~~ developmental disabilities employees established under section 5123.52 of the Revised Code;

(4) The internet-based sex offender and child-victim offender database established under division (A)(11) of section 2950.13 of the Revised Code;

(5) The internet-based database of inmates established under section 5120.66 of the Revised Code;

(6) The state nurse aide registry established under section 3721.32 of the Revised Code;

(7) Any other database, if any, specified in rules adopted under this section.

(E)(1) As a condition of employing any applicant in a position that involves providing direct care to an individual, the chief administrator of a home health agency shall request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check of the applicant. If rules adopted under this section so require, the chief administrator of a home health agency shall request the superintendent to conduct a criminal records check of an employee at times specified in the rules as a condition of continuing to employ the employee in a position that involves providing direct care to an individual. However, the chief administrator is not required to request the criminal records check of the applicant or the employee if division (F) of this section applies or the home health agency is prohibited by division (B)(1) of this section from employing the applicant or continuing to employ the employee in a position that involves providing direct care to an individual. If an applicant or employee for whom a criminal records check request is required by this section does not present proof of having been a resident of this state for the five-year period immediately prior to the date upon which the criminal records check is requested or does not provide evidence that within that five-year period the superintendent has requested information about the applicant from the federal bureau of investigation in a criminal records check, the chief administrator shall request that the superintendent obtain information from the federal bureau of investigation as a part of the criminal records check. Even if an applicant or employee for whom a criminal records check request

is required by this section presents proof that the applicant or employee has been a resident of this state for that five-year period, the chief administrator may request that the superintendent include information from the federal bureau of investigation in the criminal records check.

(2) The chief administrator shall do all of the following:

(a) Provide to each applicant and employee for whom a criminal records check request is required by this section a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a standard impression sheet prescribed pursuant to division (C)(2) of that section;

(b) Obtain the completed form and standard impression sheet from each applicant and employee;

(c) Forward the completed form and standard impression sheet to the superintendent at the time the chief administrator requests the criminal records check.

(3) A home health agency shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check the agency requests under this section. A home health agency may charge an applicant a fee not exceeding the amount the agency pays to the bureau under this section if both of the following apply:

(a) The home health agency notifies the applicant at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the applicant will not be considered for employment.

(b) The medicaid program does not reimburse the home health agency for the fee it pays to the bureau under this section.

(F) Divisions (C) to (E) of this section do not apply with regard to an applicant or employee if the applicant or employee is referred to a home health agency by an employment service that supplies full-time, part-time, or temporary staff for positions that involve providing direct care to an individual and both of the following apply:

(1) The chief administrator of the home health agency receives from the employment service confirmation that a review of the databases listed in division (D) of this section was conducted with regard to the applicant or employee.

(2) The chief administrator of the home health agency receives from the employment service, applicant, or employee a report of the results of a criminal records check of the applicant or employee that has been conducted by the superintendent within the one-year period immediately preceding the following:

(a) In the case of an applicant, the date of the applicant's referral by the employment service to the home health agency;

(b) In the case of an employee, the date by which the home health agency would otherwise have to request a criminal records check of the employee under division (E) of this section.

(G)(1) A home health agency may employ conditionally an applicant for whom a criminal records check request is required by this section before obtaining the results of the criminal records check if the agency is not prohibited by division (B) of this section from employing the applicant in a position that involves providing direct care to an individual and either of the following applies:

(a) The chief administrator of the home health agency requests the criminal records check in

accordance with division (E) of this section not later than five business days after the applicant begins conditional employment.

(b) The applicant is referred to the home health agency by an employment service, the employment service or the applicant provides the chief administrator of the agency a letter that is on the letterhead of the employment service, the letter is dated and signed by a supervisor or another designated official of the employment service, and the letter states all of the following:

(i) That the employment service has requested the superintendent to conduct a criminal records check regarding the applicant;

(ii) That the requested criminal records check is to include a determination of whether the applicant has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense;

(iii) That the employment service has not received the results of the criminal records check as of the date set forth on the letter;

(iv) That the employment service promptly will send a copy of the results of the criminal records check to the chief administrator of the home health agency when the employment service receives the results.

(2) If a home health agency employs an applicant conditionally pursuant to division (G)(1)(b) of this section, the employment service, on its receipt of the results of the criminal records check, promptly shall send a copy of the results to the chief administrator of the agency.

(3) A home health agency that employs an applicant conditionally pursuant to division (G)(1)(a) or (b) of this section shall terminate the applicant's employment if the results of the criminal records check, other than the results of any request for information from the federal bureau of investigation, are not obtained within the period ending sixty days after the date the request for the criminal records check is made. Regardless of when the results of the criminal records check are obtained, if the results indicate that the applicant has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, the home health agency shall terminate the applicant's employment unless circumstances specified in rules adopted under this section that permit the agency to employ the applicant exist and the agency chooses to employ the applicant. Termination of employment under this division shall be considered just cause for discharge for purposes of division (D)(2) of section 4141.29 of the Revised Code if the applicant makes any attempt to deceive the home health agency about the applicant's criminal record.

(H) The report of any criminal records check conducted by the bureau of criminal identification and investigation in accordance with section 109.572 of the Revised Code and pursuant to a request made under this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:

(1) The applicant or employee who is the subject of the criminal records check or the applicant's or employee's representative;

(2) The home health agency requesting the criminal records check or its representative;

(3) The administrator of any other facility, agency, or program that provides direct care to individuals that is owned or operated by the same entity that owns or operates the home health agency that requested the criminal records check;

(4) The employment service that requested the criminal records check;

(5) The director of health and the staff of the department of health who monitor a home health agency's compliance with this section;

(6) The director of aging or the director's designee if either of the following apply:

(a) In the case of a criminal records check requested by a home health agency, the home health agency also is a community-based long-term care provider or community-based long-term care subcontractor;

(b) In the case of a criminal records check requested by an employment service, the employment service makes the request for an applicant or employee the employment service refers to a home health agency that also is a community-based long-term care provider or community-based long-term care subcontractor.

(7) The medicaid director and the staff of the department of medicaid who are involved in the administration of the medicaid program if either of the following apply:

(a) In the case of a criminal records check requested by a home health agency, the home health agency also is a waiver agency;

(b) In the case of a criminal records check requested by an employment service, the employment service makes the request for an applicant or employee the employment service refers to a home health agency that also is a waiver agency.

(8) Any court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

(a) A denial of employment of the applicant or employee;

(b) Employment or unemployment benefits of the applicant or employee;

(c) A civil or criminal action regarding the medicaid program.

(I) In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by an applicant or employee who a home health agency employs in a position that involves providing direct care to an individual, all of the following shall apply:

(1) If the home health agency employed the applicant or employee in good faith and reasonable reliance on the report of a criminal records check requested under this section, the agency shall not be found negligent solely because of its reliance on the report, even if the information in the report is determined later to have been incomplete or inaccurate.

(2) If the home health agency employed the applicant in good faith on a conditional basis pursuant to division (G) of this section, the agency shall not be found negligent solely because it employed the applicant prior to receiving the report of a criminal records check requested under this section.

(3) If the home health agency in good faith employed the applicant or employee according to the personal character standards established in rules adopted under this section, the agency shall not be found negligent solely because the applicant or employee had been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(J) The director of health shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section.

(1) The rules may do the following:

(a) Require employees to undergo database reviews and criminal records checks under this section;

(b) If the rules require employees to undergo database reviews and criminal records checks under this section, exempt one or more classes of employees from the requirements;

(c) For the purpose of division (D)(7) of this section, specify other databases that are to be checked as part of a database review conducted under this section.

(2) The rules shall specify all of the following:

(a) The procedures for conducting database reviews under this section;

(b) If the rules require employees to undergo database reviews and criminal records checks under this section, the times at which the database reviews and criminal records checks are to be conducted;

(c) If the rules specify other databases to be checked as part of the database reviews, the circumstances under which a home health agency is prohibited from employing an applicant or continuing to employ an employee who is found by a database review to be included in one or more of those databases;

(d) Circumstances under which a home health agency may employ an applicant or employee who is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense but meets personal character standards.

**Sec. 3707.20.** No person, who is suffering from a contagious or infectious disease, or who has been exposed to a contagious or infectious disease, may be sent or admitted to a prison; jail; workhouse; infirmary; children's home; state hospital or institution for the blind, the mentally ill, or ~~the mentally retarded, or a persons with intellectual disabilities;~~ school for the blind or deaf; or other state or county benevolent institution without first making known the facts concerning the illness or exposure to the superintendent or other person in charge thereof. When a dangerous, contagious, or infectious disease is in a jail or prison and a prisoner in the jail or prison exposed to the disease is sentenced to a state correctional institution, the prisoner shall be confined and isolated in the jail or prison or other proper place, upon the order of the proper court, for any time that is necessary to establish the fact that ~~he~~ the prisoner has not contracted the disease.

**Sec. 3721.01.** (A) As used in sections 3721.01 to 3721.09 and 3721.99 of the Revised Code:

(1)(a) "Home" means an institution, residence, or facility that provides, for a period of more than twenty-four hours, whether for a consideration or not, accommodations to three or more unrelated individuals who are dependent upon the services of others, including a nursing home, residential care facility, home for the aging, and a veterans' home operated under Chapter 5907. of the Revised Code.

(b) "Home" also means both of the following:

(i) Any facility that a person, as defined in section 3702.51 of the Revised Code, proposes for certification as a skilled nursing facility or nursing facility under Title XVIII or XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, and for which a certificate of need, other than a certificate to recategorize hospital beds as described in section 3702.521 of the Revised Code or division (R)(7)(d) of the version of section 3702.51 of the Revised Code in effect immediately prior to April 20, 1995, has been granted to the person under sections 3702.51 to 3702.62 of the Revised Code after August 5, 1989;

(ii) A county home or district home that is or has been licensed as a residential care facility.

- (c) "Home" does not mean any of the following:
- (i) Except as provided in division (A)(1)(b) of this section, a public hospital or hospital as defined in section 3701.01 or 5122.01 of the Revised Code;
  - (ii) A residential facility as defined in section 5119.34 of the Revised Code;
  - (iii) A residential facility as defined in section 5123.19 of the Revised Code;
  - (iv) A community addiction services provider as defined in section 5119.01 of the Revised Code;
  - (v) A facility licensed to provide methadone treatment under section 5119.391 of the Revised Code;
  - (vi) A facility providing services under contract with the department of developmental disabilities under section 5123.18 of the Revised Code;
  - (vii) A facility operated by a hospice care program licensed under section 3712.04 of the Revised Code that is used exclusively for care of hospice patients;
  - (viii) A facility operated by a pediatric respite care program licensed under section 3712.041 of the Revised Code that is used exclusively for care of pediatric respite care patients;
  - (ix) A facility, infirmary, or other entity that is operated by a religious order, provides care exclusively to members of religious orders who take vows of celibacy and live by virtue of their vows within the orders as if related, and does not participate in the medicare program or the medicaid program if on January 1, 1994, the facility, infirmary, or entity was providing care exclusively to members of the religious order;
  - (x) A county home or district home that has never been licensed as a residential care facility.
- (2) "Unrelated individual" means one who is not related to the owner or operator of a home or to the spouse of the owner or operator as a parent, grandparent, child, grandchild, brother, sister, niece, nephew, aunt, uncle, or as the child of an aunt or uncle.
- (3) "Mental impairment" does not mean mental illness, as defined in section 5122.01 of the Revised Code, or ~~mental retardation~~ developmental disability, as defined in section 5123.01 of the Revised Code.
- (4) "Skilled nursing care" means procedures that require technical skills and knowledge beyond those the untrained person possesses and that are commonly employed in providing for the physical, mental, and emotional needs of the ill or otherwise incapacitated. "Skilled nursing care" includes, but is not limited to, the following:
- (a) Irrigations, catheterizations, application of dressings, and supervision of special diets;
  - (b) Objective observation of changes in the patient's condition as a means of analyzing and determining the nursing care required and the need for further medical diagnosis and treatment;
  - (c) Special procedures contributing to rehabilitation;
  - (d) Administration of medication by any method ordered by a physician, such as hypodermically, rectally, or orally, including observation of the patient after receipt of the medication;
  - (e) Carrying out other treatments prescribed by the physician that involve a similar level of complexity and skill in administration.
- (5)(a) "Personal care services" means services including, but not limited to, the following:
- (i) Assisting residents with activities of daily living;

(ii) Assisting residents with self-administration of medication, in accordance with rules adopted under section 3721.04 of the Revised Code;

(iii) Preparing special diets, other than complex therapeutic diets, for residents pursuant to the instructions of a physician or a licensed dietitian, in accordance with rules adopted under section 3721.04 of the Revised Code.

(b) "Personal care services" does not include "skilled nursing care" as defined in division (A)(4) of this section. A facility need not provide more than one of the services listed in division (A)(5)(a) of this section to be considered to be providing personal care services.

(6) "Nursing home" means a home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services but not skilled nursing care. A nursing home is licensed to provide personal care services and skilled nursing care.

(7) "Residential care facility" means a home that provides either of the following:

(a) Accommodations for seventeen or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment;

(b) Accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, any of the skilled nursing care authorized by section 3721.011 of the Revised Code.

(8) "Home for the aging" means 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.

The part or unit of a home for the aging that provides services only as a residential care facility is licensed as a residential care facility. The part or unit that may provide skilled nursing care beyond the extent authorized by section 3721.011 of the Revised Code is licensed as a nursing home.

(9) "County home" and "district home" mean a county home or district home operated under Chapter 5155. of the Revised Code.

(B) The director of health may further classify homes. For the purposes of this chapter, any residence, institution, hotel, congregate housing project, or similar facility that meets the definition of a home under this section is such a home regardless of how the facility holds itself out to the public.

(C) For purposes of this chapter, personal care services or skilled nursing care shall be considered to be provided by a facility if they are provided by a person employed by or associated with the facility or by another person pursuant to an agreement to which neither the resident who receives the services nor the resident's sponsor is a party.

(D) Nothing in division (A)(4) of this section shall be construed to permit skilled nursing care to be imposed on an individual who does not require skilled nursing care.

Nothing in division (A)(5) of this section shall be construed to permit personal care services to be imposed on an individual who is capable of performing the activity in question without assistance.

(E) Division (A)(1)(c)(ix) of this section does not prohibit a facility, infirmary, or other entity described in that division from seeking licensure under sections 3721.01 to 3721.09 of the Revised

Code or certification under Title XVIII or XIX of the "Social Security Act." However, such a facility, infirmary, or entity that applies for licensure or certification must meet the requirements of those sections or titles and the rules adopted under them and obtain a certificate of need from the director of health under section 3702.52 of the Revised Code.

(F) Nothing in this chapter, or rules adopted pursuant to it, shall be construed as authorizing the supervision, regulation, or control of the spiritual care or treatment of residents or patients in any home who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.

**Sec. 3763.06.** As used in this section, "incompetent person" means a person who is so mentally impaired, as a result of a mental or physical illness or disability, ~~or mental retardation~~ as a result of an intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.

The property, both real and personal, of a defendant against whom a judgment is rendered under sections 3763.01 to 3763.08 of the Revised Code, for fines, costs, or to recover money or any other thing of value, lost or paid, shall be liable therefor without exemption, and such judgment shall be a lien thereon until paid. If the owner of the building in which the money was lost knowingly permits it to be used for gaming purposes, such building, and the real estate upon which it stands, shall be liable therefor in a like manner. The guardian or trustee of a minor or incompetent person, permitting property under the guardian's or trustee's charge to be used for gaming purposes and to become liable on account thereof, shall be liable to the guardian's or trustee's ward for such amount.

**Sec. 3791.031.** (A) As used in this section, "place of public assembly" means:

(1) Enclosed theatres, except the lobby; opera houses; auditoriums; classrooms; elevators; rooms in which persons are confined as a matter of health care, including but not limited to a hospital room and a room in a residential care facility serving as the residence of a person living in such residential care facility;

(2) All buildings and other enclosed structures owned by the state, its agencies, or political subdivisions, including but not limited to hospitals and state institutions for ~~the mentally retarded and the mentally ill~~ and persons with intellectual disabilities; university and college buildings, except rooms within those buildings used primarily as the residences of students or other persons affiliated with the university or college; office buildings; libraries; museums; and vehicles used in public transportation. That portion of a building or other enclosed structure that is owned by the state, a state agency, or a political subdivision and that is used primarily as a food service establishment is not a place of public assembly.

(3) Each portion of a building or enclosed structure that is not included in division (A)(1) or (2) of this section is a place of public assembly if it has a seating capacity of fifty or more persons and is available to the public. Restaurants, food service establishments, dining rooms, cafes, cafeterias, or other rooms used primarily for the service of food, as well as bowling alleys and places licensed by the division of liquor control to sell intoxicating beverages for consumption on the premises, are not places of public assembly.

(B) For the purpose of separating persons who smoke from persons who do not smoke for the comfort and health of persons not smoking, in every place of public assembly there shall be an area

where smoking is not permitted, which shall be designated a no smoking area; provided that, no more than one-half of the rooms in any health care facility in which persons are confined as a matter of health care may be designated as smoking areas in their entirety. The designation shall be made before the place of public assembly is made available to the public. In places included in division (A) (1) of this section, the local fire authority having jurisdiction shall designate the no smoking area. In places included in division (A)(2) of this section that are owned by the state or its agencies, except the capitol square, the director of administrative services shall designate the area, and if the place is owned by a political subdivision, its legislative authority shall designate an officer who shall designate the area. The house rules committee shall designate the no smoking areas in all capitol square spaces used by the house of representatives; the senate rules committee shall designate the no smoking areas in all capitol square spaces used by the senate and the legislative service commission; the capitol square review and advisory board shall designate the no smoking areas in all other spaces in the capitol square. In places included in division (A)(3) of this section, the person having control of the operations of the place of public assembly shall designate the no smoking area. In places included in division (A)(2) of this section which are also included in division (A)(1) of this section, the officer who has authority to designate the area in places in division (A)(2) of this section shall designate the no smoking area. A no smoking area may include the entire place of public assembly. Designations shall be made by the placement of signs that are clearly visible and that state "no smoking." No person shall remove signs from areas designated as no smoking areas.

(C) This section does not affect or modify the prohibition contained in division (B) of section 3313.751 of the Revised Code.

(D) No person shall smoke in any area designated as a no smoking area in accordance with division (B) of this section.

(E) Whoever violates this section is guilty of a minor misdemeanor.

**Sec. 3923.24.** (A) Notwithstanding section 3901.71 of the Revised Code, every certificate furnished by an insurer in connection with, or pursuant to any provision of, any group sickness and accident insurance policy delivered, issued for delivery, renewed, or used in this state on or after January 1, 1972, every policy of sickness and accident insurance delivered, issued for delivery, renewed, or used in this state on or after January 1, 1972, and every multiple employer welfare arrangement offering an insurance program, which provides that coverage of an unmarried dependent child of a parent or legal guardian will terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance both of the following:

(1) Once an unmarried child has attained the limiting age for dependent children, as provided in the policy, upon the request of the insured, the insurer shall offer to cover the unmarried child until the child attains twenty-six years of age if all of the following are true:

(a) The child is the natural child, stepchild, or adopted child of the insured.

(b) The child is a resident of this state or a full-time student at an accredited public or private institution of higher education.

(c) The child is not employed by an employer that offers any health benefit plan under which the child is eligible for coverage.

(d) The child is not eligible for the medicaid program or the medicare program.

(2) That attainment of the limiting age for dependent children shall not operate to terminate

the coverage of a dependent child if the child is and continues to be both of the following:

(a) Incapable of self-sustaining employment by reason of ~~mental retardation~~ an intellectual disability or physical handicap;

(b) Primarily dependent upon the policyholder or certificate holder for support and maintenance.

(B) Proof of such incapacity and dependence for purposes of division (A)(2) of this section shall be furnished by the policyholder or by the certificate holder to the insurer within thirty-one days of the child's attainment of the limiting age. Upon request, but not more frequently than annually after the two-year period following the child's attainment of the limiting age, the insurer may require proof satisfactory to it of the continuance of such incapacity and dependency.

(C) Nothing in this section shall require an insurer to cover a dependent child who ~~is mentally retarded or physically handicapped~~ has an intellectual disability or physical handicap if the contract is underwritten on evidence of insurability based on health factors set forth in the application, or if such dependent child does not satisfy the conditions of the contract as to any requirement for evidence of insurability or other provision of the contract, satisfaction of which is required for coverage thereunder to take effect. In any such case, the terms of the contract shall apply with regard to the coverage or exclusion of the dependent from such coverage. Nothing in this section shall apply to accidental death or dismemberment benefits provided by any such policy of sickness and accident insurance.

(D) Nothing in this section shall do any of the following:

(1) Require that any policy offer coverage for dependent children or provide coverage for an unmarried dependent child's children as dependents on the policy;

(2) Require an employer to pay for any part of the premium for an unmarried dependent child that has attained the limiting age for dependents, as provided in the policy;

(3) Require an employer to offer health insurance coverage to the dependents of any employee.

(E) This section does not apply to any policies or certificates covering only accident, credit, dental, disability income, long-term care, hospital indemnity, medicare supplement, specified disease, or vision care; coverage under a one-time-limited-duration policy that is less than twelve months; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical-payment insurance; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(F) As used in this section, "health benefit plan" has the same meaning as in section 3924.01 of the Revised Code and also includes both of the following:

(1) A public employee benefit plan;

(2) A health benefit plan as regulated under the "Employee Retirement Income Security Act of 1974," 29 U.S.C. 1001, et seq.

**Sec. 3923.241.** (A) Notwithstanding section 3901.71 of the Revised Code, any public employee benefit plan that provides that coverage of an unmarried dependent child will terminate upon attainment of the limiting age for dependent children specified in the plan shall also provide in substance both of the following:

(1) Once an unmarried child has attained the limiting age for dependent children, as provided in the plan, upon the request of the employee, the public employee benefit plan shall offer to cover the unmarried child until the child attains twenty-six years of age if all of the following are true:

(a) The child is the natural child, stepchild, or adopted child of the employee.

(b) The child is a resident of this state or a full-time student at an accredited public or private institution of higher education.

(c) The child is not employed by an employer that offers any health benefit plan under which the child is eligible for coverage.

(d) The child is not eligible for the medicaid program or the medicare program.

(2) That attainment of the limiting age for dependent children shall not operate to terminate the coverage of a dependent child if the child is and continues to be both of the following:

(a) Incapable of self-sustaining employment by reason of ~~mental retardation~~ an intellectual disability or physical handicap;

(b) Primarily dependent upon the plan member for support and maintenance.

(B) Proof of incapacity and dependence for purposes of division (A)(2) of this section shall be furnished to the public employee benefit plan within thirty-one days of the child's attainment of the limiting age. Upon request, but not more frequently than annually, the public employee benefit plan may require proof satisfactory to it of the continuance of such incapacity and dependency.

(C) Nothing in this section shall do any of the following:

(1) Require that any public employee benefit plan offer coverage for dependent children or provide coverage for an unmarried dependent child's children as dependents on the public employee benefit plan;

(2) Require an employer to pay for any part of the premium for an unmarried dependent child that has attained the limiting age for dependents, as provided in the plan;

(3) Require an employer to offer health insurance coverage to the dependents of any employee.

(D) This section does not apply to any public employee benefit plan covering only accident, credit, dental, disability income, long-term care, hospital indemnity, medicare supplement, specified disease, or vision care; coverage under a one-time-limited-duration policy that is less than twelve months; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical-payment insurance; or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(E) As used in this section, "health benefit plan" has the same meaning as in section 3924.01 of the Revised Code and also includes both of the following:

(1) A public employee benefit plan;

(2) A health benefit plan as regulated under the "Employee Retirement Income Security Act of 1974," 29 U.S.C. 1001, et seq.

**Sec. 4112.01.** (A) As used in this chapter:

(1) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons. "Person" also includes, but is not limited to, any owner, lessor, assignor, builder,

manager, broker, salesperson, appraiser, agent, employee, lending institution, and the state and all political subdivisions, authorities, agencies, boards, and commissions of the state.

(2) "Employer" includes the state, any political subdivision of the state, any person employing four or more persons within the state, and any person acting directly or indirectly in the interest of an employer.

(3) "Employee" means an individual employed by any employer but does not include any individual employed in the domestic service of any person.

(4) "Labor organization" includes any organization that exists, in whole or in part, for the purpose of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in relation to employment.

(5) "Employment agency" includes any person regularly undertaking, with or without compensation, to procure opportunities to work or to procure, recruit, refer, or place employees.

(6) "Commission" means the Ohio civil rights commission created by section 4112.03 of the Revised Code.

(7) "Discriminate" includes segregate or separate.

(8) "Unlawful discriminatory practice" means any act prohibited by section 4112.02, 4112.021, or 4112.022 of the Revised Code.

(9) "Place of public accommodation" means any inn, restaurant, eating house, barbershop, public conveyance by air, land, or water, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement of which the accommodations, advantages, facilities, or privileges are available to the public.

(10) "Housing accommodations" includes any building or structure, or portion of a building or structure, that is used or occupied or is intended, arranged, or designed to be used or occupied as the home residence, dwelling, dwelling unit, or sleeping place of one or more individuals, groups, or families whether or not living independently of each other; and any vacant land offered for sale or lease. "Housing accommodations" also includes any housing accommodations held or offered for sale or rent by a real estate broker, salesperson, or agent, by any other person pursuant to authorization of the owner, by the owner, or by the owner's legal representative.

(11) "Restrictive covenant" means any specification limiting the transfer, rental, lease, or other use of any housing accommodations because of race, color, religion, sex, military status, familial status, national origin, disability, or ancestry, or any limitation based upon affiliation with or approval by any person, directly or indirectly, employing race, color, religion, sex, military status, familial status, national origin, disability, or ancestry as a condition of affiliation or approval.

(12) "Burial lot" means any lot for the burial of deceased persons within any public burial ground or cemetery, including, but not limited to, cemeteries owned and operated by municipal corporations, townships, or companies or associations incorporated for cemetery purposes.

(13) "Disability" means a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment.

(14) Except as otherwise provided in section 4112.021 of the Revised Code, "age" means at least forty years old.

(15) "Familial status" means either of the following:

(a) One or more individuals who are under eighteen years of age and who are domiciled with a parent or guardian having legal custody of the individual or domiciled, with the written permission of the parent or guardian having legal custody, with a designee of the parent or guardian;

(b) Any person who is pregnant or in the process of securing legal custody of any individual who is under eighteen years of age.

(16)(a) Except as provided in division (A)(16)(b) of this section, "physical or mental impairment" includes any of the following:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder, including, but not limited to, ~~mental retardation~~ intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) Diseases and conditions, including, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, ~~mental retardation~~ intellectual disability, emotional illness, drug addiction, and alcoholism.

(b) "Physical or mental impairment" does not include any of the following:

(i) Homosexuality and bisexuality;

(ii) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(iii) Compulsive gambling, kleptomania, or pyromania;

(iv) Psychoactive substance use disorders resulting from the current illegal use of a controlled substance or the current use of alcoholic beverages.

(17) "Dwelling unit" means a single unit of residence for a family of one or more persons.

(18) "Common use areas" means rooms, spaces, or elements inside or outside a building that are made available for the use of residents of the building or their guests, and includes, but is not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas, and passageways among and between buildings.

(19) "Public use areas" means interior or exterior rooms or spaces of a privately or publicly owned building that are made available to the general public.

(20) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(21) "Disabled tenant" means a tenant or prospective tenant who is a person with a disability.

(22) "Military status" means a person's status in "service in the uniformed services" as defined in section 5923.05 of the Revised Code.

(23) "Aggrieved person" includes both of the following:

(a) Any person who claims to have been injured by any unlawful discriminatory practice described in division (H) of section 4112.02 of the Revised Code;

(b) Any person who believes that the person will be injured by, any unlawful discriminatory practice described in division (H) of section 4112.02 of the Revised Code that is about to occur.

(B) For the purposes of divisions (A) to (F) of section 4112.02 of the Revised Code, the terms "because of sex" and "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, any illness arising out of and occurring during the course of a pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in division (B) of section 4111.17 of the Revised Code shall be interpreted to permit otherwise. This division shall not be construed to require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or except where medical complications have arisen from the abortion, provided that nothing in this division precludes an employer from providing abortion benefits or otherwise affects bargaining agreements in regard to abortion.

**Sec. 4303.272.** As used in this section, "incompetent person" means a person who is so mentally impaired, as a result of a mental or physical illness or disability, ~~or mental retardation~~ as a result of an intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.

Any permit holder whose permit premises are destroyed or made unusable for any cause, or whose tenancy is terminated for any cause, shall deliver the permit holder's permit to the division of liquor control for safekeeping until such time as the original permit premises are made available for occupancy or new premises are secured by the permit holder or until new premises are secured by the permit holder outside the precinct affected by a local option election.

Unless the permit is to be cancelled as the result of a local option election held pursuant to section 4301.352 of the Revised Code, a permit holder whose permit is to be restricted or cancelled as the result of a local option election pursuant to sections 4301.32 to 4301.41 and 4305.14 of the Revised Code may, within the thirty-day period after the certification of the results of the election to the division, deliver the permit to the division for safekeeping subject to the renewal and transfer provision of this section. A permit holder whose permit is to be cancelled as the result of a local option election held pursuant to section 4301.352 of the Revised Code is not entitled to deliver the permit to the division for safekeeping.

If, as the result of the election, the use of a permit is made wholly unlawful and the permit holder does not deliver or is not entitled to deliver the permit to the division for safekeeping as provided in this section, the division shall forthwith cancel and pick up the permit.

During the period of time that a permit is held in safekeeping by the division, the permit holder shall be allowed to transfer the permit to other premises, subject to the provisions of Chapters 4301. and 4303. of the Revised Code.

If the expiration date of a permit occurs during the time it is held in safekeeping, the permit shall be renewed by the division if the permit holder complies with the other provisions of Chapters 4301. and 4303. of the Revised Code, pertaining to the renewal of a permit. The division shall issue and then retain the renewed permit until the original permit premises become available for occupancy by the permit holder or until the permit holder secures other premises. The division shall return to the permit holder a permit renewed while in safekeeping when the original permit premises are made

available for occupancy or new permit premises are secured by the permit holder, if the premises meet the requirements of Chapters 4301. and 4303. of the Revised Code.

A permit renewed while in safekeeping shall be considered in full force and effect and may be transferred by the division.

Should the permit holder be adjudged an incompetent person or die while the permit holder's permit is in safekeeping, the permit shall be transferred, upon application, by the division to the guardian, administrator, executor, or other fiduciary of the permit holder who shall have the same rights to the transfer, return, and renewal of the permit as is provided in this section for the permit holder.

A permit held in safekeeping shall not be renewed more than once while so held, unless the building from which the permit was taken for safekeeping or the building to which the permit is to be transferred is under construction or reconstruction, in which event the permit shall be held in safekeeping and shall, upon the application of the permit holder, be renewed at each expiration date until the construction or reconstruction of the building is completed.

**Sec. 4399.05.** As used in this section, "incompetent person" means a person who is so mentally impaired, as a result of a mental or physical illness or disability, ~~or mental retardation~~ as a result of an intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.

If a person rents or leases to another a building or premises to be used or occupied, in whole or in part, for the sale of intoxicating liquors, or permits such building or premises to be so used or occupied, such building or premises shall be liable for and may be sold to pay all fines, costs, and damages assessed against a person occupying them. Proceedings may be had to subject them to the payment of such fine and costs assessed or judgment recovered, or part remaining unpaid, either before or after execution issues against the property of the person against whom such fine and costs or judgment have been adjudged or assessed. When execution issues against the property leased or rented, the officer shall proceed to satisfy it out of the building or premises so leased or occupied.

If such building or premises belong to a minor or incompetent person, the guardian having control thereof shall be liable and account to the guardian's ward for all damages on account of such use and occupation, and the liabilities for such fines, costs, and damages.

**Sec. 4723.071.** (A) As used in this section, "health-related activities," "~~MR/DD~~ developmental disabilities personnel," "prescribed medication," and "tube feeding" have the same meanings as in section 5123.41 of the Revised Code.

(B) The board of nursing shall adopt rules as it considers necessary to govern nursing delegation as it applies to ~~MR/DD~~ developmental disabilities personnel who administer prescribed medications, perform health-related activities, and perform tube feedings pursuant to the authority granted under section 5123.42 of the Revised Code. The board shall not establish in the rules any requirement that is inconsistent with the authority of ~~MR/DD~~ developmental disabilities personnel granted under that section. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(C) The board of nursing may accept complaints from any person or government entity regarding the performance or qualifications of ~~MR/DD~~ developmental disabilities personnel who

administer prescribed medications, perform health-related activities, and perform tube feedings pursuant to the authority granted under section 5123.42 of the Revised Code. The board shall refer all complaints received to the department of developmental disabilities. The board may participate in an investigation of a complaint being conducted by the department under section 5123.421 of the Revised Code.

**Sec. 4757.41.** (A) This chapter shall not apply to the following:

(1) A person certified by the state board of education under Chapter 3319. of the Revised Code while performing any services within the person's scope of employment by a board of education or by a private school meeting the standards prescribed by the state board of education under division (D) of section 3301.07 of the Revised Code or in a program operated under Chapter 5126. of the Revised Code for training individuals with ~~mental retardation or other~~ developmental disabilities;

(2) Psychologists or school psychologists licensed under Chapter 4732. of the Revised Code;

(3) Members of other professions licensed, certified, or registered by this state while performing services within the recognized scope, standards, and ethics of their respective professions;

(4) Rabbis, priests, Christian science practitioners, clergy, or members of religious orders and other individuals participating with them in pastoral counseling when the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices or sponsorship of an established and legally cognizable church, denomination, or sect or an integrated auxiliary of a church as defined in federal tax regulations, paragraph (g)(5) of 26 C.F.R. 1.6033-2 (1995), and when the individual rendering the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary;

(5) Any person who is not licensed under this chapter as a licensed professional clinical counselor, licensed professional counselor, independent social worker, or social worker and is employed in the civil service as defined in section 124.01 of the Revised Code while engaging in professional counseling or social work as a civil service employee, if on ~~the effective date of this amendment~~ July 10, 2014, the person has at least two years of service in that capacity;

(6) A student in an accredited educational institution while carrying out activities that are part of the student's prescribed course of study if the activities are supervised as required by the educational institution and if the student does not hold herself or himself out as a person licensed or registered under this chapter;

(7) Individuals who hold a license or certificate under Chapter 4758. of the Revised Code who are acting within the scope of their license or certificate as members of the profession of chemical dependency counseling or alcohol and other drug prevention services;

(8) Any person employed by the American red cross while engaging in activities relating to services for military families and veterans and disaster relief, as described in the "American National Red Cross Act," 33 Stat. 599 (1905), 36 U.S.C.A. 1, as amended;

(9) Members of labor organizations who hold union counselor certificates while performing services in their official capacity as union counselors;

(10) Any person employed in a hospital as defined in section 3727.01 of the Revised Code or in a nursing home as defined in section 3721.01 of the Revised Code while providing as a hospital

employee or nursing home employee, respectively, social services other than counseling and the use of psychosocial interventions and social psychotherapy;

(11) A vocational rehabilitation professional who is providing rehabilitation services to individuals under section 3304.17 of the Revised Code, or holds certification by the commission on rehabilitation counselor certification and is providing rehabilitation counseling services consistent with the commission's standards;

(12) A caseworker not licensed under this chapter as an independent social worker or social worker who is employed by a public children services agency under section 5153.112 of the Revised Code.

(B) Divisions (A)(5) and (10) of this section do not prevent a person described in those divisions from obtaining a license or certificate of registration under this chapter.

(C) Except as provided in divisions (A) and (D) of this section, no employee in the service of the state, including public employees as defined by Chapter 4117. of the Revised Code, shall engage in the practice of professional counseling, social work, or marriage and family therapy without the appropriate license issued by the board. Failure to comply with this division constitutes nonfeasance under section 124.34 of the Revised Code or just cause under a collective bargaining agreement. Nothing in this division restricts the director of administrative services from developing new classifications related to this division or from reassigning affected employees to appropriate classifications based on the employee's duties and qualifications.

(D) Except as provided in division (A) of this section, an employee who was engaged in the practice of professional counseling, social work, or marriage and family therapy in the service of the state prior to ~~the effective date of this amendment July 10, 2014~~, including public employees as defined by Chapter 4117. of the Revised Code, shall comply with division (C) of this section within two years after ~~the effective date of this amendment July 10, 2014~~. Any such employee who fails to comply shall be removed from employment.

(E) Nothing in this chapter prevents a public children services agency from employing as a caseworker a person not licensed under this chapter as an independent social worker or social worker who has the qualifications specified in section 5153.112 of the Revised Code.

**Sec. 4971.16.** As used in this section, "incompetent person" means a person who is so mentally impaired, as a result of a mental or physical illness or disability, ~~or mental retardation as a result of an intellectual disability~~, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.

Persons in interest who fail to become parties to the agreement within the four-month period referred to in section 4971.14 of the Revised Code are entitled to the same rights, interest, estate, remedy, liens, and action, and none other, which parties in interest of like class and amount who signed the agreement obtained by and under it. If a person in interest fails for six years after the publication of the notice mentioned in such section to apply at the principal office of the company, either in person or by proxy, to become a party in interest in the agreement, such person, unless an infant or incompetent person, shall be barred of all interest, claim, right, or action under the agreement or otherwise. In case of such disability such rights shall be extended for two years after the termination of the disability.

**Sec. 5101.46.** (A) As used in this section:

(1) "Title XX" means Title XX of the "Social Security Act," 88 Stat. 2337 (1974), 42 U.S.C.A. 1397, as amended.

(2) "Respective local agency" means, with respect to the department of job and family services, a county department of job and family services; with respect to the department of mental health and addiction services, a board of alcohol, drug addiction, and mental health services; and with respect to the department of developmental disabilities, a county board of developmental disabilities.

(3) "Federal poverty guidelines" means the poverty guidelines as revised annually by the United States department of health and human services in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C.A. 9902, as amended, for a family size equal to the size of the family of the person whose income is being determined.

(B) The departments of job and family services, mental health, and developmental disabilities, with their respective local agencies, shall administer the provision of social services funded through grants made under Title XX. The social services furnished with Title XX funds shall be directed at the following goals:

(1) Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) Achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

(3) Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;

(4) Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care;

(5) Securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

(C)(1) All federal funds received under Title XX shall be appropriated as follows:

(a) Seventy-two and one-half per cent to the department of job and family services;

(b) Twelve and ninety-three one-hundredths per cent to the department of mental health and addiction services;

(c) Fourteen and fifty-seven one-hundredths per cent to the department of developmental disabilities.

(2) Each of the state departments shall, subject to the approval of the controlling board, develop a formula for the distribution of the Title XX funds appropriated to the department to its respective local agencies. The formula developed by each state department shall take into account all of the following for each of its respective local agencies:

(a) The total population of the area that is served by the respective local agency;

(b) The percentage of the population in the area served that falls below the federal poverty guidelines;

(c) The respective local agency's history of and ability to utilize Title XX funds.

(3) Each of the state departments shall expend for state administrative costs not more than three per cent of the Title XX funds appropriated to the department.

Each state department shall establish for each of its respective local agencies the maximum percentage of the Title XX funds distributed to the respective local agency that the respective local agency may expend for local administrative costs. The percentage shall be established by rule and shall comply with federal law governing the use of Title XX funds. The rules shall be adopted in accordance with section 111.15 of the Revised Code as if they were internal management rules.

(4) The department of job and family services shall expend for the training of the following not more than two per cent of the Title XX funds appropriated to the department:

- (a) Employees of county departments of job and family services;
- (b) Providers of services under contract with the state departments' respective local agencies;
- (c) Employees of a public children services agency directly engaged in providing Title XX services.

(5) Title XX funds distributed for the purpose of providing family planning services shall be distributed by the respective local agencies according to the same order of priority that applies to the department of job and family services under section 5101.101 of the Revised Code.

(D) The department of job and family services shall prepare an annual comprehensive Title XX social services plan on the intended use of Title XX funds. The department shall develop a method for obtaining public comment during the development of the plan and following its completion.

For each federal fiscal year, the department of job and family services shall prepare a report on the actual use of Title XX funds. The department shall make the annual report available for public inspection.

The departments of mental health and addiction services and developmental disabilities shall prepare and submit to the department of job and family services the portions of each annual plan and report that apply to services for mental health and ~~mental retardation and~~ developmental disabilities. Each respective local agency of the three state departments shall submit information as necessary for the preparation of annual plans and reports.

(E) Each county department of job and family services shall adopt a county profile for the administration and provision of Title XX social services in the county. In developing its county profile, the county department shall take into consideration the comments and recommendations received from the public by the county family services planning committee pursuant to section 329.06 of the Revised Code. As part of its preparation of the county profile, the county department may prepare a local needs report analyzing the need for Title XX social services.

The county department shall submit the county profile to the board of county commissioners for its review. Once the county profile has been approved by the board, the county department shall file a copy of the county profile with the department of job and family services. The department shall approve the county profile if the department determines the profile provides for the Title XX social services to meet the goals specified in division (B) of this section.

(F) Any of the three state departments and their respective local agencies may require that an entity under contract to provide social services with Title XX funds submit to an audit on the basis of alleged misuse or improper accounting of funds. If an audit is required, the social services provider shall reimburse the state department or respective local agency for the cost it incurred in conducting the audit or having the audit conducted.

If an audit demonstrates that a social services provider is responsible for one or more adverse findings, the provider shall reimburse the appropriate state department or its respective local agency the amount of the adverse findings. The amount shall not be reimbursed with Title XX funds received under this section. The three state departments and their respective local agencies may terminate or refuse to enter into a Title XX contract with a social services provider if there are adverse findings in an audit that are the responsibility of the provider.

(G) Except with respect to the matters for which each of the state departments must adopt rules under division (C)(3) of this section, the department of job and family services may adopt any rules it considers necessary to implement and carry out the purposes of this section. Rules governing financial and operational matters of the department or matters between the department and county departments of job and family services shall be adopted as internal management rules in accordance with section 111.15 of the Revised Code. Rules governing eligibility for services, program participation, and other matters pertaining to applicants and participants shall be adopted in accordance with Chapter 119. of the Revised Code.

**Sec. 5103.02.** As used in sections 5103.03 to 5103.17 of the Revised Code:

(A)(1) "Association" or "institution" includes all of the following:

(a) Any incorporated or unincorporated organization, society, association, or agency, public or private, that receives or cares for children for two or more consecutive weeks;

(b) Any individual, including the operator of a foster home, who, for hire, gain, or reward, receives or cares for children for two or more consecutive weeks, unless the individual is related to them by blood or marriage;

(c) Any individual not in the regular employ of a court, or of an institution or association certified in accordance with section 5103.03 of the Revised Code, who in any manner becomes a party to the placing of children in foster homes, unless the individual is related to such children by blood or marriage or is the appointed guardian of such children.

(2) "Association" or "institution" does not include any of the following:

(a) Any organization, society, association, school, agency, child guidance center, detention or rehabilitation facility, or children's clinic licensed, regulated, approved, operated under the direction of, or otherwise certified by the department of education, a local board of education, the department of youth services, the department of mental health and addiction services, or the department of developmental disabilities;

(b) Any individual who provides care for only a single-family group, placed there by their parents or other relative having custody;

(c) A private, nonprofit therapeutic wilderness camp.

(B) "Family foster home" means a foster home that is not a specialized foster home.

(C) "Foster caregiver" means a person holding a valid foster home certificate issued under section 5103.03 of the Revised Code.

(D) "Foster home" means a private residence in which children are received apart from their parents, guardian, or legal custodian, by an individual reimbursed for providing the children nonsecure care, supervision, or training twenty-four hours a day. "Foster home" does not include care provided for a child in the home of a person other than the child's parent, guardian, or legal custodian while the parent, guardian, or legal custodian is temporarily away. Family foster homes and

specialized foster homes are types of foster homes.

(E) "Medically fragile foster home" means a foster home that provides specialized medical services designed to meet the needs of children with intensive health care needs who meet all of the following criteria:

(1) Under rules adopted by the medicaid director governing medicaid payments for long-term care services, the children require a skilled level of care.

(2) The children require the services of a doctor of medicine or osteopathic medicine at least once a week due to the instability of their medical conditions.

(3) The children require the services of a registered nurse on a daily basis.

(4) The children are at risk of institutionalization in a hospital, skilled nursing facility, or intermediate care facility for individuals with intellectual disabilities.

(F) "Private, nonprofit therapeutic wilderness camp" means a structured, alternative residential setting for children who are experiencing emotional, behavioral, moral, social, or learning difficulties at home or school in which all of the following are the case:

(1) The children spend the majority of their time, including overnight, either outdoors or in a primitive structure.

(2) The children have been placed there by their parents or another relative having custody.

(3) The camp accepts no public funds for use in its operations.

(G) "Recommending agency" means a public children services agency, private child placing agency, or private noncustodial agency that recommends that the department of job and family services take any of the following actions under section 5103.03 of the Revised Code regarding a foster home:

(1) Issue a certificate;

(2) Deny a certificate;

(3) Renew a certificate;

(4) Deny renewal of a certificate;

(5) Revoke a certificate.

(H) "Specialized foster home" means a medically fragile foster home or a treatment foster home.

(I) "Treatment foster home" means a foster home that incorporates special rehabilitative services designed to treat the specific needs of the children received in the foster home and that receives and cares for children who are emotionally or behaviorally disturbed, who are chemically dependent, mentally retarded, developmentally disabled who have developmental disabilities, or who otherwise have exceptional needs.

**Sec. 5119.44.** As used in this section, "free clinic" has the same meaning as in section 2305.2341 of the Revised Code.

(A) The department of mental health and addiction services may provide certain goods and services for the department of mental health and addiction services, the department of developmental disabilities, the department of rehabilitation and correction, the department of youth services, and other state, county, or municipal agencies requesting such goods and services when the department of mental health and addiction services determines that it is in the public interest, and considers it advisable, to provide these goods and services. The department of mental health and addiction

services also may provide goods and services to agencies operated by the United States government and to public or private nonprofit agencies, other than free clinics, that are funded in whole or in part by the state if the public or private nonprofit agencies are designated for participation in this program by the director of mental health and addiction services for community addiction services providers and community mental health services providers, the director of developmental disabilities for community ~~mental retardation and~~ developmental disabilities agencies, the director of rehabilitation and correction for community rehabilitation and correction agencies, or the director of youth services for community youth services agencies.

Designated community agencies or services providers shall receive goods and services through the department of mental health and addiction services only in those cases where the designating state agency certifies that providing such goods and services to the agency or services provider will conserve public resources to the benefit of the public and where the provision of such goods and services is considered feasible by the department of mental health and addiction services.

(B) The department of mental health and addiction services may permit free clinics to purchase certain goods and services to the extent the purchases fall within the exemption to the Robinson-Patman Act, 15 U.S.C. 13 et seq., applicable to nonprofit institutions, in 15 U.S.C. 13c, as amended.

(C) The goods and services that may be provided by the department of mental health and addiction services under divisions (A) and (B) of this section may include:

(1) Procurement, storage, processing, and distribution of food and professional consultation on food operations;

(2) Procurement, storage, and distribution of medical and laboratory supplies, dental supplies, medical records, forms, optical supplies, and sundries, subject to section 5120.135 of the Revised Code;

(3) Procurement, storage, repackaging, distribution, and dispensing of drugs, the provision of professional pharmacy consultation, and drug information services;

(4) Other goods and services.

(D) The department of mental health and addiction services may provide the goods and services designated in division (C) of this section to its institutions and to state-operated community-based mental health or addiction services providers.

(E) After consultation with and advice from the director of developmental disabilities, the director of rehabilitation and correction, and the director of youth services, the department of mental health and addiction services may provide the goods and services designated in division (C) of this section to the department of developmental disabilities, the department of rehabilitation and correction, and the department of youth services.

(F) The cost of administration of this section shall be determined by the department of mental health and addiction services and paid by the agencies, services providers, or free clinics receiving the goods and services to the department for deposit in the state treasury to the credit of the Ohio pharmacy services fund, which is hereby created. The fund shall be used to pay the cost of administration of this section to the department.

(G) Whenever a state agency fails to make a payment for goods and services provided under this section within thirty-one days after the date the payment was due, the office of budget and

management may transfer moneys from the state agency to the department of mental health and addiction services. The amount transferred shall not exceed the amount of overdue payments. Prior to making a transfer under this division, the office of budget and management shall apply any credits the state agency has accumulated in payments for goods and services provided under this section.

(H) Purchases of goods and services under this section are not subject to section 307.86 of the Revised Code.

**Sec. 5120.051.** The department of rehabilitation and correction shall provide for the needs of mentally ill persons and ~~mentally retarded persons~~ with intellectual disabilities who are incarcerated in state correctional institutions. The department may designate an institution or a unit within an institution for the custody, care, special training, treatment, and rehabilitation of mentally ill persons or ~~mentally retarded persons~~ with intellectual disabilities.

**Sec. 5120.11.** Within the department of rehabilitation and correction, there shall be established and maintained a bureau of examination and classification. The bureau shall conduct or provide for sociological, psychological, and psychiatric examination of each inmate of the correctional institutions. The examination shall be made as soon as possible after each inmate is admitted to any of the institutions, and further examinations may be made, if it is advisable. If the inmate is determined to be a ~~mentally retarded or developmentally disabled person~~ with a developmental disability, as defined in section 5123.01 of the Revised Code, the bureau shall notify the sentencing court in writing of its determination within forty-five days after sentencing.

The bureau shall collect such social and other information as will aid in the interpretation of its examinations.

Subject to division (C) of section 5120.21 of the Revised Code, the bureau shall keep a record of the health, activities, and behavior of each inmate while the inmate is in the custody of the state. The records, including the findings and recommendations of the bureau, shall be made available to the adult parole authority for use in imposing post-release control sanctions under section 2967.28 of the Revised Code or any other section of the Revised Code, in granting parole, and in making parole, post-release, and rehabilitation plans for the inmate when the inmate leaves the institution, and to the department for its use in approving transfers of inmates from one institution to another.

**Sec. 5120.17.** (A) As used in this section:

(1) "Mental illness" means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life.

(2) "Mentally ill person subject to hospitalization" means a mentally ill person to whom any of the following applies because of the person's mental illness:

(a) The person represents a substantial risk of physical harm to the person as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm.

(b) The person represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness.

(c) The person represents a substantial and immediate risk of serious physical impairment or

injury to the person as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the correctional institution in which the inmate is currently housed.

(d) The person would benefit from treatment in a hospital for the person's mental illness and is in need of treatment in a hospital as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person.

(3) "Psychiatric hospital" means all or part of a facility that is operated and managed by the department of mental health and addiction services to provide psychiatric hospitalization services in accordance with the requirements of this section pursuant to an agreement between the directors of rehabilitation and correction and mental health and addiction services or, is licensed by the department of mental health and addiction services pursuant to section 5119.33 of the Revised Code as a psychiatric hospital and is accredited by a health care accrediting organization approved by the department of mental health and addiction services and the psychiatric hospital is any of the following:

(a) Operated and managed by the department of rehabilitation and correction within a facility that is operated by the department of rehabilitation and correction;

(b) Operated and managed by a contractor for the department of rehabilitation and correction within a facility that is operated by the department of rehabilitation and correction;

(c) Operated and managed in the community by an entity that has contracted with the department of rehabilitation and correction to provide psychiatric hospitalization services in accordance with the requirements of this section.

(4) "Inmate patient" means an inmate who is admitted to a psychiatric hospital.

(5) "Admitted" to a psychiatric hospital means being accepted for and staying at least one night at the psychiatric hospital.

(6) "Treatment plan" means a written statement of reasonable objectives and goals for an inmate patient that is based on the needs of the inmate patient and that is established by the treatment team, with the active participation of the inmate patient and with documentation of that participation. "Treatment plan" includes all of the following:

(a) The specific criteria to be used in evaluating progress toward achieving the objectives and goals;

(b) The services to be provided to the inmate patient during the inmate patient's hospitalization;

(c) The services to be provided to the inmate patient after discharge from the hospital, including, but not limited to, housing and mental health services provided at the state correctional institution to which the inmate patient returns after discharge or community mental health services.

~~(7) "Mentally retarded person subject to institutionalization by court order" has the same meaning as in section 5123.01 of the Revised Code.~~

~~(8)~~ "Emergency transfer" means the transfer of a mentally ill inmate to a psychiatric hospital when the inmate presents an immediate danger to self or others and requires hospital-level care.

~~(9)~~ ~~(8)~~ "Uncontested transfer" means the transfer of a mentally ill inmate to a psychiatric hospital when the inmate has the mental capacity to, and has waived, the hearing required by division

(B) of this section.

~~(10)~~(9)(a) "Independent decision-maker" means a person who is employed or retained by the department of rehabilitation and correction and is appointed by the chief or chief clinical officer of mental health services as a hospitalization hearing officer to conduct due process hearings.

(b) An independent decision-maker who presides over any hearing or issues any order pursuant to this section shall be a psychiatrist, psychologist, or attorney, shall not be specifically associated with the institution in which the inmate who is the subject of the hearing or order resides at the time of the hearing or order, and previously shall not have had any treatment relationship with nor have represented in any legal proceeding the inmate who is the subject of the order.

(B)(1) Except as provided in division (C) of this section, if the warden of a state correctional institution or the warden's designee believes that an inmate should be transferred from the institution to a psychiatric hospital, the department shall hold a hearing to determine whether the inmate is a mentally ill person subject to hospitalization. The department shall conduct the hearing at the state correctional institution in which the inmate is confined, and the department shall provide qualified independent assistance to the inmate for the hearing. An independent decision-maker provided by the department shall preside at the hearing and determine whether the inmate is a mentally ill person subject to hospitalization.

(2) Except as provided in division (C) of this section, prior to the hearing held pursuant to division (B)(1) of this section, the warden or the warden's designee shall give written notice to the inmate that the department is considering transferring the inmate to a psychiatric hospital, that it will hold a hearing on the proposed transfer at which the inmate may be present, that at the hearing the inmate has the rights described in division (B)(3) of this section, and that the department will provide qualified independent assistance to the inmate with respect to the hearing. The department shall not hold the hearing until the inmate has received written notice of the proposed transfer and has had sufficient time to consult with the person appointed by the department to provide assistance to the inmate and to prepare for a presentation at the hearing.

(3) At the hearing held pursuant to division (B)(1) of this section, the department shall disclose to the inmate the evidence that it relies upon for the transfer and shall give the inmate an opportunity to be heard. Unless the independent decision-maker finds good cause for not permitting it, the inmate may present documentary evidence and the testimony of witnesses at the hearing and may confront and cross-examine witnesses called by the department.

(4) If the independent decision-maker does not find clear and convincing evidence that the inmate is a mentally ill person subject to hospitalization, the department shall not transfer the inmate to a psychiatric hospital but shall continue to confine the inmate in the same state correctional institution or in another state correctional institution that the department considers appropriate. If the independent decision-maker finds clear and convincing evidence that the inmate is a mentally ill person subject to hospitalization, the decision-maker shall order that the inmate be transported to a psychiatric hospital for observation and treatment for a period of not longer than thirty days. After the hearing, the independent decision-maker shall submit to the department a written decision that states one of the findings described in division (B)(4) of this section, the evidence that the decision-maker relied on in reaching that conclusion, and, if the decision is that the inmate should be transferred, the reasons for the transfer.

(C)(1) The department may transfer an inmate to a psychiatric hospital under an emergency transfer order if the chief clinical officer of mental health services of the department or that officer's designee and either a psychiatrist employed or retained by the department or, in the absence of a psychiatrist, a psychologist employed or retained by the department determines that the inmate is mentally ill, presents an immediate danger to self or others, and requires hospital-level care.

(2) The department may transfer an inmate to a psychiatric hospital under an uncontested transfer order if both of the following apply:

(a) A psychiatrist employed or retained by the department determines all of the following apply:

(i) The inmate has a mental illness or is a mentally ill person subject to hospitalization.

(ii) The inmate requires hospital care to address the mental illness.

(iii) The inmate has the mental capacity to make a reasoned choice regarding the inmate's transfer to a hospital.

(b) The inmate agrees to a transfer to a hospital.

(3) The written notice and the hearing required under divisions (B)(1) and (2) of this section are not required for an emergency transfer or uncontested transfer under division (C)(1) or (2) of this section.

(4) After an emergency transfer under division (C)(1) of this section, the department shall hold a hearing for continued hospitalization within five working days after admission of the transferred inmate to the psychiatric hospital. The department shall hold subsequent hearings pursuant to division (F) of this section at the same intervals as required for inmate patients who are transported to a psychiatric hospital under division (B)(4) of this section.

(5) After an uncontested transfer under division (C)(2) of this section, the inmate may withdraw consent to the transfer in writing at any time. Upon the inmate's withdrawal of consent, the hospital shall discharge the inmate, or, within five working days, the department shall hold a hearing for continued hospitalization. The department shall hold subsequent hearings pursuant to division (F) of this section at the same time intervals as required for inmate patients who are transported to a psychiatric hospital under division (B)(4) of this section.

(D)(1) If an independent decision-maker, pursuant to division (B)(4) of this section, orders an inmate transported to a psychiatric hospital or if an inmate is transferred pursuant to division (C)(1) or (2) of this section, the staff of the psychiatric hospital shall examine the inmate patient when admitted to the psychiatric hospital as soon as practicable after the inmate patient arrives at the hospital and no later than twenty-four hours after the time of arrival. The attending physician responsible for the inmate patient's care shall give the inmate patient all information necessary to enable the patient to give a fully informed, intelligent, and knowing consent to the treatment the inmate patient will receive in the hospital. The attending physician shall tell the inmate patient the expected physical and medical consequences of any proposed treatment and shall give the inmate patient the opportunity to consult with another psychiatrist at the hospital and with the inmate advisor.

(2) No inmate patient who is transported or transferred pursuant to division (B)(4) or (C)(1) or (2) of this section to a psychiatric hospital within a facility that is operated by the department of rehabilitation and correction shall be subjected to any of the following procedures:

- (a) Convulsive therapy;
- (b) Major aversive interventions;
- (c) Any unusually hazardous treatment procedures;
- (d) Psychosurgery.

(E) The department of rehabilitation and correction shall ensure that an inmate patient hospitalized pursuant to this section receives or has all of the following:

(1) Receives sufficient professional care within twenty days of admission to ensure that an evaluation of the inmate patient's current status, differential diagnosis, probable prognosis, and description of the current treatment plan have been formulated and are stated on the inmate patient's official chart;

(2) Has a written treatment plan consistent with the evaluation, diagnosis, prognosis, and goals of treatment;

(3) Receives treatment consistent with the treatment plan;

(4) Receives periodic reevaluations of the treatment plan by the professional staff at intervals not to exceed thirty days;

(5) Is provided with adequate medical treatment for physical disease or injury;

(6) Receives humane care and treatment, including, without being limited to, the following:

(a) Access to the facilities and personnel required by the treatment plan;

(b) A humane psychological and physical environment;

(c) The right to obtain current information concerning the treatment program, the expected outcomes of treatment, and the expectations for the inmate patient's participation in the treatment program in terms that the inmate patient reasonably can understand;

(d) Opportunity for participation in programs designed to help the inmate patient acquire the skills needed to work toward discharge from the psychiatric hospital;

(e) The right to be free from unnecessary or excessive medication and from unnecessary restraints or isolation;

(f) All other rights afforded inmates in the custody of the department consistent with rules, policy, and procedure of the department.

(F) The department shall hold a hearing for the continued hospitalization of an inmate patient who is transported or transferred to a psychiatric hospital pursuant to division (B)(4) or (C)(1) of this section prior to the expiration of the initial thirty-day period of hospitalization. The department shall hold any subsequent hearings, if necessary, not later than ninety days after the first thirty-day hearing and then not later than each one hundred and eighty days after the immediately prior hearing. An independent decision-maker shall conduct the hearings at the psychiatric hospital in which the inmate patient is confined. The inmate patient shall be afforded all of the rights set forth in this section for the hearing prior to transfer to the psychiatric hospital. The department may not waive a hearing for continued commitment. A hearing for continued commitment is mandatory for an inmate patient transported or transferred to a psychiatric hospital pursuant to division (B)(4) or (C)(1) of this section unless the inmate patient has the capacity to make a reasoned choice to execute a waiver and waives the hearing in writing. An inmate patient who is transferred to a psychiatric hospital pursuant to an uncontested transfer under division (C)(2) of this section and who has scheduled hearings after withdrawal of consent for hospitalization may waive any of the scheduled hearings if the inmate has

the capacity to make a reasoned choice and executes a written waiver of the hearing.

If upon completion of the hearing the independent decision-maker does not find by clear and convincing evidence that the inmate patient is a mentally ill person subject to hospitalization, the independent decision-maker shall order the inmate patient's discharge from the psychiatric hospital. If the independent decision-maker finds by clear and convincing evidence that the inmate patient is a mentally ill person subject to hospitalization, the independent decision-maker shall order that the inmate patient remain at the psychiatric hospital for continued hospitalization until the next required hearing.

If at any time prior to the next required hearing for continued hospitalization, the medical director of the hospital or the attending physician determines that the treatment needs of the inmate patient could be met equally well in an available and appropriate less restrictive state correctional institution or unit, the medical director or attending physician may discharge the inmate to that facility.

(G) An inmate patient is entitled to the credits toward the reduction of the inmate patient's stated prison term pursuant to Chapters 2967. and 5120. of the Revised Code under the same terms and conditions as if the inmate patient were in any other institution of the department of rehabilitation and correction.

(H) The adult parole authority may place an inmate patient on parole or under post-release control directly from a psychiatric hospital.

(I) If an inmate patient who is a mentally ill person subject to hospitalization is to be released from a psychiatric hospital because of the expiration of the inmate patient's stated prison term, the director of rehabilitation and correction or the director's designee, at least fourteen days before the expiration date, may file an affidavit under section 5122.11 or 5123.71 of the Revised Code with the probate court in the county where the psychiatric hospital is located or the probate court in the county where the inmate will reside, alleging that the inmate patient is a mentally ill person subject to court order, as defined in section 5122.01 of the Revised Code, or a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, as defined in section 5123.01 of the Revised Code, whichever is applicable. The proceedings in the probate court shall be conducted pursuant to Chapter 5122. or 5123. of the Revised Code except as modified by this division.

Upon the request of the inmate patient, the probate court shall grant the inmate patient an initial hearing under section 5122.141 of the Revised Code or a probable cause hearing under section 5123.75 of the Revised Code before the expiration of the stated prison term. After holding a full hearing, the probate court shall make a disposition authorized by section 5122.15 or 5123.76 of the Revised Code before the date of the expiration of the stated prison term. No inmate patient shall be held in the custody of the department of rehabilitation and correction past the date of the expiration of the inmate patient's stated prison term.

(J) The department of rehabilitation and correction shall set standards for treatment provided to inmate patients.

(K) A certificate, application, record, or report that is made in compliance with this section and that directly or indirectly identifies an inmate or former inmate whose hospitalization has been sought under this section is confidential. No person shall disclose the contents of any certificate, application, record, or report of that nature or any other psychiatric or medical record or report

regarding a mentally ill inmate unless one of the following applies:

(1) The person identified, or the person's legal guardian, if any, consents to disclosure, and the chief clinical officer or designee of mental health services of the department of rehabilitation and correction determines that disclosure is in the best interests of the person.

(2) Disclosure is required by a court order signed by a judge.

(3) An inmate patient seeks access to the inmate patient's own psychiatric and medical records, unless access is specifically restricted in the treatment plan for clear treatment reasons.

(4) Hospitals and other institutions and facilities within the department of rehabilitation and correction may exchange psychiatric records and other pertinent information with other hospitals, institutions, and facilities of the department, but the information that may be released about an inmate patient is limited to medication history, physical health status and history, summary of course of treatment in the hospital, summary of treatment needs, and a discharge summary, if any.

(5) An inmate patient's family member who is involved in planning, providing, and monitoring services to the inmate patient may receive medication information, a summary of the inmate patient's diagnosis and prognosis, and a list of the services and personnel available to assist the inmate patient and family if the attending physician determines that disclosure would be in the best interest of the inmate patient. No disclosure shall be made under this division unless the inmate patient is notified of the possible disclosure, receives the information to be disclosed, and does not object to the disclosure.

(6) The department of rehabilitation and correction may exchange psychiatric hospitalization records, other mental health treatment records, and other pertinent information with county sheriffs' offices, hospitals, institutions, and facilities of the department of mental health and addiction services and with community mental health services providers and boards of alcohol, drug addiction, and mental health services with which the department of mental health and addiction services has a current agreement for patient care or services to ensure continuity of care. Disclosure under this division is limited to records regarding a mentally ill inmate's medication history, physical health status and history, summary of course of treatment, summary of treatment needs, and a discharge summary, if any. No office, department, agency, provider, or board shall disclose the records and other information unless one of the following applies:

(a) The mentally ill inmate is notified of the possible disclosure and consents to the disclosure.

(b) The mentally ill inmate is notified of the possible disclosure, an attempt to gain the consent of the inmate is made, and the office, department, agency, or board documents the attempt to gain consent, the inmate's objections, if any, and the reasons for disclosure in spite of the inmate's objections.

(7) Information may be disclosed to staff members designated by the director of rehabilitation and correction for the purpose of evaluating the quality, effectiveness, and efficiency of services and determining if the services meet minimum standards.

The name of an inmate patient shall not be retained with the information obtained during the evaluations.

(L) The director of rehabilitation and correction may adopt rules setting forth guidelines for the procedures required under divisions (B), (C)(1), and (C)(2) of this section.

**Sec. 5120.173.** Any person who is required to report abuse or neglect of a child under eighteen years of age that is reasonably suspected or believed to have occurred or the threat of which is reasonably suspected or believed to exist pursuant to division (A) of section 2151.421 of the Revised Code, any person who is permitted to report or cause a report to be made of reasonably suspected abuse or neglect of a child under eighteen years of age pursuant to division (B) of that section, any person who is required to report suspected abuse or neglect of a person with ~~mental retardation~~ or a developmental disability pursuant to division (C) of section 5123.61 of the Revised Code, and any person who is permitted to report suspected abuse or neglect of a person with ~~mental retardation~~ or a developmental disability pursuant to division (F) of that section and who makes or causes the report to be made, shall direct that report to the state highway patrol if the child or the person with ~~mental retardation~~ or a developmental disability is an inmate in the custody of a state correctional institution. If the state highway patrol determines after receipt of the report that it is probable that abuse or neglect of the inmate occurred, the patrol shall report its findings to the department of rehabilitation and correction, to the court that sentenced the inmate for the offense for which the inmate is in the custody of the department, and to the chairperson and vice-chairperson of the correctional institution inspection committee established by section 103.71 of the Revised Code.

**Sec. 5121.04.** (A) The department of developmental disabilities shall investigate the financial condition of the residents in institutions, residents whose care or treatment is being paid for in a private facility or home under the control of the department, and of the relatives named in section 5121.06 of the Revised Code as liable for the support of such residents, in order to determine the ability of any resident or liable relatives to pay for the support of the resident and to provide suitable clothing as required by the superintendent of the institution.

(B) The department shall follow the provisions of this division in determining the ability to pay of a resident or the resident's liable relatives and the amount to be charged such resident or liable relatives.

(1) Subject to divisions (B)(10) and (11) of this section, a resident without dependents shall be liable for the full applicable cost. A resident without dependents who has a gross annual income equal to or exceeding the sum of the full applicable cost, plus fifty dollars per month, regardless of the source of such income, shall pay currently the full amount of the applicable cost; if the resident's gross annual income is less than such sum, not more than fifty dollars per month shall be kept for personal use by or on behalf of the resident, except as permitted in the state plan for providing medical assistance under Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, and the balance shall be paid currently on the resident's support. Subject to divisions (B) (10) and (11) of this section, the estate of a resident without dependents shall pay currently any remaining difference between the applicable cost and the amounts prescribed in this section, or shall execute an agreement with the department for payment to be made at some future date under terms suitable to the department. However, no security interest, mortgage, or lien shall be taken, granted, or charged against any principal residence of a resident without dependents under an agreement or otherwise to secure support payments, and no foreclosure actions shall be taken on security interests, mortgages, or liens taken, granted, or charged against principal residences of residents prior to October 7, 1977.

(2) The ability to pay of a resident with dependents, or of a liable relative of a resident either

with or without dependents, shall be determined in accordance with the resident's or liable relative's income or other assets, the needs of others who are dependent on such income and other assets for support, and, if applicable, divisions (B)(10) and (11) of this section.

For the first thirty days of care and treatment of each admission, but in no event for more than thirty days in any calendar year, the resident with dependents or the liable relative of a resident either with or without dependents shall be charged an amount equal to the percentage of the average applicable cost determined in accordance with the schedule of adjusted gross annual income contained after this paragraph. After such first thirty days of care and treatment, such resident or such liable relative shall be charged an amount equal to the percentage of a base support rate of four dollars per day for residents, as determined in accordance with the schedule of gross annual income contained after this paragraph, or in accordance with division (B)(5) of this section. Beginning January 1, 1978, the department shall increase the base rate when the consumer price index average is more than 4.0 for the preceding calendar year by not more than the average for such calendar year.

Adjusted Gross Annual  
Income of Resident

or Liable Relative (FN a)	Number of Dependents (FN b)							
	1	2	3	4	5	6	7	8 or more
	Rate of Support (In Percentages)							
\$15,000 or less--	--	--	--	--	--	--	--	--
15,001 to 17,500	20	--	--	--	--	--	--	--
17,501 to 20,000	25	20	--	--	--	--	--	--
20,001 to 21,000	30	25	20	--	--	--	--	--
21,001 to 22,000	35	30	25	20	--	--	--	--
22,001 to 23,000	40	35	30	25	20	--	--	--
23,001 to 24,000	45	40	35	30	25	20	--	--
24,001 to 25,000	50	45	40	35	30	25	20	--
25,001 to 26,000	55	50	45	40	35	30	25	20
26,001 to 27,000	60	55	50	45	40	35	30	25
27,001 to 28,000	70	60	55	50	45	40	35	30
28,001 to 30,000	80	70	60	55	50	45	40	35
30,001 to 40,000	90	80	70	60	55	50	45	40
40,001 and over	100	90	80	70	60	55	50	45

Footnote a. The resident or relative shall furnish a copy of the resident's or relative's federal income tax return as evidence of gross annual income.

Footnote b. The number of dependents includes the liable relative but excludes a resident in an institution. "Dependent" includes any person who receives more than half the person's support from the resident or the resident's liable relative.

(3) A resident or liable relative having medical, funeral, or related expenses in excess of four per cent of the adjusted gross annual income, which expenses were not covered by insurance, may adjust such gross annual income by reducing the adjusted gross annual income by the full amount of such expenses. Proof of such expenses satisfactory to the department must be furnished.

(4) Additional dependencies may be claimed if:

(a) The liable relative is blind;

(b) The liable relative is over sixty-five;

(c) A child is a college student with expenses in excess of fifty dollars per month;

(d) The services of a housekeeper, costing in excess of fifty dollars per month, are required if the person who normally keeps house for minor children is the resident.

(5) If with respect to any resident with dependents there is chargeable under division (B)(2) of this section less than fifty per cent of the applicable cost or, if the base support rate was used, less than fifty per cent of the amount determined by use of the base support rate, and if with respect to such resident there is a liable relative who has an estate having a value in excess of fifteen thousand dollars or if such resident has a dependent and an estate having a value in excess of fifteen thousand dollars, there shall be paid with respect to such resident a total of fifty per cent of the applicable cost or the base support rate amount, as the case may be, on a current basis or there shall be executed with respect to such resident an agreement with the department for payment to be made at some future date under terms suitable to the department.

(6) When a person has been a resident for fifteen years and the support charges for which a relative is liable have been paid for the fifteen-year period, the liable relative shall be relieved of any further support charges.

(7) The department shall accept voluntary payments from residents or liable relatives whose incomes are below the minimum shown in the schedule set forth in this division. The department also shall accept voluntary payments in excess of required amounts from both liable and nonliable relatives.

(8) If a resident is covered by an insurance policy, or other contract that provides for payment of expenses for care and treatment for ~~mental retardation or other~~ a developmental disability at or from an institution or facility (including a community service unit under the jurisdiction of the department), the other provisions of this section, except divisions (B)(8), (10), and (11) of this section, and of section 5121.01 of the Revised Code shall be suspended to the extent that such insurance policy or other contract is in force, and such resident shall be charged the full amount of the applicable cost. Any insurance carrier or other third party payor providing coverage for such care and treatment shall pay for this support obligation in an amount equal to the lesser of either the applicable cost or the benefits provided under the policy or other contract. Whether or not an insured, owner of, or other person having an interest in such policy or other contract is liable for support payments under other provisions of this chapter, the insured, policy owner, or other person shall assign payment directly to the department of all assignable benefits under the policy or other contract and shall pay over to the department, within ten days of receipt, all insurance or other benefits

received as reimbursement or payment for expenses incurred by the resident or for any other reason. If the insured, policy owner, or other person refuses to assign such payment to the department or refuses to pay such received reimbursements or payments over to the department within ten days of receipt, the insured's, policy owners', or other person's total liability for the services equals the applicable statutory liability for payment for the services as determined under other provisions of this chapter, plus the amounts payable under the terms of the policy or other contract. In no event shall this total liability exceed the full amount of the applicable cost. Upon its request, the department is entitled to a court order that compels the insured, owner of, or other person having an interest in the policy or other contract to comply with the assignment requirements of this division or that itself serves as a legally sufficient assignment in compliance with such requirements. Notwithstanding section 5123.89 of the Revised Code and any other law relating to confidentiality of records, the managing officer of the institution or facility where a person is or has been a resident shall disclose pertinent medical information concerning the resident to the insurance carrier or other third party payor in question, in order to effect collection from the carrier or payor of the state's claim for care and treatment under this division. For such disclosure, the managing officer is not subject to any civil or criminal liability.

(9) The rate to be charged for pre-admission care, after-care, day-care, or routine consultation and treatment services shall be based upon the ability of the resident or the resident's liable relatives to pay. When it is determined by the department that a charge shall be made, such charge shall be computed as provided in divisions (B)(1) and (2) of this section.

(10) If a resident with or without dependents is the beneficiary of a trust created pursuant to section 5815.28 of the Revised Code, then, notwithstanding any contrary provision of this chapter or of a rule adopted pursuant to this chapter, divisions (C) and (D) of that section shall apply in determining the assets or resources of the resident, the resident's estate, the settlor, or the settlor's estate and to claims arising under this chapter against the resident, the resident's estate, the settlor, or the settlor's estate.

(11) If the department waives the liability of an individual and the individual's liable relatives pursuant to section 5123.194 of the Revised Code, the liability of the individual and relative ceases in accordance with the waiver's terms.

(C) The department may enter into agreements with a resident or a liable relative for support payments to be made in the future. However, no security interest, mortgage, or lien shall be taken, granted, or charged against any principal family residence of a resident with dependents or a liable relative under an agreement or otherwise to secure support payments, and no foreclosure actions shall be taken on security interests, mortgages or liens taken, granted, or charged against principal residences of residents or liable relatives prior to October 7, 1977.

(D) The department shall make all investigations and determinations required by this section within ninety days after a resident is admitted to an institution under the department's control and immediately shall notify by mail the persons liable of the amount to be charged.

(E) All actions to enforce the collection of payments agreed upon or charged by the department shall be commenced within six years after the date of default of an agreement to pay support charges or the date such payment becomes delinquent. If a payment is made pursuant to an agreement which is in default, a new six-year period for actions to enforce the collection of payments

under such agreement shall be computed from the date of such payment. For purposes of this division an agreement is in default or a payment is delinquent if a payment is not made within thirty days after it is incurred or a payment, pursuant to an agreement, is not made within thirty days after the date specified for such payment. In all actions to enforce the collection of payment for the liability for support, every court of record shall receive into evidence the proof of claim made by the state together with all debts and credits, and it shall be prima-facie evidence of the facts contained in it.

**Sec. 5122.01.** As used in this chapter and Chapter 5119. of the Revised Code:

(A) "Mental illness" means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life.

(B) "Mentally ill person subject to court order" means a mentally ill person who, because of the person's illness:

(1) Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;

(2) Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;

(3) Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the community; or

(4) Would benefit from treatment for the person's mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person;

(5)(a) Would benefit from treatment as manifested by evidence of behavior that indicates all of the following:

(i) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.

(ii) The person has a history of lack of compliance with treatment for mental illness and one of the following applies:

(I) At least twice within the thirty-six months prior to the filing of an affidavit seeking court-ordered treatment of the person under section 5122.111 of the Revised Code, the lack of compliance has been a significant factor in necessitating hospitalization in a hospital or receipt of services in a forensic or other mental health unit of a correctional facility, provided that the thirty-six-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the thirty-six-month period.

(II) Within the forty-eight months prior to the filing of an affidavit seeking court-ordered treatment of the person under section 5122.111 of the Revised Code, the lack of compliance resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others, provided that the forty-eight-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the forty-eight-month period.

(iii) The person, as a result of the person's mental illness, is unlikely to voluntarily participate in necessary treatment.

(iv) In view of the person's treatment history and current behavior, the person is in need of treatment in order to prevent a relapse or deterioration that would be likely to result in substantial risk of serious harm to the person or others.

(b) An individual who meets only the criteria described in division (B)(5)(a) of this section is not subject to hospitalization.

(C)(1) "Patient" means, subject to division (C)(2) of this section, a person who is admitted either voluntarily or involuntarily to a hospital or other place under section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code subsequent to a finding of not guilty by reason of insanity or incompetence to stand trial or under this chapter, who is under observation or receiving treatment in such place.

(2) "Patient" does not include a person admitted to a hospital or other place under section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code to the extent that the reference in this chapter to patient, or the context in which the reference occurs, is in conflict with any provision of sections 2945.37 to 2945.402 of the Revised Code.

(D) "Licensed physician" means a person licensed under the laws of this state to practice medicine or a medical officer of the government of the United States while in this state in the performance of the person's official duties.

(E) "Psychiatrist" means a licensed physician who has satisfactorily completed a residency training program in psychiatry, as approved by the residency review committee of the American medical association, the committee on post-graduate education of the American osteopathic association, or the American osteopathic board of neurology and psychiatry, or who on July 1, 1989, has been recognized as a psychiatrist by the Ohio state medical association or the Ohio osteopathic association on the basis of formal training and five or more years of medical practice limited to psychiatry.

(F) "Hospital" means a hospital or inpatient unit licensed by the department of mental health and addiction services under section 5119.33 of the Revised Code, and any institution, hospital, or other place established, controlled, or supervised by the department under Chapter 5119. of the Revised Code.

(G) "Public hospital" means a facility that is tax-supported and under the jurisdiction of the department of mental health and addiction services.

(H) "Community mental health services provider" means an agency, association, corporation, individual, or program that provides community mental health services that are certified by the director of mental health and addiction services under section 5119.36 of the Revised Code.

(I) "Licensed clinical psychologist" means a person who holds a current valid psychologist license issued under section 4732.12 of the Revised Code, and in addition, meets the educational requirements set forth in division (B) of section 4732.10 of the Revised Code and has a minimum of two years' full-time professional experience, or the equivalent as determined by rule of the state board of psychology, at least one year of which shall be a predoctoral internship, in clinical psychological work in a public or private hospital or clinic or in private practice, diagnosing and treating problems of mental illness or ~~mental retardation~~ intellectual disability under the supervision

of a psychologist who is licensed or who holds a diploma issued by the American board of professional psychology, or whose qualifications are substantially similar to those required for licensure by the state board of psychology when the supervision has occurred prior to enactment of laws governing the practice of psychology.

(J) "Health officer" means any public health physician; public health nurse; or other person authorized ~~by~~ or designated by a city ~~health district; a~~ or general health district; or a board of alcohol, drug addiction, and mental health services to perform the duties of a health officer under this chapter.

(K) "Chief clinical officer" means the medical director of a hospital, ~~or a~~ community mental health services provider, or a board of alcohol, drug addiction, and mental health services, or, if there is no medical director, the licensed physician responsible for the treatment provided by a hospital or community mental health services provider ~~provides~~. The chief clinical officer may delegate to the attending physician responsible for a patient's care the duties imposed on the chief clinical officer by this chapter. Within a community mental health services provider, the chief clinical officer shall be designated by the governing body of the services provider and shall be a licensed physician or licensed clinical psychologist who supervises diagnostic and treatment services. A licensed physician or licensed clinical psychologist designated by the chief clinical officer may perform the duties and accept the responsibilities of the chief clinical officer in the chief clinical officer's absence.

(L) "Working day" or "court day" means Monday, Tuesday, Wednesday, Thursday, and Friday, except when such day is a holiday.

(M) "Indigent" means unable without deprivation of satisfaction of basic needs to provide for the payment of an attorney and other necessary expenses of legal representation, including expert testimony.

(N) "Respondent" means the person whose detention, commitment, hospitalization, continued hospitalization or commitment, or discharge is being sought in any proceeding under this chapter.

(O) "Ohio protection and advocacy system" has the same meaning as in section 5123.60 of the Revised Code.

(P) "Independent expert evaluation" means an evaluation conducted by a licensed clinical psychologist, psychiatrist, or licensed physician who has been selected by the respondent or the respondent's counsel and who consents to conducting the evaluation.

(Q) "Court" means the probate division of the court of common pleas.

(R) "Expunge" means:

(1) The removal and destruction of court files and records, originals and copies, and the deletion of all index references;

(2) The reporting to the person of the nature and extent of any information about the person transmitted to any other person by the court;

(3) Otherwise insuring that any examination of court files and records in question shall show no record whatever with respect to the person;

(4) That all rights and privileges are restored, and that the person, the court, and any other person may properly reply that no such record exists, as to any matter expunged.

(S) "Residence" means a person's physical presence in a county with intent to remain there, except that:

(1) If a person is receiving a mental health service at a facility that includes nighttime

sleeping accommodations, residence means that county in which the person maintained the person's primary place of residence at the time the person entered the facility;

(2) If a person is committed pursuant to section 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code, residence means the county where the criminal charges were filed.

When the residence of a person is disputed, the matter of residence shall be referred to the department of mental health and addiction services for investigation and determination. Residence shall not be a basis for a board's denying services to any person present in the board's service district, and the board shall provide services for a person whose residence is in dispute while residence is being determined and for a person in an emergency situation.

(T) "Admission" to a hospital or other place means that a patient is accepted for and stays at least one night at the hospital or other place.

(U) "Prosecutor" means the prosecuting attorney, village solicitor, city director of law, or similar chief legal officer who prosecuted a criminal case in which a person was found not guilty by reason of insanity, who would have had the authority to prosecute a criminal case against a person if the person had not been found incompetent to stand trial, or who prosecuted a case in which a person was found guilty.

(V)(1) "Treatment plan" means a written statement of reasonable objectives and goals for an individual established by the treatment team, with specific criteria to evaluate progress towards achieving those objectives.

(2) The active participation of the patient in establishing the objectives and goals shall be documented. The treatment plan shall be based on patient needs and include services to be provided to the patient while the patient is hospitalized, after the patient is discharged, or in an outpatient setting. The treatment plan shall address services to be provided. In the establishment of the treatment plan, consideration should be given to the availability of services, which may include but are not limited to all of the following:

- (a) Community psychiatric supportive treatment;
- (b) Assertive community treatment;
- (c) Medications;
- (d) Individual or group therapy;
- (e) Peer support services;
- (f) Financial services;
- (g) Housing or supervised living services;
- (h) Alcohol or substance abuse treatment;
- (i) Any other services prescribed to treat the patient's mental illness and to either assist the patient in living and functioning in the community or to help prevent a relapse or a deterioration of the patient's current condition.

(3) If the person subject to the treatment plan has executed an advanced directive for mental health treatment, the treatment team shall consider any directions included in such advanced directive in developing the treatment plan.

(W) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(X) "Post-release control sanction" has the same meaning as in section 2967.01 of the

Revised Code.

(Y) "Local correctional facility" has the same meaning as in section 2903.13 of the Revised Code.

**Sec. 5123.01.** As used in this chapter:

(A) "Chief medical officer" means the licensed physician appointed by the managing officer of an institution for ~~the mentally retarded~~ persons with intellectual disabilities with the approval of the director of developmental disabilities to provide medical treatment for residents of the institution.

(B) "Chief program director" means a person with special training and experience in the diagnosis and management of ~~the mentally retarded~~ persons with developmental disabilities, certified according to division (C) of this section in at least one of the designated fields, and appointed by the managing officer of an institution for ~~the mentally retarded~~ persons with intellectual disabilities with the approval of the director to provide habilitation and care for residents of the institution.

(C) "Comprehensive evaluation" means a study, including a sequence of observations and examinations, of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions if any, by a group of persons with special training and experience in the diagnosis and management of persons with ~~mental retardation or a developmental disability~~ disabilities, which group shall include individuals who are professionally qualified in the fields of medicine, psychology, and social work, together with such other specialists as the individual case may require.

(D) "Education" means the process of formal training and instruction to facilitate the intellectual and emotional development of residents.

(E) "Habilitation" means the process by which the staff of the institution assists the resident in acquiring and maintaining those life skills that enable the resident to cope more effectively with the demands of the resident's own person and of the resident's environment and in raising the level of the resident's physical, mental, social, and vocational efficiency. Habilitation includes but is not limited to programs of formal, structured education and training.

(F) "Health officer" means any public health physician, public health nurse, or other person authorized or designated by a city or general health district.

(G) "Home and community-based services" means medicaid-funded home and community-based services specified in division (A)(1) of section 5166.20 of the Revised Code provided under the medicaid waiver components the department of developmental disabilities administers pursuant to section 5166.21 of the Revised Code. Except as provided in section 5123.0412 of the Revised Code, home and community-based services provided under the medicaid waiver component known as the transitions developmental disabilities waiver are to be considered to be home and community-based services for the purposes of this chapter, and Chapters 5124. and 5126. of the Revised Code, only to the extent, if any, provided by the contract required by section 5166.21 of the Revised Code regarding the waiver.

(H) "ICF/IID" has the same meaning as in section 5124.01 of the Revised Code.

(I) "Indigent person" means a person who is unable, without substantial financial hardship, to provide for the payment of an attorney and for other necessary expenses of legal representation, including expert testimony.

(J) "Institution" means a public or private facility, or a part of a public or private facility, that is licensed by the appropriate state department and is equipped to provide residential habilitation,

care, and treatment for ~~the mentally retarded~~ persons with intellectual disabilities.

(K) "Licensed physician" means a person who holds a valid certificate issued under Chapter 4731. of the Revised Code authorizing the person to practice medicine and surgery or osteopathic medicine and surgery, or a medical officer of the government of the United States while in the performance of the officer's official duties.

(L) "Managing officer" means a person who is appointed by the director of developmental disabilities to be in executive control of an institution ~~for the mentally retarded~~ under the jurisdiction of the department of developmental disabilities.

(M) "Medicaid case management services" means case management services provided to an individual with ~~mental retardation or other~~ a developmental disability that the state medicaid plan requires.

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

(O) "~~Mentally retarded person~~ Person with an intellectual disability subject to institutionalization by court order" means a person eighteen years of age or older ~~who is with~~ at least moderately mentally retarded a moderate level of intellectual disability and in relation to whom, because of the person's ~~retardation~~ disability, either of the following conditions ~~exist~~ exists:

(1) The person represents a very substantial risk of physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's most basic physical needs and that provision for those needs is not available in the community;

(2) The person needs and is susceptible to significant habilitation in an institution.

(P) "~~A person who is at least moderately mentally retarded~~Moderate level of intellectual disability" means the condition in which a person who is found, following a comprehensive evaluation, is found to be impaired in adaptive behavior to a have at least moderate degree and to be functioning at the moderate level of deficits in overall intellectual functioning, as indicated by a full-scale intelligence quotient test score of fifty-five or below, and at least moderate deficits in adaptive behavior, as determined in accordance with ~~standard measurements as recorded in the most current revision of the manual of terminology and classification in mental retardation~~ the criteria established in the fifth edition of the diagnostic and statistical manual of mental disorders published by the American psychiatric association on mental retardation.

(Q) ~~As used in this division, "developmental delay" has the meaning established pursuant to section 5123.011 of the Revised Code.~~

"Developmental disability" means a severe, chronic disability that is characterized by all of the following:

(1) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness, as defined in division (A) of section 5122.01 of the Revised Code.

(2) It is manifested before age twenty-two.

(3) It is likely to continue indefinitely.

(4) It results in one of the following:

(a) In the case of a person under three years of age, at least one developmental delay, as

defined in rules adopted under section 5123.011 of the Revised Code, or a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay, as defined in those rules;

(b) In the case of a person at least three years of age but under six years of age, at least two developmental delays, as defined in rules adopted under section 5123.011 of the Revised Code;

(c) In the case of a person six years of age or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is at least sixteen years of age, capacity for economic self-sufficiency.

(5) It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.

"Developmental disability" includes intellectual disability.

~~(R) "Developmentally disabled person" means a person with a developmental disability.~~

~~(S) "State institution" means an institution that is tax-supported and under the jurisdiction of the department of developmental disabilities.~~

~~(F)(S) "Residence" and "legal residence" have the same meaning as "legal settlement,"~~ which is acquired by residing in Ohio for a period of one year without receiving general assistance prior to July 17, 1995, under former Chapter 5113. of the Revised Code, financial assistance under Chapter 5115. of the Revised Code, or assistance from a private agency that maintains records of assistance given. A person having a legal settlement in the state shall be considered as having legal settlement in the assistance area in which the person resides. No adult person coming into this state and having a spouse or minor children residing in another state shall obtain a legal settlement in this state as long as the spouse or minor children are receiving public assistance, care, or support at the expense of the other state or its subdivisions. For the purpose of determining the legal settlement of a person who is living in a public or private institution or in a home subject to licensing by the department of job and family services, the department of mental health and addiction services, or the department of developmental disabilities, the residence of the person shall be considered as though the person were residing in the county in which the person was living prior to the person's entrance into the institution or home. Settlement once acquired shall continue until a person has been continuously absent from Ohio for a period of one year or has acquired a legal residence in another state. A woman who marries a man with legal settlement in any county immediately acquires the settlement of her husband. The legal settlement of a minor is that of the parents, surviving parent, sole parent, parent who is designated the residential parent and legal custodian by a court, other adult having permanent custody awarded by a court, or guardian of the person of the minor, provided that:

(1) A minor female who marries shall be considered to have the legal settlement of her husband and, in the case of death of her husband or divorce, she shall not thereby lose her legal settlement obtained by the marriage.

(2) A minor male who marries, establishes a home, and who has resided in this state for one year without receiving general assistance prior to July 17, 1995, under former Chapter 5113. of the Revised Code, financial assistance under Chapter 5115. of the Revised Code, or assistance from a private agency that maintains records of assistance given shall be considered to have obtained a legal

settlement in this state.

(3) The legal settlement of a child under eighteen years of age who is in the care or custody of a public or private child caring agency shall not change if the legal settlement of the parent changes until after the child has been in the home of the parent for a period of one year.

No person, adult or minor, may establish a legal settlement in this state for the purpose of gaining admission to any state institution.

~~(U)~~~~(T)~~(1) "Resident" means, subject to division ~~(U)~~~~(T)~~(2) of this section, a person who is admitted either voluntarily or involuntarily to an institution or other facility pursuant to section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code subsequent to a finding of not guilty by reason of insanity or incompetence to stand trial or under this chapter who is under observation or receiving habilitation and care in an institution.

(2) "Resident" does not include a person admitted to an institution or other facility under section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code to the extent that the reference in this chapter to resident, or the context in which the reference occurs, is in conflict with any provision of sections 2945.37 to 2945.402 of the Revised Code.

~~(V)~~~~(U)~~ "Respondent" means the person whose detention, commitment, or continued commitment is being sought in any proceeding under this chapter.

~~(W)~~~~(V)~~ "Working day" and "court day" mean Monday, Tuesday, Wednesday, Thursday, and Friday, except when such day is a legal holiday.

~~(X)~~~~(W)~~ "Prosecutor" means the prosecuting attorney, village solicitor, city director of law, or similar chief legal officer who prosecuted a criminal case in which a person was found not guilty by reason of insanity, who would have had the authority to prosecute a criminal case against a person if the person had not been found incompetent to stand trial, or who prosecuted a case in which a person was found guilty.

~~(Y)~~~~(X)~~ "Court" means the probate division of the court of common pleas.

~~(Z)~~~~(Y)~~ "Supported living" and "residential services" have the same meanings as in section 5126.01 of the Revised Code.

**Sec. 5123.012.** (A) As used in this section, "preschool child with a disability" has the same meaning as in section 3323.01 of the Revised Code.

(B) Except as provided in division (C) of this section, the department of developmental disabilities shall make eligibility determinations in accordance with the definition of "developmental disability" contained in section 5123.01 of the Revised Code. The department may adopt rules in accordance with Chapter 119. of the Revised Code establishing eligibility for programs and services for any preschool child with a disability eligible for services under section 3323.02 of the Revised Code whose disability is not attributable solely to mental illness, as defined in section 5122.01 of the Revised Code.

(C)(1) The department shall make determinations of eligibility for protective services in accordance with sections 5123.55 to 5123.59 of the Revised Code.

(2) Determinations of whether a ~~mentally-retarded~~ person with an intellectual disability is subject to institutionalization by court order shall be made in accordance with sections 5123.71 to 5123.76 of the Revised Code and shall be based on the definition of "~~mentally-retarded~~ person with an intellectual disability subject to institutionalization by court order" contained in section 5123.01 of

the Revised Code.

(3) All persons who were eligible for services and enrolled in programs offered by the department of developmental disabilities pursuant to this chapter on July 1, 1991, shall continue to be eligible for those services and to be enrolled in those programs as long as they are in need of services.

**Sec. 5123.014.** Whenever the department or director of mental retardation and developmental disabilities is referred to or designated in any statute, rule, contract, grant, or other document, the reference or designation ~~shall be~~ is deemed to refer to the department or director of developmental disabilities, as the case may be.

Whenever "mental retardation" or any derivation of that term is referred to or designated in any statute, rule, contract, grant, or other document, the reference or designation is deemed to have the same meaning established by or derived from the definition of "intellectual disability" contained in section 5123.01 or 5126.01 of the Revised Code, as the case may be.

Whenever "mentally retarded person subject to institutionalization by court order" or any derivation of that term is referred to or designated in any statute, rule, contract, grant, or other document, the reference or designation is deemed to have the same meaning established by or derived from the definition of "person with an intellectual disability subject to institutionalization by court order" contained in section 5123.01 of the Revised Code, including the definition of "moderate level of intellectual disability" contained in that section.

**Sec. 5123.02.** The department of developmental disabilities shall do the following:

(A) Promote comprehensive statewide programs and services for persons with ~~mental retardation or a developmental disability~~ disabilities and their families wherever they reside in the state. These programs shall include public education, prevention, diagnosis, treatment, training, and care.

(B) Provide administrative leadership for statewide services which include residential facilities, evaluation centers, and community classes which are wholly or in part financed by the department of developmental disabilities as provided by section 5123.26 of the Revised Code;

(C) Develop and maintain, to the extent feasible, data on all services and programs ~~for persons with mental retardation or a developmental disability~~, that are provided by governmental and private agencies provide for persons with developmental disabilities;

(D) Make periodic determinations of the number of persons with ~~mental retardation or a developmental disability~~ disabilities requiring services in the state;

(E) Provide leadership to local authorities in planning and developing community-wide services for persons with ~~mental retardation or a developmental disability~~ disabilities and their families;

(F) Promote programs of professional training and research in cooperation with other state departments, agencies, and institutions of higher learning.

**Sec. 5123.03.** (A) The department of developmental disabilities shall do all of the following:

(1) Maintain, operate, manage, and govern all state institutions for the care, treatment, and training of ~~the mentally retarded persons with intellectual disabilities;~~

(2) Designate all such institutions by appropriate names;

(3) Provide and designate facilities for the custody, care, and special treatment of persons of

the following classes:

(a) Dangerous persons in state institutions for ~~the mentally retarded persons with intellectual disabilities~~ who represent a serious threat to the safety of the other patients of the institution;

(b) Persons charged with crimes who are found incompetent to stand trial or not guilty by reason of insanity and who are also ~~mentally retarded persons with intellectual disabilities~~ subject to institutionalization by court order.

(4) Have control of all institutions maintained in part by the state for the care, treatment, and training of ~~the mentally retarded persons with intellectual disabilities~~;

(5) Administer the laws relative to persons in such institutions in an efficient, economical, and humane manner;

(6) Ascertain by actual examinations and inquiry whether institutionalizations are made according to law.

(B) The department may do any of the following:

(1) Subject to section 5139.08 of the Revised Code, receive from the department of youth services for observation, diagnosis, care, habilitation, or placement any children in the custody of the department of youth services;

(2) Receive for observation any minor from a public institution other than an institution under the jurisdiction of the department of developmental disabilities, from a private charitable institution, or from a person having legal custody of such a minor, upon such terms as are proper;

(3) Receive from the department of mental health and addiction services any patient in the custody of the department who is transferred to the department of developmental disabilities upon such terms and conditions as may be agreed upon by the two departments.

(C) In addition to the powers and duties expressly conferred by this section, the department may take any other action necessary for the full and efficient executive, administrative, and fiscal supervision of the state institutions described in this section.

**Sec. 5123.033.** The program fee fund is hereby created in the state treasury. All fees collected pursuant to sections 5123.161, 5123.164, and 5123.19 of the Revised Code shall be credited to the fund. Money credited to the fund shall be used solely for the department of developmental disabilities' duties under sections 5123.16 to 5123.1611 and 5123.19 of the Revised Code and to provide continuing education and professional training to providers of services to individuals with ~~mental retardation or a developmental disability~~ disabilities. If the money credited to the fund is inadequate to pay all of the department's costs in performing those duties and providing the continuing education and professional training, the department may use other available funds appropriated to the department to pay the remaining costs of performing those duties and providing the continuing education and professional training.

**Sec. 5123.04.** (A) The director of developmental disabilities is the executive head of the department of developmental disabilities. All duties conferred on the department and its institutions by law or by order of the director shall be performed under such rules as the director prescribes, and shall be under the director's control. The director shall establish bylaws for the government of all institutions under the jurisdiction of the department. Except as otherwise is provided as to appointments by chiefs of divisions, the director shall appoint such employees as are necessary for the efficient conduct of the department, and shall prescribe their titles and duties. If the director is not

a licensed physician, decisions relating to medical diagnosis and treatment shall be the responsibility of a licensed physician appointed by the director.

(B) The director shall adopt rules for the proper execution of the powers and duties of the department.

(C) The director shall adopt rules establishing standards that ~~mental retardation~~ programs and facilities for persons with intellectual disabilities shall follow when performing evaluations of the mental condition of defendants ordered by the court under section 2919.271 or 2945.371 of the Revised Code, and for the treatment of defendants who have been found incompetent to stand trial under section 2945.38 of the Revised Code, and certify the compliance of such programs and facilities with the standards.

(D) On behalf of the department, the director has the authority to, and responsibility for, entering into contracts and other agreements.

(E) The director shall adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(1) Specify the supplemental services that may be provided through a trust authorized by section 5815.28 of the Revised Code;

(2) Establish standards for the maintenance and distribution to a beneficiary of assets of a trust authorized by section 5815.28 of the Revised Code.

(F) The director shall provide monitoring of county boards of developmental disabilities.

**Sec. 5123.044.** The department of developmental disabilities shall determine whether county boards of developmental disabilities violate the rights that individuals with ~~mental retardation or other~~ developmental disabilities have under section 5126.046 of the Revised Code to obtain home and community-based services, nonmedicaid residential services, or nonmedicaid supported living from qualified and willing providers. The department shall provide assistance to an individual with ~~mental retardation or other~~ a developmental disability who requests assistance with the individual's rights under that section if the department is notified of a county board's alleged violation of the individual's rights under that section.

**Sec. 5123.0410.** An individual with ~~mental retardation or other~~ a developmental disability who moves from one county in this state to another county in this state shall receive home and community-based services in the new county that are comparable in scope to the home and community-based services the individual receives in the prior county at the time the individual moves. If the county board serving the county to which the individual moves determines under section 5126.041 of the Revised Code that the individual is eligible for county board services, the county board shall ensure that the individual receives the comparable services. If the county board determines that the individual is not eligible for county board services, the department of developmental disabilities shall ensure that the individual receives the comparable services.

If the home and community-based services that the individual receives at the time the individual moves include supported living or residential services, the department shall reduce the amount the department allocates to the county board serving the county the individual left for those supported living or residential services by an amount that equals the payment the department authorizes or projects, or both, for those supported living or residential services from the last day the individual resides in the county to the last day of the state fiscal year in which the individual moves.

The department shall increase the amount the department allocates to the county board serving the county the individual moves to by the same amount. The department shall make the reduction and increase effective the day the department determines the individual has residence in the new county. The department shall determine the amount that is to be reduced and increased in accordance with the department's rules for authorizing payments for home and community-based services established adopted under section 5123.049 of the Revised Code. The department shall annualize the reduction and increase for the subsequent state fiscal year as necessary.

**Sec. 5123.0412.** (A) The department of developmental disabilities shall charge each county board of developmental disabilities an annual fee equal to one and one-quarter per cent of the total value of all medicaid paid claims for home and community-based services provided during the year to an individual eligible for services from the county board. ~~However, except that~~ the department shall not charge the fee for home and community-based services provided under the medicaid waiver component known as the transitions developmental disabilities waiver. ~~Ne~~ A county board shall not pass on to a provider of home and community-based services the cost of a fee charged to the county board under this section ~~on to another provider of these services.~~

(B) The ~~fees~~ amounts collected from the fees charged under this section shall be deposited into the ~~ODDD~~ department of developmental disabilities administration and oversight fund, which is hereby created in the state treasury. The department shall use the money in the ~~ODDD administration and oversight~~ fund for both of the following purposes:

(1) Medicaid administrative costs, including administrative and oversight costs of medicaid case management services and home and community-based services. The administrative and oversight costs of medicaid case management services and home and community-based services shall include costs for staff, systems, and other resources the department needs and dedicates solely to the following duties associated with the services:

- (a) Eligibility determinations;
- (b) Training;
- (c) Fiscal management;
- (d) Claims processing;
- (e) Quality assurance oversight;
- (f) Other duties the department identifies.

(2) Providing technical support to county ~~boards~~ boards with respect to their medicaid local administrative authority under section 5126.055 of the Revised Code for the services.

(C) The department shall submit an annual report to the director of budget and management certifying how the department spent the money in the ~~ODDD administration and oversight~~ fund for the purposes specified in division (B) of this section.

**Sec. 5123.0413.** The department of developmental disabilities, in consultation with the department of ~~job and family services~~ medicaid, office of budget and management, and county boards of developmental disabilities, shall adopt rules in accordance with Chapter 119. of the Revised Code to establish both of the following in the event a county property tax levy for services for individuals with ~~mental retardation or other developmental disability~~ disabilities fails:

- (A) A method of paying for home and community-based services;
- (B) A method of reducing the number of individuals a county board would otherwise be

required by section 5126.0512 of the Revised Code to ensure are enrolled in home and community-based services.

**Sec. 5123.0417.** (A) The director of developmental disabilities shall establish one or more programs for individuals under twenty-two years of age who have intensive behavioral needs, including such individuals with a primary diagnosis of autism spectrum disorder. The programs may include one or more medicaid waiver components that the director administers pursuant to section 5166.21 of the Revised Code. The programs may do one or more of the following:

(1) Establish models that incorporate elements common to effective intervention programs and evidence-based practices in services for children with intensive behavioral needs;

(2) Design a template for individualized education ~~plans~~ programs and individual service plans that provide consistent intervention programs and evidence-based practices for the care and treatment of children with intensive behavioral needs;

(3) Disseminate best practice guidelines for use by families of children with intensive behavioral needs and professionals working with such families;

(4) Develop a transition planning model for effectively mainstreaming school-age children with intensive behavioral needs to their public school district;

(5) Contribute to the field of early and effective identification and intervention programs for children with intensive behavioral needs by providing financial support for scholarly research and publication of clinical findings.

(B) The director of developmental disabilities shall collaborate with the medicaid director and consult with the executive director of the Ohio center for autism and low incidence and university-based programs that specialize in services for individuals with developmental disabilities when establishing programs under this section.

**Sec. 5123.0418.** (A) In addition to other authority granted the director of developmental disabilities for use of funds appropriated to the department of developmental disabilities, the director may use such funds for the following purposes:

(1) All of the following to assist persons with ~~mental retardation or a developmental disability~~ disabilities remain in the community and avoid institutionalization:

(a) Behavioral and short-term interventions;

(b) Residential services;

(c) Supported living.

(2) Respite care services;

(3) Staff training to help the following personnel serve persons with ~~mental retardation or a developmental disability~~ disabilities in the community:

(a) Employees of, and personnel under contract with, county boards of developmental disabilities;

(b) Employees of providers of supported living;

(c) Employees of providers of residential services;

(d) Other personnel the director identifies.

(B) The director may establish priorities for using funds for the purposes specified in division (A) of this section. The director shall use the funds in a manner consistent with the appropriations that authorize the director to use the funds and all other state and federal laws governing the use of

the funds.

**Sec. 5123.081.** (A) As used in this section:

(1)(a) "Applicant" means any of the following:

(i) A person who is under final consideration for appointment to or employment with the department of developmental disabilities or a county board of developmental disabilities;

(ii) A person who is being transferred to the department or a county board;

(iii) An employee who is being recalled to or reemployed by the department or a county board after a layoff;

(iv) A person under final consideration for a direct services position with a provider or subcontractor.

(b) Neither of the following is an applicant:

(i) A person who is employed by a responsible entity in a position for which a criminal records check is required by this section and either is being considered for a different position with the responsible entity or is returning after a leave of absence or seasonal break in employment, unless the responsible entity has reason to believe that the person has committed a disqualifying offense;

(ii) A person who is to provide only respite care under a family support services program established under section 5126.11 of the Revised Code if a family member of the individual with ~~mental retardation~~ or a developmental disability who is to receive the respite care selects the person.

(2) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(3) "Direct services position" means an employment position in which the employee has the opportunity to be alone with or exercises supervision or control over one or more individuals with ~~mental retardation~~ or a developmental ~~disability~~ disabilities.

(4) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (e) of section 109.572 of the Revised Code.

(5)(a) "Employee" means either of the following:

(i) A person appointed to or employed by the department of developmental disabilities or a county board of developmental disabilities;

(ii) A person employed in a direct services position by a provider or subcontractor.

(b) "Employee" does not mean a person who provides only respite care under a family support services program established under section 5126.11 of the Revised Code if a family member of the individual with ~~mental retardation~~ or a developmental disability who receives the respite care selected the person.

(6) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

(7) "Provider" means a person that provides specialized services to individuals with ~~mental retardation~~ or a developmental ~~disability~~ disabilities and employs one or more persons in direct services positions.

(8) "Responsible entity" means the following:

(a) The department of developmental disabilities in the case of either of the following:

(i) A person who is an applicant because the person is under final consideration for appointment to or employment with the department, being transferred to the department, or being

recalled to or reemployed by the department after a layoff;

(ii) A person who is an employee because the person is appointed to or employed by the department.

(b) A county board of developmental disabilities in the case of either of the following:

(i) A person who is an applicant because the person is under final consideration for appointment to or employment with the county board, being transferred to the county board, or being recalled to or reemployed by the county board after a layoff;

(ii) A person who is an employee because the person is appointed to or employed by the county board.

(c) A provider in the case of either of the following:

(i) A person who is an applicant because the person is under final consideration for a direct services position with the provider;

(ii) A person who is an employee because the person is employed in a direct services position by the provider.

(d) A subcontractor in the case of either of the following:

(i) A person who is an applicant because the person is under final consideration for a direct services position with the subcontractor;

(ii) A person who is an employee because the person is employed in a direct services position by the subcontractor.

(9) "Specialized services" means any program or service designed and operated to serve primarily individuals with ~~mental retardation or a developmental disability~~ disabilities, including a program or service provided by an entity licensed or certified by the department of developmental disabilities. If there is a question as to whether a provider or subcontractor is providing specialized services, the provider or subcontractor may request that the director of developmental disabilities make a determination. The director's determination is final.

(10) "Subcontractor" means a person to which both of the following apply:

(a) The person has either of the following:

(i) A subcontract with a provider to provide specialized services included in the contract between the provider and the department of developmental disabilities or a county board of developmental disabilities;

(ii) A subcontract with another subcontractor to provide specialized services included in a subcontract between the other subcontractor and a provider or other subcontractor.

(b) The person employs one or more persons in direct services positions.

(B) A responsible entity shall not employ an applicant or continue to employ an employee if either of the following applies:

(1) The applicant or employee fails to comply with division (D)(3) of this section.

(2) Except as provided in rules adopted under this section, the applicant or employee is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(C) Before employing an applicant in a position for which a criminal records check is required by this section, a responsible entity shall require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of, pleaded guilty to, or been

found eligible for intervention in lieu of conviction for a disqualifying offense. The responsible entity also shall require the applicant to sign an agreement under which the applicant agrees to notify the responsible entity within fourteen calendar days if, while employed by the responsible entity, the applicant is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for a disqualifying offense. The agreement shall provide that the applicant's failure to provide the notification may result in termination of the applicant's employment.

(D)(1) As a condition of employing any applicant in a position for which a criminal records check is required by this section, a responsible entity shall request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check of the applicant. If rules adopted under this section require an employee to undergo a criminal records check, a responsible entity shall request the superintendent to conduct a criminal records check of the employee at times specified in the rules as a condition of the responsible entity's continuing to employ the employee in a position for which a criminal records check is required by this section. If an applicant or employee does not present proof that the applicant or employee has been a resident of this state for the five-year period immediately prior to the date upon which the criminal records check is requested, the responsible entity shall request that the superintendent obtain information from the federal bureau of investigation as a part of the criminal records check. If the applicant or employee presents proof that the applicant or employee has been a resident of this state for that five-year period, the responsible entity may request that the superintendent include information from the federal bureau of investigation in the criminal records check. For purposes of this division, an applicant or employee may provide proof of residency in this state by presenting, with a notarized statement asserting that the applicant or employee has been a resident of this state for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the applicant's or employee's permanent residence, or any other document the responsible entity considers acceptable.

(2) A responsible entity shall do all of the following:

(a) Provide to each applicant and employee for whom a criminal records check is required by this section a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a standard impression sheet to obtain fingerprint impressions prescribed pursuant to division (C)(2) of section 109.572 of the Revised Code;

(b) Obtain the completed form and standard impression sheet from the applicant or employee;

(c) Forward the completed form and standard impression sheet to the superintendent at the time the criminal records check is requested.

(3) Any applicant or employee who receives pursuant to this division a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a copy of the standard impression sheet prescribed pursuant to division (C)(2) of that section and who is requested to complete the form and provide a set of the applicant's or employee's fingerprint impressions shall complete the form or provide all the information necessary to complete the form and shall provide the standard impression sheet with the impressions of the applicant's or employee's fingerprints.

(4) A responsible entity shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check requested and conducted pursuant to this section.

(E) A responsible entity may request any other state or federal agency to supply the responsible entity with a written report regarding the criminal record of an applicant or employee. If an employee holds an occupational or professional license or other credentials, the responsible entity may request that the state or federal agency that regulates the employee's occupation or profession supply the responsible entity with a written report of any information pertaining to the employee's criminal record that the agency obtains in the course of conducting an investigation or in the process of renewing the employee's license or other credentials. The responsible entity may consider the reports when determining whether to employ the applicant or to continue to employ the employee.

(F) As a condition of employing an applicant in a position for which a criminal records check is required by this section and that involves transporting individuals with ~~mental retardation or~~ developmental disabilities or operating a responsible entity's vehicles for any purpose, the responsible entity shall obtain the applicant's driving record from the bureau of motor vehicles. If rules adopted under this section require a responsible entity to obtain an employee's driving record, the responsible entity shall obtain the employee's driving record from the bureau at times specified in the rules as a condition of continuing to employ the employee. The responsible entity may consider the applicant's or employee's driving record when determining whether to employ the applicant or to continue to employ the employee.

(G) A responsible entity may employ an applicant conditionally pending receipt of a report regarding the applicant requested under this section. The responsible entity shall terminate the applicant's employment if it is determined from a report that the applicant failed to inform the responsible entity that the applicant had been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(H) A responsible entity may charge an applicant a fee for costs the responsible entity incurs in obtaining a report regarding the applicant under this section if the responsible entity notifies the applicant of the amount of the fee at the time of the applicant's initial application for employment and that, unless the fee is paid, the responsible entity will not consider the applicant for employment. The fee shall not exceed the amount of the fee, if any, the responsible entity pays for the report.

(I)(1) Any report obtained pursuant to this section is not a public record for purposes of section 149.43 of the Revised Code and shall not be made available to any person, other than the following:

(a) The applicant or employee who is the subject of the report or the applicant's or employee's representative;

(b) The responsible entity that requested the report or its representative;

(c) The department if a county board, provider, or subcontractor is the responsible entity that requested the report and the department requests the responsible entity to provide a copy of the report to the department;

(d) A county board if a provider or subcontractor is the responsible entity that requested the report and the county board requests the responsible entity to provide a copy of the report to the county board;

(e) Any court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

(i) The denial of employment to the applicant or employee;

(ii) The denial, suspension, or revocation of a certificate under section 5123.166 or 5123.45 of the Revised Code;

(iii) A civil or criminal action regarding the medicaid program or a program the department administers.

(2) An applicant or employee for whom the responsible entity has obtained reports under this section may submit a written request to the responsible entity to have copies of the reports sent to any state agency, entity of local government, or private entity. The applicant or employee shall specify in the request the agencies or entities to which the copies are to be sent. On receiving the request, the responsible entity shall send copies of the reports to the agencies or entities specified.

(3) A responsible entity may request that a state agency, entity of local government, or private entity send copies to the responsible entity of any report regarding a records check or criminal records check that the agency or entity possesses, if the responsible entity obtains the written consent of the individual who is the subject of the report.

(4) A responsible entity shall provide each applicant and employee with a copy of any report obtained about the applicant or employee under this section.

(J) The director of developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section.

(1) The rules may do the following:

(a) Require employees to undergo criminal records checks under this section;

(b) Require responsible entities to obtain the driving records of employees under this section;

(c) If the rules require employees to undergo criminal records checks, require responsible entities to obtain the driving records of employees, or both, exempt one or more classes of employees from the requirements.

(2) The rules shall do both of the following:

(a) If the rules require employees to undergo criminal records checks, require responsible entities to obtain the driving records of employees, or both, specify the times at which the criminal records checks are to be conducted and the driving records are to be obtained;

(b) Specify circumstances under which a responsible entity may employ an applicant or employee who is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense but meets standards in regard to rehabilitation set by the director.

**Sec. 5123.092.** (A) There is hereby established at each institution and branch institution under the control of the department of developmental disabilities a citizen's advisory council consisting of thirteen members. At least seven of the members shall be persons who are not providers of ~~mental-retardation~~ services for persons with developmental disabilities. Each council shall include parents or other relatives of residents of institutions under the control of the department, community leaders, professional persons in relevant fields, and persons who have an interest in or knowledge of ~~mental-retardation~~ developmental disabilities. The managing officer of the institution shall be a nonvoting member of the council.

(B) The director of developmental disabilities shall be the appointing authority for the voting members of each citizen's advisory council. Each time the term of a voting member expires, the remaining members of the council shall recommend to the director one or more persons to serve on

the council. The director may accept a nominee of the council or reject the nominee or nominees. If the director rejects the nominee or nominees, the remaining members of the advisory council shall further recommend to the director one or more other persons to serve on the advisory council. This procedure shall continue until a member is appointed to the advisory council.

Each advisory council shall elect from its appointed members a chairperson, vice-chairperson, and a secretary to serve for terms of one year. Advisory council officers shall not serve for more than two consecutive terms in the same office. A majority of the advisory council members constitutes a quorum.

(C) Terms of office shall be for three years, each term ending on the same day of the same month of the year as did the term which it succeeds. No member shall serve more than two consecutive terms, except that any former member may be appointed if one year or longer has elapsed since the member served two consecutive terms. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Any vacancy shall be filled in the same manner in which the original appointment was made, and the appointee to a vacancy in an unexpired term shall serve the balance of the term of the original appointee. Any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

(D) Members shall be expected to attend all meetings of the advisory council. Unexcused absence from two successive regularly scheduled meetings shall be considered prima-facie evidence of intent not to continue as a member. The chairperson of the board shall, after a member has been absent for two successive regularly scheduled meetings, direct a letter to the member asking if the member wishes to remain in membership. If an affirmative reply is received, the member shall be retained as a member except that, if, after having expressed a desire to remain a member, the member then misses a third successive regularly scheduled meeting without being excused, the chairperson shall terminate the member's membership.

(E) A citizen's advisory council shall meet six times annually, or more frequently if three council members request the chairperson to call a meeting. The council shall keep minutes of each meeting and shall submit them to the managing officer of the institution with which the council is associated and the department of developmental disabilities.

(F) Members of citizen's advisory councils shall receive no compensation for their services, except that they shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties by the institution with which they are associated from funds allocated to it, provided that reimbursement for those expenses shall not exceed limits imposed upon the department of developmental disabilities by administrative rules regulating travel within this state.

(G) The councils shall have reasonable access to all patient treatment and living areas and records of the institution, except those records of a strictly personal or confidential nature. The councils shall have access to a patient's personal records with the consent of the patient or the patient's legal guardian or, if the patient is a minor, with the consent of the parent or legal guardian of the patient.

(H) As used in this section, "branch institution" means a facility that is located apart from an institution and is under the control of the managing officer of the institution.

**Sec. 5123.093.** The citizen's advisory councils established under section 5123.092 of the Revised Code shall do all of the following:

- (A) Transmit to the director of developmental disabilities verbal or written information, received from any person or organization associated with the institution or within the community, that an advisory council considers important, ~~to the director of developmental disabilities~~;
- (B) Review the records of all applicants to any unclassified position at the institution, except for resident physician positions filled under section 5123.11 of the Revised Code;
- (C) Review and evaluate institutional employee training and continuing education programs;
- (D) On or before the thirty-first day of January of each year, submit a written report to the director of developmental disabilities regarding matters affecting the institution including, but not limited to, allegations of dehumanizing practices and violations of individual or legal rights;
- (E) Review institutional budgets, programs, services, and planning;
- (F) Develop and maintain ~~relationships~~ within the community relationships with community ~~mental retardation and~~ developmental disabilities organizations;
- (G) Participate in the formulation of the institution's objectives, administrative procedures, program philosophy, and long range goals;
- (H) Bring any matter that an advisory council considers important to the attention of ~~the joint council on developmental disabilities and~~ the director of developmental disabilities;
- (I) Recommend to the director of developmental disabilities persons for appointment to citizen's advisory councils;
- (J) Adopt any rules or procedures necessary to carry out this section.

The chairperson of the advisory council or the chairperson's designee shall be notified within twenty-four hours of any alleged incident of abuse to a resident or staff member by anyone. Incidents of resident or staff abuse shall include, but not be limited to, sudden deaths, accidents, suicides, attempted suicides, injury caused by other persons, alleged criminal acts, errors in prescribing or administering medication, theft from clients, fires, epidemic disease, administering unprescribed drugs, unauthorized use of restraint, withholding of information concerning alleged abuse, neglect, or any deprivation of rights as defined in Chapter 5122. or 5123. of the Revised Code.

**Sec. 5123.122.** Notwithstanding section 5121.04 of the Revised Code and except as provided in section 5123.194 of the Revised Code, the liable relative of a ~~mentally retarded or developmentally disabled~~ person with a developmental disability who is a minor receiving residential services pursuant to a contract entered into with the department of developmental disabilities under section 5123.18 of the Revised Code shall be charged for the minor's support the percentage of a base support rate determined in accordance with division (B)(2) of section 5121.04 of the Revised Code.

**Sec. 5123.165.** (A) Except as provided in division (B) of this section, no person or government entity may provide supported living to an individual with ~~mental retardation or a~~ developmental disability if the person or government entity also provides the individual a residence.

(B) A person may provide supported living to an individual with ~~mental retardation or a~~ developmental disability even though the person also provides the individual a residence if either of the following apply:

- (1) The person also resides in the residence with the individual and does not provide at any one time supported living to more than a total of three individuals with ~~mental retardation or a~~

developmental ~~disability~~ disabilities who reside in that residence;

(2) The person is an association of family members related to two or more of the individuals with ~~mental retardation or a developmental disability~~ disabilities who reside in the residence and does not provide at any one time supported living to more than a total of four individuals with ~~mental retardation or a developmental disability~~ disabilities who reside in that residence.

**Sec. 5123.169.** (A) The director of developmental disabilities shall not issue a supported living certificate to an applicant or renew an applicant's supported living certificate if either of the following applies:

(1) The applicant fails to comply with division (C)(2) of this section;

(2) Except as provided in rules adopted under section 5123.1611 of the Revised Code, the applicant is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(B) Before issuing a supported living certificate to an applicant or renewing an applicant's supported living certificate, the director shall require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. The director also shall require the applicant to sign an agreement under which the applicant agrees to notify the director within fourteen calendar days if, while holding a supported living certificate, the applicant is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for a disqualifying offense. The agreement shall provide that the applicant's failure to provide the notification may result in action being taken by the director against the applicant under section 5123.166 of the Revised Code.

(C)(1) As a condition of receiving a supported living certificate or having a supported living certificate renewed, an applicant shall request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check of the applicant. If an applicant does not present proof to the director that the applicant has been a resident of this state for the five-year period immediately prior to the date that the applicant applies for issuance or renewal of the supported living certificate, the director shall require the applicant to request that the superintendent obtain information from the federal bureau of investigation as a part of the criminal records check. If the applicant presents proof to the director that the applicant has been a resident of this state for that five-year period, the director may require the applicant to request that the superintendent include information from the federal bureau of investigation in the criminal records check. For purposes of this division, an applicant may provide proof of residency in this state by presenting, with a notarized statement asserting that the applicant has been a resident of this state for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the applicant's permanent residence, or any other document the director considers acceptable.

(2) Each applicant shall do all of the following:

(a) Obtain a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a standard impression sheet prescribed pursuant to division (C)(2) of section 109.572 of the Revised Code;

(b) Complete the form and provide the applicant's fingerprint impressions on the standard impression sheet;

(c) Forward the completed form and standard impression sheet to the superintendent at the time the criminal records check is requested;

(d) Instruct the superintendent to submit the completed report of the criminal records check directly to the director;

(e) Pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check of the applicant requested and conducted pursuant to this section.

(D) The director may request any other state or federal agency to supply the director with a written report regarding the criminal record of an applicant. The director may consider the reports when determining whether to issue a supported living certificate to the applicant or to renew an applicant's supported living certificate.

(E) An applicant who seeks to be an independent provider or is an independent provider seeking renewal of the applicant's supported living certificate shall obtain the applicant's driving record from the bureau of motor vehicles and provide a copy of the record to the director if the supported living that the applicant will provide involves transporting individuals with ~~mental retardation~~ or developmental disabilities. The director may consider the applicant's driving record when determining whether to issue the applicant a supported living certificate or to renew the applicant's supported living certificate.

(F)(1) A report obtained pursuant to this section is not a public record for purposes of section 149.43 of the Revised Code and shall not be made available to any person, other than the following:

(a) The applicant who is the subject of the report or the applicant's representative;

(b) The director or the director's representative;

(c) Any court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

(i) The denial of a supported living certificate or refusal to renew a supported living certificate;

(ii) The denial, suspension, or revocation of a certificate under section 5123.45 of the Revised Code;

(iii) A civil or criminal action regarding the medicaid program.

(2) An applicant for whom the director has obtained reports under this section may submit a written request to the director to have copies of the reports sent to any person or state or local government entity. The applicant shall specify in the request the person or entities to which the copies are to be sent. On receiving the request, the director shall send copies of the reports to the persons or entities specified.

(3) The director may request that a person or state or local government entity send copies to the director of any report regarding a records check or criminal records check that the person or entity possesses, if the director obtains the written consent of the individual who is the subject of the report.

(4) The director shall provide each applicant with a copy of any report obtained about the applicant under this section.

**Sec. 5123.17.** The department of developmental disabilities may provide for the custody, supervision, control, treatment, and training of persons with ~~mental retardation or a developmental disability~~ disabilities elsewhere than within the enclosure of an institution under its jurisdiction, if the department so determines with respect to any individual or group of individuals. In all such cases, the department shall ensure adequate and proper supervision for the protection of those persons and of the public.

**Sec. 5123.171.** As used in this section, "respite care" means appropriate, short-term, temporary care provided to a ~~mentally retarded or developmentally disabled~~ person with a developmental disability to sustain the family structure or to meet planned or emergency needs of the family.

The department of developmental disabilities shall provide respite care services to persons with ~~mental retardation or a developmental disability~~ disabilities for the purpose of promoting self-sufficiency and normalization, preventing or reducing inappropriate institutional care, and furthering the unity of the family by enabling the family to meet the special needs of a ~~mentally retarded or developmentally disabled~~ person with a developmental disability.

In order to be eligible for respite care services under this section, the ~~mentally retarded or developmentally disabled~~ person with a developmental disability must be in need of services that are part of habilitation services, as defined in section 5126.01 of the Revised Code.

Respite care may be provided in a residential facility licensed under section 5123.19 of the Revised Code, including a residential facility certified as an ICF/IID, and a respite care home certified under section 5126.05 of the Revised Code.

The department shall develop a system for locating vacant beds that are available for respite care and for making information on vacant beds available to users of respite care services. ICFs/IID shall report vacant beds to the department but shall not be required to accept respite care clients.

The director of developmental disabilities shall adopt, and may amend or rescind, rules in accordance with Chapter 119. of the Revised Code for both of the following:

- (A) Certification by county boards of developmental disabilities of respite care homes;
- (B) Provision of respite care services authorized by this section. Rules adopted under this division shall establish all of the following:
  - (1) A formula for distributing funds appropriated for respite care services;
  - (2) Standards for supervision, training, and quality control in the provision of respite care services;
  - (3) Eligibility criteria for emergency respite care services.

**Sec. 5123.18.** ~~(A)~~ The department of developmental disabilities may enter into a contract with a person or government agency to provide residential services to individuals with ~~mental retardation or developmental disabilities~~ in need of residential services. To be eligible to enter into a contract with the department under this section, a person or government entity and the home in which the residential services are provided must meet all applicable standards for licensing or certification by the appropriate government entity.

**Sec. 5123.19.** (A) As used in sections 5123.19 to 5123.20 of the Revised Code:

- (1) "Independent living arrangement" means an arrangement in which a ~~mentally retarded or developmentally disabled~~ person an individual with a developmental disability resides in an

individualized setting chosen by the ~~person-individual~~ or the ~~person's-individual's~~ guardian, which is not dedicated principally to the provision of residential services for ~~mentally-retarded-or-developmentally-disabled-persons~~ individuals with developmental disabilities, and for which no financial support is received for rendering such service from any governmental agency by a provider of residential services.

(2) "Licensee" means the person or government agency that has applied for a license to operate a residential facility and to which the license was issued under this section.

(3) "Political subdivision" means a municipal corporation, county, or township.

(4) "Related party" has the same meaning as in section 5123.16 of the Revised Code except that "provider" as used in the definition of "related party" means a person or government entity that held or applied for a license to operate a residential facility, rather than a person or government entity certified to provide supported living.

(5)(a) Except as provided in division (A)(5)(b) of this section, "residential facility" means a home or facility, including an ICF/IID, in which an individual with ~~mental-retardation-or-a~~ developmental disability resides.

(b) "Residential facility" does not mean any of the following:

(i) The home of a relative or legal guardian in which an individual with ~~mental-retardation-or~~ a developmental disability resides;

(ii) A respite care home certified under section 5126.05 of the Revised Code;

(iii) A county home or district home operated pursuant to Chapter 5155. of the Revised Code;

(iv) A dwelling in which the only residents with ~~mental-retardation-or~~ developmental disabilities are in independent living arrangements or are being provided supported living.

(B) Every person or government agency desiring to operate a residential facility shall apply for licensure of the facility to the director of developmental disabilities unless the residential facility is subject to section 3721.02, 5103.03, 5119.33, or division (B)(1)(b) of section 5119.34 of the Revised Code.

(C) Subject to section 5123.196 of the Revised Code, the director of developmental disabilities shall license the operation of residential facilities. An initial license shall be issued for a period that does not exceed one year, unless the director denies the license under division (D) of this section. A license shall be renewed for a period that does not exceed three years, unless the director refuses to renew the license under division (D) of this section. The director, when issuing or renewing a license, shall specify the period for which the license is being issued or renewed. A license remains valid for the length of the licensing period specified by the director, unless the license is terminated, revoked, or voluntarily surrendered.

(D) If it is determined that an applicant or licensee is not in compliance with a provision of this chapter that applies to residential facilities or the rules adopted under such a provision, the director may deny issuance of a license, refuse to renew a license, terminate a license, revoke a license, issue an order for the suspension of admissions to a facility, issue an order for the placement of a monitor at a facility, issue an order for the immediate removal of residents, or take any other action the director considers necessary consistent with the director's authority under this chapter regarding residential facilities. In the director's selection and administration of the sanction to be imposed, all of the following apply:

(1) The director may deny, refuse to renew, or revoke a license, if the director determines that the applicant or licensee has demonstrated a pattern of serious noncompliance or that a violation creates a substantial risk to the health and safety of residents of a residential facility.

(2) The director may terminate a license if more than twelve consecutive months have elapsed since the residential facility was last occupied by a resident or a notice required by division (J) of this section is not given.

(3) The director may issue an order for the suspension of admissions to a facility for any violation that may result in sanctions under division (D)(1) of this section and for any other violation specified in rules adopted under division (G)(2) of this section. If the suspension of admissions is imposed for a violation that may result in sanctions under division (D)(1) of this section, the director may impose the suspension before providing an opportunity for an adjudication under Chapter 119. of the Revised Code. The director shall lift an order for the suspension of admissions when the director determines that the violation that formed the basis for the order has been corrected.

(4) The director may order the placement of a monitor at a residential facility for any violation specified in rules adopted under division (G)(2) of this section. The director shall lift the order when the director determines that the violation that formed the basis for the order has been corrected.

(5) When the director initiates license revocation proceedings, no opportunity for submitting a plan of correction shall be given. The director shall notify the licensee by letter of the initiation of the proceedings. The letter shall list the deficiencies of the residential facility and inform the licensee that no plan of correction will be accepted. The director shall also send a copy of the letter to the county board of developmental disabilities. Except in the case of a licensee that is an ICF/IID, the county board shall send a copy of the letter to each of the following:

- (a) Each resident who receives services from the licensee;
- (b) The guardian of each resident who receives services from the licensee if the resident has a guardian;
- (c) The parent or guardian of each resident who receives services from the licensee if the resident is a minor.

(6) Pursuant to rules which shall be adopted in accordance with Chapter 119. of the Revised Code, the director may order the immediate removal of residents from a residential facility whenever conditions at the facility present an immediate danger of physical or psychological harm to the residents.

(7) In determining whether a residential facility is being operated in compliance with a provision of this chapter that applies to residential facilities or the rules adopted under such a provision, or whether conditions at a residential facility present an immediate danger of physical or psychological harm to the residents, the director may rely on information obtained by a county board of developmental disabilities or other governmental agencies.

(8) In proceedings initiated to deny, refuse to renew, or revoke licenses, the director may deny, refuse to renew, or revoke a license regardless of whether some or all of the deficiencies that prompted the proceedings have been corrected at the time of the hearing.

(E)(1) Except as provided in division (E)(2) of this section, appeals from proceedings initiated to impose a sanction under division (D) of this section shall be conducted in accordance

with Chapter 119. of the Revised Code.

(2) Appeals from proceedings initiated to order the suspension of admissions to a facility shall be conducted in accordance with Chapter 119. of the Revised Code, unless the order was issued before providing an opportunity for an adjudication, in which case all of the following apply:

(a) The licensee may request a hearing not later than ten days after receiving the notice specified in section 119.07 of the Revised Code.

(b) If a timely request for a hearing that includes the licensee's current address is made, the hearing shall commence not later than thirty days after the department receives the request.

(c) After commencing, the hearing shall continue uninterrupted, except for Saturdays, Sundays, and legal holidays, unless other interruptions are agreed to by the licensee and the director.

(d) If the hearing is conducted by a hearing examiner, the hearing examiner shall file a report and recommendations not later than ten days after the last of the following:

(i) The close of the hearing;

(ii) If a transcript of the proceedings is ordered, the hearing examiner receives the transcript;

(iii) If post-hearing briefs are timely filed, the hearing examiner receives the briefs.

(e) A copy of the written report and recommendation of the hearing examiner shall be sent, by certified mail, to the licensee and the licensee's attorney, if applicable, not later than five days after the report is filed.

(f) Not later than five days after the hearing examiner files the report and recommendations, the licensee may file objections to the report and recommendations.

(g) Not later than fifteen days after the hearing examiner files the report and recommendations, the director shall issue an order approving, modifying, or disapproving the report and recommendations.

(h) Notwithstanding the pendency of the hearing, the director shall lift the order for the suspension of admissions when the director determines that the violation that formed the basis for the order has been corrected.

(F) Neither a person or government agency whose application for a license to operate a residential facility is denied nor a related party of the person or government agency may apply for a license to operate a residential facility before the date that is five years after the date of the denial. Neither a licensee whose residential facility license is revoked nor a related party of the licensee may apply for a residential facility license before the date that is five years after the date of the revocation.

(G) In accordance with Chapter 119. of the Revised Code, the director shall adopt and may amend and rescind rules for licensing and regulating the operation of residential facilities. The rules for residential facilities that are ICFs/IID may differ from those for other residential facilities. The rules shall establish and specify the following:

(1) Procedures and criteria for issuing and renewing licenses, including procedures and criteria for determining the length of the licensing period that the director must specify for each license when it is issued or renewed;

(2) Procedures and criteria for denying, refusing to renew, terminating, and revoking licenses and for ordering the suspension of admissions to a facility, placement of a monitor at a facility, and the immediate removal of residents from a facility;

(3) Fees for issuing and renewing licenses, which shall be deposited into the program fee

fund created under section 5123.033 of the Revised Code;

(4) Procedures for surveying residential facilities;

(5) Classifications for the various types of residential facilities;

(6) The maximum number of ~~persons~~individuals who may be served in a particular type of residential facility;

(7) Uniform procedures for admission of ~~persons~~individuals to and transfers and discharges of ~~persons~~individuals from residential facilities;

(8) Other standards for the operation of residential facilities and the services provided at residential facilities;

(9) Procedures for waiving any provision of any rule adopted under this section.

(H)(1) Before issuing a license, the director shall conduct a survey of the residential facility for which application is made. The director shall conduct a survey of each licensed residential facility at least once during the period the license is valid and may conduct additional inspections as needed. A survey includes but is not limited to an on-site examination and evaluation of the residential facility, its personnel, and the services provided there. The director may assign to a county board of developmental disabilities or the department of health the responsibility to conduct any survey or inspection under this section.

(2) In conducting surveys, the director shall be given access to the residential facility; all records, accounts, and any other documents related to the operation of the facility; the licensee; the residents of the facility; and all persons acting on behalf of, under the control of, or in connection with the licensee. The licensee and all persons on behalf of, under the control of, or in connection with the licensee shall cooperate with the director in conducting the survey.

(3) Following each survey, the director shall provide the licensee with a report listing the date of the survey, any citations issued as a result of the survey, and the statutes or rules that purportedly have been violated and are the bases of the citations. The director shall also do both of the following:

(a) Specify a date by which the licensee may appeal any of the citations;

(b) When appropriate, specify a timetable within which the licensee must submit a plan of correction describing how the problems specified in the citations will be corrected and, the date by which the licensee anticipates the problems will be corrected.

(4) If the director initiates a proceeding to revoke a license, the director shall include the report required by division (H)(3) of this section with the notice of the proposed revocation the director sends to the licensee. In this circumstance, the licensee may not submit a plan of correction.

(5) After a plan of correction is submitted, the director shall approve or disapprove the plan. If the plan of correction is approved, a copy of the approved plan shall be provided, not later than five business days after it is approved, to any person or government entity who requests it and made available on the internet web site maintained by the department of developmental disabilities. If the plan of correction is not approved and the director initiates a proceeding to revoke the license, a copy of the survey report shall be provided to any person or government entity that requests it and shall be made available on the internet web site maintained by the department.

(6) The director shall initiate disciplinary action against any department employee who notifies or causes the notification to any unauthorized person of an unannounced survey of a residential facility by an authorized representative of the department.

(I) In addition to any other information which may be required of applicants for a license pursuant to this section, the director shall require each applicant to provide a copy of an approved plan for a proposed residential facility pursuant to section 5123.042 of the Revised Code. This division does not apply to renewal of a license or to an applicant for an initial or modified license who meets the requirements of section 5123.197 of the Revised Code.

(J)(1) A licensee shall notify the owner of the building in which the licensee's residential facility is located of any significant change in the identity of the licensee or management contractor before the effective date of the change if the licensee is not the owner of the building.

(2) Pursuant to rules, which shall be adopted in accordance with Chapter 119. of the Revised Code, the director may require notification to the department of any significant change in the ownership of a residential facility or in the identity of the licensee or management contractor. If the director determines that a significant change of ownership is proposed, the director shall consider the proposed change to be an application for development by a new operator pursuant to section 5123.042 of the Revised Code and shall advise the applicant within sixty days of the notification that the current license shall continue in effect or a new license will be required pursuant to this section. If the director requires a new license, the director shall permit the facility to continue to operate under the current license until the new license is issued, unless the current license is revoked, refused to be renewed, or terminated in accordance with Chapter 119. of the Revised Code.

(3) A licensee shall transfer to the new licensee or management contractor all records related to the residents of the facility following any significant change in the identity of the licensee or management contractor.

(K) A county board of developmental disabilities and any interested person may file complaints alleging violations of statute or department rule relating to residential facilities with the department. All complaints shall state the facts constituting the basis of the allegation. The department shall not reveal the source of any complaint unless the complainant agrees in writing to waive the right to confidentiality or until so ordered by a court of competent jurisdiction.

The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures for the receipt, referral, investigation, and disposition of complaints filed with the department under this division.

(L) Before issuing a license under this section to a residential facility that will accommodate at any time more than one ~~mentally retarded or developmentally disabled~~ individual with a developmental disability, the director shall, by first class mail, notify the following:

(1) If the facility will be located in a municipal corporation, the clerk of the legislative authority of the municipal corporation;

(2) If the facility will be located in unincorporated territory, the clerk of the appropriate board of county commissioners and the fiscal officer of the appropriate board of township trustees.

The director shall not issue the license for ten days after mailing the notice, excluding Saturdays, Sundays, and legal holidays, in order to give the notified local officials time in which to comment on the proposed issuance.

Any legislative authority of a municipal corporation, board of county commissioners, or board of township trustees that receives notice under this division of the proposed issuance of a license for a residential facility may comment on it in writing to the director within ten days after the

director mailed the notice, excluding Saturdays, Sundays, and legal holidays. If the director receives written comments from any notified officials within the specified time, the director shall make written findings concerning the comments and the director's decision on the issuance of the license. If the director does not receive written comments from any notified local officials within the specified time, the director shall continue the process for issuance of the license.

(M) Any person may operate a licensed residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least six but not more than eight ~~persons~~ individuals with ~~mental retardation or a developmental disability~~ disabilities as a permitted use in any residential district or zone, including any single-family residential district or zone, of any political subdivision. These residential facilities may be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed upon all single-family residences within the district or zone.

(N) Any person may operate a licensed residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least nine but not more than sixteen ~~persons~~ individuals with ~~mental retardation or a developmental disability~~ disabilities as a permitted use in any multiple-family residential district or zone of any political subdivision, except that a political subdivision that has enacted a zoning ordinance or resolution establishing planned unit development districts may exclude these residential facilities from those districts, and a political subdivision that has enacted a zoning ordinance or resolution may regulate these residential facilities in multiple-family residential districts or zones as a conditionally permitted use or special exception, in either case, under reasonable and specific standards and conditions set out in the zoning ordinance or resolution to:

(1) Require the architectural design and site layout of the residential facility and the location, nature, and height of any walls, screens, and fences to be compatible with adjoining land uses and the residential character of the neighborhood;

(2) Require compliance with yard, parking, and sign regulation;

(3) Limit excessive concentration of these residential facilities.

(O) This section does not prohibit a political subdivision from applying to residential facilities nondiscriminatory regulations requiring compliance with health, fire, and safety regulations and building standards and regulations.

(P) Divisions (M) and (N) of this section are not applicable to municipal corporations that had in effect on June 15, 1977, an ordinance specifically permitting in residential zones licensed residential facilities by means of permitted uses, conditional uses, or special exception, so long as such ordinance remains in effect without any substantive modification.

(Q)(1) The director may issue an interim license to operate a residential facility to an applicant for a license under this section if either of the following is the case:

(a) The director determines that an emergency exists requiring immediate placement of ~~persons~~ individuals in a residential facility, that insufficient licensed beds are available, and that the residential facility is likely to receive a permanent license under this section within thirty days after issuance of the interim license.

(b) The director determines that the issuance of an interim license is necessary to meet a temporary need for a residential facility.

(2) To be eligible to receive an interim license, an applicant must meet the same criteria that must be met to receive a permanent license under this section, except for any differing procedures and time frames that may apply to issuance of a permanent license.

(3) An interim license shall be valid for thirty days and may be renewed by the director for a period not to exceed one hundred eighty days.

(4) The director shall adopt rules in accordance with Chapter 119. of the Revised Code as the director considers necessary to administer the issuance of interim licenses.

(R) Notwithstanding rules adopted pursuant to this section establishing the maximum number of ~~persons~~individuals who may be served in a particular type of residential facility, a residential facility shall be permitted to serve the same number of ~~persons~~individuals being served by the facility on the effective date of the rules or the number of ~~persons~~individuals for which the facility is authorized pursuant to a current application for a certificate of need with a letter of support from the department of developmental disabilities and which is in the review process prior to April 4, 1986.

This division does not preclude the department from suspending new admissions to a residential facility pursuant to a written order issued under section 5124.70 of the Revised Code.

(S) The director may enter at any time, for purposes of investigation, any home, facility, or other structure that has been reported to the director or that the director has reasonable cause to believe is being operated as a residential facility without a license issued under this section.

The director may petition the court of common pleas of the county in which an unlicensed residential facility is located for an order enjoining the person or governmental agency operating the facility from continuing to operate without a license. The court may grant the injunction on a showing that the person or governmental agency named in the petition is operating a residential facility without a license. The court may grant the injunction, regardless of whether the residential facility meets the requirements for receiving a license under this section.

**Sec. 5123.196.** (A) Except as provided in division (E) of this section, the director of developmental disabilities shall not issue a license under section 5123.19 of the Revised Code on or after July 1, 2003, if issuance will result in there being more beds in all residential facilities licensed under that section than is permitted under division (B) of this section.

(B) The maximum number of beds for the purpose of division (A) of this section shall not exceed ten thousand eight hundred thirty-eight minus, except as provided in division (C) of this section, both of the following:

(1) The number of such beds that cease to be residential facility beds on or after July 1, 2003, because a residential facility license is revoked, terminated, or not renewed for any reason or is surrendered in accordance with section 5123.19 of the Revised Code;

(2) The number of such beds for which a licensee voluntarily converts to use for supported living on or after July 1, 2003.

(C) The director is not required to reduce the maximum number of beds pursuant to division (B) of this section by a bed that ceases to be a residential facility bed if the director determines that the bed is needed to provide services to an individual with ~~mental retardation~~ or a developmental disability who resided in the residential facility in which the bed was located.

(D) The director shall maintain an up-to-date written record of the maximum number of residential facility beds provided for by division (B) of this section.

(E) The director may issue an interim license under division (Q) of section 5123.19 of the Revised Code and issue, pursuant to rules adopted under division (G)(9) of that section, a waiver allowing a residential facility to admit more residents than the facility is licensed to admit regardless of whether the interim license or waiver will result in there being more beds in all residential facilities licensed under that section than is permitted under division (B) of this section.

**Sec. 5123.20.** No person or government agency shall operate a residential facility or receive a ~~mentally retarded or developmentally disabled person~~ an individual with a developmental disability as a resident of a residential facility unless the facility is licensed under section 5123.19 of the Revised Code, and no person or governmental agency shall operate a respite care home or receive a ~~mentally retarded or developmentally disabled person~~ an individual with a developmental disability in a respite care home unless the home is certified under section 5126.05 of the Revised Code.

**Sec. 5123.27.** The director of developmental disabilities may accept, hold, and administer in trust on behalf of the state, if it is for the public interest, any grant, devise, gift, or bequest of money or property made to the state for the use or benefit of any institution under the jurisdiction of the department of developmental disabilities or for the use and benefit of persons with ~~mental retardation or a developmental disability~~ disabilities who are under the control of the department. If the trust so provides, the money or property may be used for any work which the department is authorized to undertake.

The department shall keep such gift, grant, devise, or bequest as a distinct property or fund and, if it is in money, shall invest it in the manner provided by law. The department may deposit in a proper trust company or savings bank any money left in trust during a specified life or lives and shall adopt rules governing the deposit, transfer, withdrawal, or investment of the money and the income from it.

The department shall, in the manner prescribed by the director of budget and management pursuant to section 126.21 of the Revised Code, account for all money or property received or expended under this section. The records, together with a statement certified by the depository showing the money deposited there to the credit of the trust, shall be open to public inspection. The director of budget and management may require the department to file a report with the director on any particular portion, or the whole, of any trust property received or expended by it.

The department shall, upon the expiration of any trust according to its terms, dispose of the money or property held under the trust in the manner provided in the instrument creating the trust. If the instrument creating the trust failed to make any terms of disposition, or if no trust was in evidence, the decedent resident's money, saving or commercial deposits, dividends or distributions, bonds, or any other interest-bearing debt certificate or stamp issued by the United States government shall escheat to the state. All such unclaimed intangible personal property of a former resident shall be retained by the managing officer in such institution for the period of one year, during which time every possible effort shall be made to find the former resident or the former resident's legal representative.

If after a period of one year from the time the resident has left the institution or has died, the managing officer has been unable to locate the person or the person's legal representative, then, upon proper notice of that fact, the director shall at that time formulate in writing a method of disposition on the minutes of the department authorizing the managing officer to convert such intangible

personal property to cash to be paid into the state treasury to the credit of the general revenue fund.

The department shall include in its annual report a statement of all such money and property and the terms and conditions relating to them.

**Sec. 5123.34.** This chapter attempts to do all of the following:

(A) Provide humane and scientific treatment and care and the highest attainable degree of individual development for persons with ~~mental retardation or a developmental disability~~ disabilities;

(B) Promote the study of the causes of ~~mental retardation and~~ developmental disabilities, with a view to ultimate prevention;

(C) Secure by uniform and systematic management the highest attainable degree of economy in the administration of the institutions under the control of the department of developmental disabilities.

Sections 5123.02 to 5123.04, 5123.042, 5123.043, 5123.10, 5123.21, 5123.221, 5123.25, and 5123.31 of the Revised Code shall be liberally construed to attain these purposes.

**Sec. 5123.35.** (A) There is hereby created the Ohio developmental disabilities council, which shall serve as an advocate for all persons with developmental disabilities. The council shall act in accordance with the "Developmental Disabilities Assistance and Bill of Rights Act," 98 Stat. 2662 (1984), 42 U.S.C. 6001, as amended. The governor shall appoint the members of the council in accordance with 42 U.S.C. 6024.

(B) The ~~Ohio developmental disabilities~~ council shall develop the state plan required by federal law as a condition of receiving federal assistance under 42 U.S.C. 6021 to 6030. The department of developmental disabilities, as the state agency selected by the governor for purposes of receiving the federal assistance, shall receive, account for, and disburse funds based on the state plan and shall provide assurances and other administrative support services required as a condition of receiving the federal assistance.

(C) The federal funds may be disbursed through grants to or contracts with persons and government agencies for the provision of necessary or useful goods and services for ~~developmentally disabled persons with developmental disabilities~~. The ~~Ohio developmental disabilities~~ council may award the grants or enter into the contracts.

(D) The ~~Ohio developmental disabilities~~ council may award grants to or enter into contracts with a member of the council or an entity that the member represents if all of the following apply:

(1) The member serves on the council as a representative of one of the principal state agencies concerned with services for persons with developmental disabilities as specified in 42 U.S.C. 6024(b)(3), a representative of a university affiliated program as defined in 42 U.S.C. 6001(18), or a representative of the ~~legal rights service created under Ohio protection and advocacy system~~, as defined in section 5123.60 of the Revised Code.

(2) The council determines that the member or the entity the member represents is capable of providing the goods or services specified under the terms of the grant or contract.

(3) The member has not taken part in any discussion or vote of the council related to awarding the grant or entering into the contract, including service as a member of a review panel established by the council to award grants or enter into contracts or to make recommendations with regard to awarding grants or entering into contracts.

(E) A member of the ~~Ohio developmental disabilities~~ council is not in violation of Chapter

102. or section 2921.42 of the Revised Code with regard to receiving a grant or entering into a contract under this section if the requirements of division (D) of this section have been met.

(F)(1) Notwithstanding division (C) of section 121.22 of the Revised Code, the requirement for a member's presence in person at a meeting in order to be part of a quorum or to vote does not apply if the council holds a meeting by interactive video conference and all of the following apply:

(a) A primary meeting location that is open and accessible to the public is established for the meeting of the council;

(b) A clear video and audio connection is established that enables all meeting participants at the primary meeting location to witness the participation of each member;

(c) A roll call vote is recorded for each vote taken;

(d) The minutes of the council identify which members participated by interactive video conference.

(2) Notwithstanding division (C) of section 121.22 of the Revised Code, the requirement for a member's presence in person at a meeting in order to be part of a quorum or to vote does not apply if the council holds a meeting by teleconference and all of the following apply:

(a) The council has determined its membership does not have access to and the council cannot provide access to the equipment needed to conduct interactive video conferencing;

(b) A primary meeting location that is open and accessible to the public is established for the meeting of the council;

(c) A clear audio connection is established that enables all meeting participants at the primary meeting location to hear the participation of each member;

(d) A roll call vote is recorded for each vote taken;

(e) The minutes of the council identify which members participated by teleconference.

(3) The ~~Ohio developmental disabilities~~ council shall adopt any rules the council considers necessary to implement this section. The rules shall be adopted in accordance with Chapter 119. of the Revised Code. At a minimum, the rules shall do all of the following:

(a) Authorize council members to remotely attend a council meeting by interactive video conference or teleconference in lieu of attending the meeting in person;

(b) Establish a minimum number of members required to be physically present in person at the primary meeting location if the council conducts a meeting by interactive video conference or teleconference;

(c) Establish geographic restrictions for participation in meetings by interactive video conference or teleconference;

(d) Establish a policy for distributing and circulating necessary documents to council members, the public, and the media in advance of a meeting at which members are permitted to attend by interactive video conference or teleconference;

(e) Establish a method for verifying the identity of a member who remotely attends a meeting by teleconference.

**Sec. 5123.351.** The director of developmental disabilities, with respect to the eligibility for state reimbursement of expenses incurred by facilities and programs established and operated under Chapter 5126. of the Revised Code for persons with ~~mental retardation or a developmental disability~~disabilities, shall do all of the following:

(A) Make rules that may be necessary to carry out the purposes of Chapter 5126. and sections 5123.35, 5123.351, and 5123.36 of the Revised Code;

(B) Define minimum standards for qualifications of personnel, professional services, and in-service training and educational leave programs;

(C) Review and evaluate community programs and make recommendations for needed improvements to county boards of developmental disabilities and to program directors;

(D) Withhold state reimbursement, in whole or in part, from any county or combination of counties for failure to comply with Chapter 5126. or section 5123.35 or 5123.351 of the Revised Code or rules of the department of developmental disabilities;

(E) Withhold state funds from an agency, corporation, or association denying or rendering service on the basis of race, color, sex, religion, ancestry, national origin, disability as defined in section 4112.01 of the Revised Code, or inability to pay;

(F) Provide consultative staff service to communities to assist in ascertaining needs and in planning and establishing programs.

**Sec. 5123.36.** (A) To the extent funds are available and on application by a county board of developmental disabilities or private nonprofit agency incorporated to provide ~~mental retardation or~~ developmental disability services, the director of developmental disabilities may enter into an agreement with the county board or agency to assist the county board or agency with a ~~mental retardation or~~ developmental disability construction project. Except as provided by division (B) of this section, the director may provide up to ninety per cent of the total project cost where circumstances warrant. The director may, where circumstances warrant, use existing facilities or other in-kind match for the local share of the communities' share of the cost.

(B) Upon the recommendation of the director, for projects of the highest priority of the department of developmental disabilities, the controlling board may authorize the director to provide more than ninety per cent of the total cost of a project under this section.

(C) A county board is eligible for funds under this section for a project bid on or after January 1, 1992, under either section 153.07 or 307.86 of the Revised Code, as long as all other applicable requirements were followed.

(D) A private nonprofit agency that receives funds pursuant to this section for the construction of a single-family home, including, where appropriate, the acquisition and installation of a single-family home fabricated in an off-site facility, is not subject to the requirements of Chapter 153. of the Revised Code with respect to the construction project, notwithstanding any provision of that chapter to the contrary.

(E) The director may not assist a project under this section unless the controlling board or director of budget and management also approves the project pursuant to section 126.14 of the Revised Code.

**Sec. 5123.37.** A county board of developmental disabilities or private, nonprofit agency that receives state funds pursuant to an agreement with the director of developmental disabilities under section 5123.36 of the Revised Code to acquire a facility may apply to the director for approval to sell the facility before the terms of the agreement expire for the purpose of acquiring a replacement facility to be used to provide ~~mental retardation or~~ developmental disability services to individuals the county board or agency serves. The application shall be made on a form the director shall

prescribe. The county board or agency shall include in the application the specific purpose for which the replacement facility is to be used. The director may refuse to approve the application if the director determines that any of the following apply:

(A) The application is incomplete or indicates that the county board or agency is unable to purchase a replacement facility.

(B) The replacement facility would not be used to continue to provide ~~mental retardation or~~ developmental disability services that the director determines are appropriate for the individuals the county board or agency serves.

(C) The county board or agency has failed to comply with a provision of Chapter 5123. or 5126. of the Revised Code or a rule adopted by the director.

(D) Approving the application would be inconsistent with the plans and priorities of the department of developmental disabilities.

**Sec. 5123.374.** (A) The director of developmental disabilities may rescind approval of an application submitted under section 5123.37 of the Revised Code if either of the following occurs:

(1) The county board of developmental disabilities or private, nonprofit agency that submitted the application fails, on or before the deadline or, if any, the last extended deadline established under section 5123.372 of the Revised Code for the county board or agency, to notify the director that the county board or agency is ready to acquire the replacement facility.

(2) The county board or agency at any time notifies the director that the county board or agency no longer intends to acquire a replacement facility.

(B) If the director rescinds approval of an application, the director shall use any funds the county board or agency paid to the director under section 5123.371 of the Revised Code to assist ~~mental retardation or~~ developmental disabilities construction projects under section 5123.36 of the Revised Code.

**Sec. 5123.375.** The developmental disabilities community capital replacement facilities fund is hereby created in the state treasury. The director of developmental disabilities shall credit all amounts paid to the director under section 5123.371 of the Revised Code to the fund. The director shall use the money in the fund as follows:

(A) To make payments to county boards of developmental disabilities and private, nonprofit agencies pursuant to agreements entered into under section 5123.373 of the Revised Code;

(B) To provide, pursuant to section 5123.374 of the Revised Code, assistance for ~~mental retardation or~~ developmental disabilities construction projects under section 5123.36 of the Revised Code.

**Sec. 5123.40.** There is hereby created in the state treasury the services fund for individuals with ~~mental retardation and~~ developmental disabilities. On the death of the beneficiary of a trust created pursuant to section 5815.28 of the Revised Code, the portion of the remaining assets of the trust specified in the trust instrument shall be deposited to the credit of the fund.

Money credited to the fund shall be used for individuals with ~~mental retardation and~~ developmental disabilities. In accordance with Chapter 119. of the Revised Code, the department of developmental disabilities may adopt any rules necessary to implement this section.

**Sec. 5123.41.** As used in this section and sections 5123.42 to 5123.47 of the Revised Code:

(A) "Adult services" has the same meaning as in section 5126.01 of the Revised Code.

(B) "Certified supported living provider" means a person or government entity certified under section 5123.161 of the Revised Code.

(C) "Drug" has the same meaning as in section 4729.01 of the Revised Code.

(D) "Family support services" has the same meaning as in section 5126.01 of the Revised Code.

(E) "Health-related activities" means the following:

- (1) Taking vital signs;
- (2) Application of clean dressings that do not require health assessment;
- (3) Basic measurement of bodily intake and output;
- (4) Oral suctioning;
- (5) Use of glucometers;
- (6) External urinary catheter care;
- (7) Emptying and replacing colostomy bags;
- (8) Collection of specimens by noninvasive means.

(F) "Licensed health professional authorized to prescribe drugs" has the same meaning as in section 4729.01 of the Revised Code.

(G) "~~MR/DD~~ Developmental disabilities personnel" means the employees and the workers under contract who provide specialized services to individuals with ~~mental retardation and~~ developmental disabilities. "~~MR/DD~~ Developmental disabilities personnel" includes those who provide the services as follows:

- (1) Through direct employment with the department of developmental disabilities or a county board of developmental disabilities;
- (2) Through an entity under contract with the department of developmental disabilities or a county board of developmental disabilities;
- (3) Through direct employment or by being under contract with private entities, including private entities that operate residential facilities.

(H) "Nursing delegation" means the process established in rules adopted by the board of nursing pursuant to Chapter 4723. of the Revised Code under which a registered nurse or licensed practical nurse acting at the direction of a registered nurse transfers the performance of a particular nursing activity or task to another person who is not otherwise authorized to perform the activity or task.

(I) "Prescribed medication" means a drug that is to be administered according to the instructions of a licensed health professional authorized to prescribe drugs.

(J) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code.

(K) "Specialized services" has the same meaning as in section 5123.50 of the Revised Code.

(L) "Tube feeding" means the provision of nutrition to an individual through a gastrostomy tube or a jejunostomy tube.

**Sec. 5123.42.** (A) ~~Beginning nine months after March 31, 2003, MR/DD~~ Developmental disabilities personnel who are not specifically authorized by other provisions of the Revised Code to administer prescribed medications, perform health-related activities, or perform tube feedings may do so pursuant to this section as part of the specialized services the ~~MR/DD~~ developmental disabilities personnel provide to individuals with ~~mental retardation and~~ developmental disabilities in the

following categories:

(1) Recipients of early intervention, preschool, and school-age services offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

(2) Recipients of adult services offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

(3) Recipients of family support services offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

(4) Recipients of services from certified supported living providers, if the services are offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

(5) Recipients of residential support services from certified home and community-based services providers, if the services are received in a community living arrangement that includes not more than four individuals with ~~mental retardation and~~ developmental disabilities and the services are offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

(6) Recipients of services not included in divisions (A)(1) to (5) of this section that are offered or provided pursuant to this chapter or Chapter 5126. of the Revised Code;

(7) Residents of a residential facility with five or fewer resident beds;

(8) Residents of a residential facility with at least six but not more than sixteen resident beds;

(9) Residents of a residential facility with seventeen or more resident beds who are on a field trip from the facility, if all of the following are the case:

(a) The field trip is sponsored by the facility for purposes of complying with federal medicaid statutes and regulations, state medicaid statutes and rules, or other federal or state statutes, regulations, or rules that require the facility to provide habilitation, community integration, or normalization services to its residents.

(b) Not more than ten field trip participants are residents who have health needs requiring the administration of prescribed medications, excluding participants who self-administer prescribed medications or receive assistance with self-administration of prescribed medications.

(c) The facility staffs the field trip with ~~MR/DD-developmental disabilities~~ personnel in such a manner that one person will administer prescribed medications, perform health-related activities, or perform tube feedings for not more than four participants if one or more of those participants have health needs requiring the person to administer prescribed medications through a gastrostomy or jejunostomy tube.

(d) According to the instructions of a health care professional acting within the scope of the professional's practice, the health needs of the participants who require administration of prescribed medications by ~~MR/DD-developmental disabilities~~ personnel are such that the participants must receive the medications during the field trip to avoid jeopardizing their health and safety.

(B)(1) In the case of recipients of early intervention, preschool, and school-age services, as specified in division (A)(1) of this section, all of the following apply:

(a) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform health-related activities.

(b) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer

prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(2) In the case of recipients of adult services, as specified in division (A)(2) of this section, all of the following apply:

(a) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform health-related activities.

(b) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(3) In the case of recipients of family support services, as specified in division (A)(3) of this section, all of the following apply:

(a) Without nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform health-related activities.

(b) Without nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(e) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer routine doses of insulin through subcutaneous injections and insulin pumps.

(4) In the case of recipients of services from certified supported living providers, as specified in division (A)(4) of this section, all of the following apply:

(a) Without nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform health-related activities.

(b) Without nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(e) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer routine doses of insulin through subcutaneous injections and insulin pumps.

(5) In the case of recipients of residential support services from certified home and

community-based services providers, as specified in division (A)(5) of this section, all of the following apply:

(a) Without nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform health-related activities.

(b) Without nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(e) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer routine doses of insulin through subcutaneous injections and insulin pumps.

(6) In the case of recipients of services not included in divisions (A)(1) to (5) of this section, as specified in division (A)(6) of this section, all of the following apply:

(a) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform health-related activities.

(b) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(7) In the case of residents of a residential facility with five or fewer beds, as specified in division (A)(7) of this section, all of the following apply:

(a) Without nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform health-related activities.

(b) Without nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(e) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer routine doses of insulin through subcutaneous injections and insulin pumps.

(8) In the case of residents of a residential facility with at least six but not more than sixteen resident beds, as specified in division (A)(8) of this section, all of the following apply:

(a) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform health-related activities.

(b) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer

oral and topical prescribed medications.

(c) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(9) In the case of residents of a residential facility with seventeen or more resident beds who are on a field trip from the facility, all of the following apply during the field trip, subject to the limitations specified in division (A)(9) of this section:

(a) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform health-related activities.

(b) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer oral and topical prescribed medications.

(c) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, if the tubes being used are stable and labeled.

(d) With nursing delegation, ~~MR/DD-developmental disabilities~~ personnel may perform routine tube feedings, if the gastrostomy and jejunostomy tubes being used are stable and labeled.

(C) The authority of ~~MR/DD-developmental disabilities~~ personnel to administer prescribed medications, perform health-related activities, and perform tube feedings pursuant to this section is subject to all of the following:

(1) To administer prescribed medications, perform health-related activities, or perform tube feedings for individuals in the categories specified under divisions (A)(1) to (8) of this section, ~~MR/DD-developmental disabilities~~ personnel shall obtain the certificate or certificates required by the department of developmental disabilities and issued under section 5123.45 of the Revised Code. ~~MR/DD-Developmental disabilities~~ personnel shall administer prescribed medication, perform health-related activities, and perform tube feedings only as authorized by the certificate or certificates held.

(2) To administer prescribed medications, perform health-related activities, or perform tube feedings for individuals in the category specified under division (A)(9) of this section, ~~MR/DD-developmental disabilities~~ personnel shall successfully complete the training course or courses developed under section 5123.43 of the Revised Code for the ~~MR/DD-developmental disabilities~~ personnel. ~~MR/DD-Developmental disabilities~~ personnel shall administer prescribed medication, perform health-related activities, and perform tube feedings only as authorized by the training completed.

(3) If nursing delegation is required under division (B) of this section, ~~MR/DD-developmental disabilities~~ personnel shall not act without nursing delegation or in a manner that is inconsistent with the delegation.

(4) The employer of ~~MR/DD-developmental disabilities~~ personnel shall ensure that ~~MR/DD-developmental disabilities~~ personnel have been trained specifically with respect to each individual for whom they administer prescribed medications, perform health-related activities, or perform tube feedings. ~~MR/DD-Developmental disabilities~~ personnel shall not administer prescribed medications,

perform health-related activities, or perform tube feedings for any individual for whom they have not been specifically trained.

(5) If the employer of ~~MR/DD-developmental disabilities~~ personnel believes that ~~MR/DD-developmental disabilities~~ personnel have not or will not safely administer prescribed medications, perform health-related activities, or perform tube feedings, the employer shall prohibit the action from continuing or commencing. ~~MR/DD-Developmental disabilities~~ personnel shall not engage in the action or actions subject to an employer's prohibition.

(D) In accordance with section 5123.46 of the Revised Code, the department of developmental disabilities shall adopt rules governing its implementation of this section. The rules shall include the following:

(1) Requirements for documentation of the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by ~~MR/DD-developmental disabilities~~ personnel pursuant to the authority granted under this section;

(2) Procedures for reporting errors that occur in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by ~~MR/DD-developmental disabilities~~ personnel pursuant to the authority granted under this section;

(3) Other standards and procedures the department considers necessary for implementation of this section.

**Sec. 5123.421.** The department of developmental disabilities shall accept complaints from any person or government entity regarding the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by ~~MR/DD-developmental disabilities~~ personnel pursuant to the authority granted under section 5123.42 of the Revised Code. The department shall conduct investigations of complaints as it considers appropriate. The department shall adopt rules in accordance with section 5123.46 of the Revised Code establishing procedures for accepting complaints and conducting investigations under this section.

**Sec. 5123.422.** ~~MR/DD-Developmental disabilities~~ personnel who administer prescribed medications, perform health-related activities, or perform tube feedings pursuant to the authority granted under section 5123.42 of the Revised Code are not liable for any injury caused by administering the medications, performing the health-related activities, or performing the tube feedings, if both of the following apply:

(A) The ~~MR/DD-developmental disabilities~~ personnel acted in accordance with the methods taught in training completed in compliance with section 5123.42 of the Revised Code;

(B) The ~~MR/DD-developmental disabilities~~ personnel did not act in a manner that constitutes wanton or reckless misconduct.

**Sec. 5123.43.** (A) The department of developmental disabilities shall develop courses for the training of ~~MR/DD-developmental disabilities~~ personnel in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings pursuant to the authority granted under section 5123.42 of the Revised Code. The department may develop separate or combined training courses for the administration of prescribed medications, performance of health-related activities, and performance of tube feedings. Training in the administration of prescribed medications through gastrostomy and jejunostomy tubes may be included in a course providing training in tube feedings. Training in the administration of insulin may be developed as a

separate course or included in a course providing training in the administration of other prescribed medications.

(B)(1) The department shall adopt rules in accordance with section 5123.46 of the Revised Code that specify the content and length of the training courses developed under this section. The rules may include any other standards the department considers necessary for the training courses.

(2) In adopting rules that specify the content of a training course or part of a training course that trains ~~MR/DD~~-developmental disabilities personnel in the administration of prescribed medications, the department shall ensure that the content includes all of the following:

- (a) Infection control and universal precautions;
- (b) Correct and safe practices, procedures, and techniques for administering prescribed medication;
- (c) Assessment of drug reaction, including known side effects, interactions, and the proper course of action if a side effect occurs;
- (d) The requirements for documentation of medications administered to each individual;
- (e) The requirements for documentation and notification of medication errors;
- (f) Information regarding the proper storage and care of medications;
- (g) Information about proper receipt of prescriptions and transcription of prescriptions into an individual's medication administration record, except when the ~~MR/DD~~-developmental disabilities personnel being trained will administer prescribed medications only to residents of a residential facility with seventeen or more resident beds who are participating in a field trip, as specified in division (A)(9) of section 5123.42 of the Revised Code;
- (h) Course completion standards that require successful demonstration of proficiency in administering prescribed medications;
- (i) Any other material or course completion standards that the department considers relevant to the administration of prescribed medications by ~~MR/DD~~-developmental disabilities personnel.

**Sec. 5123.44.** The department of developmental disabilities shall develop courses that train registered nurses to provide the ~~MR/DD~~-developmental disabilities personnel training courses developed under section 5123.43 of the Revised Code. The department may develop courses that train registered nurses to provide all of the courses developed under section 5123.43 of the Revised Code or any one or more of the courses developed under that section.

The department shall adopt rules in accordance with section 5123.46 of the Revised Code that specify the content and length of the training courses. The rules may include any other standards the department considers necessary for the training courses.

**Sec. 5123.441.** (A) Each ~~MR/DD~~-developmental disabilities personnel training course developed under section 5123.43 of the Revised Code shall be provided by a registered nurse.

(B)(1) Except as provided in division (B)(2) of this section, to provide a training course or courses to ~~MR/DD~~-developmental disabilities personnel, a registered nurse shall obtain the certificate or certificates required by the department and issued under section 5123.45 of the Revised Code. The registered nurse shall provide only the training course or courses authorized by the certificate or certificates the registered nurse holds.

(2) A registered nurse is not required to obtain a certificate to provide a training course to ~~MR/DD~~-developmental disabilities personnel if the only ~~MR/DD~~-personnel to whom the course or

courses are provided are those who administer prescribed medications, perform health-related activities, or perform tube feedings for residents of a residential facility with seventeen or more resident beds who are on a field trip from the facility, as specified in division (A)(9) of section 5123.42 of the Revised Code. To provide the training course or courses, the registered nurse shall successfully complete the training required by the department through the courses it develops under section 5123.44 of the Revised Code. The registered nurse shall provide only the training courses authorized by the training the registered nurse completes.

**Sec. 5123.45.** (A) The department of developmental disabilities shall establish a program under which the department issues certificates to the following:

(1) ~~MR/DD-Developmental disabilities~~ personnel, for purposes of meeting the requirement of division (C)(1) of section 5123.42 of the Revised Code to obtain a certificate or certificates to administer prescribed medications, perform health-related activities, and perform tube feedings;

(2) Registered nurses, for purposes of meeting the requirement of division (B)(1) of section 5123.441 of the Revised Code to obtain a certificate or certificates to provide the ~~MR/DD-developmental disabilities~~ personnel training courses developed under section 5123.43 of the Revised Code.

(B)(1) Except as provided in division (B)(2) of this section, to receive a certificate issued under this section, ~~MR/DD-developmental disabilities~~ personnel and registered nurses shall successfully complete the applicable training course or courses and meet all other applicable requirements established in rules adopted pursuant to this section. The department shall issue the appropriate certificate or certificates to ~~MR/DD-developmental disabilities~~ personnel and registered nurses who meet the requirements for the certificate or certificates.

(2) The department shall include provisions in the program for issuing certificates to ~~MR/DD~~ personnel and registered nurses who were required to be included in the certificate program pursuant to division (B)(2) of this section as that division existed immediately before ~~the effective date of this amendment September 29, 2011.~~ ~~MR/DD-personnel~~ Personnel who receive a certificate under division (B)(2) of this section shall not administer insulin until they have been trained by a registered nurse who has received a certificate under this section that allows the registered nurse to provide training courses to ~~MR/DD-personnel~~ in the administration of insulin. A registered nurse who receives a certificate under division (B)(2) of this section shall not provide training courses to ~~MR/DD-personnel~~ in the administration of insulin unless the registered nurse completes a course developed under section 5123.44 of the Revised Code that enables the registered nurse to receive a certificate to provide training courses to ~~MR/DD-personnel~~ in the administration of insulin.

(C) Certificates issued to ~~MR/DD-developmental disabilities~~ personnel are valid for one year and may be renewed. Certificates issued to registered nurses are valid for two years and may be renewed.

To be eligible for renewal, ~~MR/DD-developmental disabilities~~ personnel and registered nurses shall meet the applicable continued competency requirements and continuing education requirements specified in rules adopted under division (D) of this section. In the case of registered nurses, continuing nursing education completed in compliance with the license renewal requirements established under Chapter 4723. of the Revised Code may be counted toward meeting the continuing education requirements established in the rules adopted under division (D) of this section.

(D) In accordance with section 5123.46 of the Revised Code, the department shall adopt rules that establish all of the following:

- (1) Requirements that ~~MR/DD-developmental disabilities~~ personnel and registered nurses must meet to be eligible to take a training course;
- (2) Standards that must be met to receive a certificate, including requirements pertaining to an applicant's criminal background;
- (3) Procedures to be followed in applying for a certificate and issuing a certificate;
- (4) Standards and procedures for renewing a certificate, including requirements for continuing education and, in the case of ~~MR/DD-developmental disabilities~~ personnel who administer prescribed medications, standards that require successful demonstration of proficiency in administering prescribed medications;
- (5) Standards and procedures for suspending or revoking a certificate;
- (6) Standards and procedures for suspending a certificate without a hearing pending the outcome of an investigation;
- (7) Any other standards or procedures the department considers necessary to administer the certification program.

**Sec. 5123.451.** The department of developmental disabilities shall establish and maintain a registry that lists all ~~MR/DD-developmental disabilities~~ personnel and registered nurses holding valid certificates issued under section 5123.45 of the Revised Code. The registry shall specify the type of certificate held and any limitations that apply to a certificate holder. The department shall make the information in the registry available to the public in computerized form or any other manner that provides continuous access to the information in the registry.

**Sec. 5123.47.** (A) As used in this section:

- (1) "In-home care" means the supportive services provided within the home of an individual with ~~mental retardation or a developmental disability~~ who receives funding for the services through a county board of developmental disabilities, including any recipient of residential services funded as home and community-based services, family support services provided under section 5126.11 of the Revised Code, or supported living provided in accordance with sections 5126.41 to 5126.47 of the Revised Code. "In-home care" includes care that is provided outside an individual's home in places incidental to the home, and while traveling to places incidental to the home, except that "in-home care" does not include care provided in the facilities of a county board of developmental disabilities or care provided in schools.
- (2) "Parent" means either parent of a child, including an adoptive parent but not a foster parent.
- (3) "Unlicensed in-home care worker" means an individual who provides in-home care but is not a health care professional.
- (4) "Family member" means a parent, sibling, spouse, son, daughter, grandparent, aunt, uncle, cousin, or guardian of the individual with ~~mental retardation or a developmental disability~~ if the individual with ~~mental retardation or a developmental disabilities-disability~~ lives with the person and is dependent on the person to the extent that, if the supports were withdrawn, another living arrangement would have to be found.
- (5) "Health care professional" means any of the following:

- (a) A dentist who holds a valid license issued under Chapter 4715. of the Revised Code;
  - (b) A registered or licensed practical nurse who holds a valid license issued under Chapter 4723. of the Revised Code;
  - (c) An optometrist who holds a valid license issued under Chapter 4725. of the Revised Code;
  - (d) A pharmacist who holds a valid license issued under Chapter 4729. of the Revised Code;
  - (e) A person who holds a valid certificate issued under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited brand of medicine;
  - (f) A physician assistant who holds a valid license issued under Chapter 4730. of the Revised Code;
  - (g) An occupational therapist or occupational therapy assistant or a physical therapist or physical therapist assistant who holds a valid license issued under Chapter 4755. of the Revised Code;
  - (h) A respiratory care professional who holds a valid license issued under Chapter 4761. of the Revised Code.
- (6) "Health care task" means a task that is prescribed, ordered, delegated, or otherwise directed by a health care professional acting within the scope of the professional's practice.
- (B) Except as provided in division (E) of this section, a family member of an individual with ~~mental retardation~~ or a developmental disability may authorize an unlicensed in-home care worker to administer oral and topical prescribed medications or perform other health care tasks as part of the in-home care the worker provides to the individual, if all of the following apply:
- (1) The family member is the primary supervisor of the care.
  - (2) The unlicensed in-home care worker has been selected by the family member or the individual receiving care and is under the direct supervision of the family member.
  - (3) The unlicensed in-home care worker is providing the care through an employment or other arrangement entered into directly with the family member and is not otherwise employed by or under contract with a person or government entity to provide services to individuals with ~~mental retardation~~ and developmental disabilities.
- (C) A family member shall obtain a prescription, if applicable, and written instructions from a health care professional for the care to be provided to the individual. The family member shall authorize the unlicensed in-home care worker to provide the care by preparing a written document granting the authority. The family member shall provide the unlicensed in-home care worker with appropriate training and written instructions in accordance with the instructions obtained from the health care professional.
- (D) A family member who authorizes an unlicensed in-home care worker to administer oral and topical prescribed medications or perform other health care tasks retains full responsibility for the health and safety of the individual receiving the care and for ensuring that the worker provides the care appropriately and safely. No entity that funds or monitors the provision of in-home care may be held liable for the results of the care provided under this section by an unlicensed in-home care worker, including such entities as the county board of developmental disabilities and the department of developmental disabilities.

An unlicensed in-home care worker who is authorized under this section by a family member

to provide care to an individual may not be held liable for any injury caused in providing the care, unless the worker provides the care in a manner that is not in accordance with the training and instructions received or the worker acts in a manner that constitutes wanton or reckless misconduct.

(E) A county board of developmental disabilities may evaluate the authority granted by a family member under this section to an unlicensed in-home care worker at any time it considers necessary and shall evaluate the authority on receipt of a complaint. If the board determines that a family member has acted in a manner that is inappropriate for the health and safety of the individual receiving the care, the authorization granted by the family member to an unlicensed in-home care worker is void, and the family member may not authorize other unlicensed in-home care workers to provide the care. In making such a determination, the board shall use appropriately licensed health care professionals and shall provide the family member an opportunity to file a complaint under section 5126.06 of the Revised Code.

**Sec. 5123.50.** As used in sections 5123.50 to 5123.542 of the Revised Code:

(A) "Abuse" means all of the following:

(1) The use of physical force that can reasonably be expected to result in physical harm or serious physical harm;

(2) Sexual abuse;

(3) Verbal abuse.

(B) "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Revised Code, including violations of Chapter 2911. or 2913. of the Revised Code.

(C) "~~MR/DD~~ Developmental disabilities employee" means all of the following:

(1) An employee of the department of developmental disabilities;

(2) An employee of a county board of developmental disabilities;

(3) An employee in a position that includes providing specialized services to an individual with ~~mental retardation or another~~ a developmental disability;

(4) An independent provider as defined in section 5123.16 of the Revised Code.

(D) "Neglect" means, when there is a duty to do so, failing to provide an individual with any treatment, care, goods, or services that are necessary to maintain the health and safety of the individual.

(E) "Offense of violence" has the same meaning as in section 2901.01 of the Revised Code.

(F) "Physical harm" and "serious physical harm" have the same meanings as in section 2901.01 of the Revised Code.

(G) "Prescribed medication" has the same meaning as in section 5123.41 of the Revised Code.

(H) "Sexual abuse" means unlawful sexual conduct or sexual contact.

(I) "Specialized services" means any program or service designed and operated to serve primarily individuals with ~~mental retardation or a developmental disability~~ disabilities, including a program or service provided by an entity licensed or certified by the department of developmental disabilities. A program or service available to the general public is not a specialized service.

(J) "Verbal abuse" means purposely using words to threaten, coerce, intimidate, harass, or humiliate an individual.

(K) "Sexual conduct," "sexual contact," and "spouse" have the same meanings as in section 2907.01 of the Revised Code.

**Sec. 5123.51.** (A) In addition to any other action required by sections 5123.61 and 5126.31 of the Revised Code, the department of developmental disabilities shall review each report the department receives of abuse or neglect of an individual with ~~mental retardation~~ or a developmental disability or misappropriation of an individual's property that includes an allegation that ~~an MR/DD~~ a developmental disabilities employee committed or was responsible for the abuse, neglect, or misappropriation. The department shall review a report it receives from a public children services agency only after the agency completes its investigation pursuant to section 2151.421 of the Revised Code. On receipt of a notice under section 2930.061 or 5123.541 of the Revised Code, the department shall review the notice.

(B) The department shall do both of the following:

(1) Investigate the allegation or adopt the findings of an investigation or review of the allegation conducted by another person or government entity and determine whether there is a reasonable basis for the allegation;

(2) If the department determines that there is a reasonable basis for the allegation, conduct an adjudication pursuant to Chapter 119. of the Revised Code.

(C)(1) The department shall appoint an independent hearing officer to conduct any hearing conducted pursuant to division (B)(2) of this section, except that, if the hearing is regarding an employee of the department who is represented by a union, the department and a representative of the union shall jointly select the hearing officer.

(2)(a) Except as provided in division (C)(2)(b) of this section, no hearing shall be conducted under division (B)(2) of this section until any criminal proceeding or collective bargaining arbitration concerning the same allegation has concluded.

(b) The department may conduct a hearing pursuant to division (B)(2) of this section before a criminal proceeding concerning the same allegation is concluded if both of the following are the case:

(i) The department notifies the prosecutor responsible for the criminal proceeding that the department proposes to conduct a hearing.

(ii) The prosecutor consents to the hearing.

(3) In conducting a hearing pursuant to division (B)(2) of this section, the hearing officer shall do all of the following:

(a) Determine whether there is clear and convincing evidence that the ~~MR/DD~~ developmental disabilities employee has done any of the following:

(i) Misappropriated property of one or more individuals with ~~mental retardation~~ or a developmental ~~disability~~ disabilities that has a value, either separately or taken together, of one hundred dollars or more;

(ii) Misappropriated property of an individual with ~~mental retardation~~ or a developmental disability that is designed to be used as a check, draft, negotiable instrument, credit card, charge card, or device for initiating an electronic fund transfer at a point of sale terminal, automated teller machine, or cash dispensing machine;

(iii) Misappropriated prescribed medication of an individual with ~~mental retardation~~ or a

developmental disability;

- (iv) Knowingly abused such an individual;
- (v) Recklessly abused or neglected such an individual, with resulting physical harm;
- (vi) Negligently abused or neglected such an individual, with resulting serious physical harm;
- (vii) Recklessly neglected such an individual, creating a substantial risk of serious physical

harm;

(viii) Engaged in sexual conduct or had sexual contact with an individual with ~~mental retardation or another~~ a developmental disability who was not the ~~MR/DD~~ developmental disabilities employee's spouse and for whom the ~~MR/DD~~ developmental disabilities employee was employed or under a contract to provide care;

(ix) Unreasonably failed to make a report pursuant to division (C) of section 5123.61 of the Revised Code when the employee knew or should have known that the failure would result in a substantial risk of harm to an individual with ~~mental retardation or a~~ developmental disability;

(x) Been convicted of or entered a plea of guilty to any of the following if the victim of the offense is an individual with ~~mental retardation or a~~ developmental disability: an offense of violence, a violation of a section contained in Chapter 2907. or Chapter 2913. of the Revised Code, or a violation of section 2903.16, 2903.34, 2903.341, or 2919.22 of the Revised Code.

(b) Give weight to the decision in any collective bargaining arbitration regarding the same allegation;

(c) Give weight to any relevant facts presented at the hearing.

(D)(1) Unless the director of developmental disabilities determines that there are extenuating circumstances and except as provided in division (E) of this section, if the director, after considering all of the factors listed in division (C)(3) of this section, finds that there is clear and convincing evidence that ~~an MR/DD~~ a developmental disabilities employee has done one or more of the things described in division (C)(3)(a) of this section the director shall include the name of the employee in the registry established under section 5123.52 of the Revised Code.

(2) Extenuating circumstances the director must consider include the use of physical force by ~~an MR/DD~~ a developmental disabilities employee that was necessary as self-defense.

(3) If the director includes ~~an MR/DD~~ a developmental disabilities employee in the registry established under section 5123.52 of the Revised Code, the director shall notify the employee, the person or government entity that employs or contracts with the employee, the individual with ~~mental retardation or a~~ developmental disability who was the subject of the report and that individual's legal guardian, if any, the attorney general, and the prosecuting attorney or other law enforcement agency. If the ~~MR/DD~~ developmental disabilities employee holds a license, certificate, registration, or other authorization to engage in a profession issued pursuant to Title XLVII of the Revised Code, the director shall notify the appropriate agency, board, department, or other entity responsible for regulating the employee's professional practice.

(4) If an individual whose name appears on the registry is involved in a court proceeding or arbitration arising from the same facts as the allegation resulting in the individual's placement on the registry, the disposition of the proceeding or arbitration shall be noted in the registry next to the individual's name.

(E) In the case of an allegation concerning an employee of the department, after the hearing

conducted pursuant to division (B)(2) of this section, the director of health or that director's designee shall review the decision of the hearing officer to determine whether the standard described in division (C)(3) of this section has been met. If the director or designee determines that the standard has been met and that no extenuating circumstances exist, the director or designee shall notify the director of developmental disabilities that the ~~MR/DD~~ developmental disabilities employee is to be included in the registry established under section 5123.52 of the Revised Code. If the director of developmental disabilities receives such notification, the director shall include the ~~MR/DD~~ developmental disabilities employee in the registry and shall provide the notification described in division (D)(3) of this section.

(F) If the department is required by Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and the ~~MR/DD~~ developmental disabilities employee subject to the notice does not timely request a hearing in accordance with section 119.07 or 5123.0414 of the Revised Code, the department is not required to hold a hearing.

(G) Files and records of investigations conducted pursuant to this section are not public records as defined in section 149.43 of the Revised Code, but, on request, the department shall provide copies of those files and records to the attorney general, a prosecuting attorney, or a law enforcement agency.

**Sec. 5123.52.** (A) The department of developmental disabilities shall establish a registry of ~~MR/DD~~ developmental disabilities employees consisting of the names of ~~MR/DD~~ employees individuals included in the registry pursuant to section 5123.51 of the Revised Code.

(B) Before a person or government entity hires, contracts with, or employs an individual as an ~~MR/DD~~ a developmental disabilities employee, the person or government entity shall inquire whether the individual is included in the registry.

(C) When it receives an inquiry regarding whether an individual is included in the registry, the department shall inform the person making the inquiry whether the individual is included in the registry.

(D)(1) Except as otherwise provided in a collective bargaining agreement entered into under Chapter 4117. of the Revised Code that is in effect on November 22, 2000, no person or government entity shall hire, contract with, or employ as an ~~MR/DD~~ a developmental disabilities employee an individual who is included in the registry. Notwithstanding sections 4117.08 and 4117.10 of the Revised Code, no agreement entered into under Chapter 4117. of the Revised Code after November 22, 2000, may contain any provision that in any way limits the effect or operation of this section.

(2) Neither the department nor any county board of developmental disabilities may enter into a new contract or renew a contract with a person or government entity that fails to comply with division (D)(1) of this section until the department or board is satisfied that the person or government entity will comply.

(3) A person or government entity that fails to hire or retain as an ~~MR/DD~~ a developmental disabilities employee ~~a person~~ an individual because the ~~person~~ individual is included in the registry shall not be liable in damages in a civil action brought by the employee or applicant for employment. Termination of employment pursuant to division (D)(1) of this section constitutes a discharge for just cause for the purposes of section 4141.29 of the Revised Code.

(E) Information contained in the registry is a public record for the purposes of section 149.43

of the Revised Code and is subject to inspection and copying under section 1347.08 of the Revised Code.

**Sec. 5123.541.** (A) No ~~MR/DD-developmental disabilities~~ employee shall engage in any sexual conduct or have any sexual contact with an individual with ~~mental retardation or another a~~ developmental disability for whom the ~~MR/DD-developmental disabilities~~ employee is employed or under a contract to provide care unless the individual is the ~~MR/DD-developmental disabilities~~ employee's spouse.

(B) Any ~~MR/DD-developmental disabilities~~ employee who violates division (A) of this section shall be eligible to be included in the registry regarding misappropriation, abuse, neglect, or other specified misconduct by ~~MR/DD-developmental disabilities~~ employees established under section 5123.52 of the Revised Code, in addition to any other sanction or penalty authorized or required by law.

(C)(1) Any person listed in division (C)(2) of section 5123.61 of the Revised Code who has reason to believe that ~~an MR/DD a developmental disabilities~~ employee has violated division (A) of this section shall immediately report that belief to the department of developmental disabilities.

(2) Any person who has reason to believe that ~~an MR/DD a developmental disabilities~~ employee has violated division (A) of this section may report that belief to the department of developmental disabilities.

**Sec. 5123.542.** (A) Each of the following shall annually provide a written notice to each of its ~~MR/DD-developmental disabilities~~ employees explaining the conduct for which ~~an MR/DD a developmental disabilities~~ employee may be included in the registry established under section 5123.52 of the Revised Code:

- (1) The department of developmental disabilities;
- (2) Each county board of developmental disabilities;
- (3) Each provider and subcontractor, as defined in section 5123.081 of the Revised Code;
- (4) Each owner, operator, or administrator of a residential facility, as defined in section 5123.19 of the Revised Code;
- (5) Each owner, operator, or administrator of a program certified by the department to provide supported living.

(B) The department of developmental disabilities or a county board of developmental disabilities shall provide the notice required by division (A) of this section to ~~an MR/DD a developmental disabilities~~ employee who is an independent provider, as defined in section 5123.16 of the Revised Code.

(C) The notice described in division (A) of this section shall be in a form and provided in a manner prescribed by the department of developmental disabilities. The form shall be the same for all persons and entities required to provide notice under division (A) of this section.

~~(C)(D)~~ The fact that ~~an MR/DD a developmental disabilities~~ employee does not receive the notice required by this section does not exempt the employee from inclusion in the registry established under section 5123.52 of the Revised Code.

**Sec. 5123.55.** As used in sections 5123.55 to 5123.59 of the Revised Code:

(A) "Guardian" means a guardian of the person, limited guardian, interim guardian, or emergency guardian pursuant to appointment by the probate court under Chapter 2111. of the

Revised Code.

(B) "Trustee" means a trustee appointed by and accountable to the probate court, in lieu of a guardian and without a judicial determination of incompetency, with respect to an estate of ten thousand dollars or less.

(C) "Protector" means an agency under contract with the department of developmental disabilities acting with or without court appointment to provide guidance, service, and encouragement in the development of maximum self-reliance to a person with ~~mental retardation or a~~ developmental disability, independent of any determination of incompetency.

(D) "Protective service" means performance of the duties of a guardian, trustee, or conservator, or acting as a protector, with respect to a person with ~~mental retardation or a~~ developmental disability.

(E) "Conservator" means a conservator of the person pursuant to an appointment by a probate court under Chapter 2111. of the Revised Code.

**Sec. 5123.57.** No guardianship or trusteeship appointment shall be made under sections 5123.55 to 5123.59 of the Revised Code and no person shall be accepted for service by a protector under those sections unless a comprehensive evaluation has been made in a clinic or other facility approved by the department of developmental disabilities. The evaluation shall include a medical, psychological, social, and educational evaluation, and a copy of the evaluation shall be filed with the department.

Any agency that is appointed as a guardian, trustee, or conservator under sections 5123.55 to 5123.59 of the Revised Code or accepted as a protector under those sections shall provide for a review at least once each year in writing of the physical, mental, and social condition of each ~~mentally retarded or developmentally disabled~~ person with a developmental disability for whom it is acting as guardian, trustee, or protector. An agency providing protective services under contract with the department shall file these reports with the department of developmental disabilities. Any record of the department or agency pertaining to a ~~mentally retarded or developmentally disabled~~ person with a developmental disability shall not be a public record under section 149.43 of the Revised Code. Information contained in those records shall not be disclosed publicly in such a manner as to identify individuals, but may be made available to persons approved by the director of developmental disabilities or the court.

**Sec. 5123.58.** An agency providing protective services under contract with the department of developmental disabilities may be nominated under any of the following conditions as guardian, trustee, protector, conservator, or as trustee and protector of a ~~mentally retarded or developmentally disabled~~ person with a developmental disability:

(A) The person who needs or believes the person needs protective service may make application in writing.

(B) Any interested person may make application in writing on behalf of a ~~mentally retarded or developmentally disabled~~ person with a developmental disability.

(C) A parent may name the department or agency as guardian or successor guardian in a will.

(D) A parent may name the department or agency as guardian, trustee, or protector, to assume such duties during the parent's lifetime.

If the results of the comprehensive evaluation required under section 5123.57 of the Revised

Code indicate that the person named in the nomination is in need of protective services, the agency or service either shall reject or accept the nomination as guardian, trustee, or conservator, subject to appointment by the probate court, or reject or accept the nomination as protector, or trustee and protector.

At the time the nomination is accepted or when an appointment is made by the court, the ~~mentally retarded or developmentally disabled~~ person with a developmental disability and any person who made application for service on the ~~mentally retarded or developmentally disabled person's~~ behalf of the person with a developmental disability under this section shall be informed by the agency, service, or court of the procedure for terminating the appointment or service. The agency or service shall cease to provide protective service as a protector pursuant to nomination under division (A), (B), or (D) of this section when a written request for termination is received by the agency from or on behalf of the ~~mentally retarded or developmentally disabled~~ person with a developmental disability. If the agency or service believes the person to be in need of protective service, the agency or service may file an application for guardianship, trusteeship, or protectorship with the probate court. Termination of any court appointment as guardian, trustee, or protector shall be by order of the probate court.

**Sec. 5123.601.** (A) The Ohio protection and advocacy system staff, and attorneys designated by the system to represent persons detained, hospitalized, or institutionalized under this chapter or Chapter 5122. of the Revised Code shall have ready access to all of the following:

(1) During normal business hours and at other reasonable times, all records, except records of community residential facilities and records of contract agencies of county boards of developmental disabilities and boards of alcohol, drug addiction, and mental health services, relating to expenditures of state and federal funds or to the commitment, care, treatment, and habilitation of all persons represented by the Ohio protection and advocacy system, including those who may be represented pursuant to division (D) of this section, or persons detained, hospitalized, institutionalized, or receiving services under this chapter or Chapter 340., 5119., 5122., or 5126. of the Revised Code that are records maintained by the following entities providing services for those persons: departments; institutions; hospitals; boards of alcohol, drug addiction, and mental health services; county boards of developmental disabilities; and any other entity providing services to persons who may be represented by the Ohio protection and advocacy system pursuant to division (D) of this section;

(2) Any records maintained in computerized data banks of the departments or boards or, in the case of persons who may be represented by the Ohio protection and advocacy system pursuant to division (D) of this section, any other entity that provides services to those persons;

(3) During their normal working hours, personnel of the departments, facilities, boards, agencies, institutions, hospitals, and other service-providing entities;

(4) At any time, all persons detained, hospitalized, or institutionalized; persons receiving services under this chapter or Chapter 340., 5119., 5122., or 5126. of the Revised Code; and persons who may be represented by the Ohio protection and advocacy system pursuant to division (D) of this section.

(5) Records of a community residential facility, a contract agency of a board of alcohol, drug addiction, and mental health services, or a contract agency of a county board of developmental disabilities with one of the following consents:

(a) The consent of the person, including when the person is a minor or has been adjudicated incompetent;

(b) The consent of the person's guardian of the person, if any, or the parent if the person is a minor;

(c) No consent, if the person is unable to consent for any reason, and the guardian of the person, if any, or the parent of the minor, has refused to consent or has not responded to a request for consent and either of the following has occurred:

(i) A complaint regarding the person has been received by the Ohio protection and advocacy system;

(ii) The Ohio protection and advocacy system has determined that there is probable cause to believe that such person has been subjected to abuse or neglect.

(B) All records received or maintained by the Ohio protection and advocacy system in connection with any investigation, representation, or other activity under this section shall be confidential and shall not be disclosed except as authorized by the person represented by the Ohio protection and advocacy system or, subject to any privilege, a guardian of the person or parent of the minor. Relationships between personnel and the agents of the Ohio protection and advocacy system and its clients shall be fiduciary relationships, and all communications shall be privileged as if between attorney and client.

(C) The Ohio protection and advocacy system may compel by subpoena the appearance and sworn testimony of any person the Ohio protection and advocacy system reasonably believes may be able to provide information or to produce any documents, books, records, papers, or other information necessary to carry out its duties. On the refusal of any person to produce or authenticate any requested documents, the Ohio protection and advocacy system may apply to the Franklin county court of common pleas to compel the production or authentication of requested documents. If the court finds that failure to produce or authenticate any requested documents was improper, the court may hold the person in contempt as in the case of disobedience of the requirements of a subpoena issued from the court, or a refusal to testify in the court.

(D) In addition to providing services to ~~mentally ill, mentally retarded,~~ persons with mental illness or developmentally disabled persons with developmental disabilities, when a grant authorizing the provision of services to other individuals is accepted by the Ohio protection and advocacy system, the Ohio protection and advocacy system may provide advocacy to those other individuals and exercise any other authority granted by this section on behalf of those individuals. Determinations of whether an individual is eligible for services under this division shall be made by the Ohio protection and advocacy system.

**Sec. 5123.61.** (A) As used in this section:

(1) "Law enforcement agency" means the state highway patrol, the police department of a municipal corporation, or a county sheriff.

(2) "Abuse" has the same meaning as in section 5123.50 of the Revised Code, except that it includes a misappropriation, as defined in that section.

(3) "Neglect" has the same meaning as in section 5123.50 of the Revised Code.

(B) The department of developmental disabilities shall establish a registry office for the purpose of maintaining reports of abuse, neglect, and other major unusual incidents made to the

department under this section and reports received from county boards of developmental disabilities under section 5126.31 of the Revised Code. The department shall establish committees to review reports of abuse, neglect, and other major unusual incidents.

(C)(1) Any person listed in division (C)(2) of this section, having reason to believe that ~~a person~~ an individual with ~~mental retardation or~~ a developmental disability has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect of that ~~person~~ individual, shall immediately report or cause reports to be made of such information to the entity specified in this division. Except as provided in section 5120.173 of the Revised Code or as otherwise provided in this division, the person making the report shall make it to a law enforcement agency or to the county board of developmental disabilities. If the report concerns a resident of a facility operated by the department of developmental disabilities the report shall be made either to a law enforcement agency or to the department. If the report concerns any act or omission of an employee of a county board of developmental disabilities, the report immediately shall be made to the department and to the county board.

(2) All of the following persons are required to make a report under division (C)(1) of this section:

(a) Any physician, including a hospital intern or resident, any dentist, podiatrist, chiropractor, practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code, hospital administrator or employee of a hospital, nurse licensed under Chapter 4723. of the Revised Code, employee of an ambulatory health facility as defined in section 5101.61 of the Revised Code, employee of a home health agency, employee of a residential facility licensed under section 5119.34 of the Revised Code that provides accommodations, supervision, and ~~person~~ personal care services for three to sixteen unrelated adults, or employee of a community mental health facility;

(b) Any school teacher or school authority, licensed professional clinical counselor, licensed professional counselor, independent social worker, social worker, independent marriage and family therapist, marriage and family therapist, psychologist, attorney, peace officer, coroner, or residents' rights advocate as defined in section 3721.10 of the Revised Code;

(c) A superintendent, board member, or employee of a county board of developmental disabilities; an administrator, board member, or employee of a residential facility licensed under section 5123.19 of the Revised Code; an administrator, board member, or employee of any other public or private provider of services to ~~a person~~ an individual with ~~mental retardation or~~ a developmental disability, or any ~~MR/DD~~ developmental disabilities employee, as defined in section 5123.50 of the Revised Code;

(d) A member of a citizen's advisory council established at an institution or branch institution of the department of developmental disabilities under section 5123.092 of the Revised Code;

(e) A member of the clergy who is employed in a position that includes providing specialized services to an individual with ~~mental retardation or another~~ a developmental disability, while acting in an official or professional capacity in that position, or a person who is employed in a position that includes providing specialized services to an individual with ~~mental retardation or another~~ a developmental disability and who, while acting in an official or professional capacity, renders spiritual treatment through prayer in accordance with the tenets of an organized religion.

(3)(a) The reporting requirements of this division do not apply to employees of the Ohio protection and advocacy system.

(b) An attorney or physician is not required to make a report pursuant to division (C)(1) of this section concerning any communication the attorney or physician receives from a client or patient in an attorney-client or physician-patient relationship, if, in accordance with division (A) or (B) of section 2317.02 of the Revised Code, the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding, except that the client or patient is deemed to have waived any testimonial privilege under division (A) or (B) of section 2317.02 of the Revised Code with respect to that communication and the attorney or physician shall make a report pursuant to division (C)(1) of this section, if both of the following apply:

(i) The client or patient, at the time of the communication, is ~~a person~~ an individual with mental retardation or a developmental disability.

(ii) The attorney or physician knows or suspects, as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient.

(4) Any person who fails to make a report required under division (C) of this section and who is ~~an MR/DD~~ a developmental disabilities employee, as defined in section 5123.50 of the Revised Code, shall be eligible to be included in the registry regarding misappropriation, abuse, neglect, or other specified misconduct by ~~MR/DD~~ developmental disabilities employees established under section 5123.52 of the Revised Code.

(D) The reports required under division (C) of this section shall be made forthwith by telephone or in person and shall be followed by a written report. The reports shall contain the following:

(1) The names and addresses of the ~~person~~ individual with mental retardation or a developmental disability and the ~~person's~~ individual's custodian, if known;

(2) The age of the ~~person~~ individual with mental retardation or a developmental disability;

(3) Any other information that would assist in the investigation of the report.

(E) When a physician performing services as a member of the staff of a hospital or similar institution has reason to believe that ~~a person~~ an individual with mental retardation or a developmental disability has suffered injury, abuse, or physical neglect, the physician shall notify the person in charge of the institution or that person's designated delegate, who shall make the necessary reports.

(F) Any person having reasonable cause to believe that ~~a person~~ an individual with mental retardation or a developmental disability has suffered or faces a substantial risk of suffering abuse or neglect may report or cause a report to be made of that belief to the entity specified in this division. Except as provided in section 5120.173 of the Revised Code or as otherwise provided in this division, the person making the report shall make it to a law enforcement agency or the county board of developmental disabilities. If the ~~person~~ individual is a resident of a facility operated by the department of developmental disabilities, the report shall be made to a law enforcement agency or to the department. If the report concerns any act or omission of an employee of a county board of developmental disabilities, the report immediately shall be made to the department and to the county

board.

(G)(1) Upon the receipt of a report concerning the possible abuse or neglect of a ~~person-an individual with mental retardation or~~ a developmental disability, the law enforcement agency shall inform the county board of developmental disabilities or, if the ~~person-individual~~ is a resident of a facility operated by the department of developmental disabilities, the department.

(2) On receipt of a report under this section that includes an allegation of action or inaction that may constitute a crime under federal law or the law of this state, the department of developmental disabilities shall notify the law enforcement agency.

(3) When a county board of developmental disabilities receives a report under this section that includes an allegation of action or inaction that may constitute a crime under federal law or the law of this state, the superintendent of the board or an individual the superintendent designates under division (H) of this section shall notify the law enforcement agency. The superintendent or individual shall notify the department of developmental disabilities when it receives any report under this section.

(4) When a county board of developmental disabilities receives a report under this section and believes that the degree of risk to the person is such that the report is an emergency, the superintendent of the board or an employee of the board the superintendent designates shall attempt a face-to-face contact with the ~~person-individual with mental retardation or~~ a developmental disability who allegedly is the victim within one hour of the board's receipt of the report.

(H) The superintendent of the board may designate an individual to be responsible for notifying the law enforcement agency and the department when the county board receives a report under this section.

(I) An adult with ~~mental retardation or~~ a developmental disability about whom a report is made may be removed from the adult's place of residence only by law enforcement officers who consider that the adult's immediate removal is essential to protect the adult from further injury or abuse or in accordance with the order of a court made pursuant to section 5126.33 of the Revised Code.

(J) A law enforcement agency shall investigate each report of abuse or neglect it receives under this section. In addition, the department, in cooperation with law enforcement officials, shall investigate each report regarding a resident of a facility operated by the department to determine the circumstances surrounding the injury, the cause of the injury, and the person responsible. The investigation shall be in accordance with the memorandum of understanding prepared under section 5126.058 of the Revised Code. The department shall determine, with the registry office which shall be maintained by the department, whether prior reports have been made concerning an adult with ~~mental retardation or~~ a developmental disability or other principals in the case. If the department finds that the report involves action or inaction that may constitute a crime under federal law or the law of this state, it shall submit a report of its investigation, in writing, to the law enforcement agency. If the ~~person-individual with mental retardation or~~ a developmental disability is an adult, with the consent of the adult, the department shall provide such protective services as are necessary to protect the adult. The law enforcement agency shall make a written report of its findings to the department.

If the ~~person-individual with a developmental disability~~ is an adult and is not a resident of a

facility operated by the department, the county board of developmental disabilities shall review the report of abuse or neglect in accordance with sections 5126.30 to 5126.33 of the Revised Code and the law enforcement agency shall make the written report of its findings to the county board.

(K) Any person or any hospital, institution, school, health department, or agency participating in the making of reports pursuant to this section, any person participating as a witness in an administrative or judicial proceeding resulting from the reports, or any person or governmental entity that discharges responsibilities under sections 5126.31 to 5126.33 of the Revised Code shall be immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of such actions except liability for perjury, unless the person or governmental entity has acted in bad faith or with malicious purpose.

(L) No employer or any person with the authority to do so shall discharge, demote, transfer, prepare a negative work performance evaluation, reduce pay or benefits, terminate work privileges, or take any other action detrimental to an employee or retaliate against an employee as a result of the employee's having made a report under this section. This division does not preclude an employer or person with authority from taking action with regard to an employee who has made a report under this section if there is another reasonable basis for the action.

(M) Reports made under this section are not public records as defined in section 149.43 of the Revised Code. Information contained in the reports on request shall be made available to the ~~person~~ individual who is the subject of the report, to the ~~person's individual's~~ individual's legal counsel, and to agencies authorized to receive information in the report by the department or by a county board of developmental disabilities.

(N) Notwithstanding section 4731.22 of the Revised Code, the physician-patient privilege shall not be a ground for excluding evidence regarding the injuries or physical neglect of a ~~person~~ an individual with ~~mental retardation~~ or a developmental disability or the cause thereof in any judicial proceeding resulting from a report submitted pursuant to this section.

**Sec. 5123.611.** (A) As used in this section, "~~MR/DD~~ developmental disabilities employee" means all of the following:

- (1) An employee of the department of developmental disabilities;
- (2) An employee of a county board of developmental disabilities;
- (3) An employee in a position that includes providing specialized services, as defined in section 5123.50 of the Revised Code, to an individual with ~~mental retardation~~ or a developmental disability.

(B) At the conclusion of a review of a report of abuse, neglect, or a major unusual incident that is conducted by a review committee established pursuant to section 5123.61 of the Revised Code, the committee shall issue recommendations to the department. The department shall review the committee's recommendations and issue a report of its findings. The department shall make the report available to all of the following:

- (1) The individual with ~~mental retardation~~ or a developmental disability who is the subject of the report;
- (2) That individual's guardian or legal counsel;
- (3) The licensee, as defined in section 5123.19 of the Revised Code, of a residential facility in which the individual resides;

(4) The employer of any ~~MR/DD~~ developmental disabilities employee who allegedly committed or was responsible for the abuse, neglect, or major unusual incident.

(C) Except as provided in this section, the department shall not disclose its report to any person or government entity that is not authorized to investigate reports of abuse, neglect, or other major unusual incidents, unless the individual with ~~mental retardation~~ or a developmental disability who is the subject of the report or the individual's guardian gives the department written consent.

**Sec. 5123.612.** The director of developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code regarding the reporting of major unusual incidents and unusual incidents concerning persons with ~~mental retardation~~ or a ~~developmental disability~~ disabilities. The rules shall specify what constitutes a major unusual incident or an unusual incident.

**Sec. 5123.614.** (A) Subject to division (B) of this section, on receipt of a report of a major unusual incident made pursuant to section 5123.61 or 5126.31 of the Revised Code or rules adopted under section 5123.612 of the Revised Code, the department of developmental disabilities may do either of the following:

- (1) Conduct an independent review or investigation of the incident;
- (2) Request that an independent review or investigation of the incident be conducted by a county board of developmental disabilities that is not implicated in the report, a regional council of government, or any other entity authorized to conduct such investigations.

(B) If a report described in division (A) of this section concerning the health or safety of a person with ~~mental retardation~~ or a developmental disability involves an allegation that an employee of a county board of developmental disabilities has created a substantial risk of serious physical harm to a person with ~~mental retardation~~ or a developmental disability, the department shall do one of the following:

- (1) Conduct an independent investigation regarding the incident;
- (2) Request that an independent review or investigation of the incident be conducted by a county board of developmental disabilities that is not implicated in the report, a regional council of government, or any other entity authorized to conduct such investigations.

**Sec. 5123.62.** The rights of persons with ~~mental retardation~~ or a ~~developmental disability~~ disabilities include, but are not limited to, the following:

(A) The right to be treated at all times with courtesy and respect and with full recognition of their dignity and individuality;

(B) The right to an appropriate, safe, and sanitary living environment that complies with local, state, and federal standards and recognizes the persons' need for privacy and independence;

(C) The right to food adequate to meet accepted standards of nutrition;

(D) The right to practice the religion of their choice or to abstain from the practice of religion;

(E) The right of timely access to appropriate medical or dental treatment;

(F) The right of access to necessary ancillary services, including, but not limited to, occupational therapy, physical therapy, speech therapy, and behavior modification and other psychological services;

(G) The right to receive appropriate care and treatment in the least intrusive manner;

(H) The right to privacy, including both periods of privacy and places of privacy;

(I) The right to communicate freely with persons of their choice in any reasonable manner they choose;

(J) The right to ownership and use of personal possessions so as to maintain individuality and personal dignity;

(K) The right to social interaction with members of either sex;

(L) The right of access to opportunities that enable individuals to develop their full human potential;

(M) The right to pursue vocational opportunities that will promote and enhance economic independence;

(N) The right to be treated equally as citizens under the law;

(O) The right to be free from emotional, psychological, and physical abuse;

(P) The right to participate in appropriate programs of education, training, social development, and habilitation and in programs of reasonable recreation;

(Q) The right to participate in decisions that affect their lives;

(R) The right to select a parent or advocate to act on their behalf;

(S) The right to manage their personal financial affairs, based on individual ability to do so;

(T) The right to confidential treatment of all information in their personal and medical records, except to the extent that disclosure or release of records is permitted under sections 5123.89 and 5126.044 of the Revised Code;

(U) The right to voice grievances and recommend changes in policies and services without restraint, interference, coercion, discrimination, or reprisal;

(V) The right to be free from unnecessary chemical or physical restraints;

(W) The right to participate in the political process;

(X) The right to refuse to participate in medical, psychological, or other research or experiments.

**Sec. 5123.63.** Every state agency, county board of developmental disabilities, or political subdivision that provides services, either directly or through a contract, to persons with ~~mental retardation~~ or a developmental disability ~~disabilities~~ shall give each provider a copy of the list of rights contained in section 5123.62 of the Revised Code. Each public and private provider of services shall carry out the requirements of this section in addition to any other posting or notification requirements imposed by local, state, or federal law or rules.

The provider shall make copies of the list of rights and shall be responsible for an initial distribution of the list to each individual receiving services from the provider. If the individual is unable to read the list, the provider shall communicate the contents of the list to the individual to the extent practicable in a manner that the individual understands. The individual receiving services or the parent, guardian, or advocate of the individual shall sign an acknowledgement of receipt of a copy of the list of rights, and a copy of the signed acknowledgement shall be placed in the individual's file. The provider shall also be responsible for answering any questions and giving any explanations necessary to assist the individual to understand the rights enumerated. Instruction in these rights shall be documented.

Each provider shall make available to all persons receiving services and all employees and visitors a copy of the list of rights and the addresses and telephone numbers of the Ohio protection

and advocacy system, the department of developmental disabilities, and the county board of developmental disabilities of the county in which the provider provides services.

**Sec. 5123.64.** (A) Every provider of services to persons with ~~mental retardation or a developmental disability~~ disabilities shall establish policies and programs to ensure that all staff members are familiar with the rights enumerated in section 5123.62 of the Revised Code and observe those rights in their contacts with persons receiving services. Any policy, procedure, or rule of the provider that conflicts with any of the rights enumerated shall be null and void. Every provider shall establish written procedures for resolving complaints of violations of those rights. A copy of the procedures shall be provided to any person receiving services or to any parent, guardian, or advocate of a person receiving services.

(B) Any person with ~~mental retardation or a developmental disability~~ who believes that the person's rights as enumerated in section 5123.62 of the Revised Code have been violated may:

- (1) Bring the violation to the attention of the provider for resolution;
- (2) Report the violation to the department of developmental disabilities, the Ohio protection and advocacy system, or the appropriate county board of developmental disabilities;
- (3) Take any other appropriate action to ensure compliance with sections 5123.61 to 5123.64 of the Revised Code, including the filing of a legal action to enforce rights or to recover damages for violation of rights.

**Sec. 5123.65.** In addition to the rights specified in section 5123.62 of the Revised Code, individuals with ~~mental retardation and developmental disabilities~~ who can safely self-administer medication or receive assistance with self-administration of medication have the right to self-administer medication or receive assistance with the self-administration of medication. The department of developmental disabilities shall adopt rules as it considers necessary to implement and enforce this section. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

**Sec. 5123.651.** (A) As used in this section, "~~MR/DD developmental disabilities~~ personnel" and "prescribed medication" have the same meanings as in section 5123.41 of the Revised Code.

(B) ~~MR/DD Developmental disabilities~~ personnel who are not specifically authorized by other provisions of the Revised Code to provide assistance in the self-administration of prescribed medication may, under this section, provide that assistance as part of the services they provide to individuals with ~~mental retardation and developmental disabilities~~. To provide assistance with self-administration of prescribed medication, ~~MR/DD developmental disabilities~~ personnel are not required to be trained or certified in accordance with section 5123.42 of the Revised Code.

(C) When assisting in the self-administration of prescribed medication, ~~MR/DD developmental disabilities~~ personnel shall take only the following actions:

- (1) Remind an individual when to take the medication and observe the individual to ensure that the individual follows the directions on the container;
- (2) Assist an individual by taking the medication in its container from the area where it is stored, handing the container with the medication in it to the individual, and opening the container, if the individual is physically unable to open the container;
- (3) Assist, on request by or with the consent of, a physically impaired but mentally alert individual, with removal of oral or topical medication from the container and with the individual's taking or applying of the medication. If an individual is physically unable to place a dose of oral

medication to the individual's mouth without spilling or dropping it, ~~MR/DD-developmental disabilities~~ personnel may place the dose in another container and place that container to the individual's mouth.

**Sec. 5123.67.** This chapter shall be liberally interpreted to accomplish the following purposes:

(A) To promote the human dignity and to protect the constitutional rights of persons with ~~mental retardation or a developmental disability~~ disabilities in the state;

(B) To encourage the development of the ability and potential of each person with ~~mental retardation or a developmental disability~~ in the state to the fullest possible extent, no matter how severe the degree of disability;

(C) To promote the economic security, standard of living, and meaningful employment of persons with ~~mental retardation or a developmental disability~~ disabilities;

(D) To maximize the assimilation of persons with ~~mental retardation or a developmental disability~~ disabilities into the ordinary life of the communities in which they live;

(E) To promote opportunities for persons with ~~mental retardation or a developmental disability~~ disabilities to live in surroundings or circumstances that are typical for other community members;

(F) To promote the right of persons with ~~mental retardation or a developmental disability~~ disabilities to speak and be heard about the desired direction of their lives and to use available resources in ways that further that direction.

**Sec. 5123.69.** (A) Except as provided in division (D) of this section, any person who is eighteen years of age or older and who is or believes self to be ~~mentally retarded~~ a person with an intellectual disability may make written application to the managing officer of any institution for voluntary admission. Except as provided in division (D) of this section, the application may be made on behalf of a minor by a parent or guardian, and on behalf of an adult adjudicated mentally incompetent by a guardian.

(B) The managing officer of an institution, with the concurrence of the chief program director, may admit a person applying pursuant to this section only after a comprehensive evaluation has been made of the person and only if the comprehensive evaluation concludes that the person is ~~mentally retarded~~ has an intellectual disability and would benefit significantly from admission.

(C) The managing officer shall discharge any voluntary resident if, in the judgment of the chief program director, the results of a comprehensive examination indicate that institutionalization no longer is advisable. In light of the results of the comprehensive evaluation, the managing officer also may discharge any voluntary resident if, in the judgment of the chief program director, the discharge would contribute to the most effective use of the institution in the habilitation and care of ~~the mentally retarded persons with developmental disabilities~~.

(D) A person who is found incompetent to stand trial or not guilty by reason of insanity and who is committed pursuant to section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code shall not voluntarily commit self pursuant to this section until after the final termination of the commitment, as described in division (J) of section 2945.401 of the Revised Code.

**Sec. 5123.701.** (A) Except as provided in division (D) of this section, any person in the community who is eighteen years of age or older and who is or believes self to be ~~mentally retarded~~ a

person with an intellectual disability may make written application to the managing officer of any institution for temporary admission for short-term care. The application may be made on behalf of a minor by a parent or guardian, and on behalf of an adult adjudicated mentally incompetent by a guardian.

(B) For purposes of this section, short-term care shall be defined to mean appropriate services provided to a person with ~~mental retardation~~ an intellectual disability for no more than fourteen consecutive days and for no more than forty-two days in a fiscal year. When circumstances warrant, the fourteen-day period may be extended at the discretion of the managing officer. Short-term care is provided in a developmental center to meet the family's or caretaker's needs for separation from the person with ~~mental retardation~~ an intellectual disability.

(C) The managing officer of an institution, with the concurrence of the chief program director, may admit a person for short-term care only after a medical examination has been made of the person and only if the managing officer concludes that the person ~~is mentally retarded~~ has an intellectual disability.

(D) A person who is found not guilty by reason of insanity shall not admit self to an institution for short-term care unless a hearing was held regarding the person pursuant to division (A) of section 2945.40 of the Revised Code and either of the following applies:

(1) The person was found at the hearing not to be a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order;

(2) The person was found at the hearing to be a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, was involuntarily committed, and was finally discharged.

(E) The ~~mentally retarded~~ person with an intellectual disability, liable relatives, and guardians of ~~mentally retarded~~ persons with intellectual disabilities admitted for respite care shall pay support charges in accordance with sections 5121.01 to 5121.21 of the Revised Code.

(F) At the conclusion of each period of short-term care, the person shall return to the person's family or caretaker. Under no circumstances shall a person admitted for short-term care according to this section remain in the institution after the period of short-term care unless the person is admitted according to section 5123.70, sections 5123.71 to 5123.76, or section 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code.

**Sec. 5123.71.** (A)(1) Proceedings for the involuntary institutionalization of a person pursuant to sections 5123.71 to 5123.76 of the Revised Code shall be commenced by the filing of an affidavit with the probate division of the court of common pleas of the county where the person resides or where the person is institutionalized, in the manner and form prescribed by the department of developmental disabilities either on information or actual knowledge, whichever is determined to be proper by the court. The affidavit may be filed only by a person who has custody of the individual as a parent, guardian, or service provider or by a person acting on behalf of the department or a county board of developmental disabilities. This section does not apply regarding the institutionalization of a person pursuant to section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code.

The affidavit shall contain an allegation setting forth the specific category or categories under division (O) of section 5123.01 of the Revised Code upon which the commencement of proceedings is based and a statement of the factual ground for the belief that the person is a ~~mentally retarded~~

person with an intellectual disability subject to institutionalization by court order. Except as provided in division (A)(2) of this section, the affidavit shall be accompanied by both of the following:

(a) A comprehensive evaluation report prepared by the person's evaluation team that includes a statement by the members of the team certifying that they have performed a comprehensive evaluation of the person and that they are of the opinion that the person is a ~~mentally-retarded~~ person with an intellectual disability subject to institutionalization by court order;

(b) An assessment report prepared by the county board of developmental disabilities under section 5123.711 of the Revised Code specifying that the individual is in need of services on an emergency or priority basis.

(2) In lieu of the comprehensive evaluation report, the affidavit may be accompanied by a written and sworn statement that the person or the guardian of a person adjudicated incompetent has refused to allow a comprehensive evaluation and county board assessment and assessment reports. Immediately after accepting an affidavit that is not accompanied by the reports of a comprehensive evaluation and county board assessment, the court shall cause a comprehensive evaluation and county board assessment of the person named in the affidavit to be performed. The evaluation shall be conducted in the least restrictive environment possible and the assessment shall be conducted in the same manner as assessments conducted under section 5123.711 of the Revised Code. The evaluation and assessment must be completed before a probable cause hearing or full hearing may be held under section 5123.75 or 5123.76 of the Revised Code.

A written report of the evaluation team's findings and the county board's assessment shall be filed with the court. The reports shall, consistent with the rules of evidence, be accepted as probative evidence in any proceeding under section 5123.75 or 5123.76 of the Revised Code. If the counsel for the person who is evaluated or assessed is known, the court shall send to the counsel a copy of the reports as soon as possible after they are filed and prior to any proceedings under section 5123.75 or 5123.76 of the Revised Code.

(B) Any person who is involuntarily detained in an institution or otherwise is in custody under this chapter shall be informed of the right to do the following:

(1) Immediately make a reasonable number of telephone calls or use other reasonable means to contact an attorney, a physician, or both, to contact any other person or persons to secure representation by counsel, or to obtain medical assistance, and be provided assistance in making calls if the assistance is needed and requested;

(2) Retain counsel and have independent expert evaluation and, if the person is an indigent person, be represented by court-appointed counsel and have independent expert evaluation at court expense;

(3) Upon request, have a hearing to determine whether there is probable cause to believe that the person is a ~~mentally-retarded~~ person with an intellectual disability subject to institutionalization by court order.

(C) No person who is being treated by spiritual means through prayer alone in accordance with a recognized religious method of healing may be ordered detained or involuntarily committed unless the court has determined that the person represents a very substantial risk of self-impairment, self-injury, or impairment or injury to others.

**Sec. 5123.74.** (A) On receipt of an affidavit under section 5123.71 of the Revised Code, the

probate division of the court of common pleas may, if it has probable cause to believe that the person named in the affidavit is a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order and that emergency institutionalization is required, do any of the following:

(1) Issue a temporary order of detention ordering any health or police officer or sheriff to take into custody and transport such person to an institution or other place as designated in section 5123.77 of the Revised Code;

(2) Order the county board of developmental disabilities to provide services to the individual in the community if the board's assessment of the individual conducted under section 5123.711 of the Revised Code identifies that resources are available to meet the individual's needs in an appropriate manner within the community as an alternative to institutionalization;

(3) Set the matter for further hearing.

(B) A managing officer of a nonpublic institution may, and the managing officer of a public institution shall, receive for observation, diagnosis, habilitation, and care any person whose admission is ordered pursuant to division (A)(1) of this section.

The alternatives to institutionalization that may be ordered under division (A)(2) of this section are limited to those that are necessary to remediate the emergency condition; necessary for the person's health, safety or welfare; and necessary for the protection of society, if applicable.

(C) A person detained under this section may be observed and habilitated until the probable cause hearing provided for in section 5123.75 of the Revised Code. If no probable cause hearing is requested or held, the person may be evaluated and shall be provided with habilitative services until the full hearing is held pursuant to section 5123.76 of the Revised Code.

**Sec. 5123.75.** A respondent who is involuntarily placed in an institution or other place as designated in section 5123.77 of the Revised Code or with respect to whom proceedings have been instituted under section 5123.71 of the Revised Code shall, on request of the respondent, the respondent's guardian, or the respondent's counsel, or upon the court's own motion, be afforded a hearing to determine whether there is probable cause to believe that the respondent is a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order.

(A) The probable cause hearing shall be conducted within two court days from the day on which the request is made. Failure to conduct the probable cause hearing within this time shall effect an immediate discharge of the respondent. If the proceedings are not reinstated within thirty days, records of the proceedings shall be expunged.

(B) The respondent shall be informed that the respondent may retain counsel and have independent expert evaluation and, if the respondent is an indigent person, be represented by court appointed counsel and have independent expert evaluation at court expense.

(C) The probable cause hearing shall be conducted in a manner consistent with the procedures set forth in division (A) of section 5123.76 of the Revised Code, except divisions (A)(10) and (14) of that section, and the designee of the director of developmental disabilities under section 5123.72 of the Revised Code shall present evidence for the state.

(D) If the court does not find probable cause to believe that the respondent is a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, it shall order immediate release of the respondent and dismiss and expunge all record of the proceedings

under this chapter.

(E) On motion of the respondent or the respondent's counsel and for good cause shown, the court may order a continuance of the hearing.

(F) If the court finds probable cause to believe that the respondent is a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, the court may issue an interim order of placement and, where proceedings under section 5123.71 of the Revised Code have been instituted, shall order a full hearing as provided in section 5123.76 of the Revised Code to be held on the question of whether the respondent is a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order. Unless specifically waived by the respondent or the respondent's counsel, the court shall schedule said hearing to be held as soon as possible within ten days from the probable cause hearing. A waiver of such full hearing at this point shall not preclude the respondent from asserting the respondent's right to such hearing under section 5123.76 of the Revised Code at any time prior to the mandatory hearing provided in division (H) of section 5123.76 of the Revised Code. In any case, if the respondent has waived the right to the full hearing, a mandatory hearing shall be held under division (H) of section 5123.76 of the Revised Code between the ninetieth and the one hundredth day after the original involuntary detention of the person unless the respondent has been discharged.

(G) Whenever possible, the probable cause hearing shall be held before the respondent is taken into custody.

**Sec. 5123.76.** (A) The full hearing shall be conducted in a manner consistent with the procedures outlined in this chapter and with due process of law. The hearing shall be held by a judge of the probate division or, upon transfer by the judge of the probate division, by another judge of the court of common pleas, or a referee designated by the judge of the probate division. Any referee designated by the judge of the probate division must be an attorney.

(1) The following shall be made available to counsel for the respondent:

(a) All relevant documents, information, and evidence in the custody or control of the state or prosecutor;

(b) All relevant documents, information, and evidence in the custody or control of the institution, facility, or program in which the respondent currently is held or in which the respondent has been held pursuant to these proceedings;

(c) With the consent of the respondent, all relevant documents, information, and evidence in the custody or control of any institution or person other than the state.

(2) The respondent has the right to be represented by counsel of the respondent's choice and has the right to attend the hearing except if unusual circumstances of compelling medical necessity exist that render the respondent unable to attend and the respondent has not expressed a desire to attend.

(3) If the respondent is not represented by counsel and the court determines that the conditions specified in division (A)(2) of this section justify the respondent's absence and the right to counsel has not been validly waived, the court shall appoint counsel forthwith to represent the respondent at the hearing, reserving the right to tax costs of appointed counsel to the respondent unless it is shown that the respondent is indigent. If the court appoints counsel, or if the court determines that the evidence relevant to the respondent's absence does not justify the absence, the

court shall continue the case.

(4) The respondent shall be informed of the right to retain counsel, to have independent expert evaluation, and, if an indigent person, to be represented by court appointed counsel and have expert independent evaluation at court expense.

(5) The hearing may be closed to the public unless counsel for the respondent requests that the hearing be open to the public.

(6) Unless objected to by the respondent, the respondent's counsel, or the designee of the director of developmental disabilities under section 5123.72 of the Revised Code, the court, for good cause shown, may admit persons having a legitimate interest in the proceedings.

(7) The affiant under section 5123.71 of the Revised Code shall be subject to subpoena by either party.

(8) The court shall examine the sufficiency of all documents filed and shall inform the respondent, if present, and the respondent's counsel of the nature of the content of the documents and the reason for which the respondent is being held or for which the respondent's placement is being sought.

(9) The court shall receive only relevant, competent, and material evidence.

(10) In accordance with section 5123.72 of the Revised Code, the designee of the director shall present the evidence for the state. In proceedings under this chapter, the attorney general shall present the comprehensive evaluation, assessment, diagnosis, prognosis, record of habilitation and care, if any, and less restrictive habilitation plans, if any. The attorney general does not have a similar presentation responsibility in connection with a person who has been found not guilty by reason of insanity and who is the subject of a hearing under section 2945.40 of the Revised Code to determine whether the person is a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order.

(11) The respondent has the right to testify and the respondent or the respondent's counsel has the right to subpoena witnesses and documents and to present and cross-examine witnesses.

(12) The respondent shall not be compelled to testify and shall be so advised by the court.

(13) On motion of the respondent or the respondent's counsel for good cause shown, or upon the court's own motion, the court may order a continuance of the hearing.

(14) To an extent not inconsistent with this chapter, the Rules of Civil Procedure shall be applicable.

(B) Unless, upon completion of the hearing, the court finds by clear and convincing evidence that the respondent named in the affidavit is a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, it shall order the respondent's discharge forthwith.

(C) If, upon completion of the hearing, the court finds by clear and convincing evidence that the respondent is a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, the court may order the respondent's discharge or order the respondent, for a period not to exceed ninety days, to any of the following:

(1) A public institution, provided that commitment of the respondent to the institution will not cause the institution to exceed its licensed capacity determined in accordance with section 5123.19 of the Revised Code and provided that such a placement is indicated by the comprehensive evaluation report filed pursuant to section 5123.71 of the Revised Code;

- (2) A private institution;
- (3) A county mental retardation program offered by a county board of developmental disabilities for persons with intellectual disabilities;
- (4) Receive private habilitation and care;
- (5) Any other suitable facility, program, or the care of any person consistent with the comprehensive evaluation, assessment, diagnosis, prognosis, and habilitation needs of the respondent.

(D) Any order made pursuant to division (C)(2), (4), or (5) of this section shall be conditional upon the receipt by the court of consent by the facility, program, or person to accept the respondent.

(E) In determining the place to which, or the person with whom, the respondent is to be committed, the court shall consider the comprehensive evaluation, assessment, diagnosis, and projected habilitation plan for the respondent, and shall order the implementation of the least restrictive alternative available and consistent with habilitation goals.

(F) If, at any time it is determined by the director of the facility or program to which, or the person to whom, the respondent is committed that the respondent could be equally well habilitated in a less restrictive environment that is available, the following shall occur:

(1) The respondent shall be released by the director of the facility or program or by the person forthwith and referred to the court together with a report of the findings and recommendations of the facility, program, or person.

(2) The director of the facility or program or the person shall notify the respondent's counsel and the designee of the director of developmental disabilities.

(3) The court shall dismiss the case or order placement in the less restrictive environment.

(G)(1) Except as provided in divisions (G)(2) and (3) of this section, any person who has been committed under this section may apply at any time during the ninety-day period for voluntary admission to an institution under section 5123.69 of the Revised Code. Upon admission of a voluntary resident, the managing officer immediately shall notify the court, the respondent's counsel, and the designee of the director in writing of that fact by mail or otherwise, and, upon receipt of the notice, the court shall dismiss the case.

(2) A person who is found incompetent to stand trial or not guilty by reason of insanity and who is committed pursuant to section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code shall not be voluntarily admitted to an institution pursuant to division (G)(1) of this section until after the termination of the commitment, as described in division (J) of section 2945.401 of the Revised Code.

(H) If, at the end of any commitment period, the respondent has not already been discharged or has not requested voluntary admission status, the director of the facility or program, or the person to whose care the respondent has been committed, shall discharge the respondent forthwith, unless at least ten days before the expiration of that period the designee of the director of developmental disabilities or the prosecutor files an application with the court requesting continued commitment.

(1) An application for continued commitment shall include a written report containing a current comprehensive evaluation and assessment, a diagnosis, a prognosis, an account of progress and past habilitation, and a description of alternative habilitation settings and plans, including a habilitation setting that is the least restrictive setting consistent with the need for habilitation. A copy

of the application shall be provided to respondent's counsel. The requirements for notice under section 5123.73 of the Revised Code and the provisions of divisions (A) to (E) of this section apply to all hearings on such applications.

(2) A hearing on the first application for continued commitment shall be held at the expiration of the first ninety-day period. The hearing shall be mandatory and may not be waived.

(3) Subsequent periods of commitment not to exceed one hundred eighty days each may be ordered by the court if the designee of the director of developmental disabilities files an application for continued commitment, after a hearing is held on the application or without a hearing if no hearing is requested and no hearing required under division (H)(4) of this section is waived. Upon the application of a person involuntarily committed under this section, supported by an affidavit of a licensed physician alleging that the person is no longer a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, the court for good cause shown may hold a full hearing on the person's continued commitment prior to the expiration of any subsequent period of commitment set by the court.

(4) A mandatory hearing shall be held at least every two years after the initial commitment.

(5) If the court, after a hearing upon a request to continue commitment, finds that the respondent is a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, the court may make an order pursuant to divisions (C), (D), and (E) of this section.

(I) Notwithstanding the provisions of division (H) of this section, no person who is found to be a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order pursuant to division (O)(2) of section 5123.01 of the Revised Code shall be held under involuntary commitment for more than five years.

(J) The managing officer admitting a person pursuant to a judicial proceeding, within ten working days of the admission, shall make a report of the admission to the department.

**Sec. 5123.79.** (A) Notwithstanding a finding pursuant to section 5123.76 of the Revised Code that a person is a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, the managing officer of an institution, with the concurrence of the chief program director, shall, except as provided in division (C) of this section, grant a discharge without the consent or the authorization of any court upon a determination that institutionalization no longer is appropriate. Upon the discharge, the managing officer of the institution shall notify the probate division of the court of common pleas that made the involuntary commitment.

(B) Upon the request of the director of a private institution, program, facility, or person having custody of a resident institutionalized pursuant to section 5123.76 of the Revised Code, or on the order of the probate division of the court of common pleas, the resident may be called for a rehearing to determine the advisability of continued institutionalization at a place within the county of resident's residence or the county where the resident is institutionalized as the probate division designates. The hearing shall be held pursuant to section 5123.76 of the Revised Code.

**Sec. 5123.80.** (A) When the chief program director of an institution for ~~the mentally retarded~~ persons with intellectual disabilities considers that it is in the best interest of a resident, the managing officer may permit the resident to leave the institution on a trial visit. The trial visit shall be for the period of time the managing officer determines.

(B) The managing officer, upon releasing a resident on trial visit, may impose such

requirements and conditions upon the resident while the resident is absent from the institution as are consistent with the habilitation plan.

(C) The managing officer of the institution from which an involuntary resident is given trial visit status may at any time revoke the trial visit if there is reason to believe that it is in the best interests of the resident to be returned to the institution.

(D) If the revocation is not voluntarily complied with the managing officer, within five days, shall authorize any health or police officer, or sheriff to take the resident into custody and transport the resident to the institution.

(E) An involuntarily committed resident who has successfully completed one year of continuous trial visit shall be automatically discharged.

**Sec. 5123.81.** When an involuntarily committed resident of an institution for ~~the mentally retarded~~ persons with intellectual disabilities is absent without leave, an order shall be issued within five days after the resident's absence requiring the resident to be taken into custody by any health or police officer, or sheriff and transported to the institution from which the resident is absent. The order may be issued by the director of developmental disabilities, the managing officer of the institution from which the resident is absent, or the probate judge of the county from which the resident was ordered institutionalized or in which he is found. The officer who takes the resident into custody shall immediately notify the issuer of the order.

**Sec. 5123.82.** (A) Any person who has been institutionalized under this chapter may, at any time after discharge from such institution, make application to the managing officer of any public institution for habilitation and care if such person feels the person is in need of such services. If the chief program director determines the applicant to be in need of such services, the managing officer may provide such services as are required by the applicant.

(B) Any person may apply to the managing officer of any public institution for habilitation and care if such person feels the person is in need of such services. If the person's condition warrants, ~~the person's person~~ may be enrolled as an outpatient and, during such enrollment, the person may receive services subject to Chapter 5121. of the Revised Code.

(C) The application prescribed in division (A) or (B) of this section may also be made on behalf of a minor by a parent, guardian, or custodian of a minor, and on behalf of an adult adjudicated incompetent by the guardian or custodian of the adult.

(D) The managing officer of the public institution may refer any discharged resident who makes an application under this section to the director of any ~~community mental retardation program serving~~ that serves the county in which such resident resides and is offered by the county board of developmental disabilities for persons with intellectual disabilities, or to such other facility as the director of developmental disabilities may designate. Upon notice of such referral, the director of such program may provide the services required by the applicant.

**Sec. 5123.83.** No person shall be deprived of any civil right, or public or private employment, solely by reason of ~~his~~ the person's having received services, voluntarily or involuntarily, for ~~mental retardation~~ or a developmental disability. Any person in custody, voluntarily or involuntarily, under the provisions of this chapter, retains all rights not specifically denied ~~him~~ the person under this or any other chapter of the Revised Code.

**Sec. 5123.84.** All residents of institutions for ~~the mentally retarded~~ persons with intellectual

disabilities shall be allowed to communicate freely with others, including but not restricted to the following:

- (A) Receiving visitors at reasonable times;
- (B) Being visited by counsel or personal physician, or both, at any reasonable time;
- (C) Having reasonable access to telephones to make and receive confidential calls, including a reasonable number of free calls if unable to pay for them and assistance in calling if requested and needed;
- (D) Having ready access to letter writing materials and stamps, including a reasonable number without cost if the resident is unable to pay for them, to mailing and receiving unopened correspondence, and to receiving assistance in writing if requested and needed.

**Sec. 5123.85.** (A) All residents institutionalized pursuant to this chapter shall receive, within thirty days of their admission, a comprehensive evaluation, a diagnosis, a prognosis, and a description of habilitation goals consistent therewith.

(B) All such residents shall have a written habilitation plan consistent with the comprehensive evaluation, diagnosis, prognosis, and goals which shall be provided, upon request of resident or resident's counsel, to resident's counsel and to any private physician designated by the resident or the resident's counsel.

(C) All such residents shall receive habilitation and care consistent with the habilitation plan. The department of developmental disabilities shall set standards for habilitation and care provided to such residents, consistent wherever possible with standards set by ~~the joint commission on national accreditation of facilities for the mentally retarded~~ organizations recognized by the department.

(D) All such residents shall receive periodic comprehensive re-evaluations of the habilitation plan by the professional staff of the institution at intervals not to exceed ninety days.

(E) All such residents shall be provided with prompt and adequate medical treatment for any physical or mental disease or injury.

**Sec. 5123.86.** (A) Except as provided in divisions (C), (D), and (E) of this section, the chief medical officer shall provide all information, including expected physical and medical consequences, necessary to enable any resident of an institution for ~~the mentally retarded persons with intellectual disabilities~~ to give a fully informed, intelligent, and knowing consent if any of the following procedures are proposed:

- (1) Surgery;
- (2) Sterilization;
- (3) Experimental procedures.

(B) No resident shall be subjected to sterilization without the resident's informed consent.

(C) If a resident is physically or mentally unable to receive the information required for surgery or an experimental procedure under division (A) of this section, or has been adjudicated incompetent, the information may be provided to the resident's natural or court-appointed guardian, including an agency providing guardianship services under contract with the department of developmental disabilities under sections 5123.55 to 5123.59 of the Revised Code. The guardian may give the informed, intelligent, and knowing written consent for surgery or the experimental procedure.

If a resident is physically or mentally unable to receive the information required for surgery

or an experimental procedure under division (A) of this section and has no guardian, then the information, the recommendation of the chief medical officer, and the concurring judgment of a licensed physician who is not a full-time employee of the state may be provided to the court in the county in which the institution is located. The court may approve the surgery or experimental procedure. Before approving the surgery or experimental procedure, the court shall notify the Ohio protection and advocacy system created by section 5123.60 of the Revised Code, and shall notify the resident of the resident's rights to consult with counsel, to have counsel appointed by the court if the resident is indigent, and to contest the recommendation of the chief medical officer.

(D) If, in the judgment of two licensed physicians, delay in obtaining consent for surgery would create a grave danger to the health of a resident, emergency surgery may be performed without the consent of the resident if the necessary information is provided to the resident's guardian, including an agency providing guardianship services under contract with the department of developmental disabilities under sections 5123.55 to 5123.59 of the Revised Code, or to the resident's spouse or next of kin to enable that person or agency to give an informed, intelligent, and knowing written consent.

If the guardian, spouse, or next of kin cannot be contacted through exercise of reasonable diligence, or if the guardian, spouse, or next of kin is contacted, but refuses to consent, then the emergency surgery may be performed upon the written authorization of the chief medical officer and after court approval has been obtained. However, if delay in obtaining court approval would create a grave danger to the life of the resident, the chief medical officer may authorize surgery, in writing, without court approval. If the surgery is authorized without court approval, the chief medical officer who made the authorization and the physician who performed the surgery shall each execute an affidavit describing the circumstances constituting the emergency and warranting the surgery and the circumstances warranting their not obtaining prior court approval. The affidavit shall be filed with the court with which the request for prior approval would have been filed within five court days after the surgery, and a copy of the affidavit shall be placed in the resident's file and shall be given to the guardian, spouse, or next of kin of the resident, to the hospital at which the surgery was performed, and to the Ohio protection and advocacy system created by section 5123.60 of the Revised Code.

(E) This chapter does not authorize any form of compulsory medical or psychiatric treatment of any resident who is being treated by spiritual means through prayer alone in accordance with a recognized religious method of healing.

**Sec. 5123.87.** (A) No resident of an institution for ~~the mentally retarded persons with~~ intellectual disabilities shall be compelled to perform labor ~~which that~~ involves the operation, support, or maintenance of the institution or for which the institution is under contract with an outside organization. Privileges or release from the institution shall not be conditional upon the performance of such labor. Residents who volunteer to perform such labor shall be compensated at a rate derived from the value of the work performed, having reference to the prevailing wage rate for comparable work or wage rates established under section 4111.06 of the Revised Code.

(B) A resident may be required to perform habilitative tasks ~~which that~~ do not involve the operation, support, or maintenance of the institution if those tasks are an integrated part of the resident's habilitation plan and supervised by a ~~mental retardation~~ member of the institution's professional staff who is designated by the chief program director.

(C) A resident may be required to perform tasks of a personal housekeeping nature.

**Sec. 5123.88.** Any person detained pursuant to this chapter shall be entitled to the writ of habeas corpus upon proper petition by himself self or a friend to any court generally empowered to issue the writ of habeas corpus in the county in which the person is detained.

No person may bring a petition for a writ of habeas corpus that alleges that a person involuntarily detained pursuant to this chapter is no longer ~~mentally retarded~~ a person with an intellectual disability subject to institutionalization by court order unless the person shows that the release procedures of division (H) of section 5123.76 of the Revised Code are inadequate or unavailable.

**Sec. 5123.89.** (A) As used in this section:

(1) "Family" means a parent, brother, sister, spouse, son, daughter, grandparent, aunt, uncle, or cousin.

(2) "Payment" means activities undertaken by a service provider or government entity to obtain or provide reimbursement for services provided to a person.

(3) "Treatment" means the provision of services to a person, including the coordination or management of services provided to the person.

(B) All certificates, applications, records, and reports made for the purpose of this chapter, other than court journal entries or court docket entries, ~~which that~~ directly or indirectly identify a resident or former resident of an institution for ~~the mentally retarded persons with intellectual disabilities~~ or person whose institutionalization has been sought under this chapter shall be kept confidential and shall not be disclosed by any person except in the following situations:

(1) It is the judgment of the court for judicial records, and the managing officer for institution records, that disclosure is in the best interest of the person identified, and that person or that person's guardian or, if that person is a minor, that person's parent or guardian consents.

(2) Disclosure is provided for in other sections of this chapter.

~~(3) It is the judgment of the managing officer for institution records that disclosure to a mental health facility is in the best interest of the person identified.~~

~~(4) Disclosure is of a record deposited with the Ohio history connection pursuant to division (C) of section 5123.31 of the Revised Code and the disclosure is made to the closest living relative of the person identified, on the relative's request.~~

~~(5) (4) Disclosure is needed for the treatment of a person who is a resident or former resident of an institution for the mentally retarded persons with intellectual disabilities or a person whose institutionalization has been sought under this chapter or is needed for the payment of services provided to the person.~~

(C) The department of developmental disabilities shall adopt rules with respect to the systematic and periodic destruction of residents' records.

(D) Upon the death of a resident or former resident of an institution for ~~the mentally retarded persons with intellectual disabilities~~ or a person whose institutionalization was sought under this chapter, the managing officer of an institution shall provide access to the certificates, applications, records, and reports made for the purposes of this chapter to the resident's, former resident's, or person's guardian if the guardian makes a written request. If a deceased resident, former resident, or person whose institutionalization was sought under this chapter did not have a guardian at the time of

death, the managing officer shall provide access to the certificates, applications, records, and reports made for purposes of this chapter to a member of the person's family, upon that family member's written request.

(E) No person shall reveal the contents of a record of a resident except as authorized by this chapter.

**Sec. 5123.91.** All persons who are not subject to any criminal provisions and who act reasonable and in good faith, either upon actual knowledge or upon information reasonably thought by them to be reliable, shall be free from any liability to a person institutionalized in institutions for ~~the mentally retarded persons with intellectual disabilities~~ or to any other person in their procedural or physical assistance administered in the course of the institutionalization or discharge of a person pursuant to the provisions of this chapter.

**Sec. 5123.92.** If an affidavit alleging that a person ~~is mentally retarded~~ has an intellectual disability and is subject to institutionalization by court order is filed, according to the provisions of section 5123.71 of the Revised Code, in the probate division of a county within the institutional district but not in the county within which the institution is located, and if such person is detained in the institution, the probate division of the county in which the institution is located shall, upon the request of the probate division receiving the affidavit, hold a hearing and make a disposition of the person in accordance with the procedures prescribed by this chapter.

**Sec. 5123.93.** Minors with ~~mental retardation~~ intellectual disabilities shall remain under the guardianship of their parents or of a guardian appointed pursuant to Chapter 2111. of the Revised Code, notwithstanding institutionalization pursuant to any section of this chapter, unless parental rights have been terminated pursuant to a court finding that the child is neglected, abused, or dependent pursuant to Chapter 2151. of the Revised Code. If a minor with ~~mental retardation~~ an intellectual disability has been found to be dependent, abused, or neglected, the public children services agency to whom permanent custody has been assigned pursuant to Chapter 2151. of the Revised Code shall have the same authority and responsibility it would have if the child were not ~~mentally retarded~~ a person with an intellectual disability and were not institutionalized. In no case shall the guardianship of a person with ~~mental retardation~~ an intellectual disability be assigned to the managing officer or any other employee of an institution in which the person is institutionalized, or be assigned, unless there is a relationship by blood or marriage or unless the service is a protective service as defined in section 5123.55 of the Revised Code, to a person or agency who provides services to the person with ~~mental retardation~~ an intellectual disability.

**Sec. 5123.95.** The probate judge, upon making an order institutionalizing a person under this chapter, shall forthwith transmit copies, under ~~his~~ the judge's official seal, of court papers in the case, including the certificate of the expert witnesses, and of ~~his~~ the judge's findings in the case to the managing officer of the institution for ~~the mentally retarded persons with intellectual disabilities~~.

If not otherwise furnished, the probate judge shall see that each person institutionalized under section 5123.76 of the Revised Code is properly attired for transportation and, in addition, the institution shall be furnished a complete change of clothing for such person, which shall be paid for on the certificate of the probate judge and the order of the county auditor from the county treasury. The clothing shall be new or as good as new. The managing officer of the institution need not receive the person without such clothing.

Upon institutionalization, the managing officer of the institution to which the individual is admitted shall take possession of all money and other valuables that may be upon the person of the individual and shall, within ten days, file a list thereof with the probate judge of the county of which the individual is a resident. If the amount of money is fifty dollars or less it shall be retained and expended by the managing officer of the institution for the benefit of the individual. Unless a guardian of the estate of the individual has already been appointed, the probate judge may, upon ~~his~~ the judge's own motion and without notice, appoint a special guardian of the estate of the individual. Any special guardian, before being appointed, shall file a bond approved by the probate judge in the same amount as is required by section 2109.04 of the Revised Code. A special guardian as provided for in this section, and while acting as such, shall be governed by all laws applicable to guardians of the estates of incompetents. The special guardian shall be allowed such compensation for ~~his~~ the special guardian's services as the court thinks reasonable, providing ~~he~~ the special guardian forthwith performs all the duties incumbent upon ~~him~~ the special guardian.

**Sec. 5123.96.** Costs, fees, and expenses of all proceedings held under this chapter shall be paid as follows:

(A) To police and health officers, other than sheriffs or their deputies, the same fees allowed to constables, to be paid upon the approval of the probate judge;

(B) To sheriffs or their deputies, the same fees allowed for similar services in the court of common pleas;

(C) To physicians or licensed clinical psychologists acting as expert witnesses and to other expert witnesses designated by the court, an amount determined by the court;

(D) To witnesses in an administrative proceeding, the same fees and mileage as are provided to witnesses by section 119.094 of the Revised Code, and to witnesses in a judicial proceeding, the same fees and mileage as are provided to witnesses by section 2335.06 of the Revised Code, to be paid upon the approval of the probate judge;

(E) To a person, other than the sheriff or the sheriff's deputies, for taking a ~~mentally retarded~~ person with an intellectual disability to an institution or removing a ~~mentally retarded~~ person with an intellectual disability from an institution, the actual necessary expenses incurred, specifically itemized, and approved by the probate judge;

(F) To assistants who convey ~~mentally retarded~~ persons with intellectual disabilities to institutions when authorized by the probate judge, a fee set by the probate court, provided the assistants are not drawing a salary from the state or any political subdivision of the state, and their actual necessary expenses incurred, provided that the expenses are specifically itemized and approved by the probate judge;

(G) To an attorney appointed by the probate division for an indigent who allegedly is a ~~mentally retarded~~ person with an intellectual disability pursuant to any section of this chapter, the fees that are determined by the probate division. When those indigent persons are before the court, all filing and recording fees shall be waived.

(H) To a referee who is appointed to conduct proceedings under this chapter that involve a respondent whose domicile is or, before the respondent's institutionalization, was not the county in which the proceedings are held, compensation as fixed by the probate division, but not more than the compensation paid for similar proceedings for respondents whose domicile is in the county in which

the proceedings are held;

(I) To a court reporter appointed to make a transcript of proceedings under this chapter, the compensation and fees allowed in other cases under section 2101.08 of the Revised Code.

All costs, fees, and expenses described in this section, after payment by the county from appropriations pursuant to section 2101.11 of the Revised Code, shall be certified by the county auditor to the department of developmental disabilities within two months of the date the costs, fees, and expenses are incurred by the county. Payment shall be provided for by the director of budget and management upon presentation of properly verified vouchers. The director of developmental disabilities may adopt rules in accordance with Chapter 119. of the Revised Code to implement the payment of costs, fees, and expenses under this section.

**Sec. 5123.99.** (A) Whoever violates section 5123.16 or 5123.20 of the Revised Code is guilty of a misdemeanor of the first degree.

(B) Whoever violates division (C), (E), or (G)(3) of section 5123.61 of the Revised Code is guilty of a misdemeanor of the fourth degree or, if the abuse or neglect constitutes a felony, a misdemeanor of the second degree. In addition to any other sanction or penalty authorized or required by law, if a person who is convicted of or pleads guilty to a violation of division (C), (E), or (G)(3) of section 5123.61 of the Revised Code is ~~an MR/DD~~ a developmental disabilities employee, as defined in section 5123.50 of the Revised Code, the offender shall be eligible to be included in the registry regarding misappropriation, abuse, neglect, or other specified misconduct by ~~MR/DD~~ developmental disabilities employees established under section 5123.52 of the Revised Code.

**Sec. 5126.01.** As used in this chapter:

(A) As used in this division, "adult" means an individual who is eighteen years of age or over and not enrolled in a program or service under Chapter 3323. of the Revised Code and an individual sixteen or seventeen years of age who is eligible for adult services under rules adopted by the director of developmental disabilities pursuant to Chapter 119. of the Revised Code.

(1) "Adult services" means services provided to an adult outside the home, except when they are provided within the home according to an individual's assessed needs and identified in an individual service plan, that support learning and assistance in the area of self-care, sensory and motor development, socialization, daily living skills, communication, community living, social skills, or vocational skills.

(2) "Adult services" includes all of the following:

(a) Adult day habilitation services;

(b) Employment services;

(c) Educational experiences and training obtained through entities and activities that are not expressly intended for individuals with ~~mental retardation and~~ developmental disabilities, including trade schools, vocational or technical schools, adult education, job exploration and sampling, unpaid work experience in the community, volunteer activities, and spectator sports.

(B)(1) "Adult day habilitation services" means adult services that do the following:

(a) Provide access to and participation in typical activities and functions of community life that are desired and chosen by the general population, including such activities and functions as opportunities to experience and participate in community exploration, companionship with friends and peers, leisure activities, hobbies, maintaining family contacts, community events, and activities

where individuals without disabilities are involved;

(b) Provide supports or a combination of training and supports that afford an individual a wide variety of opportunities to facilitate and build relationships and social supports in the community.

(2) "Adult day habilitation services" includes all of the following:

(a) Personal care services needed to ensure an individual's ability to experience and participate in vocational services, educational services, community activities, and any other adult day habilitation services;

(b) Skilled services provided while receiving adult day habilitation services, including such skilled services as behavior management intervention, occupational therapy, speech and language therapy, physical therapy, and nursing services;

(c) Training and education in self-determination designed to help the individual do one or more of the following: develop self-advocacy skills, exercise the individual's civil rights, acquire skills that enable the individual to exercise control and responsibility over the services received, and acquire skills that enable the individual to become more independent, integrated, or productive in the community;

(d) Recreational and leisure activities identified in the individual's service plan as therapeutic in nature or assistive in developing or maintaining social supports;

(e) Transportation necessary to access adult day habilitation services;

(f) Habilitation management, as described in section 5126.14 of the Revised Code.

(3) "Adult day habilitation services" does not include activities that are components of the provision of residential services, family support services, or supported living services.

(C) "Appointing authority" means the following:

(1) In the case of a member of a county board of developmental disabilities appointed by, or to be appointed by, a board of county commissioners, the board of county commissioners;

(2) In the case of a member of a county board appointed by, or to be appointed by, a senior probate judge, the senior probate judge.

(D) "Community employment," "competitive employment," and "integrated setting" have the same meanings as in section 5123.022 of the Revised Code.

(E) "Supported employment services" means vocational assessment, job training and coaching, job development and placement, worksite accessibility, and other services related to employment outside a sheltered workshop. "Supported employment services" includes both of the following:

(1) Job training resulting in the attainment of community employment, supported work in a typical work environment, or self-employment;

(2) Support for ongoing community employment, supported work at community-based sites, or self-employment.

~~(F) As used in this division, "developmental delay" has the meaning established pursuant to section 5123.011 of the Revised Code.~~

"Developmental disability" means a severe, chronic disability that is characterized by all of the following:

(1) It is attributable to a mental or physical impairment or a combination of mental and

physical impairments, other than a mental or physical impairment solely caused by mental illness as defined in division (A) of section 5122.01 of the Revised Code;

(2) It is manifested before age twenty-two;

(3) It is likely to continue indefinitely;

(4) It results in one of the following:

(a) In the case of a person under age three, at least one developmental delay, as defined in rules adopted under section 5123.011 of the Revised Code, or a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay, as defined in those rules;

(b) In the case of a person at least age three but under age six, at least two developmental delays, as defined in rules adopted under section 5123.011 of the Revised Code;

(c) In the case of a person age six or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is at least age sixteen, capacity for economic self-sufficiency.

(5) It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.

"Developmental disability" includes intellectual disability.

(G) "Early childhood services" means a planned program of habilitation designed to meet the needs of individuals with ~~mental retardation or other~~ developmental disabilities who have not attained compulsory school age.

(H) "Employment services" means prevocational services or supported employment services.

(I)(1) "Environmental modifications" means the physical adaptations to an individual's home, specified in the individual's service plan, that are necessary to ensure the individual's health, safety, and welfare or that enable the individual to function with greater independence in the home, and without which the individual would require institutionalization.

(2) "Environmental modifications" includes such adaptations as installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, and installation of specialized electric and plumbing systems necessary to accommodate the individual's medical equipment and supplies.

(3) "Environmental modifications" does not include physical adaptations or improvements to the home that are of general utility or not of direct medical or remedial benefit to the individual, including such adaptations or improvements as carpeting, roof repair, and central air conditioning.

(J) "Family support services" means the services provided under a family support services program operated under section 5126.11 of the Revised Code.

(K) "Habilitation" means the process by which the staff of the facility or agency assists an individual with ~~mental retardation or other~~ a developmental disability in acquiring and maintaining those life skills that enable the individual to cope more effectively with the demands of the individual's own person and environment, and in raising the level of the individual's personal, physical, mental, social, and vocational efficiency. Habilitation includes, but is not limited to, programs of formal, structured education and training.

(L) "Home and community-based services" has the same meaning as in section 5123.01 of

the Revised Code.

(M) "ICF/IID" has the same meaning as in section 5124.01 of the Revised Code.

(N) "Immediate family" means parents, grandparents, brothers, sisters, spouses, sons, daughters, aunts, uncles, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law.

(O) "Intellectual disability" means a mental impairment manifested during the developmental period characterized by significantly subaverage general intellectual functioning existing concurrently with deficiencies in the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group.

~~(P) "Medicaid case management services" means case management services provided to an individual with mental retardation or other a developmental disability that the state medicaid plan requires.~~

~~(P) "Mental retardation" means a mental impairment manifested during the developmental period characterized by significantly subaverage general intellectual functioning existing concurrently with deficiencies in the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group.~~

(Q) "Prevocational services" means services that provide learning and work experiences, including volunteer work experiences, from which an individual can develop general strengths and skills that are not specific to a particular task or job but contribute to employability in community employment, supported work at community-based sites, or self-employment.

(R) "Residential services" means services to individuals with ~~mental retardation or other~~ developmental disabilities to provide housing, food, clothing, habilitation, staff support, and related support services necessary for the health, safety, and welfare of the individuals and the advancement of their quality of life. "Residential services" includes program management, as described in section 5126.14 of the Revised Code.

(S) "Resources" means available capital and other assets, including moneys received from the federal, state, and local governments, private grants, and donations; appropriately qualified personnel; and appropriate capital facilities and equipment.

(T) "Senior probate judge" means the current probate judge of a county who has served as probate judge of that county longer than any of the other current probate judges of that county. If a county has only one probate judge, "senior probate judge" means that probate judge.

(U) "Service and support administration" means the duties performed by a service and support administrator pursuant to section 5126.15 of the Revised Code.

(V)(1) "Specialized medical, adaptive, and assistive equipment, supplies, and supports" means equipment, supplies, and supports that enable an individual to increase the ability to perform activities of daily living or to perceive, control, or communicate within the environment.

(2) "Specialized medical, adaptive, and assistive equipment, supplies, and supports" includes the following:

(a) Eating utensils, adaptive feeding dishes, plate guards, mylatex straps, hand splints, reaches, feeder seats, adjustable pointer sticks, interpreter services, telecommunication devices for

the deaf, computerized communications boards, other communication devices, support animals, veterinary care for support animals, adaptive beds, supine boards, prone boards, wedges, sand bags, sidelayers, bolsters, adaptive electrical switches, hand-held shower heads, air conditioners, humidifiers, emergency response systems, folding shopping carts, vehicle lifts, vehicle hand controls, other adaptations of vehicles for accessibility, and repair of the equipment received.

(b) Nondisposable items not covered by medicaid that are intended to assist an individual in activities of daily living or instrumental activities of daily living.

(W) "Supportive home services" means a range of services to families of individuals with ~~mental retardation or other~~ developmental disabilities to develop and maintain increased acceptance and understanding of such persons, increased ability of family members to teach the person, better coordination between school and home, skills in performing specific therapeutic and management techniques, and ability to cope with specific situations.

(X)(1) "Supported living" means services provided for as long as twenty-four hours a day to an individual with ~~mental retardation or other~~ a developmental disability through any public or private resources, including moneys from the individual, that enhance the individual's reputation in community life and advance the individual's quality of life by doing the following:

(a) Providing the support necessary to enable an individual to live in a residence of the individual's choice, with any number of individuals who are not disabled, or with not more than three individuals with ~~mental retardation and~~ developmental disabilities unless the individuals are related by blood or marriage;

(b) Encouraging the individual's participation in the community;

(c) Promoting the individual's rights and autonomy;

(d) Assisting the individual in acquiring, retaining, and improving the skills and competence necessary to live successfully in the individual's residence.

(2) "Supported living" includes the provision of all of the following:

(a) Housing, food, clothing, habilitation, staff support, professional services, and any related support services necessary to ensure the health, safety, and welfare of the individual receiving the services;

(b) A combination of lifelong or extended-duration supervision, training, and other services essential to daily living, including assessment and evaluation and assistance with the cost of training materials, transportation, fees, and supplies;

(c) Personal care services and homemaker services;

(d) Household maintenance that does not include modifications to the physical structure of the residence;

(e) Respite care services;

(f) Program management, as described in section 5126.14 of the Revised Code.

**Sec. 5126.022.** When making appointments to a county board of developmental disabilities, an appointing authority shall do all of the following:

(A) Appoint only individuals who are residents of the county the appointing authority serves, citizens of the United States, and interested and knowledgeable in the field of ~~mental retardation~~ intellectual disabilities and other allied fields;

(B) If the appointing authority is a board of county commissioners, appoint at least two

individuals who are eligible for services provided by the county board or are immediate family members of such individuals. The board of county commissioners shall, whenever possible, ensure that one of those two members is an individual eligible for adult services or an immediate family member of an individual eligible for adult services and the other is an immediate family member of an individual eligible for early intervention services or services for preschool or school-age children;

(C) If the appointing authority is a senior probate judge, appoint at least one individual who is an immediate family member of an individual eligible for residential services or supported living;

(D) Appoint, to the maximum extent possible, individuals who have professional training and experience in business management, finance, law, health care practice, personnel administration, or government service;

(E) Provide for the county board's membership to reflect, as nearly as possible, the composition of the county that the county board serves.

**Sec. 5126.023.** None of the following individuals may serve as a member of a county board of developmental disabilities:

(A) An elected public official, except for a township trustee, township fiscal officer, or individual excluded from the definition of public official or employee in division (B) of section 102.01 of the Revised Code;

(B) An immediate family member of a member of the same county board;

(C) An employee of any county board;

(D) An immediate family member of an employee of the same county board;

(E) A former employee of a county board whose employment ceased less than four calendar years before the former employee would begin to serve as a member of the same county board;

(F) A former employee of a county board whose employment ceased less than two years before the former employee would begin to serve as a member of a different county board;

(G) Unless there is no conflict of interest, an individual who or whose immediate family member is a board member of an agency licensed or certified by the department of developmental disabilities to provide services to individuals with ~~mental retardation~~ or developmental disabilities or an individual who or whose immediate family member is an employee of such an agency;

(H) An individual with an immediate family member who serves as a county commissioner of a county served by the county board unless the individual was a member of the county board before October 31, 1980.

**Sec. 5126.04.** (A) Each county board of developmental disabilities shall plan and set priorities based on available resources for the provision of facilities, programs, and other services to meet the needs of county residents who are individuals with ~~mental retardation and other~~ developmental disabilities, former residents of the county residing in state institutions or, before ~~the effective date of this amendment~~ September 29, 2011, placed under purchase of service agreements under section 5123.18 of the Revised Code, and children subject to a determination made pursuant to section 121.38 of the Revised Code.

Each county board shall assess the facility and service needs of the individuals with ~~mental retardation and other~~ developmental disabilities who are residents of the county or former residents of the county residing in state institutions or, before ~~the effective date of this amendment~~ September 29, 2011, placed under purchase of service agreements under section 5123.18 of the Revised Code.

Each county board shall require individual habilitation or service plans for individuals with ~~mental retardation and other~~ developmental disabilities who are being served or who have been determined eligible for services and are awaiting the provision of services. Each board shall ensure that methods of having their service needs evaluated are available.

(B)(1) If a foster child is in need of assessment for eligible services or is receiving services from a county board of developmental disabilities and that child is placed in a different county, the agency that placed the child, immediately upon placement, shall inform the county board in the new county all of the following:

- (a) That a foster child has been placed in that county;
- (b) The name and other identifying information of the foster child;
- (c) The name of the foster child's previous county of residence;
- (d) That the foster child was in need of assessment for eligible services or was receiving services from the county board of developmental disabilities in the previous county.

(2) Upon receiving the notice described in division (B)(1) of this section or otherwise learning that the child was in need of assessment for eligible services or was receiving services from a county board of developmental disabilities in the previous county, the county board in the new county shall communicate with the county board of the previous county to determine how services for the foster child shall be provided in accordance with each board's plan and priorities as described in division (A) of this section.

If the two county boards are unable to reach an agreement within ten days of the child's placement, the county board in the new county shall send notice to the Ohio department of developmental disabilities of the failure to agree. The department shall decide how services shall be provided for the foster child within ten days of receiving notice that the county boards could not reach an agreement. The department may decide that one, or both, of the county boards shall provide services. The services shall be provided in accordance with the board's plan and priorities as described in division (A) of this section.

(C) The department of developmental disabilities may adopt rules in accordance with Chapter 119. of the Revised Code as necessary to implement this section. To the extent that rules adopted under this section apply to the identification and placement of children with disabilities under Chapter 3323. of the Revised Code, the rules shall be consistent with the standards and procedures established under sections 3323.03 to 3323.05 of the Revised Code.

(D) The responsibility or authority of a county board to provide services under this chapter does not affect the responsibility of any other entity of state or local government to provide services to individuals with ~~mental retardation and~~ developmental disabilities.

(E) On or before the first day of February prior to a school year, a county board of developmental disabilities may elect not to participate during that school year in the provision of or contracting for educational services for children ages six through twenty-one years of age, provided that on or before that date the board gives notice of this election to the superintendent of public instruction, each school district in the county, and the educational service center serving the county. If a board makes this election, it shall not have any responsibility for or authority to provide educational services that school year for children ages six through twenty-one years of age. If a board does not make an election for a school year in accordance with this division, the board shall be deemed to

have elected to participate during that school year in the provision of or contracting for educational services for children ages six through twenty-one years of age.

(F) If a county board of developmental disabilities elects to provide educational services during a school year to individuals six through twenty-one years of age who have multiple disabilities, the board may provide these services to individuals who are appropriately identified and determined eligible pursuant to Chapter 3323. of the Revised Code, and in accordance with applicable rules of the state board of education. The county board may also provide related services to individuals six through twenty-one years of age who have one or more disabling conditions, in accordance with section 3317.20 and Chapter 3323. of the Revised Code and applicable rules of the state board of education.

**Sec. 5126.041.** (A) As used in this section:

(1) "Preschool child with a disability" has the same meaning as in section 3323.01 of the Revised Code.

(2) "State institution" means all or part of an institution under the control of the department of developmental disabilities pursuant to section 5123.03 of the Revised Code and maintained for the care, treatment, and training of ~~the mentally retarded~~ individuals with intellectual disabilities.

(B) Except as provided in division (C) of this section, each county board of developmental disabilities shall make eligibility determinations in accordance with the definition of "developmental disability" contained in section 5126.01 of the Revised Code. Pursuant to rules adopted under section 5123.012 of the Revised Code, a county board may establish eligibility for programs and services for any preschool child with a disability eligible for services under section 3323.02 of the Revised Code whose disability is not attributable solely to mental illness, as defined in section 5122.01 of the Revised Code.

(C)(1) A county board shall make determinations of eligibility for service and support administration in accordance with rules adopted under section 5126.08 of the Revised Code.

(2) All persons who were eligible for services and enrolled in programs offered by a county board of developmental disabilities pursuant to this chapter on July 1, 1991, shall continue to be eligible for those services and to be enrolled in those programs as long as they are in need of services.

(3) A person who resided in a state institution on or before October 29, 1993, is eligible for programs and services offered by a county board of developmental disabilities, unless the person is determined by the county board not to be in need of those programs and services.

(D) A county board shall refer a person who requests but is not eligible for programs and services offered by the board to other entities of state and local government or appropriate private entities that provide services.

(E) Membership of a person on, or employment of a person by, a county board of developmental disabilities does not affect the eligibility of any member of that person's family for services provided by the board or by any entity under contract with the board.

**Sec. 5126.042.** (A) As used in this section, "emergency status" means a status that an individual with ~~mental retardation~~ or developmental disabilities has when the individual is at risk of substantial self-harm or substantial harm to others if action is not taken within thirty days. An "emergency status" may include a status resulting from one or more of the following situations:

- (1) Loss of present residence for any reason, including legal action;
- (2) Loss of present caretaker for any reason, including serious illness of the caretaker, change in the caretaker's status, or inability of the caretaker to perform effectively for the individual;
- (3) Abuse, neglect, or exploitation of the individual;
- (4) Health and safety conditions that pose a serious risk to the individual or others of immediate harm or death;
- (5) Change in the emotional or physical condition of the individual that necessitates substantial accommodation that cannot be reasonably provided by the individual's existing caretaker.

(B) If a county board of developmental disabilities determines that available resources are not sufficient to meet the needs of all individuals who request non-medicaid programs or services, it shall establish one or more waiting lists for the non-medicaid programs or services in accordance with its plan developed under section 5126.04 of the Revised Code. The board may establish priorities for making placements on its waiting lists established under this division. Any such priorities shall be consistent with the board's plan and applicable law.

(C) If a county board determines that available resources are insufficient to meet the needs of all individuals who request home and community-based services, it shall establish a waiting list for the services. An individual's date of placement on the waiting list shall be the date a request is made to the board for the individual to receive the home and community-based services. The board shall provide for an individual who has an emergency status to receive priority status on the waiting list. The board shall also provide for an individual to whom any of the following apply to receive priority status on the waiting list in accordance with rules adopted under division (E) of this section:

- (1) The individual is receiving supported living, family support services, or adult services for which no federal financial participation is received under the medicaid program;
- (2) The individual's primary caregiver is at least sixty years of age;
- (3) The individual has intensive needs as determined in accordance with rules adopted under division (E) of this section;
- (4) The individual resides in an ICF/IID, as defined in section 5124.01 of the Revised Code;
- (5) The individual resides in a nursing facility, as defined in section 5165.01 of the Revised Code.

(D) If two or more individuals on a waiting list established under division (C) of this section have priority for the services pursuant to that division, a county board shall use criteria specified in rules adopted under division (E) of this section in determining the order in which the individuals with priority will be offered the services. An individual who has priority for home and community-based services because the individual has an emergency status has priority for the services over all other individuals on the waiting list who do not have emergency status.

(E) The department of developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code governing waiting lists established under division (C) of this section. The rules shall include procedures to be followed to ensure that the due process rights of individuals placed on waiting lists are not violated. As part of the rules adopted under this division, the department shall adopt rules establishing criteria a county board shall use under division (D) of this section in determining the order in which individuals with priority for home and community-based services pursuant to division (C) of this section will be offered the services.

(F) The following shall take precedence over the applicable provisions of this section:

(1) Medicaid rules and regulations;

(2) Any specific requirements that may be contained within a medicaid state plan amendment or waiver program that a county board has authority to administer or with respect to which it has authority to provide services, programs, or supports.

**Sec. 5126.043.** (A) Unless a guardian has been appointed for the individual, when a decision regarding receipt of a service or participation in a program provided for or funded under this chapter or Chapter 5123. or 5124. of the Revised Code by an individual with ~~mental retardation or other a~~ developmental disability must be made, the individual shall be permitted to make the decision. The individual may obtain support and guidance from an adult family member or other person, but doing so does not affect the right of the individual to make the decision.

(B) An individual with ~~mental retardation or other a~~ developmental disability may authorize an adult to make a decision described in division (A) of this section on the individual's behalf, as long as the adult does not have a financial interest in the decision. The authorization shall be made in writing.

(C) If a guardian has been appointed for an individual with ~~mental retardation or other a~~ developmental disability, the guardian shall make any decision described in division (A) of this section on behalf of the individual. This section does not require appointment of a guardian.

(D) Individuals with ~~mental retardation and other~~ developmental disabilities, including those who have been adjudicated incompetent pursuant to Chapter 2111. of the Revised Code, have the right to participate in decisions that affect their lives and to have their needs, desires, and preferences considered. An adult or guardian who makes a decision pursuant to division (B) or (C) of this section shall make a decision that is in the best interests of the individual on whose behalf the decision is made and that is consistent with the needs, desires, and preferences of that individual.

**Sec. 5126.046.** (A) Except as otherwise provided by 42 C.F.R. 431.51, an individual with ~~mental retardation or other a~~ developmental disability who is eligible for home and community-based services has the right to obtain the services from any provider of the services that is qualified to furnish the services and is willing to furnish the services to the individual. A county board of developmental disabilities that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for home and community-based services and refuses to permit an individual to obtain home and community-based services from a qualified and willing provider shall provide the individual timely notice that the individual may appeal under section 5160.31 of the Revised Code.

(B) An individual with ~~mental retardation or other a~~ developmental disability who is eligible for nonmedicaid residential services or nonmedicaid supported living has the right to obtain the services from any provider of the residential services or supported living that is qualified to furnish the residential services or supported living and is willing to furnish the residential services or supported living to the individual.

(C) The department of developmental disabilities shall make available to the public on its internet web site an up-to-date list of all providers of home and community-based services, nonmedicaid residential services, and nonmedicaid supported living. County boards shall assist individuals with ~~mental retardation or other~~ developmental disabilities and the families of such

individuals access the list on the department's internet web site.

(D) The director of developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code governing the implementation of this section. The rules shall include procedures for individuals to choose their providers.

**Sec. 5126.05.** (A) Subject to the rules established by the director of developmental disabilities pursuant to Chapter 119. of the Revised Code for programs and services offered pursuant to this chapter, and subject to the rules established by the state board of education pursuant to Chapter 119. of the Revised Code for programs and services offered pursuant to Chapter 3323. of the Revised Code, the county board of developmental disabilities shall:

(1) Administer and operate facilities, programs, and services as provided by this chapter and Chapter 3323. of the Revised Code and establish policies for their administration and operation;

(2) Coordinate, monitor, and evaluate existing services and facilities available to individuals with ~~mental retardation and~~ developmental disabilities;

(3) Provide early childhood services, supportive home services, and adult services, according to the plan and priorities developed under section 5126.04 of the Revised Code;

(4) Provide or contract for special education services pursuant to Chapters 3317. and 3323. of the Revised Code and ensure that related services, as defined in section 3323.01 of the Revised Code, are available according to the plan and priorities developed under section 5126.04 of the Revised Code;

(5) Adopt a budget, authorize expenditures for the purposes specified in this chapter and do so in accordance with section 319.16 of the Revised Code, approve attendance of board members and employees at professional meetings and approve expenditures for attendance, and exercise such powers and duties as are prescribed by the director;

(6) Submit annual reports of its work and expenditures, pursuant to sections 3323.09 and 5126.12 of the Revised Code, to the director, the superintendent of public instruction, and the board of county commissioners at the close of the fiscal year and at such other times as may reasonably be requested;

(7) Authorize all positions of employment, establish compensation, including but not limited to salary schedules and fringe benefits for all board employees, approve contracts of employment for management employees that are for a term of more than one year, employ legal counsel under section 309.10 of the Revised Code, and contract for employee benefits;

(8) Provide service and support administration in accordance with section 5126.15 of the Revised Code;

(9) Certify respite care homes pursuant to rules adopted under section 5123.171 of the Revised Code by the director of developmental disabilities;

(10) Implement an employment first policy that clearly identifies community employment as the desired outcome for every individual of working age who receives services from the board;

(11) Set benchmarks for improving community employment outcomes.

(B) To the extent that rules adopted under this section apply to the identification and placement of children with disabilities under Chapter 3323. of the Revised Code, they shall be consistent with the standards and procedures established under sections 3323.03 to 3323.05 of the Revised Code.

(C) Any county board may enter into contracts with other such boards and with public or private, nonprofit, or profit-making agencies or organizations of the same or another county, to provide the facilities, programs, and services authorized or required, upon such terms as may be agreeable, and in accordance with this chapter and Chapter 3323. of the Revised Code and rules adopted thereunder and in accordance with sections 307.86 and 5126.071 of the Revised Code.

(D) A county board may combine transportation for children and adults enrolled in programs and services offered under Chapter 5126. of the Revised Code with transportation for children enrolled in classes funded under sections 3317.0213 and 3317.20 of the Revised Code.

(E) A county board may purchase all necessary insurance policies, may purchase equipment and supplies through the department of administrative services or from other sources, and may enter into agreements with public agencies or nonprofit organizations for cooperative purchasing arrangements.

(F) A county board may receive by gift, grant, devise, or bequest any moneys, lands, or property for the benefit of the purposes for which the board is established and hold, apply, and dispose of the moneys, lands, and property according to the terms of the gift, grant, devise, or bequest. All money received by gift, grant, bequest, or disposition of lands or property received by gift, grant, devise, or bequest shall be deposited in the county treasury to the credit of such board and shall be available for use by the board for purposes determined or stated by the donor or grantor, but may not be used for personal expenses of the board members. Any interest or earnings accruing from such gift, grant, devise, or bequest shall be treated in the same manner and subject to the same provisions as such gift, grant, devise, or bequest.

(G) The board of county commissioners shall levy taxes and make appropriations sufficient to enable the county board of developmental disabilities to perform its functions and duties, and may utilize any available local, state, and federal funds for such purpose.

**Sec. 5126.051.** (A) To the extent that resources are available, a county board of developmental disabilities shall provide for or arrange residential services and supported living for individuals with ~~mental retardation and~~ developmental disabilities.

A county board may acquire, convey, lease, or sell property for residential services and supported living and enter into loan agreements, including mortgages, for the acquisition of such property. A county board is not required to comply with provisions of Chapter 307. of the Revised Code providing for competitive bidding or sheriff sales in the acquisition, lease, conveyance, or sale of property under this division, but the acquisition, lease, conveyance, or sale must be at fair market value determined by appraisal of one or more disinterested persons appointed by the board.

Any action taken by a county board under this division that will incur debt on the part of the county shall be taken in accordance with Chapter 133. of the Revised Code. A county board shall not incur any debt on the part of the county without the prior approval of the board of county commissioners.

(B)(1) To the extent that resources are available, a county board shall provide or arrange for the provision of adult services to individuals who are age eighteen and older and not enrolled in a program or service under Chapter 3323. of the Revised Code or age sixteen or seventeen and eligible for adult services under rules adopted by the director of developmental disabilities under Chapter 119. of the Revised Code. These services shall be provided to the individuals in accordance with ~~the~~

~~individual's~~ their individual service ~~plan-plans~~ and shall include support services specified in the ~~plan~~ plans.

(2) Any prevocational services shall be provided in accordance with the individual's ~~individual~~-service plan and occur over a specified period of time with specific outcomes sought to be achieved.

(3) A county board may, in cooperation with the opportunities for Ohioans with disabilities agency, seek federal funds for job training or other services directed at helping individuals obtain community employment.

(4) A county board may contract with any agency, board, or other entity that is accredited by the commission on accreditation of rehabilitation facilities to provide services. A county board that is accredited by the commission on accreditation of rehabilitation facilities may provide services for which it is certified by the commission.

(C) To the extent that resources are available, a county board may provide services to an individual with ~~mental-retardation or other~~ a developmental disability in addition to those provided pursuant to this section, section 5126.05 of the Revised Code, or any other section of this chapter. The services shall be provided in accordance with the individual's ~~individual~~-service plan and may be provided in collaboration with other entities of state or local government.

**Sec. 5126.054.** (A) Each county board of developmental disabilities shall, by resolution, develop a three-calendar year plan that includes the following three components:

(1) An assessment component that includes all of the following:

(a) The number of individuals with ~~mental-retardation or other~~ developmental ~~disability~~ disabilities residing in the county who need the level of care provided by an ICF/IID, may seek home and community-based services, and are given priority on a waiting list established for the services pursuant to section 5126.042 of the Revised Code; the service needs of those individuals; and the projected annualized cost for services;

(b) The source of funds available to the county board to pay the nonfederal share of medicaid expenditures that the county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay;

(c) Any other applicable information or conditions that the department of developmental disabilities requires as a condition of approving the component under section 5123.046 of the Revised Code.

(2) A preliminary implementation component that specifies the number of individuals to be provided, during the first year that the plan is in effect, home and community-based services pursuant to the waiting list priority given to them under section 5126.042 of the Revised Code and the types of home and community-based services the individuals are to receive;

(3) A component that provides for the implementation of medicaid case management services and home and community-based services for individuals who begin to receive the services on or after the date the plan is approved under section 5123.046 of the Revised Code. A county board shall include all of the following in the component:

(a) If the department of developmental disabilities or department of medicaid requires, an agreement to pay the nonfederal share of medicaid expenditures that the county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay;

(b) How the services are to be phased in over the period the plan covers, including how the county board will serve individuals who have priority on a waiting list established under section 5126.042 of the Revised Code;

(c) Any agreement or commitment regarding the county board's funding of home and community-based services that the county board has with the department at the time the county board develops the component;

(d) Assurances adequate to the department that the county board will comply with all of the following requirements:

(i) To provide the types of home and community-based services specified in the preliminary implementation component required by division (A)(2) of this section to at least the number of individuals specified in that component;

(ii) To use any additional funds the county board receives for the services to improve the county board's resource capabilities for supporting such services available in the county at the time the component is developed and to expand the services to accommodate the unmet need for those services in the county;

(iii) To employ or contract with a business manager or enter into an agreement with another county board of developmental disabilities that employs or contracts with a business manager to have the business manager serve both county boards. No superintendent of a county board may serve as the county board's business manager.

(iv) To employ or contract with a medicaid services manager or enter into an agreement with another county board of developmental disabilities that employs or contracts with a medicaid services manager to have the medicaid services manager serve both county boards. No superintendent of a county board may serve as the county board's medicaid services manager.

(e) Programmatic and financial accountability measures and projected outcomes expected from the implementation of the plan;

(f) Any other applicable information or conditions that the department requires as a condition of approving the component under section 5123.046 of the Revised Code.

(B) A county board whose plan developed under division (A) of this section is approved by the department under section 5123.046 of the Revised Code shall update and renew the plan in accordance with a schedule the department shall develop.

**Sec. 5126.055.** (A) Except as provided in section 5126.056 of the Revised Code, a county board of developmental disabilities has medicaid local administrative authority to, and shall, do all of the following for an individual with ~~mental retardation or other~~ a developmental disability who resides in the county that the county board serves and seeks or receives home and community-based services:

(1) Perform assessments and evaluations of the individual. As part of the assessment and evaluation process, ~~the county board shall do~~ all of the following apply:

(a) ~~Make~~ The county board shall make a recommendation to the department of developmental disabilities on whether the department should approve or deny the individual's application for the services, including on the basis of whether the individual needs the level of care an ICF/IID provides;

(b) If the individual's application is denied because of the county board's recommendation

and the individual appeals pursuant to section 5160.31 of the Revised Code, the county board shall present, with the department of developmental disabilities or department of medicaid, whichever denies the application, the reasons for the recommendation and denial at the hearing;

(c) If the individual's application is approved, the county board shall recommend to the departments of developmental disabilities and medicaid the services that should be included in the ~~individual's individualized individual~~ service plan ~~and, if, If~~ either department under section 5166.21 of the Revised Code approves, reduces, denies, or terminates a service included in the ~~individual's individualized service plan under section 5166.20 of the Revised Code~~ because of the county board's recommendation, the board shall present, with the department that made the approval, reduction, denial, or termination, the reasons for the recommendation and approval, reduction, denial, or termination at a hearing held pursuant to an appeal made under section 5160.31 of the Revised Code.

(2) Perform any duties assigned to the county board in rules adopted under section 5126.046 of the Revised Code regarding the individual's right to choose a qualified and willing provider of the services and, at a hearing held pursuant to an appeal made under section 5160.31 of the Revised Code, present evidence of the process for appropriate assistance in choosing providers;

(3) If the county board is certified under section 5123.161 of the Revised Code to provide the services and agrees to provide the services to the individual and the individual chooses the county board to provide the services, furnish, in accordance with the county board's medicaid provider agreement and for the authorized reimbursement rate, the services the individual requires;

(4) Monitor the services provided to the individual and ensure the individual's health, safety, and welfare. The monitoring shall include quality assurance activities. If the county board provides the services, the department of developmental disabilities shall also monitor the services.

(5) Develop, with the individual and the provider of the individual's services, an effective ~~individualized individual~~ service plan that includes coordination of services, recommend that the departments of developmental disabilities and medicaid approve the plan, and implement the plan unless either department disapproves it. The ~~individualized service plan~~ shall include a summary page, agreed to by the county board, provider, and individual receiving services, that clearly outlines the amount, duration, and scope of services to be provided under the plan.

(6) Have an investigative agent conduct investigations under section 5126.313 of the Revised Code that concern the individual;

(7) Have a service and support administrator perform the duties under division (B)(9) of section 5126.15 of the Revised Code that concern the individual.

(B) A county board shall perform its medicaid local administrative authority under this section in accordance with all of the following:

(1) The county board's plan that the department of developmental disabilities approves under section 5123.046 of the Revised Code;

(2) All applicable federal and state laws;

(3) All applicable policies of the departments of developmental disabilities and medicaid and the United States department of health and human services;

(4) The department of medicaid's supervision under its authority as the single state medicaid agency;

(5) The department of developmental disabilities' oversight.

(C) The departments of developmental disabilities and medicaid shall communicate with and provide training to county boards regarding medicaid local administrative authority granted by this section. The communication and training shall include issues regarding audit protocols and other standards established by the United States department of health and human services that the departments determine appropriate for communication and training. County boards shall participate in the training. The departments shall assess the county board's compliance against uniform standards that the departments shall establish.

(D) A county board may not delegate its medicaid local administrative authority granted under this section but may contract with a person or government entity, including a council of governments, for assistance with its medicaid local administrative authority. A county board that enters into such a contract shall notify the director of developmental disabilities. The notice shall include the tasks and responsibilities that the contract gives to the person or government entity. The person or government entity shall comply in full with all requirements to which the county board is subject regarding the person or government entity's tasks and responsibilities under the contract. The county board remains ultimately responsible for the tasks and responsibilities.

(E) A county board that has medicaid local administrative authority under this section shall, through the departments of developmental disabilities and medicaid, reply to, and cooperate in arranging compliance with, a program or fiscal audit or program violation exception that a state or federal audit or review discovers. The department of medicaid shall timely notify the department of developmental disabilities and the county board of any adverse findings. After receiving the notice, the county board, in conjunction with the department of developmental disabilities, shall cooperate fully with the department of medicaid and timely prepare and send to the department a written plan of correction or response to the adverse findings. The county board is liable for any adverse findings that result from an action it takes or fails to take in its implementation of medicaid local administrative authority.

(F) If the department of developmental disabilities or department of medicaid determines that a county board's implementation of its medicaid local administrative authority under this section is deficient, the department that makes the determination shall require that county board do the following:

- (1) If the deficiency affects the health, safety, or welfare of an individual with ~~mental retardation or other a~~ developmental disability, correct the deficiency within twenty-four hours;
- (2) If the deficiency does not affect the health, safety, or welfare of an individual with ~~mental retardation or other a~~ developmental disability, receive technical assistance from the department or submit a plan of correction to the department that is acceptable to the department within sixty days and correct the deficiency within the time required by the plan of correction.

**Sec. 5126.058.** (A) Each county board of developmental disabilities shall prepare a memorandum of understanding that is developed by all of the following and that is signed by the persons identified in divisions (A)(2) to (7) of this section:

- (1) The senior probate judge of the county or the senior probate judge's representative;
- (2) The county peace officer;
- (3) All chief municipal peace officers within the county;
- (4) Other law enforcement officers handling abuse, neglect, and exploitation of ~~mentally~~

~~retarded and developmentally disabled persons~~ individuals with developmental disabilities in the county;

- (5) The prosecuting attorney of the county;
- (6) The public children services agency;
- (7) The coroner of the county.

(B) A memorandum of understanding shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and sections 313.12, 2151.421, 2903.16, 5126.31, and 5126.33 of the Revised Code and shall have as its primary goal the elimination of all unnecessary interviews of persons who are the subject of reports made pursuant to this section. A failure to follow the procedure set forth in the memorandum by the concerned officials is not grounds for, and shall not result in, the dismissal of any charge or complaint arising from any reported case of abuse, neglect, or exploitation or the suppression of any evidence obtained as a result of any reported abuse, neglect, or exploitation and does not give any rights or grounds for appeal or post-conviction relief to any person.

(C) A memorandum of understanding shall include, but is not limited to, all of the following:

(1) The roles and responsibilities for handling emergency and nonemergency cases of abuse, neglect, or exploitation;

(2) The roles and responsibilities for handling and coordinating investigations of reported cases of abuse, neglect, or exploitation and methods to be used in interviewing the person who is the subject of the report and who allegedly was abused, neglected, or exploited;

(3) The roles and responsibilities for addressing the categories of persons who may interview the person who is the subject of the report and who allegedly was abused, neglected, or exploited;

(4) The roles and responsibilities for providing victim services to ~~mentally retarded and developmentally disabled persons~~ individuals with developmental disabilities pursuant to Chapter 2930. of the Revised Code;

(5) The roles and responsibilities for the filing of criminal charges against persons alleged to have abused, neglected, or exploited ~~mentally retarded or developmentally disabled persons~~ individuals with developmental disabilities.

(D) A memorandum of understanding may be signed by victim advocates, municipal court judges, municipal prosecutors, and any other person whose participation furthers the goals of a memorandum of understanding, as set forth in this section.

**Sec. 5126.059.** A county board of developmental disabilities shall pay the nonfederal share of medicaid expenditures for medicaid case management services the county board provides to an individual with ~~mental retardation or other~~ a developmental disability who the county board determines under section 5126.041 of the Revised Code is eligible for county board services.

**Sec. 5126.0510.** (A) Except as otherwise provided in an agreement entered into under section 5123.048 of the Revised Code and subject to divisions (B), (C), (D), and (E) of this section, a county board of developmental disabilities shall pay the nonfederal share of medicaid expenditures for the following home and community-based services provided to an individual with ~~mental retardation or other~~ a developmental disability who the county board determines under section 5126.041 of the Revised Code is eligible for county board services:

- (1) Home and community-based services provided by the county board to such an individual;

(2) Home and community-based services provided by a provider other than the county board to such an individual who is enrolled as of June 30, 2007, in the medicaid waiver component under which the services are provided;

(3) Home and community-based services provided by a provider other than the county board to such an individual who, pursuant to a request the county board makes, enrolls in the medicaid waiver component under which the services are provided after June 30, 2007;

(4) Home and community-based services provided by a provider other than the county board to such an individual for whom there is in effect an agreement entered into under division (F) of this section between the county board and director of developmental disabilities.

(B) In the case of medicaid expenditures for home and community-based services for which division (A)(2) of this section requires a county board to pay the nonfederal share, the following shall apply to such services provided during fiscal year 2008 under the individual options medicaid waiver component:

(1) The county board shall pay no less than the total amount the county board paid as the nonfederal share for home and community-based services provided in fiscal year 2007 under the individual options medicaid waiver component;

(2) The county board shall pay no more than the sum of the following:

(a) The total amount the county board paid as the nonfederal share for home and community-based services provided in fiscal year 2007 under the individual options medicaid waiver component;

(b) An amount equal to one per cent of the total amount the department of developmental disabilities and county board paid as the nonfederal share for home and community-based services provided in fiscal year 2007 under the individual options medicaid waiver component to individuals the county board determined under section 5126.041 of the Revised Code are eligible for county board services.

(C) A county board is not required to pay the nonfederal share of home and community-based services provided after June 30, 2008, that the county board is otherwise required by division (A)(2) of this section to pay if the department of developmental disabilities fails to comply with division (A) of section 5123.0416 of the Revised Code.

(D) A county board is not required to pay the nonfederal share of home and community-based services that the county board is otherwise required by division (A)(3) of this section to pay if both of the following apply:

(1) The services are provided to an individual who enrolls in the medicaid waiver component under which the services are provided as the result of an order issued following an appeal made under section 5160.31 of the Revised Code or an appeal of the order to a court of common pleas;

(2) There are more individuals who are eligible for services from the county board enrolled in home and community-based services than is required by section 5126.0512 of the Revised Code.

(E) A county board is not required to pay the nonfederal share of home and community-based services that the county board is otherwise required by division (A) of this section to pay if the services are provided to an individual who enrolls, pursuant to division (D) of section 5124.69 of the Revised Code, in the medicaid waiver component under which the services are provided.

(F) A county board may enter into an agreement with the director of developmental disabilities under which the county board agrees to pay the nonfederal share of medicaid

expenditures for one or more home and community-based services that the county board is not otherwise required by division (A)(1), (2), or (3) of this section to pay and that are provided to an individual the county board determines under section 5126.041 of the Revised Code is eligible for county board services. The agreement shall specify which home and community-based services the agreement covers. The county board shall pay the nonfederal share of medicaid expenditures for the home and community-based services that the agreement covers as long as the agreement is in effect.

**Sec. 5126.08.** (A) The director of developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code for all programs and services offered by a county board of developmental disabilities. Such rules shall include, but are not limited to, the following:

- (1) Determination of what constitutes a program or service;
- (2) Standards to be followed by a board in administering, providing, arranging, or operating programs and services;
- (3) Standards for determining the nature and degree of ~~mental retardation, including mild-mental retardation, or~~ developmental disability;
- (4) Standards and procedures for making eligibility determinations for the programs and services;
- (5) Procedures for obtaining consent for the arrangement of services under section 5126.31 of the Revised Code and for obtaining signatures on ~~individual~~-individualized service plans under that section;
- (6) Specification of the service and support administration to be provided by a county board and standards for resolving grievances in connection with service and support administration.

(B) The director shall be the final authority in determining the nature and degree of ~~mental retardation or~~ developmental disability.

**Sec. 5126.082.** (A) In addition to the rules adopted under division (A)(2) of section 5126.08 of the Revised Code establishing standards to be followed by county boards of developmental disabilities in administering, providing, arranging, and operating programs and services and in addition to the board accreditation system established under section 5126.081 of the Revised Code, the director of developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code establishing standards for promoting and advancing the quality of life of individuals with ~~mental retardation and~~ developmental disabilities receiving any of the following:

- (1) Early childhood services pursuant to section 5126.05 of the Revised Code for children under age three;
- (2) Adult services pursuant to section 5126.05 and division (B) of section 5126.051 of the Revised Code for individuals age sixteen or older;
- (3) Family support services pursuant to section 5126.11 of the Revised Code.

(B) The rules adopted under this section shall specify the actions county boards of developmental disabilities and the agencies with which they contract should take to do the following:

- (1) Offer individuals with ~~mental retardation and~~ developmental disabilities, and their families when appropriate, choices in programs and services that are centered on the needs and desires of those individuals;
- (2) Maintain infants with their families whenever possible by collaborating with other agencies that provide services to infants and their families and taking other appropriate actions;

(3) Provide families that have children with ~~mental retardation and~~ developmental disabilities under age eighteen residing in their homes the resources necessary to allow the children to remain in their homes;

(4) Create and implement community employment services based on the needs and desires of adults with ~~mental retardation and~~ developmental disabilities;

(5) Create, in collaboration with other agencies, transportation systems that provide safe and accessible transportation within the county to individuals with disabilities;

(6) Provide services that allow individuals with disabilities to be integrated into the community by engaging in educational, vocational, and recreational activities with individuals who do not have disabilities;

(7) Provide age-appropriate retirement services for individuals age sixty-five and older with ~~mental retardation and~~ developmental disabilities;

(8) Establish residential services and supported living for individuals with ~~mental retardation and~~ developmental disabilities in accordance with their needs.

(C) To assist in funding programs and services that meet the standards established under this section, each county board of developmental disabilities shall make a good faith effort to acquire available federal funds, including reimbursements under Title XIX of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1396, as amended.

(D) Each county board of developmental disabilities shall work toward full compliance with the standards established under this section, based on its available resources. Funds received under this chapter shall be used to comply with the standards. Annually, each board shall conduct a self audit to evaluate the board's progress in complying fully with the standards.

(E) The department shall complete a program quality review of each county board of developmental disabilities to determine the extent to which the board has complied with the standards. The review shall be conducted in conjunction with the comprehensive accreditation review of the board that is conducted under section 5126.081 of the Revised Code.

Notwithstanding any provision of this chapter or Chapter 5123. of the Revised Code requiring the department to distribute funds to county boards of developmental disabilities, the department may withhold funds from a board if it finds that the board is not in substantial compliance with the standards established under this section.

(F) When the standards for accreditation from the commission on accreditation of rehabilitation facilities, or another accrediting agency, meet or exceed the standards established under this section, the director may accept accreditation from the commission or other agency as evidence that the board is in compliance with all or part of the standards established under this section. Programs and services accredited by the commission or agency are exempt from the program quality reviews required by division (E) of this section.

**Sec. 5126.11.** (A) As used in this section, "respite care" means appropriate, short-term, temporary care that is provided to ~~a mentally retarded or developmentally disabled person~~ an individual with a developmental disability to sustain the family structure or to meet planned or emergency needs of the family.

(B) Subject to rules adopted by the director of developmental disabilities, and subject to the availability of money from state and federal sources, the county board of developmental disabilities

shall establish a family support services program. Under such a program, the board shall make payments to an individual with ~~mental retardation or other~~ a developmental disability or the family of an individual with ~~mental retardation or other~~ a developmental disability who desires to remain in and be supported in the family home. Payments shall be made for all or part of costs incurred or estimated to be incurred for services that would promote self-sufficiency and normalization, prevent or reduce inappropriate institutional care, and further the unity of the family by enabling the family to meet the special needs of the individual and to live as much like other families as possible. Payments may be made in the form of reimbursement for expenditures or in the form of vouchers to be used to purchase services.

(C) Payment shall not be made under this section to an individual or the individual's family if the individual is living in a residential facility that is providing residential services under contract with the department of developmental disabilities or a county board.

(D) Payments may be made for the following services:

(1) Respite care, in or out of the home;

(2) Counseling, supervision, training, and education of the individual, the individual's caregivers, and members of the individual's family that aid the family in providing proper care for the individual, provide for the special needs of the family, and assist in all aspects of the individual's daily living;

(3) Special diets, purchase or lease of special equipment, or modifications of the home, if such diets, equipment, or modifications are necessary to improve or facilitate the care and living environment of the individual;

(4) Providing support necessary for the individual's continued skill development, including such services as development of interventions to cope with unique problems that may occur within the complexity of the family, enrollment of the individual in special summer programs, provision of appropriate leisure activities, and other social skills development activities;

(5) Any other services that are consistent with the purposes specified in division (B) of this section and specified in the individual's service plan.

(E) In order to be eligible for payments under a family support services program, the individual or the individual's family must reside in the county served by the county board, and the individual must be in need of habilitation. Payments shall be adjusted for income in accordance with the payment schedule established in rules adopted under this section. Payments shall be made only after the county board has taken into account all other available assistance for which the individual or family is eligible.

(F) Before incurring expenses for a service for which payment will be sought under a family support services program, the individual or family shall apply to the county board for a determination of eligibility and approval of the service. The service need not be provided in the county served by the county board. After being determined eligible and receiving approval for the service, the individual or family may incur expenses for the service or use the vouchers received from the county board for the purchase of the service.

If the county board refuses to approve a service, an appeal may be made in accordance with rules adopted by the department under this section.

(G) To be reimbursed for expenses incurred for approved services, the individual or family

shall submit to the county board a statement of the expenses incurred accompanied by any evidence required by the board. To redeem vouchers used to purchase approved services, the entity that provided the service shall submit to the county board evidence that the service was provided and a statement of the charges. The county board shall make reimbursements and redeem vouchers ~~no not~~ later than forty-five days after it receives the statements and evidence required by this division.

(H) A county board shall consider the following objectives in carrying out a family support services program:

(1) Enabling individuals to return to their families from an institution under the jurisdiction of the department of developmental disabilities;

(2) Enabling individuals found to be subject to institutionalization by court order under section 5123.76 of the Revised Code to remain with their families with the aid of payments provided under this section;

(3) Providing services to eligible children and adults currently residing in the community;

(4) Providing services to individuals with developmental disabilities who are not receiving other services from the board.

(I) The director shall adopt, and may amend and rescind, rules for the implementation of family support services programs by county boards. ~~Such~~ The rules shall include all of the following:

(1) A payment schedule adjusted for income;

(2) Standards for supervision, training, and quality control in the provision of respite care services;

(3) Eligibility standards and procedures for providing temporary emergency respite care;

(4) Procedures for hearing and deciding appeals made under division (F) of this section.

Rules adopted under division (I)(1) of this section shall be adopted in accordance with section 111.15 of the Revised Code. Rules adopted under divisions (I)(2) to (4) of this section shall be adopted in accordance with Chapter 119. of the Revised Code.

(J) All individuals certified by the superintendent of the county board as eligible for temporary emergency respite care in accordance with rules adopted under this section shall be considered eligible for temporary emergency respite care for not more than five days to permit the determination of eligibility for family support services. The requirements of divisions (E) and (F) of this section do not apply to temporary emergency respite care.

(K) The county board shall not be required to make payments for family support services at a level that exceeds available state and federal funds for such payments.

**Sec. 5126.15.** (A) A county board of developmental disabilities shall provide service and support administration to each individual three years of age or older who is eligible for service and support administration if the individual requests, or a person on the individual's behalf requests, service and support administration. A board shall provide service and support administration to each individual receiving home and community-based services. A board may provide, in accordance with the service coordination requirements of 34 C.F.R. 303.23, service and support administration to an individual under three years of age eligible for early intervention services under 34 C.F.R. part 303. A board may provide service and support administration to an individual who is not eligible for other services of the board. Service and support administration shall be provided in accordance with rules adopted under section 5126.08 of the Revised Code.

A board may provide service and support administration by directly employing service and support administrators or by contracting with entities for the performance of service and support administration. Individuals employed or under contract as service and support administrators shall not be in the same collective bargaining unit as employees who perform duties that are not administrative.

A service and support administrator shall perform only the duties specified in division (B) of this section. While employed by or under contract with a board, a service and support administrator shall neither be employed by or serve in a decision-making or policy-making capacity for any other entity that provides programs or services to individuals with ~~mental retardation or~~ developmental disabilities nor provide programs or services to individuals with mental retardation or developmental disabilities through self-employment.

(B) A service and support administrator shall do all of the following:

(1) Establish an individual's eligibility for the services of the county board of developmental disabilities;

(2) Assess individual needs for services;

(3) Develop individual service plans with the active participation of the individual to be served, other persons selected by the individual, and, when applicable, the provider selected by the individual, and recommend the plans for approval by the department of developmental disabilities when services included in the plans are funded through medicaid;

(4) Establish budgets for services based on the individual's assessed needs and preferred ways of meeting those needs;

(5) Assist individuals in making selections from among the providers they have chosen;

(6) Ensure that services are effectively coordinated and provided by appropriate providers;

(7) Establish and implement an ongoing system of monitoring the implementation of individual service plans to achieve consistent implementation and the desired outcomes for the individual;

(8) Perform quality assurance reviews as a distinct function of service and support administration;

(9) Incorporate the results of quality assurance reviews and identified trends and patterns of unusual incidents and major unusual incidents into amendments of an individual's service plan for the purpose of improving and enhancing the quality and appropriateness of services rendered to the individual.

**Sec. 5126.22.** (A) Employees who hold the following positions in a county board of developmental disabilities are management employees:

assistant superintendent

director of business

director of personnel

adult services director

workshop director

habilitation manager

director of residential services

principal (director of children services)

program or service supervisor  
plant manager  
production manager  
service and support administration supervisor  
investigative agent  
confidential employees as defined in section 4117.01 of the Revised Code  
positions designated by the director of developmental disabilities as having managerial or supervisory responsibilities and duties

positions designated by the county board in accordance with division (D) of this section.

(B) Employees who hold the following positions in a board are professional employees:

personnel licensed or certified pursuant to Chapter 3319. of the Revised Code

early intervention specialist

physical development specialist

habilitation specialist

work adjustment specialist

placement specialist

vocational evaluator

psychologist

occupational therapist

speech and language pathologist

recreation specialist

behavior management specialist

physical therapist

supportive home services specialist

licensed practical nurse or registered nurse

rehabilitation counselor

doctor of medicine and surgery or of osteopathic medicine and surgery

dentist

service and support administrator

conditional status service and support administrator

social worker

any position that is not a management position and for which the standards for certification established by the director of developmental disabilities under section 5126.25 of the Revised Code require a bachelor's or higher degree

professional positions designated by the director

professional positions designated by the county board in accordance with division (D) of this section.

(C) Employees who hold positions in a board that are neither management positions nor professional positions are service employees. Service employee positions include:

workshop specialist

workshop specialist assistant

contract procurement specialist

community employment specialist  
 any assistant to a professional employee certified to provide, or supervise the provision of,  
 adult services or service and support administration  
 service positions designated by the director  
 service positions designated by a county board in accordance with division (D) of this  
 section.

(D) A county board may designate a position only if the position does not include directly providing, or supervising employees who directly provide, service or instruction to individuals with ~~mental retardation or developmental~~ disabilities.

(E) If a county board desires to have a position established that is not specifically listed in this section that includes directly providing, or supervising employees who directly provide, services or instruction to individuals with ~~mental retardation or developmental~~ disabilities, the board shall submit to the director a written description of the position and request that the director designate the position as a management, professional, or service position under this section. The director shall consider each request submitted under this division and respond within thirty days. If the director approves the request, the director shall designate the position as a management, professional, or service position.

(F) A county board shall not terminate its employment of any management, professional, or service employee solely because a position is added to or eliminated from those positions listed in this section or because a position is designated or no longer designated by the director or a county board.

**Sec. 5126.25.** (A) The director of developmental disabilities shall adopt rules under division (C) of this section establishing uniform standards and procedures for the certification and registration of persons, other than the persons described in division (I) of this section, who are seeking employment with or are employed by either of the following:

- (1) A county board of developmental disabilities;
- (2) An entity that contracts with a county board to operate programs and services for individuals with ~~mental retardation or developmental~~ disabilities.

(B) No person shall be employed in a position for which certification or registration is required pursuant to the rules adopted under this section without the certification or registration that is required for that position. The person shall not be employed or shall not continue to be employed if the required certification or registration is denied, revoked, or not renewed.

(C) The director shall adopt rules in accordance with Chapter 119. of the Revised Code as the director considers necessary to implement and administer this section, including rules establishing all of the following:

- (1) Positions of employment that are subject to this section and, for each position, whether a person must receive certification or receive registration to be employed in that position;
- (2) Requirements that must be met to receive the certification or registration required to be employed in a particular position, including standards regarding education, specialized training, and experience, taking into account the needs of individuals with ~~mental retardation or developmental~~ disabilities and the specialized techniques needed to serve them, except that the rules shall not require a person designated as a service employee under section 5126.22 of the Revised Code to have

or obtain a bachelor's or higher degree;

(3) Procedures to be followed in applying for initial certification or registration and for renewing the certification or registration.

(4) Requirements that must be met for renewal of certification or registration, which may include continuing education and professional training requirements;

(5) Subject to section 5126.23 of the Revised Code, grounds for which certification or registration may be denied, suspended, or revoked and procedures for appealing the denial, suspension, or revocation.

(D) Each person seeking certification or registration for employment shall apply in the manner established in rules adopted under this section.

(E)(1) Except as provided in division (E)(2) of this section, the superintendent of each county board is responsible for taking all actions regarding certification and registration of employees, other than the position of superintendent, early intervention supervisor, early intervention specialist, or investigative agent. For the position of superintendent, early intervention supervisor, early intervention specialist, or investigative agent, the director of developmental disabilities is responsible for taking all such actions.

Actions that may be taken by the superintendent or director include issuing, renewing, denying, suspending, and revoking certification and registration. All actions shall be taken in accordance with the rules adopted under this section.

The superintendent may charge a fee to persons applying for certification or registration. The superintendent shall establish the amount of the fee according to the costs the county board incurs in administering its program for certification and registration of employees.

A person subject to the denial, suspension, or revocation of certification or registration may appeal the decision. The appeal shall be made in accordance with the rules adopted under this section.

(2) Pursuant to division (C) of section 5126.05 of the Revised Code, the superintendent may enter into a contract with any other entity under which the entity is given authority to carry out all or part of the superintendent's responsibilities under division (E)(1) of this section.

(F) A person with valid certification or registration under this section on the effective date of any rules adopted under this section that increase the standards applicable to the certification or registration shall have such period as the rules prescribe, but not less than one year after the effective date of the rules, to meet the new certification or registration standards.

(G) A person with valid certification or registration is qualified to be employed according to that certification or registration by any county board or entity contracting with a county board.

(H) The director shall monitor county boards to ensure that their employees and the employees of their contracting entities have the applicable certification or registration required under this section and that the employees are performing only those functions they are authorized to perform under the certification or registration. The superintendent of each county board or the superintendent's designee shall maintain in appropriate personnel files evidence acceptable to the director that the employees have met the requirements. On request, representatives of the department of developmental disabilities shall be given access to the evidence.

(I) The certification and registration requirements of this section and the rules adopted under

it do not apply to either of the following:

(1) A person who holds a valid license issued or certificate issued under Chapter 3319. of the Revised Code and performs no duties other than teaching or supervision of a teaching program;

(2) A person who holds a valid license or certificate issued under Title XLVII of the Revised Code and performs only those duties governed by the license or certificate.

**Sec. 5126.30.** As used in sections 5126.30 to 5126.34 of the Revised Code:

(A) "Adult" means a person eighteen years of age or older with ~~mental retardation or a~~ developmental disability.

(B) "Caretaker" means a person who is responsible for the care of an adult by order of a court, including an order of guardianship, or who assumes the responsibility for the care of an adult as a volunteer, as a family member, by contract, or by the acceptance of payment for care.

(C) "Abuse" has the same meaning as in section 5123.50 of the Revised Code, except that it includes a misappropriation, as defined in that section.

(D) "Neglect" has the same meaning as in section 5123.50 of the Revised Code.

(E) "Exploitation" means the unlawful or improper act of a caretaker using an adult or an adult's resources for monetary or personal benefit, profit, or gain, including misappropriation, as defined in section 5123.50 of the Revised Code, of an adult's resources.

(F) "Working day" means Monday, Tuesday, Wednesday, Thursday, or Friday, except when that day is a holiday as defined in section 1.14 of the Revised Code.

(G) "Incapacitated" means lacking understanding or capacity, with or without the assistance of a caretaker, to make and carry out decisions regarding food, clothing, shelter, health care, or other necessities, but does not include mere refusal to consent to the provision of services.

(H) "Emergency protective services" means protective services furnished to ~~a person an~~ individual with ~~mental retardation or a~~ developmental disability to prevent immediate physical harm.

(I) "Protective services" means services provided by the county board of developmental disabilities to an adult with ~~mental retardation or a~~ developmental disability for the prevention, correction, or discontinuance of an act of as well as conditions resulting from abuse, neglect, or exploitation.

(J) "Protective service plan" means an individualized plan developed by the county board of developmental disabilities to prevent the further abuse, neglect, or exploitation of an adult with ~~mental retardation or a~~ developmental disability.

(K) "Substantial risk" has the same meaning as in section 2901.01 of the Revised Code.

(L) "Party" means all of the following:

(1) An adult who is the subject of a probate proceeding under sections 5126.30 to 5126.33 of the Revised Code;

(2) A caretaker, unless otherwise ordered by the probate court;

(3) Any other person designated as a party by the probate court including but not limited to, the adult's spouse, custodian, guardian, or parent.

~~(M) "Board" means a county board of developmental disabilities.~~

**Sec. 5126.31.** (A) A county board of developmental disabilities shall review reports of abuse and neglect made under section 5123.61 of the Revised Code and reports referred to it under section 5101.611 of the Revised Code to determine whether the ~~person~~ individual who is the subject of the

report is an adult with ~~mental retardation~~ or a developmental disability in need of services to deal with the abuse or neglect. The county board shall give notice of each report to the registry office of the department of developmental disabilities established pursuant to section 5123.61 of the Revised Code on the first working day after receipt of the report. If the report alleges that there is a substantial risk to the adult of immediate physical harm or death, the county board shall initiate review within twenty-four hours of its receipt of the report. If the county board determines that the ~~person~~ individual is sixty years of age or older but does not have ~~mental retardation~~ or a developmental disability, it shall refer the case to the county department of job and family services. If the county board determines that the ~~person~~ individual is an adult with ~~mental retardation~~ or a developmental disability, it shall continue its review of the case.

(B) For each review over which the county board retains responsibility under division (A) of this section, it shall do all of the following:

(1) Give both written and oral notice of the purpose of the review to the adult and, if any, to the adult's legal counsel or caretaker, in simple and clear language;

(2) Visit the adult, in the adult's residence if possible, and explain the notice given under division (B)(1) of this section;

(3) Request from the registry office any prior reports concerning the adult or other principals in the case;

(4) Consult, if feasible, with the person who made the report under section 5101.61 or 5123.61 of the Revised Code and with any agencies or persons who have information about the alleged abuse or neglect;

(5) Cooperate fully with the law enforcement agency responsible for investigating the report and for filing any resulting criminal charges and, on request, turn over evidence to the agency;

(6) Determine whether the adult needs services, and prepare a written report stating reasons for the determination. No adult shall be determined to be abused, neglected, or in need of services for the sole reason that, in lieu of medical treatment, the adult relies on or is being furnished spiritual treatment through prayer alone in accordance with the tenets and practices of a church or religious denomination of which the adult is a member or adherent.

(C) The county board shall arrange for the provision of services for the prevention, correction or discontinuance of abuse or neglect or of a condition resulting from abuse or neglect for any adult who has been determined to need the services and consents to receive them. These services may include, but are not limited to, service and support administration, fiscal management, medical, mental health, home health care, homemaker, legal, and residential services and the provision of temporary accommodations and necessities such as food and clothing. The services do not include acting as a guardian, trustee, or protector as defined in section 5123.55 of the Revised Code. If the provision of residential services would require expenditures by the department of developmental disabilities, the county board shall obtain the approval of the department prior to arranging the residential services.

To arrange services, the county board shall:

(1) Develop an individualized service plan identifying the types of services required for the adult, the goals for the services, and the persons or agencies that will provide them;

(2) In accordance with rules established by the director of developmental disabilities, obtain

the consent of the adult or the adult's guardian to the provision of any of these services and obtain the signature of the adult or guardian on the ~~individual~~-individualized service plan. An adult who has been found incompetent under Chapter 2111. of the Revised Code may consent to services. If the county board is unable to obtain consent, it may seek, if the adult is incapacitated, a court order pursuant to section 5126.33 of the Revised Code authorizing the board to arrange these services.

(D) The county board shall ensure that the adult receives the services arranged by the board from the provider and shall have the services terminated if the adult withdraws consent.

(E) On completion of a review, the county board shall submit a written report to the registry office established under section 5123.61 of the Revised Code. If the report includes a finding that a ~~person~~-an individual with ~~mental retardation~~ or a developmental disability is a victim of action or inaction that may constitute a crime under federal law or the law of this state, the board shall submit the report to the law enforcement agency responsible for investigating the report. Reports prepared under this section are not public records as defined in section 149.43 of the Revised Code.

**Sec. 5126.33.** (A) A county board of developmental disabilities may file a complaint with the probate court of the county in which an adult with ~~mental retardation~~ or a developmental disability resides for an order authorizing the board to arrange services described in division (C) of section 5126.31 of the Revised Code for that adult if the adult is eligible to receive services or support under section 5126.041 of the Revised Code and the board has been unable to secure consent. The complaint shall include all of the following:

- (1) The name, age, and address of the adult;
- (2) Facts describing the nature of the abuse, neglect, or exploitation and supporting the board's belief that services are needed;
- (3) The types of services proposed by the board, as set forth in the protective service plan described in division (J) of section 5126.30 of the Revised Code and filed with the complaint;
- (4) Facts showing the board's attempts to obtain the consent of the adult or the adult's guardian to the services.

(B) The board shall give the adult notice of the filing of the complaint and in simple and clear language shall inform the adult of the adult's rights in the hearing under division (C) of this section and explain the consequences of a court order. This notice shall be personally served upon all parties, and also shall be given to the adult's legal counsel, if any. The notice shall be given at least twenty-four hours prior to the hearing, although the court may waive this requirement upon a showing that there is a substantial risk that the adult will suffer immediate physical harm in the twenty-four hour period and that the board has made reasonable attempts to give the notice required by this division.

(C) Upon the filing of a complaint for an order under this section, the court shall hold a hearing at least twenty-four hours and no later than seventy-two hours after the notice under division (B) of this section has been given unless the court has waived the notice. All parties shall have the right to be present at the hearing, present evidence, and examine and cross-examine witnesses. The Ohio Rules of Evidence shall apply to a hearing conducted pursuant to this division. The adult shall be represented by counsel unless the court finds that the adult has made a voluntary, informed, and knowing waiver of the right to counsel. If the adult is indigent, the court shall appoint counsel to represent the adult. The board shall be represented by the county prosecutor or an attorney designated by the board.

(D)(1) The court shall issue an order authorizing the board to arrange the protective services if it finds, on the basis of clear and convincing evidence, all of the following:

- (a) The adult has been abused, neglected, or exploited;
- (b) The adult is incapacitated;
- (c) There is a substantial risk to the adult of immediate physical harm or death;
- (d) The adult is in need of the services;
- (e) No person authorized by law or court order to give consent for the adult is available or willing to consent to the services.

(2) The board shall develop a detailed protective service plan describing the services that the board will provide, or arrange for the provision of, to the adult to prevent further abuse, neglect, or exploitation. The board shall submit the plan to the court for approval. The protective service plan may be changed only by court order.

(3) In formulating the order, the court shall consider the individual protective service plan and shall specifically designate the services that are necessary to deal with the abuse, neglect, or exploitation or condition resulting from abuse, neglect, or exploitation and that are available locally, and authorize the board to arrange for these services only. The court shall limit the provision of these services to a period not exceeding six months, renewable for an additional six-month period on a showing by the board that continuation of the order is necessary.

(E) If the court finds that all other options for meeting the adult's needs have been exhausted, it may order that the adult be removed from the adult's place of residence and placed in another residential setting. Before issuing that order, the court shall consider the adult's choice of residence and shall determine that the new residential setting is the least restrictive alternative available for meeting the adult's needs and is a place where the adult can obtain the necessary requirements for daily living in safety. The court shall not order an adult to a hospital or public hospital, as defined in section 5122.01 of the Revised Code, or a state institution, as defined in section 5123.01 of the Revised Code.

(F) The court shall not authorize a change in an adult's placement ordered under division (E) of this section unless it finds compelling reasons to justify a change. The parties to whom notice was given in division (B) of this section shall be given notice of a proposed change at least five working days prior to the change.

(G) The adult, the board, or any other person who received notice of the petition may file a motion for modification of the court order at any time.

(H) The county board shall pay court costs incurred in proceedings brought pursuant to this section. The adult shall not be required to pay for court-ordered services.

(I)(1) After the filing of a complaint for an order under this section, the court, prior to the final disposition, may enter any temporary order that the court finds necessary to protect the adult with ~~mental retardation~~ or a developmental disability from abuse, neglect, or exploitation including, but not limited to, the following:

- (a) A temporary protection order;
- (b) An order requiring the evaluation of the adult;
- (c) An order requiring a party to vacate the adult's place of residence or legal settlement, provided that, subject to division (K)(1)(d) of this section, no operator of a residential facility

licensed by the department may be removed under this division;

(d) In the circumstances described in, and in accordance with the procedures set forth in, section 5123.191 of the Revised Code, an order of the type described in that section that appoints a receiver to take possession of and operate a residential facility licensed by the department.

(2) The court may grant an ex parte order pursuant to this division on its own motion or if a party files a written motion or makes an oral motion requesting the issuance of the order and stating the reasons for it if it appears to the court that the best interest and the welfare of the adult require that the court issue the order immediately. The court, if acting on its own motion, or the person requesting the granting of an ex parte order, to the extent possible, shall give notice of its intent or of the request to all parties, the adult's legal counsel, if any. If the court issues an ex parte order, the court shall hold a hearing to review the order within seventy-two hours after it is issued or before the end of the next day after the day on which it is issued, whichever occurs first. The court shall give written notice of the hearing to all parties to the action.

**Sec. 5126.333.** Any person who has reason to believe that there is a substantial risk to an adult with ~~mental retardation or a~~ developmental disability of immediate physical harm or death and that the responsible county board of developmental disabilities has failed to seek an order pursuant to section 5126.33 or 5126.331 of the Revised Code may notify the department of developmental disabilities. Within twenty-four hours of receipt of such notice, the department shall cause an investigation to be conducted regarding the notice. The department shall provide assistance to the county board to provide for the health and safety of the adult as permitted by law.

**Sec. 5126.40.** (A) Sections 5126.40 to 5126.47 of the Revised Code do not apply to medicaid-funded supported living.

(B) As used in sections 5126.40 to 5126.47 of the Revised Code, "provider" means a person or government entity certified by the director of developmental disabilities to provide supported living for individuals with ~~mental retardation and~~ developmental disabilities.

(C) On and after July 1, 1995, each county board of developmental disabilities shall plan and develop supported living for individuals with ~~mental retardation and~~ developmental disabilities who are residents of the county in accordance with sections 5126.41 to 5126.47 of the Revised Code.

**Sec. 5126.46.** (A) No county board of developmental disabilities shall be obligated to use any money other than money in the community developmental disabilities residential services fund to furnish residential services.

(B) Except with respect to a child required to be provided services pursuant to section 121.38 of the Revised Code, no court or other entity of state or local government shall order or otherwise require a county board of developmental disabilities to use money from local sources for residential services for an individual with ~~mental retardation or a~~ developmental ~~disabilities~~ disability or to arrange for residential services for such an individual unless a vacancy exists in an appropriate residential setting within the county.

**Sec. 5126.49.** The county board of developmental disabilities may adopt a resolution requesting the board of county commissioners to implement a residential facility linked deposit program under sections 5126.51 to 5126.62 of the Revised Code if the county board of developmental disabilities finds all of the following:

(A) There is a shortage of residential facilities in the county for individuals with ~~mental~~

~~retardation or developmental disabilities.~~

(B) Eligible organizations, otherwise willing and able to develop residential facilities in the county, have been unable to do so because of high interest rates.

(C) Placement of residential facility linked deposits will assist in financing the development of residential facilities in the county that otherwise would not be developed because of high interest rates.

The board shall transmit a certified copy of the resolution to the board of county commissioners.

**Sec. 5126.52.** The general assembly finds that individuals with ~~mental retardation or~~ developmental disabilities residing in the state face a shortage of suitable residential facilities; that loans to finance the development of suitable residential facilities are subject to high interest rates; that eligible organizations, otherwise willing and able to develop suitable residential facilities, are unable to do so because of the high interest rates; and, consequently, that the shortage of suitable residential facilities is likely to continue and worsen.

The residential facility linked deposit program, when implemented in a county, is intended to provide low-cost funds for lending purposes that will effectively reduce high interest rates and materially contribute to remedying the shortage of suitable residential facilities for individuals with ~~mental retardation or~~ developmental disabilities who reside in the county.

**Sec. 5126.55.** The county board of developmental disabilities shall review each application filed under section 5126.54 of the Revised Code and adopt a resolution approving or disapproving development of the proposed residential facility. The county board shall not approve development of the proposed residential facility unless it finds, based upon the application and its evaluation of the applicant, that development of the residential facility is consistent with its plan and priorities, under section 5126.05 of the Revised Code, for the provision of residential facilities for individuals with ~~mental retardation or~~ developmental disabilities residing in the county.

The resolution shall include specific findings of fact justifying the approval or disapproval.

The county board shall transmit a certified copy of the resolution to the applicant and to the board of county commissioners.

**Sec. 5126.58.** The county board of developmental disabilities shall adopt a resolution approving or disapproving an eligible organization's application for a residential facility linked deposit loan. The county board shall disapprove an application unless it finds, based on the application and its evaluation of the applicant, each of the following:

(A) The applicant has fully complied with sections 5126.54 and 5126.56 of the Revised Code.

(B) Development of the residential facility will materially contribute to alleviating the shortage of residential facilities in the county for individuals with ~~mental retardation or~~ developmental disabilities.

(C) The applicant is ready to proceed with development of the residential facility, but is unable to do so because of high interest rates.

(D) The board of county commissioners has certified that public moneys of the county are currently available for placement of the residential facility linked deposit necessary to provide low-cost financing to the applicant.

(E) Placement of the residential facility linked deposit, considered in the aggregate with all other residential facility linked deposits under the county's residential facility linked deposit program, will not cause the total amount of the county's residential facility linked deposits to exceed an amount equal to ten per cent of the operating budget of the county board of developmental disabilities for the current year. If placement of the residential facility linked deposit would cause the total amount of the county's residential facility linked deposits to exceed the maximum established by this division, the county board may accept the application but limit the amount of the residential facility linked deposit accordingly.

The resolution shall include specific findings of fact justifying acceptance or rejection of the application. If the board accepts the application, it shall specify the amount of the residential facility linked deposit in the resolution.

The county board shall transmit a certified copy of the resolution to the applicant, the eligible lending institution, and the county's investing authority.

**Sec. 5139.06.** (A) When a child has been committed to the department of youth services, the department shall do both of the following:

(1) Place the child in an appropriate institution under the condition that it considers best designed for the training and rehabilitation of the child and the protection of the public, provided that the institutional placement shall be consistent with the order committing the child to its custody;

(2) Maintain the child in institutional care or institutional care in a secure facility for the required period of institutionalization in a manner consistent with division (A)(1) of section 2152.16 and divisions (A) to (F) of section 2152.17 of the Revised Code, whichever are applicable, and with section 5139.38 or division (B), (C), or (D) of section 2152.22 of the Revised Code.

(B) When a child has been committed to the department of youth services and has not been institutionalized or institutionalized in a secure facility for the prescribed minimum period of time, including, but not limited to, a prescribed period of time under division (A)(1)(a) of section 2152.16 of the Revised Code, the department, the child, or the child's parent may request the court that committed the child to order a judicial release to court supervision or a judicial release to department of youth services supervision in accordance with division (B), (C), or (D) of section 2152.22 of the Revised Code, and the child may be released from institutionalization or institutionalization in a secure facility in accordance with the applicable division. A child in those circumstances shall not be released from institutionalization or institutionalization in a secure facility except in accordance with section 2152.22 or 5139.38 of the Revised Code. When a child is released pursuant to a judicial release to court supervision under division (B) or (D) of section 2152.22 of the Revised Code, the department shall comply with division (B)(3) of that section and, if the court requests, shall send the committing court a report on the child's progress in the institution and recommendations for conditions of supervision by the court after release. When a child is released pursuant to a judicial release to department of youth services supervision under division (C) or (D) of section 2152.22 of the Revised Code, the department shall comply with division (C)(3) of that section relative to the child and shall send the committing court and the juvenile court of the county in which the child is placed a copy of the treatment and rehabilitation plan described in that division and the conditions that it fixed. The court of the county in which the child is placed may adopt the conditions as an order of the court and may add any additional consistent conditions it considers appropriate, provided that

the court may not add any condition that decreases the level or degree of supervision specified by the department in its plan, that substantially increases the financial burden of supervision that will be experienced by the department, or that alters the placement specified by the department in its plan. Any violations of the conditions of the child's judicial release or early release shall be handled pursuant to division (E) of section 2152.22 of the Revised Code.

(C) When a child has been committed to the department of youth services, the department may do any of the following:

(1) Notwithstanding the provisions of this chapter, Chapter 2151., or Chapter 2152. of the Revised Code that prescribe required periods of institutionalization, transfer the child to any other state institution, whenever it appears that the child by reason of mental illness, ~~mental retardation~~, or ~~other~~ developmental disability ought to be in another state institution. Before transferring a child to any other state institution, the department shall include in the minutes a record of the order of transfer and the reason for the transfer and, at least seven days prior to the transfer, shall send a certified copy of the order to the person shown by its record to have had the care or custody of the child immediately prior to the child's commitment. Except as provided in division (C)(2) of this section, no person shall be transferred from a benevolent institution to a correctional institution or to a facility or institution operated by the department of youth services.

(2) Notwithstanding the provisions of this chapter, Chapter 2151., or Chapter 2152. of the Revised Code that prescribe required periods of institutionalization, transfer the child under section 5120.162 of the Revised Code to a correctional medical center established by the department of rehabilitation and correction, whenever the child has an illness, physical condition, or other medical problem and it appears that the child would benefit from diagnosis or treatment at the center for that illness, condition, or problem. Before transferring a child to a center, the department of youth services shall include in the minutes a record of the order of transfer and the reason for the transfer and, except in emergency situations, at least seven days prior to the transfer, shall send a certified copy of the order to the person shown by its records to have had the care or custody of the child immediately prior to the child's commitment. If the transfer of the child occurs in an emergency situation, as soon as possible after the decision is made to make the transfer, the department of youth services shall send a certified copy of the order to the person shown by its records to have had the care or custody of the child immediately prior to the child's commitment. A transfer under this division shall be in accordance with the terms of the agreement the department of youth services enters into with the department of rehabilitation and correction under section 5120.162 of the Revised Code and shall continue only as long as the child reasonably appears to receive benefit from diagnosis or treatment at the center for an illness, physical condition, or other medical problem.

(3) Revoke or modify any order of the department except an order of discharge as often as conditions indicate it to be desirable;

(4) If the child was committed pursuant to division (A)(1)(b), (c), (d), or (e) of section 2152.16 of the Revised Code and has been institutionalized or institutionalized in a secure facility for the prescribed minimum periods of time under the division pursuant to which the commitment was made, assign the child to a family home, a group care facility, or other place maintained under public or private auspices, within or without this state, for necessary treatment and rehabilitation, the costs of which may be paid by the department, provided that the department shall notify the committing

court, in writing, of the place and terms of the assignment at least fifteen days prior to the scheduled date of the assignment;

(5) Release the child from an institution in accordance with sections 5139.51 to 5139.54 of the Revised Code in the circumstances described in those sections.

(D) The department of youth services shall notify the committing court of any order transferring the physical location of any child committed to it in accordance with section 5139.35 of the Revised Code. Upon the discharge from its custody and control, the department may petition the court for an order terminating its custody and control.

**Sec. 5139.08.** The department of youth services may enter into an agreement with the director of rehabilitation and correction pursuant to which the department of youth services, in accordance with division (C)(2) of section 5139.06 and section 5120.162 of the Revised Code, may transfer to a correctional medical center established by the department of rehabilitation and correction, children who are within its custody for diagnosis or treatment of an illness, physical condition, or other medical problem. The department of youth services may enter into any other agreements with the director of job and family services, the director of mental health and addiction services, the director of developmental disabilities, the director of rehabilitation and correction, with the courts having probation officers or other public officials, and with private agencies or institutions for separate care or special treatment of children subject to the control of the department of youth services. The department of youth services may, upon the request of a juvenile court not having a regular probation officer, provide probation services for such court.

Upon request by the department of youth services, any public agency or group care facility established or administered by the state for the care and treatment of children and youth shall, consistent with its functions, accept and care for any child whose custody is vested in the department in the same manner as it would be required to do if custody had been vested by a court in such agency or group care facility. If the department has reasonable grounds to believe that any child or youth whose custody is vested in it is mentally ill or ~~mentally retarded~~ has an intellectual disability, the department may file an affidavit under section 5122.11 or 5123.76 of the Revised Code. The department's affidavit for admission of a child or youth to such institution shall be filed with the probate court of the county from which the child was committed to the department. Such court may request the probate court of the county in which the child is held to conduct the hearing on the application, in which case the court making such request shall bear the expenses of the proceeding. If the department files such an affidavit, the child or youth may be kept in such institution until a final decision on the affidavit is made by the appropriate court.

**Sec. 5139.12.** Any person who is required, pursuant to division (A) of section 2151.421 of the Revised Code, to report the person's knowledge of or reasonable cause to suspect abuse or neglect or threat of abuse or neglect of a child under eighteen years of age or a ~~mentally retarded, developmentally disabled, or physically impaired child~~ person with a developmental disability or physical impairment under twenty-one years of age, or any person who is permitted, pursuant to division (B) of that section, to report, or cause such a report to be made and who makes or causes the report to be made, shall direct that report to the state highway patrol if the child is a delinquent child in the custody of an institution. If the state highway patrol determines after receipt of the report that there is probable cause that abuse or neglect or threat of abuse or neglect of the delinquent child

occurred, the highway patrol shall report its findings to the department of youth services, to the court that ordered the disposition of the delinquent child for the act that would have been an offense if committed by an adult and for which the delinquent child is in the custody of the department, to the public children services agency in the county in which the child resides or in which the abuse or neglect or threat of abuse or neglect occurred, and to the chairperson and vice-chairperson of the correctional institution inspection committee established by section 103.71 of the Revised Code.

**Sec. 5139.27.** The department of youth services shall adopt rules prescribing the minimum standards of construction for a school, forestry camp, or other facility established under section 2151.65 of the Revised Code for which financial assistance may be granted to assist in defraying the cost of the construction of the school, forestry camp, or other facility. If an application for that financial assistance is filed with the department under section 2151.651 of the Revised Code, and the department finds that the application is in proper form and the specifications for the construction of the school, forestry camp, or other facility meet the minimum standards set forth in the rules adopted by the department, the department may, from moneys available to it for granting financial assistance for the construction of schools, forestry camps, or other facilities established under section 2151.65 of the Revised Code, grant financial assistance to the county making the application, subject to the approval of the controlling board, in an amount not to exceed one-half of the county's share of the cost of construction of the school, forestry camp, or other facility but not to exceed six thousand five hundred dollars for each bed unit provided for in the school, forestry camp, or other facility. As used in this section, "construction" means the building and the initial equipping of new structures and, to the extent provided for in rules adopted by the department, the acquisition, remodeling, and initial equipping of existing structures, excluding architect's fees and the cost of land acquisition.

A county that receives financial assistance under this section shall not be obligated to repay the assistance to the state unless the school, forestry camp, or other facility for which the assistance is granted is used within the ten-year period immediately following its establishment for other than the purpose of rehabilitating children between the ages of twelve to eighteen years, other than psychotic ~~or mentally retarded children~~ or children with intellectual disabilities, who are designated delinquent children, as defined in section 2152.02 of the Revised Code, or unruly, as defined in section 2151.022 of the Revised Code, by order of a juvenile court. If the department of youth services finds that the school, forestry camp, or other facility is used for other than that purpose within that ten-year period, the county shall be obligated to repay the assistance to the state and, through its board of county commissioners, may enter into an agreement with the director of budget and management for the discharge of that obligation over a period not to exceed ten years in duration. Whenever a county is obligated to repay that assistance to the state and its board of county commissioners fails to enter into or fails to comply with an agreement for the discharge of that obligation, the tax commissioner, pursuant to section 5747.54 of the Revised Code, shall withhold from distribution to the county from the local government fund an amount sufficient to discharge the county from that obligation to the state.

**Sec. 5139.39.** The department of youth services, in the manner provided in this chapter and Chapter 2151. of the Revised Code, may transfer to a foster care facility certified by the department of job and family services under section 5103.03 of the Revised Code, any child committed to it and, in the event of a transfer of that nature, unless otherwise mutually agreed, the department of youth

services shall bear the cost of care and services provided for the child in the foster care facility. A juvenile court may transfer to any foster facility certified by the department of job and family services any child between twelve and eighteen years of age, other than a psychotic ~~or mentally retarded~~ child or a child with an intellectual disability, who has been designated a delinquent child and placed on probation by order of the juvenile court as a result of having violated any law of this state or the United States or any ordinance of a political subdivision of this state.

**Sec. 5139.54.** (A) Notwithstanding any other provision for determining when a child shall be released or discharged from the legal custody of the department of youth services, including jurisdictional provisions in section 2152.22 of the Revised Code, the release authority, for medical reasons, may release a child upon supervised release or discharge the child from the custody of the department when any of the following applies:

- (1) The child is terminally ill or otherwise in imminent danger of death.
- (2) The child is incapacitated due to injury, disease, illness, or other medical condition and is no longer a threat to public safety.
- (3) The child appears to be a mentally ill person subject to court order, as defined in section 5122.01 of the Revised Code, or a ~~mentally retarded~~ person with an intellectual disability subject to institutionalization by court order, as defined in section 5123.01 of the Revised Code.

(B) When considering whether to release or discharge a child under this section for medical reasons, the release authority may request additional medical information about the child or may ask the department to conduct additional medical examinations.

(C) The release authority shall determine the appropriate level of supervised release for a child released under this section. The terms and conditions of the release may require periodic medical reevaluations as appropriate. Upon granting a release or discharge under this section, the release authority shall give notice of the release and its terms and conditions or of the discharge to the court that committed the child to the custody of the department.

(D) The release authority shall submit annually to the director of youth services a report that includes all of the following information for the previous calendar year:

- (1) The number of children the release authority considered for medical release or discharge;
- (2) The nature of the injury, disease, illness, or other medical condition of each child considered for medical release or discharge;
- (3) The decision made by the release authority for each child, including the reasons for denying medical release or discharge or for granting it;
- (4) The number of children on medical release who were returned to a secure facility or whose supervised release was revoked.

**Sec. 5164.25.** The departments of developmental disabilities and medicaid may approve, reduce, deny, or terminate a medicaid service included in the ~~individualized individual~~ service plan developed for a medicaid recipient with ~~mental retardation or other~~ a developmental disability who is eligible for medicaid case management services. If either department approves, reduces, denies, or terminates a service, that department shall timely notify the medicaid recipient that the recipient may appeal pursuant to section 5160.31 of the Revised Code.

**Sec. 5164.342.** (A) As used in this section:

"Applicant" means a person who is under final consideration for employment with a waiver

agency in a full-time, part-time, or temporary position that involves providing home and community-based services.

"Community-based long-term care provider" means a provider as defined in section 173.39 of the Revised Code.

"Community-based long-term care subcontractor" means a subcontractor as defined in section 173.38 of the Revised Code.

"Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

"Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (e) of section 109.572 of the Revised Code.

"Employee" means a person employed by a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based services.

"Waiver agency" means a person or government entity that provides home and community-based services under a home and community-based services medicaid waiver component administered by the department of medicaid, other than such a person or government entity that is certified under the medicare program. "Waiver agency" does not mean an independent provider as defined in section 5164.341 of the Revised Code.

(B) This section does not apply to any individual who is subject to a database review or criminal records check under section 3701.881 of the Revised Code. If a waiver agency also is a community-based long-term care provider or community-based long-term care subcontractor, the waiver agency may provide for applicants and employees to undergo database reviews and criminal records checks in accordance with section 173.38 of the Revised Code rather than this section.

(C) No waiver agency shall employ an applicant or continue to employ an employee in a position that involves providing home and community-based services if any of the following apply:

(1) A review of the databases listed in division (E) of this section reveals any of the following:

(a) That the applicant or employee is included in one or more of the databases listed in divisions (E)(1) to (5) of this section;

(b) That there is in the state nurse aide registry established under section 3721.32 of the Revised Code a statement detailing findings by the director of health that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident;

(c) That the applicant or employee is included in one or more of the databases, if any, specified in rules authorized by this section and the rules prohibit the waiver agency from employing an applicant or continuing to employ an employee included in such a database in a position that involves providing home and community-based services.

(2) After the applicant or employee is given the information and notification required by divisions (F)(2)(a) and (b) of this section, the applicant or employee fails to do either of the following:

(a) Access, complete, or forward to the superintendent of the bureau of criminal identification and investigation the form prescribed to division (C)(1) of section 109.572 of the Revised Code or the standard impression sheet prescribed pursuant to division (C)(2) of that section;

(b) Instruct the superintendent to submit the completed report of the criminal records check

required by this section directly to the chief administrator of the waiver agency.

(3) Except as provided in rules authorized by this section, the applicant or employee is found by a criminal records check required by this section to have been convicted of or have pleaded guilty to a disqualifying offense, regardless of the date of the conviction or date of entry of the guilty plea.

(D) At the time of each applicant's initial application for employment in a position that involves providing home and community-based services, the chief administrator of a waiver agency shall inform the applicant of both of the following:

(1) That a review of the databases listed in division (E) of this section will be conducted to determine whether the waiver agency is prohibited by division (C)(1) of this section from employing the applicant in the position;

(2) That, unless the database review reveals that the applicant may not be employed in the position, a criminal records check of the applicant will be conducted and the applicant is required to provide a set of the applicant's fingerprint impressions as part of the criminal records check.

(E) As a condition of employing any applicant in a position that involves providing home and community-based services, the chief administrator of a waiver agency shall conduct a database review of the applicant in accordance with rules authorized by this section. If rules authorized by this section so require, the chief administrator of a waiver agency shall conduct a database review of an employee in accordance with the rules as a condition of continuing to employ the employee in a position that involves providing home and community-based services. A database review shall determine whether the applicant or employee is included in any of the following:

(1) The excluded parties list system that is maintained by the United States general services administration pursuant to subpart 9.4 of the federal acquisition regulation and available at the federal web site known as the system for award management;

(2) The list of excluded individuals and entities maintained by the office of inspector general in the United States department of health and human services pursuant to the "Social Security Act," sections 1128 and 1156, 42 U.S.C. 1320a-7 and 1320c-5;

(3) The registry of ~~MR/DD~~ developmental disabilities employees established under section 5123.52 of the Revised Code;

(4) The internet-based sex offender and child-victim offender database established under division (A)(11) of section 2950.13 of the Revised Code;

(5) The internet-based database of inmates established under section 5120.66 of the Revised Code;

(6) The state nurse aide registry established under section 3721.32 of the Revised Code;

(7) Any other database, if any, specified in rules authorized by this section.

(F)(1) As a condition of employing any applicant in a position that involves providing home and community-based services, the chief administrator of a waiver agency shall require the applicant to request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of the applicant. If rules authorized by this section so require, the chief administrator of a waiver agency shall require an employee to request that the superintendent conduct a criminal records check of the employee at times specified in the rules as a condition of continuing to employ the employee in a position that involves providing home and community-based services. However, a criminal records check is not required for an applicant or employee if the waiver agency

is prohibited by division (C)(1) of this section from employing the applicant or continuing to employ the employee in a position that involves providing home and community-based services. If an applicant or employee for whom a criminal records check request is required by this section does not present proof of having been a resident of this state for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the superintendent has requested information about the applicant or employee from the federal bureau of investigation in a criminal records check, the chief administrator shall require the applicant or employee to request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check. Even if an applicant or employee for whom a criminal records check request is required by this section presents proof of having been a resident of this state for the five-year period, the chief administrator may require the applicant or employee to request that the superintendent include information from the federal bureau of investigation in the criminal records check.

(2) The chief administrator shall provide the following to each applicant and employee for whom a criminal records check is required by this section:

(a) Information about accessing, completing, and forwarding to the superintendent of the bureau of criminal identification and investigation the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard impression sheet prescribed pursuant to division (C)(2) of that section;

(b) Written notification that the applicant or employee is to instruct the superintendent to submit the completed report of the criminal records check directly to the chief administrator.

(3) A waiver agency shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for any criminal records check required by this section. However, a waiver agency may require an applicant to pay to the bureau the fee for a criminal records check of the applicant. If the waiver agency pays the fee for an applicant, it may charge the applicant a fee not exceeding the amount the waiver agency pays to the bureau under this section if the waiver agency notifies the applicant at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the applicant will not be considered for employment.

(G)(1) A waiver agency may employ conditionally an applicant for whom a criminal records check is required by this section prior to obtaining the results of the criminal records check if both of the following apply:

(a) The waiver agency is not prohibited by division (C)(1) of this section from employing the applicant in a position that involves providing home and community-based services.

(b) The chief administrator of the waiver agency requires the applicant to request a criminal records check regarding the applicant in accordance with division (F)(1) of this section not later than five business days after the applicant begins conditional employment.

(2) A waiver agency that employs an applicant conditionally under division (G)(1) of this section shall terminate the applicant's employment if the results of the criminal records check, other than the results of any request for information from the federal bureau of investigation, are not obtained within the period ending sixty days after the date the request for the criminal records check is made. Regardless of when the results of the criminal records check are obtained, if the results

indicate that the applicant has been convicted of or has pleaded guilty to a disqualifying offense, the waiver agency shall terminate the applicant's employment unless circumstances specified in rules authorized by this section exist that permit the waiver agency to employ the applicant and the waiver agency chooses to employ the applicant.

(H) The report of any criminal records check conducted pursuant to a request made under this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:

(1) The applicant or employee who is the subject of the criminal records check or the representative of the applicant or employee;

(2) The chief administrator of the waiver agency that requires the applicant or employee to request the criminal records check or the administrator's representative;

(3) The medicaid director and the staff of the department who are involved in the administration of the medicaid program;

(4) The director of aging or the director's designee if the waiver agency also is a community-based long-term care provider or community-based long-term care subcontractor;

(5) An individual receiving or deciding whether to receive home and community-based services from the subject of the criminal records check;

(6) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

(a) A denial of employment of the applicant or employee;

(b) Employment or unemployment benefits of the applicant or employee;

(c) A civil or criminal action regarding the medicaid program.

(I) The medicaid director shall adopt rules under section 5164.02 of the Revised Code to implement this section.

(1) The rules may do the following:

(a) Require employees to undergo database reviews and criminal records checks under this section;

(b) If the rules require employees to undergo database reviews and criminal records checks under this section, exempt one or more classes of employees from the requirements;

(c) For the purpose of division (E)(7) of this section, specify other databases that are to be checked as part of a database review conducted under this section.

(2) The rules shall specify all of the following:

(a) The procedures for conducting a database review under this section;

(b) If the rules require employees to undergo database reviews and criminal records checks under this section, the times at which the database reviews and criminal records checks are to be conducted;

(c) If the rules specify other databases to be checked as part of a database review, the circumstances under which a waiver agency is prohibited from employing an applicant or continuing to employ an employee who is found by the database review to be included in one or more of those databases;

(d) The circumstances under which a waiver agency may employ an applicant or employee who is found by a criminal records check required by this section to have been convicted of or have

pleaded guilty to a disqualifying offense.

(J) The amendments made by H.B. 487 of the 129th general assembly to this section do not preclude the department of medicaid from taking action against a person for failure to comply with former division (H) of this section as that division existed on the day preceding January 1, 2013.

**Sec. 5164.881.** The medicaid director, in consultation with the director of developmental disabilities, may develop and implement within the medicaid program a system under which eligible individuals with chronic conditions, as defined in the "Social Security Act," section 1945 (h)(1), 42 U.S.C. 1396w-4(h)(1), who also have ~~mental retardation or other~~ developmental disabilities may receive health home services, as defined in the "Social Security Act," section 1945 (h)(4), 42 U.S.C. 1396w-4(h)(4). Any such system shall focus on the needs of individuals and have as its goal improving services and outcomes under the medicaid program by improving integration of long-term care services and supportive services with primary and acute health care services.

In developing any system under this section, the directors shall consult with representatives of county boards of developmental disabilities, the Ohio provider resource association, and the arc of Ohio. The directors may consult with any other individuals or entities that have an interest in the well being of individuals with developmental disabilities.

**Sec. 5165.01.** As used in this chapter:

(A) "Affiliated operator" means an operator affiliated with either of the following:

(1) The exiting operator for whom the affiliated operator is to assume liability for the entire amount of the exiting operator's debt under the medicaid program or the portion of the debt that represents the franchise permit fee the exiting operator owes;

(2) The entering operator involved in the change of operator with the exiting operator specified in division (A)(1) of this section.

(B) "Allowable costs" are a nursing facility's costs that the department of medicaid determines are reasonable. Fines paid under sections 5165.60 to 5165.89 and section 5165.99 of the Revised Code are not allowable costs.

(C) "Ancillary and support costs" means all reasonable costs incurred by a nursing facility other than direct care costs, tax costs, or capital costs. "Ancillary and support costs" includes, but is not limited to, costs of activities, social services, pharmacy consultants, habilitation supervisors, qualified ~~mental retardation~~ intellectual disability professionals, program directors, medical and habilitation records, program supplies, incontinence supplies, food, enterals, dietary supplies and personnel, laundry, housekeeping, security, administration, medical equipment, utilities, liability insurance, bookkeeping, purchasing department, human resources, communications, travel, dues, license fees, subscriptions, home office costs not otherwise allocated, legal services, accounting services, minor equipment, maintenance and repairs, help-wanted advertising, informational advertising, start-up costs, organizational expenses, other interest, property insurance, employee training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or costs for self-insurance claims and related costs as specified in rules adopted under section 5165.02 of the Revised Code, for personnel listed in this division. "Ancillary and support costs" also means the cost of equipment, including vehicles, acquired by operating lease executed before December 1, 1992, if the costs are reported as administrative and general costs on the nursing facility's cost report for the cost reporting period ending December 31, 1992.

(D)(1) "Capital costs" means the actual expense incurred by a nursing facility for all of the following:

(a) Depreciation and interest on any capital assets that cost five hundred dollars or more per item, including the following:

- (i) Buildings;
- (ii) Building improvements;
- (iii) Except as provided in division (C) of this section, equipment;
- (iv) Transportation equipment.

(b) Amortization and interest on land improvements and leasehold improvements;

(c) Amortization of financing costs;

(d) Lease and rent of land, buildings, and equipment.

(2) The costs of capital assets of less than five hundred dollars per item may be considered capital costs in accordance with a provider's practice.

(E) "Capital lease" and "operating lease" shall be construed in accordance with generally accepted accounting principles.

(F) "Case-mix score" means a measure determined under section 5165.192 of the Revised Code of the relative direct-care resources needed to provide care and habilitation to a nursing facility resident.

(G) "Change of operator" means an entering operator becoming the operator of a nursing facility in the place of the exiting operator.

(1) Actions that constitute a change of operator include the following:

(a) A change in an exiting operator's form of legal organization, including the formation of a partnership or corporation from a sole proprietorship;

(b) A transfer of all the exiting operator's ownership interest in the operation of the nursing facility to the entering operator, regardless of whether ownership of any or all of the real property or personal property associated with the nursing facility is also transferred;

(c) A lease of the nursing facility to the entering operator or the exiting operator's termination of the exiting operator's lease;

(d) If the exiting operator is a partnership, dissolution of the partnership;

(e) If the exiting operator is a partnership, a change in composition of the partnership unless both of the following apply:

(i) The change in composition does not cause the partnership's dissolution under state law.

(ii) The partners agree that the change in composition does not constitute a change in operator.

(f) If the operator is a corporation, dissolution of the corporation, a merger of the corporation into another corporation that is the survivor of the merger, or a consolidation of one or more other corporations to form a new corporation.

(2) The following, alone, do not constitute a change of operator:

(a) A contract for an entity to manage a nursing facility as the operator's agent, subject to the operator's approval of daily operating and management decisions;

(b) A change of ownership, lease, or termination of a lease of real property or personal property associated with a nursing facility if an entering operator does not become the operator in

place of an exiting operator;

(c) If the operator is a corporation, a change of one or more members of the corporation's governing body or transfer of ownership of one or more shares of the corporation's stock, if the same corporation continues to be the operator.

(H) "Cost center" means the following:

- (1) Ancillary and support costs;
- (2) Capital costs;
- (3) Direct care costs;
- (4) Tax costs.

(I) "Custom wheelchair" means a wheelchair to which both of the following apply:

- (1) It has been measured, fitted, or adapted in consideration of either of the following:
  - (a) The body size or disability of the individual who is to use the wheelchair;
  - (b) The individual's period of need for, or intended use of, the wheelchair.
- (2) It has customized features, modifications, or components, such as adaptive seating and positioning systems, that the supplier who assembled the wheelchair, or the manufacturer from which the wheelchair was ordered, added or made in accordance with the instructions of the physician of the individual who is to use the wheelchair.

(J)(1) "Date of licensure" means the following:

(a) In the case of a nursing facility that was required by law to be licensed as a nursing home under Chapter 3721. of the Revised Code when it originally began to be operated as a nursing home, the date the nursing facility was originally so licensed;

(b) In the case of a nursing facility that was not required by law to be licensed as a nursing home when it originally began to be operated as a nursing home, the date it first began to be operated as a nursing home, regardless of the date the nursing facility was first licensed as a nursing home.

(2) If, after a nursing facility's original date of licensure, more nursing home beds are added to the nursing facility, the nursing facility has a different date of licensure for the additional beds. This does not apply, however, to additional beds when both of the following apply:

(a) The additional beds are located in a part of the nursing facility that was constructed at the same time as the continuing beds already located in that part of the nursing facility;

(b) The part of the nursing facility in which the additional beds are located was constructed as part of the nursing facility at a time when the nursing facility was not required by law to be licensed as a nursing home.

(3) The definition of "date of licensure" in this section applies in determinations of nursing facilities' medicaid payment rates but does not apply in determinations of nursing facilities' franchise permit fees.

(K) "Desk-reviewed" means that a nursing facility's costs as reported on a cost report submitted under section 5165.10 of the Revised Code have been subjected to a desk review under section 5165.108 of the Revised Code and preliminarily determined to be allowable costs.

(L) "Direct care costs" means all of the following costs incurred by a nursing facility:

(1) Costs for registered nurses, licensed practical nurses, and nurse aides employed by the nursing facility;

(2) Costs for direct care staff, administrative nursing staff, medical directors, respiratory

therapists, and except as provided in division (L)(8) of this section, other persons holding degrees qualifying them to provide therapy;

(3) Costs of purchased nursing services;

(4) Costs of quality assurance;

(5) Costs of training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or costs for self-insurance claims and related costs as specified in rules adopted under section 5165.02 of the Revised Code, for personnel listed in divisions (L)(1), (2), (4), and (8) of this section;

(6) Costs of consulting and management fees related to direct care;

(7) Allocated direct care home office costs;

(8) Costs of habilitation staff (other than habilitation supervisors), medical supplies, emergency oxygen, over-the-counter pharmacy products, behavioral and mental health services, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists, audiologists, habilitation supplies, and universal precautions supplies;

(9) Until January 1, 2014, costs of oxygen, wheelchairs, and resident transportation;

(10) Beginning January 1, 2014, costs of both of the following:

(a) Emergency oxygen;

(b) Wheelchairs other than the following:

(i) Custom wheelchairs;

(ii) Repairs to and replacements of custom wheelchairs and parts that are made in accordance with the instructions of the physician of the individual who uses the custom wheelchair.

(11) Costs of other direct-care resources that are specified as direct care costs in rules adopted under section 5165.02 of the Revised Code.

(M) "Dual eligible individual" has the same meaning as in section 5160.01 of the Revised Code.

(N) "Effective date of a change of operator" means the day the entering operator becomes the operator of the nursing facility.

(O) "Effective date of a facility closure" means the last day that the last of the residents of the nursing facility resides in the nursing facility.

(P) "Effective date of an involuntary termination" means the date the department of medicaid terminates the operator's provider agreement for the nursing facility.

(Q) "Effective date of a voluntary withdrawal of participation" means the day the nursing facility ceases to accept new medicaid residents other than the individuals who reside in the nursing facility on the day before the effective date of the voluntary withdrawal of participation.

(R) "Entering operator" means the person or government entity that will become the operator of a nursing facility when a change of operator occurs or following an involuntary termination.

(S) "Exiting operator" means any of the following:

(1) An operator that will cease to be the operator of a nursing facility on the effective date of a change of operator;

(2) An operator that will cease to be the operator of a nursing facility on the effective date of a facility closure;

(3) An operator of a nursing facility that is undergoing or has undergone a voluntary

withdrawal of participation;

(4) An operator of a nursing facility that is undergoing or has undergone an involuntary termination.

(T)(1) Subject to divisions (T)(2) and (3) of this section, "facility closure" means either of the following:

(a) Discontinuance of the use of the building, or part of the building, that houses the facility as a nursing facility that results in the relocation of all of the nursing facility's residents;

(b) Conversion of the building, or part of the building, that houses a nursing facility to a different use with any necessary license or other approval needed for that use being obtained and one or more of the nursing facility's residents remaining in the building, or part of the building, to receive services under the new use.

(2) A facility closure occurs regardless of any of the following:

(a) The operator completely or partially replacing the nursing facility by constructing a new nursing facility or transferring the nursing facility's license to another nursing facility;

(b) The nursing facility's residents relocating to another of the operator's nursing facilities;

(c) Any action the department of health takes regarding the nursing facility's medicaid certification that may result in the transfer of part of the nursing facility's survey findings to another of the operator's nursing facilities;

(d) Any action the department of health takes regarding the nursing facility's license under Chapter 3721. of the Revised Code.

(3) A facility closure does not occur if all of the nursing facility's residents are relocated due to an emergency evacuation and one or more of the residents return to a medicaid-certified bed in the nursing facility not later than thirty days after the evacuation occurs.

(U) "Fiscal year" means the fiscal year of this state, as specified in section 9.34 of the Revised Code.

(V) "Franchise permit fee" means the fee imposed by sections 5168.40 to 5168.56 of the Revised Code.

(W) "Inpatient days" means both of the following:

(1) All days during which a resident, regardless of payment source, occupies a bed in a nursing facility that is included in the nursing facility's medicaid-certified capacity;

(2) Fifty per cent of the days for which payment is made under section 5165.34 of the Revised Code.

(X) "Involuntary termination" means the department of medicaid's termination of the operator's provider agreement for the nursing facility when the termination is not taken at the operator's request.

(Y) "Low resource utilization resident" means a medicaid recipient residing in a nursing facility who, for purposes of calculating the nursing facility's medicaid payment rate for direct care costs, is placed in either of the two lowest resource utilization groups, excluding any resource utilization group that is a default group used for residents with incomplete assessment data.

(Z) "Maintenance and repair expenses" means a nursing facility's expenditures that are necessary and proper to maintain an asset in a normally efficient working condition and that do not extend the useful life of the asset two years or more. "Maintenance and repair expenses" includes but

is not limited to the costs of ordinary repairs such as painting and wallpapering.

(AA) "Medicaid-certified capacity" means the number of a nursing facility's beds that are certified for participation in medicaid as nursing facility beds.

(BB) "Medicaid days" means both of the following:

(1) All days during which a resident who is a medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the nursing facility's medicaid-certified capacity;

(2) Fifty per cent of the days for which payment is made under section 5165.34 of the Revised Code.

(CC)(1) "New nursing facility" means a nursing facility for which the provider obtains an initial provider agreement following medicaid certification of the nursing facility by the director of health, including such a nursing facility that replaces one or more nursing facilities for which a provider previously held a provider agreement.

(2) "New nursing facility" does not mean a nursing facility for which the entering operator seeks a provider agreement pursuant to section 5165.511 or 5165.512 or (pursuant to section 5165.515) section 5165.07 of the Revised Code.

(DD) "Nursing facility" has the same meaning as in the "Social Security Act," section 1919(a), 42 U.S.C. 1396r(a).

(EE) "Nursing facility services" has the same meaning as in the "Social Security Act," section 1905(f), 42 U.S.C. 1396d(f).

(FF) "Nursing home" has the same meaning as in section 3721.01 of the Revised Code.

(GG) "Operator" means the person or government entity responsible for the daily operating and management decisions for a nursing facility.

(HH)(1) "Owner" means any person or government entity that has at least five per cent ownership or interest, either directly, indirectly, or in any combination, in any of the following regarding a nursing facility:

(a) The land on which the nursing facility is located;

(b) The structure in which the nursing facility is located;

(c) Any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure on or in which the nursing facility is located;

(d) Any lease or sublease of the land or structure on or in which the nursing facility is located.

(2) "Owner" does not mean a holder of a debenture or bond related to the nursing facility and purchased at public issue or a regulated lender that has made a loan related to the nursing facility unless the holder or lender operates the nursing facility directly or through a subsidiary.

(II) "Per diem" means a nursing facility's actual, allowable costs in a given cost center in a cost reporting period, divided by the nursing facility's inpatient days for that cost reporting period.

(JJ) "Provider" means an operator with a provider agreement.

(KK) "Provider agreement" means a provider agreement, as defined in section 5164.01 of the Revised Code, that is between the department of medicaid and the operator of a nursing facility for the provision of nursing facility services under the medicaid program.

(LL) "Purchased nursing services" means services that are provided in a nursing facility by registered nurses, licensed practical nurses, or nurse aides who are not employees of the nursing

facility.

(MM) "Reasonable" means that a cost is an actual cost that is appropriate and helpful to develop and maintain the operation of patient care facilities and activities, including normal standby costs, and that does not exceed what a prudent buyer pays for a given item or services. Reasonable costs may vary from provider to provider and from time to time for the same provider.

(NN) "Related party" means an individual or organization that, to a significant extent, has common ownership with, is associated or affiliated with, has control of, or is controlled by, the provider.

(1) An individual who is a relative of an owner is a related party.

(2) Common ownership exists when an individual or individuals possess significant ownership or equity in both the provider and the other organization. Significant ownership or equity exists when an individual or individuals possess five per cent ownership or equity in both the provider and a supplier. Significant ownership or equity is presumed to exist when an individual or individuals possess ten per cent ownership or equity in both the provider and another organization from which the provider purchases or leases real property.

(3) Control exists when an individual or organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization.

(4) An individual or organization that supplies goods or services to a provider shall not be considered a related party if all of the following conditions are met:

(a) The supplier is a separate bona fide organization.

(b) A substantial part of the supplier's business activity of the type carried on with the provider is transacted with others than the provider and there is an open, competitive market for the types of goods or services the supplier furnishes.

(c) The types of goods or services are commonly obtained by other nursing facilities from outside organizations and are not a basic element of patient care ordinarily furnished directly to patients by nursing facilities.

(d) The charge to the provider is in line with the charge for the goods or services in the open market and no more than the charge made under comparable circumstances to others by the supplier.

(OO) "Relative of owner" means an individual who is related to an owner of a nursing facility by one of the following relationships:

(1) Spouse;

(2) Natural parent, child, or sibling;

(3) Adopted parent, child, or sibling;

(4) Stepparent, stepchild, stepbrother, or stepsister;

(5) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law;

(6) Grandparent or grandchild;

(7) Foster caregiver, foster child, foster brother, or foster sister.

(PP) "Residents' rights advocate" has the same meaning as in section 3721.10 of the Revised Code.

(QQ) "Skilled nursing facility" has the same meaning as in the "Social Security Act," section 1819(a), 42 U.S.C. 1395i-3(a).

(RR) "Sponsor" has the same meaning as in section 3721.10 of the Revised Code.

(SS) "Tax costs" means the costs of taxes imposed under Chapter 5751. of the Revised Code, real estate taxes, personal property taxes, and corporate franchise taxes.

(TT) "Title XIX" means Title XIX of the "Social Security Act," 42 U.S.C. 1396 et seq.

(UU) "Title XVIII" means Title XVIII of the "Social Security Act," 42 U.S.C. 1395 et seq.

(VV) "Voluntary withdrawal of participation" means an operator's voluntary election to terminate the participation of a nursing facility in the medicaid program but to continue to provide service of the type provided by a nursing facility.

**Sec. 5166.20.** (A) The department of medicaid may create the following:

(1) One or more medicaid waiver components under which home and community-based services are provided to individuals with ~~mental retardation or other developmental disability~~ disabilities as an alternative to placement in ICFs/IID;

(2) One or more medicaid waiver components under which home and community-based services are provided in the form of any of the following:

(a) Early intervention and supportive services for children under three years of age who have developmental delays or disabilities the department determines are significant;

(b) Therapeutic services for children who have autism;

(c) Specialized habilitative services for individuals who are eighteen years of age or older and have autism.

(B) No medicaid waiver component created pursuant to division (A)(2)(b) or (c) of this section shall provide services that are available under another medicaid waiver component. No medicaid waiver component created pursuant to division (A)(2)(b) of this section shall provide services to an individual that the individual is eligible to receive through an individualized education program as defined in section 3323.01 of the Revised Code.

(C) The director of developmental disabilities and director of health may request that the department of medicaid create one or more medicaid waiver components under this section.

(D) Before creating a medicaid waiver component under this section, the department of medicaid shall seek, accept, and consider public comments.

**Sec. 5166.21.** The department of medicaid shall enter into a contract with the department of developmental disabilities under section 5162.35 of the Revised Code with regard to one or more of the medicaid waiver components created by the department of medicaid under section 5166.20 of the Revised Code. The contract shall include the medicaid waiver component known as the transitions developmental disabilities waiver. The contract shall provide for the department of developmental disabilities to administer the components in accordance with the terms of the federal medicaid waivers authorizing the components. The contract shall include a schedule for the department of developmental disabilities to begin administering the transitions developmental disabilities waiver.

If the department of developmental disabilities or the department of medicaid denies an individual's application for home and community-based services provided under any of these medicaid components, the department that denied the services shall give timely notice to the individual that the individual may appeal pursuant to section 5160.31 of the Revised Code.

The departments of developmental disabilities and medicaid may approve, reduce, deny, or terminate a medicaid service included in the ~~individualized individual~~ service plan developed for a medicaid recipient eligible for home and community-based services provided under any of these

medicaid components. The departments shall consider the recommendations a county board of developmental disabilities makes under division (A)(1)(c) of section 5126.055 of the Revised Code. If either department approves, reduces, denies, or terminates a medicaid service, that department shall give timely notice to the medicaid recipient that the recipient may appeal pursuant to section 5160.31 of the Revised Code.

If supported living, as defined in section 5126.01 of the Revised Code, is to be provided as a medicaid service under any of these components, any person or government entity with a current, valid provider agreement and a current, valid certificate under section 5123.161 of the Revised Code may provide the medicaid service.

If a medicaid service is to be provided under any of these components by a residential facility, as defined in section 5123.19 of the Revised Code, any person or government entity with a current, valid provider agreement and a current, valid license under section 5123.19 of the Revised Code may provide the medicaid service.

**Sec. 5166.22.** (A) Subject to division (B) of this section, when the department of developmental disabilities allocates enrollment numbers to a county board of developmental disabilities for home and community-based services specified in division (A)(1) of section 5166.20 of the Revised Code and provided under any of the medicaid waiver components that the department administers under section 5166.21 of the Revised Code, the department shall consider all of the following:

(1) The number of individuals with ~~mental retardation or other developmental disability~~ disabilities who are on a waiting list the county board establishes under section 5126.042 of the Revised Code for those services and are given priority on the waiting list;

(2) The implementation component required by division (A)(3) of section 5126.054 of the Revised Code of the county board's plan approved under section 5123.046 of the Revised Code;

(3) Anything else the department considers necessary to enable county boards to provide those services to individuals in accordance with the priority requirements for waiting lists established under section 5126.042 of the Revised Code for those services.

(B) Division (A) of this section applies to home and community-based services provided under the medicaid waiver component known as the transitions developmental disabilities waiver only to the extent, if any, provided by the contract required by section 5166.21 of the Revised Code regarding the component.

**Sec. 5168.68.** There is hereby created in the state treasury the home and community-based services for ~~the mentally retarded and developmentally disabled persons with developmental disabilities~~ fund. All installment payments and penalties paid by an ICF/IID under sections 5168.63 and 5168.65 of the Revised Code shall be deposited into the fund. As soon as possible after the end of each quarter, the medicaid director shall certify to the director of budget and management the amount of money that is in the fund as of the last day of that quarter. On receipt of a certification, the director of budget and management shall transfer the amount so certified from the home and community-based services for ~~the mentally retarded and developmentally disabled persons with developmental disabilities~~ fund to the department of developmental disabilities operating and services fund created under section 5168.69 of the Revised Code.

**Sec. 5301.22.** As used in this section, "incompetent person" means a person who is so

mentally impaired, as a result of a mental or physical illness or disability, ~~or mental retardation as a result of an intellectual disability~~, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.

No agreement described in section 5301.21 of the Revised Code shall be executed by a minor or incompetent person, but it may be executed and delivered for record, on such a person's behalf, by the person's guardian. When executed, acknowledged, delivered for record, and recorded, such agreement shall be as effectual against such minor or incompetent person, as if the person had been under no disability, and had performed such acts personally. An owner, not under any of such disabilities, may perform all such acts by an attorney in fact. The power of such attorney must be in writing and first recorded in the county recorder's office.

**Sec. 5305.17.** As used in this section and sections 5305.18 to 5305.22 of the Revised Code, "incompetent person" means a person who is so mentally impaired, as a result of a mental or physical illness or disability, ~~or mental retardation~~ as a result of an intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.

The guardian of a surviving spouse who has been adjudged to be an incompetent person may appear and answer for such incompetent person in an action under section 5305.15 of the Revised Code, subject to the approval of the court in which it is pending. Such answer has the same effect as if such spouse answered personally. The guardian shall be liable to such spouse, or the heirs, for all damage or loss sustained by the guardian's fraud or collusion, notwithstanding the approval of the court.

**Sec. 5307.19.** As used in this section and section 5307.20 of the Revised Code, "incompetent person" means a person who is so mentally impaired, as a result of a mental or physical illness or disability, ~~or mental retardation~~ as a result of an intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.

The guardian of a minor or incompetent person, on behalf of the guardian's ward, may perform any act, matter, or thing respecting the partition of an estate which such ward could do under sections 5307.01 to 5307.25 of the Revised Code, if the ward were of age and of sound mind. On behalf of such ward, the guardian may elect to take the estate, when it cannot be divided without injury, and make payments therefor on the ward's behalf.

**Sec. 5310.12.** As used in this section, "incompetent person" means a person who is so mentally impaired, as a result of a mental or physical illness or disability, ~~or mental retardation~~ as a result of an intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.

No action or proceeding for compensation from the assurance fund provided for in section 5310.05 of the Revised Code for, or by reason of, any deprivation, loss, or damage shall be made, brought or taken, except within a period of six years from the time when the right to bring such

action or proceeding first accrued. If at the time when such right of action first accrues the person entitled to bring such action or take such proceedings is within the age of eighteen years, an incompetent person, imprisoned, or absent from the United States in the service of the United States or of this state, such person or anyone claiming from, by, or under the person, may bring the action at any time within two years after such disability is removed.

**Sec. 5321.01.** As used in this chapter:

(A) "Tenant" means a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.

(B) "Landlord" means the owner, lessor, or sublessor of residential premises, the agent of the owner, lessor, or sublessor, or any person authorized by the owner, lessor, or sublessor to manage the premises or to receive rent from a tenant under a rental agreement.

(C) "Residential premises" means a dwelling unit for residential use and occupancy and the structure of which it is a part, the facilities and appurtenances in it, and the grounds, areas, and facilities for the use of tenants generally or the use of which is promised the tenant. "Residential premises" includes a dwelling unit that is owned or operated by a college or university. "Residential premises" does not include any of the following:

(1) Prisons, jails, workhouses, and other places of incarceration or correction, including, but not limited to, halfway houses or residential arrangements that are used or occupied as a requirement of a community control sanction, a post-release control sanction, or parole;

(2) Hospitals and similar institutions with the primary purpose of providing medical services, and homes licensed pursuant to Chapter 3721. of the Revised Code;

(3) Tourist homes, hotels, motels, recreational vehicle parks, recreation camps, combined park-camps, temporary park-camps, and other similar facilities where circumstances indicate a transient occupancy;

(4) Elementary and secondary boarding schools, where the cost of room and board is included as part of the cost of tuition;

(5) Orphanages and similar institutions;

(6) Farm residences furnished in connection with the rental of land of a minimum of two acres for production of agricultural products by one or more of the occupants;

(7) Dwelling units subject to sections 3733.41 to 3733.49 of the Revised Code;

(8) Occupancy by an owner of a condominium unit;

(9) Occupancy in a facility licensed as an SRO facility pursuant to Chapter 3731. of the Revised Code, if the facility is owned or operated by an organization that is exempt from taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended, or by an entity or group of entities in which such an organization has a controlling interest, and if either of the following applies:

(a) The occupancy is for a period of less than sixty days.

(b) The occupancy is for participation in a program operated by the facility, or by a public entity or private charitable organization pursuant to a contract with the facility, to provide either of the following:

(i) Services licensed, certified, registered, or approved by a governmental agency or private accrediting organization for the rehabilitation of mentally ill persons, ~~developmentally disabled~~

persons with developmental disabilities, adults or juveniles convicted of criminal offenses, or persons suffering from substance abuse;

(ii) Shelter for juvenile runaways, victims of domestic violence, or homeless persons.

(10) Emergency shelters operated by organizations exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended, for persons whose circumstances indicate a transient occupancy, including homeless people, victims of domestic violence, and juvenile runaways.

(D) "Rental agreement" means any agreement or lease, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties.

(E) "Security deposit" means any deposit of money or property to secure performance by the tenant under a rental agreement.

(F) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(G) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(H) "Student tenant" means a person who occupies a dwelling unit owned or operated by the college or university at which the person is a student, and who has a rental agreement that is contingent upon the person's status as a student.

(I) "Recreational vehicle park," "recreation camp," "combined park-camp," and "temporary park-camp" have the same meanings as in section 3729.01 of the Revised Code.

(J) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(K) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

(L) "School premises" has the same meaning as in section 2925.01 of the Revised Code.

(M) "Sexually oriented offense" and "child-victim oriented offense" have the same meanings as in section 2950.01 of the Revised Code.

(N) "Preschool or child day-care center premises" has the ~~the~~ same meaning as in section 2950.034 of the Revised Code.

**Sec. 5705.05.** The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made. The taxing authority of a political subdivision may include in such levy the amounts required for carrying into effect any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements and the payment of judgments, but excluding the payment of debt charges and, in the case of counties, the construction, reconstruction, resurfacing, or repair of roads and bridges. The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax. Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include:

(A) The amounts certified to be necessary for the payment of final judgments;

(B) The amounts necessary for general, special, and primary elections;

(C) The amounts necessary for boards and commissioners of health, and other special or district appropriating authorities deriving their revenue in whole or part from the subdivision;

(D) In the case of municipal corporations, the amounts necessary for the maintenance, operation, and repair of public buildings, wharves, bridges, parks, and streets, for the prevention, control, and abatement of air pollution, and for a sanitary fund;

(E) In the case of counties, the amounts necessary for the maintenance, operation, and repair of public buildings, for providing or maintaining senior citizens services or facilities, for the relief and support of the poor, for the relief of needy blind, for the support of mental health, ~~mental retardation~~, or developmental disability services, for the relief of honorably discharged soldiers, indigent soldiers, sailors, and marines, for the operation and maintenance and the acquisition, construction, or improvement of permanent improvements, including, without limitation, the acquisition and improvement of land and buildings owned or used by a county land reutilization corporation organized under Chapter 1724. of the Revised Code, for mothers' pension fund, support of soil and water conservation districts, watershed conservancy districts, and educational television, for the prevention, control, and abatement of air pollution, and for the county's share of the compensation paid judges;

(F) In the case of a school district, the amounts necessary for tuition, the state teachers retirement system, and the maintenance, operation, and repair of schools;

(G) In the case of a township, the amounts necessary for the relief of the poor and for the prevention, control, and abatement of air pollution.

This section does not require the inclusion within the general levy of amounts for any purpose for which a special levy is authorized by section 5705.06 of the Revised Code.

**Sec. 5705.091.** The board of county commissioners of each county shall establish a county developmental disabilities general fund. Notwithstanding section 5705.10 of the Revised Code, proceeds from levies under section 5705.222 and division (L) of section 5705.19 of the Revised Code shall be deposited to the credit of the county developmental disabilities general fund. Accounts shall be established within the county developmental disabilities general fund for each of the several particular purposes of the levies as specified in the resolutions under which the levies were approved, and proceeds from different levies that were approved for the same particular purpose shall be credited to accounts for that purpose. Other money received by the county for the purposes of Chapters 3323. and 5126. of the Revised Code and not required by state or federal law to be deposited to the credit of a different fund shall also be deposited to the credit of the county developmental disabilities general fund, in an account appropriate to the particular purpose for which the money was received. Unless otherwise provided by law, an unexpended balance at the end of a fiscal year in any account in the county developmental disabilities general fund shall be appropriated the next fiscal year to the same fund.

A county board of developmental disabilities may request, by resolution, that the board of county commissioners establish a county developmental disabilities capital fund for money to be used for acquisition, construction, or improvement of capital facilities or acquisition of capital equipment used in providing services to ~~mentally retarded and developmentally disabled persons~~ with developmental disabilities. The county board of developmental disabilities shall transmit a

certified copy of the resolution to the board of county commissioners. Upon receiving the resolution, the board of county commissioners shall establish a county developmental disabilities capital fund.

**Sec. 5705.19.** This section does not apply to school districts, county school financing districts, or lake facilities authorities.

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections not less than ninety days before the election upon which it will be voted that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation for any of the following purposes:

(A) For current expenses of the subdivision, except that the total levy for current expenses of a detention facility district or district organized under section 2151.65 of the Revised Code shall not exceed two mills and that the total levy for current expenses of a combined district organized under sections 2151.65 and 2152.41 of the Revised Code shall not exceed four mills;

(B) For the payment of debt charges on certain described bonds, notes, or certificates of indebtedness of the subdivision issued subsequent to January 1, 1925;

(C) For the debt charges on all bonds, notes, and certificates of indebtedness issued and authorized to be issued prior to January 1, 1925;

(D) For a public library of, or supported by, the subdivision under whatever law organized or authorized to be supported;

(E) For a municipal university, not to exceed two mills over the limitation of one mill prescribed in section 3349.13 of the Revised Code;

(F) For the construction or acquisition of any specific permanent improvement or class of improvements that the taxing authority of the subdivision may include in a single bond issue;

(G) For the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges in municipal corporations, counties, or townships;

(H) For parks and recreational purposes;

(I) For the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph, or the payment of firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the payment of any employer contributions required for such personnel under section 145.48 or 742.34 of the Revised Code, or the purchase of ambulance equipment, or the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company;

(J) For the purpose of providing and maintaining motor vehicles, communications, other equipment, buildings, and sites for such buildings used directly in the operation of a police department, or the payment of salaries of permanent or part-time police, communications, or administrative personnel to operate the same, including the payment of any employer contributions required for such personnel under section 145.48 or 742.33 of the Revised Code, or the payment of the costs incurred by townships as a result of contracts made with other political subdivisions in order to obtain police protection, or the provision of ambulance or emergency medical services

operated by a police department;

(K) For the maintenance and operation of a county home or detention facility;

(L) For community ~~mental retardation and~~ developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code, except that the procedure for such levies shall be as provided in section 5705.222 of the Revised Code;

(M) For regional planning;

(N) For a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2151.65 or 2152.41 of the Revised Code or both of those sections;

(O) For providing for flood defense, providing and maintaining a flood wall or pumps, and other purposes to prevent floods;

(P) For maintaining and operating sewage disposal plants and facilities;

(Q) For the purpose of purchasing, acquiring, constructing, enlarging, improving, equipping, repairing, maintaining, or operating, or any combination of the foregoing, a county transit system pursuant to sections 306.01 to 306.13 of the Revised Code, or of making any payment to a board of county commissioners operating a transit system or a county transit board pursuant to section 306.06 of the Revised Code;

(R) For the subdivision's share of the cost of acquiring or constructing any schools, forestry camps, detention facilities, or other facilities, or any combination thereof, under section 2151.65 or 2152.41 of the Revised Code or both of those sections;

(S) For the prevention, control, and abatement of air pollution;

(T) For maintaining and operating cemeteries;

(U) For providing ambulance service, emergency medical service, or both;

(V) For providing for the collection and disposal of garbage or refuse, including yard waste;

(W) For the payment of the police officer employers' contribution or the firefighter employers' contribution required under sections 742.33 and 742.34 of the Revised Code;

(X) For the construction and maintenance of a drainage improvement pursuant to section 6131.52 of the Revised Code;

(Y) For providing or maintaining senior citizens services or facilities as authorized by section 307.694, 307.85, 505.70, or 505.706 or division (EE) of section 717.01 of the Revised Code;

(Z) For the provision and maintenance of zoological park services and facilities as authorized under section 307.76 of the Revised Code;

(AA) For the maintenance and operation of a free public museum of art, science, or history;

(BB) For the establishment and operation of a 9-1-1 system, as defined in section 128.01 of the Revised Code;

(CC) For the purpose of acquiring, rehabilitating, or developing rail property or rail service. As used in this division, "rail property" and "rail service" have the same meanings as in section 4981.01 of the Revised Code. This division applies only to a county, township, or municipal corporation.

(DD) For the purpose of acquiring property for, constructing, operating, and maintaining community centers as provided for in section 755.16 of the Revised Code;

(EE) For the creation and operation of an office or joint office of economic development, for

any economic development purpose of the office, and to otherwise provide for the establishment and operation of a program of economic development pursuant to sections 307.07 and 307.64 of the Revised Code, or to the extent that the expenses of a county land reutilization corporation organized under Chapter 1724. of the Revised Code are found by the board of county commissioners to constitute the promotion of economic development, for the payment of such operations and expenses;

(FF) For the purpose of acquiring, establishing, constructing, improving, equipping, maintaining, or operating, or any combination of the foregoing, a township airport, landing field, or other air navigation facility pursuant to section 505.15 of the Revised Code;

(GG) For the payment of costs incurred by a township as a result of a contract made with a county pursuant to section 505.263 of the Revised Code in order to pay all or any part of the cost of constructing, maintaining, repairing, or operating a water supply improvement;

(HH) For a board of township trustees to acquire, other than by appropriation, an ownership interest in land, water, or wetlands, or to restore or maintain land, water, or wetlands in which the board has an ownership interest, not for purposes of recreation, but for the purposes of protecting and preserving the natural, scenic, open, or wooded condition of the land, water, or wetlands against modification or encroachment resulting from occupation, development, or other use, which may be styled as protecting or preserving "greenspace" in the resolution, notice of election, or ballot form. Except as otherwise provided in this division, land is not acquired for purposes of recreation, even if the land is used for recreational purposes, so long as no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. Except as otherwise provided in this division, land that previously has been acquired in a township for these greenspace purposes may subsequently be used for recreational purposes if the board of township trustees adopts a resolution approving that use and no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. The authorization to use greenspace land for recreational use does not apply to land located in a township that had a population, at the time it passed its first greenspace levy, of more than thirty-eight thousand within a county that had a population, at that time, of at least eight hundred sixty thousand.

(II) For the support by a county of a crime victim assistance program that is provided and maintained by a county agency or a private, nonprofit corporation or association under section 307.62 of the Revised Code;

(JJ) For any or all of the purposes set forth in divisions (I) and (J) of this section. This division applies only to a township.

(KK) For a countywide public safety communications system under section 307.63 of the Revised Code. This division applies only to counties.

(LL) For the support by a county of criminal justice services under section 307.45 of the Revised Code;

(MM) For the purpose of maintaining and operating a jail or other detention facility as defined in section 2921.01 of the Revised Code;

(NN) For purchasing, maintaining, or improving, or any combination of the foregoing, real estate on which to hold, and the operating expenses of, agricultural fairs operated by a county agricultural society or independent agricultural society under Chapter 1711. of the Revised Code. This division applies only to a county.

(OO) For constructing, rehabilitating, repairing, or maintaining sidewalks, walkways, trails, bicycle pathways, or similar improvements, or acquiring ownership interests in land necessary for the foregoing improvements;

(PP) For both of the purposes set forth in divisions (G) and (OO) of this section.

(QQ) For both of the purposes set forth in divisions (H) and (HH) of this section. This division applies only to a township.

(RR) For the legislative authority of a municipal corporation, board of county commissioners of a county, or board of township trustees of a township to acquire agricultural easements, as defined in section 5301.67 of the Revised Code, and to supervise and enforce the easements.

(SS) For both of the purposes set forth in divisions (BB) and (KK) of this section. This division applies only to a county.

(TT) For the maintenance and operation of a facility that is organized in whole or in part to promote the sciences and natural history under section 307.761 of the Revised Code.

(UU) For the creation and operation of a county land reutilization corporation and for any programs or activities of the corporation found by the board of directors of the corporation to be consistent with the purposes for which the corporation is organized;

(VV) For construction and maintenance of improvements and expenses of soil and water conservation district programs under Chapter 1515. of the Revised Code;

(WW) For the OSU extension fund created under section 3335.35 of the Revised Code for the purposes prescribed under section 3335.36 of the Revised Code for the benefit of the citizens of a county. This division applies only to a county.

(XX) For a municipal corporation that withdraws or proposes by resolution to withdraw from a regional transit authority under section 306.55 of the Revised Code to provide transportation services for the movement of persons within, from, or to the municipal corporation;

(YY) For any combination of the purposes specified in divisions (NN), (VV), and (WW) of this section. This division applies only to a county.

The resolution shall be confined to the purpose or purposes described in one division of this section, to which the revenue derived therefrom shall be applied. The existence in any other division of this section of authority to levy a tax for any part or all of the same purpose or purposes does not preclude the use of such revenues for any part of the purpose or purposes of the division under which the resolution is adopted.

The resolution shall specify the amount of the increase in rate that it is necessary to levy, the purpose of that increase in rate, and the number of years during which the increase in rate shall be in effect, which may or may not include a levy upon the duplicate of the current year. The number of years may be any number not exceeding five, except as follows:

(1) When the additional rate is for the payment of debt charges, the increased rate shall be for the life of the indebtedness.

(2) When the additional rate is for any of the following, the increased rate shall be for a continuing period of time:

(a) For the current expenses for a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2151.65 and 2152.41 of the Revised Code;

(b) For providing a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2151.65 or 2152.41 of the Revised Code or under both of those sections.

(3) When the additional rate is for either of the following, the increased rate may be for a continuing period of time:

(a) For the purposes set forth in division (I), (J), (U), or (KK) of this section;

(b) For the maintenance and operation of a joint recreation district.

(4) When the increase is for the purpose or purposes set forth in division (D), (G), (H), (Z), (CC), or (PP) of this section, the tax levy may be for any specified number of years or for a continuing period of time, as set forth in the resolution.

A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may be reduced pursuant to section 5705.261 or 5705.31 of the Revised Code. A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may also be terminated or permanently reduced by the taxing authority if it adopts a resolution stating that the continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount.

A resolution of a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under both sections 2151.65 and 2152.41 of the Revised Code may include both current expenses and other purposes, provided that the resolution shall apportion the annual rate of levy between the current expenses and the other purpose or purposes. The apportionment need not be the same for each year of the levy, but the respective portions of the rate actually levied each year for the current expenses and the other purpose or purposes shall be limited by the apportionment.

Whenever a board of county commissioners, acting either as the taxing authority of its county or as the taxing authority of a sewer district or subdistrict created under Chapter 6117. of the Revised Code, by resolution declares it necessary to levy a tax in excess of the ten-mill limitation for the purpose of constructing, improving, or extending sewage disposal plants or sewage systems, the tax may be in effect for any number of years not exceeding twenty, and the proceeds of the tax, notwithstanding the general provisions of this section, may be used to pay debt charges on any obligations issued and outstanding on behalf of the subdivision for the purposes enumerated in this paragraph, provided that any such obligations have been specifically described in the resolution.

A resolution adopted by the legislative authority of a municipal corporation that is for the purpose in division (XX) of this section may be combined with the purpose provided in section 306.55 of the Revised Code, by vote of two-thirds of all members of the legislative authority. The legislative authority may certify the resolution to the board of elections as a combined question. The question appearing on the ballot shall be as provided in section 5705.252 of the Revised Code.

The resolution shall go into immediate effect upon its passage, and no publication of the resolution is necessary other than that provided for in the notice of election.

When the electors of a subdivision or, in the case of a qualifying library levy for the support of a library association or private corporation, the electors of the association library district, have approved a tax levy under this section, the taxing authority of the subdivision may anticipate a fraction of the proceeds of the levy and issue anticipation notes in accordance with section 5705.191

or 5705.193 of the Revised Code.

**Sec. 5705.222.** (A) At any time the board of county commissioners of any county by a majority vote of the full membership may declare by resolution and certify to the board of elections of the county that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide the necessary requirements of the county board of developmental disabilities established pursuant to Chapter 5126. of the Revised Code and that it is necessary to levy a tax in excess of such limitation for the operation of programs and services by county boards of developmental disabilities and for the acquisition, construction, renovation, financing, maintenance, and operation of ~~mental-retardation and~~ developmental disabilities facilities.

Such resolution shall conform to section 5705.19 of the Revised Code, except that the increased rate may be in effect for any number of years not exceeding ten or for a continuing period of time.

The resolution shall be certified and submitted in the manner provided in section 5705.25 of the Revised Code, except that it may be placed on the ballot in any election, and shall be certified to the board of elections not less than ninety days before the election at which it will be voted upon.

If the majority of the electors voting on a levy for the support of the programs and services of the county board of developmental disabilities vote in favor of the levy, the board of county commissioners may levy a tax within the county at the additional rate outside the ten-mill limitation during the specified or continuing period, for the purpose stated in the resolution. The county board of developmental disabilities, within its budget and with the approval of the board of county commissioners through annual appropriations, shall use the proceeds of a levy approved under this section solely for the purposes authorized by this section.

(B) When electors have approved a tax levy under this section, the county commissioners may anticipate a fraction of the proceeds of the levy and issue anticipation notes in accordance with section 5705.191 or 5705.193 of the Revised Code.

(C) The county auditor, upon receipt of a resolution from the county board of developmental disabilities, shall establish a capital improvements account or a reserve balance account, or both, as specified in the resolution. The capital improvements account shall be a contingency account for the necessary acquisition, replacement, renovation, or construction of facilities and movable and fixed equipment. Upon the request of the county board of developmental disabilities, moneys not needed to pay for current expenses may be appropriated to this account, in amounts such that this account does not exceed twenty-five per cent of the replacement value of all capital facilities and equipment currently used by the county board of developmental disabilities for ~~mental-retardation and~~ developmental disabilities programs and services. Other moneys available for current capital expenses from federal, state, or local sources may also be appropriated to this account.

The reserve balance account shall contain those moneys that are not needed to pay for current operating expenses and not deposited in the capital improvements account but that will be needed to pay for operating expenses in the future. Upon the request of a county board of developmental disabilities, the board of county commissioners may appropriate moneys to the reserve balance account.

**Sec. 5709.40.** (A) As used in this section:

(1) "Blighted area" and "impacted city" have the same meanings as in section 1728.01 of the Revised Code.

(2) "Business day" means a day of the week excluding Saturday, Sunday, and a legal holiday as defined under section 1.14 of the Revised Code.

(3) "Housing renovation" means a project carried out for residential purposes.

(4) "Improvement" means the increase in the assessed value of any real property that would first appear on the tax list and duplicate of real and public utility property after the effective date of an ordinance adopted under this section were it not for the exemption granted by that ordinance.

(5) "Incentive district" means an area not more than three hundred acres in size enclosed by a continuous boundary in which a project is being, or will be, undertaken and having one or more of the following distress characteristics:

(a) At least fifty-one per cent of the residents of the district have incomes of less than eighty per cent of the median income of residents of the political subdivision in which the district is located, as determined in the same manner specified under section 119(b) of the "Housing and Community Development Act of 1974," 88 Stat. 633, 42 U.S.C. 5318, as amended;

(b) The average rate of unemployment in the district during the most recent twelve-month period for which data are available is equal to at least one hundred fifty per cent of the average rate of unemployment for this state for the same period.

(c) At least twenty per cent of the people residing in the district live at or below the poverty level as defined in the federal Housing and Community Development Act of 1974, 42 U.S.C. 5301, as amended, and regulations adopted pursuant to that act.

(d) The district is a blighted area.

(e) The district is in a situational distress area as designated by the director of development services under division (F) of section 122.23 of the Revised Code.

(f) As certified by the engineer for the political subdivision, the public infrastructure serving the district is inadequate to meet the development needs of the district as evidenced by a written economic development plan or urban renewal plan for the district that has been adopted by the legislative authority of the subdivision.

(g) The district is comprised entirely of unimproved land that is located in a distressed area as defined in section 122.23 of the Revised Code.

(6) "Project" means development activities undertaken on one or more parcels, including, but not limited to, construction, expansion, and alteration of buildings or structures, demolition, remediation, and site development, and any building or structure that results from those activities.

(7) "Public infrastructure improvement" includes, but is not limited to, public roads and highways; water and sewer lines; environmental remediation; land acquisition, including acquisition in aid of industry, commerce, distribution, or research; demolition, including demolition on private property when determined to be necessary for economic development purposes; stormwater and flood remediation projects, including such projects on private property when determined to be necessary for public health, safety, and welfare; the provision of gas, electric, and communications service facilities, including the provision of gas or electric service facilities owned by nongovernmental entities when such improvements are determined to be necessary for economic development purposes; and the enhancement of public waterways through improvements that allow

for greater public access.

(B) The legislative authority of a municipal corporation, by ordinance, may declare improvements to certain parcels of real property located in the municipal corporation to be a public purpose. Improvements with respect to a parcel that is used or to be used for residential purposes may be declared a public purpose under this division only if the parcel is located in a blighted area of an impacted city. For this purpose, "parcel that is used or to be used for residential purposes" means a parcel that, as improved, is used or to be used for purposes that would cause the tax commissioner to classify the parcel as residential property in accordance with rules adopted by the commissioner under section 5713.041 of the Revised Code. Except with the approval under division (D) of this section of the board of education of each city, local, or exempted village school district within which the improvements are located, not more than seventy-five per cent of an improvement thus declared to be a public purpose may be exempted from real property taxation for a period of not more than ten years. The ordinance shall specify the percentage of the improvement to be exempted from taxation and the life of the exemption.

An ordinance adopted or amended under this division shall designate the specific public infrastructure improvements made, to be made, or in the process of being made by the municipal corporation that directly benefit, or that once made will directly benefit, the parcels for which improvements are declared to be a public purpose. The service payments provided for in section 5709.42 of the Revised Code shall be used to finance the public infrastructure improvements designated in the ordinance, for the purpose described in division (D)(1) of this section or as provided in section 5709.43 of the Revised Code.

(C)(1) The legislative authority of a municipal corporation may adopt an ordinance creating an incentive district and declaring improvements to parcels within the district to be a public purpose and, except as provided in division (F) of this section, exempt from taxation as provided in this section, but no legislative authority of a municipal corporation that has a population that exceeds twenty-five thousand, as shown by the most recent federal decennial census, shall adopt an ordinance that creates an incentive district if the sum of the taxable value of real property in the proposed district for the preceding tax year and the taxable value of all real property in the municipal corporation that would have been taxable in the preceding year were it not for the fact that the property was in an existing incentive district and therefore exempt from taxation exceeds twenty-five per cent of the taxable value of real property in the municipal corporation for the preceding tax year. The ordinance shall delineate the boundary of the district and specifically identify each parcel within the district. A district may not include any parcel that is or has been exempted from taxation under division (B) of this section or that is or has been within another district created under this division. An ordinance may create more than one such district, and more than one ordinance may be adopted under division (C)(1) of this section.

(2) Not later than thirty days prior to adopting an ordinance under division (C)(1) of this section, if the municipal corporation intends to apply for exemptions from taxation under section 5709.911 of the Revised Code on behalf of owners of real property located within the proposed incentive district, the legislative authority of a municipal corporation shall conduct a public hearing on the proposed ordinance. Not later than thirty days prior to the public hearing, the legislative authority shall give notice of the public hearing and the proposed ordinance by first class mail to

every real property owner whose property is located within the boundaries of the proposed incentive district that is the subject of the proposed ordinance.

(3)(a) An ordinance adopted under division (C)(1) of this section shall specify the life of the incentive district and the percentage of the improvements to be exempted, shall designate the public infrastructure improvements made, to be made, or in the process of being made, that benefit or serve, or, once made, will benefit or serve parcels in the district. The ordinance also shall identify one or more specific projects being, or to be, undertaken in the district that place additional demand on the public infrastructure improvements designated in the ordinance. The project identified may, but need not be, the project under division (C)(3)(b) of this section that places real property in use for commercial or industrial purposes. Except as otherwise permitted under that division, the service payments provided for in section 5709.42 of the Revised Code shall be used to finance the designated public infrastructure improvements, for the purpose described in division (D)(1) or (E) of this section, or as provided in section 5709.43 of the Revised Code.

An ordinance adopted under division (C)(1) of this section on or after March 30, 2006, shall not designate police or fire equipment as public infrastructure improvements, and no service payment provided for in section 5709.42 of the Revised Code and received by the municipal corporation under the ordinance shall be used for police or fire equipment.

(b) An ordinance adopted under division (C)(1) of this section may authorize the use of service payments provided for in section 5709.42 of the Revised Code for the purpose of housing renovations within the incentive district, provided that the ordinance also designates public infrastructure improvements that benefit or serve the district, and that a project within the district places real property in use for commercial or industrial purposes. Service payments may be used to finance or support loans, deferred loans, and grants to persons for the purpose of housing renovations within the district. The ordinance shall designate the parcels within the district that are eligible for housing renovation. The ordinance shall state separately the amounts or the percentages of the expected aggregate service payments that are designated for each public infrastructure improvement and for the general purpose of housing renovations.

(4) Except with the approval of the board of education of each city, local, or exempted village school district within the territory of which the incentive district is or will be located, and subject to division (E) of this section, the life of an incentive district shall not exceed ten years, and the percentage of improvements to be exempted shall not exceed seventy-five per cent. With approval of the board of education, the life of a district may be not more than thirty years, and the percentage of improvements to be exempted may be not more than one hundred per cent. The approval of a board of education shall be obtained in the manner provided in division (D) of this section.

(D)(1) If the ordinance declaring improvements to a parcel to be a public purpose or creating an incentive district specifies that payments in lieu of taxes provided for in section 5709.42 of the Revised Code shall be paid to the city, local, or exempted village, and joint vocational school district in which the parcel or incentive district is located in the amount of the taxes that would have been payable to the school district if the improvements had not been exempted from taxation, the percentage of the improvement that may be exempted from taxation may exceed seventy-five per cent, and the exemption may be granted for up to thirty years, without the approval of the board of education as otherwise required under division (D)(2) of this section.

(2) Improvements with respect to a parcel may be exempted from taxation under division (B) of this section, and improvements to parcels within an incentive district may be exempted from taxation under division (C) of this section, for up to ten years or, with the approval under this paragraph of the board of education of the city, local, or exempted village school district within which the parcel or district is located, for up to thirty years. The percentage of the improvement exempted from taxation may, with such approval, exceed seventy-five per cent, but shall not exceed one hundred per cent. Not later than forty-five business days prior to adopting an ordinance under this section declaring improvements to be a public purpose that is subject to approval by a board of education under this division, the legislative authority shall deliver to the board of education a notice stating its intent to adopt an ordinance making that declaration. The notice regarding improvements with respect to a parcel under division (B) of this section shall identify the parcels for which improvements are to be exempted from taxation, provide an estimate of the true value in money of the improvements, specify the period for which the improvements would be exempted from taxation and the percentage of the improvement that would be exempted, and indicate the date on which the legislative authority intends to adopt the ordinance. The notice regarding improvements to parcels within an incentive district under division (C) of this section shall delineate the boundaries of the district, specifically identify each parcel within the district, identify each anticipated improvement in the district, provide an estimate of the true value in money of each such improvement, specify the life of the district and the percentage of improvements that would be exempted, and indicate the date on which the legislative authority intends to adopt the ordinance. The board of education, by resolution adopted by a majority of the board, may approve the exemption for the period or for the exemption percentage specified in the notice; may disapprove the exemption for the number of years in excess of ten, may disapprove the exemption for the percentage of the improvement to be exempted in excess of seventy-five per cent, or both; or may approve the exemption on the condition that the legislative authority and the board negotiate an agreement providing for compensation to the school district equal in value to a percentage of the amount of taxes exempted in the eleventh and subsequent years of the exemption period or, in the case of exemption percentages in excess of seventy-five per cent, compensation equal in value to a percentage of the taxes that would be payable on the portion of the improvement in excess of seventy-five per cent were that portion to be subject to taxation, or other mutually agreeable compensation. If an agreement is negotiated between the legislative authority and the board to compensate the school district for all or part of the taxes exempted, including agreements for payments in lieu of taxes under section 5709.42 of the Revised Code, the legislative authority shall compensate the joint vocational school district within which the parcel or district is located at the same rate and under the same terms received by the city, local, or exempted village school district.

(3) The board of education shall certify its resolution to the legislative authority not later than fourteen days prior to the date the legislative authority intends to adopt the ordinance as indicated in the notice. If the board of education and the legislative authority negotiate a mutually acceptable compensation agreement, the ordinance may declare the improvements a public purpose for the number of years specified in the ordinance or, in the case of exemption percentages in excess of seventy-five per cent, for the exemption percentage specified in the ordinance. In either case, if the board and the legislative authority fail to negotiate a mutually acceptable compensation agreement,

the ordinance may declare the improvements a public purpose for not more than ten years, and shall not exempt more than seventy-five per cent of the improvements from taxation. If the board fails to certify a resolution to the legislative authority within the time prescribed by this division, the legislative authority thereupon may adopt the ordinance and may declare the improvements a public purpose for up to thirty years, or, in the case of exemption percentages proposed in excess of seventy-five per cent, for the exemption percentage specified in the ordinance. The legislative authority may adopt the ordinance at any time after the board of education certifies its resolution approving the exemption to the legislative authority, or, if the board approves the exemption on the condition that a mutually acceptable compensation agreement be negotiated, at any time after the compensation agreement is agreed to by the board and the legislative authority.

(4) If a board of education has adopted a resolution waiving its right to approve exemptions from taxation under this section and the resolution remains in effect, approval of exemptions by the board is not required under division (D) of this section. If a board of education has adopted a resolution allowing a legislative authority to deliver the notice required under division (D) of this section fewer than forty-five business days prior to the legislative authority's adoption of the ordinance, the legislative authority shall deliver the notice to the board not later than the number of days prior to such adoption as prescribed by the board in its resolution. If a board of education adopts a resolution waiving its right to approve agreements or shortening the notification period, the board shall certify a copy of the resolution to the legislative authority. If the board of education rescinds such a resolution, it shall certify notice of the rescission to the legislative authority.

(5) If the legislative authority is not required by division (D) of this section to notify the board of education of the legislative authority's intent to declare improvements to be a public purpose, the legislative authority shall comply with the notice requirements imposed under section 5709.83 of the Revised Code, unless the board has adopted a resolution under that section waiving its right to receive such a notice.

(E)(1) If a proposed ordinance under division (C)(1) of this section exempts improvements with respect to a parcel within an incentive district for more than ten years, or the percentage of the improvement exempted from taxation exceeds seventy-five per cent, not later than forty-five business days prior to adopting the ordinance the legislative authority of the municipal corporation shall deliver to the board of county commissioners of the county within which the incentive district will be located a notice that states its intent to adopt an ordinance creating an incentive district. The notice shall include a copy of the proposed ordinance, identify the parcels for which improvements are to be exempted from taxation, provide an estimate of the true value in money of the improvements, specify the period of time for which the improvements would be exempted from taxation, specify the percentage of the improvements that would be exempted from taxation, and indicate the date on which the legislative authority intends to adopt the ordinance.

(2) The board of county commissioners, by resolution adopted by a majority of the board, may object to the exemption for the number of years in excess of ten, may object to the exemption for the percentage of the improvement to be exempted in excess of seventy-five per cent, or both. If the board of county commissioners objects, the board may negotiate a mutually acceptable compensation agreement with the legislative authority. In no case shall the compensation provided to the board exceed the property taxes forgone due to the exemption. If the board of county

commissioners objects, and the board and legislative authority fail to negotiate a mutually acceptable compensation agreement, the ordinance adopted under division (C)(1) of this section shall provide to the board compensation in the eleventh and subsequent years of the exemption period equal in value to not more than fifty per cent of the taxes that would be payable to the county or, if the board's objection includes an objection to an exemption percentage in excess of seventy-five per cent, compensation equal in value to not more than fifty per cent of the taxes that would be payable to the county, on the portion of the improvement in excess of seventy-five per cent, were that portion to be subject to taxation. The board of county commissioners shall certify its resolution to the legislative authority not later than thirty days after receipt of the notice.

(3) If the board of county commissioners does not object or fails to certify its resolution objecting to an exemption within thirty days after receipt of the notice, the legislative authority may adopt the ordinance, and no compensation shall be provided to the board of county commissioners. If the board timely certifies its resolution objecting to the ordinance, the legislative authority may adopt the ordinance at any time after a mutually acceptable compensation agreement is agreed to by the board and the legislative authority, or, if no compensation agreement is negotiated, at any time after the legislative authority agrees in the proposed ordinance to provide compensation to the board of fifty per cent of the taxes that would be payable to the county in the eleventh and subsequent years of the exemption period or on the portion of the improvement in excess of seventy-five per cent, were that portion to be subject to taxation.

(F) Service payments in lieu of taxes that are attributable to any amount by which the effective tax rate of either a renewal levy with an increase or a replacement levy exceeds the effective tax rate of the levy renewed or replaced, or that are attributable to an additional levy, for a levy authorized by the voters for any of the following purposes on or after January 1, 2006, and which are provided pursuant to an ordinance creating an incentive district under division (C)(1) of this section that is adopted on or after January 1, 2006, shall be distributed to the appropriate taxing authority as required under division (C) of section 5709.42 of the Revised Code in an amount equal to the amount of taxes from that additional levy or from the increase in the effective tax rate of such renewal or replacement levy that would have been payable to that taxing authority from the following levies were it not for the exemption authorized under division (C) of this section:

(1) A tax levied under division (L) of section 5705.19 or section 5705.191 of the Revised Code for community ~~mental-retardation~~ and developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code;

(2) A tax levied under division (Y) of section 5705.19 of the Revised Code for providing or maintaining senior citizens services or facilities;

(3) A tax levied under section 5705.22 of the Revised Code for county hospitals;

(4) A tax levied by a joint-county district or by a county under section 5705.19, 5705.191, or 5705.221 of the Revised Code for alcohol, drug addiction, and mental health services or facilities;

(5) A tax levied under section 5705.23 of the Revised Code for library purposes;

(6) A tax levied under section 5705.24 of the Revised Code for the support of children services and the placement and care of children;

(7) A tax levied under division (Z) of section 5705.19 of the Revised Code for the provision and maintenance of zoological park services and facilities under section 307.76 of the Revised Code;

(8) A tax levied under section 511.27 or division (H) of section 5705.19 of the Revised Code for the support of township park districts;

(9) A tax levied under division (A), (F), or (H) of section 5705.19 of the Revised Code for parks and recreational purposes of a joint recreation district organized pursuant to division (B) of section 755.14 of the Revised Code;

(10) A tax levied under section 1545.20 or 1545.21 of the Revised Code for park district purposes;

(11) A tax levied under section 5705.191 of the Revised Code for the purpose of making appropriations for public assistance; human or social services; public relief; public welfare; public health and hospitalization; and support of general hospitals;

(12) A tax levied under section 3709.29 of the Revised Code for a general health district program.

(G) An exemption from taxation granted under this section commences with the tax year specified in the ordinance so long as the year specified in the ordinance commences after the effective date of the ordinance. If the ordinance specifies a year commencing before the effective date of the resolution or specifies no year whatsoever, the exemption commences with the tax year in which an exempted improvement first appears on the tax list and duplicate of real and public utility property and that commences after the effective date of the ordinance. In lieu of stating a specific year, the ordinance may provide that the exemption commences in the tax year in which the value of an improvement exceeds a specified amount or in which the construction of one or more improvements is completed, provided that such tax year commences after the effective date of the ordinance. With respect to the exemption of improvements to parcels under division (B) of this section, the ordinance may allow for the exemption to commence in different tax years on a parcel-by-parcel basis, with a separate exemption term specified for each parcel.

Except as otherwise provided in this division, the exemption ends on the date specified in the ordinance as the date the improvement ceases to be a public purpose or the incentive district expires, or ends on the date on which the public infrastructure improvements and housing renovations are paid in full from the municipal public improvement tax increment equivalent fund established under division (A) of section 5709.43 of the Revised Code, whichever occurs first. The exemption of an improvement with respect to a parcel or within an incentive district may end on a later date, as specified in the ordinance, if the legislative authority and the board of education of the city, local, or exempted village school district within which the parcel or district is located have entered into a compensation agreement under section 5709.82 of the Revised Code with respect to the improvement, and the board of education has approved the term of the exemption under division (D) (2) of this section, but in no case shall the improvement be exempted from taxation for more than thirty years. Exemptions shall be claimed and allowed in the same manner as in the case of other real property exemptions. If an exemption status changes during a year, the procedure for the apportionment of the taxes for that year is the same as in the case of other changes in tax exemption status during the year.

(H) Additional municipal financing of public infrastructure improvements and housing renovations may be provided by any methods that the municipal corporation may otherwise use for financing such improvements or renovations. If the municipal corporation issues bonds or notes to

finance the public infrastructure improvements and housing renovations and pledges money from the municipal public improvement tax increment equivalent fund to pay the interest on and principal of the bonds or notes, the bonds or notes are not subject to Chapter 133. of the Revised Code.

(I) The municipal corporation, not later than fifteen days after the adoption of an ordinance under this section, shall submit to the director of development services a copy of the ordinance. On or before the thirty-first day of March of each year, the municipal corporation shall submit a status report to the director of development services. The report shall indicate, in the manner prescribed by the director, the progress of the project during each year that an exemption remains in effect, including a summary of the receipts from service payments in lieu of taxes; expenditures of money from the funds created under section 5709.43 of the Revised Code; a description of the public infrastructure improvements and housing renovations financed with such expenditures; and a quantitative summary of changes in employment and private investment resulting from each project.

(J) Nothing in this section shall be construed to prohibit a legislative authority from declaring to be a public purpose improvements with respect to more than one parcel.

(K) If a parcel is located in a new community district in which the new community authority imposes a community development charge on the basis of rentals received from leases of real property as described in division (L)(2) of section 349.01 of the Revised Code, the parcel may not be exempted from taxation under this section.

**Sec. 5709.73.** (A) As used in this section and section 5709.74 of the Revised Code:

(1) "Business day" means a day of the week excluding Saturday, Sunday, and a legal holiday as defined in section 1.14 of the Revised Code.

(2) "Further improvements" or "improvements" means the increase in the assessed value of real property that would first appear on the tax list and duplicate of real and public utility property after the effective date of a resolution adopted under this section were it not for the exemption granted by that resolution. For purposes of division (B) of this section, "improvements" do not include any property used or to be used for residential purposes. For this purpose, "property that is used or to be used for residential purposes" means property that, as improved, is used or to be used for purposes that would cause the tax commissioner to classify the property as residential property in accordance with rules adopted by the commissioner under section 5713.041 of the Revised Code.

(3) "Housing renovation" means a project carried out for residential purposes.

(4) "Incentive district" has the same meaning as in section 5709.40 of the Revised Code, except that a blighted area is in the unincorporated area of a township.

(5) "Project" and "public infrastructure improvement" have the same meanings as in section 5709.40 of the Revised Code.

(B) A board of township trustees may, by unanimous vote, adopt a resolution that declares to be a public purpose any public infrastructure improvements made that are necessary for the development of certain parcels of land located in the unincorporated area of the township. Except with the approval under division (D) of this section of the board of education of each city, local, or exempted village school district within which the improvements are located, the resolution may exempt from real property taxation not more than seventy-five per cent of further improvements to a parcel of land that directly benefits from the public infrastructure improvements, for a period of not more than ten years. The resolution shall specify the percentage of the further improvements to be

exempted and the life of the exemption.

(C)(1) A board of township trustees may adopt, by unanimous vote, a resolution creating an incentive district and declaring improvements to parcels within the district to be a public purpose and, except as provided in division (F) of this section, exempt from taxation as provided in this section, but no board of township trustees of a township that has a population that exceeds twenty-five thousand, as shown by the most recent federal decennial census, shall adopt a resolution that creates an incentive district if the sum of the taxable value of real property in the proposed district for the preceding tax year and the taxable value of all real property in the township that would have been taxable in the preceding year were it not for the fact that the property was in an existing incentive district and therefore exempt from taxation exceeds twenty-five per cent of the taxable value of real property in the township for the preceding tax year. The district shall be located within the unincorporated area of the township and shall not include any territory that is included within a district created under division (B) of section 5709.78 of the Revised Code. The resolution shall delineate the boundary of the district and specifically identify each parcel within the district. A district may not include any parcel that is or has been exempted from taxation under division (B) of this section or that is or has been within another district created under this division. A resolution may create more than one district, and more than one resolution may be adopted under division (C)(1) of this section.

(2) Not later than thirty days prior to adopting a resolution under division (C)(1) of this section, if the township intends to apply for exemptions from taxation under section 5709.911 of the Revised Code on behalf of owners of real property located within the proposed incentive district, the board shall conduct a public hearing on the proposed resolution. Not later than thirty days prior to the public hearing, the board shall give notice of the public hearing and the proposed resolution by first class mail to every real property owner whose property is located within the boundaries of the proposed incentive district that is the subject of the proposed resolution.

(3)(a) A resolution adopted under division (C)(1) of this section shall specify the life of the incentive district and the percentage of the improvements to be exempted, shall designate the public infrastructure improvements made, to be made, or in the process of being made, that benefit or serve, or, once made, will benefit or serve parcels in the district. The resolution also shall identify one or more specific projects being, or to be, undertaken in the district that place additional demand on the public infrastructure improvements designated in the resolution. The project identified may, but need not be, the project under division (C)(3)(b) of this section that places real property in use for commercial or industrial purposes.

A resolution adopted under division (C)(1) of this section on or after March 30, 2006, shall not designate police or fire equipment as public infrastructure improvements, and no service payment provided for in section 5709.74 of the Revised Code and received by the township under the resolution shall be used for police or fire equipment.

(b) A resolution adopted under division (C)(1) of this section may authorize the use of service payments provided for in section 5709.74 of the Revised Code for the purpose of housing renovations within the incentive district, provided that the resolution also designates public infrastructure improvements that benefit or serve the district, and that a project within the district places real property in use for commercial or industrial purposes. Service payments may be used to

finance or support loans, deferred loans, and grants to persons for the purpose of housing renovations within the district. The resolution shall designate the parcels within the district that are eligible for housing renovations. The resolution shall state separately the amount or the percentages of the expected aggregate service payments that are designated for each public infrastructure improvement and for the purpose of housing renovations.

(4) Except with the approval of the board of education of each city, local, or exempted village school district within the territory of which the incentive district is or will be located, and subject to division (E) of this section, the life of an incentive district shall not exceed ten years, and the percentage of improvements to be exempted shall not exceed seventy-five per cent. With approval of the board of education, the life of a district may be not more than thirty years, and the percentage of improvements to be exempted may be not more than one hundred per cent. The approval of a board of education shall be obtained in the manner provided in division (D) of this section.

(D) Improvements with respect to a parcel may be exempted from taxation under division (B) of this section, and improvements to parcels within an incentive district may be exempted from taxation under division (C) of this section, for up to ten years or, with the approval of the board of education of the city, local, or exempted village school district within which the parcel or district is located, for up to thirty years. The percentage of the improvements exempted from taxation may, with such approval, exceed seventy-five per cent, but shall not exceed one hundred per cent. Not later than forty-five business days prior to adopting a resolution under this section declaring improvements to be a public purpose that is subject to approval by a board of education under this division, the board of township trustees shall deliver to the board of education a notice stating its intent to adopt a resolution making that declaration. The notice regarding improvements with respect to a parcel under division (B) of this section shall identify the parcels for which improvements are to be exempted from taxation, provide an estimate of the true value in money of the improvements, specify the period for which the improvements would be exempted from taxation and the percentage of the improvements that would be exempted, and indicate the date on which the board of township trustees intends to adopt the resolution. The notice regarding improvements made under division (C) of this section to parcels within an incentive district shall delineate the boundaries of the district, specifically identify each parcel within the district, identify each anticipated improvement in the district, provide an estimate of the true value in money of each such improvement, specify the life of the district and the percentage of improvements that would be exempted, and indicate the date on which the board of township trustees intends to adopt the resolution. The board of education, by resolution adopted by a majority of the board, may approve the exemption for the period or for the exemption percentage specified in the notice; may disapprove the exemption for the number of years in excess of ten, may disapprove the exemption for the percentage of the improvements to be exempted in excess of seventy-five per cent, or both; or may approve the exemption on the condition that the board of township trustees and the board of education negotiate an agreement providing for compensation to the school district equal in value to a percentage of the amount of taxes exempted in the eleventh and subsequent years of the exemption period or, in the case of exemption percentages in excess of seventy-five per cent, compensation equal in value to a percentage of the taxes that would be payable on the portion of the improvements in excess of seventy-five per cent were that portion to be subject to taxation, or other mutually agreeable compensation.

The board of education shall certify its resolution to the board of township trustees not later than fourteen days prior to the date the board of township trustees intends to adopt the resolution as indicated in the notice. If the board of education and the board of township trustees negotiate a mutually acceptable compensation agreement, the resolution may declare the improvements a public purpose for the number of years specified in the resolution or, in the case of exemption percentages in excess of seventy-five per cent, for the exemption percentage specified in the resolution. In either case, if the board of education and the board of township trustees fail to negotiate a mutually acceptable compensation agreement, the resolution may declare the improvements a public purpose for not more than ten years, and shall not exempt more than seventy-five per cent of the improvements from taxation. If the board of education fails to certify a resolution to the board of township trustees within the time prescribed by this section, the board of township trustees thereupon may adopt the resolution and may declare the improvements a public purpose for up to thirty years or, in the case of exemption percentages proposed in excess of seventy-five per cent, for the exemption percentage specified in the resolution. The board of township trustees may adopt the resolution at any time after the board of education certifies its resolution approving the exemption to the board of township trustees, or, if the board of education approves the exemption on the condition that a mutually acceptable compensation agreement be negotiated, at any time after the compensation agreement is agreed to by the board of education and the board of township trustees. If a mutually acceptable compensation agreement is negotiated between the board of township trustees and the board of education, including agreements for payments in lieu of taxes under section 5709.74 of the Revised Code, the board of township trustees shall compensate the joint vocational school district within which the parcel or district is located at the same rate and under the same terms received by the city, local, or exempted village school district.

If a board of education has adopted a resolution waiving its right to approve exemptions from taxation under this section and the resolution remains in effect, approval of such exemptions by the board of education is not required under division (D) of this section. If a board of education has adopted a resolution allowing a board of township trustees to deliver the notice required under division (D) of this section fewer than forty-five business days prior to adoption of the resolution by the board of township trustees, the board of township trustees shall deliver the notice to the board of education not later than the number of days prior to the adoption as prescribed by the board of education in its resolution. If a board of education adopts a resolution waiving its right to approve exemptions or shortening the notification period, the board of education shall certify a copy of the resolution to the board of township trustees. If the board of education rescinds the resolution, it shall certify notice of the rescission to the board of township trustees.

If the board of township trustees is not required by division (D) of this section to notify the board of education of the board of township trustees' intent to declare improvements to be a public purpose, the board of township trustees shall comply with the notice requirements imposed under section 5709.83 of the Revised Code before taking formal action to adopt the resolution making that declaration, unless the board of education has adopted a resolution under that section waiving its right to receive the notice.

(E)(1) If a proposed resolution under division (C)(1) of this section exempts improvements with respect to a parcel within an incentive district for more than ten years, or the percentage of the

improvement exempted from taxation exceeds seventy-five per cent, not later than forty-five business days prior to adopting the resolution the board of township trustees shall deliver to the board of county commissioners of the county within which the incentive district is or will be located a notice that states its intent to adopt a resolution creating an incentive district. The notice shall include a copy of the proposed resolution, identify the parcels for which improvements are to be exempted from taxation, provide an estimate of the true value in money of the improvements, specify the period of time for which the improvements would be exempted from taxation, specify the percentage of the improvements that would be exempted from taxation, and indicate the date on which the board of township trustees intends to adopt the resolution.

(2) The board of county commissioners, by resolution adopted by a majority of the board, may object to the exemption for the number of years in excess of ten, may object to the exemption for the percentage of the improvement to be exempted in excess of seventy-five per cent, or both. If the board of county commissioners objects, the board may negotiate a mutually acceptable compensation agreement with the board of township trustees. In no case shall the compensation provided to the board of county commissioners exceed the property taxes foregone due to the exemption. If the board of county commissioners objects, and the board of county commissioners and board of township trustees fail to negotiate a mutually acceptable compensation agreement, the resolution adopted under division (C)(1) of this section shall provide to the board of county commissioners compensation in the eleventh and subsequent years of the exemption period equal in value to not more than fifty per cent of the taxes that would be payable to the county or, if the board of county commissioner's objection includes an objection to an exemption percentage in excess of seventy-five per cent, compensation equal in value to not more than fifty per cent of the taxes that would be payable to the county, on the portion of the improvement in excess of seventy-five per cent, were that portion to be subject to taxation. The board of county commissioners shall certify its resolution to the board of township trustees not later than thirty days after receipt of the notice.

(3) If the board of county commissioners does not object or fails to certify its resolution objecting to an exemption within thirty days after receipt of the notice, the board of township trustees may adopt its resolution, and no compensation shall be provided to the board of county commissioners. If the board of county commissioners timely certifies its resolution objecting to the trustees' resolution, the board of township trustees may adopt its resolution at any time after a mutually acceptable compensation agreement is agreed to by the board of county commissioners and the board of township trustees, or, if no compensation agreement is negotiated, at any time after the board of township trustees agrees in the proposed resolution to provide compensation to the board of county commissioners of fifty per cent of the taxes that would be payable to the county in the eleventh and subsequent years of the exemption period or on the portion of the improvement in excess of seventy-five per cent, were that portion to be subject to taxation.

(F) Service payments in lieu of taxes that are attributable to any amount by which the effective tax rate of either a renewal levy with an increase or a replacement levy exceeds the effective tax rate of the levy renewed or replaced, or that are attributable to an additional levy, for a levy authorized by the voters for any of the following purposes on or after January 1, 2006, and which are provided pursuant to a resolution creating an incentive district under division (C)(1) of this section that is adopted on or after January 1, 2006, shall be distributed to the appropriate taxing authority as

required under division (C) of section 5709.74 of the Revised Code in an amount equal to the amount of taxes from that additional levy or from the increase in the effective tax rate of such renewal or replacement levy that would have been payable to that taxing authority from the following levies were it not for the exemption authorized under division (C) of this section:

(1) A tax levied under division (L) of section 5705.19 or section 5705.191 of the Revised Code for community ~~mental-retardation-and~~ developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code;

(2) A tax levied under division (Y) of section 5705.19 of the Revised Code for providing or maintaining senior citizens services or facilities;

(3) A tax levied under section 5705.22 of the Revised Code for county hospitals;

(4) A tax levied by a joint-county district or by a county under section 5705.19, 5705.191, or 5705.221 of the Revised Code for alcohol, drug addiction, and mental health services or families;

(5) A tax levied under section 5705.23 of the Revised Code for library purposes;

(6) A tax levied under section 5705.24 of the Revised Code for the support of children services and the placement and care of children;

(7) A tax levied under division (Z) of section 5705.19 of the Revised Code for the provision and maintenance of zoological park services and facilities under section 307.76 of the Revised Code;

(8) A tax levied under section 511.27 or division (H) of section 5705.19 of the Revised Code for the support of township park districts;

(9) A tax levied under division (A), (F), or (H) of section 5705.19 of the Revised Code for parks and recreational purposes of a joint recreation district organized pursuant to division (B) of section 755.14 of the Revised Code;

(10) A tax levied under section 1545.20 or 1545.21 of the Revised Code for park district purposes;

(11) A tax levied under section 5705.191 of the Revised Code for the purpose of making appropriations for public assistance; human or social services; public relief; public welfare; public health and hospitalization; and support of general hospitals;

(12) A tax levied under section 3709.29 of the Revised Code for a general health district program.

(G) An exemption from taxation granted under this section commences with the tax year specified in the resolution so long as the year specified in the resolution commences after the effective date of the resolution. If the resolution specifies a year commencing before the effective date of the resolution or specifies no year whatsoever, the exemption commences with the tax year in which an exempted improvement first appears on the tax list and duplicate of real and public utility property and that commences after the effective date of the resolution. In lieu of stating a specific year, the resolution may provide that the exemption commences in the tax year in which the value of an improvement exceeds a specified amount or in which the construction of one or more improvements is completed, provided that such tax year commences after the effective date of the resolution. With respect to the exemption of improvements to parcels under division (B) of this section, the resolution may allow for the exemption to commence in different tax years on a parcel-by-parcel basis, with a separate exemption term specified for each parcel.

Except as otherwise provided in this division, the exemption ends on the date specified in the

resolution as the date the improvement ceases to be a public purpose or the incentive district expires, or ends on the date on which the public infrastructure improvements and housing renovations are paid in full from the township public improvement tax increment equivalent fund established under section 5709.75 of the Revised Code, whichever occurs first. The exemption of an improvement with respect to a parcel or within an incentive district may end on a later date, as specified in the resolution, if the board of township trustees and the board of education of the city, local, or exempted village school district within which the parcel or district is located have entered into a compensation agreement under section 5709.82 of the Revised Code with respect to the improvement and the board of education has approved the term of the exemption under division (D) of this section, but in no case shall the improvement be exempted from taxation for more than thirty years. The board of township trustees may, by majority vote, adopt a resolution permitting the township to enter into such agreements as the board finds necessary or appropriate to provide for the construction or undertaking of public infrastructure improvements and housing renovations. Any exemption shall be claimed and allowed in the same or a similar manner as in the case of other real property exemptions. If an exemption status changes during a tax year, the procedure for the apportionment of the taxes for that year is the same as in the case of other changes in tax exemption status during the year.

(H) The board of township trustees may issue the notes of the township to finance all costs pertaining to the construction or undertaking of public infrastructure improvements and housing renovations made pursuant to this section. The notes shall be signed by the board and attested by the signature of the township fiscal officer, shall bear interest not to exceed the rate provided in section 9.95 of the Revised Code, and are not subject to Chapter 133. of the Revised Code. The resolution authorizing the issuance of the notes shall pledge the funds of the township public improvement tax increment equivalent fund established pursuant to section 5709.75 of the Revised Code to pay the interest on and principal of the notes. The notes, which may contain a clause permitting prepayment at the option of the board, shall be offered for sale on the open market or given to the vendor or contractor if no sale is made.

(I) The township, not later than fifteen days after the adoption of a resolution under this section, shall submit to the director of development services a copy of the resolution. On or before the thirty-first day of March of each year, the township shall submit a status report to the director of development services. The report shall indicate, in the manner prescribed by the director, the progress of the project during each year that the exemption remains in effect, including a summary of the receipts from service payments in lieu of taxes; expenditures of money from the fund created under section 5709.75 of the Revised Code; a description of the public infrastructure improvements and housing renovations financed with the expenditures; and a quantitative summary of changes in private investment resulting from each project.

(J) Nothing in this section shall be construed to prohibit a board of township trustees from declaring to be a public purpose improvements with respect to more than one parcel.

If a parcel is located in a new community district in which the new community authority imposes a community development charge on the basis of rentals received from leases of real property as described in division (L)(2) of section 349.01 of the Revised Code, the parcel may not be exempted from taxation under this section.

(K) A board of township trustees that adopted a resolution under this section prior to July 21,

1994, may amend that resolution to include any additional public infrastructure improvement. A board of township trustees that seeks by the amendment to utilize money from its township public improvement tax increment equivalent fund for land acquisition in aid of industry, commerce, distribution, or research, demolition on private property, or stormwater and flood remediation projects may do so provided that the board currently is a party to a hold-harmless agreement with the board of education of the city, local, or exempted village school district within the territory of which are located the parcels that are subject to an exemption. For the purposes of this division, a "hold-harmless agreement" means an agreement under which the board of township trustees agrees to compensate the school district for one hundred per cent of the tax revenue that the school district would have received from further improvements to parcels designated in the resolution were it not for the exemption granted by the resolution.

**Sec. 5709.78.** (A) A board of county commissioners may, by resolution, declare improvements to certain parcels of real property located in the unincorporated territory of the county to be a public purpose. Except with the approval under division (C) of this section of the board of education of each city, local, or exempted village school district within which the improvements are located, not more than seventy-five per cent of an improvement thus declared to be a public purpose may be exempted from real property taxation, for a period of not more than ten years. The resolution shall specify the percentage of the improvement to be exempted and the life of the exemption.

A resolution adopted under this division shall designate the specific public infrastructure improvements made, to be made, or in the process of being made by the county that directly benefit, or that once made will directly benefit, the parcels for which improvements are declared to be a public purpose. The service payments provided for in section 5709.79 of the Revised Code shall be used to finance the public infrastructure improvements designated in the resolution, or as provided in section 5709.80 of the Revised Code.

(B)(1) A board of county commissioners may adopt a resolution creating an incentive district and declaring improvements to parcels within the district to be a public purpose and, except as provided in division (E) of this section, exempt from taxation as provided in this section, but no board of county commissioners of a county that has a population that exceeds twenty-five thousand, as shown by the most recent federal decennial census, shall adopt a resolution that creates an incentive district if the sum of the taxable value of real property in the proposed district for the preceding tax year and the taxable value of all real property in the county that would have been taxable in the preceding year were it not for the fact that the property was in an existing incentive district and therefore exempt from taxation exceeds twenty-five per cent of the taxable value of real property in the county for the preceding tax year. The district shall be located within the unincorporated territory of the county and shall not include any territory that is included within a district created under division (C) of section 5709.73 of the Revised Code. The resolution shall delineate the boundary of the district and specifically identify each parcel within the district. A district may not include any parcel that is or has been exempted from taxation under division (A) of this section or that is or has been within another district created under this division. A resolution may create more than one such district, and more than one resolution may be adopted under division (B) (1) of this section.

(2) Not later than thirty days prior to adopting a resolution under division (B)(1) of this

section, if the county intends to apply for exemptions from taxation under section 5709.911 of the Revised Code on behalf of owners of real property located within the proposed incentive district, the board of county commissioners shall conduct a public hearing on the proposed resolution. Not later than thirty days prior to the public hearing, the board shall give notice of the public hearing and the proposed resolution by first class mail to every real property owner whose property is located within the boundaries of the proposed incentive district that is the subject of the proposed resolution. The board also shall provide the notice by first class mail to the clerk of each township in which the proposed incentive district will be located.

(3)(a) A resolution adopted under division (B)(1) of this section shall specify the life of the incentive district and the percentage of the improvements to be exempted, shall designate the public infrastructure improvements made, to be made, or in the process of being made, that benefit or serve, or, once made, will benefit or serve parcels in the district. The resolution also shall identify one or more specific projects being, or to be, undertaken in the district that place additional demand on the public infrastructure improvements designated in the resolution. The project identified may, but need not be, the project under division (B)(3)(b) of this section that places real property in use for commercial or industrial purposes.

A resolution adopted under division (B)(1) of this section on or after March 30, 2006, shall not designate police or fire equipment as public infrastructure improvements, and no service payment provided for in section 5709.79 of the Revised Code and received by the county under the resolution shall be used for police or fire equipment.

(b) A resolution adopted under division (B)(1) of this section may authorize the use of service payments provided for in section 5709.79 of the Revised Code for the purpose of housing renovations within the incentive district, provided that the resolution also designates public infrastructure improvements that benefit or serve the district, and that a project within the district places real property in use for commercial or industrial purposes. Service payments may be used to finance or support loans, deferred loans, and grants to persons for the purpose of housing renovations within the district. The resolution shall designate the parcels within the district that are eligible for housing renovations. The resolution shall state separately the amount or the percentages of the expected aggregate service payments that are designated for each public infrastructure improvement and for the purpose of housing renovations.

(4) Except with the approval of the board of education of each city, local, or exempted village school district within the territory of which the incentive district is or will be located, and subject to division (D) of this section, the life of an incentive district shall not exceed ten years, and the percentage of improvements to be exempted shall not exceed seventy-five per cent. With approval of the board of education, the life of a district may be not more than thirty years, and the percentage of improvements to be exempted may be not more than one hundred per cent. The approval of a board of education shall be obtained in the manner provided in division (C) of this section.

(C)(1) Improvements with respect to a parcel may be exempted from taxation under division (A) of this section, and improvements to parcels within an incentive district may be exempted from taxation under division (B) of this section, for up to ten years or, with the approval of the board of education of each city, local, or exempted village school district within which the parcel or district is located, for up to thirty years. The percentage of the improvements exempted from taxation may,

with such approval, exceed seventy-five per cent, but shall not exceed one hundred per cent. Not later than forty-five business days prior to adopting a resolution under this section declaring improvements to be a public purpose that is subject to the approval of a board of education under this division, the board of county commissioners shall deliver to the board of education a notice stating its intent to adopt a resolution making that declaration. The notice regarding improvements with respect to a parcel under division (A) of this section shall identify the parcels for which improvements are to be exempted from taxation, provide an estimate of the true value in money of the improvements, specify the period for which the improvements would be exempted from taxation and the percentage of the improvements that would be exempted, and indicate the date on which the board of county commissioners intends to adopt the resolution. The notice regarding improvements to parcels within an incentive district under division (B) of this section shall delineate the boundaries of the district, specifically identify each parcel within the district, identify each anticipated improvement in the district, provide an estimate of the true value in money of each such improvement, specify the life of the district and the percentage of improvements that would be exempted, and indicate the date on which the board of county commissioners intends to adopt the resolution. The board of education, by resolution adopted by a majority of the board, may approve the exemption for the period or for the exemption percentage specified in the notice; may disapprove the exemption for the number of years in excess of ten, may disapprove the exemption for the percentage of the improvements to be exempted in excess of seventy-five per cent, or both; or may approve the exemption on the condition that the board of county commissioners and the board of education negotiate an agreement providing for compensation to the school district equal in value to a percentage of the amount of taxes exempted in the eleventh and subsequent years of the exemption period or, in the case of exemption percentages in excess of seventy-five per cent, compensation equal in value to a percentage of the taxes that would be payable on the portion of the improvements in excess of seventy-five per cent were that portion to be subject to taxation, or other mutually agreeable compensation.

(2) The board of education shall certify its resolution to the board of county commissioners not later than fourteen days prior to the date the board of county commissioners intends to adopt its resolution as indicated in the notice. If the board of education and the board of county commissioners negotiate a mutually acceptable compensation agreement, the resolution of the board of county commissioners may declare the improvements a public purpose for the number of years specified in that resolution or, in the case of exemption percentages in excess of seventy-five per cent, for the exemption percentage specified in the resolution. In either case, if the board of education and the board of county commissioners fail to negotiate a mutually acceptable compensation agreement, the resolution may declare the improvements a public purpose for not more than ten years, and shall not exempt more than seventy-five per cent of the improvements from taxation. If the board of education fails to certify a resolution to the board of county commissioners within the time prescribed by this section, the board of county commissioners thereupon may adopt the resolution and may declare the improvements a public purpose for up to thirty years or, in the case of exemption percentages proposed in excess of seventy-five per cent, for the exemption percentage specified in the resolution. The board of county commissioners may adopt the resolution at any time after the board of education certifies its resolution approving the exemption to the board of county commissioners, or, if the board of education approves the exemption on the condition that a mutually acceptable compensation

agreement be negotiated, at any time after the compensation agreement is agreed to by the board of education and the board of county commissioners. If a mutually acceptable compensation agreement is negotiated between the board of county commissioners and the board of education, including agreements for payments in lieu of taxes under section 5709.79 of the Revised Code, the board of county commissioners shall compensate the joint vocational school district within which the parcel or district is located at the same rate and under the same terms received by the city, local, or exempted village school district.

(3) If a board of education has adopted a resolution waiving its right to approve exemptions from taxation under this section and the resolution remains in effect, approval of such exemptions by the board of education is not required under division (C) of this section. If a board of education has adopted a resolution allowing a board of county commissioners to deliver the notice required under division (C) of this section fewer than forty-five business days prior to approval of the resolution by the board of county commissioners, the board of county commissioners shall deliver the notice to the board of education not later than the number of days prior to such approval as prescribed by the board of education in its resolution. If a board of education adopts a resolution waiving its right to approve exemptions or shortening the notification period, the board of education shall certify a copy of the resolution to the board of county commissioners. If the board of education rescinds such a resolution, it shall certify notice of the rescission to the board of county commissioners.

(D)(1) If a proposed resolution under division (B)(1) of this section exempts improvements with respect to a parcel within an incentive district for more than ten years, or the percentage of the improvement exempted from taxation exceeds seventy-five per cent, not later than forty-five business days prior to adopting the resolution the board of county commissioners shall deliver to the board of township trustees of any township within which the incentive district is or will be located a notice that states its intent to adopt a resolution creating an incentive district. The notice shall include a copy of the proposed resolution, identify the parcels for which improvements are to be exempted from taxation, provide an estimate of the true value in money of the improvements, specify the period of time for which the improvements would be exempted from taxation, specify the percentage of the improvements that would be exempted from taxation, and indicate the date on which the board intends to adopt the resolution.

(2) The board of township trustees, by resolution adopted by a majority of the board, may object to the exemption for the number of years in excess of ten, may object to the exemption for the percentage of the improvement to be exempted in excess of seventy-five per cent, or both. If the board of township trustees objects, the board of township trustees may negotiate a mutually acceptable compensation agreement with the board of county commissioners. In no case shall the compensation provided to the board of township trustees exceed the property taxes forgone due to the exemption. If the board of township trustees objects, and the board of township trustees and the board of county commissioners fail to negotiate a mutually acceptable compensation agreement, the resolution adopted under division (B)(1) of this section shall provide to the board of township trustees compensation in the eleventh and subsequent years of the exemption period equal in value to not more than fifty per cent of the taxes that would be payable to the township or, if the board of township trustee's objection includes an objection to an exemption percentage in excess of seventy-five per cent, compensation equal in value to not more than fifty per cent of the taxes that would be

payable to the township on the portion of the improvement in excess of seventy-five per cent, were that portion to be subject to taxation. The board of township trustees shall certify its resolution to the board of county commissioners not later than thirty days after receipt of the notice.

(3) If the board of township trustees does not object or fails to certify a resolution objecting to an exemption within thirty days after receipt of the notice, the board of county commissioners may adopt its resolution, and no compensation shall be provided to the board of township trustees. If the board of township trustees certifies its resolution objecting to the commissioners' resolution, the board of county commissioners may adopt its resolution at any time after a mutually acceptable compensation agreement is agreed to by the board of county commissioners and the board of township trustees. If the board of township trustees certifies a resolution objecting to the commissioners' resolution, the board of county commissioners may adopt its resolution at any time after a mutually acceptable compensation agreement is agreed to by the board of county commissioners and the board of township trustees, or, if no compensation agreement is negotiated, at any time after the board of county commissioners in the proposed resolution to provide compensation to the board of township trustees of fifty per cent of the taxes that would be payable to the township in the eleventh and subsequent years of the exemption period or on the portion of the improvement in excess of seventy-five per cent, were that portion to be subject to taxation.

(E) Service payments in lieu of taxes that are attributable to any amount by which the effective tax rate of either a renewal levy with an increase or a replacement levy exceeds the effective tax rate of the levy renewed or replaced, or that are attributable to an additional levy, for a levy authorized by the voters for any of the following purposes on or after January 1, 2006, and which are provided pursuant to a resolution creating an incentive district under division (B)(1) of this section that is adopted on or after January 1, 2006, shall be distributed to the appropriate taxing authority as required under division (D) of section 5709.79 of the Revised Code in an amount equal to the amount of taxes from that additional levy or from the increase in the effective tax rate of such renewal or replacement levy that would have been payable to that taxing authority from the following levies were it not for the exemption authorized under division (B) of this section:

(1) A tax levied under division (L) of section 5705.19 or section 5705.191 of the Revised Code for community ~~mental-retardation~~ and developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code;

(2) A tax levied under division (Y) of section 5705.19 of the Revised Code for providing or maintaining senior citizens services or facilities;

(3) A tax levied under section 5705.22 of the Revised Code for county hospitals;

(4) A tax levied by a joint-county district or by a county under section 5705.19, 5705.191, or 5705.221 of the Revised Code for alcohol, drug addiction, and mental health services or facilities;

(5) A tax levied under section 5705.23 of the Revised Code for library purposes;

(6) A tax levied under section 5705.24 of the Revised Code for the support of children services and the placement and care of children;

(7) A tax levied under division (Z) of section 5705.19 of the Revised Code for the provision and maintenance of zoological park services and facilities under section 307.76 of the Revised Code;

(8) A tax levied under section 511.27 or division (H) of section 5705.19 of the Revised Code for the support of township park districts;

(9) A tax levied under division (A), (F), or (H) of section 5705.19 of the Revised Code for parks and recreational purposes of a joint recreation district organized pursuant to division (B) of section 755.14 of the Revised Code;

(10) A tax levied under section 1545.20 or 1545.21 of the Revised Code for park district purposes;

(11) A tax levied under section 5705.191 of the Revised Code for the purpose of making appropriations for public assistance; human or social services; public relief; public welfare; public health and hospitalization; and support of general hospitals;

(12) A tax levied under section 3709.29 of the Revised Code for a general health district program.

(F) An exemption from taxation granted under this section commences with the tax year specified in the resolution so long as the year specified in the resolution commences after the effective date of the resolution. If the resolution specifies a year commencing before the effective date of the resolution or specifies no year whatsoever, the exemption commences with the tax year in which an exempted improvement first appears on the tax list and duplicate of real and public utility property and that commences after the effective date of the resolution. In lieu of stating a specific year, the resolution may provide that the exemption commences in the tax year in which the value of an improvement exceeds a specified amount or in which the construction of one or more improvements is completed, provided that such tax year commences after the effective date of the resolution. With respect to the exemption of improvements to parcels under division (A) of this section, the resolution may allow for the exemption to commence in different tax years on a parcel-by-parcel basis, with a separate exemption term specified for each parcel.

Except as otherwise provided in this division, the exemption ends on the date specified in the resolution as the date the improvement ceases to be a public purpose or the incentive district expires, or ends on the date on which the county can no longer require annual service payments in lieu of taxes under section 5709.79 of the Revised Code, whichever occurs first. The exemption of an improvement with respect to a parcel or within an incentive district may end on a later date, as specified in the resolution, if the board of commissioners and the board of education of the city, local, or exempted village school district within which the parcel or district is located have entered into a compensation agreement under section 5709.82 of the Revised Code with respect to the improvement, and the board of education has approved the term of the exemption under division (C) (1) of this section, but in no case shall the improvement be exempted from taxation for more than thirty years. Exemptions shall be claimed and allowed in the same or a similar manner as in the case of other real property exemptions. If an exemption status changes during a tax year, the procedure for the apportionment of the taxes for that year is the same as in the case of other changes in tax exemption status during the year.

(G) If the board of county commissioners is not required by this section to notify the board of education of the board of county commissioners' intent to declare improvements to be a public purpose, the board of county commissioners shall comply with the notice requirements imposed under section 5709.83 of the Revised Code before taking formal action to adopt the resolution making that declaration, unless the board of education has adopted a resolution under that section waiving its right to receive such a notice.

(H) The county, not later than fifteen days after the adoption of a resolution under this section, shall submit to the director of development services a copy of the resolution. On or before the thirty-first day of March of each year, the county shall submit a status report to the director of development services. The report shall indicate, in the manner prescribed by the director, the progress of the project during each year that an exemption remains in effect, including a summary of the receipts from service payments in lieu of taxes; expenditures of money from the fund created under section 5709.80 of the Revised Code; a description of the public infrastructure improvements and housing renovations financed with such expenditures; and a quantitative summary of changes in employment and private investment resulting from each project.

(I) Nothing in this section shall be construed to prohibit a board of county commissioners from declaring to be a public purpose improvements with respect to more than one parcel.

(J) If a parcel is located in a new community district in which the new community authority imposes a community development charge on the basis of rentals received from leases of real property as described in division (L)(2) of section 349.01 of the Revised Code, the parcel may not be exempted from taxation under this section.

**Sec. 5711.07.** Personal property used in business shall be listed and assessed in the taxing district in which such business is carried on. If such business is carried on in more than one taxing district in the same county, the return shall set forth the amount of the property used therein which is situated in each taxing district in such county, and the value of all the personal property used in business shall be apportioned to and assessed in each of such taxing districts in proportion to the value of the personal property situated therein. Domestic animals not used in business shall be listed and assessed in the taxing district where kept. Ships, vessels, boats, and aircraft, and shares and interests therein, shall be listed and assessed in the taxing district in which the owner resides. All other taxable property shall be listed and assessed in the municipal corporation in which the owner resides, or, if the owner resides outside a municipal corporation, then in the county in which the owner resides except as provided in sections 5711.01 to 5711.36 of the Revised Code. Whenever, under such sections, taxable property required by this section to be listed and assessed in the taxing district or county in which the owner resides is required to be listed by a fiduciary, such property shall be listed and assessed by such fiduciary in the taxing district or county in which such fiduciary resides, or, in the case of joint fiduciaries, in which either such fiduciary resides; but such property belonging to the estate of a deceased resident of this state shall be listed and assessed in the taxing district or county in which the deceased resident resided at the time of death, regardless of the residence of the deceased resident's executors, administrators, or personal representatives, and such property belonging to a ward, minor, incompetent person, or beneficiary of a trust residing in this state, title, custody, or possession of which is vested in a nonresident fiduciary, shall be listed and assessed in the taxing district or county in which such ward, minor, incompetent person, or beneficiary resides.

As used in this section, "incompetent person" means a person who is so mentally impaired, as a result of a mental or physical illness or disability, ~~or mental retardation~~ as a result of an intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.

**Sec. 5747.03.** (A) All money collected under this chapter arising from the taxes imposed by section 5747.02 or 5747.41 of the Revised Code shall be credited to the general revenue fund, except that the treasurer of state shall, at the beginning of each calendar quarter, credit to the Ohio political party fund, pursuant to section 3517.16 of the Revised Code, an amount equal to the total dollar value realized from the taxpayer exercise of the income tax checkoff option on tax forms processed during the preceding calendar quarter.

(B)(1) Following the crediting of moneys pursuant to division (A) of this section, the remainder deposited in the general revenue fund shall be distributed pursuant to division (F) of section 321.24 and section 323.156 of the Revised Code; to make subsidy payments to institutions of higher education from appropriations to the Ohio board of regents; to support expenditures for programs and services for the mentally ill, ~~mentally retarded, developmentally disabled~~ persons with developmental disabilities, and the elderly; for primary and secondary education; for medical assistance; and for any other purposes authorized by law, subject to the limitation that at least fifty per cent of the income tax collected by the state from the tax imposed by section 5747.02 of the Revised Code shall be returned pursuant to Section 9 of Article XII, Ohio Constitution.

(2) To ensure that such constitutional requirement is satisfied the tax commissioner shall, on or before the thirtieth day of June of each year, from the best information available to the tax commissioner, determine and certify for each county to the director of budget and management the amount of taxes collected under this chapter from the tax imposed under section 5747.02 of the Revised Code during the preceding calendar year that are required to be returned to the county by Section 9 of Article XII, Ohio Constitution. The director shall provide for payment from the general revenue fund to the county in the amount, if any, that the sum of the amount so certified for that county exceeds the sum of the following:

(a) The sum of the payments from the general revenue fund for the preceding calendar year credited to the county's undivided income tax fund pursuant to division (F) of section 321.24 and section 323.156 of the Revised Code or made directly from the general revenue fund to political subdivisions located in the county;

(b) The sum of the amounts from the general revenue fund distributed in the county during the preceding calendar year for subsidy payments to institutions of higher education from appropriations to the Ohio board of regents; for programs and services for mentally ill persons, ~~mentally retarded, developmentally disabled~~ persons with developmental disabilities, and elderly persons; for primary and secondary education; and for medical assistance.

(c) In the case of payments made by the director under this division in 2007, the total amount distributed to the county during the preceding calendar year from the local government fund and the local government revenue assistance fund, and, in the case of payments made by the director under this division in subsequent calendar years, the amount distributed to the county from the local government fund;

(d) In the case of payments made by the director under this division, the total amount distributed to the county during the preceding calendar year from the public library fund.

Payments under this division shall be credited to the county's undivided income tax fund, except that, notwithstanding section 5705.14 of the Revised Code, such payments may be transferred by the board of county commissioners to the county general fund by resolution adopted with the

affirmative vote of two-thirds of the members thereof.

(C) All payments received in each month from taxes imposed under Chapter 5748. of the Revised Code and any penalties or interest thereon shall be paid into the school district income tax fund, which is hereby created in the state treasury, except that an amount equal to the following portion of such payments shall be paid into the general school district income tax administrative fund, which is hereby created in the state treasury:

- (1) One and three-quarters of one per cent of those received in fiscal year 1996;
- (2) One and one-half per cent of those received in fiscal year 1997 and thereafter.

Money in the school district income tax administrative fund shall be used by the tax commissioner to defray costs incurred in administering the school district's income tax, including the cost of providing employers with information regarding the rate of tax imposed by any school district. Any moneys remaining in the fund after such use shall be deposited in the school district income tax fund.

All interest earned on moneys in the school district income tax fund shall be credited to the fund.

(D)(1)(a) Within thirty days of the end of each calendar quarter ending on the last day of March, June, September, and December, the director of budget and management shall make a payment from the school district income tax fund to each school district for which school district income tax revenue was received during that quarter. The amount of the payment shall equal the balance in the school district's account at the end of that quarter.

(b) After a school district ceases to levy an income tax, the director of budget and management shall adjust the payments under division (D)(1)(a) of this section to retain sufficient money in the school district's account to pay refunds. For the calendar quarters ending on the last day of March and December of the calendar year following the last calendar year the tax is levied, the director shall make the payments in the amount required under division (D)(1)(a) of this section. For the calendar quarter ending on the last day of June of the calendar year following the last calendar year the tax is levied, the director shall make a payment equal to nine-tenths of the balance in the account at the end of that quarter. For the calendar quarter ending on the last day of September of the calendar year following the last calendar year the tax is levied, the director shall make no payment. For the second and succeeding calendar years following the last calendar year the tax is levied, the director shall make one payment each year, within thirty days of the last day of June, in an amount equal to the balance in the district's account on the last day of June.

(2) Moneys paid to a school district under this division shall be deposited in its school district income tax fund. All interest earned on moneys in the school district income tax fund shall be apportioned by the tax commissioner pro rata among the school districts in the proportions and at the times the districts are entitled to receive payments under this division.

**Sec. 5815.28.** (A) As used in this section:

(1) "Ascertainable standard" includes a standard in a trust instrument requiring the trustee to provide for the care, comfort, maintenance, welfare, education, or general well-being of the beneficiary.

(2) "Disability" means any substantial, medically determinable impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at

least twelve months, except that "disability" does not include an impairment that is the result of abuse of alcohol or drugs.

(3) "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.

(4) "Supplemental services" means services specified by rule of the department of mental health and addiction services under section 5119.10 of the Revised Code or the department of developmental disabilities under section 5123.04 of the Revised Code that are provided to an individual with a disability in addition to services the individual is eligible to receive under programs authorized by federal or state law.

(B) Any person may create a trust under this section to provide funding for supplemental services for the benefit of another individual who meets either of the following conditions:

(1) The individual has a physical or mental disability and is eligible to receive services through the department of developmental disabilities or a county board of developmental disabilities;

(2) The individual has a mental disability and is eligible to receive services through the department of mental health and addiction services or a board of alcohol, drug addiction, and mental health services.

The trust may confer discretion upon the trustee and may contain specific instructions or conditions governing the exercise of the discretion.

(C) The general division of the court of common pleas and the probate court of the county in which the beneficiary of a trust authorized by division (B) of this section resides or is confined have concurrent original jurisdiction to hear and determine actions pertaining to the trust. In any action pertaining to the trust in a court of common pleas or probate court and in any appeal of the action, all of the following apply to the trial or appellate court:

(1) The court shall render determinations consistent with the testator's or other settlor's intent in creating the trust, as evidenced by the terms of the trust instrument.

(2) The court may order the trustee to exercise discretion that the trust instrument confers upon the trustee only if the instrument contains specific instructions or conditions governing the exercise of that discretion and the trustee has failed to comply with the instructions or conditions. In issuing an order pursuant to this division, the court shall require the trustee to exercise the trustee's discretion only in accordance with the instructions or conditions.

(3) The court may order the trustee to maintain the trust and distribute assets in accordance with rules adopted by the director of mental health and addiction services under section 5119.10 of the Revised Code or the director of developmental disabilities under section 5123.04 of the Revised Code if the trustee has failed to comply with such rules.

(D) To the extent permitted by federal law and subject to the provisions of division (C)(2) of this section pertaining to the enforcement of specific instructions or conditions governing a trustee's discretion, a trust authorized by division (B) of this section that confers discretion upon the trustee shall not be considered an asset or resource of the beneficiary, the beneficiary's estate, the settlor, or the settlor's estate and shall be exempt from the claims of creditors, political subdivisions, the state, other governmental entities, and other claimants against the beneficiary, the beneficiary's estate, the settlor, or the settlor's estate, including claims regarding the medicaid program or based on provisions of Chapters 5121. or 5123. of the Revised Code and claims sought to be satisfied by way of a civil

action, subrogation, execution, garnishment, attachment, judicial sale, or other legal process, if all of the following apply:

(1) At the time the trust is created, the trust principal does not exceed the maximum amount determined under division (E) of this section;

(2) The trust instrument contains a statement of the settlor's intent, or otherwise clearly evidences the settlor's intent, that the beneficiary does not have authority to compel the trustee under any circumstances to furnish the beneficiary with minimal or other maintenance or support, to make payments from the principal of the trust or from the income derived from the principal, or to convert any portion of the principal into cash, whether pursuant to an ascertainable standard specified in the instrument or otherwise;

(3) The trust instrument provides that trust assets can be used only to provide supplemental services, as defined by rule of the director of mental health and addiction services under section 5119.10 of the Revised Code or the director of developmental disabilities under section 5123.04 of the Revised Code, to the beneficiary;

(4) The trust is maintained and assets are distributed in accordance with rules adopted by the director of mental health and addiction services under section 5119.10 of the Revised Code or the director of developmental disabilities under section 5123.04 of the Revised Code;

(5) The trust instrument provides that on the death of the beneficiary, a portion of the remaining assets of the trust, which shall be not less than fifty per cent of such assets, will be deposited to the credit of the services fund for individuals with mental illness created by section 5119.51 of the Revised Code or the services fund for individuals with ~~mental retardation and~~ developmental disabilities created by section 5123.40 of the Revised Code.

(E) In 1994, the trust principal maximum amount for a trust created under this section shall be two hundred thousand dollars. The maximum amount for a trust created under this section prior to November 11, 1994, may be increased to two hundred thousand dollars.

In 1995, the maximum amount for a trust created under this section shall be two hundred two thousand dollars. Each year thereafter, the maximum amount shall be the prior year's amount plus two thousand dollars.

(F) This section does not limit or otherwise affect the creation, validity, interpretation, or effect of any trust that is not created under this section.

(G) Once a trustee takes action on a trust created by a settlor under this section and disburses trust funds on behalf of the beneficiary of the trust, then the trust may not be terminated or otherwise revoked by a particular event or otherwise without payment into the services fund created pursuant to section 5119.51 or 5123.40 of the Revised Code of an amount that is equal to the disbursements made on behalf of the beneficiary for medical care by the state from the date the trust vests but that is not more than fifty per cent of the trust corpus.

**Sec. 5815.35.** (A)(1) As used in this division, "fiduciary" means any person, association, or corporation, other than a trustee of a testamentary trust, an assignee or trustee for an insolvent debtor, or a guardian under Chapter 5905. of the Revised Code, that is appointed by and accountable to the probate court, and that is acting in a fiduciary capacity for another or charged with duties in relation to any property, interest, or estate for another's benefit. A fiduciary also includes an agency under contract with the department of developmental disabilities for the provision of protective service

under sections 5123.55 to 5123.59 of the Revised Code, when appointed by and accountable to the probate court as a guardian or trustee for a ~~mentally retarded or developmentally disabled person with a developmental disability.~~

(2) A fiduciary who enters a contract as fiduciary on or after March 22, 1984, is not personally liable on that contract, unless the contract otherwise specifies, if the contract is within the fiduciary's authority and the fiduciary discloses that the contract is being entered into in a fiduciary capacity. In a contract, the words "fiduciary" or "as fiduciary" or other words that indicate one's fiduciary capacity following the name or signature of a fiduciary are sufficient disclosure for purposes of this division.

(B)(1) As used in this division, "partnership" includes a partnership composed of only general partners and a partnership composed of general and limited partners.

(2) Subject to division (D) of this section, an executor or administrator who acquires, in a fiduciary capacity, a general partnership interest upon the death of a general partner of a partnership is not personally liable for any debt, obligation, or liability of the partnership that arises from the executor's or administrator's actions, except as provided in this division, as a general partner, or for any debt, obligation, or liability of the partnership for which the executor or administrator otherwise would be personally liable because the executor or administrator holds the general partnership interest, if the executor or administrator discloses that the general partnership interest is held by the executor or administrator in a fiduciary capacity. This immunity does not apply if an executor or administrator causes loss or injury to a person who is not a partner in the partnership by a wrongful act or omission. This immunity is not available to an executor or administrator who holds a general partnership interest in a fiduciary capacity if the spouse or any lineal descendants of the executor or administrator, or the executor or administrator other than in a fiduciary capacity, holds any interest in the partnership.

A partnership certificate that is filed pursuant to Chapter 1777. or another chapter of the Revised Code and that indicates that an executor or administrator holds a general partnership interest in a fiduciary capacity by the use following the name or signature of the executor or administrator of the words "executor under the will of (name of decedent)" or "administrator of the estate of (name of decedent)" or other words that indicate the executor's or administrator's fiduciary capacity constitutes a sufficient disclosure for purposes of this division.

If a partnership certificate is not required to be filed pursuant to Chapter 1776. or 1777. or another chapter of the Revised Code, a sufficient disclosure for purposes of this division can be made by an executor or administrator if a certificate that satisfies the following requirements is filed with the recorder of the county in which the partnership's principal office or place of business is situated and with the recorder of each county in which the partnership owns real estate:

(a) The certificate shall state in full the names of all persons holding interests in the partnership and their places of residence;

(b) The certificate shall be signed by all persons who are general partners in the partnership, and shall be acknowledged by a person authorized to take acknowledgements of deeds;

(c) The certificate shall use the words "executor under the will of (name of decedent)" or "administrator of the estate of (name of decedent)" or other words that indicate the executor's or administrator's fiduciary capacity, following the name or signature of the executor or administrator.

A contract or other written instrument delivered to a party that contracts with the partnership in which an executor or administrator holds a general partnership interest in a fiduciary capacity, that indicates that the executor or administrator so holds the interest, constitutes a disclosure for purposes of this division with respect to transactions between the party and the partnership. If a disclosure has been made by a certificate in accordance with this division, a disclosure for purposes of this division with respect to such transactions exists regardless of whether a contract or other instrument indicates the executor or administrator holds the general partnership interest in a fiduciary capacity.

If an executor or administrator acquires, in a fiduciary capacity, a general partnership interest, the decedent's estate is liable for debts, obligations, or liabilities of the partnership.

(C) An estate that includes a general partnership interest is not liable for the debts, obligations, or liabilities of a partnership in which another estate has a general partnership interest, merely because the executor or administrator of the estates holds a general partnership interest in both of the partnerships in the executor's or administrator's fiduciary capacities.

(D) Divisions (B) and (C) of this section apply to general partnership interests held by executors or administrators in their fiduciary capacities prior to and on or after March 22, 1984. If an appropriate disclosure is made pursuant to division (B) of this section, the immunity acquired under that division extends only to debts, obligations, and liabilities of the partnership arising on and after the date of the disclosure and to debts, obligations, and liabilities of the partnership that arose prior to the acquisition of the general partnership interest by the executor or administrator becoming a general partner.

(E) The liability limitations in this section apply to fiduciaries as partners notwithstanding the broader personal liabilities otherwise imposed by any partnership law.

(F) If an estate or other fund held by a fiduciary is identified as a partner, the reference is deemed to be to, and the partner is, the current executor, administrator, or other fiduciary of the estate or other fund and their successors as executors, administrators, or other fiduciaries.

**SECTION 2.** That existing sections 1.02, 121.22, 121.37, 135.801, 145.01, 145.012, 145.298, 145.332, 149.431, 152.04, 173.25, 173.27, 173.38, 173.381, 305.07, 307.02, 313.12, 325.07, 711.23, 1751.01, 1751.14, 2101.17, 2101.24, 2108.521, 2109.01, 2111.01, 2111.10, 2111.49, 2151.011, 2151.281, 2151.353, 2151.414, 2151.415, 2151.421, 2151.425, 2151.651, 2152.02, 2152.12, 2152.14, 2152.51, 2152.52, 2152.54, 2152.56, 2152.811, 2305.111, 2311.14, 2317.021, 2503.37, 2721.05, 2744.01, 2901.13, 2903.341, 2905.32, 2907.24, 2919.23, 2929.01, 2929.04, 2929.06, 2930.061, 2930.16, 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, 2945.482, 2945.491, 2949.29, 2950.01, 2951.041, 2967.22, 3107.02, 3301.52, 3301.53, 3301.55, 3301.57, 3301.58, 3314.022, 3317.02, 3317.024, 3317.03, 3317.032, 3317.07, 3317.15, 3317.20, 3323.01, 3323.02, 3323.021, 3323.03, 3323.04, 3323.05, 3323.09, 3323.091, 3323.12, 3323.141, 3323.142, 3701.881, 3707.20, 3721.01, 3763.06, 3791.031, 3923.24, 3923.241, 4112.01, 4303.272, 4399.05, 4723.071, 4757.41, 4971.16, 5101.46, 5103.02, 5119.44, 5120.051, 5120.11, 5120.17, 5120.173, 5121.04, 5122.01, 5123.01, 5123.012, 5123.014, 5123.02, 5123.03, 5123.033, 5123.04, 5123.044, 5123.0410, 5123.0412, 5123.0413, 5123.0417, 5123.0418, 5123.081, 5123.092, 5123.093, 5123.122, 5123.165, 5123.169, 5123.17, 5123.171, 5123.18, 5123.19, 5123.196, 5123.20, 5123.27, 5123.34, 5123.35, 5123.351, 5123.36, 5123.37, 5123.374, 5123.375, 5123.40, 5123.41, 5123.42, 5123.421, 5123.422, 5123.43, 5123.44, 5123.441, 5123.45, 5123.451, 5123.47, 5123.50, 5123.51, 5123.52, 5123.541,

5123.542, 5123.55, 5123.57, 5123.58, 5123.601, 5123.61, 5123.611, 5123.612, 5123.614, 5123.62, 5123.63, 5123.64, 5123.65, 5123.651, 5123.67, 5123.69, 5123.701, 5123.71, 5123.74, 5123.75, 5123.76, 5123.79, 5123.80, 5123.81, 5123.82, 5123.83, 5123.84, 5123.85, 5123.86, 5123.87, 5123.88, 5123.89, 5123.91, 5123.92, 5123.93, 5123.95, 5123.96, 5123.99, 5126.01, 5126.022, 5126.023, 5126.04, 5126.041, 5126.042, 5126.043, 5126.046, 5126.05, 5126.051, 5126.054, 5126.055, 5126.058, 5126.059, 5126.0510, 5126.08, 5126.082, 5126.11, 5126.15, 5126.22, 5126.25, 5126.30, 5126.31, 5126.33, 5126.333, 5126.40, 5126.46, 5126.49, 5126.52, 5126.55, 5126.58, 5139.06, 5139.08, 5139.12, 5139.27, 5139.39, 5139.54, 5164.25, 5164.342, 5164.881, 5165.01, 5166.20, 5166.21, 5166.22, 5168.68, 5301.22, 5305.17, 5307.19, 5310.12, 5321.01, 5705.05, 5705.091, 5705.19, 5705.222, 5709.40, 5709.73, 5709.78, 5711.07, 5747.03, 5815.28, and 5815.35 of the Revised Code are hereby repealed.

**SECTION 3.** The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the following sections, presented in this act as composites of the sections as amended by the acts indicated, are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act:

Section 2151.414 of the Revised Code as amended by both Am. Sub. H.B. 130 and Am. Sub. H.B. 213 of the 130th General Assembly.

Section 3323.05 of the Revised Code as amended by both Am. Sub. H.B. 1 and Sub. S.B. 79 of the 128th General Assembly.

Section 3791.031 of the Revised Code as amended by both Am. Sub. H.B. 117 and Am. Sub. S.B. 162 of the 121st General Assembly.

Section 5123.61 of the Revised Code as amended by both Sub. H.B. 232 and Am. Sub. H.B. 483 of the 130th General Assembly.

Section 5705.05 of the Revised Code as amended by both Sub. H.B. 458 and Sub. S.B. 353 of the 127th General Assembly.

**SECTION 4.** Under this act, it is the intent of the General Assembly to remove references in the Revised Code to the term "mental retardation" and derivations of that term, to replace those references with the term "intellectual disability" and corresponding derivations of that term, and to do so without a resulting change in meaning.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_