



Department of
Developmental Disabilities

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Listing of
Ohio Revised Code
Ohio Administrative Code Sections

*Prepared for Building Partnership Initiative
November 17, 2009*

This reference guide is designed to be a starting point. The Building Partnership Initiative asked that it contain some key citations. It is a listing of information that is within the Ohio Revised Code (R.C.) or the Ohio Administrative Code (O.A.C.).

It is organized with eight separate sections:

1. Safeguards and Protection
2. Criminal Offenses – Specific to Disability
3. Age Span (18-21) Offenses
4. Enhanced Penalties
5. Testimony
6. Administrative Process – Major Unusual Incidents
7. Abuser Registry
8. Websites – Resources

While section two is devoted to criminal offenses with an element of the crime being the victim is an individual with a developmental disability, this is not to suggest that the other crimes in Chapter 29 of the R.C. are not applicable.

This booklet was compiled in November of 2009. The offense of Patient Endangerment (**R.C. 2903.341**) was added on January 30, 2004. Until that point the law had provisions for safeguarding children and the elderly, but not individuals with developmental disabilities from substantial risk of harm. The Missing Persons section (**R.C. 2901.41**) as applicable to individuals with developmental disabilities was effective April 5, 2007.

It is hoped and expected that the laws and rules will change.

Safeguards and Protection

- A. 2901.30 Missing child report**
- B. 2901.41 Missing person reports policies**
- C. 5123.61(I) Reporting abuse, neglect, and other major unusual incidents**

(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.

- D. 5126.33 Complaint process – Protective Service Plan**

(A) A county board of mental retardation and 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:

- (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, and the legal rights service. 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 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, and the legal rights service. 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.

E. 2111.50 Probate court is superior guardian of wards - Guardianship

(A)(1) At all times, the probate court is the superior guardian of wards who are subject to its jurisdiction, and all guardians who are subject to the jurisdiction of the court shall obey all orders of the court that concern their wards or guardianships.

(2)(a) Subject to divisions (A)(2)(b) and (c) of this section, the control of a guardian over the person, the estate, or both of his ward is limited to the authority that is granted to the guardian by the Revised Code, relevant decisions of the courts of this state, and orders or rules of the probate court.

(b) Except for the powers specified in division (E) of this section and unless otherwise provided in or inconsistent with another section of the Revised Code, the probate court may confer upon a guardian any power that this section grants to the probate court in connection with wards.

(c) For good cause shown, the probate court may limit or deny, by order or rule, any power that is granted to a guardian by a section of the Revised Code or relevant decisions of the courts of this state.

Take Charge of Your Life: Know about Guardianship
http://olrs.ohio.gov/asp/pub_GuardianshipGuide.asp

Guardianship and Its Alternatives
http://olrs.ohio.gov/asp/olrs_FAQ_Guardianship.asp

Emergency Preparation Resources and Links
<http://olrs.ohio.gov/asp/GetPreparedLinks.asp>

Offenses

A. Chapter 29

B. 2903.10 Functionally impaired person, caretaker defined.

As used in sections 2903.13 and 2903.16 of the Revised Code:

(A) "Functionally impaired person" means any person who has a physical or mental impairment that prevents him from providing for his own care or protection or whose infirmities caused by aging prevent him from providing for his own care or protection.

(B) "Caretaker" means a person who assumes the duty to provide for the care and protection of a functionally impaired person 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. "Caretaker" does not include a person who owns, operates, or administers, or who is an agent or employee of, a care facility, as defined in section 2903.33 of the Revised Code.

Effective Date: 03-17-1989

C. Failure to Report 5123.61 -5123.99 Penalty.

(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 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 employees established under section 5123.52 of the Revised Code.

(C) Whoever violates division (A) of section 5123.604 of the Revised Code is guilty of a misdemeanor of the second degree.

(D) Whoever violates division (B) of section 5123.604 of the Revised Code shall be fined not more than one thousand dollars. Each violation constitutes a separate offense. Effective Date: 01-30-2004; 2007 HB119 06-30-2007

D. 2903.16 Failing to Provide for a Functionally Impaired Adult

(A) No caretaker shall knowingly fail to provide a functionally impaired person under the caretaker's care with any treatment, care, goods, or service that is necessary to maintain the health or safety of the functionally impaired person when this failure results in physical harm or serious physical harm to the functionally impaired person.

(B) No caretaker shall recklessly fail to provide a functionally impaired person under the caretaker's care with any treatment, care, goods, or service that is necessary to maintain the health or safety of the functionally impaired person when this failure results in serious physical harm to the functionally impaired person.

(C)(1) Whoever violates division (A) of this section is guilty of knowingly failing to provide for a functionally impaired person, a misdemeanor of the first degree. If the functionally impaired person under the offender's care suffers serious physical harm as a result of the violation of this section, a violation of division (A) of this section is a felony of the fourth degree.

(2) Whoever violates division (B) of this section is guilty of recklessly failing to provide for a functionally impaired person, a misdemeanor of the second degree. If the functionally impaired person under the offender's care suffers serious physical harm as a result of the violation of this section, a violation of division (B) of this section is a felony of the fourth degree.

Effective Date: 07-01-1996

D (A) No person who owns, operates, or administers, or who is an agent or employee of, a care facility shall do any of the following:

- (1) Commit abuse against a resident or patient of the facility;
- (2) Commit gross neglect against a resident or patient of the facility;
- (3) Commit neglect against a resident or patient of the facility.

(B)(1) 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 neglected under division (A)(3) of this section for that reason alone.

(2) It is an affirmative defense to a charge of gross neglect or neglect under 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 with supervisory authority over the actor.

(C) Whoever violates division (A)(1) of this section is guilty of patient abuse, a felony of the fourth degree. If the offender previously has been convicted of, or pleaded guilty to, any violation of this section, patient abuse is a felony of the third degree.

(D) Whoever violates division (A)(2) of this section is guilty of gross patient neglect, a misdemeanor of the first degree. If the offender previously has been convicted of, or pleaded guilty to, any violation of this section, gross patient neglect is a felony of the fifth degree.

(E) Whoever violates division (A)(3) of this section is guilty of patient neglect, a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to any violation of this section, patient neglect is a felony of the fifth degree. Effective Date: 07-01-1996

E. 2933.34 Patient Abuse – Neglect

A) No person who owns, operates, or administers, or who is an agent or employee of, a care facility shall do any of the following:

- (1) Commit abuse against a resident or patient of the facility;
- (2) Commit gross neglect against a resident or patient of the facility;
- (3) Commit neglect against a resident or patient of the facility.

(B)(1) 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 neglected under division (A)(3) of this section for that reason alone.

(2) It is an affirmative defense to a charge of gross neglect or neglect under 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 with supervisory authority over the actor.

(C) Whoever violates division (A)(1) of this section is guilty of patient abuse, a felony of the fourth degree. If the offender previously has been convicted of, or pleaded guilty to, any violation of this section, patient abuse is a felony of the third degree.

(D) Whoever violates division (A)(2) of this section is guilty of gross patient neglect, a misdemeanor of the first degree. If the offender previously has been

convicted of, or pleaded guilty to, any violation of this section, gross patient neglect is a felony of the fifth degree.

(E) Whoever violates division (A)(3) of this section is guilty of patient neglect, a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to any violation of this section, patient neglect is a felony of the fifth degree. Effective Date: 07-01-1996

F. 2903.341 Patient endangerment.

(A) As used in this section:

(1) "MR/DD caretaker" means any MR/DD 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 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 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 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 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 employee" has the same meaning as in section 5123.50 of the Revised Code.

(B) No MR/DD caretaker shall create a substantial risk to the health or safety of a mentally retarded person or a developmentally disabled person. An MR/DD caretaker does not create a substantial risk to the health or safety of a mentally retarded person or a developmentally disabled person under this division when the MR/DD caretaker treats a physical or mental illness or defect of the mentally retarded person or developmentally disabled person 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 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 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 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.

G. False Reporting 2903.35

A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, alleging a violation of section 2903.34 of the Revised Code, when the statement is made with purpose to incriminate another.

(B) Whoever violates this section is guilty of filing a false patient abuse or neglect complaint, a misdemeanor of the first degree. Effective Date: 09-17-1986

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Age Span (18-21) Broadened

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Testimony

2311.14 Interpreter provided for person with hearing, speech or other impediment.

(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. Before appointing any interpreter under this division for a party or witness who is a mentally retarded person or developmentally disabled person, the court shall evaluate the qualifications of the interpreter and shall make a determination as to the ability of the interpreter to effectively interpret on behalf of the party or witness that the interpreter will assist, and the court may appoint the interpreter only if the court is satisfied that the interpreter is able to effectively interpret on behalf of that party or witness.

(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 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 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. . .

2152.811 Taking testimony of mentally retarded person or developmentally disabled person accused in juvenile court.

2945.482 Taking testimony of mentally retarded person or developmentally disabled person victim.

Administrative – Major Unusual Incidents

A major unusual incident **MUI Rule OAC 5123:2-17-02** is defined as any alleged, suspected, or actual occurrence of an incident that adversely affects the health and safety of an individual. There are sixteen types of incidents defined in the rule that are considered major unusual incidents (MUIs). All of the incidents require that immediate action is taken to protect individuals from further harm, that an investigation is conducted to determine the cause of the incident and contributing factors, and that a prevention plan is developed to reduce the likelihood of future occurrences. MUIs are reported to the local County Board of DODD, which then reports the information to the DODD. County Boards of DODD are responsible for immediate action, investigations, and prevention planning for each incident.

The DODD *Major Unusual Incident and Registry Unit* reviews all initial MUIs to ensure immediate actions are in place and appropriate notifications have been made. In addition to this review, the DODD provides technical assistance to providers and counties and annually conducts an assessment of each County Board of DODD and Developmental Center's system for ensuring health and safety.

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Abuser Registry

5123.50-541

OAC 5123:2-17-03

The Registry protects individuals. Employees who commit a Registry offense and whose names are placed on the Registry are unable to work as an employee within the Ohio Developmental Disabilities system.

Knowingly **Abuse** with a reasonable expectation of harm;

Recklessly **Abuse or Neglect** with resulting physical harm;

Recklessly **Neglect** creating a substantial risk of serious physical harm;

Negligently **Abuse or Neglect** with resulting serious physical harm;

Misappropriated property of one or more individuals that has a value, either separately or taken together, of one hundred dollars or more;
Misappropriated property of an individual that is designed to be used as a check, draft, negotiable instrument, credit card, charge card, EFT, ATM, or cash dispensing machine;

Failure to Report

Unreasonably failed to make a report pursuant to the (mandatory reporter law) when the employee knew or should have known that the failure would result in a substantial risk of harm to an individual., and,

Prohibited Sexual Relationship

Engaged in sexual conduct or had sexual contact with an individual who was not the MR/DD employee's spouse and for whom they were employed or under a contract to provide care.

Abuser Registry is on-line and available to the public

https://odmrdd.state.oh.us/apps/extranet/its_revise/abr_default.aspx

Websites - Resources

Department of Developmental Disabilities

<http://dodd.ohio.gov/>

County Boards After Hours Contacts

<http://www.odmrdd.state.oh.us/abuse/>

Victims with Disabilities: The Forensic Interview-Techniques for Interviewing Victims with Communication and/or Cognitive Disabilities (April 2007)

<http://www.ovc.gov/publications/infores/vicdis.htm>

This 57-minute DVD (NCJ 212894) provides a specific set of guidelines for law enforcement officers, prosecutors, victim advocates, forensic interviewers, and others for interviewing adults and children with communication and/or cognitive disabilities. An interactive companion [discussion guide](#) (PDF 831 kb) including a complete transcript of the DVD and a glossary of terms and concepts used in the film is also available.

First Response to Victims of Crime (April 2008)

<http://www.ovc.gov/publications/infores/pdfxt/FirstResponseGuidebook.pdf>

This educational multimedia package, produced by the National Sheriffs' Association, looks at the impact of crime on victims and describes steps that law enforcement can take, as first responders, to meet victims' needs. Among the types of victimizations covered are sexual assault, drunk driving, homicide, human trafficking, and mass casualties. The special needs of older victims, child victims, immigrants, and victims with disabilities are addressed as well. This 30-minute video is available in DVD (NCJ 211619) and VHS (NCJ 211618). A companion [guidebook](#) (PDF 470 kb) (NCJ 217272) is also available.

Legislative Services Commission

<http://www.lsc.state.oh.us/index.html>

international coalition on abuse and disability

<http://icad.wordpress.com/>

Ohio Revised Code and Ohio Administrative Code

<http://codes.ohio.gov/>