

AN ACT

To amend sections 9.239, 9.55, 101.37, 101.39, 107.12, 109.57, 109.572, 109.71, 109.77, 109.86, 117.102, 121.02, 121.03, 121.32, 121.36, 121.37, 123.01, 124.11, 124.23, 124.241, 124.27, 124.38, 124.381, 125.602, 125.603, 126.32, 127.16, 135.801, 135.802, 135.803, 140.01, 140.03, 140.05, 145.012, 145.297, 154.17, 154.20, 173.03, 305.14, 307.10, 307.86, 309.10, 319.16, 325.19, 329.06, 1751.01, 1751.02, 2108.521, 2109.01, 2109.04, 2111.01, 2111.02, 2111.10, 2133.25, 2151.011, 2151.421, 2903.33, 2919.271, 2921.36, 2921.38, 2930.061, 2935.03, 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, 2967.22, 3109.18, 3301.07, 3301.15, 3301.52, 3301.53, 3301.55, 3301.57, 3301.58, 3304.231, 3313.65, 3313.715, 3314.022, 3314.99, 3317.01, 3317.02, 3317.024, 3317.03, 3317.032, 3317.05, 3317.051, 3317.052, 3317.07, 3317.15, 3317.20, 3319.22, 3319.99, 3323.01, 3323.02, 3323.021, 3323.03, 3323.04, 3323.05, 3323.07, 3323.09, 3323.091, 3323.12, 3323.141, 3323.142, 3323.31, 3326.99, 3501.01, 3701.78, 3701.93, 3701.932, 3701.933, 3705.36, 3721.01, 3721.14, 3722.01, 3727.01, 3735.58, 4109.06, 4115.32, 4141.29, 4511.21, 4511.75, 4723.071, 5101.35, 5101.46, 5101.611, 5103.02, 5103.13, 5104.08, 5107.24, 5111.042, 5111.151, 5111.202, 5111.203, 5111.211, 5111.251, 5111.291, 5111.65, 5111.677, 5111.709, 5111.87, 5111.871, 5111.872, 5111.873, 5111.874, 5111.875, 5111.876, 5111.8710, 5111.915, 5112.30, 5112.32, 5112.37, 5112.371, 5119.16, 5119.221, 5119.51, 5120.07,

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(5126.0214), 5126.0222 (5126.0215), 5126.0223
(5126.0216), 5126.0224 (5126.0217), 5126.0225
(5126.0218), 5126.0226 (5126.0219), 5126.0227
(5126.0220), 5126.0228 (5126.0221), and 5126.0229
(5126.0222); to enact sections 5123.014 and 5126.011; to
repeal sections 5126.021, 5126.022, 5126.023, 5126.024,
5126.025, 5126.026, and 5126.027 of the Revised Code;
to amend Sections 209.60.40, 209.60.50, and 501.40 of
H.B. 496 of the 127th General Assembly, to amend
Section 201.60.30 of H.B. 496 of the 127th General
Assembly, as subsequently amended, to amend Sections
231.30.10, 231.30.20, and 253.10 of Am. Sub. H.B. 562
of the 127th General Assembly, to amend Section
231.20.30 of Am. Sub. H.B. 562 of the 127th General
Assembly, as subsequently amended, and to amend
Section 4 of Am. Sub. H.B. 516 of the 125th General
Assembly, as subsequently amended, to change the name
of the Department of Mental Retardation and
Developmental Disabilities to the Department of
Developmental Disabilities and the name of county
boards of mental retardation and developmental
disabilities to county boards of developmental
disabilities, to make similar name changes for the Joint
Council on Mental Retardation and Developmental
Disabilities, the Mental Retardation and Developmental
Disabilities Developmental Center Closure Commission,
and certain state and county funds, and to repeal obsolete
law regarding multi-county boards of mental retardation
and developmental disabilities.

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

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. 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. 5123.59. Before entering upon the duties of trustee, an agency under contract with the department of ~~mental retardation and~~ developmental disabilities may require any of its employees having custody or control of funds or property to give bond to the probate court with sufficient surety, conditioned upon the full and faithful accounting of all trust funds which ~~he~~ the employee holds. The amount of the bond shall be determined by the court and may be modified by the court.

Sec. 5123.60. (A) A legal rights service is hereby created and established to protect and advocate the rights of mentally ill persons, mentally retarded persons, developmentally disabled persons, and other disabled persons who may be represented by the service pursuant to division (L) of this section; to receive and act upon complaints concerning institutional and hospital practices and conditions of institutions for mentally retarded or developmentally disabled persons and hospitals for the mentally ill; and to assure that all persons detained, hospitalized, discharged, or institutionalized, and all persons whose detention, hospitalization, discharge, or institutionalization is sought or has been sought under this chapter or Chapter 5122. of the Revised Code are fully informed of their rights and adequately represented by counsel in proceedings under this chapter or Chapter 5122. of the Revised Code and in any proceedings to secure the rights of those persons. Notwithstanding the definitions of "mentally retarded person" and "developmentally disabled person" in section 5123.01 of the Revised Code, the legal rights service shall determine who is a mentally retarded or developmentally disabled person for purposes of this section and sections 5123.601 to 5123.604 of the Revised Code.

(B)(1) In regard to those persons detained, hospitalized, or institutionalized under Chapter 5122. of the Revised Code, the legal rights service shall undertake formal representation only of those persons who are involuntarily detained, hospitalized, or institutionalized pursuant to sections 5122.10 to 5122.15 of the Revised Code, and those voluntarily detained, hospitalized, or institutionalized who are minors, who have been adjudicated incompetent, who have been detained, hospitalized, or institutionalized in a

public hospital, or who have requested representation by the legal rights service.

(2) If a person referred to in division (A) of this section voluntarily requests in writing that the legal rights service terminate participation in the person's case, such involvement shall cease.

(3) Persons described in divisions (A) and (B)(1) of this section who are represented by the legal rights service are clients of the legal rights service.

(C) Any person voluntarily hospitalized or institutionalized in a public hospital under division (A) of section 5122.02 of the Revised Code, after being fully informed of the person's rights under division (A) of this section, may, by written request, waive assistance by the legal rights service if the waiver is knowingly and intelligently made, without duress or coercion.

The waiver may be rescinded at any time by the voluntary patient or resident, or by the voluntary patient's or resident's legal guardian.

(D)(1) The legal rights service commission is hereby created for the purposes of appointing an administrator of the legal rights service, advising the administrator, assisting the administrator in developing a budget, advising the administrator in establishing and annually reviewing a strategic plan, creating a procedure for filing and determination of grievances against the legal rights service, and establishing general policy guidelines, including guidelines for the commencement of litigation, for the legal rights service. The commission may adopt rules to carry these purposes into effect and may receive and act upon appeals of personnel decisions by the administrator.

(2) The commission shall consist of seven members. One member, who shall serve as chairperson, shall be appointed by the chief justice of the supreme court, three members shall be appointed by the speaker of the house of representatives, and three members shall be appointed by the president of the senate. At least two members shall have experience in the field of developmental disabilities, and at least two members shall have experience in the field of mental health. No member shall be a provider or related to a provider of services to mentally retarded, developmentally disabled, or mentally ill persons.

(3) Terms of office of the members of the commission shall be for three years, each term ending on the same day of the month of the year as did the term which it succeeds. Each member shall serve subsequent to the expiration of the member's term until a successor is appointed and qualifies, or until sixty days has elapsed, whichever occurs first. No member shall serve more than two consecutive terms.

All vacancies in the membership of the commission shall be filled in the manner prescribed for regular appointments to the commission and shall be

limited to the unexpired terms.

(4) The commission shall meet at least four times each year. Members shall be reimbursed for their necessary and actual expenses incurred in the performance of their official duties.

(5) The administrator of the legal rights service shall serve at the pleasure of the commission.

The administrator shall be an attorney admitted to practice law in this state. The salary of the administrator shall be established in accordance with section 124.14 of the Revised Code.

(E) The legal rights service shall be completely independent of the department of mental health and the department of ~~mental retardation and~~ developmental disabilities and, notwithstanding section 109.02 of the Revised Code, shall also be independent of the office of the attorney general. The administrator of the legal rights service, staff, and attorneys designated by the administrator to represent persons detained, hospitalized, or institutionalized under this chapter or Chapter 5122. of the Revised Code shall have ready access to 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 ~~mental retardation and~~ 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 legal rights service, including those who may be represented pursuant to division (L) 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 ~~mental retardation and~~ developmental disabilities; and any other entity providing services to persons who may be represented by the service pursuant to division (L) 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 service pursuant to division (L) 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 service pursuant to division (L) 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 ~~mental retardation and~~ 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 legal rights service;

(ii) The legal rights service has determined that there is probable cause to believe that such person has been subjected to abuse or neglect.

(F) The administrator of the legal rights service shall do the following:

(1) Administer and organize the work of the legal rights service and establish administrative or geographic divisions as the administrator considers necessary, proper, and expedient;

(2) Adopt and promulgate rules that are not in conflict with rules adopted by the commission and prescribe duties for the efficient conduct of the business and general administration of the legal rights service;

(3) Appoint and discharge employees, and hire experts, consultants, advisors, or other professionally qualified persons as the administrator considers necessary to carry out the duties of the legal rights service;

(4) Apply for and accept grants of funds, and accept charitable gifts and bequests;

(5) Prepare and submit a budget to the general assembly for the operation of the legal rights service. At least thirty days prior to submitting the budget to the general assembly, the administrator shall provide a copy of the budget to the commission for review and comment. When submitting the budget to the general assembly, the administrator shall include a copy of any written comments returned by the commission to the administrator.

(6) Enter into contracts and make expenditures necessary for the efficient operation of the legal rights service;

(7) Annually prepare a report of activities and submit copies of the

report to the governor, the chief justice of the supreme court, the president of the senate, the speaker of the house of representatives, the director of mental health, and the director of ~~mental retardation and~~ developmental disabilities, and make the report available to the public;

(8) Upon request of the commission or of the chairperson of the commission, report to the commission on specific litigation issues or activities.

(G)(1) The legal rights service may act directly or contract with other organizations or individuals for the provision of the services envisioned under this section.

(2) Whenever possible, the administrator shall attempt to facilitate the resolution of complaints through administrative channels. Subject to division (G)(3) of this section, if attempts at administrative resolution prove unsatisfactory, the administrator may pursue any legal, administrative, and other appropriate remedies or approaches that may be necessary to accomplish the purposes of this section.

(3) The administrator may not pursue a class action lawsuit under division (G)(2) of this section when attempts at administrative resolution of a complaint prove unsatisfactory under that division unless both of the following have first occurred:

(a) At least four members of the commission, by their affirmative vote, have consented to the pursuit of the class action lawsuit;

(b) At least five members of the commission are present at the meeting of the commission at which that consent is obtained.

(4) All records received or maintained by the legal rights service 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 legal rights service or, subject to any privilege, a guardian of the person or parent of the minor. Subject to division (G)(5) of this section, relationships between personnel and the agents of the legal rights service and its clients shall be fiduciary relationships, and all communications shall be privileged as if between attorney and client.

(5) Any person who has been represented by the legal rights service or who has applied for and been denied representation and who files a grievance with the service concerning the representation or application may appeal the decision of the service on the grievance to the commission. The person may appeal notwithstanding any objections of the person's legal guardian. The commission may examine any records relevant to the appeal and shall maintain the confidentiality of any records that are required to be

kept confidential.

(H) The legal rights service, on the order of the administrator, with the approval by an affirmative vote of at least four members of the commission, may compel by subpoena the appearance and sworn testimony of any person the administrator 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 legal rights service 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.

(I) The legal rights service may conduct public hearings.

(J) The legal rights service may request from any governmental agency any cooperation, assistance, services, or data that will enable it to perform its duties.

(K) In any malpractice action filed against the administrator of the legal rights service, a member of the staff of the legal rights service, or an attorney designated by the administrator to perform legal services under division (E) of this section, the state shall, when the administrator, member, or attorney has acted in good faith and in the scope of employment, indemnify the administrator, member, or attorney for any judgment awarded or amount negotiated in settlement, and for any court costs or legal fees incurred in defense of the claim.

This division does not limit or waive, and shall not be construed to limit or waive, any defense that is available to the legal rights service, its administrator or employees, persons under a personal services contract with it, or persons designated under division (E) of this section, including, but not limited to, any defense available under section 9.86 of the Revised Code.

(L) In addition to providing services to mentally ill, mentally retarded, or developmentally disabled persons, when a grant authorizing the provision of services to other individuals is accepted pursuant to division (F)(4) of this section, the legal rights service and its ombudsperson section may provide advocacy or ombudsperson services to those other individuals and exercise any other authority granted by this section or sections 5123.601 to 5123.604 of the Revised Code on behalf of those individuals. Determinations of whether an individual is eligible for services under this division shall be made by the legal rights service.

Sec. 5123.601. (A) As used in sections 5123.601 to 5123.604 of the Revised Code, "provider" means any person or governmental agency that furnishes one or more services to one or more mentally retarded, developmentally disabled, or mentally ill persons.

(B) There is hereby created within the legal rights service the ~~ombudsman~~ ombudsperson section. The administrator of the legal rights service shall adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures for receiving complaints and conducting investigations for the purposes of resolving and mediating complaints from mentally retarded, developmentally disabled, or mentally ill persons, their relatives, their guardians, and interested citizens, public officials, and governmental agencies or any deficiencies which come to its attention concerning any activity, practice, policy, or procedure it determines is adversely affecting or may adversely affect the health, safety, welfare, and civil or human rights of any mentally retarded, developmentally disabled, or mentally ill persons. After initial investigation, the section may decline to accept any complaint it determines is frivolous, vexatious, or not made in good faith. The section shall attempt to resolve the complaint at the lowest appropriate administrative level, unless otherwise provided by law. The procedures shall require the section to:

(1) Acknowledge the receipt of a complaint by sending written notice to the complainant no more than seven days after it receives the complaint;

(2) When appropriate, provide written notice to the department of ~~mental retardation and~~ developmental disabilities or the department of mental health and any other appropriate agency within seven days after receiving the complaint;

(3) Immediately refer a complaint made under this section to the department of ~~mental retardation and~~ developmental disabilities and to any other appropriate governmental agency, whenever the complaint involves an immediate and substantial threat to the health or safety of a mentally retarded or developmentally disabled person, or to the department of mental health and to any other appropriate governmental agency, whenever the complaint involves an immediate and substantial threat to the health or safety of a mentally ill person. The department or an agency designated by the department shall report its findings and actions no later than forty-eight hours following its receipt of the complaint.

(4) Within seven days after identifying a deficiency in the treatment of a mentally retarded, developmentally disabled, or mentally ill person that pertains to misconduct, breach of duty, or noncompliance with state or federal laws, local ordinances, or rules or regulations adopted under those

laws or ordinances that are administered by a governmental agency, refer the matter in writing to the appropriate state agency. The state agency shall report on its actions and findings within seven days of receiving the matter.

(5) Advise the complainant and any mentally retarded, developmentally disabled, or mentally ill person mentioned in the complaint, no more than thirty days after it receives the complaint, of any action it has taken and of any opinions and recommendations it has with respect to the complaint.

(6) Attempt to resolve the complaint by using informal techniques of mediation, conciliation, and persuasion. If the complaint cannot be resolved by the use of these informal techniques or if the act, practice, policy, or procedure that is the subject of the complaint adversely affects the health, safety, welfare, or civil or human rights of a mentally retarded, developmentally disabled, or mentally ill person, the section may recommend to the appropriate authorities or the administrator of the legal rights service that appropriate actions be taken.

(7) Report its opinions or recommendations to the parties involved after attempting to resolve a complaint through informal techniques of mediation, conciliation, or persuasion. The section may request any party affected by the opinions or recommendations to notify the section, within a time period specified by the section, of any action the party has taken on the section's recommendations.

(C) The section may make public any of its opinions or recommendations concerning a complaint, the responses of persons and governmental agencies to its opinions or recommendations, and any act, practice, policy, or procedure that adversely affects or may adversely affect the health, safety, welfare, or civil or human rights of a mentally retarded, developmentally disabled, or mentally ill person.

(D) The section shall at all times maintain confidentiality under sections 5123.601 to 5123.604 of the Revised Code concerning the identities of mentally retarded, developmentally disabled, or mentally ill persons, complainants, witnesses, and other involved parties who provide it with information unless the person, in writing, authorizes the release of the information.

Nothing in this section shall prohibit the legal rights service from taking appropriate action when the administrator determines it is necessary.

(E) Whenever information is disclosed indicating the commission of a crime or a violation of standards of professional conduct, the legal rights service shall, within seven days of receiving the complaint or identifying the information during its investigation, refer the matter to the attorney general, county prosecutor, other law enforcement official, or regulatory board, as

appropriate, to investigate the crime or violation. The section may disclose any information permitted by law that is necessary to resolve the matter referred. The section shall monitor and maintain records on every matter it refers under this division.

Sec. 5123.602. (A) Except as provided in division (B) of this section, the ombudsperson section of the legal rights service may, in order to carry out its duties under this chapter, make necessary inquiries and obtain information it considers necessary. Upon receiving a complaint and in the course of conducting an investigation in accordance with division (B) of section 5123.601 of the Revised Code, the section shall have ready access to the premises and records of all providers of services to mentally retarded, developmentally disabled, or mentally ill persons and shall have the right to communicate in a private and confidential setting with any mentally retarded, developmentally disabled, or mentally ill persons, with their parents, guardians, or advocates, and with employees of any provider.

(B) Records held by community residential facilities, contract agencies of boards of alcohol, drug addiction, and mental health services, and contract agencies of county boards of ~~mental retardation and~~ developmental disabilities shall only be accessible by the ombudsperson section of the legal rights service in a situation as described in division (E)(5) of section 5123.60 of the Revised Code.

Sec. 5123.604. (A) No one shall take a discriminatory, disciplinary, or retaliatory action against any officer or employee of a provider, any mentally retarded, developmentally disabled, or mentally ill person, the parents or guardian of a mentally retarded, developmentally disabled, or mentally ill person, or any volunteer or advocate for a mentally retarded, developmentally disabled, or mentally ill person, for any communication these persons make or information they disclose in good faith to the ombudsperson section of the legal rights service.

(B) No person shall knowingly interfere with lawful actions of the ombudsperson section, refuse entry to its representatives, fail to comply with its lawful demands, or offer any compensation, gratuity, or promise thereof in an effort to influence the outcome of any matter being considered by the section.

(C) The department of ~~mental retardation and~~ developmental disabilities shall immediately notify the ombudsperson section of all investigations of major unusual incidents or life-threatening situations, as defined in rules adopted by the department, involving mentally retarded and developmentally disabled persons, and shall furnish copies of all relevant reports within forty-eight hours after receipt. The department of mental

health shall notify the ombudsperson section of all major unusual incidents or life-threatening situations, as defined in rules adopted by the department, involving mentally ill persons within forty-eight hours after receipt of the report of the incident or situation. The departments of health and job and family services shall notify the department of ~~mental retardation and~~ developmental disabilities of all allegations and investigations of abuse, neglect, or life-threatening situations involving mentally retarded or developmentally disabled persons. Any other state agency with information concerning abuse, neglect, or life-threatening situations involving mentally retarded or developmentally disabled persons shall report that information immediately to the department of ~~mental retardation and~~ developmental disabilities.

Nothing in this section or section 5123.60, 5123.601, or 5123.602 of the Revised Code shall preclude any department or board, its contract agencies, a community residential facility, or other governmental entity from carrying out its responsibility as prescribed by law.

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 ~~mental retardation and~~ 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 ~~mental retardation and~~ 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 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, 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 ~~mental retardation and~~ developmental disabilities. If the report concerns a resident of a facility