



**To:** Superintendents of County Boards of MRDD  
Superintendents of Developmental Centers  
County Board MUI Investigators  
Licensed Providers

**From:** Christine Oliver, Deputy Director  
Division of Legal Services

**Date:** June 4, 2004

**Re:** Court-Ordered Protective Services

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Amended Senate Bill No. 178 expanded the protective services statutes. The protective services statutes for adults with mr/dd are now contained in Sections 5126.30 to 5126.333 of the Ohio Revised Code (ORC).

### ***Filing a Complaint for Court-Ordered Protective Services***

Section 5126.33 of the ORC authorizes a County Board of MR/DD ("board") to file a complaint with the Probate Court of the county in which the adult with mental retardation and developmental disabilities (the "adult") resides for a court order authorizing the board to arrange for protective services. A complaint for protective services is filed when:

- An adult with mental retardation or a developmental disability is at substantial risk of harm or death as a result of abuse, neglect or exploitation.
- The adult does not have the ability to make decisions concerning, food, clothing shelter health care or other necessities.
- The adult is in need of services.
- No one is able or authorized by law to consent to services. Protective services are defined as services provided by a Board of MR/DD to an adult to prevent and correct conditions resulting from abuse, neglect, and exploitation. Court-ordered protective services are only for an adult who is eligible for board services.

Voice: 995-3810 Fax: 995-3822 Website: <http://www.state.oh.us/dmr>  
**To report Abuse/Neglect/MUIs call the Hotline: 1-866-313-MRDD (6733)**  
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- **“Abuse”** means all of the following:
  - The use of physical force that can reasonably be expected to result in physical harm (*includes, but is not limited to*, hitting, slapping, pushing, or throwing objects at an individual) or serious physical harm (includes any injury that creates a substantial risk of death; an injury that causes permanent disfigurement or temporary serious disfigurement).
  - “Sexual abuse” means unlawful sexual contact (touching the erogenous zone of another for the sexual gratification of the offender) or unlawful sexual conduct (This would include offenses such as non-consensual intercourse).
  - "Verbal abuse" means using words to threaten, coerce, intimidate, harass, or humiliate an individual.
- **“Misappropriation”** means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by law, including but not limited to theft, forgery and misuse of a credit card.
- **“Neglect”** means, where 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.
- **“Exploitation”** means the unlawful or improper act of a caretaker using the adult or the adult’s resources for the monetary or personal benefit, profit or gain of the caretaker. This definition also includes “misappropriation.” (A caretaker is a person who is responsible for the care of the adult, such as, a family member, by court order, by contract or by the acceptance of payment for care.)

The complaint must have the following information:

- The name, age and address of the adult.
- A description of the abuse, neglect or exploitation.
- Facts demonstrating the board’s attempts to obtain the consent of the adult or his/her guardian to services.
- A *protective services plan*, an individualized plan developed by the board to prevent further abuse, neglect or exploitation. The plan can only be changed by court order. Previously, the statute required an Individual Service Plan.

A copy of the complaint is served on the adult who is the subject of the complaint, the caretaker, or, any other person the court names, including the adult's spouse, custodian, guardian or parent. Previously, only the adult received a copy of the complaint. The adult has a right to an attorney, unless the court finds that the adult has made a voluntary, informed and knowing waiver of the right to an attorney. If the adult is indigent, an attorney is appointed to represent the adult by the court.

A person who receives a copy of the complaint has a right to attend the hearing, present evidence, and examine and cross-examine witnesses.

The court will issue an order for the board to provide protective services if there is clear and convincing evidence of the following:

- ◆ The adult lacks the ability to make decisions regarding food, clothing, shelter, health care or other necessities.
- ◆ The adult is abused, neglected or exploited.
- ◆ There is a substantial risk (strong possibility) of immediate physical harm or death.
- ◆ The adult is in need of services.
- ◆ No person is willing or authorized by law to consent to the services.

***Amended Senate Bill 178 Modified ORC 5123.33 to:***

- Extend from 28 days to 6 months, renewable for an additional 6 months, the time period in which a court can order protective services.
- Authorize the court to issue the following orders to protect the adult from abuse, neglect, or exploitation, including:
  - An *ex parte order*, an order initiated and obtained by a party in a case without a hearing. The court can issue an *ex parte order* on its own or at the request of a party.
  - A temporary protection order.
  - An evaluation of the adult.
  - An order requiring a person to leave the adult's home. Except, the court cannot order an operator of a residential facility to leave.
  - An order to appoint a receiver per ORC 5123.191.

## ***Obtaining A Court Order for Emergency Protective Services***

ORC 5126.331 authorizes a probate judge or magistrate to issue, by *telephone*, an *ex parte emergency order* to the board. The board must demonstrate the following to the Probate Judge or Magistrate:

- ❑ The adult is eligible to receive services from the board.
- ❑ The adult is unable to make decisions regarding food, clothing, shelter, health care or other necessities.
- ❑ The adult faces substantial risk (a strong possibility) of immediate physical harm or death.

With an *ex parte emergency telephone order*, the board may:

- ❑ Provide or arrange for *emergency protective services* (protective services designed to prevent immediate physical harm to the adult).
- ❑ Remove the adult from his/her home.
- ❑ Remove the adult from the place where the abuse, neglect or exploitation is occurring, making reasonable efforts to notify the adult and any person who lives with the adult of the proposed removal. (Notice of removal is not required if it would jeopardize the physical or emotional safety of the adult or result in the adult's removal from the court's jurisdiction.)

The *ex parte emergency telephone order* is effective for *24-hours* (or in the case of weekends and holidays, the order is effective until the next business day.)

Section 5126.332 of the ORC requires the Probate Court to hold a hearing within 24-hours of issuing an *ex parte emergency telephone order* to determine if there is "probable cause" for the *ex parte emergency telephone order*. Probable cause means whether reasonable grounds exist for the issuance of the *ex parte emergency telephone order*.

### **At the Hearing, the Court:**

- ❑ Considers where the adult desires to live and determines whether protective services are the least restrictive alternative for meeting the adult's needs.
- ❑ May order any of the following: an evaluation, a person to leave the adult's home, emergency protective services, or any other order to protect the adult from immediate physical harm.

Any orders issued at the probable cause hearing are effective for 30-days, renewable for an additional 30-day period.

If the adult remains in need of services after the expiration of the *ex parte emergency telephone order*, the board is to file a Complaint for Protective Services.

### **When Court Ordered Services Have Not Been Requested:**

Under ORC 5123.333, when the board has not filed a complaint for protective services and a person has reason to believe that there is a substantial risk to an adult of immediate physical harm or death, can notify the Ohio Department of Mental Retardation and Developmental Disabilities (the Department). Within 24-hours of receiving the notice, the Department is to cause an investigation to occur. The Department is to provide assistance to the board to provide for the health and safety of the adult.

Further information contact regarding this notice Vicki Jenkins, Associate General Counsel at (614) 644-7342 or e-mail to [Vicki.Jenkins@dmr.state.oh.us](mailto:Vicki.Jenkins@dmr.state.oh.us)

**This information notice is provided to raise awareness of SB 178 requirements and should not be considered legal advice. Readers are encouraged to contact your legal counsel for specific advice.**

c: Distribution List