



To: Superintendents of County Board of MR/DD
Superintendents of Developmental Centers
Investigative Agents and DC Investigators
All Providers

From: Christine Oliver, Deputy Director
Division of Legal and MUI Services

Date: July 29, 2004

Re: Mandated Reporters - Abuse/Neglect
Ohio Revised Code Section 5123.61 & 5123.99

The purpose of this information notice is to advise persons employed in the mental retardation and developmental disabilities field of the requirements contained in Ohio Revised Code (ORC) 5123.61 and 5123.99 as a result of Amended Senate Bill 178.

Abuse means all of the following:

- The use of physical force that can reasonably be expected to result in physical harm; *(may include 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 or prolonged pain)*.
- *Sexual Abuse* is unlawful sexual contact *(touching the erogenous zone of another for the sexual arousing or gratification of either party)* or unlawful sexual conduct *(intercourse or other sexual penetration)*.
- *Verbal abuse* is purposefully using words to threaten, coerce, intimidate, harass or humiliate an individual.
- *Misappropriation* is 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* is 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.

The above definitions continue to be the basis for reporting MUIs and have not changed.

New reporting requirements:

If you have reason to believe that a person with mental retardation and/or a developmental disability (person with MR/DD) has suffered or faces a substantial risk (a strong possibility) of suffering any wound, injury, disability or condition of such a nature as to reasonably indicate abuse or neglect of that person, you are to immediately report or cause reports to be made to law enforcement and/or a County Board of Mental Retardation and Developmental Disabilities (County Board of MR/DD). If the report concerns a person in a developmental center, you are to notify the Ohio State Highway Patrol or the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD).

Those required to report suspected abuse, neglect or exploitation include:

- Physicians, including hospital interns or residents, when the patient is a person with MR/DD and the physician knows or suspects, as a result of the communication or observations made during the communication, that the client has suffered or faces a substantial risk of suffering any wound, injury, disability or condition of a nature that reasonably indicates abuse or neglect.
- Podiatrists, Dentists, Chiropractors, Practitioners of a limited branch of medicine per 4731.15 of the ORC.
- Hospital Administrators and/or employees of the hospital.
- Nurses licensed under Chapter 4723 of the ORC.
- Employees of an ambulatory health facility per 5101.61 of the ORC.
- Employees of a home health agency.
- Employees of an adult care facility licensed under chapter 3722 of the ORC.
- Employees of a community mental health facility.

- Any schoolteacher or school authority.
- Social Workers.
- Psychologists.
- Peace Officers.
- Coroners.
- Residents' Rights Advocates defined in Section 3721.10 of the ORC.
- Attorneys, when the client is a person with MR/DD and the attorney knows or suspects as a result of the communication or observations made during the communication that the client has suffered or faces a substantial risk of suffering any wound, injury, disability or condition of a nature that reasonably indicates abuse or neglect.
- Superintendents, board members or employees of a County Board of Mental Retardation and Developmental Disabilities.
- Administrators, board members or employees of any other public or private provider of services to a person with MR/DD.
- An MR/DD employee (an employee of the ODMR/DD, an employee of a county board and an employee in a program or service designed and operated to primarily service persons with MR/DD, including programs and services provided by an entity licensed or certified by the ODMR/DD).
- Clergymen employed in a position that includes providing specialized services to an individual with MR/DD 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 MR/DD and who, while acting in a official or professional capacity, renders spiritual treatment through prayer in accordance with the tenets of an organized religion.

- A member of a Citizens' Advisory Council established at an institution/branch of institution of the department per ORC 5123.092.
- An administrator, board member or employee of a residential facility licensed per ORC 5123.19.

Reporting incidents of abuse, neglect and exploitation involving employees of County Boards of Mental Retardation and Developmental Disabilities.

Reports of abuse or neglect of an individual with MR/DD due to *any act or omission of an employee of a county board* are made to the county board and the Department. Reports of abuse or neglect of individuals with MR/DD who are inmates in the custody of a state correctional facility are made to the Ohio State Highway Patrol.

If the allegation is concerning a child, it needs to be reported to the local Children's Services Board (See information notice on "Reporting Allegations of Child Abuse/Neglect").

REPORTING CHART	
Allegation	Report Made To:
1. Person with MR/DD served in the community	1. County board and/or law enforcement
2. Person with MR/DD served in a developmental center	2. Developmental Center and/or ODMR/DD and the Ohio State Highway Patrol
3. Act of omission by county board employee	3. ODMR/DD and county board and/or law enforcement
4. Person with MR/DD who are inmates in the custody of a state correctional facility.	4. Ohio State Highway Patrol
5. Children with MR/DD	5. Children's Services Board or law enforcement and county board of MR/DD

Information to be included in a report:

Reports of abuse, neglect or exploitation are to be made by telephone or in person, followed by a written report. The report must contain all of the following:

1. The name and address of the individual with MR/DD and the individual's guardian, if known.
2. The age of the individual with MR/DD.
3. Any other information that would assist in the investigation of the report.

Reports of abuse and neglect that are determined to be an emergency.

If a county board receives a report of abuse, neglect or exploitation and believes that the degree of risk to the individual with MR/DD is such that the *report is an emergency*, the Superintendent or Superintendent's designee must *attempt a face-to-face contact with the individual with MR/DD who is alleged to be the victim within one-hour of receiving the report.*

"Emergency" is not defined. By analogy, ORC 5126.331 allows a Probate Court to issue an *"emergency order" to a county board to provide protective services to a person with MR/DD upon a showing that there is a substantial risk (strong possibility) of immediate physical harm or death to the person with MR/DD.*

The Memorandum of Understanding, which is required for all county boards, will also define the roles and responsibilities for county boards and law enforcement in handling emergency and non-emergency cases of abuse, neglect or exploitation involving individuals with MR/DD.

Conducting the investigation.

All abuse and neglect investigations are conducted in accordance with the county board's Memorandum of Understanding (MOU) per ORC 5126.058. The MOU is an agreement entered into by the county board, county peace officer, law enforcement officers handling abuse, neglect and exploitation cases involving individuals with MR/DD, the public Children's Services Agency, the County Coroner, the Prosecuting Attorney and the Probate Judge for the purpose of establishing the normal operating procedure by all concerned officials of their respective responsibilities in investigations of abuse, neglect and exploitation.

Independent reviews.

ORC 5123.614, newly enacted by SB 178, identifies the options for review or investigation of a report of a major unusual incident (per 5123.61, 5126.31 or rules adopted per 5123.612). When a person has reason to believe that a person with

MR/DD has suffered any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect, the Department may conduct an independent review or investigation or request an independent review or investigation by a county board not implicated, a regional council of government or any other entity authorized to conduct such investigations.

Ohio Administrative Code 5123: 2-17-02, Incidents Adversely Affecting Health and Safety, outlines situations in section (E)(5) when the Department is to be called regarding conducting a separate investigation. SB 178 adds an additional situation requiring the Department, upon receipt of a report alleging that an employee of a county board has created a substantial risk of serious physical harm to an individual with MR/DD, to conduct an independent investigation or request an independent review or investigation be conducted by a county board not implicated, by a regional council of government or by any other entity authorized to conduct such investigations.

The Department is required to conduct a separate investigation when the following circumstances are present:

- The allegation involves the superintendent of the county board or the executive director of a regional council of government.
- The allegation involves a county board management employee.
- The allegation involves a current member of the board for the county.
- The allegation involves a person with a known relationship with the superintendent or director of the regional council of government.
- The allegation is that a county board employee is responsible for the death of an individual or has committed sexual abuse against the individual or neglect that has resulted in an emergency room visit or hospitalization.
- ODMR/DD is to conduct an independent investigation or request an independent review or investigation by a regional council of government, a county board not implicated in the report or any other entity authorized to conduct such investigations when the report involves an allegation that an employee of a county board created a substantial risk of serious physical harm. (ORC 5123.614(B))
- Others deemed appropriate by ODMR/DD.

Penalties for failure to report abuse, neglect, and exploitation.

An MR/DD employee (an employee of the ODMR/DD, an employee of the county board and an employee in a program or service designed and operated to primarily service individuals with MR/DD, including programs and services provided by an entity licensed or certified by the ODMR/DD) who fails to report abuse or neglect, is eligible for inclusion on the Abuser Registry.

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Also, failure to report abuse or neglect is a crime. It is a misdemeanor of the fourth degree. However, if the abuse or neglect constitutes a felony offense, failure to report is a misdemeanor of the second degree.

For any questions, please contact the MUI/Registry Unit at (614) 995-3810 or 995-3818.

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