



Ohio Revised Code

Section 2945.491 Taking testimony of mentally retarded person or developmentally disabled person victim.

Effective: January 30, 2004

Legislation: Senate Bill 178 - 125th General Assembly

(A) As used in this section:

(1) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

(2) "Mentally retarded or developmentally disabled victim" includes a mentally retarded or developmentally disabled person 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, the court, upon motion of the prosecutor in the case, may admit videotaped preliminary hearing testimony of the mentally retarded or developmentally disabled victim as evidence at the trial, in lieu of the mentally retarded or developmentally disabled victim 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 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 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 who gave the testimony at the preliminary hearing were to testify in person at the trial, the mentally retarded or developmentally disabled victim 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 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 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 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 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 shall not be required to testify at the hearing.

After the hearing, the court shall not require the mentally retarded or developmentally disabled victim 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 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 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 testify at the trial.

(b) That the testimony of the mentally retarded or developmentally disabled victim 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 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 shall not otherwise be required to testify at the trial. The required testimony of the mentally retarded or developmentally disabled victim 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 is admitted at trial in accordance with division (B)(1) of this section, the mentally retarded or developmentally disabled victim 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 concerning whose testimony it pertains. The order shall apply only during the testimony of the mentally retarded or developmentally disabled victim it specifically identifies.