

As Reported by the Senate Health Committee

134th General Assembly

Regular Session

2021-2022

Sub. S. B. No. 58

Senators Antonio, Brenner

**Cosponsors: Senators Craig, Fedor, Maharath, Schaffer, Sykes, Thomas,
Williams, Yuko, Huffman, S.**

A BILL

To amend section 3721.99 and to enact sections 1
3721.60, 3721.61, 3721.62, 3721.63, 3721.64, 2
3721.65, 3721.66, and 3721.67 of the Revised 3
Code to permit a resident of a long-term care 4
facility to conduct electronic monitoring of the 5
resident's room and to designate this act as 6
Esther's Law. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3721.99 be amended and sections 8
3721.60, 3721.61, 3721.62, 3721.63, 3721.64, 3721.65, 3721.66, 9
and 3721.67 of the Revised Code be enacted to read as follows: 10

Sec. 3721.60. As used in sections 3721.60 to 3721.67 of 11
the Revised Code: 12

(A) "Attorney in fact" means a person designated as such 13
by a durable power of attorney for health care executed pursuant 14
to sections 1337.11 to 1337.17 of the Revised Code. 15

(B) "Electronic monitoring device" means a surveillance 16
instrument with a fixed position video camera or an audio 17

recording device, or a combination thereof, that is installed in 18
a resident's room and broadcasts or records activities or sounds 19
occurring in the room. 20

(C) "Guardian" has the same meaning as in section 2111.01 21
of the Revised Code. 22

(D) "Long-term care facility" has the same meaning as in 23
section 3721.21 of the Revised Code. 24

(E) "Resident" means an individual who resides in a long- 25
term care facility. 26

Sec. 3721.61. (A) Subject to section 3721.62 of the 27
Revised Code, a resident or a resident's guardian or attorney in 28
fact may authorize the installation and use of an electronic 29
monitoring device in the resident's room in a long-term care 30
facility. 31

(B) The installation and use of an electronic monitoring 32
device may be authorized only if both of the following 33
conditions are met: 34

(1) If a long-term care facility has prescribed a form 35
described in section 3721.63 of the Revised Code, the resident 36
or resident's guardian or attorney in fact completes the form 37
and submits it to the facility. 38

(2) The cost of the device and the cost of installing, 39
maintaining, and removing the device, other than the cost of 40
electricity for the device, is paid for by the resident or the 41
resident's guardian or attorney in fact. 42

(C) A resident who has authorized the installation and use 43
of an electronic monitoring device may withdraw that 44
authorization at any time. 45

Sec. 3721.62. (A) If a resident wishing to conduct 46
authorized electronic monitoring of the resident's room lives 47
with another resident in a long-term care facility, the consent 48
of the other resident or the other resident's guardian or 49
attorney in fact to the installation and use of an electronic 50
monitoring device in the room is required before any 51
installation or use of such a device may occur. If the long- 52
term care facility has prescribed a form described in section 53
3721.63 of the Revised Code, the other resident or other 54
resident's guardian or attorney in fact shall consent by 55
completing the relevant part of the form. 56

(B) (1) If a resident living in a room with another 57
resident wishes to conduct authorized electronic monitoring of 58
the resident's room, but the other resident or other resident's 59
guardian or attorney in fact refuses to consent to the 60
installation and use of an electronic monitoring device, the 61
facility shall make a reasonable attempt to accommodate the 62
resident wishing to conduct authorized electronic monitoring by 63
moving either resident to another available room with the 64
consent of the resident being moved or resident's guardian or 65
attorney in fact. 66

(2) In the case of a resident living in a room with 67
another resident, the other resident or other resident's 68
guardian or attorney in fact may place conditions on any consent 69
to the installation and use of an electronic monitoring device, 70
including conditions such as pointing the device away from the 71
other resident or limiting or prohibiting the use of certain 72
devices. If conditions are placed on consent, the device shall 73
be installed and used according to those conditions. 74

(C) A resident whose consent is required under this 75

section may withdraw that consent at any time. 76

Sec. 3721.63. A long-term care facility may prescribe a 77
form for use by a resident or resident's guardian or attorney in 78
fact seeking to authorize the installation and use of an 79
electronic monitoring device in the resident's room in a long- 80
term care facility. If a long-term care facility prescribes a 81
form, it shall, at a minimum, include all of the following: 82

(A) An explanation of sections 3721.60 to 3721.67 of the 83
Revised Code; 84

(B) An acknowledgment that the resident or resident's 85
guardian or attorney in fact has consented to the installation 86
and use of the device in the resident's room; 87

(C) In the case of a resident who lives in a room with 88
another resident, an acknowledgment that the other resident or 89
other resident's guardian or attorney in fact has consented to 90
the installation and use of the device and a description of any 91
conditions placed on that consent pursuant to division (B) (2) of 92
section 3721.62 of the Revised Code; 93

(D) A section for providing the facility with information 94
regarding the type, function, and use of the device to be 95
installed and used; 96

(E) A section stating that the facility is released from 97
liability in any civil or criminal action or administrative 98
proceeding for a violation of the resident's right to privacy in 99
connection with using the device. 100

Sec. 3721.64. A long-term care facility may post a notice 101
in a conspicuous place at the entrance to a resident's room with 102
an electronic monitoring device stating that an electronic 103
monitoring device is in use in that room. 104

Sec. 3721.65. No person or resident shall be denied admission to or discharged from a long-term care facility or otherwise discriminated or retaliated against because of the decision to authorize the installation and use of an electronic monitoring device in a resident's room in the facility. 105
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Sec. 3721.66. (A) No person other than the resident or resident's guardian or attorney in fact who authorized the installation and use of an electronic monitoring device in the resident's room in a long-term care facility shall intentionally obstruct, tamper with, or destroy the device or a recording made by the device. 110
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(B) Except as provided in division (C) of this section, no person other than the following shall intentionally view or listen to the images displayed or sounds recorded by an electronic monitoring device installed in a resident's room: 116
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(1) The resident; 120

(2) The resident's guardian or attorney in fact; 121

(3) Law enforcement personnel. 122

(C) A resident or resident's guardian or attorney in fact may authorize a person to view or listen to the images displayed or sounds recorded by an electronic monitoring device installed in a resident's room. 123
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Sec. 3721.67. The director of health shall adopt rules in accordance with Chapter 119. of the Revised Code as necessary to implement sections 3721.60 to 3721.66 of the Revised Code. 127
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Sec. 3721.99. (A) Whoever violates section 3721.021, division (B), (D), or (E) of section 3721.05, division (A), (C), or (D) of section 3721.051, section 3721.06, division (A) of 130
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section 3721.22, division (A) or (B) of section 3721.24, ~~or~~ 133
division (E) or (F) of section 3721.30, or section 3721.65 of 134
the Revised Code shall be fined one hundred dollars for a first 135
offense. For each subsequent offense, the violator shall be 136
fined five hundred dollars. 137

(B) Whoever violates division (A) or (C) of section 138
3721.05 or division (B) of section 3721.051 of the Revised Code 139
shall be fined five thousand dollars for a first offense. For 140
each subsequent offense, the violator shall be fined ten 141
thousand dollars. 142

(C) Whoever violates division (D) of section 3721.031 or 143
division (E) of section 3721.22 of the Revised Code is guilty of 144
registering a false complaint, a misdemeanor of the first 145
degree. 146

(D) Whoever violates section 3721.66 of the Revised Code 147
is guilty of tampering with an electronic monitoring device, a 148
misdemeanor of the first degree. 149

Section 2. That existing section 3721.99 of the Revised 150
Code is hereby repealed. 151

Section 3. This act shall be known as Esther's Law. 152