Dennis M. Papp *Legislative Service Commission*

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(As Reported by S. Judiciary - Criminal Justice)

Reps. **Setzer, Stebelton, Evans, Healy, Combs, Yuko, Harwood, Huffman, Collier, Webster, Brown, Patton, B. Williams, Lundy, Dyer, Heard, Barrett, Boyd, Budish, Chandler, DeBose, Distel, Domenick, Driehaus, Fende, Flowers, Foley, Garrison, Gibbs, J. Hagan, R. Hagan, Hite, Letson, Luckie, Mallory, Miller, Oelslager, Okey, Otterman, Schindel, Schlichter, Schneider, Strahorn, Szollosi, Uecker, Wagoner, S. Williams, Zehringer**

BILL SUMMARY

- Allows a law enforcement agency that takes a missing child report to notify the public or nonpublic school in which the missing child is or was most recently enrolled that the child is the subject of a missing child report and that the child's school records are to be marked.

- Requires each public and nonpublic school to mark the records of a pupil currently or previously enrolled in the school when the school receives notice from a law enforcement agency that the pupil has been reported to be a missing child and to notify that law enforcement agency whenever it receives a request for a copy of or information regarding that pupil's records.

- Requires a law enforcement agency that took a missing child report and receives notice that the missing child has returned to the home of, or to the care, custody, and control of the child's caregiver, has been released if the missing child was the victim of a specified offense, or otherwise has been located to promptly inform any school that was notified under the bill's provisions that the minor no longer is a missing child.

* This analysis was prepared before the report of the Senate Judiciary - Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Specifies that cooperation among law enforcement agencies in missing children cases will be in accordance with agreements the law enforcement agencies have with each other.

- Specifies that law enforcement agencies assisting other agencies in missing children cases and the employees of the assisting agencies when outside of their employing political subdivisions are covered under the Sovereign Immunity Law, and that the employees of the assisting agencies when outside of their employing political subdivision are covered by any indemnity fund established by their employer and by the Workers' Compensation Law.

- Requires a court to impose an additional court cost of $10 for a moving violation to provide funds for certain costs of drug task forces, certain costs of alcohol monitoring provided to indigent offenders, certain costs of alcohol monitoring of indigent defendants, and certain indigent defense costs, creates the Drug Law Enforcement Fund to be administered by the Division of Criminal Justice Services of the Department of Public Safety for the provision of the funds for drug task forces, and creates the Indigent Defense Support Fund to be administered by the State Public Defender for the provision of the funds for indigent defense.

- Expands the authorized uses of moneys that currently comprise the Indigent Drivers Alcohol Treatment Fund.

- In any review hearing that pertains to a permanency plan for a child who will not be returned to the parent, requires the court to consider in-state and out-of-state placement options and requires the court or a court-appointed citizens board to consult in an age-appropriate manner with the child regarding the permanency plan.

- For certain reviews or hearings regarding foster care placement of a child, custody of a child with a relative other than a parent, or adoption of a child, specifies that the foster caregiver, relative, or prospective adoptive parent has the right to (rather than may) present evidence.

- Declares an emergency.

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Missing child reports and investigations

Background

Existing law provides that, when a law enforcement agency in Ohio that has jurisdiction in the matter is informed that a "minor" is or may be a "missing child" and that the person providing the "information" wishes to file a missing child report, the agency must take that report (see "***Definitions regarding missing child provisions***," below, for definitions of the terms in quotation marks). Upon taking the report, the agency must take prompt action upon it, including, but not limited to, concerted efforts to locate the missing child. No law enforcement agency in Ohio may have a rule or policy that prohibits or discourages the filing of or the taking of action upon a missing child report, within a specified period following the discovery or formulation of a belief that a minor is or could be a missing child.

If a missing child report is made to a law enforcement agency in Ohio that has jurisdiction in the matter, the agency must gather readily available information about the missing child and integrate it into the National Crime Information Center computer within 12 hours following the making of the report. The agency must make reasonable efforts to acquire additional information about the missing child following the transmittal of the initially available information, promptly integrate any additional information acquired into such computer systems, and promptly notify the missing child's parents, parent who is the residential parent and legal custodian, guardian, or legal custodian, or any other person responsible for the care of the missing child (hereafter, collectively referred to as a child's caregiver), that it has so integrated the information. The child's caregiver must provide available information upon request, and may provide information voluntarily, to the law enforcement agency during the information gathering process.

When a missing child has not been located within 30 days after the date on which the missing child report pertaining to the child was filed with a law enforcement agency, that agency must request the missing child's caregiver to provide written consent for the agency to contact the missing child's dentist and request the missing child's dental records. Upon receipt of such written consent, the dentist must release a copy of the missing child's dental records to the law enforcement agency. The law enforcement agency then must integrate information in the records into the National Crime Information Center computer in order to compare the records to those of unidentified deceased persons.

A missing child's caregiver immediately must notify the law enforcement agency with which the caregiver filed the missing child report whenever the child has returned to the caregiver's home or the caregiver's care, custody, and control, has been released if the missing child was the victim of an offense listed in clause (2) under the definition of "missing children" set forth below, or otherwise has been located. Upon such notification or upon otherwise learning that a missing child has returned to the home of, or to the care, custody, and control of the missing child's caregiver, has been released if the missing child was the victim of an offense listed in clause (2) under the definition of "missing children," or otherwise has been located, the law enforcement agency involved promptly must integrate the fact that the minor no longer is a missing child into the National Crime Information Center computer. (R.C. 2901.30.)

See paragraphs (1) to (3) under "***Related existing law***," below, for other procedures related to investigations of missing children's reports.

Marking student records

Operation of the bill. The bill enacts provisions regarding the marking of a child's school records to assist a law enforcement agency that takes a missing child

report in its efforts to locate the child. Specifically, the bill allows (but does not require) the law enforcement agency that takes a missing child report to notify the public or nonpublic school in which the missing child is or was most recently enrolled, as ascertained by the agency that the child is the subject of a missing child report and that the child's school records are to be marked.

If a notification is made as described in the preceding paragraph, the bill requires the person in charge of admission at the school to mark the pupil's records so that whenever a copy of or information regarding the records is requested, any school official responding to the request is alerted that the records are those of a missing child. In addition, when a request for copies or information regarding a pupil's records that have been so marked is received, the person in charge of admission must immediately report the request to the law enforcement agency that notified the school that the pupil is a missing child. When forwarding a copy of or information from the pupil's records in response to a request, the person in charge of admission must do so in such a way that the receiving district or school would be unable to discern that the student's records are marked. At the same time, the person in charge of admission must retain the mark in the records until notified that the student is no longer a missing child.

Finally, the person in charge of admission must remove the mark from the student's record in such a way that if the records were forwarded to another district or school the receiving district or school would be unable to tell that the records were ever marked. (R.C. 2901.30(D) and 3313.672(D).)

When a law enforcement agency that has received a missing child report from a child's caregiver receives notice from the caregiver that the missing child has returned to the home of, or to the care, custody, and control of the caregiver, has been released if the missing child was the victim of an offense listed in clause (2) under the definition of "missing children," or otherwise has been located, in addition to its duties specified under existing law, the agency involved promptly must inform any school that was notified under the bill's provisions described above that the minor no longer is a missing child (R.C. 2901.30(H)).

Related existing law. Under existing law not changed by the bill, each public or nonpublic school, within 24 hours of a student's first enrollment in the school, must request the student's official record from the student's former school (this provision does not apply regarding a child just released from the Department of Youth Services). The school must notify the appropriate law enforcement agency that the newly enrolled student may be a missing child if (1) the school does not receive the record within 14 days, (2) the school to which the request was made indicates that it does not have a record for that student, or (3) the student does not provide the school with a birth certificate or other legitimate proof of birthdate and birthplace. (R.C. 3313.672(A)(3).)

Other provisions of existing law that are not changed by the bill specify that (R.C. 2901.30):

(1) Upon the filing of a missing child report, the law enforcement agency involved promptly must make a reasonable attempt to notify other law enforcement agencies within its county and, if the agency has jurisdiction in a municipal corporation or township that borders another county, to notify the law enforcement agency for the municipal corporation or township in the other county with which it shares the border, that it has taken a missing child report and may be requesting assistance or cooperation in the case, and provide relevant information to the other law enforcement agencies. The agency may notify additional law enforcement agencies, or appropriate public children services agencies, about the case, request their assistance or cooperation in the case, and provide them with relevant information.

(2) Upon request from a law enforcement agency, a public children services agency must grant the law enforcement agency access to all information concerning a missing child that the public children services agency possesses that may be relevant to the law enforcement agency in investigating a missing child report concerning that child. The information obtained by the law enforcement agency may be used only to further the investigation to locate the missing child.

(3) Upon request, law enforcement agencies in Ohio must provide assistance to, and cooperate with, other law enforcement agencies in their investigation of missing child cases. The information in any missing child report made to a law enforcement agency must be made available, upon request, to law enforcement personnel of Ohio, other states, and the federal government when the law enforcement personnel indicate that the request is to aid in identifying or locating a missing child or the possible identification of a deceased minor who, upon discovery, cannot be identified. (R.C. 2901.30.)

Cooperation among law enforcement agencies

The bill enacts provisions that relate to the existing provisions requiring law enforcement agencies, upon request, to provide assistance to, and to cooperate with, other law enforcement agencies in their investigation of missing children cases. The bill specifies that the scope of this assistance and cooperation must be pursuant to any terms agreed upon by the law enforcement agencies, including terms regarding which services and equipment may be shared. It also specifies that: (1) the state's Political Subdivision Sovereign Immunity Law (R.C. Chapter 2744.), insofar as it applies to the operation of law enforcement agencies, applies to the cooperating political subdivisions and to the law enforcement agency employees when they are rendering services pursuant to the existing provision and the bill's provision outside the territory of the political subdivision by which they

are employed, (2) law enforcement agency employees rendering services outside the territory of the political subdivision in which they are employed pursuant to the existing provision and the bill's provision are entitled to participate in any indemnity fund established by their employer to the same extent as if they were rendering service within the territory of their employing political subdivision, and (3) those law enforcement agency employees also are entitled to all the rights and benefits of the state's Workers' Compensation Law (R.C. Chapter 4123.) to the same extent as if rendering services within the territory of their employing political subdivision.

Definitions regarding missing child provisions

Existing law defines the following terms for use in R.C. 2901.30 to 2901.32, including the missing child provisions described above in "***Background***" (R.C. 2901.30(A)):

"***Information***" means information that can be integrated into the computer system and that relates to the physical or mental description of a minor including, but not limited to, height, weight, color of hair and eyes, use of eyeglasses or contact lenses, skin coloring, physical or mental handicaps, special medical conditions or needs, abnormalities, problems, scars and marks, and distinguishing characteristics, and other information that could assist in identifying a minor including, but not limited to, full name and nickname, date and place of birth, age, names and addresses of parents and other relatives, fingerprints, dental records, photographs, social security number, driver's license number, credit card numbers, bank account numbers, and clothing.

"***Minor***" means a person under 18 years of age.

"***Missing children***" or "***missing child***" means either of the following: (1) a minor who has run away from or who otherwise is missing from the home of, or the care, custody, and control of, the minor's parents, parent who is the residential parent and legal custodian, guardian, legal custodian, or other person having responsibility for the care of the minor, or (2) a minor who is missing and about whom there is reason to believe the minor could be the victim of a violation of kidnapping, abduction, unlawful restraint, or interference with custody or the former offense of child stealing.

Additional court cost of $10 for a moving violation to provide funds for certain costs of drug task forces and certain costs of alcohol monitoring provided to indigent offenders

Imposition of court cost and transmission to various funds

The bill requires the court in which any person is convicted of or pleads guilty to any "moving violation" (see below), and the juvenile court in which a child is found to be a juvenile traffic offender for an act that is a moving violation, to impose an additional court cost of $10 upon the offender or juvenile traffic offender. The bill prohibits the court or juvenile court from waiving the payment of the $10 unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender. (R.C. 2949.092 and 2949.094(A) and (B).)

The bill requires the clerk of the court to transmit the additional $10 court costs as follows: (1) the clerk must transmit 35% of all additional court costs so collected during a month on the first business day of the following month to the "Division of Criminal Justice Services" (see below), and the Division must deposit the money so transmitted into the Drug Law Enforcement Fund created by the bill (see "***Drug Law Enforcement Fund***," below), (2) the clerk must transmit 15% of all additional court costs so collected during a month on the first business day of the following month to the state treasury to be credited to the existing Indigent Drivers Alcohol Treatment Fund and to be distributed by the Department of Alcohol and Drug Addiction Services in accordance with provisions of the bill (see "***Indigent Drivers Alcohol Treatment Fund***," below), and (3) the clerk must transmit 50% of all additional court costs so collected during a month on the first business day of the following month to the state treasury to be credited to the Indigent Defense Support Fund created by the bill (see "***Indigent Defense Support Fund***," below).

The bill also requires that, whenever a person is charged with any offense that is a "moving violation" (see below) and posts bail, the court must add to the amount of the bail the $10 required to be paid pursuant to the requirement described in the second preceding paragraph. The clerk of the court must retain the $10 until the person is convicted, pleads guilty, forfeits bail, is found not guilty, or has the charges dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk must transmit $3.50 out of the $10 to the "Division of Criminal Justice Services" (see below), and the Division must deposit the money so transmitted into the Drug Law Enforcement Fund created by the bill, the clerk must transmit $1.50 out of the $10 to the state treasury to be credited to the existing Indigent Drivers Alcohol Treatment Fund and to be distributed by the Department of Alcohol and Drug Addiction Services in accordance with provisions of the bill, and the clerk must transmit $5 out of the $10 to the state

treasury to be credited to the Indigent Defense Support Fund created by the bill. If the person is found not guilty or the charges are dismissed, the clerk must return the $10 to the person.

The bill specifies that no person may be placed or held in a "detention facility" (see below) for failing to pay the $10 court cost or bail required by the bill. (R.C. 2949.094(A) to (D).)

As used in the bill's provisions described above (R.C. 2949.094(E)):

(1) "Bail" means cash, a check, a money order, a credit card, or any other form of money that is posted by or for an offender pursuant to R.C. 2937.22 to 2937.46, Criminal Rule 46, or Traffic Rule 4 to prevent the offender from being placed or held in a "detention facility" (see (3), below; by reference to existing R.C. 2949.093, which is not in the bill).

(2) "Moving violation" means any violation of any statute or ordinance, other than R.C. 4513.263 or an ordinance that is substantially equivalent to that section, that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles. "Moving violation" does not include the violation of any statute or ordinance that regulates pedestrians or the parking of vehicles (by reference to existing R.C. 2949.093, which is not in the bill).

(3) "Detention facility" means any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States (by reference to existing R.C. 2921.01, which is not in the bill).

(4) "Division of Criminal Justice Services" means the Division of Criminal Justice Services of the Department of Public Safety, created by R.C. 5502.62.

Drug Law Enforcement Fund

The bill establishes in the state treasury the Drug Law Enforcement Fund and specifies that $3.50 out of each $10 court cost imposed pursuant to the bill for a moving violation must be credited to the Fund. Money in the Fund must be in an interest-bearing account, and all interest earned must be credited to the Fund. Money in the Fund may be used only in accordance with the provisions described below to award grants to counties, municipal corporations, townships, township police districts, and joint township police districts to defray the expenses that a "drug task force" organized in the county, or in the county in which the municipal corporation, township, or district is located, incurs in performing its functions related to the enforcement of the state's drug laws and other state laws related to

illegal drug activity. As used in this provision and the related provisions described below, "drug task force" means a drug task force organized in any county by the sheriff of the county, the prosecuting attorney of the county, the chief of police of the organized police department of any municipal corporation or township in the county, and the chief of police of the police force of any township police district or joint township police district in the county to perform functions related to the enforcement of state drug laws and other state laws related to illegal drug activity.

The bill requires the Division of Criminal Justice Services of the Department of Public Safety to administer all money deposited into the Fund and, by rule adopted under the Administrative Procedure Act, to establish procedures for a county, municipal corporation, township, township police district, or joint township police district to apply for money from the Fund to defray the expenses that a drug task force incurs in performing its functions, procedures and criteria for determining eligibility of applicants to be provided money from the Fund, and procedures and criteria for determining the amount of money to be provided out of the Fund to eligible applicants.

The application procedures and criteria must include, but are not limited to, a provision requiring a county, municipal corporation, township, township police district, or joint township police district that applies for money from the Fund to specify in its application the amount of money desired from the Fund, provided that the cumulative amount requested in all applications submitted for any single drug task force may not exceed more than $250,000 in any calendar year for that task force.

The procedures and criteria for determining eligibility and for determining the amount of money to be provided out of the Fund to eligible applicants must include, but are not limited to, all of the following:

(1) Provisions requiring that a drug task force that applies for money from the Fund must provide evidence that the drug task force will receive a local funding match of at least 25% of the task force's projected operating costs in the period of time covered by the grant;

(2) Provisions requiring that money from the Fund be allocated and provided to drug task forces that apply for money from the Fund in accordance with the following priorities:

(a) Drug task forces that apply, that are in existence on the date of the application, that are determined to be eligible applicants, and to which either of the following applies must be given first priority to be provided money from the Fund: (i) drug task forces that received funding through the Division of Criminal Justice Services in calendar year 2007, and (ii) drug task forces in a county that has a population that exceeds 750,000.

(b) If any moneys remain in the Fund after all drug task forces that apply, that are in existence on the date of the application, that are determined to be eligible applicants, and that satisfy the criteria set forth in clause (i) or (ii) of the preceding paragraph are provided money from the Fund as described in the preceding paragraph, the following categories of drug task forces that apply and that are determined to be eligible applicants must be given priority to be provided money from the Fund in the order in which they apply for money from the Fund: (i) drug task forces that are not in existence on the date of the application, and (ii) drug task forces that are in existence on the date of the application but that do not satisfy the criteria set forth in clause (i) or (ii) of the preceding paragraph.

(3) A provision specifying that the cumulative amount provided to any single drug task force may not exceed more than $250,000 in any calendar year. (R.C. 5502.68.)

Indigent Drivers Alcohol Treatment Fund

Existing law. Existing law establishes the Indigent Drivers Alcohol Treatment Fund, which contains $37.50 out of every $425 license reinstatement fee paid by a person under R.C. 4511.191(F) to reinstate the person's driver's or commercial driver's license or permit at the end of a suspension period. Generally, the Department of Alcohol and Drug Addiction Services (ODADAS) distributes moneys in the Fund to the county indigent drivers alcohol treatment funds, the county juvenile indigent drivers alcohol treatment funds, and the municipal indigent drivers alcohol treatment funds that counties and municipal corporations must establish, and the funds may be used only to pay the cost of an alcohol and drug addiction treatment program attended by an offender or juvenile traffic offender who is ordered by a judge to attend such a program and who is determined by the judge not to have the means to pay for program attendance or for alcohol and drug abuse assessment and treatment or electronic continuous alcohol monitoring devices. In addition, a judge may use moneys in the county fund, county juvenile fund, or municipal fund to pay for the cost of the continued use of an "electronic continuous alcohol monitoring device." Moneys in the Fund that are not distributed to a county fund, a county juvenile fund, or a municipal fund because the Director of ODADAS does not have the information necessary to identify the county or municipal corporation where the offender or juvenile offender was arrested may be transferred by the Director of Budget and Management to the Statewide Treatment and Prevention Fund created by R.C. 4301.30, upon certification of the amount by the Director of ODADAS. (R.C. 4511.191(F)(2)(c).)

Existing law also requires each county to establish an indigent drivers alcohol treatment fund, requires each county to establish a juvenile indigent drivers alcohol treatment fund, and requires each municipal corporation in which

there is a municipal court to establish an indigent drivers alcohol treatment fund. All of those funds receive revenue that the General Assembly appropriates for transfer to such a fund, portions of license reinstatement fees, and portions of fines that are specified for deposit into such a fund by R.C. 4511.193. Additionally, portions of fines paid for a violation of R.C. 4511.19 or of any prohibition contained in R.C. Chapter 4510. must be deposited into the appropriate fund in accordance with the applicable provision. (R.C. 4511.191(H)(1).)

That portion of the license reinstatement fee that is credited to the Indigent Drivers Alcohol Treatment Fund as described in the second preceding paragraph must be deposited into a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund as follows: (1) regarding a license or permit suspension imposed under R.C. 4511.191, if the fee is paid by a person charged in a county court with the applicable violation, the portion must be deposited into the county fund under the control of that court, if the fee is paid by a person charged in a juvenile court with the applicable violation, the portion must be deposited into the county juvenile fund established in the county served by the court, and if the fee is paid by a person charged in a municipal court with the applicable violation, the portion must be deposited into the municipal fund under the control of that court, and (2) regarding a suspension imposed under R.C. 4511.19 for a conviction of a violation of that section or under R.C. 4510.07 for a violation of a municipal OVI ordinance, if the fee is paid by a person whose license or permit was suspended by a county court, the portion must be deposited into the county fund under the control of that court, and, if the fee is paid by a person whose license or permit was suspended by a municipal court, the portion must be deposited into the municipal fund under the control of that court (R.C. 4511.191(H)(2)).

Expenditures from an indigent drivers alcohol treatment fund may be made only upon the order of a county, juvenile, or municipal court judge and only for payment of the cost of the attendance at an alcohol and drug addiction treatment program of a person who is convicted of, or found to be a juvenile traffic offender by reason of, a violation of R.C. 4511.19(A) or a substantially similar municipal ordinance, who is ordered by the court to attend the program, and who is determined by the court to be unable to pay the cost of attendance at the program or, in certain cases, for alcohol and drug abuse assessment and treatment or electronic continuous alcohol monitoring devices. The alcohol and drug addiction services board or the board of alcohol, drug addiction, and mental health services serving the alcohol, drug addiction, and mental health service district in which the court is located administers the indigent drivers alcohol treatment program of the court. When a court orders an offender or juvenile traffic offender to attend an alcohol and drug addiction treatment program, the board must determine which program is suitable to meet the needs of the offender or juvenile traffic offender, and when a suitable program is located and space is available, the offender or

juvenile traffic offender must attend the program designated by the board. A reasonable amount not to exceed 5% of the amounts credited to and deposited into the county fund, the county juvenile fund, or the municipal fund serving every court whose program is administered by that board must be paid to the board to cover the costs it incurs in administering those indigent drivers alcohol treatment programs. In addition, a county, juvenile, or municipal court judge may use moneys in the county fund, county juvenile fund, or municipal fund to pay for the continued use of an "electronic continuous alcohol monitoring device" by an offender or juvenile traffic offender, in conjunction with a treatment program approved by ODADAS, when such use is determined clinically necessary by the treatment program and the court determines that the offender or juvenile traffic offender is unable to pay all or part of the daily monitoring of the device. (R.C. 4511.191(H)(3).)

If a county, juvenile, or municipal court determines, in consultation with the alcohol and drug addiction services board or the board of alcohol, drug addiction, and mental health services serving the alcohol, drug addiction, and mental health district in which the court is located, that the funds in the county indigent drivers alcohol treatment fund, the county juvenile indigent drivers alcohol treatment fund, or the municipal indigent drivers alcohol treatment fund under the control of the court are more than sufficient to satisfy the purpose for which the fund was established, the court may declare a surplus in the fund. If the court declares a surplus, the court may expend the amount of the surplus in the fund for: (1) alcohol and drug abuse assessment and treatment of persons who are charged in the court with committing a criminal offense or with being a delinquent child or juvenile traffic offender and in relation to whom the court determines both that substance abuse was a contributing factor leading to the criminal or delinquent activity or the juvenile traffic offense with which the person is charged and that the person is unable to pay the cost of the assessment and treatment for which the surplus money will be used, or (2) all or part of the cost of purchasing "electronic continuous alcohol monitoring devices" to be used in conjunction with the provisions described in the preceding paragraph. (R.C. 4511.191(H)(4).)

Operation of the bill. The bill revises the law regarding the Indigent Drivers Alcohol Treatment Fund and the related county, county juvenile, and municipal funds in several ways:

(1) The bill requires that $1.50 out of every $10 additional court cost that is assessed under the bill must be transmitted to the state treasury to be credited to the Indigent Drivers Alcohol Treatment Fund and specifies that that portion of the additional court costs must be deposited into a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund as follows: (a) if the cost is paid by a person who was charged in a county court with the violation that resulted in

the imposition of the court costs, the portion must be deposited into the county fund under the control of that court, (b) if the cost is paid by a person who was charged in a juvenile court with the violation that resulted in the imposition of the court costs, the portion must be deposited into the county juvenile fund established in the county served by the court, and (c) if the cost is paid by a person who was charged in a municipal court with the violation that resulted in the imposition of the court costs, the portion must be deposited into the municipal fund under the control of that court (R.C. 4511.191(H)(1) and (2)).

(2) The bill modifies and expands the existing provisions regarding the use of moneys in the fund for alcohol monitoring devices. In that regard, under the bill (R.C. 4511.191(H)(3)):

(a) If the source of the moneys was an appropriation of the General Assembly, a portion of a license reinstatement fee, a portion of a fine that was specified for deposit into the fund by R.C. 4511.193, or a portion of a fine that was paid for a violation of R.C. 4511.19 or of a provision contained in R.C. Chapter 4510. that was required to be deposited into the fund, the moneys also may be used to pay for the continued use of an "alcohol monitoring device" (see paragraph (4), below; this reference replaces a reference under existing law to an "electronic continuous alcohol monitoring device," which is not defined) by an offender or juvenile traffic offender, in conjunction with a treatment program approved by ODADAS, when such use is determined clinically necessary by the treatment program and when the court determines that the offender or juvenile traffic offender is unable to pay all or part of the daily monitoring or cost of the device;

(b) If the source of the moneys was a portion of an additional court cost imposed for a moving violation under the bill's provisions described above in "***Imposition of court cost and transmission to various funds***," the moneys also may be used to pay for the continued use of an "alcohol monitoring device" by an offender or juvenile traffic offender when the court determines that the offender or juvenile traffic offender is unable to pay all or part of the daily monitoring or cost of the device. The moneys may be used for a device as described in this paragraph if the use of the device is in conjunction with a treatment program approved by ODADAS, when the use of the device is determined clinically necessary by the treatment program, but the use of a device is not required to be in conjunction with a treatment program approved by ODADAS in order for the moneys to be used for the device as described in this paragraph.

(3) In the existing provision that specifies that one of the authorized uses of the surplus in an indigent drivers alcohol treatment fund is for all or part of the cost of purchasing "electronic continuous alcohol monitoring devices" to be used in conjunction with the provisions described in the preceding paragraph, the bill replaces the reference to "electronic continuous alcohol monitoring devices" with

a reference to "alcohol monitoring devices" (see paragraph (4), below; R.C. 4511.191(H)(3)).

(4) The bill defines "alcohol monitoring device," as used in R.C. 4511.191, including the bill's provisions described above, as any device that provides for "continuous alcohol monitoring" (see "***Application of R.C. 2929.01 definition of "continuous alcohol monitoring" to R.C. 4511.181 to 4511.197***," under "***Miscellaneous--Motor Vehicle Law***," below), any "ignition interlock device" (see below), any "immobilizing or disabling device" (see below) other than an ignition interlock device that is constantly available to monitor the concentration of alcohol in a person's system, or any other device that provides for the automatic testing and periodic reporting of alcohol consumption by a person and that a court orders a person to use as a sanction imposed as a result of the person's conviction of or plea of guilty to an offense (R.C. 4511.191(A)(1)). Under existing R.C. 4510.01, which is not in the bill, as used in R.C. Title XLV, including this definition: (a) "ignition interlock device" means a device approved by the Director of Public Safety that connects a breath analyzer to a motor vehicle's ignition system, that is constantly available to monitor the concentration by weight of alcohol in the breath of any person attempting to start that vehicle by using its ignition system, and that deters starting the vehicle by use of its ignition system unless the person attempting to start the vehicle provides an appropriate breath sample for the device and the device determines that the concentration by weight of alcohol in the person's breath is below a preset level, and (b) "immobilizing or disabling device" means a device approved by the Director of Public Safety that may be ordered by a court to be used by an offender as a condition of limited driving privileges, including an ignition interlock device and any "prototype device" that is used according to protocols designed to ensure efficient and effective monitoring of limited driving privileges granted by a court to an offender (a "prototype device" is any testing device to monitor limited driving privileges that has not yet been approved or disapproved by the Director of Public Safety).

Indigent Defense Support Fund

The bill establishes in the state treasury the Indigent Defense Support Fund, consisting of money paid into the Fund out of the additional $10 court cost imposed for moving violations (i.e., $5 out of every $10 additional court cost imposed). The bill requires the State Public Defender to use the money in the Fund for the purpose of reimbursing county governments for expenses incurred pursuant to R.C. 120.18, 120.28, and 120.33 (see **COMMENT**). Disbursements from the Fund to county governments must be made in each state fiscal year and must be allocated proportionately so that each county receives an equal percentage of its total cost for operating its county public defender system, its joint county public defender system, or its county appointed counsel system. (R.C. 120.08.)

Miscellaneous--Motor Vehicle Law

Application of R.C. 2929.01 definition of "continuous alcohol monitoring" to R.C. 4511.181 to 4511.197

Existing R.C. 4511.19(G) refers to "continuous alcohol monitoring" as a sanction for a person who is being sentenced for a violation of R.C. 4511.19(A), but no definition of that term applies to that section. The bill specifies that, as used in R.C. 4511.181 to 4511.197, "continuous alcohol monitoring" means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored. (R.C. 4511.181(D), by reference to existing R.C. 2929.01, which is not in the bill.)

Application of R.C. 4511.191 definition of "physical control"

The bill clarifies that the definition of "physical control" that is set forth in existing R.C. 4511.191(A)(1) applies throughout R.C. 4511.191 (R.C. 4511.191(A)(1)).

Review hearings that pertain to permanency plans for children

Existing law

Existing law provides that a juvenile court that issues a dispositional order pursuant to R.C. 2151.353, 2151.414, or 2151.415 regarding an abused, neglected, or dependent child must hold a review hearing one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care to review the case plan prepared pursuant to R.C. 2151.412 and the child's placement or custody arrangement, to approve or review the permanency plan for the child, and to make changes to the case plan and placement or custody arrangement consistent with the permanency plan. The court generally must hold a similar review hearing no later than every 12 months after the initial review hearing until the child is adopted, returned to the parents, or the court otherwise terminates the child's placement or custody arrangement.

Existing law also provides that if, within 14 days after a written summary of an administrative review is filed with the court, the court does not approve the proposed change to the case plan or a party or the guardian *ad litem* requests a review hearing, the court generally must hold a review hearing in the same manner that it holds review hearings as described in the preceding paragraph. Additionally, if a court determines that a public children services agency or private child placing agency is not required to make reasonable efforts to prevent the removal of a child from the child's home, eliminate the continued removal of a child from the child's home, and return the child to the child's home, and the court

does not return the child to the child's home pursuant to that section, the court must hold a review hearing to approve the permanency plan for the child and, if appropriate, to make changes to the child's case plan and the child's placement or custody arrangement consistent with the permanency plan.

The court must give notice of the review hearings described above to every interested party, including, but not limited to, the appropriate agency employees who are responsible for the child's care and planning, the child's parents, any person who had guardianship or legal custody of the child prior to the custody order, the child's guardian *ad litem*, and the child. The court must summon every interested party to appear at the review hearing and give them an opportunity to testify and to present other evidence with respect to the child's custody arrangement. The court must require any interested party to testify or present other evidence when necessary to a proper determination of the issues presented at the review hearing.

Existing law authorizes the court to appoint a referee or a citizens review board to conduct the review hearings, subject to the review and approval by the court of any determinations made by the referee or citizens review board. If the court appoints a citizens review board to conduct the review hearings, the board consists of one member representing the general public and four members who are trained or experienced in the care or placement of children and have training or experience in the fields of medicine, psychology, social work, education, or any related field. (R.C. 2151.417(C) to (F) and (H).)

Operation of the bill

The bill provides that, in any review hearing held under the provisions of existing law described above that pertains to a permanency plan for a child who will not be returned to the parent, the court must consider in-state and out-of-state placement options, and the court must determine whether the in-state or the out-of-state placement continues to be appropriate and in the best interests of the child. In any review hearing that pertains to a permanency plan for a child, the court or a citizens board appointed by the court as described above must consult in an age-appropriate manner with the child regarding the proposed permanency plan for the child. (R.C. 2151.417(F).)

Presentation of evidence at hearing or review regarding foster care or relative placement or prospective adoption of a child

Existing law

Existing law provides that, if a child has been placed in a certified foster home or is in the custody of a relative of the child, other than a parent, a court, prior to conducting a hearing under R.C. 2151.412(E)(2) or (3) or R.C. 2151.28,

2151.33, 2151.35, 2151.414, 2151.415, 2151.416, or 2151.417 with respect to the child, must notify the foster caregiver or relative of the date, time, and place of the hearing and that, at the hearing, the foster caregiver or relative may present evidence.

It also provides that, if a public children services agency or private child placing agency has permanent custody of a child and a petition to adopt the child has been filed, the agency, prior to conducting a review under R.C. 2151.416, or a court, prior to conducting a hearing under R.C. 2151.412(E)(2) or (3) or R.C. 2151.416 or 2151.417, must notify the prospective adoptive parent of the date, time, and place of the review or hearing and that, at the review or hearing, the foster caregiver or relative may present evidence. (R.C. 2151.424.)

Operation of the bill

The bill modifies the provisions described above to specify that, at the hearing or reviews described in those provisions, the foster caregiver or relative, or the prospective adoptive parent, whichever is applicable, *has the right* to present evidence (replacing the statement that the foster caregiver or relative, or the prospective adoptive parent, whichever is applicable, *may* present evidence) (R.C. 2151.424).

COMMENT

Existing R.C. 120.18, not in the bill, provides as follows:

> (A) The county public defender commission's report to the board of county commissioners shall be audited by the county auditor. The board of county commissioners, after review and approval of the audited report, may then certify it to the state public defender for reimbursement. If a request for the reimbursement of any operating expenditure incurred by a county public defender office is not received by the state public defender within sixty days after the end of the calendar month in which the expenditure is incurred, the state public defender shall not pay the requested reimbursement, unless the county has requested, and the state public defender has granted, an extension of the sixty-day time limit. Each request for reimbursement shall include a certification by the county public defender that the persons provided representation by the county public defender's office during the period covered by the report were indigent

and, for each person provided representation during that period, a financial disclosure form completed by the person on a form prescribed by the state public defender. The state public defender shall also review the report and, in accordance with the standards, guidelines, and maximums established pursuant to divisions (B)(7) and (8) of section 120.04 of the Revised Code, prepare a voucher for fifty per cent of the total cost of each county public defender's office for the period of time covered by the certified report and a voucher for fifty per cent of the costs and expenses that are reimbursable under section 120.35 of the Revised Code, if any, or, if the amount of money appropriated by the general assembly to reimburse counties for the operation of county public defender offices, joint county public defender offices, and county appointed counsel systems is not sufficient to pay fifty per cent of the total cost of all of the offices and systems, for the lesser amount required by section 120.34 of the Revised Code. For the purposes of this section, "total cost" means total expenses minus costs and expenses reimbursable under section 120.35 of the Revised Code and any funds received by the county public defender commission pursuant to a contract, except a contract entered into with a municipal corporation pursuant to division (E) of section 120.14 of the Revised Code, gift, or grant.

(B) If the county public defender fails to maintain the standards for the conduct of the office established by rules of the Ohio public defender commission pursuant to divisions (B) and (C) of section 120.03 or the standards established by the state public defender pursuant to division (B)(7) of section 120.04 of the Revised Code, the Ohio public defender commission shall notify the county public defender commission and the board of county commissioners of the county that the county public defender has failed to comply with its rules or the standards of the state public defender. Unless the county public defender commission or the county public defender corrects the conduct of the county public defender's office to comply with the rules and standards within ninety days after the date of the notice, the state public defender

may deny payment of all or part of the county's reimbursement from the state provided for in division (A) of this section.

Existing R.C. 120.28, not in the bill, contains provisions similar to those of existing R.C. 120.18, as set forth above, except that the provisions of R.C. 120.18 pertain to joint county public defender offices instead of county public defender offices.

Existing R.C. 120.33, not in the bill, provides as follows:

(A) In lieu of using a county public defender or joint county public defender to represent indigent persons in the proceedings set forth in division (A) of section 120.16 of the Revised Code, the board of county commissioners of any county may adopt a resolution to pay counsel who are either personally selected by the indigent person or appointed by the court. The resolution shall include those provisions the board of county commissioners considers necessary to provide effective representation of indigent persons in any proceeding for which counsel is provided under this section. The resolution shall include provisions for contracts with any municipal corporation under which the municipal corporation shall reimburse the county for counsel appointed to represent indigent persons charged with violations of the ordinances of the municipal corporation.

(1) In a county that adopts a resolution to pay counsel, an indigent person shall have the right to do either of the following:

(a) To select the person's own personal counsel to represent the person in any proceeding included within the provisions of the resolution;

(b) To request the court to appoint counsel to represent the person in such a proceeding.

(2) The court having jurisdiction over the proceeding in a county that adopts a resolution to pay counsel shall, after determining that the person is indigent and entitled to legal representation under this section, do either of the following:

(a) By signed journal entry recorded on its docket, enter the name of the lawyer selected by the indigent person as counsel of record;

(b) Appoint counsel for the indigent person if the person has requested the court to appoint counsel and, by signed journal entry recorded on its dockets, enter the name of the lawyer appointed for the indigent person as counsel of record.

(3) The board of county commissioners shall establish a schedule of fees by case or on an hourly basis to be paid to counsel for legal services provided pursuant to a resolution adopted under this section. Prior to establishing the schedule, the board of county commissioners shall request the bar association or associations of the county to submit a proposed schedule. The schedule submitted shall be subject to the review, amendment, and approval of the board of county commissioners.

(4) Counsel selected by the indigent person or appointed by the court at the request of an indigent person in a county that adopts a resolution to pay counsel, except for counsel appointed to represent a person charged with any violation of an ordinance of a municipal corporation that has not contracted with the county commissioners for the payment of appointed counsel, shall be paid by the county and shall receive the compensation and expenses the court approves. Each request for payment shall be accompanied by a financial disclosure form and an affidavit of indigency that are completed by the indigent person on forms prescribed by the state public defender. Compensation and expenses shall not exceed the amounts fixed by the board of county commissioners in the schedule adopted pursuant to division (A)(3) of this section. No court shall approve compensation and expenses that exceed the amount fixed pursuant to division (A)(3) of this section.

The fees and expenses approved by the court shall not be taxed as part of the costs and shall be paid by the county. However, if the person represented has,

or may reasonably be expected to have, the means to meet some part of the cost of the services rendered to the person, the person shall pay the county an amount that the person reasonably can be expected to pay. Pursuant to section 120.04 of the Revised Code, the county shall pay to the state public defender a percentage of the payment received from the person in an amount proportionate to the percentage of the costs of the person's case that were paid to the county by the state public defender pursuant to this section. The money paid to the state public defender shall be credited to the client payment fund created pursuant to division (B)(5) of section 120.04 of the Revised Code.

The county auditor shall draw a warrant on the county treasurer for the payment of counsel in the amount fixed by the court, plus the expenses the court fixes and certifies to the auditor. The county auditor shall report periodically, but not less than annually, to the board of county commissioners and to the state public defender the amounts paid out pursuant to the approval of the court. The board of county commissioners, after review and approval of the auditor's report, or the county auditor, with permission from and notice to the board of county commissioners, may then certify it to the state public defender for reimbursement. The state public defender may pay a requested reimbursement only if the request for reimbursement is accompanied by a financial disclosure form and an affidavit of indigency completed by the indigent person on forms prescribed by the state public defender or if the court certifies by electronic signature as prescribed by the state public defender that a financial disclosure form and affidavit of indigency have been completed by the indigent person and are available for inspection. If a request for the reimbursement of the cost of counsel in any case is not received by the state public defender within ninety days after the end of the calendar month in which the case is finally disposed of by the court, unless the county has requested and the state public defender has granted an extension of the ninety-day limit, the state public defender shall not pay the requested reimbursement. The state public defender shall also

review the report and, in accordance with the standards, guidelines, and maximums established pursuant to divisions (B)(7) and (8) of section 120.04 of the Revised Code, prepare a voucher for fifty per cent of the total cost of each county appointed counsel system in the period of time covered by the certified report and a voucher for fifty per cent of the costs and expenses that are reimbursable under section 120.35 of the Revised Code, if any, or, if the amount of money appropriated by the general assembly to reimburse counties for the operation of county public defender offices, joint county public defender offices, and county appointed counsel systems is not sufficient to pay fifty per cent of the total cost of all of the offices and systems other than costs and expenses that are reimbursable under section 120.35 of the Revised Code, for the lesser amount required by section 120.34 of the Revised Code.

(5) If any county appointed counsel system fails to maintain the standards for the conduct of the system established by the rules of the Ohio public defender commission pursuant to divisions (B) and (C) of section 120.03 or the standards established by the state public defender pursuant to division (B)(7) of section 120.04 of the Revised Code, the Ohio public defender commission shall notify the board of county commissioners of the county that the county appointed counsel system has failed to comply with its rules or the standards of the state public defender. Unless the board of county commissioners corrects the conduct of its appointed counsel system to comply with the rules and standards within ninety days after the date of the notice, the state public defender may deny all or part of the county's reimbursement from the state provided for in division (A)(4) of this section.

(B) In lieu of using a county public defender or joint county public defender to represent indigent persons in the proceedings set forth in division (A) of section 120.16 of the Revised Code, and in lieu of adopting the resolution and following the procedure described in division (A) of this section, the board of county commissioners of any county may contract

with the state public defender for the state public defender's legal representation of indigent persons. A contract entered into pursuant to this division may provide for payment for the services provided on a per case, hourly, or fixed contract basis.

(C) If a court appoints an attorney pursuant to this section to represent a petitioner in a postconviction relief proceeding under section 2953.21 of the Revised Code, the petitioner has received a sentence of death, and the proceeding relates to that sentence, the attorney who represents the petitioner in the proceeding pursuant to the appointment shall be certified under Rule 20 of the Rules of Superintendence for the Courts of Ohio to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed.

HISTORY

ACTION	DATE
Introduced	04-24-07
Reported, H. Education	06-20-07
Passed House (95-0)	09-11-07
Reported, S. Judiciary - Criminal Justice	---

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