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## ***Bill Analysis***

*Legislative Service Commission*

### **Am. Sub. H.B. 214**

127th General Assembly

(As Reported by S. Health, Human Services, & Aging)

**Reps. Wagner and Combs, Seitz, J. McGregor, Stebelton, Brown, Aslanides, Batchelder, Blessing, Collier, Flowers, Goodwin, J. Hagan, Letson, Raussen, Wachtmann**

**Sen. Seitz**

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### **BILL SUMMARY**

- Increases from 24 to 36 hours the amount of preplacement training for foster caregivers providing family foster homes.
- Allows a foster caregiver to fulfill up to 20% of the required amount of continuing training by teaching training classes or mentoring other foster caregivers.
- Alters the timing and form of reimbursement to foster caregivers for completing preplacement and continuing training.
- Removes, generally, the names, documentation, and other identifying information regarding a foster caregiver or prospective foster caregiver from the definition of "public record."
- Makes specified foster caregiver identifying information a public record if the caregiver has been convicted of, pleaded guilty to, or indicted or otherwise charged with certain offenses.
- Specifies that nonidentifying foster care statistics, including the number of foster caregivers and foster care certificate revocations, are public records.
- Establishes a procedure by which two county boards of mental retardation and developmental disabilities must reach an agreement regarding how to provide services to a foster child who moves from one county to another.

- Requires the Ohio Department of Job and Family Services (ODJFS) to partner with the Ohio Department of Mental Retardation and Developmental Disabilities to offer joint cross system briefings to better educate the professionals of both systems.
- Permits a juvenile judge to enter into an agreement with ODJFS for the purpose of reimbursing the court specified foster care related costs incurred on behalf of a child who has been determined to be at serious risk of removal from the home and for whom the court has undertaken a plan of reasonable efforts to prevent such removal.
- Requires the Director of ODJFS to appoint two current certified foster caregivers as additional members of the Ohio Child Welfare Training Program steering committee.
- Allows ODJFS to seek federal approval through the United States Department of Health and Human Services to include within funding under Title IV-E of the Social Security Act an additional category of foster care certification for placements in which the child has an existing relationship with the foster caregiver.
- Reenacts the Interstate Compact *on* the Placement of Children that was repealed by Am. Sub. S.B. 238 of the 126th General Assembly as a continuation of that interstate compact until the new Interstate Compact *for* the Placement of Children takes effect.

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## CONTENT AND OPERATION

### *Training of foster caregivers*

#### *Increase in amount of preplacement training*

Existing law requires foster caregivers to complete training prior to the placement of foster children in the home. The amount of training hours required depends upon whether the home is a family foster home or a specialized foster home.<sup>1</sup> Foster caregivers providing a family foster home must complete at least

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<sup>1</sup> A specialized foster home is a foster home that either provides specialized medical services designed to meet the needs of children with intensive health care needs or incorporates special rehabilitative services designed to treat the specific needs of children who have been emotionally or behaviorally disturbed, chemically dependent, mentally retarded, developmentally disabled, or who otherwise have exceptional needs. A family

24 hours of preplacement training, and those providing a specialized foster home must complete at least 36 hours.

The bill increases the minimum number of preplacement training hours required for a foster caregiver providing a family foster home from 24 hours to 36 hours. (R.C. 5103.031.)

### **Fulfillment of continuing training hours**

Existing law requires foster caregivers to complete a minimum number of continuing training hours to remain certified. A foster caregiver providing a family foster home must complete at least 40 hours of continuing training every two years, and a foster caregiver providing a specialized foster home must complete at least 60 hours of continuing training every two years. (R.C. 5103.032.) The public children services agency (PCSA), private child placing agency (PCPA), or private noncustodial agency (PNA) acting as a recommending agency for a foster caregiver must develop and implement a written needs assessment and continuing training plan for the foster caregiver, and the training classes must be approved by the Ohio Department of Job and Family Services (ODJFS). (R.C. 5103.035 and 5103.0316.)

The bill allows a foster caregiver to complete up to 20% of the foster caregiver's continuing training hours by teaching one or more training classes for other foster caregivers or by providing mentorship services to other foster caregivers. The PCSA, PCPA, or PNA acting as a recommending agency for a foster caregiver must include the number of hours that a foster caregiver is permitted to complete in this fashion on the foster caregiver's needs assessment and continuing training plan. The bill also requires ODJFS to adopt rules under R.C. Chapter 119. (the Administrative Procedure Act) as necessary for the qualification of foster caregivers to provide training or mentorship services to other foster caregivers. (R.C. 5103.032 and 5103.035.)

### **Reimbursement for training**

Existing law requires a PCSA, PCPA, or PNA acting as a recommending agency for a foster caregiver to pay each foster caregiver a stipend to reimburse the foster caregiver for attending a preplacement or continuing training program. The bill changes the form of payment for attending preplacement training programs from the stipend rate to a lump sum payment. The stipend rate remains for the completion of continuing training. (R.C. 5103.0312.)

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foster home is any foster home that does not fall under the definition of a specialized foster home. (R.C. 5103.02.)

Existing law also requires ODJFS to compensate PCPAs and PNAs for the cost of procuring or operating preplacement and continuing training programs for foster caregivers. These agencies must be compensated for each hour of training provided or received. The bill limits agency compensation to an allowance to reimburse the agency for the minimum amount of preplacement and continuing training required; an agency may not receive additional reimbursement from ODJFS for the provision of additional training. (R.C. 5103.0313.)

Currently, individuals who attend a preplacement training program receive their reimbursement when they receive a foster home certificate from ODJFS. Under the bill, ODJFS must adopt rules regarding the release of lump sum stipends to individuals who have attended a preplacement training program. (R.C. 5103.0312.)

### **Public records**

Existing statutory law does not specifically exclude information about foster caregivers held by ODJFS, a county department of job and family services, or a PCSA from being considered a public record (see **COMMENT**). The bill specifically provides that, generally, names, documentation, and other identifying information regarding a foster caregiver or a prospective foster caregiver, including the foster caregiver application for certification and the home study conducted by ODJFS, are not accessible through a public records request. The bill also includes in the Public Records Law a cross-reference to an existing provision that specifies that certain records held by ODJFS, a county department of job and family services, and a PCSA are not public records. (R.C. 149.43 and 5101.29.)

### **Permitted release of certain foster caregiver information**

The bill requires the release of the following foster caregiver information under certain circumstances:

- The foster caregiver's name, date of birth, and county of residence;
- The date of the foster caregiver's certification;
- The date of each placement of a foster child into the foster caregiver's home;
- If applicable, the date of the removal of a foster child from the foster caregiver's home and the reason for removal unless release of such information would be detrimental to the foster child or other children residing in the foster caregiver's home;

- If applicable, the date of the foster care certificate revocation and all documents related to the revocation unless otherwise not a public record.

This information is only required to be released under the Public Records Law if the foster caregiver, after receiving a current or current renewed certificate has been convicted of, pleaded guilty to, or indicted or otherwise charged with any offense that would preclude the person from being appointed or employed as a person responsible for a child's care in out-of-home care.

The bill also specifies that nonidentifying foster care statistics, including the number of foster caregivers and foster care certificate revocations, are public records. (R.C. 5101.29(D)(2).)

**Services provided by county boards of mental retardation and developmental disabilities**

The bill provides a method for resolution of disputes in situations in which a foster child is in need of assessment for eligible services or is receiving services from a county board of mental retardation and developmental disabilities and is subsequently placed with a foster caregiver in another county. The agency that places the child in the new foster home must inform the county board in the new county that a foster child who has previously been receiving services from another county or who was in need of assessment for eligible services has been placed in the new county. The agency must then provide the name and other identifying information regarding that child and the name of the child's previous county of residence.

Upon receiving the notice or otherwise learning that the child is in need of assessment for eligible services or was receiving services from a county board of mental retardation and developmental disabilities in the previous county, the county board in the new county must communicate with the county board of the previous county to determine how to provide services for the foster child in accordance with each board's plan and priorities.

If the two county boards are unable to reach an agreement within ten days of the child's placement, the county board in the new county must send notice to the Ohio Department of Mental Retardation and Developmental Disabilities (ODMRDD) of the failure to agree. Within ten days of receiving notice that the county boards could not reach an agreement, ODMRDD may decide that one, or both, of the county boards must provide services in accordance with that board's plan and priorities. (R.C. 5126.04.)

### **Joint cross system briefings**

The bill also requires ODJFS to partner with ODMRDD to offer joint cross system briefings to better educate the professionals of both systems for more effective service delivery for dually involved children and families. The joint cross system briefings must be conducted regularly for one year after the effective date of the bill and serve as a platform for conducting forums and developing training curriculums for foster caregivers that care for mentally retarded and developmentally disabled children. (Section 4.)

### **Reimbursements to juvenile courts**

Existing law allows a juvenile judge to enter into an agreement with ODJFS for the purpose of reimbursing the court for foster care maintenance costs and associated administrative and training costs incurred on behalf of a child eligible for payments under Title IV-E of the Social Security Act<sup>2</sup> and who is in the temporary or permanent custody of the court or subject to certain dispositions of the court. Under the bill, the agreement also may be for the purpose of reimbursing such costs incurred on behalf of a child who has been determined to be at serious risk of removal from the home and for whom the court has undertaken a plan of reasonable efforts to prevent such removal. (R.C. 2151.152.)

### **The Ohio Child Welfare Training Program**

The Ohio Child Welfare Training Program in ODJFS provides the various training classes required for certification as a foster caregiver or a PCSA caseworker or supervisor, and for adoption assessors who conduct home studies (R.C. 5103.30). Leading this program is a steering committee, currently comprised of employees of ODJFS, one representative of each of the regional training centers located throughout the state, one representative of a statewide organization that represents the interests of PCSAs, one representative of the Ohio Child Welfare Training Program coordinator, and employees of PCSAs.

The bill requires ODJFS to appoint two additional members to the steering committee. These new members must be current foster caregivers certified by ODJFS. (R.C. 5103.391.)

### **Title IV-E funding eligibility**

The bill grants ODJFS authority to seek federal approval through the United States Department of Health and Human Services to include within funding under Title IV-E of the Social Security Act an additional category of

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<sup>2</sup> 94 Stat. 501, 42 U.S.C. 670 (1980).

foster care certification, and simplified standards for that certification, for placements in which the child has an existing relationship with the foster caregiver (Section 3).

### **The Interstate Compact on the Placement of Children**

Am. Sub. S.B. 238 of the 126th General Assembly (effective September 21, 2006) repealed the Interstate Compact *on* the Placement of Children and replaced it with the Interstate Compact *for* the Placement of Children. This new compact has not yet taken effect because not enough states have enacted it; it will not take effect until 35 states enact the new compact, and Ohio is the only state to have enacted it.<sup>3</sup> As a result, the Interstate Compact on the Placement of Children no longer appears in the Revised Code, although it remains in effect due to the fact that Article IX of the Compact contained a two-year delay of any repeal.

The bill reenacts the old compact, while retaining the new compact in the event of its future effectiveness. The bill states that the enactment of the old compact is a continuation of the interstate compact of the same name that was repealed by Am. Sub. S.B. 238 of the 126th General Assembly and that its provisions will no longer apply once the new compact becomes effective. (Sections 5, 6, 7, and 8.)

### **Technical changes**

The bill corrects two technical problems created by the enactment of Am. Sub. S.B. 238 of the 126th General Assembly. Sections 5153.122 and 5153.123 of the Revised Code referred to incorrect amounts of training hours. The bill corrects these references.

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## **COMMENT**

Although existing statutory law does not specifically exclude foster caregiver information from being considered a public record, the public records status of foster care records is currently being litigated in *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, Case No. 2006-2239.

The *Cincinnati Enquirer* filed suit against the Ohio Department of Job and Family Services after a request for the list of all foster caregivers' names and addressees was denied. The *Enquirer* argues that names and addresses of foster caregivers are public records, and no exemptions to the Public Records Law apply. Therefore, the information should be open to the public, because the Ohio

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<sup>3</sup> <http://www.csg.org/programs/ncic/InterstateCompactforthePlacementofChildren.aspx>.

Supreme Court has consistently held that the provisions of the Public Records Law should be construed to provide the broadest access possible to government records. *Brief for the Cincinnati Enquirer*, filed September 14, 2007 (<http://www.sconet.state.oh.us/temp/604860.pdf>).

ODJFS argues that documents containing the names and addresses of foster parents are exempted from disclosure under both state and federal law, because the foster parents are beneficiaries of public assistance. Foster parents receive public assistance from county agencies or private child placement agencies in the form of foster care maintenance. As a result, information regarding recipients of foster care maintenance is confidential under R.C. 5101.27 and federal 45 C.F.R. 205.50. In addition, ODJFS argues that the information is confidential under R.C. 5101.131 as part of the statewide automated child welfare information system. *Brief for Helen Jones-Kelley, Director of the Ohio Department of Job and Family Services*, filed September 21, 2007 (<http://www.sconet.state.oh.us/temp/605293.pdf>).

Finally, ODJFS argues that the names and addresses of foster caregivers should be held confidential under the "good sense" rule established in *State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 1999 Ohio 264 (1999). In that case, the Court held that the personnel records of a police detective should not be disclosed under the Public Records Law, even though there is no clear statutory exemption. ODJFS argues that revealing public records information about foster caregivers will place children in danger. *Id.*

This case is currently open.

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## HISTORY

ACTION	DATE
Introduced	05-08-07
Reported, H. Juvenile & Family Law	06-26-07
Passed House (87-9)	10-10-07
Reported, S. Health, Human Services, & Aging	01-30-08

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