



Am. Sub. S.B. 163
127th General Assembly
(As Passed by the Senate)

Sens. Niehaus, Cates, Kearney, Austria, Clancy, Schuring, Padgett, Sawyer, Schaffer, Carey, Coughlin, Faber, Fedor, Gardner, Grendell, Harris, Mason, D. Miller, Roberts, Schuler, Spada, Stivers, Mumper, R. Miller, Jacobson

BILL SUMMARY

- In provisions that require various persons within the criminal justice system to provide certain information to the Bureau of Criminal Identification and Investigation (BCII), expands the information that must be provided to also require information regarding any misdemeanor described in a criminal records check provision located in R.C. 109.572(A)(8)(a).
- Requires that the weekly report of case summaries sent by clerks of court to BCII under one of the provisions described in the preceding dot point include the date of offense, summons, or arraignment.
- Clarifies that if a person or child has not been arrested and first appears before a court or magistrate in response to a summons, the court must order the person or child to appear before the sheriff or chief of police within 24 hours for fingerprinting.
- Expands the offenses for which a person who is arrested, taken into custody, or issued a summons is subjected to fingerprinting to include, in addition to the currently specified offenses, a misdemeanor described in R.C. 109.572(A)(8)(a).
- Requires the Superintendent of BCII to establish and maintain a Retained Applicant Fingerprint Database to notify a participating entity when an individual who is licensed, certified, approved for adoption, or employed by, or volunteers with, the participating entity is arrested for, pleads guilty to, or is convicted of an offense that would disqualify that

individual from licensure, certification, approval, or employment by, or volunteering with, the participating entity.

- Specifies that information contained in the Retained Applicant Fingerprint Database and in the notice sent by BCII to a participating entity that an individual has been arrested for, convicted of, or pleaded guilty to a disqualifying offense is only to be used by BCII and the participating entity for specified purposes; otherwise the information is confidential and not a public record under the Public Records Act.
- Prohibits any person from knowingly disseminating or using the information contained in the Retained Applicant Fingerprint Database for any purpose that is not authorized by law or by rules and classifies such a violation as a misdemeanor of the fourth degree.
- Prohibits any person from knowingly using the information contained in the Retained Applicant Fingerprint Database to harass or intimidate another person and classifies such a violation as a misdemeanor of the first degree.
- Provides that any law enforcement official or official employed by a participating entity who receives notification regarding the Retained Applicant Fingerprint Database, who disseminates or fails to disseminate information contained in the Database in good faith compliance with statutory requirements generally is immune from civil liability relating to that dissemination or failure to disseminate.
- States that a participating entity is not to be found negligent *per se* in a civil action for failure to submit an individual's information or fingerprint impressions to BCII for the Retained Applicant Fingerprint Database.
- Requires each participating entity that is a state agency, not later than six months after its effective date, to adopt rules to implement the Retained Applicant Fingerprint Database provisions and specifies that, prior to the date on which rules adopted by a participating entity take effect, the entity may use information provided under the Database provisions, notwithstanding the fact that the rules have not taken effect.
- Modifies the law regarding the uniform statewide automated child welfare information system by: (1) specifying that the Department of Job and Family Services (ODJFS) must finalize statewide implementation of

the system by all public children services agencies not later than January 1, 2008, (2) expanding the entities that may access information contained in the system to also permit access by a Title IV-E agency, a prosecuting attorney, a private child placing agency, and a private noncustodial agency in connection with assessment, investigation, or services regarding a child or family or when permitted by state or federal law, rule, or regulation, and (3) providing that, until the system is implemented statewide, agencies or persons required to include a summary report pursuant to adoption or foster care provisions must request a check of the Ohio Central Registry of Abuse and Neglect and that after the system is implemented statewide, all private agencies must request a check of that system until the private agency can access the system and conduct its own search.

- Modifies the law regarding criminal records checks required for any prospective out-of-home care provider, foster caregiver, or adoptive parent by: (1) specifying that such a check must be requested regarding a prospective adoptive parent and specified persons who reside with the prospective adoptive parent at the time of the initial home study, every four years after the initial home study at the time of an update, and at the time an adoptive home study is completed as a new home study, (2) specifying that such a check must be requested regarding a prospective foster caregiver and specified persons who reside with the foster caregiver before submitting a recommendation to ODJFS on whether a foster home certificate should be issued and every four years after the submission of a recommendation to ODJFS prior to a recertification of the foster home, (3) specifying that such a check requested at the time of the initial home study regarding an adoption or prior to the submission of a recommendation to ODJFS regarding foster home certification must request an FBI check for the person subject to the check, and (4) specifying that every request for an FBI check for any of the specified persons must request that information obtained from the FBI include fingerprint based checks of national crime information databases.
- Expands the list of offenses that disqualify a person from providing out-of-home care, being certified as a foster parent, or being approved as an adoptive parent to include the following: cruelty to animals, permitting child abuse, menacing by stalking, menacing, soliciting or providing support for act of terrorism, making terroristic threat, terrorism, identity fraud, inciting to violence, aggravated riot, ethnic intimidation, or two or

more state OVI or state OVUAC violations, or substantially equivalent offenses, committed within the three years immediately preceding the submission of the person's application.

- Allows a public children services agency to access the otherwise confidential criminal records checks for prospective out-of-home care providers, foster caregivers, or adoptive parents.
- Directs a prospective foster caregiver, prior to certification or recertification, to notify the recommending agency of the revocation of any foster home license, certificate, or other similar authorization in another state occurring within five years prior to the date of application to become a foster caregiver in Ohio, prohibits ODJFS from issuing a foster home certificate to that person if the person has had such a revocation, and specifies that the failure of a prospective foster caregiver to notify the recommending agency of any such revocation in another state occurring within that five-year period is grounds for denial of the person's foster home application or the revocation of the person's foster home certification, whichever is applicable.
- Prohibits ODJFS from issuing a certificate to a prospective foster home or prospective specialized foster home pursuant to a specific existing statutory authority if the prospective foster home operates as a type A family day-care home or in the case of a prospective specialized foster home if the prospective specialized foster home operates as a type B family day-care.
- Requires ODJFS, not later than 96 hours after receiving notice from BCII or otherwise learning that a foster caregiver has been convicted of or pleaded guilty to an offense that disqualifies a person from being a foster caregiver, to provide notice of that conviction, guilty plea, or adjudication to the recommending agency relative to the foster caregiver and requires the recommending agency, upon receipt of the notice or otherwise learning that a foster caregiver has been convicted of or pleaded guilty to any such offense, to assess the foster caregiver's overall situation for safety concerns and forward any recommendations, if applicable, for revoking the foster caregiver's certificate to ODJFS for ODJFS's review for possible revocation.
- Requires the Director of ODJFS to adopt rehabilitation standards that a person who has been convicted of or pleaded guilty to a disqualifying

offense must satisfy in order for ODJFS to not revoke a foster home certificate for a disqualifying violation.

- Authorizes ODJFS to revoke the certificate of any foster caregiver who has not cared for one or more foster children in the foster caregiver's home within the preceding 12 months, but specifies that, prior to the revocation, the recommending agency must have the opportunity to provide good cause for ODJFS to continue the certification and not revoke the certification and that, if ODJFS decides to revoke the certification, ODJFS must notify the recommending agency that the certification will be revoked.
- Prohibits a foster caregiver or prospective foster caregiver from failing to notify the recommending agency if a person at least 12 years of age but less than 18 years of age who resides with the foster caregiver or prospective foster caregiver has been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing a state OVI or OVUAC violation or a substantially equivalent offense if the person previously was convicted of or pleaded guilty to one or more such violations within the three years immediately preceding the current violation, and specifies that a recommending agency that learns that a foster caregiver has failed to comply with this requirement must notify ODJFS and ODJFS must revoke the foster caregiver's foster home certificate.
- Requires that before a foster home is certified or recertified a recommending agency must obtain a summary report of a search of the uniform statewide automated child welfare information system from an entity that is authorized to access the system, and requires that, whenever a prospective foster parent or any person 18 years of age or older who resides with the prospective foster parent has resided in a state other than Ohio within the five-year period immediately prior to the date on which a criminal records check is requested for the person, the recommending agency must request a check of the Ohio Central Registry of Abuse and Neglect from ODJFS regarding the prospective foster parent or person to enable the agency to check any child abuse and neglect registry maintained by that other state.
- Requires an entity that intends to place a child who is an exceptional behavioral needs child or who is a child who has been adjudicated a delinquent child for a felony act in a certified foster home in any county to provide written notification, prior to the placement, to: (1) each board

of education of a school district with schools in the applicable specified geographical notification area, (2) each chartered nonpublic school or other school located in that geographical notification area that is not operated by a board described in clause (1) of this dot point, (3) the sheriff of each county that includes any portion of that geographical notification area, and (4) the chief of police, marshal, or other chief law enforcement officer of the municipality, or the constable or chief of the police department or district police force of the township, in which the foster home is located.

- Expands the information that must be provided in a written notification of the type described in the preceding dot point to also require: (1) the child's name and age, (2) the address of the certified foster home at which the child is being placed, (3) the name and a telephone number of a contact person at that home, (4) a statement that the home is a treatment foster home, (5) a brief description of the facts supporting the determination that the child is an exceptional behavioral needs child or of the facts and circumstances of the act resulting in the delinquent child adjudication, and (6) a discussion of safety and well-being concerns with respect to the child and community.
- Specifies that the procedure that each school district board of education currently must implement for receiving information regarding placement of a child in a foster home must contain safeguards to ensure the confidentiality of the information provided regarding a child who is an exceptional behavioral needs child or who is a child who has been adjudicated a delinquent child for a felony act.
- Modifies a provision that requires an entity that places an adjudicated unruly or delinquent child in a certified foster home to provide written notice of specified information regarding a child who is an exceptional behavioral needs child or who is a child who has been adjudicated a delinquent child for a felony act to the juvenile court of the county in which the home is located unless that juvenile court is the court of jurisdiction in the child's case.
- Specifies that any information, document, statement, or report provided by an entity pursuant to its provisions described in the four preceding dot points is confidential and not a public record open to public inspection under the state's Public Records Law, and prohibits any person from permitting or encouraging the unauthorized dissemination of that

confidential information, except pursuant to a court order as provided by law.

- Provides that, whenever a prospective adoptive parent or a person 18 years of age or older who resides with a prospective adoptive parent has resided in a state other than Ohio within the five-year period immediately prior to the date on which a criminal records check is requested for the person, before a final decree of adoption or an interlocutory order of adoption may be made, the administrative director of an agency, or attorney, who arranges the adoption must request a check of the Ohio Central Registry of Abuse and Neglect from ODJFS regarding the prospective adoptive parent or person to enable the agency or attorney to check any child abuse and neglect registry maintained by that other state.
- Related to the provisions described in the preceding dot point, specifies that ODJFS rules regarding the information and documents to be included in a home study report must include a report of a check of a central registry of a state other than Ohio if such a check is required under the provision described in the preceding dot point.
- Requires ODJFS to include in its rules governing type B family day-care homes requirements that the type B home notify parents with children in the home that the home is also certified as a foster home.
- In provisions that require the Director of ODJFS to provide to each day-care licensee notice of proposed rules governing the licensure of child day-care centers and type A homes and require the county director of job and family services to provide to authorized providers and in-home aides copies of proposed rules, specifies that the notice or copies may be provided or made available in either paper or electronic form.
- Modifies the law regarding criminal records checks required for child day-care centers, type A homes, and type B homes by: (1) specifying that ODJFS or a county department of job and family services, whichever is applicable, must request such a check for the specified persons at the time of the initial application for licensure as a center or type A home or certification as a type B home and every four years thereafter at the time of a license or certification renewal, (2) specifying that the administrator of a center or a type A home must request such a check for a prospective employee or in-home aide at the time of the applicant's initial application for employment and every four years thereafter at the time of a license

renewal and removing references to a provider of a type B home requesting a check for prospective employees (type B homes supposedly never have employees), (3) specifying that such a check requested at the time of an initial application for licensure or certification or at the time of an applicant's initial application for employment must request an FBI check for the person subject to the check, and that every request for such an FBI check must request that information obtained from the FBI include fingerprint based checks of national crime information databases, and (4) specifying that the administrator of a care center or type A home must review the results of the check before the applicant has sole responsibility for the care, custody, or control of any child and ODJFS and the director of a county department must review the results of the check prior to approval of a license or certification, whichever is applicable.

- Consolidates the two lists of offenses that disqualify a person from the issuance of a license to a child day-care center or type A home, the certification of a type B home, or employment by a center or home as a person responsible for the care, custody, or control of a child, expands the list of disqualifying offenses so that it also includes the offense of menacing, and removes references to a provider of a type B home from the provisions regarding disqualifying offenses for a prospective employee (type B homes supposedly never have employees).
- In provisions not directly linked to criminal records checks that disqualify a person convicted of an offense included in either of two lists of specified offenses from certification as an in-home aide or employment in, or ownership or operation of, a child day-care center, type A family day-care home, type B family day-care home, or certified type B family day-care home, revises the specified disqualifying offenses so that they include any offense specified under the consolidated list described in the preceding dot point and any offense specified in either of the lists provided under current law.
- Prohibits ODJFS from licensing a prospective type A family day-care home if that prospective home is certified to be a foster home or specialized foster home and prohibits a county department of job and family services from certifying a prospective type B family day-care home if that home is certified as a specialized foster home.

- In provisions of law that pertain to permanent custody of a child who has been in the temporary custody of an agency for 12 or more months of a consecutive 22-month period, eliminates references to the 22-month period ending on or after March 18, 1999.
- Specifies that if a child has been in the temporary custody of one or more public children services agencies or private child placing agencies and the child previously was in the temporary custody of an equivalent agency in another state, the agency with custody of the child must apply the time in temporary custody in the other state to the time in temporary custody in Ohio and unless specified circumstances are present, if the time spent in temporary custody equals 12 months or more of a consecutive 22-month period, the agency with custody may file a motion requesting permanent custody.
- Modifies two of the four specified circumstances used by a court in determining whether to grant permanent custody so that, under those two circumstances, the court may grant permanent custody of a child to an agency if it finds that it is in the best interest of the child and that either of the following applies: (1) the child has not been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period if the child was previously in the temporary custody of an equivalent agency in a state other than Ohio, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents, or (2) the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period and the child was previously in the temporary custody of an equivalent agency in a state other than Ohio.
- Provides that, in any review hearing 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 must determine whether the in-state or the out-of-state placement continues to be appropriate and in the best interests of the child and that in any review hearing that pertains to a permanency plan, the court or a citizens board appointed by the court must consult with the child, in an age-appropriate manner, regarding the proposed permanency plan for the child.

- In provisions that govern 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 present evidence (replacing the statement that the foster caregiver, relative, or prospective adoptive parent may present evidence).
- Includes a provision permitting the clerk of the court of common pleas to sign a required memorandum of understanding to minimize interviews of children who are the subject of alleged child abuse.
- Requires the Director of ODJFS to convene a work group to study and make recommendations to the Director regarding both of the following: (1) support for positive child and family outcomes offered to public children services agencies, private child placing agencies, and private noncustodial agencies by ODJFS, and (2) the establishment of fines and sanctions for public children services agencies, private child placing agencies, and private noncustodial agencies that do not comply with foster care related laws or rules.
- In two provisions that currently list certain Revised Code sections, refer to certain types of actions that occur under the listed sections, and link certain restrictions related to the custody of a child to those actions, includes references to existing or former laws of Ohio, any other state, or the United States that are substantially equivalent to the currently listed Revised Code sections.
- In the provisions of law that govern a putative father's consent to the adoption of any child born prior to January 1, 1997, removes references to the Department of Human Services (the predecessor department to ODJFS) regarding a putative father's filing of objections with the Department to the adoption of the child.
- Expands the categories of professions to which the state's mandatory child abuse and neglect reporting provision applies so that, in addition to the categories specified under existing law, the provision also applies to an employee of a county department of job and family services who is a professional and who works with children and families.

TABLE OF CONTENTS

Provision of information to BCII	13
Current law	13
Operation of the bill.....	15
When a court must order a person to be fingerprinted	15
Current law	15
Operation of the bill.....	16
Retained Applicant Fingerprint Database	16
Notice that an individual has been arrested for, pleaded guilty to, or convicted of a disqualifying offense.....	17
Confidentiality of information in the Database	18
Criminal offenses.....	18
Civil liability	18
Rule-making duties.....	19
Uniform statewide automated child welfare information system	19
Current law	19
Operation of the bill.....	20
Criminal records checks for prospective out-of-home care providers, foster parents, and adoptive parents	21
Types of required criminal records checks.....	21
Operation of the bill.....	22
Disqualifying offenses	23
Confidentiality of criminal records checks.....	24
Foster caregiver notices	25
Certification of specified foster caregivers.....	25
Current law	25
Operation of the bill.....	26
Revocation of a foster caregiver's certificate if no foster children within 12-month period	27
Current law	27
Operation of the bill.....	28
Foster caregiver notification if minor residing with the caregiver is convicted of or found to be delinquent or a juvenile traffic offender for committing a specified offense	28
Current law	28
Operation of the bill.....	29
Search of the uniform statewide automated child welfare system before certification as a foster home.....	29
Notification of the placement of a child in a foster home	31
Written communication prior to placement; content of communication	31

Written notice to juvenile court, if placement of delinquent or unruly child; content of notice	34
General confidentiality of information provided	34
Search of uniform statewide automated child welfare information system and central registries in other states, in an adoption	34
Current law	34
Operation of the bill.....	35
Provisions regarding child day-care centers, type A homes, and type B homes ...	36
Requirement that a type B family day-care home notify parents that the home is also certified as a foster home.....	36
Provision of proposed rules regarding child day-care centers, type A homes, type B homes, and in-home aides.....	37
Criminal records checks	38
Separate disqualification of certain offenders from day-care ownership, operation, certification, or employment	41
No licensure or certification if the home is a foster home	45
Permanent custody of a child who has been in the temporary custody of a public children services agency for 12 or more months of a consecutive 22-month period	45
Current law	45
Operation of the bill.....	46
Review hearings that pertain to permanency plans	47
Current law	47
Operation of the bill.....	48
Presentation of evidence at hearing or review regarding foster care or relative placement or prospective adoption of a child.....	48
Current law	48
Operation of the bill.....	49
Public children services agency memorandum of understanding	49
ODJFS work group.....	49
References to former Ohio laws and the laws of other states	50
Putative father consent to adoption	51
Existing law	51
Operation of the bill.....	54
Mandatory reporter--child abuse or neglect	55
Existing law	55
Operation of the bill.....	57

CONTENT AND OPERATION

Provision of information to BCII

Current law

Current law contains a series of provisions that pertain to the provision of information by various persons within the criminal justice system to the Bureau of Criminal Identification and Investigation (BCII) and the sharing of the information. A summary of the provisions follows:

Procurement by BCII Superintendent. Existing law requires BCII's Superintendent to procure from wherever procurable and file for record photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent of all persons who have been convicted of committing within Ohio a felony, a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or a misdemeanor described in division (A)(1)(a) or (A)(10)(a) of R.C. 109.572 (those provisions pertain to mandatory criminal records checks of persons who are under consideration for certain types of employment or licensing, generally involving specified positions that have frequent and regular contact with children), of all children under 18 years of age who have been adjudicated delinquent children for committing within Ohio an act that would be a felony or an offense of violence if committed by an adult or who have been convicted of or pleaded guilty to committing within Ohio a felony or an offense of violence, and of all well-known and habitual criminals (R.C. 109.57(A)(1)).

Provision by correctional facility official. Current law requires the person in charge of any local jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution and the person in charge of any state institution having custody of a person suspected of having committed a felony, a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or a misdemeanor described in R.C. 109.572(A)(1)(a) or (A)(10)(a) or having custody of a child under 18 years of age with respect to whom there is probable cause to believe that the child may have committed an act that would be a felony or an offense of violence if committed by an adult to furnish material of the type described in the preceding paragraph to BCII's Superintendent (R.C. 109.57(A)(1)).

Provision by clerk of court. Current law requires every clerk of a court of record in Ohio, other than the Supreme Court or a court of appeals, to send to BCII's Superintendent a weekly report containing a summary of each case involving a felony, involving a crime constituting a misdemeanor on the first

offense and a felony on subsequent offenses, involving a misdemeanor described in R.C. 109.572(A)(1)(a) or (A)(10)(a), or involving an adjudication in a case in which a child under 18 years of age was alleged to be a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult. The summary must be written on standard forms furnished by the Superintendent and must include the following information: (1) the incident tracking number contained on the standard forms furnished by the Superintendent, (2) the style and number of the case, (3) the date of arrest, (4) the date that the person was convicted of the offense, adjudicated a delinquent child for committing the act that would be a felony or an offense of violence if committed by an adult, found not guilty of the offense, or found not to be a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult, the date of an entry dismissing the charge, an entry declaring a mistrial of the offense in which the person is discharged, an entry finding that the person or child is not competent to stand trial, or an entry of a *nolle prosequi*, or the date of any other determination that constitutes final resolution of the case, (5) a statement of the original charge with the Revised Code section allegedly violated, (6) if the person or child was convicted or was adjudicated a delinquent child, the sentence or terms of probation imposed or any other disposition of the offender or the delinquent child. (R.C. 109.57(A)(2).)

BCII establishment of identification system. Current law requires BCII's Superintendent to cooperate with and assist sheriffs, chiefs of police, and other law enforcement officers in the establishment of a complete system of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on a charge of a felony, a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or a misdemeanor described in R.C. 109.572(A)(1)(a) or (A)(10)(a) and of all children under 18 years of age arrested or otherwise taken into custody for committing an act that would be a felony or an offense of violence if committed by an adult. The Superintendent also must file for record the fingerprint impressions of all persons confined in a local jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution for the violation of state laws and of all children under 18 years of age who are confined in a local jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution or in any facility for delinquent children for committing an act that would be a felony or an offense of violence if committed by an adult, and any other information that the Superintendent may receive from law enforcement officials. (R.C. 109.57(A)(3).)

Data processing center or communications network. Existing law authorizes BCII's Superintendent to operate a center for electronic, automated, or other data processing for the storage and retrieval of information, data, and

statistics pertaining to criminals and to children under 18 years of age who are adjudicated delinquent children for committing an act that would be a felony or an offense of violence if committed by an adult, criminal activity, crime prevention, law enforcement, and criminal justice, and to establish and operate a statewide communications network to gather and disseminate information, data, and statistics for the use of law enforcement agencies (R.C. 109.57(C)).

Operation of the bill

The bill modifies all of the provisions described above to require that the information provided to BCII's Superintendent also include information regarding any misdemeanor described in division (A)(8)(a) of R.C. 109.572 (R.C. 109.57(A)(1) to (3)). The offenses that are listed or described in R.C. 109.572(A)(8)(a) are described below in "**Disqualifying offenses**" under "**Criminal records checks for prospective out-of-home care providers, foster parents, and adoptive parents.**"

The bill additionally requires that the weekly report of case summaries sent by clerks of court to BCII include the date of offense, summons, or arraignment for each case (R.C. 109.57(A)(2)(c)).

When a court must order a person to be fingerprinted

Current law

Current law requires sheriffs and city chiefs of police to immediately fingerprint or cause to be fingerprinted a person who is arrested for a felony, on suspicion of a felony, or a misdemeanor described in R.C. 109.572(A)(1)(a) or (A)(10)(a) and to immediately fingerprint a child under 18 who is arrested or taken into custody for committing an act that would be a felony or an offense of violence if committed by an adult or upon probable cause to believe the child committed such an act. The sheriffs and chiefs of police must then forward these fingerprints and other required information to BCII and to the clerk of the court with jurisdiction over the case.

If a sheriff or chief of police has not taken the person's or child's fingerprints by the time of the person's arraignment or first appearance, the court must order the person or child to appear before the sheriff or chief of police within 24 hours for fingerprinting. The sheriff or chief of police must then forward the fingerprints and required information to BCII and the court clerk.

At the time of a person's sentencing or a child's adjudication for an offense for which fingerprinting is required, the court must inquire whether the person's fingerprints were taken. If the person or child was not fingerprinted for the

original arrest, the court must order the person to appear before the sheriff or chief of police within 24 hours for fingerprinting. The sheriff or chief of police must then forward the fingerprints and required information to BCII and the court clerk.

These fingerprinting requirements do not apply to a violator of a city ordinance unless specified criteria are met (R.C. 109.60(A)(1), (2), and (3) and (B)).

Operation of the bill

The bill clarifies that if a person or child has not been arrested (and thus no fingerprints would have been taken by a sheriff or police chief as described under "**Current law**") and first appears before the court or magistrate in response to a summons, the court must order the person or child to appear before the sheriff or chief of police within 24 hours for fingerprinting, unless the offense is a violation of a non-qualifying city ordinance. Similarly, the court must inquire at the time of a person's sentencing or a child's adjudication for an offense for which fingerprinting is required whether the person's fingerprints were taken for the original arrest *or court appearance*. If the person or child was not fingerprinted for the original arrest *or court appearance*, the court must order the person to appear before the sheriff or chief of police within 24 hours for fingerprinting. (R.C. 109.60(A)(2) and (3).)

The bill also expands the offenses for which an arrest or a taking into custody (or, under the bill, a summons) subjects the arrested or detained person (or the summoned person) to the fingerprinting provisions. Under the bill, in addition to the currently specified offenses, a person is subjected to the fingerprint provisions if the person is arrested for a misdemeanor described in division (A)(8)(a) of R.C. 109.572 (R.C. 109.60(A)(1)). The offenses that are listed or described in R.C. 109.572(A)(8)(a) are described below in "**Disqualifying offenses**" under "**Criminal records checks for prospective out-of-home care providers, foster parents, and adoptive parents.**"

Finally, the bill restates a court's fingerprinting duties discussed above in the Revised Code chapters concerning municipal courts, county courts, and courts of common pleas (R.C. 1901.43, 1907.181, and 2301.10).

Retained Applicant Fingerprint Database

The bill requires the Superintendent of BCII to establish and maintain a Retained Applicant Fingerprint Database, separate and apart from all other records maintained by BCII. The purpose of the database is to notify a "participating entity" when an individual who is licensed, certified, approved for adoption, or employed by, or volunteers with, the participating entity and is arrested for, pleads

guilty to, or is convicted of an offense that would disqualify that individual from licensure, certification, approval, or employment by, or volunteering with, the participating entity.¹ (R.C. 109.581(B).)

The bill requires participating entities to ensure that BCII receives fingerprint impressions in a manner prescribed by BCII rules prior to an individual being licensed, certified, approved for adoption, or employed by, or beginning volunteer service with, the participating entity. BCII must enter information and the fingerprint impressions relating to the individual into the Database within 30 days of receipt of the information and impressions. Participating entities must also notify BCII when an individual is deceased or is no longer licensed, certified, approved for adoption, or employed by, or volunteers with the participating entity. (R.C. 109.581(C)(1) and (3).)

An individual who has submitted fingerprint impressions for licensure, certification, approval for adoption, or employment by, or volunteer service with, a participating entity is required by the bill to be reprinted for licensure, certification, approval, employment, or volunteer service with another participating entity. If an individual has been reprinted, BCII must update that individual's information accordingly. (R.C. 109.581(C)(2).)

Notice that an individual has been arrested for, pleaded guilty to, or convicted of a disqualifying offense

BCII is required to promptly notify a participating entity when an individual who is licensed, certified, approved for adoption, or employed by, or volunteers with, a participating entity is arrested for, pleads guilty to, or is convicted of an offense that would disqualify that individual from licensure, certification, approval, employment, or volunteering with the participating entity. (R.C. 109.581(D).)

Additionally, the bill requires the Department of Job and Family Services (ODJFS) to work with BCII to develop procedures and formats necessary to produce these notices in a format that is acceptable to JFS. JFS is also authorized to adopt rules in accordance with R.C. 111.15, as if they were internal management rules, necessary for these collaborations. JFS also is authorized to

¹ "Individual" means any person who is required by law to submit fingerprint impressions to a participating entity for a criminal records check. "Participating entity" means a state agency or government agency required by statute to submit fingerprint impressions of an individual for a criminal records check as a condition of licensure, certification, approval for adoption, employment, or volunteer service with the agency. "State agency" has the same meaning as in R.C. 9.23. (R.C. 109.581(A).)

adopt rules that are necessary for utilizing the information received from the Database pursuant to the Administrative Procedure Act (rules adopted under this authority are in addition to the mandatory rules each participating entity that is a state agency must adopt, as described below in "Rule-making duties"). (R.C. 5101.32.)

Confidentiality of information in the Database

The bill specifies that information contained in the Database and in the notice sent by BCII to a participating entity that an individual has been arrested for, convicted of, or pleaded guilty to a disqualifying offense must be used by BCII and the participating entity for the purposes of licensure, certification, approval for adoption, or employment by, or volunteer service with, the participating entity. Otherwise, this information is confidential and not a public record under the Public Records Act. (R.C. 109.581(E)(1).)

Criminal offenses

The bill prohibits any person from knowingly disseminating or using the information contained in the Database for any purpose that is not authorized by law or by rules. A violation of this prohibition is the offense of unlawful dissemination or use of retained applicant fingerprint database information, a misdemeanor of the fourth degree.

The bill also prohibits any person from knowingly using the information contained in the Database to harass or intimidate another person. A violation of this prohibition is the offense of harassment or intimidation using retained applicant fingerprint database information, a misdemeanor of the first degree. (R.C. 109.581(E)(2) and (3) and 109.99(D)(1) and (2).)

Civil liability

The bill provides that any law enforcement official or official employed by a participating entity who receives notification regarding the Database and who disseminates or fails to disseminate information contained in the Database in good faith compliance with the duties described above is immune from civil liability relating to that dissemination or failure to disseminate. This immunity does not apply if the official's actions were manifestly outside the scope of the duties described above, or the official acted with malicious purpose, in bad faith, or in a wonton or reckless manner. (R.C. 109.581(F)(1).)

The bill also states that a participating entity is not to be found negligent *per se* in a civil action for failure to submit an individual's information or fingerprint impressions to BCII, as described above (R.C. 109.581(F)(2)).

Rule-making duties

Not later than six months after its effective date, each participating entity that is a state agency must adopt rules under the Administrative Procedure Act to implement the Database provisions. The rules must be consistent with the Database provisions that are applicable to the participating entity. Prior to the date on which rules adopted by a participating entity under this requirement take effect, the participating entity may use information provided under the Database provisions, notwithstanding the fact that the rules have not taken effect, and the lack of rules does not limit or restrict the participating entity from using information so provided. (R.C. 109.581(G).)

The bill requires the Superintendent of BCII to adopt rules in accordance with the Administrative Procedure Act necessary to carry out the purposes of the Database, including rules regarding all of the following (R.C. 109.581(H)):

(1) The establishment and maintenance of the Retained Applicant Fingerprint Database;

(2) The collection of fingerprint impressions and a reasonable fee for utilizing the Database;

(3) The expungement of fingerprint impressions and other personal information of individuals who are deceased or are no longer licensed, certified, approved for adoption, or employed by, or volunteering with, a participating entity.

Uniform statewide automated child welfare information system

Current law

Current law requires ODJFS to operate a uniform statewide automated child welfare information system. The information system contains records regarding any of the following (R.C. 5101.13(A)):

(1) Investigations of children and families and children's care in out-of-home care;

(2) Care and treatment provided to children and families;

(3) Any other information related to children and families that state or federal law, regulation, or rule requires ODJFS or a public children services agency to maintain.

ODJFS must plan implementation of the information system on a county-by-county basis and must finalize statewide implementation no later than January 1, 2008. ODJFS must promptly notify all public children services agencies of the initiation and completion of statewide implementation of the statewide information system. (R.C. 5101.13(B) and (C).)

Current law specifies that information contained in the uniform statewide automated child welfare information system generally may be accessed only by ODJFS and a public children services agency when the access is directly connected with assessment, investigation, or services regarding a child or family or when the access is permitted by state or federal law, rule, or regulation. Current law, however, also requires ODJFS to adopt rules regarding a private child placing agency's or private noncustodial agency's access to the information system and authorizes a person to access the information as authorized by ODJFS rules. (R.C. 5101.132 and 5101.134.)

Operation of the bill

The bill modifies current law regarding the uniform statewide automated child welfare information system in the following ways:

(1) It specifies that ODJFS must finalize statewide implementation of the information system *by all public children services agencies as described in R.C. 5153.02* not later than January 1, 2008 (R.C. 5101.13(B)).

(2) It provides that, in addition to access by ODJFS and public children services agencies, information contained in the information system also may be accessed by a "Title IV-E agency" (see below), a prosecuting attorney, a private child placing agency, and a private noncustodial agency when the access is directly connected with assessment, investigation, or services regarding a child or family or when the access is permitted by state or federal law, rule, or regulation. As used in this provision, "Title IV-E agency" means a public children services agency or a public entity with which ODJFS has a Title IV-E subgrant agreement in effect. (R.C. 5101.132 and 5101.134.)

(3) It provides in uncodified law that, until the information system is implemented statewide by all public children services agencies, agencies or persons required to include a summary report pursuant to R.C. 3107.033 or 5103.18 must request a check of the Ohio Central Registry of Abuse and Neglect from ODJFS regarding any prospective foster parent and any person 18 years of age or older who resides with the prospective foster parent or regarding any prospective adoptive parent and any person 18 years of age or older who resides with the prospective adoptive parent, whichever is applicable, to enable the agency or person to check any child abuse and neglect registry maintained by any state in

which the prospective foster parent, the prospective adoptive parent, or the person 18 years of age or older who resided with the prospective foster parent or prospective adoptive parent has resided in the preceding five years. After the information system is implemented statewide by all public children services agencies, all private agencies must request a check of that system by ODJFS until the private agency can access the system and conduct its own search. (Section 4.)

(4) Although it makes the changes described above in paragraph (2), it retains ODJFS's current duty to adopt rules regarding a private child placing agency's or private noncustodial agency's access to the information system (R.C. 5101.134).

Criminal records checks for prospective out-of-home care providers, foster parents, and adoptive parents

Types of required criminal records checks

Current law. Under current law, an appointing or hiring authority must request a criminal records check by BCII before employing a person as a provider of out-of-home care;² the administrative director of an agency, or an attorney, who arranges an adoption for a prospective adoptive parent must request a criminal records check with respect to that prospective adoptive parent and all persons 18 years of age or older who reside with the prospective adoptive parent; and before a "recommending agency" submits a recommendation to ODJFS on whether ODJFS should issue a certificate to a foster home, the administrative director of the agency must request a criminal records check with respect to the prospective foster caregiver and all other persons 18 years of age or older who reside with the foster caregiver.³ If a person subject to a criminal records check does not present proof that the person has been an Ohio resident for the five-year period immediately prior to the date upon which the criminal records check is requested or does not

² In this context, "out-of-home care" refers to persons who provide care to children in detention facilities, shelter facilities, certified children's crisis care facilities, certified foster homes, placement in a prospective adoptive home prior to the issuance of a final decree of adoption, organizations, certified organizations, child day-care centers, type A family day-care homes, child care provided by type B family day-care home providers and by in-home aides, group home providers, group homes, institutions, state institutions, residential facilities, residential care facilities, residential camps, day camps, and children's hospitals, other than prospective employees of the Department of Youth Services (R.C. 2151.86(A)(1) and (I)(3), and referencing R.C. 2151.011).

³ "Recommending agency" means a public children services agency, private child placing agency, or private noncustodial agency to which JFS has delegated a duty to inspect and approve foster homes (R.C. 2151.86(I)(5)).

provide evidence that within that five-year period BCII has requested information about the person from the FBI in a criminal records check, then the appointing or hiring officer, administrative director, or attorney must request that BCII obtain information from the FBI regarding the person as part of the criminal records check. If the person does present proof of Ohio residency for the prior five years, the officer, director, or attorney may request that BCII include in the criminal records check information from the FBI. (R.C. 2151.86(A) and (B).)

When BCII receives a request for a criminal records check under the above provisions, it must review or cause to be reviewed any relevant information it gathers and compiles that relates to the person who is the subject of the request, including any relevant information contained in sealed conviction records. If the request asks for information from the FBI, BCII must request from the FBI any information it has with respect to the person who is the subject of the request and must review the information received from the FBI. BCII may request criminal history records from other states or the federal government pursuant to the National Crime Prevention and Privacy Compact set forth in R.C. 109.571. BCII conducts the record check to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of a list of specified offenses, which are described below in "Disqualifying offenses." (R.C. 109.572(A)(8) and (B).)

Operation of the bill

The bill changes the current provisions regarding criminal records checks for prospective out-of-home care providers, foster parents, and adoptive parents in the following ways:

(1) It requires the administrative director of an agency, or attorney, who arranges an adoption to request a criminal records check of a prospective adoptive parent and of all persons 18 years of age or older who reside with the prospective adoptive parent at the time of the initial home study, every four years after the initial home study at the time of an update, and at the time that an adoptive home study is completed as a new home study (R.C. 2151.86(A)(2)).

(2) It requires the administrative director of a recommending agency to request a criminal records check of a prospective foster caregiver and of all persons 18 years of age or older who reside with the foster caregiver before submitting a recommendation to ODJFS on whether a foster home certificate should be issued, and every four years after the submission of the recommendation to ODJFS prior to a recertification of the foster home (R.C. 2151.86(A)(3)).

(3) It revises the situations in which a request to BCII for a criminal records check must include a request that BCII obtain information from the FBI

regarding the subject person. Under the bill (R.C. 2151.86(B)(1)): (a) when an appointing or hiring officer requests a criminal records check before employing a person as an out-of-home care provider, the appointing or hiring officer must request an FBI check in the same circumstances as under existing law, (b) when the administrative director of an agency, or attorney, who arranges an adoption for a prospective parent requests, at the time of the initial home study, a criminal records check for a person, the administrative director or attorney must request an FBI check for the person subject to the criminal records check, and, in all other cases, the administrative director or attorney may request an FBI check, (c) when the administrative director of a recommending agency requests, before submitting a recommendation on whether ODJFS should issue a foster home certificate, a criminal records check for a person, the administrative director must request an FBI check for the person subject to the criminal records check, and, in all other cases in which the administrative director requests a criminal records check for a person, the administrative director may request an FBI check.

(4) It specifies that every request for an FBI check must request that BCII obtain information from the FBI as part of the criminal records check, including fingerprint based checks of national crime information databases as described in a specified provision of federal law (R.C. 2151.86(B)(1) and 109.572(B)(2)).

Disqualifying offenses

Current law. Currently, when BCII conducts a record check under the provisions described above in "**Types of criminal records checks,**" it determines whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the offenses described below in paragraphs (1) and (2) and it notifies the requesting appointing or hiring officer, administrative director, or attorney of its findings (R.C. 109.572(A)(8) and (13)). Unless the person who is the subject of the request meets rehabilitation standards established by ODJFS, a conviction of or guilty plea to any of the following offenses disqualifies a person from providing out-of-home care, being approved as an adoptive parent, or being certified as a foster caregiver (additionally if a person 18 years of age or older who resides with a prospective adoptive parent or foster caregiver has been convicted of or pleaded guilty to one of the following offenses, the prospective adoptive parent or foster caregiver is disqualified) (R.C. 2151.86(C)(1)):

(1) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, failure to provide for a functionally impaired person, aggravated menacing, patient abuse, gross patient neglect, patient neglect, kidnapping, abduction, criminal child enticement, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, voyeurism, public indecency, compelling

prostitution, promoting prostitution, procuring, prostitution, prostitution after a positive HIV test, disseminating matter harmful to juveniles, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of a minor in a nudity-oriented material or performance, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, unlawful abortion, endangering children, contributing to the unruliness or delinquency of a child, domestic violence, carrying a concealed weapon, having weapons while under disability, improperly discharging firearm at or into a habitation in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function, corrupting another with drugs, a drug trafficking offense, illegal manufacture of drugs, illegal cultivation of marihuana, an offense regarding funding of drug or marihuana trafficking, illegal administration or distribution of anabolic steroids, placing harmful objects in food or confection, the former offense of child stealing, interference with custody that is comparable to the former offense of child stealing, a drug possession offense that is not a minor drug possession offense, or the former offense of felonious sexual penetration.

(2) A violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1).

Operation of the bill. The bill expands the list of disqualifying offenses for out-of-home care providers, adoptive parents, and foster caregivers to also include the following, in addition to the offenses currently included in the list: cruelty to animals, permitting child abuse, menacing by stalking, menacing, soliciting or providing support for act of terrorism, making a terroristic threat, terrorism, identity fraud, inciting to violence, aggravated riot, ethnic intimidation, or two or more OVI or state OVUAC violations committed within the three years immediately preceding the submission of the application or petition that is the basis of the request (R.C. 109.572(A)(8) and 2151.86(C)(1)).

As used in the provision described in the preceding paragraph, "OVI or OVUAC violation" means a violation of R.C. 4511.19 or a violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to R.C. 4511.19 (R.C. 109.572(E)(6)).

Confidentiality of criminal records checks

Current law. Under current law, any criminal records check for an out-of-home care provider, prospective adoptive parent, or prospective foster caregiver is not a public record under the Public Records Law. Only the following persons have authority to access the information (R.C. 2151.86(E)):

(1) The person who is the subject of the records check or the person's representative;

(2) The appointing or hiring officer, administrative director, or attorney requesting the records check, or that person's representative;

(3) ODJFS or a county department of job and family services;

(4) Any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment, a final decree of adoption or interlocutory order of adoption, or a foster home certificate.

Operation of the bill. The bill additionally allows a public children services agency access to the otherwise confidential criminal records check (R.C. 2151.86(E)(3)).

Foster caregiver notices

Prior to certification or recertification as a foster caregiver, the bill requires the prospective foster caregiver to notify the recommending agency of the revocation of any foster home license, certificate, or other similar authorization in another state occurring within the five years prior to the date of application to become a foster caregiver in Ohio. The failure of a prospective foster caregiver to notify the recommending agency of any such revocation in another state occurring within that five-year period is grounds for denial of the person's foster home application or the revocation of the person's foster home certification, whichever is applicable. If a person has had such a revocation, ODJFS is prohibited from issuing a foster home certificate to the prospective foster caregiver. (R.C. 2151.86(C)(3).)

Certification of specified foster caregivers

Current law

Current law requires ODJFS, every two years, to pass upon the fitness of an "institution" or "association" that receives, or desires to receive and care for children, or places children in private homes.⁴ This requirement does not apply to

⁴ "Association" or "institution" includes any incorporated or unincorporated organization, society, association, or agency, public or private, that receives or cares for children for two or more consecutive weeks; any individual, including the operator of a foster home, who, for hire, gain, or reward, receives or cares for children for two or more consecutive weeks, unless the individual is related to them by blood or marriage; and any individual not in the regular employ of a court, or of an institution or association certified in accordance with R.C. 5103.03, who in any manner becomes a party to the placing of

facilities under the control of the Department of Youth Services (DYS), specified places of detention, and child day-care centers subject to R.C. Chapter 5104. If an institution or association satisfies the fitness review, ODJFS issues that entity a foster caregiver's certificate to that effect that is valid for two years, unless sooner revoked by ODJFS. ODJFS also has the authority to issue a temporary certificate valid for less than one year authorizing an institution or association to operate until minimum standards have been met. (R.C. 5103.03(B).)

Operation of the bill

The bill specifically prohibits ODJFS from issuing a certificate to a prospective foster home or prospective specialized foster home pursuant to this specific statutory authority if the prospective foster home operates as a type A family day-care home under R.C. Chapter 5104. Additionally, the bill prohibits ODJFS from issuing a certificate to a prospective specialized foster home if the prospective specialized foster home operates as a type B family day-care home pursuant to R.C. Chapter 5104. (See **COMMENT** for definitions of type A family day-care home and type B family day-care home.) (R.C. 5103.03(B)(5).)

The bill requires ODJFS to adopt rules that require a foster caregiver or other individual certified to operate a foster home, as described above, to notify the recommending agency that the foster caregiver or other individual is certified to operate a type B family day-care home. There is not a similar requirement regarding notice that the foster caregiver operates as a type A family day-care home. (R.C. 5103.03(G)(2).)

Revocation of a foster caregiver's certificate for conviction of disqualifying offense

The bill provides that, not later than 96 hours after receiving notice from BCII pursuant to the bill's provisions described above in "**Retained Applicant Fingerprint Database**" that a foster caregiver has been convicted of or pleaded guilty to any "foster caregiver-disqualifying offense" (see below), and not later

children in foster homes, unless the individual is related to such children by blood or marriage, or is the appointed guardian of such children. However, any organization, society, association, school, agency, child guidance center, detention or rehabilitation facility, or children's clinic licensed, regulated, approved, operated under the direction of, or otherwise certified by the Department of Education, a local board of education, the Department of Youth Services, the Department of Mental Health, or the Department of Mental Retardation and Developmental Disabilities, or any individual who provides care for only a single-family group, placed there by their parents or other relative having custody, is not included in "association" or "institution." (R.C. 5103.02(A), not in the bill.)

than 96 hours after learning in any other manner that a foster caregiver has been convicted of or pleaded guilty to any "foster caregiver-disqualifying offense," ODJFS must provide notice of that conviction or guilty plea to the recommending agency relative to the foster caregiver.

If a recommending agency receives notice from ODJFS as described in the preceding paragraph that a foster caregiver has been convicted of or pleaded guilty to any "foster caregiver-disqualifying offense," or if a recommending agency learns in any other manner that a foster caregiver has been convicted of or pleaded guilty to any "foster caregiver-disqualifying offense," the recommending agency must assess the foster caregiver's overall situation for safety concerns and forward any recommendations, if applicable, for revoking the foster caregiver's certificate to ODJFS for ODJFS's review for possible revocation.

As used in these provisions, "foster caregiver-disqualifying offense" means any offense or violation that is a disqualifying offense for certification of a foster caregiver. The offenses and violations, as expanded by the bill, are described above in "*Disqualifying offenses*" under "*Criminal records checks for prospective out-of-home care providers, foster parents, and adoptive parents.*" (R.C. 5103.0328.)

The bill expands an existing provision that requires the Director of ODJFS to adopt rehabilitation standards that a person who has been convicted of or pleaded guilty to a disqualifying offense must satisfy in order to be appointed or employed as a person responsible for a child's care in out-of-home care, to be approved as an adoptive parent, or to be issued a foster caregiver certificate to also require that the Director adopt rehabilitation standards that a person who has been convicted of or pleaded guilty to a disqualifying offense must satisfy in order for ODJFS to not revoke a foster home certificate for a violation specified in the three preceding paragraphs (R.C. 2151.86(F)).

Revocation of a foster caregiver's certificate if no foster children within 12-month period

Current law

Under current law, a recommending agency may recommend that ODJFS not renew a foster home certificate under R.C. 5103.03 if the foster caregiver refused to accept the placement of any children into the foster home during the current certification period. Based on the agency's recommendation, ODJFS may refuse to renew a foster home certificate. (R.C. 5103.0326.)

Operation of the bill

The bill additionally authorizes ODJFS to revoke the certificate of any foster caregiver who has not cared for one or more foster children in the foster caregiver's home within the preceding 12 months. Prior to the revocation of any certification pursuant to this provision, the recommending agency must have the opportunity to provide good cause for ODJFS to continue the certification and not revoke the certification. If ODJFS decides to revoke the certification, ODJFS must notify the recommending agency that the certification will be revoked. (R.C. 5103.0326(B).)

Foster caregiver notification if minor residing with the caregiver is convicted of or found to be delinquent or a juvenile traffic offender for committing a specified offense

Current law

Current law prohibits a foster caregiver or prospective foster caregiver from failing to notify the recommending agency that recommended or is recommending the foster caregiver or prospective foster caregiver for certification in writing if a person at least 12 years of age but less than 18 years of age residing with the foster caregiver or prospective foster caregiver has been convicted of or pleaded guilty to, or has been adjudicated to be a delinquent child for committing, any of the following offenses: (1) aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, failing to provide for a functionally impaired person, aggravated menacing, patient abuse, gross patient neglect, patient neglect, kidnapping, abduction, criminal child enticement, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, voyeurism, public indecency, compelling prostitution, promoting prostitution, procuring, prostitution, prostitution after a positive HIV test, disseminating matter harmful to juveniles, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of a minor in nudity-oriented material or performance, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, unlawful abortion, endangering children, contributing to the unruliness or delinquency of a child, domestic violence, carrying concealed weapons, having weapons while under disability, improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function, corrupting another with drugs, a drug trafficking offense, illegal manufacture of drugs, illegal cultivation of marihuana, an offense involving the funding of drug or marihuana trafficking, illegal administration or distribution of anabolic steroids, placing harmful objects in food or confection, the former offense of child stealing, interference with

custody that is comparable to the former offense of child stealing, a drug possession offense that is not a minor drug possession offense, conspiracy that involved an attempt to commit aggravated murder or murder, or the former offense of felonious sexual penetration, (2) an offense that would be a felony if committed by an adult and the court determined that the child, if an adult, would be guilty of a specification found in R.C. 2941.141, 2941.144, or 2941.145 or in another Revised Code section that relates to the possession or use of a firearm during the commission of the act for which the child was adjudicated a delinquent child, or (3) a violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses described in clause (1) or (2) of this paragraph.

If a recommending agency learns that a foster caregiver has failed to comply with the requirement described in the preceding paragraph, it must notify ODJFS and ODJFS must revoke the foster caregiver's foster home certificate. (R.C. 5103.0319.)

Operation of the bill

The bill expands the current prohibition described above to also prohibit a foster caregiver or prospective foster caregiver from failing to notify the recommending agency that recommended or is recommending the foster caregiver or prospective foster caregiver for certification in writing if a person at least 12 years of age but less than 18 years of age residing with the foster caregiver or prospective foster caregiver has been convicted of or pleaded guilty to, or has been adjudicated to be a delinquent child for committing, an "OVI or OVUAC violation" (see below) and the person previously was convicted of or pleaded guilty to one or more OVI or OVUAC violations within the three years immediately preceding the current violation (R.C. 5103.0319(A)(1)). As used in this provision, "OVI or OVUAC violation" means a violation of R.C. 4511.19 or a violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to R.C. 4511.19 (R.C. 5103.0319(C).)

If a recommending agency learns that a foster caregiver has failed to comply with the requirement described in the preceding paragraph, it must notify ODJFS and ODJFS must revoke the foster caregiver's foster home certificate. (R.C. 5103.0319(B).)

Search of the uniform statewide automated child welfare system before certification as a foster home

The bill requires that before a foster home is certified or recertified, a recommending agency must obtain a summary report of a search of the uniform statewide automated child welfare information system from an entity that is

authorized to access the system. The summary report must contain, if applicable, a chronological list of abuse and neglect determinations or allegations of which a person seeking to become a foster caregiver of a child is subject and in regards to which a public children services agency has determined that abuse or neglect has occurred, has initiated an investigation that is ongoing, or has initiated an investigation but was unable to determine whether abuse or neglect occurred.

The bill also requires that, whenever a prospective foster parent or any other person 18 years of age or older who resides with the prospective foster parent has resided in a state other than Ohio within the five-year period immediately prior to the date on which a criminal records check is requested for the person, the recommending agency must request a check of the Ohio Central Registry of Abuse and Neglect from ODJFS regarding the prospective foster parent or the person 18 years of age or older who resides with the prospective foster parent to enable the agency to check any child abuse and neglect registry maintained by that other state. The recommending agency must make the request and must review the results of the check before the prospective foster parent may be finally approved for placement of a child. Information received pursuant to such a request is to be considered, for purposes of R.C. Chapter 5104., as if it were a summary report required as described in the preceding paragraph. ODJFS must comply with any request to check the central registry that is similar to the request described in this paragraph and that is received from any other state.

Based on a summary report containing a determination that abuse or neglect has occurred, and when considered within the totality of the circumstances, ODJFS may deny a foster home certification or recertification. ODJFS may not deny certification or recertification solely based on a summary report containing information indicating that a public children services agency has initiated an investigation that is ongoing or has initiated an investigation but was unable to determine whether abuse or neglect occurred. (R.C. 5103.18 and conforming change in R.C. 5103.16(A).)

Current law provides that this summary report must be submitted by an association or institution certified to place a child into a foster home to ODJFS before a child is placed in a foster home (R.C. 5103.16 and 5103.18).

The bill provides in uncodified law that, until the uniform statewide automated child welfare information system is implemented statewide by all public children services agencies as described in R.C. 5153.02, agencies or persons required to include a summary report pursuant to the provisions described above must request a check of the Ohio Central Registry of Abuse and Neglect from ODJFS regarding any prospective foster parent and any person 18 years of age or older who resides with the prospective foster parent to enable the agency or person to check any child abuse and neglect registry maintained by any state in

which the prospective foster parent or the person 18 years of age or older who resided with the prospective foster parent has resided in the preceding five years. After the information system is implemented statewide by all public children services agencies as described in R.C. 5153.02, all private agencies, as defined in R.C. 5103.02, must request a check of that system by ODJFS until the private agency can access the system and conduct its own search. (Section 4.)

Notification of the placement of a child in a foster home

The bill makes no substantive changes to the existing provisions regarding notification of the placement of a child in a foster home, but the bill adds new provisions that are applicable if the child being placed is an exceptional behavioral needs child or a child who has been adjudicated a delinquent child for a felony act.

Written communication prior to placement; content of communication

Under continuing law, when a private or governmental entity intends to place a child in a certified foster home in a county other than the county in which the child resided at the time of being removed from home, a representative of the placing entity must orally communicate the intended placement to both (1) the foster caregiver with whom the child is to be placed and (2) if the child will attend the schools of the district in which the foster home is located, a representative of the school district's board of education.

The bill additionally requires that when a private or governmental entity intends to place a child in a certified foster home in any county, and either the child has been determined by a court, a public children services agency, a private child placing agency, or a governmental entity with authority to place the child to be an exceptional behavioral needs child or the child has been adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, a representative of the placing entity, prior to the placement, must communicate *in writing* the intended placement to the foster caregiver with whom the child is to be placed and to all of the following persons: (1) the superintendent of each board of education of a school district with schools within the "specified geographical notification area" (see below), (2) the appointing or hiring officer of each chartered nonpublic school or each other school located within the specified geographical notification area that is not operated by a board of education described in the preceding clause, (3) the sheriff of each county that includes any portion of the specified geographical notification area, and (4) the chief of police, marshal, or other chief law enforcement officer of the municipal corporation in which the foster home is located or, if the foster home is located in an unincorporated area, the constable or chief of the police department or police district police force of the township in which it is located. The bill defines for use in this provision an "exceptional behavioral needs child" as meaning a child who

presents severe emotional or behavioral management problems, including, but not limited to, a child who displays a high degree of impulsive and acting-out behavior toward themselves or others that often is characterized by verbal and physical aggression, a child who has multiple and severe psychiatric, emotional, and behavioral management problems ranging from personality disorders to aggression toward animals, others, and self, or sexual acting-out, or a child who poses an ongoing danger to self or others documented by one or more of the following licensed professionals:

- (1) A psychiatrist;
- (2) A licensed psychologist or licensed school psychologist, both as defined in R.C. 4732.01;
- (3) A person licensed under R.C. Chapter 4757. to engage in the practice of social work;
- (4) A person licensed under R.C. Chapter 4757. to engage in the practice of professional counseling;
- (5) A person licensed under R.C. Chapter 4757. as an independent marriage and family therapist or a marriage and family therapist.

Also, as used in this provision, "specified geographical notification area" means the geographic area or areas within which the Attorney General, by rule adopted under R.C. 2950.13, requires notice under the community notification provision of the Sex Offender Registration and Notification Law (R.C. 2950.11(B)) to be given to the persons identified in that provision, except that any references made in a rule so adopted to a specific proximity to an offender's or delinquent child's residential premises is to be considered for purposes of this provision to be references to the same specific proximity to the premises of the foster home. (R.C. 2151.55.)

In the required oral or written communication described above, the representative of the placing entity must do the following (continuing current law): (1) discuss safety and well-being concerns regarding the child and, if the child attends school, the students, teachers, and personnel of the school, (2) provide the following information: (a) a brief description of the reasons the child was removed from home, (b) services the child is receiving, (c) the name of the contact person for the placing entity that is directly responsible for monitoring the child's placement, (d) the telephone number of the placing entity and, if the child is in the temporary, permanent, or legal custody of a private or government entity other than the placing entity, the telephone number of the entity with custody, (e) the

previous school district attended by the child, and (f) the last known address of the child's parents.

Under continuing current law, for a child for whom only an oral communication is required (i.e. not an exceptional behavioral needs child or child adjudicated a delinquent child for a felony act) and who is enrolled in a school in the district where the foster home is located, the information described in clause (2), above, must be provided, in writing, to the school district and the child's foster caregiver within five days of the child's enrollment in the school. (R.C. 2151.551(A) and (B) and 2151.552.)

For an exceptional behavioral needs child or a child who has been adjudicated a delinquent child for committing an act that would be a felony, the bill additionally requires that the written notification to the foster caregiver and the other specified entities provide the child's name and age, the address of the certified foster home at which the child is being placed, the name and a telephone number of a contact person at that home, and a statement that the home is a treatment foster home. The notification must also provide a brief description of the facts supporting the determination that the child is an exceptional behavioral needs child or of the facts and circumstances of the act resulting in the delinquent child adjudication and must discuss safety and well-being concerns with respect to the child and community. (R.C. 2151.551(C).)

Each school district board of education must implement a procedure for receiving the information regarding a child placed with a foster caregiver enrolled in a district school (similar to existing law) and for receiving the discussions and information, described above, regarding an exceptional behavioral needs child or a child who has been adjudicated a delinquent child for a felony act. The procedures regarding the discussions and information regarding an exceptional behavioral needs child or a child who has been adjudicated a delinquent child for a felony act must contain safeguards to ensure the confidentiality of the information provided. (R.C. 2151.553.)

Existing R.C. 5103.02 (not in the bill) provides that, as used in the law governing foster homes, a "treatment foster home" is a foster home that incorporates special rehabilitative services designed to treat the specific needs of the children received in the home and that receives and cares for children who are emotionally or behaviorally disturbed, chemically dependent, mentally retarded, developmentally disabled, or who otherwise have exceptional needs.

Written notice to juvenile court, if placement of delinquent or unruly child; content of notice

Under continuing law, when a private or governmental entity places a child who has been adjudicated to be an unruly or delinquent child in a certified foster home in a county other than the county in which the child resided at the time of being removed from home, the placing entity must provide the following information in writing to the juvenile court of the county in which the certified foster home is located: (1) services the child is receiving, the name of the contact person for the placing entity that is directly responsible for monitoring the child's placement, and the telephone number of the placing entity and, if the child is in the temporary, permanent, or legal custody of a private or government entity other than the placing entity, the telephone number of the entity with custody, (2) a brief description of the facts supporting the adjudication that the child is unruly or delinquent, (3) the name and address of the foster caregiver, and (4) safety and well-being concerns with respect to the child and community (R.C. 2151.554(A)).

The bill additionally specifies that when a private or governmental entity places a child who has been adjudicated an unruly child or delinquent child in a certified foster home in any county, and either the child has been determined by a court or a placing entity to be an exceptional behavioral needs child or the child has been adjudicated a delinquent child for committing a felony act, the placing entity must provide the information described in clauses (1) through (4), above, to the juvenile court of the county in which the foster home is located, unless that court is the court of jurisdiction in the child's case (R.C. 2151.554(B)).

General confidentiality of information provided

The bill specifies that any information, document, written or oral statement, or report provided by a private or governmental entity pursuant to its provisions described above is confidential and not a public record open to public inspection under the state's Public Records Law. The bill prohibits any person from permitting or encouraging the unauthorized dissemination of the confidential information described in the preceding sentence, except pursuant to a court order as provided by law (the bill does not provide a criminal penalty for a violation of the prohibition). (R.C. 2151.555.)

Search of uniform statewide automated child welfare information system and central registries in other states, in an adoption

Current law

Current law provides that, not later than January 1, 2008, the Director of ODJFS must adopt rules under the Administrative Procedure Act specifying both

of the following regarding adoptions: (1) the manner in which a home study is to be conducted and the information and documents to be included in a home study report, which must include, pursuant to the provisions described in the next paragraph, a summary report of a search of the uniform statewide automated child welfare information system described above in "*Uniform statewide automated child welfare information system*," and (2) a procedure under which a person whose application for adoption has been denied as a result of a search of the system as part of the home study may appeal the denial to the agency that employed the assessor who filed the report (R.C. 3107.033).

Under current law, the summary report of a search of the uniform statewide automated child welfare information system that is required under the provision described in the preceding paragraph must contain, if applicable, a chronological list of abuse and neglect determinations or allegations of which the person seeking to adopt is subject and in regards to which a public children services agency has done one of the following: (1) determined that abuse or neglect occurred, (2) initiated an investigation, and the investigation is ongoing, or (3) initiated an investigation and the agency was unable to determine whether abuse or neglect occurred. Current law also specifies certain types of information that the summary report cannot contain. An application for adoption may be denied based on a summary report containing information indicating that abuse or neglect has occurred, when considered within the totality of the circumstances. An application for adoption cannot be denied solely based on a summary report containing information of the type described in clause (2) or (3) of the first sentence of this paragraph. (R.C. 3107.034.)

Operation of the bill

The bill provides that, whenever a prospective adoptive parent or a person 18 years of age or older who resides with a prospective adoptive parent has resided in a state other than Ohio within the five-year period immediately prior to the date on which a criminal records check is requested for the person under R.C. 2151.86(A), the administrative director of an agency, or attorney, who arranges the adoption for the prospective adoptive parent must request a check of the Ohio Central Registry of Abuse and Neglect from ODJFS regarding the prospective adoptive parent or the person 18 years of age or older who resides with the prospective adoptive parent to enable the agency or attorney to check any child abuse and neglect registry maintained by that other state. The administrative director or attorney must make the request and review the results of the check before a final decree of adoption or an interlocutory order of adoption making the person an adoptive parent may be made. Information received pursuant to the request is considered, for purposes of the Adoption Law, as if it were a summary report required under the provision described above in the first paragraph under

"Current law." ODJFS must comply with any request to check the central registry that is similar to the request described in this paragraph and that is received from any other state. (R.C. 3107.034(A).)

Related to the provisions described in the preceding paragraph, the bill expands the current provision that requires the Director of ODJFS to adopt rules specifying the manner in which a home study is to be conducted and the information and documents to be included in a home study report so that, in addition to including a summary report of a search of the uniform statewide automated child welfare information system, the information and documents to be included in a home study report also must include a report of a check of a central registry of a state other than Ohio if such a check is required under the provision described in the preceding paragraph (R.C. 3107.033).

The bill provides in uncodified law that, until the uniform statewide automated child welfare information system is implemented statewide by all public children services agencies as described in R.C. 5153.02, agencies or persons required to include a summary report pursuant to the provisions described above must request a check of the Ohio Central Registry of Abuse and Neglect from ODJFS regarding any prospective adoptive parent and any person 18 years of age or older who resides with the prospective adoptive parent to enable the agency or person to check any child abuse and neglect registry maintained by any state in which the prospective adoptive parent or the person 18 years of age or older who resided with the prospective adoptive parent has resided in the preceding five years. After the information system is implemented statewide by all public children services agencies as described in R.C. 5153.02, all private agencies, as defined in R.C. 5103.02, must request a check of that system by ODJFS until the private agency can access the system and conduct its own search. (Section 4.)

Provisions regarding child day-care centers, type A homes, and type B homes

Requirement that a type B family day-care home notify parents that the home is also certified as a foster home

Current law requires ODJFS to adopt rules governing the certification of type B family day-care homes. Current law also includes a list of topics that JFS must address in these rules. The bill adds to the required rules that JFS must adopt by specifying that the type B family day-care rules must include, in addition to the currently required content, requirements for the type B home to notify parents with children in the home that the home is also certified as a foster home. (R.C. 5104.011(G)(1)(c) and (G)(2)(p), conforming change in R.C. 5104.30(E)(2)(c)(i) and (ii).)

Provision of proposed rules regarding child day-care centers, type A homes, type B homes, and in-home aides

By ODJFS--rules regarding child day-care centers and type A homes.

Current law requires the Director of ODJFS to send to each licensee (i.e., the owner of a child day-care center or type A family day-care home licensed under R.C. Chapter 5104.) notice of proposed rules governing the licensure of child day-care centers and type A homes, give notice of hearings regarding the rules to each licensee at least 30 days prior to the date of the public hearing, and, at least 30 days before the effective date of a rule, provide in either paper or electronic form, a copy of the adopted rule to each licensee.

The bill modifies current law relative to notice of the proposed rules to require the Director to *provide or make available in either paper or electronic form* to each licensee notice of proposed rules governing the licensure of child day-care centers and type A homes. (R.C. 5104.011(J)(1).)

By county director of job and family services--rules regarding type B homes and in-home aides.

Current law requires the county director of job and family services to send copies of proposed rules to each authorized provider (i.e., a person authorized by a county director to operate a certified type B family day-care home) and in-home aide (i.e., a person who does not reside with the child but provides care in the child's home and is certified by a county director to provide publicly funded child care to a child in the child's own home), to give public notice of hearings regarding the rules to each authorized provider and in-home aide at least 30 days prior to the date of the public hearing, and, at least 30 days before the effective date of a rule, provide in either paper or electronic form, copies of the adopted rule to each authorized provider and in-home aide.

The bill modifies current law relative to notice of the proposed rules to require the county director of job and family services to *provide or make available in either paper or electronic form* to each authorized provider and in-home aide copies of proposed rules. (R.C. 5104.011(J)(3).)

By ODJFS--rules regarding type B homes and in-home aides. Current law, unchanged by the bill, requires the director of ODJFS to send to each county director of job and family services a notice of proposed rules governing the certification of each type B family homes and in-home aides that includes an Internet web site address where the proposed rules may be viewed, to give public notice of hearings regarding the proposed rules at least 30 days in advance, and provide to each county director an electronic copy of each adopted rule at least 45 days prior to the rule's effective date (R.C. 5104.011(J)(2)).

Criminal records checks

The bill changes the current provisions regarding criminal records checks regarding child day-care centers, type A homes, and type B homes in the following ways:

(1) In the provision that currently requires the ODJFS to request a criminal records check of the owner, licensee, or administrator of a child day-care center and of the owner, licensee, or administrator of a type A family day-care home and any person 18 years of age or older who resides in a type A home, and in the provision that currently requires the director of a county department of job and family services to request a criminal records check of the authorized provider of a certified type B family day-care home and any person 18 years of age or older who resides in a certified type B home, it specifies that ODJFS must request the criminal records check for all of the specified persons regarding a child day-care center or type A home at the time of the initial application for licensure and every four years thereafter at the time of a license renewal, and that the director of the county department must request the criminal records check regarding a type B home at the time of the initial application for certification and every four years thereafter at the time of a certification renewal (R.C. 5104.013(A)(1), (2), and (3)).

(2) In the provision that currently requires the administrator of a child day-care center or a type A home and the provider of a certified type B home to request a criminal records check of a person who is under final consideration for appointment to or employment in a position with the center or home as a person responsible for the care, custody, or control of a child, an in-home aide, or a person who would serve in a position with the center or home as a person responsible for the care, custody, or control of a child, it: (a) removes from the provision the references to a provider of a certified type B home (type B homes supposedly never have employees), and (b) specifies that the administrator of a child day-care center or type A home must request the criminal records check at the time of the applicant's initial application for employment and every four years thereafter at the time of a license renewal (R.C. 5104.012(A)(1)).

(3) It revises the situations in which a request to BCII for a criminal records check must include a request that BCII obtain information from the FBI regarding the subject person. Under the bill: (a) when ODJFS or the director of a county department of job and family services requests, at the time of the initial application for licensure or certification, a criminal records check for a person, ODJFS or the director must request an FBI check for the person subject to the criminal records check, and, in all other cases in which ODJFS or the director of a county department requests a criminal records check for a person, ODJFS or the director may request an FBI check (R.C. 5104.013(A)(3)), and (b) when the administrator of a child day-care center or a type A home requests a criminal

records check for an applicant at the time of the applicant's initial application for employment, the administrator must request an FBI check for the person subject to the criminal records check, and, in all other cases in which the administrator requests a criminal records check for an applicant, the administrative director may request an FBI check (R.C. 5104.012(A)(1)).

(4) It specifies that every request for an FBI check must request that BCII obtain information from the FBI as part of the criminal records check, including fingerprint based checks of national crime information databases as described in a specified provision of federal law (R.C. 5104.012(A)(1), 5120.013(A)(3), and 109.572(B)(2)).

(5) It specifies that: (a) on and after the bill's effective date, the administrator of a child day-care center or a type A family day-care home must review the results of a criminal records check conducted under these provisions before the applicant has sole responsibility for the care, custody, or control of any child (R.C. 5104.012(A)(2)), and (b) ODJFS and the director of a county department of job and family services must review the results of a criminal records check conducted under these provisions prior to approval of a license or prior to approval of certification, whichever is applicable (R.C. 5104.013(A)(4)).

Disqualifying offenses--current law. Currently, when BCII conducts a records check under the provisions described above, it determines whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the offenses described below that are relevant regarding the particular request and it notifies the requesting ODJFS, county department of job and family services, administrator of a child day-care center or a type A family day-care home, or provider of a type B family day-care home of its findings (R.C. 109.572(A)(1), (9), and (13)). Unless the person who is the subject of the request meets rehabilitation standards adopted by ODJFS, a conviction of or plea of guilty to any of the following offenses prohibits the issuance of a license to a child day-care center or type A home, the certification of a type B home, or the employment of the person by a center or home as a person responsible for the care, custody, or control of a child:

(1) If the request is made pursuant to R.C. 5104.012 or 5104.013 regarding possible licensure or certification of a center or home or possible employment in a center or home, the offenses for which BCII checks and that are disqualifying offenses are: (a) aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, failing to provide for a functionally impaired person, aggravated menacing, patient abuse, gross patient neglect, patient neglect, kidnapping, abduction, criminal child enticement, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, voyeurism, public indecency, compelling

prostitution, promoting prostitution, procuring, prostitution, prostitution after a positive HIV test, disseminating matter harmful to juveniles, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of a minor in nudity-oriented material or performance, aggravated robbery, robbery, aggravated burglary, burglary, unlawful abortion, endangering children, contributing to the unruliness or delinquency of a child, domestic violence, carrying concealed weapons, having weapons while under a disability, improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function, corrupting another with drugs, a drug trafficking offense, illegal manufacture of drugs, illegal cultivation of marihuana, an offense regarding funding of drug or marihuana trafficking, illegal administration or distribution of anabolic steroids, placing harmful objects in food or confection, the former offense of felonious sexual penetration, the former offense of child stealing, interference with custody that is comparable to the former offense of child stealing, or a drug possession offense that is not a minor drug possession offense, or (b) a violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in clause (a) of this paragraph (R.C. 109.572(A)(1), 5104.012(B)(1), and 5104.013(D)(1)).

(2) If the request is made pursuant to R.C. 5104.013 regarding possible licensure or certification of a center or home, the offenses for which BCII checks and that are disqualifying offenses, in addition to those described in paragraph (1), above, are: (a) theft and the related offenses set forth in R.C. 2913.02, unauthorized use of a vehicle, unauthorized use of property, unauthorized use of computer, cable, or telecommunication property, possession of an unauthorized device, sale of an unauthorized device, telecommunications fraud, unlawful use of a telecommunications device, passing bad checks, misuse of credit cards, forgery, forging identification cards or selling or distributing forged identification cards, criminal simulation, making or using slugs, trademark counterfeiting, Medicaid fraud, defrauding a livery or hostelry, tampering with records, securing writings by deception, personating an officer, unlawful display of the emblem of a law enforcement agency or an organization of law enforcement officers, defrauding creditors, illegal use of food stamps or WIC program benefits, insurance fraud, workers' compensation fraud, identity fraud, perjury, falsification, falsification in a theft offense, falsification to purchase a firearm, falsification to obtain a concealed handgun license, conspiracy, attempt or complicity that relates to a crime specified in this paragraph or clause (a) of paragraph (1), above, or a second state OVI or OVUAC offense within five years of the date of application for licensure or certification, or (b) a violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in clause (a) of this paragraph (R.C. 109.572(A)(9) and

5104.013(D)(2)). Note that if the request is made pursuant to R.C. 5104.012 regarding possible employment in a center or home, BCII is required to check for the offenses listed in this paragraph, but the offenses are not explicitly identified as disqualifying offenses regarding the possible employment (R.C. 109.572(A)(9) requires the check for the offenses, but neither R.C. 5104.012(B)(1) nor 5104.013(D)(2) identifies them as disqualifying offenses regarding employment).

Disqualifying offenses--operation of the bill. The bill modifies the existing "disqualifying offense" provisions regarding the issuance of a license to a child day-care center or type A home, the certification of a type B home, or the employment of the person by a center or home as a person responsible for the care, custody, or control of a child as follows:

(1) In the provision that currently lists disqualifying offenses regarding employment in a position with a child day-care center, type A home, or certified type B home, the bill removes from the provision the references to employment with a certified type B home (type B homes supposedly never have employees) (R.C. 5104.012(B) to (G)).

(2) It consolidates the two lists of disqualifying offenses for which BCII conducts a criminal records check regarding the issuance of a license to a child day-care center or type A home, the certification of a type B home, or the employment of the person by a center or type A home as a person responsible for the care, custody, or control of a child, as described above, into one list that is located in R.C. 109.572(A)(9). It also expands the consolidated list so that it includes, in addition to the offenses that currently are disqualifying offenses, the offense of menacing. The consolidated list, as so expanded, applies regarding all requests for criminal records checks made under R.C. 5104.012 or 5104.013 regarding the issuance of a license to a child day-care center or type A home, the certification of a type B home, or the employment of the person by a center or type A home as a person responsible for the care, custody, or control of a child. (R.C. 109.572(A)(1) and (A)(9), 5104.012(B), and 5104.013(D).)

Separate disqualification of certain offenders from day-care ownership, operation, certification, or employment

Existing law--disqualification not directly linked to criminal records check. In provisions that are not directly linked to the criminal records check provisions described above, existing law specifies that, except as provided in rules adopted by ODJFS, as described below (R.C. 5104.09(A)(1)):

(1) No individual who has been convicted of or pleaded guilty to aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, failing to provide for a functionally

impaired person, aggravated menacing, menacing, patient abuse, gross patient neglect, patient neglect, kidnapping, abduction, criminal child enticement, extortion, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, voyeurism, public indecency, compelling prostitution, promoting prostitution, procuring, prostitution, prostitution after a positive HIV test, disseminating matter harmful to juveniles, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of a minor in nudity-oriented material or performance, aggravated arson, arson, disrupting public services, vandalism, aggravated robbery, robbery, aggravated burglary, burglary, inciting to violence, aggravated riot, riot, inducing panic, unlawful abortion, endangering children, contributing to the unruliness or delinquency of a child, domestic violence, intimidation, escape, aiding escape or resistance to lawful authority, carrying concealed weapons, having weapons while under a disability, improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function, corrupting another with drugs, a drug trafficking offense, illegal manufacture of drugs, illegal cultivation of marijuana, an offense regarding funding of drug or marijuana trafficking, illegal administration or distribution of anabolic steroids, placing harmful objects in food or confection, the former offense of child stealing, a drug possession offense that is not a minor drug possession offense, the former offense of felonious sexual penetration, or a violation of an existing or former law or ordinance of any municipal corporation, Ohio, any other state, or the United States that is substantially equivalent to any of those offenses may be certified as an in-home aide or be employed in any capacity in or own or operate a child day-care center, type A family day-care home, type B family day-care home, or certified type B family day-care home.

(2) No individual who has been convicted of or pleaded guilty to theft or a related offense set forth in R.C. 2913.02, unauthorized use of a vehicle, unauthorized use of property, unauthorized use of computer, cable, or telecommunication property, possession of an unauthorized device, sale of an unauthorized device, telecommunications fraud, unlawful use of a telecommunications device, passing bad checks, misuse of credit cards, forgery, forging identification cards or selling or distributing forged identification cards, criminal simulation, making or using slugs, trademark counterfeiting, Medicaid fraud, defrauding a livery or hostelry, tampering with records, securing writings by deception, personating an officer, unlawful display of the emblem of a law enforcement agency or an organization of law enforcement officers, defrauding creditors, illegal use of food stamps or WIC program benefits, insurance fraud, workers' compensation fraud, identity fraud, perjury, falsification, falsification in a theft offense, falsification to purchase a firearm, falsification to obtain a concealed

handgun license, conspiracy, attempt or complicity that relates to a crime specified in this paragraph or paragraph (1), above, a second state OVI or OVUAC offense within five years of the date of application for licensure or certification, or two state OVI or OVUAC offenses during the operation of the center or home, or a violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of those violations may own or operate a child day-care center, type A family day-care home, type B family day-care home, or certified type B family day-care home.

Operation of the bill--disqualification not directly linked to criminal records check. The bill revises the disqualification provisions described above, and the lists of disqualifying offenses they contain, so that they specify that no individual who has been convicted of or pleaded guilty to any offense listed in R.C. 109.572(A)(9), as described above in "**Disqualifying offenses--operation of the bill**" under "**Criminal records checks**," or any offense specified in either of the lists provided under current law, as described in paragraphs (1) and (2) under "**Existing law--disqualification not directly linked to criminal records check**," that are not listed in division (A)(9) of R.C. 109.572 (those offenses are extortion, aggravated arson, arson, disrupting public services, vandalism, inciting to violence, aggravated riot, riot, inducing panic, intimidation, escape, aiding escape or resistance to lawful authority, and two state OVI or OVUAC offenses during the operation of the center or home) may be certified as an in-home aide or be employed in any capacity in or own or operate a child day-care center, type A family day-care home, type B family day-care home, or certified type B family day-care home (R.C. 5104.09(A)(1), partially by cross-reference to the list of offenses that the bill consolidates in R.C. 109.572(A)(9), as described above in "**Disqualifying offenses--operation of the bill**" under "**Criminal records checks**").

Existing law--attestation of no conviction. Existing law provides the following, in relation to the disqualifications described above (R.C. 5104.09(A)(2) to (D)):

(1) It requires each employee of a child day-care center or type A home and each person 18 years of age or older residing in a type A home to sign a statement attesting to the fact that the person has not been convicted of or pleaded guilty to any offense identified in paragraph (1), above, under "**Existing law--disqualification not directly linked to criminal records check**" and that no child has been removed from the employee's or resident person's home pursuant to R.C. 2151.353, and requires each licensee of a type A home to sign a statement attesting to the fact that no person who resides at the type A home and who is under the age of 18 has been adjudicated a delinquent child for committing a violation of any section identified in paragraph (1), above, under "**Existing law--**

disqualification not directly linked to criminal records check." The statements must be kept on file at the center or type A home.

(2) It requires each in-home aide and each person 18 years of age or older residing in a certified type B home to sign a statement attesting that the person has not been convicted of or pleaded guilty to any offense identified in paragraph (1), above, under "**Existing law--disqualification not directly linked to criminal records check**" and that no child has been removed from the aide's or person's home pursuant to R.C. 2151.353, requires each authorized provider to sign a statement attesting that the provider has not been convicted of or pleaded guilty to any offense identified in paragraph (1) or (2), above, under "**Existing law--disqualification not directly linked to criminal records check**" and that no child has been removed from the provider's home pursuant to R.C. 2151.353, and requires each authorized provider to sign a statement attesting to the fact that no person who resides at the certified type B home and who is under the age of 18 has been adjudicated a delinquent child for committing a violation of any section identified in paragraph (1), above, under "**Existing law--disqualification not directly linked to criminal records check.**" The statements must be kept on file at the county department of job and family services.

(3) It requires each administrator and licensee of a center or type A home to sign a statement attesting that the administrator or licensee has not been convicted of or pleaded guilty to any offense identified in paragraph (1) or (2), above, under "**Existing law--disqualification not directly linked to criminal records check**" and that no child has been removed from the administrator's or licensee's home pursuant to R.C. 2151.353. The statement must be kept on file at the center or type A home.

(4) It prohibits an in-home aide, an administrator, licensee, authorized provider, or employee of a center, type A home, or certified type B home, and a person 18 years of age or older residing in a type A home or certified type B home from withholding information from, or falsifying on, any statement required pursuant to the provisions described in paragraphs (1) to (3), above, and prohibits an administrator, licensee, or child-care staff member from discriminating in the enrollment of children in a child day-care center upon the basis of race, color, religion, sex, or national origin.

(5) It requires the Director of ODJFS to adopt rules pursuant to the Administrative Procedure Act to implement the provisions described above, including rules specifying exceptions to the prohibitions related to the disqualification of persons who have been convicted of a disqualifying offense identified above but meet rehabilitation standards set by the department.

Operation of the bill--attestation of no conviction. The bill amends the attestation provisions described above so that all of the required attestations are that the subject person has not been convicted of or pleaded guilty to any offense described above in "**Operation of the bill--disqualification not directly linked to criminal records check**" (R.C. 5104.09(A)(2) to (4) and (D)), by cross-reference to the list of offenses the bill references in R.C. 5104.09(A)(1), as described above in "**Operation of the bill--disqualification not directly linked to criminal records check**".

No licensure or certification if the home is a foster home

The bill prohibits ODJFS from licensing a prospective type A family day-care home if that prospective home is certified to be a foster home or specialized foster home under R.C. Chapter 5103. Additionally, the bill prohibits a county department of job and family services from certifying a prospective type B family day-care home if that home is certified as a specialized foster home. (R.C. 5104.022.)

Permanent custody of a child who has been in the temporary custody of a public children services agency for 12 or more months of a consecutive 22-month period

Current law

Under current law, if a child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999, the agency with custody of the child, unless specified circumstances are present, must file a motion with the court who issued the current temporary order requesting permanent custody. If the court finds that it is in the best interests of the child (current law specifies factors to be considered in determining the best interest) and any of four specified circumstances are present, the court may grant permanent custody of the child to the agency. The specified circumstances are: (1) the child is not abandoned or orphaned or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents, (2) the child is abandoned, (3) the child is orphaned and there are no relatives of the child who are able to take permanent custody, or (4) the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999. (R.C. 2151.413(D) and 2151.414(B).)

Operation of the bill

In all of the provisions of current law described above that contain a reference to a period "ending on or after March 18, 1999," the bill eliminates the reference to the period ending on or after March 18, 1999. The bill also specifies that, if the child has been in the temporary custody of one or more public children services agencies or private child placing agencies and the child previously was in the temporary custody of an equivalent agency in another state, the agency with custody of the child must apply the time in temporary custody in the other state to the time in temporary custody in Ohio and, unless specified circumstances are present, if the time spent in temporary custody equals 12 months or more of a consecutive 22-month period, the agency with custody may file a motion requesting permanent custody. (R.C. 2151.413(D)(1) and R.C. 2151.414(B)(1)(d) and (D)(3).)

Regarding the court's determination as to whether to grant permanent custody, the bill modifies two of the four specified circumstances that are used in determining whether to grant permanent custody. Under the bill, if the court finds that it is in the best interest of the child, it may grant permanent custody of the child to the agency if it finds that any of the following circumstances apply: (1) the child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period, *or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period if, as described in the preceding paragraph, the child was previously in the temporary custody of an equivalent agency in a state other than Ohio*, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents (amended by the bill), (2) the child is abandoned (existing law), (3) the child is orphaned and there are no relatives of the child who are able to take permanent custody (existing law), or (4) the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period, *or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period and, as described in the preceding paragraph, the child was previously in the temporary custody of an equivalent agency in a state other than Ohio* (amended by the bill). (R.C. 2151.414(B)(1).)

Finally, existing law requires the court, in determining the best interest of a child, to consider all relevant factors, including five specified factors. One of the specified factors is the custodial history of the child, including whether the child has been in the temporary custody of one or more public children services

agencies or private child placing agencies for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999. The bill removes the "ending on or after March 18, 1999," reference and expands this factor so that it also refers to whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period and, as described in the second preceding paragraph, the child was previously in the temporary custody of an equivalent agency in a state other than Ohio. (R.C. 2151.414(D)(3).)

Review hearings that pertain to permanency plans

Current law

Current 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.

Current law also provides that if, within 14 days after a written summary of an administrative review is filed with the court pursuant to R.C. 2151.416, the court does not approve the proposed change to the case plan filed pursuant to division (E) of that section 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 section. Additionally, if a court determines pursuant to R.C. 2151.419 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, including, but not limited to, the following: the case plan for the child; the permanency plan, if one exists; the actions taken by the child's custodian; the need for a change in the child's custodian or caseworker; and the need for any specific action to be taken with respect to the child. 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.

Current law authorizes the court to appoint a referee or a citizens review board to conduct the review hearings described above that the court is required to conduct, 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 current 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 with the child, in an age-appropriate manner, 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

Current law

Current 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).

Public children services agency memorandum of understanding

Current law requires each public children services agency to prepare a memorandum of understanding signed by various public officials from the county the agency serves. The memorandum must set forth the normal operating procedure for all concerned officials to employ in the execution of their respective responsibilities in the investigation and prosecution of child abuse. Two of the primary goals of the memorandum are the elimination of all unnecessary interviews of children who are the subject of alleged child abuse reports and, when feasible, providing for only one interview of such a child. (R.C. 2151.421(J)(1) and (2).)

The bill does not change the specified public officials who must sign the memorandum of understanding, but it includes a provision permitting the clerk of the court of common pleas to sign the memorandum of understanding. If the clerk signs the memorandum, the clerk must execute all relevant responsibilities as required of officials specified in the memorandum. (R.C. 2151.421(J)(5).)

ODJFS work group

The bill requires the Director of ODJFS, not later than 30 days after its effective date and in addition to the actions authorized by R.C. 5101.24 (that section currently pertains to ODJFS actions against certain entities), to convene a

work group to study and make recommendations to the Director regarding both of the following (Section 3):

(1) Support for positive child and family outcomes offered to public children services agencies, private child placing agencies, and private noncustodial agencies by ODJFS;

(2) The establishment of fines and sanctions for public children services agencies, private child placing agencies, and private noncustodial agencies that do not comply with foster care related laws or rules.

The work group must include representatives of public children services agencies, private child placing agencies, private noncustodial agencies, the Ohio Family Care Association, the Ohio Association of Child Caring Agencies, the Public Children Services Association of Ohio, the Ohio Job and Family Services Directors' Association, the County Commissioners' Association of Ohio, foster caregivers, and current and former foster children. By June 30, 2008, the work group must prepare and submit to the Director of ODJFS a report that contains recommendations regarding ODJFS support for local agencies and the establishment of fines and sanctions either in law, rule, or both. The Director must review the recommendations and create an executive summary of the recommendations for submission to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The work group ceases to exist upon submission of the executive summary.

References to former Ohio laws and the laws of other states

In two existing provisions that list certain Revised Code sections, refer to certain types of actions that occur under the listed sections, and link certain restrictions to those actions, the bill includes references to existing or former laws of Ohio, any other state, or the United States that are substantially equivalent to the listed Revised Code sections. The existing provisions, with the modifications made by the bill indicated in italics, do the following:

(1) Require a court to enter a finding that a child for whom a public children services agency or a private child placing agency is requesting permanent custody cannot be placed with either parent within a reasonable period of time or should not be placed with either parent if the court determines that the parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to R.C. 2151.214, 2151.353, or 2151.415 *or under an existing or former law of this state, another state, or the United States that is substantially equivalent to those sections* (R.C. 2151.414(E)(11)).

(2) Require a court to make a determination that a public children services agency or a private child placing agency is not required to make reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the child's home, and return the child to the child's home if the parent from whom the child was removed has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to R.C. 2151.353, 2151.414, or 2151.415 *or under an existing or former law of this state, another state, or the United States that is substantially equivalent to those sections* (R.C. 2151.419(A)(2)(e)).

Putative father consent to adoption

Existing law

In general. Existing law specifies certain persons that must consent, and certain other persons who are not required to consent, to an adoption. It provides that, unless consent is not required under the provisions described in the next paragraph, a petition to adopt a minor may be granted only if written consent to the adoption has been executed by all of the following: (1) the minor's mother, (2) the minor's father, if the minor was conceived or born while the father was married to the mother, the minor is his child by adoption, prior to the date the adoption petition was filed, it was determined by a court or administrative proceeding in Ohio or another state that he has a parent and child relationship with the minor, or he acknowledged paternity of the child and that acknowledgment has become final pursuant to R.C. 2151.232, 3111.25, or 3111.821, (3) the minor's putative father, (4) any person or agency having permanent custody of the minor or authorized by court order to consent, (5) the juvenile court with jurisdiction to determine custody of the minor, if the legal guardian or custodian of the minor is not authorized by law or court order to consent to the adoption, and (6) the minor, if more than 12 years of age, unless the court, finding that it is in the minor's best interest, determines that the minor's consent is not required. (R.C. 3107.06.)

Existing law provides that consent to adoption is not required of any of the following: (1) a minor's parent, when it is alleged in the adoption petition and the court finds after proper service of notice and hearing that the parent has failed without justifiable cause to communicate with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner, (2) the minor's putative father if either the putative father fails to register as the minor's putative father with the putative father registry established under R.C. 3107.062 not later than 30 days after the minor's birth or the court finds, after proper service of notice and hearing, that the putative father is not the minor's father, the putative father has willfully abandoned or failed to care for and support the minor, or the putative

father has willfully abandoned the minor's mother during her pregnancy and up to the time of her surrender of the minor, or the minor's placement in the home of the petitioner, whichever occurs first, (3) except as provided in R.C. 3107.071, a parent who has entered into a voluntary permanent custody surrender agreement under R.C. 5103.15(B), (4) a parent whose parental rights have been terminated by order of a juvenile court under R.C. Chapter 2151., (5) a parent who is married to the petitioner and supports the adoption, (6) a minor's father, or putative father, if the minor is conceived as the result of the commission of rape by the father or putative father and the father or putative father is convicted of or pleads guilty to that offense, (7) a legal guardian or guardian *ad litem* of a parent judicially declared incompetent in a separate court proceeding who has failed to respond in writing to a request for consent, for a period of 30 days, or who, after examination of the written reasons for withholding consent, is found by the court to be withholding consent unreasonably, (8) any legal guardian or lawful custodian of the person to be adopted, other than a parent, who has failed to respond in writing to a request for consent, for a period of 30 days, or who, after examination of the written reasons for withholding consent, is found by the court to be withholding consent unreasonably, (9) the spouse of the person to be adopted, if the failure of the spouse to consent is found by the court to be by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances that make it impossible or unreasonably difficult to obtain the consent or refusal of the spouse, (10) any parent, legal guardian, or other lawful custodian in a foreign country, if the person to be adopted has been released for adoption pursuant to the laws of the country in which the person resides and the release of such person is in a form that satisfies the requirements of the federal government, (11) except as described above in clause (7) or (8) of this paragraph, a juvenile court, agency, or person given notice of the petition pursuant to R.C. 3107.11(A)(1) that fails to file an objection to the petition within 14 days after proof is filed pursuant to division (B) of that section that the notice was given, or (12) any guardian, custodian, or other party who has temporary custody of the child. (R.C. 3107.07.)

Adoption of a child born before January 1, 1997. The adoption consent provisions described above in "**In general**" were enacted in Am. Sub. H.B. 419 of the 121st General Assembly, and replaced the consent provisions that previously were in effect. Section 5 of that act specified that the amendments made by the act to R.C. 3107.06 and 3107.07 concerning a putative father consenting to his child's adoption apply only if the child is born on or after January 1, 1997, and that whether a putative father's consent to the adoption of his child born prior to January 1, 1997, is required is determined in accordance with R.C. 3107.06 and 3107.07 as those sections existed immediately prior to their amendment by that act.

R.C. 3107.06, as it existed immediately prior to its amendment by Am. Sub. H.B. 419 of the 121st General Assembly, provided that unless consent was not required under the provisions described in the next paragraph, a petition to adopt a minor could be granted only if written consent to the adoption had been executed by all of the following: (1) the minor's mother, (2) the minor's father, if the minor was conceived or born while the father was married to the mother, if the minor was his child by adoption, or if the minor had been established to be his child by a court proceeding, (3) any person or agency having permanent custody of the minor or authorized by court order to consent, (4) the juvenile court with jurisdiction to determine custody of the minor, if the legal guardian or custodian of the minor was not authorized by law or court order to consent to the adoption, (5) the minor, if more than 12 years of age, unless the court, finding that it was in the minor's best interest, determined that the minor's consent was not required, and (6) subject to the provision described in clause (2) of the next paragraph, the putative father, if he was alleged to be the minor's father in proceedings brought under R.C. 3111.01 to 3111.19 at any time before the placement of the minor in the home of the petitioner, he had acknowledged the child in a writing sworn to before a notary public at any time before the placement of the minor in the home of the petitioner, he had signed the child's birth certificate as an informant as provided in R.C. 3705.09, or he had filed an objection to the adoption with the agency having custody of the minor *or the Department of Human Services* (the predecessor department to ODJFS) at any time before the placement of the minor in the home of the petitioner, or with the probate court *or the Department of Human Services* within 30 days of the filing of a petition to adopt the minor or its placement in the home of the petitioner, whichever occurred first.

R.C. 3107.07, as it existed immediately prior to its amendment by Am. Sub. H.B. 419 of the 121st General Assembly, provided that consent to adoption was not required of any of the following: (1) a minor's parent, when it was alleged in the adoption petition and the court found after proper service of notice and hearing that the parent had failed without justifiable cause to communicate with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner, (2) a minor's putative father if the putative father failed to file an objection with the court, *the Department of Human Services* (the predecessor department to ODJFS), or the agency having custody of the minor as provided in the provision described in clause (6) of the preceding paragraph, or filed an objection with the court, *Department*, or agency and the court found, after proper service of notice and hearing, that he was not the minor's father, or that he had willfully abandoned or failed to care for and support the minor, or abandoned the minor's mother during her pregnancy and up to the time of her surrender of the minor, or its placement in the home of the petitioner, whichever occurred first, (3)

a parent who had relinquished his right to consent under R.C. 5103.15, (4) a parent whose parental rights had been terminated by order of a juvenile court under R.C. Chapter 2151., (5) a legal guardian or guardian *ad litem* of a parent judicially declared incompetent in a separate court proceeding who had failed to respond in writing to a request for consent, for a period of 30 days, or who, after examination of his written reasons for withholding consent, was found by the court to be withholding his consent unreasonably, (6) any legal guardian or lawful custodian of the person to be adopted, other than a parent, who had failed to respond in writing to a request for consent, for a period of 30 days, or who, after examination of his written reasons for withholding consent, was found by the court to be withholding his consent unreasonably, (7) the spouse of the person to be adopted, if the failure of the spouse to consent was found by the court to be by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances that made it impossible or unreasonably difficult to obtain the consent or refusal of the spouse, or (8) any parent, legal guardian, or other lawful custodian in a foreign country, if the person to be adopted had been released for adoption pursuant to the laws of the country in which the person resided and the release of such person was in a form that satisfied the requirements of the federal government.

Operation of the bill

The bill provides that, notwithstanding the provisions of the versions of former R.C. 3107.06 and 3107.07 that, pursuant to Section 5 of Am. Sub. H.B. 419 of the 121st General Assembly, apply regarding a putative father's consent to the adoption of any child born prior to January 1, 1997 (i.e., the versions of those sections that were in effect immediately prior to September 18, 1996), on and after the bill's effective date, both of the following apply (R.C. 3107.066):

(1) The references in former R.C. 3107.06(F)(4) to the Department of Human Services (highlighted above in the summary of that former section) are repealed, and that division of that former section is to be considered as reading, and be applicable, as follows: "Has filed an objection to the adoption with the agency having custody of the minor at any time before the placement of the minor in the home of the petitioner, or with the probate court within 30 days of the filing of a petition to adopt the minor or its placement in the home of the petitioner, whichever occurs first."

(2) The references in former R.C. 3107.07(B) to the Department of Human Services (highlighted above in the summary of that former section) are repealed, and that division of that former section is to be considered as reading, and be applicable, as follows: "The putative father of a minor if the putative father fails to file an objection with the court or the agency having custody of the minor as provided in R.C. 3107.06(F)(4), or files an objection with the court or agency and the court finds, after proper service of notice and hearing, that he is not the father

of the minor, or that he has willfully abandoned or failed to care for and support the minor, or abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor, or its placement in the home of the petitioner, whichever occurs first."

Mandatory reporter--child abuse or neglect

Existing law

General mandatory reporting duty. Existing law identifies specified categories of professions and prohibits a person in any of those categories who is acting in an official or professional capacity and knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child from failing to immediately report that knowledge or reasonable cause to suspect to a specified person or entity.

The categories of professions to which the prohibition described in the preceding paragraph applies are attorneys; physicians; dentists; podiatrists; practitioners of a limited branch of medicine; registered nurses; licensed practical nurses; visiting nurses; other health care professionals; licensed psychologists; licensed school psychologists; independent marriage and family therapists and marriage and family therapists; speech pathologists or audiologists; coroners; administrators and employees of a child day-care center; administrators and employees of a residential camp or child day camp; administrators and employees of a certified child care agency or other public or private children services agency; school teachers, employees, and authorities; persons engaged in social work or the practice of professional counseling; agents of a county humane society; persons, other than clerics, rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; superintendents, board members, and employees of a county board of mental retardation; investigative agents contracted with by a county board of mental retardation; employees of the Department of Mental Retardation and Developmental Disabilities; employees of a facility or home that provides respite care; employees of a home health agency; employees of an entity that provides homemaker services; persons performing the duties of an assessor pursuant to R.C. Chapter 3107. or 5103.; and third parties employed by a public children services agency to assist in providing child or family related services. Exceptions are made for certain communications involving attorneys or physicians and their clients or patients. (R.C. 2151.421(A)(1) to (3).)

A violation of this prohibition generally is a misdemeanor of the fourth degree. If the child who is the subject of the required report that the offender fails to make suffers or faces the threat of suffering the physical or mental wound, injury, disability, or condition that would be the basis of the required report when the child is under the direct care or supervision of the offender who is then acting in the offender's official or professional capacity or when the child is under the direct care or supervision of another person over whom the offender while acting in the offender's official or professional capacity has supervisory control, the violation is a misdemeanor of the first degree. (R.C. 2151.99, not in the bill.)

Cleric and church official mandatory reporting duty. Existing law also prohibits a cleric and a person, other than a volunteer, designated by any church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith who is acting in an official or professional capacity, who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, and who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that another cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith caused, or poses the threat of causing, the wound, injury, disability, or condition that reasonably indicates abuse or neglect from failing to immediately report that knowledge or reasonable cause to believe to a specified entity or person. An exception is made for certain communications involving clerics and their penitent, and the prohibition does not apply when the disclosure of any communication a cleric receives from a penitent is in violation of the sacred trust. (R.C. 2151.421(A)(4).)

A violation of this prohibition generally is a misdemeanor of the fourth degree. If the offender knows that a child has been abused or neglected and knows that the person who committed the abuse or neglect was a cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith, the violation is a misdemeanor of the first degree if the offender and the person who committed the abuse or neglect belong to the same church, religious society, or faith. (R.C. 2151.99, not in the bill.)

Discretionary reporting authority. In addition to the mandatory reporting situations described above, existing law permits anyone who knows, or has

reasonable cause to suspect based on facts that would cause a reasonable person in similar circumstances to suspect, that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child to report or cause reports to be made of that knowledge or reasonable cause to suspect. (R.C. 2151.421(B).)

Operation of the bill

The bill expands the categories of professions to which the mandatory reporting provision described above in "**General mandatory reporting duty**" applies so that, in addition to the categories specified under existing law, the provision also applies to an employee of a county department of job and family services who is a professional and who works with children and families. As under existing law, the person making the report generally must make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred, but in limited circumstances described in R.C. 5120.173, the person making the report must make it to the entity specified in that section. The penalty provided under current law for a violation of the mandatory reporting provision, as described above in "**General mandatory reporting duty**," applies to a violation by an employee of a county department of job and family services whom the bill subjects to the provision. (R.C. 2151.421(A)(1)(b), and R.C. 2151.99, which is not in the bill.)

COMMENT

As used in this analysis:

(1) "Child day-care center" and "center" mean any place in which child care or publicly funded child care is provided for 13 or more children at one time or any place that is not the permanent residence of the licensee or administrator in which child care or publicly funded child care is provided for 7 to 12 children at one time. In counting children, any children under six years of age who are related to a licensee, administrator, or employee and who are on the premises of the center are counted. "Child day-care center" and "center" do not include any of the following (R.C. 5104.01(L)):

(a) A place located in and operated by a hospital, as defined in R.C. 3727.01, in which the needs of children are administered to, if all the children whose needs are being administered to are monitored under the on-site supervision of a physician licensed under R.C. Chapter 4731. or a registered nurse licensed

under R.C. Chapter 4723., and the services are provided only for children who, in the opinion of the child's parent, guardian, or custodian, are exhibiting symptoms of a communicable disease or other illness or are injured;

(b) A child day camp;

(c) A place that provides child care, but not publicly funded child care, if all of the following apply:

(i) An organized religious body provides the child care;

(ii) A parent, custodian, or guardian of at least one child receiving child care is on the premises and readily accessible at all times;

(iii) The child care is not provided for more than thirty days a year;

(iv) The child care is provided only for preschool and school children.

(2) "Type A family day-care home" and "type A home" mean a permanent residence of the administrator in which child care or publicly funded child care is provided for 7 to 12 children at one time or a permanent residence of the administrator in which child care is provided for 4 to 12 children at one time if four or more children at one time are under two years of age. In counting children, any children under six years of age who are related to a licensee, administrator, or employee and who are on the premises of the type A home are counted. "Type A family day-care home" and "type A home" do not include any child day camp. (R.C. 5104.01(RR).)

(3) "Type B family day-care home" and "type B home" mean a permanent residence of the provider in which child care is provided for one to six children at one time and in which no more than three children are under two years of age at one time. In counting children, any children under six years of age who are related to the provider and who are on the premises of the type B home are counted. "Type B family day-care home" and "type B home" do not include any child day camp. (R.C. 5104.01(SS).)

HISTORY

ACTION

DATE

Introduced

05-09-07

Reported, S. Judiciary - Criminal Justice

06-13-07

Passed Senate (33-0)

06-26-07

s0163-ps-127.doc/kl

