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Bill Analysis
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Sen. Stivers

BILL SUMMARY

- Requires the hiring officer of any residential camp to request the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) to conduct a criminal records check with respect to any person who is under final consideration for employment by the residential camp and requires that the request ask for information from the FBI as part of the check if the person does not present proof that the person has been a resident of Ohio for the five-year period immediately prior to the date upon which the check is requested or does not provide evidence that within that five-year period BCII's Superintendent has requested information about the person from the FBI in a criminal records check.
- Requires a residential camp hiring officer who requests a BCII criminal records check as described in the preceding dot point to provide the subject person a form and a fingerprint impression sheet to be used for the check and authorizes the hiring officer to charge the subject person a fee for the officer's costs for the records check.
- Generally prohibits a residential camp hiring officer from employing a person if the person previously has been convicted of or pleaded guilty to any of a list of specified offenses (hereafter, disqualifying offenses) unless the person meets rehabilitation standards established by the Director of the Department of Job and Family Services (ODJFS), permits a hiring officer to employ a person conditionally until the criminal records check is completed and the officer receives the results of the check, and if the results of the check indicate that the subject person does not qualify for employment, requires the hiring officer to release the person from employment.

- Requires the director or person responsible for the coordination of volunteers for a residential camp to request a criminal records check of each person who intends to volunteer at the residential camp, requires the person's Social Security number to be used to conduct the criminal records check by a private criminal records check provider with whom the director or person responsible for the coordination of volunteers contracts, and requires a person who intends to volunteer at a residential camp to provide the person's Social Security number and any additional information required to complete the required check.
- Generally prohibits a director or person responsible for the coordination of volunteers of a residential camp from permitting a person to volunteer at the residential camp if the person previously has been convicted of or pleaded guilty to any disqualifying offense unless the person meets rehabilitation standards established by the Director of ODJFS, permits a director or person responsible for the coordination of volunteers to permit a person to volunteer at the residential camp conditionally until the criminal records check is completed and the director or person responsible for the coordination of volunteers receives the result of the check, and if the results of the criminal records check indicate that the subject person does not qualify as a volunteer requires the director or person responsible for the coordination of volunteers to release the person as a volunteer for the camp.
- Specifies that, on receipt of a request pursuant to the provisions described above in the first dot point, a completed form, and a set of fingerprint impressions, BCII's Superintendent must conduct a criminal records check to determine whether any information exists that indicates that the subject person previously has been convicted of or pleaded guilty to any disqualifying offense.
- Requires the Director of ODJFS to adopt rules to implement the criminal records check provisions described in the preceding dot points, including rules that provide rehabilitation standards that a person who has been convicted of or pleaded guilty to a disqualifying offense must meet for a hiring officer of a residential camp to employ the person or a director or person responsible for volunteers at a residential camp to permit the person to volunteer at the camp.

- Makes an exception from existing provisions that require criminal records checks of persons under final consideration for appointment or employment as a person responsible for a child's care in out-of-home care for residential camps that are subject to the bill's requirements described in the preceding dot points.

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CONTENT AND OPERATION

Background

Existing law contains numerous provisions that require criminal records checks by the Bureau of Criminal Identification and Investigation (BCII) of the Attorney General's Office of persons who are under final consideration for certain types of employment or certain positions or licenses (e.g., a position in which the person will have contact with children, older adults, or individuals with mental retardation or a developmental disability, etc.). Existing law also contains a series of provisions that authorize certain potential employers, potential licensors, or other persons to request criminal records checks by BCII of persons who are under final consideration for certain types of employment or certain positions or licenses or who are in other specified circumstances.

Further, existing R.C. 109.57(E), not in the bill, requires the Attorney General (the AG) to adopt rules under the Administrative Procedure Act setting forth the procedure by which any person may receive or release information BCII gathers pursuant to R.C. 109.57(A) and provides that a reasonable fee may be charged for that service. Existing section 109:5-1-01 of the Ohio Administrative

Code, adopted by the AG, specifies that any person may obtain information concerning the criminal record of any other person maintained at BCII by submitting the following: (1) the complete name, current address, and other "identifying characteristics" (defined as date of birth, Social Security number, height, weight, sex, race, and nationality) of the individual whose records are sought, (2) a complete set of fingerprints of the individual whose records are sought, (3) the signed consent of the individual whose records are sought, and (4) a \$22 fee payable to BCII (law enforcement officers are exempt from this fee).

Existing law--criminal records checks of persons under final consideration for appointment or employment as a person responsible for a child's care in out-of-home care

Criminal records check requirement

Existing law requires the appointing or hiring officer of any entity that appoints or employs any "person responsible for a child's care in out-of-home care" (see "**Definitions regarding out-of-home care provisions**," below) to request BCII's Superintendent to conduct a criminal records check with respect to any person who is *under final consideration for appointment or employment* as a person responsible for a child's care in out-of-home care. This provision does not apply, though, if the out-of-home care entity is a public school, educational service center, or chartered nonpublic school--in such a case, existing R.C. 3319.39, which imposes a separate criminal records check requirement and which is not in the bill, applies.

If a person subject to a criminal records check (i.e., a person who is under final consideration for appointment or employment as a person responsible for a child's care in out-of-home care) does not present proof that the person has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested or does not provide evidence that within that five-year period BCII's Superintendent has requested information about the person from the FBI in a criminal records check, the appointing or hiring officer must request that BCII's Superintendent obtain information from the FBI as a part of the criminal records check. If the person subject to the criminal records check presents proof that the person has been a resident of Ohio for that five-year period, the officer may request that BCII's Superintendent include information from the FBI in the criminal records check.

An appointing or hiring officer required by the provisions described in the preceding two paragraphs to request a criminal records check must provide to each person subject to a criminal records check a copy of the form prescribed by BCII's Superintendent and a standard impression sheet to obtain fingerprint impressions prescribed by the Superintendent (see "**Existing BCII criminal records check**

procedures," below), obtain the completed form and impression sheet from the person, and forward the completed form and impression sheet to BCII's Superintendent at the time the criminal records check is requested. Any person subject to a criminal records check who is requested to complete the form and provide a set of fingerprint impressions must complete the form or provide all the information necessary to complete the form and must provide the impression sheet with the impressions of the person's fingerprints. If the person, upon request, fails to provide the information necessary to complete the form or fails to provide the fingerprint impressions, the appointing or hiring officer cannot appoint or employ the person as a person responsible for a child's care in out-of-home care. The appointing or hiring officer must pay to BCII the fee prescribed by BCII's Superintendent for each criminal records check conducted upon a request pursuant to the provisions described above. The officer may charge the person subject to the criminal records check a fee for the costs the officer incurs in obtaining the criminal records check, but the fee charged cannot exceed the amount of fees the officer pays for the criminal records check.

No appointing or hiring officer may appoint or employ a person as a person responsible for a child's care in out-of-home care if the person previously has been convicted of or pleaded guilty to any of the following, unless the person meets rehabilitation standards established in rules adopted by the Director of the Department of Job and Family Services (ODJFS), as described below: (1) a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11, a violation of R.C. 2905.04 as it existed prior to July 1, 1996, a violation of R.C. 2919.23 that would have been a violation of R.C. 2905.04 as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of R.C. 2925.11 that is not a minor drug possession offense (as defined in R.C. 2925.01), or felonious sexual penetration in violation of former R.C. 2907.12, or (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 described in clause (1) of this paragraph. In the succeeding parts of this analysis, a conviction of or plea of guilty to any of the violations or offenses identified in the preceding sentence are referred to as an "out-of-home care disqualifying conviction/guilty plea." The appointing or hiring officer may appoint or employ a person as a person responsible for a child's care in out-of-home care conditionally until the criminal records check required as described above is completed and the officer receives the results of the criminal records check, but if the results of the criminal records check indicate that, pursuant to the general disqualifying provision

described in this paragraph, the person subject to the criminal records check does not qualify for appointment or employment, the officer must release the person from appointment or employment.

The report of any criminal records check conducted by BCII based on a request under these provisions is not a public record for the purposes of the state's Public Records Law and cannot be made available to any person other than the person who is the subject of the criminal records check or the person's representative; the appointing or hiring officer; ODJFS or a county department of job and family services; and any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment.

The Director of ODJFS is required to adopt rules under the Administrative Procedure Act to implement the criminal records check provisions described above. The rules must include rehabilitation standards a person who has been convicted of or pleaded guilty to a disqualifying offense listed in the second preceding paragraph must meet for an appointing or hiring officer to appoint or employ the person as a person responsible for a child's care in out-of-home care, a probate court to issue a final decree of adoption or interlocutory order of adoption making the person an adoptive parent, or the department to issue a certificate authorizing the prospective foster caregiver to operate a foster home.

An appointing or hiring officer required by these provisions to request a criminal records check must inform each person who is the applicant, at the time of the person's initial application for appointment or employment, that the person subject to the criminal records check is required to provide a set of impressions of the person's fingerprints and that a criminal records check is required to be conducted and satisfactorily completed. (R.C. 2151.86(A) to (H).)

Existing law contains provisions pursuant to which ODJFS may periodically conduct a random sampling of registered child day camps to determine their compliance with the criminal records check provisions described above, and may impose specified sanctions upon camps that do not comply (R.C. 2151.861, which is not in the bill; see **COMMENT**).

Definitions regarding out-of-home care provisions

As used in the out-of-home care criminal records check provisions described above (R.C. 2151.86(I)):

(1) "Criminal records check" means any criminal records check conducted by BCII's Superintendent in accordance with R.C. 109.572, as described below in "**Existing BCII criminal records check procedures.**"

(2) "Person responsible for a child's care in out-of-home care" means any of the following, other than a prospective employee of the Department of Youth Services or a person responsible for a child's care in a hospital or medical clinic other than a children's hospital: (a) *any administrator, employee, or agent of a residential camp or day camp* (see the next paragraph), (b) any foster caregiver, in-home aide, or provider, (c) any administrator, employee, or agent of any of a public or private detention facility, shelter facility, certified children's crisis care facility, organization, certified organization, child day-care center, type A family day-care home, certified type B family day-care home, group home, institution, state institution, residential facility, residential care facility, school district, community school, chartered nonpublic school, educational service center, hospital, or medical clinic, (d) any person who supervises or coaches children as part of an extracurricular activity sponsored by a school district, public school, or chartered nonpublic school, or (e) any other person who performs a similar function with respect to, or has a similar relationship to, children.

As used in the definition of "person responsible for a child's care in out-of-home care" (existing R.C. 2151.011, which is not in the bill): (a) "*residential camp*" means a program in which the care, physical custody, or control of children is accepted overnight for recreational or recreational and educational purposes, (b) "*child day camp*" means a program in which only school children attend or participate, that operates for no more than seven hours per day (not including transportation time to or from the camp), that operates only during one or more public school district's regular vacation periods or for no more than 15 weeks during the summer, and that operates outdoor activities for each child who attends or participates in the program for a minimum of 50% of each day that children attend or participate in the program, except for any day when hazardous weather conditions prevent the program from operating outdoor activities for a minimum of 50% of that day, and (c) "out-of-home care" means premises and facilities of a type listed in clause (a) or (c) of the preceding paragraph, certified foster homes, placement in a prospective adoptive home prior to the issuance of a final decree of adoption, and child care provided by in-home aides, and medical clinics that are responsible for the care, physical custody, or control of children.

Operation of the bill--criminal records checks of persons under final consideration for employment by, or persons intending to volunteer at, a residential camp

The bill requires that a criminal records check be conducted on each employee and volunteer of a residential camp in accordance with the provisions described below (R.C. 2151.862(A)) and makes an exception for such residential camps from the existing criminal records check provisions described above for

persons under final consideration for appointment or employment as a person responsible for a child's care in out-of-home care (R.C. 2151.861).

Person under final consideration for employment

The bill requires the hiring officer of any "residential camp" (see "**Definitions**," below) to request BCII's Superintendent to conduct a criminal records check with respect to any person who is under final consideration for employment by the residential camp. If a person under final consideration for employment by a residential camp does not present proof that the person has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested or does not provide evidence that within that five-year period BCII's Superintendent has requested information about the person from the FBI in a criminal records check, the hiring officer must request that BCII's Superintendent obtain information from the FBI as a part of the criminal records check. If the person presents proof that the person has been a resident of Ohio for that five-year period, the hiring officer may request that BCII's Superintendent include information from the FBI in the criminal records check.

A hiring officer required by this provision to request a criminal records check must provide to each person under final consideration for employment by the residential camp a copy of the form, and a standard impression sheet to obtain fingerprint impressions, both as prescribed by BCII's Superintendent, obtain the completed form and impression sheet from the person, and forward them to BCII's Superintendent at the time the criminal records check is requested. Any person under final consideration for employment by a residential camp who receives a copy of the specified form and the specified impression sheet and is requested to complete the form and provide a set of fingerprint impressions must complete the form or provide all the information necessary to complete the form and must provide the impression sheet with the impressions of the person's fingerprints. If that person fails to provide the information necessary to complete the form or fails to provide impressions of the person's fingerprints, the hiring officer cannot employ the person. The hiring officer must pay to BCII the fee prescribed by BCII's Superintendent for each criminal records check so conducted. The hiring officer may charge the person subject to the criminal records check a fee for the costs the officer incurs in obtaining the criminal records check, but the fee charged cannot exceed the amount of fees the officer pays for the criminal records check. If a fee is charged, the officer must notify the person at the time of the person's initial application for employment of the amount of the fee and that, unless the fee is paid, the person will not be considered for employment.

No hiring officer of a residential camp may employ a person if the person has any previous conviction or guilty plea that is the same as an "out-of-home care

disqualifying conviction/guilty plea," unless the person meets rehabilitation standards established by the Director of ODJFS, as described below. The hiring officer of a residential camp may employ a person conditionally until the criminal records check is completed and the officer receives the results of the criminal records check, but if the results of the criminal records check indicate that, pursuant to the general disqualifying provision described in this paragraph, the person subject to the criminal records check does not qualify for employment, the officer must release the person from employment.

The report of any such criminal records check conducted by BCII is not a public record for the purposes of the state's Public Records Law and cannot be made available to any person other than the person who is the subject of the criminal records check or the person's representative; the hiring officer; and any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment.

The bill requires the Director of ODJFS to adopt rules under the Administrative Procedure Act to implement these criminal records check provisions. The rules must include rehabilitation standards a person who has been convicted of or pleaded guilty to an offense listed in the second preceding paragraph must meet for a hiring officer of a residential camp to employ the person or a director or person responsible for volunteers at a residential camp to permit the person to volunteer at the camp (see "*Person who intends to volunteer at a residential camp*," below).

A hiring officer required under these provisions to request a criminal records check must inform each person who applies for employment by the residential camp, at the time of the person's initial application for employment, that the person is required to provide a set of impressions of the person's fingerprints and that a criminal records check is required to be conducted and satisfactorily completed. (R.C. 2151.862(B)(1) to (7).)

The bill specifies that, on receipt of a request pursuant to the bill's criminal records request provisions described above, a completed form prescribed by BCII's Superintendent under the existing provisions described below in "*Existing BCII criminal records check procedures*," and a set of fingerprint impressions provided under those existing provisions, BCII's Superintendent must conduct a criminal records check in the existing manner described below in the first paragraph of those provisions to determine whether any information exists that indicates that the person who is the subject of the request has any previous conviction or guilty plea that is the same as an "out-of-home care disqualifying conviction/guilty plea" (R.C. 109.572(A)(8)). The bill does not explicitly make the provisions described below in the second through fourth paragraphs under

"Existing BCII criminal records check procedures" applicable to a criminal records check required under the bill's provisions described above.

Person who intends to volunteer at a residential camp

The bill requires the director or person responsible for the coordination of volunteers for a "residential camp" (see "**Definitions**," below) to request a criminal records check of each person who intends to volunteer at the residential camp. The person's Social Security number must be used to conduct the criminal records check by a private criminal records check provider with whom the director or person responsible for the coordination of volunteers contracts. A person who intends to volunteer at a residential camp must provide to the director or person responsible for the coordination of volunteers for the camp the proposed volunteer's Social Security number and any additional information required to complete the criminal records check.

No director or person responsible for the coordination of volunteers of a residential camp may permit a person to volunteer at the residential camp if the person has any previous conviction or guilty plea that is the same as an "out-of-home care disqualifying conviction/guilty plea," unless the person meets rehabilitation standards established by the Director of ODJFS, as described above in "**Person under final consideration for employment**." A director or person responsible for the coordination of volunteers of a residential camp may permit a person to volunteer at the residential camp conditionally until the criminal records check is completed and the director or person responsible for the coordination of volunteers receives the result of the criminal records check. If the results of the criminal records check indicate that, pursuant to the general disqualifying provision described in this paragraph, the person subject to the criminal records check does not qualify as a volunteer, the director or person responsible for the coordination of volunteers must release the person as a volunteer for the residential camp.

The report of the criminal records check is not a public record for the purposes of the state's Public Records Law and cannot be made available to any person other than the person who is the subject of the criminal records check or the person's representative; the director or person responsible for the coordination of volunteers of the residential camp; and any court, hearing officer, or other necessary individual involved in a case dealing with the denial of the person as a volunteer.

The director or person responsible for the coordination of volunteers of a residential camp must inform each person who desires to volunteer at the residential camp, at the time of the person's initial application to volunteer, that the applicant is required to provide the applicant's Social Security number and any

additional information required as described above and that a criminal records check is required to be conducted and satisfactorily completed for the applicant to volunteer at the residential camp.

Definitions

As used in the criminal records check provisions described above in "**Person under final consideration for employment**," "criminal records check" means any criminal records check conducted by BCII's Superintendent in accordance with R.C. 109.572, as described below in "**Existing BCII criminal records checks procedures**" (R.C. 2151.862(B)(8)). As used in those provisions and in the provisions discussed above in "**Person who intends to volunteer at a residential camp**," "residential camp" means a program in which the care, physical custody, or control of children is accepted overnight for recreational or recreational and educational purposes (existing R.C. 2151.011, not in the bill).

Existing BCII criminal records check procedures

Existing law specifies that, on receipt of a request pursuant to the out-of-home care provisions described above in "**Existing law--criminal records checks of persons under final consideration for appointment or employment as a person responsible for a child's care in out-of-home care**," a completed form prescribed by BCII's Superintendent as described below, and a set of fingerprint impressions obtained in the manner described below, BCII's Superintendent must conduct a criminal records check in the manner described in this paragraph to determine whether any information exists that indicates that the person who is the subject of the request has any previous "out-of-home care disqualifying conviction/guilty plea." In conducting the check, BCII's Superintendent must review or cause to be reviewed any relevant information gathered and compiled by BCII under R.C. 109.57(A) that relates to the person who is the subject of the request, including any relevant information contained in records that have been sealed under R.C. 2953.32. Also, if the request received by the Superintendent asks for information from the FBI, the Superintendent must request from the FBI any information it has with respect to the person who is the subject of the request and must review or cause to be reviewed any information the Superintendent receives from the FBI. Finally, the Superintendent or the Superintendent's designee 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's Superintendent is required to prescribe a form to obtain the information necessary to conduct a criminal records check from any person for whom a criminal records check is requested under the out-of-home care provisions described above or any other mandatory criminal records check provisions. The form may be in a tangible format, in an electronic format, or in both tangible and

electronic formats. The Superintendent also is required to prescribe standard impression sheets to obtain the fingerprint impressions of any person for whom a criminal records check is requested under the out-of-home care provisions described above or any other mandatory criminal records check provisions. Any person for whom a records check is requested under or required by any of those provisions must obtain the fingerprint impressions at a county sheriff's office, municipal police department, or any other entity with the ability to make fingerprint impressions on the standard impression sheets prescribed by the Superintendent. The office, department, or entity may charge the person a reasonable fee for making the impressions. The standard impression sheets may be in a tangible format, in an electronic format, or in both tangible and electronic formats. The Superintendent may prescribe methods of forwarding fingerprint impressions and information necessary to conduct a criminal records check, which methods must include, but not be limited to, an electronic method.

Subject to the provision described in the next paragraph, BCII's Superintendent is required to prescribe and charge a reasonable fee for providing a criminal records check requested under the out-of-home care provisions described above or any other mandatory criminal records check provisions. The person making any such request must pay the fee so prescribed, subject to limited exceptions not relevant to the bill.

A determination whether any information exists that indicates that a person previously has been convicted of or pleaded guilty to any disqualifying offense and that is made by BCII's Superintendent with respect to information considered in a criminal records check in accordance with the provisions described above is valid for the person who is the subject of the criminal records check for a period of one year from the date upon which the Superintendent makes the determination. During the period in which the determination in regard to a person is valid, if another request is made for a criminal records check for that person under the out-of-home care provisions described above or any other mandatory criminal records check provisions, the Superintendent must provide the information that is the basis for the Superintendent's initial determination at a lower fee than the fee prescribed for the initial criminal records check. (R.C. 109.572(A)(8) and (B) to (E).)

COMMENT

Existing R.C. 2151.861, which is not in the bill, authorizes ODJFS to periodically conduct a random sampling of registered child day camps to determine compliance with existing R.C. 2151.86, including the section's criminal records check provisions.

Existing R.C. 2151.861 also prohibits a child day camp from failing to comply with existing R.C. 2151.86 in regards to a person it appoints or employs. If ODJFS determines that a child day camp has violated this prohibition, ODJFS must do both of the following: (1) consider imposing a civil penalty on the child day camp in an amount that cannot exceed 10% of the camp's gross revenues for the full month immediately preceding the month in which the violation occurred (if the camp was not operating for the entire calendar month preceding the month in which the violation occurred, the penalty is to be \$500), and (2) order the child day camp to initiate a criminal records check of the person who is the subject of the violation within a specified period of time. If, within the specified period of time (apparently, the specified period referred to in the preceding sentence), the child day camp fails to comply with an order to initiate a criminal records check of the person who is the subject of the violation or to release the person from the appointment or employment, ODJFS must do both of the following: (1) impose a civil penalty in an amount not less than the amount previously imposed and that cannot exceed twice the amount permitted by clause (1) of the preceding sentence, and (2) order the child day camp to initiate a criminal records check of the person who is the subject of the violation within a specified period of time. The AG must commence and prosecute to judgment a civil action in a court of competent jurisdiction to collect any civil penalty imposed under these provisions that remains unpaid.

If ODJFS determines that a child day camp has violated the prohibition described in the preceding paragraph, ODJFS may post a notice at a prominent place at the camp that states that the camp has failed to conduct criminal records checks of its appointees or employees as required by existing R.C. 2151.861. Once the camp demonstrates to ODJFS that the camp is in compliance with that section, ODJFS must permit the camp to remove the notice. ODJFS must include on its web site a list of child day camps that it has determined from a random sample to be not in compliance with the criminal records check requirements of existing R.C. 2151.86. ODJFS must remove a camp's name from the list when the camp demonstrates to ODJFS that the camp is in compliance with that section.

For the purposes of the provisions described in the preceding paragraph, a child day camp will be considered to be in compliance with existing R.C. 2151.86 by doing any of the following: (1) requesting that BCII conduct a criminal records check regarding the person who is the subject of the violation of the prohibition described in the second preceding paragraph and, if the person does not qualify for the appointment or employment, releasing the person from the appointment or employment, or (2) releasing the person who is the subject of the violation from the appointment or employment.

A child day camp may appeal any action ODJFS takes under the provisions described above to the court of common pleas of the county in which the camp is located. (R.C. 2151.861.)

HISTORY

ACTION	DATE
Introduced	04-22-08

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