



# Ohio Legislative Service Commission

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## Bill Analysis

Laurel Mannion

### H.B. 392

129th General Assembly  
(As Introduced)

**Reps.** Grossman and Combs, Pelanda, Garland, Stinziano, Maag, Yuko, Boyd, C. Hagan, Letson, Hall

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### BILL SUMMARY

- Prohibits a public children services agency (PCSA), private child placing agency (PCPA), private noncustodial agency (PNA), or juvenile court from placing an abused, neglected, or dependent child in an out-of-state residential facility unless the facility complies with the core standards established under the bill.
  - Requires the Ohio Department of Job and Family Services (ODJFS) to adopt rules establishing core standards for client rights, use of restraints and isolation or seclusion, agency reporting requirements, and behavior intervention and discipline policies that apply to the placement of an abused, neglected, or dependent child in an out-of-state residential facility.
  - Requires that a contract between a PCSA, PCPA, PNA, or juvenile court and an out-of-state residential facility include the core standards established under the bill and certain reporting requirements.
  - Requires ODJFS to report annually the number of abused, neglected, or dependent children placed in out-of-state residential facilities and the names of the agencies or courts that placed those children and of the facilities in which they were placed.
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### CONTENT AND OPERATION

#### Restriction on placement of children in out-of-state facilities

A public children services agency (PCSA), private child placing agency (PCPA), private noncustodial agency (PNA), or juvenile court is prohibited under the bill from placing an abused, neglected, or dependent child (see "**Background**," below) in an out-

of-state residential facility unless the facility complies with the core standards established under the bill (see below).<sup>1</sup>

## Core standards

The bill requires the Ohio Department of Job and Family Services (ODJFS), within 90 days of the bill's effective date, to adopt rules that establish core standards for client rights, use of restraints and isolation or seclusion, agency reporting requirements, and behavior intervention and discipline policies that apply to the placement of an abused, neglected, or dependent child in an out-of-state residential facility.<sup>2</sup> A "residential facility" is defined under the bill and the Interstate Compact for the Placement of Children as a facility providing a level of care that is sufficient to substitute for parental responsibility or foster care, and is beyond what is needed for assessment or treatment of an acute condition, but does not include institutions primarily educational in character, hospitals, or other medical facilities.<sup>3</sup>

The rules must be adopted in accordance with the Administrative Procedure Act and must include core standards that do all of the following:

(1) Incorporate rules adopted under specified Revised Code sections by ODJFS, the Department of Alcohol and Drug Addiction Services (ODADAS), the Department of Developmental Disabilities (ODODD), and the Department of Mental Health (ODMH) that relate to client rights, use of restraints and isolation or seclusion, agency reporting requirements, and behavior intervention and discipline policies;

(2) Prohibit the use of the prone restraint, which is any item or measure, including physical or mechanical restraints, used to limit or control the movement or normal functioning of any portion, or all, of a person's body while the person is in a facedown position for an extended period of time;

(3) Permit the use of the transitional hold only if applied by staff with current training on the safe use of this procedure, including how to recognize and respond to signs of distress in the child. "Transitional hold" means brief physical positioning of a person facedown for the purpose of quickly and effectively gaining physical control of that person in order to prevent harm to the person or others, or before transport to enable the person to be transported safely. The rules must provide that a transitional hold may be applied only in a manner that does not compromise breathing, including

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<sup>1</sup> R.C. 5103.24.

<sup>2</sup> R.C. 5103.26.

<sup>3</sup> R.C. 5103.24 by reference to R.C. 5103.20, which is not in the bill.



the compromise that occurs with the use of pressure or weight bearing on the back, soft devices such as a pillow under a child's face or upper body, or the placement of a child's or staff's arms under the child's head, face, or upper body. Further, the transitional hold may be applied only for the amount of time reasonably necessary to bring the child or situation under control and ensure the safety of those involved and must be applied with consistent and frequent monitoring during and after its use to ensure that the child is safe and suffers no harm.

(4) Prohibit other types of physical restraint unless there is a risk of escape or harm to the child or others;

(5) Prohibit the use of hand cuffs, ankle cuffs, or similar devices;

(6) Prohibit the use of physical or chemical restraint, medication, or isolation as punishment, for staff convenience, or as a substitute for treatment;

(7) Prohibit the use of physical or chemical restraint, medication, or isolation that is excessive or in a quantity that precludes habilitation and treatment.<sup>4</sup>

## **Required provisions of contracts**

A contract between a PCSA, PCPA, PNA, or juvenile court and an out-of-state residential facility regarding the placement of an abused, neglected, or dependent child must include all of the following:

(1) The core standards established under the bill;

(2) A requirement that the residential facility annually report to the agency or court how it demonstrates compliance with the core standards;

(3) A requirement that the residential facility notify the agency or court when its licensure or certification status changes or when it is the subject of a substantiated finding or penalty.<sup>5</sup>

## **ODJFS reporting requirements**

Not later than one year after the bill's effective date, and annually thereafter, ODJFS must prepare a report that includes all of the following information:

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<sup>4</sup> R.C. 5103.26.

<sup>5</sup> R.C. 5103.25.



- (1) The number of abused, neglected, or dependent children who have been placed in residential facilities located in other states;
- (2) The names of the agencies or courts that placed those children;
- (3) The names of the residential facilities in which those children were placed.<sup>6</sup>

The report cannot include any information that identifies the children. ODJFS must submit a copy of each report to the Governor and the General Assembly and must make it available to the public on request.<sup>7</sup>

## **Application to existing contracts**

The bill's provisions regarding contracts between a PCSA, PCPA, PNA, or juvenile court and an out-of-state residential facility apply to all new contracts entered into on or after 120 days after the bill's effective date. In the case of an existing contract that was entered into before the bill's effective date or is entered into on or after the effective date of the bill and before the 120th day after the bill's effective date, the bill's provisions apply to the contract on the earlier of (1) the date the contract is renewed, or (2) 450 days after the bill's effective date.<sup>8</sup>

## **Background**

Under existing law, an abused child is any child who: (1) is the victim of "sexual activity" as defined under Chapter 2907. of the Revised Code (sex offenses), where the activity would constitute an offense under that chapter, (2) is endangered as defined in R.C. 2919.22 (law that prohibits creating risk to health or safety of a child, abusing or torturing a child, improperly disciplining a child, allowing a child to engage in certain sexually related acts, or operating a vehicle under the influence with a child in the vehicle), (3) exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death that is at variance with the history given of it, (4) because of the acts of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare, or (5) is subjected to out-of-home care child abuse.<sup>9</sup>

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<sup>6</sup> R.C. 5103.241(A).

<sup>7</sup> R.C. 5103.241(B) and (C).

<sup>8</sup> Section 2.

<sup>9</sup> R.C. 2151.031.



A neglected child is defined in existing law to include any child: (1) who is abandoned by the child's parents, guardian, or custodian, (2) who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian, (3) whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well-being, (4) whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition, (5) whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of R.C. 5103.16 (certified associations and institutions) and 5103.17 (advertising for adoption or foster care), (6) who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare, or (7) who is subjected to out-of-home care child neglect.<sup>10</sup>

A "dependent child" is any child: (1) who is homeless, destitute, or without adequate parental care, through no fault of the child's parents, guardian, or custodian, (2) who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian, (3) whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship, and (4) who is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child, and, because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the conditions in the child's household, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.<sup>11</sup>

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## HISTORY

| ACTION     | DATE     |
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| Introduced | 12-13-11 |

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<sup>10</sup> R.C. 2151.03(A).

<sup>11</sup> R.C. 2151.04.

