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Bill Analysis

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Primary Sponsors: Reps. Plummer and Manchester

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SUMMARY

Children Service Ombudsman Office

- Establishes the Children Service Ombudsman Office (Office) under the Department of Job and Family Services (ODJFS) for investigating and resolving concerns and complaints from and on behalf of children and families involved with entities overseeing foster care or the placement of children.
- Requires the Office to do all of the following:
 - Receive, investigate, and attempt to resolve complaints related to government services regarding child protective services, foster care, and adoption;
 - Establish procedures for receiving and resolving complaints;
 - Provide an annual report to the Governor, Speaker of the House, Senate President, minority leadership of the House of Representatives and Senate, and the Director of Job and Family Services.
- Allows a representative of the Office to report any suspected violation of state law to appropriate authorities, to the extent permitted by state or federal law.
- Prohibits employees of the Office from holding any office of trust or profit, engaging in any business interfering with the duties of the Office, serving on any committee of a political party, or having any conflicting interests.
- Requires ODJFS to be responsible for all administrative undertakings for the Office, including the provision of offices, equipment, and supplies, as necessary.

* This analysis was prepared before the report of the House Families, Aging, and Human Services Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- Defines the parameters for Office access to ODJFS records and entities that oversee foster care or the placement of children.
- Provides that Office records are not public records subject to inspection or copying.

Biennial memorandum of understanding (MOU) review

- Requires every official who signed an MOU, which each PCSA is required to prepare under continuing law, to biennially do the following to the MOU: (1) review for necessary updates, (2) update, as necessary, (3) sign, (4) submit to the board of county commissioners for approval.
- Requires, on receipt of a county's MOU, the board of county commissioners to review and evaluate if the MOU meets the requirements under the bill and do either of the following:
 - If the board determines the MOU meets the requirements, it must adopt a resolution to approve the MOU;
 - If the board determines the MOU does not meet those requirements, it must notify the responsible PCSA that the MOU does not meet requirements and must be reviewed in accordance with MOU review and update requirements.
- Requires the biennial MOU review by MOU officials and the biennial adoption of a resolution by the board of county commissioners to approve the MOU to be completed by December 31 following the first full calendar year after the bill's effective date, and by December 31 each year thereafter.

Department of Job and Family Services (ODJFS) requirements

- Requires ODJFS to biennially audit each PCSA's MOU to ensure compliance with the bill's requirements.
- Requires ODJFS to determine that a PCSA is compliant regarding the MOU if the MOU meets all requirements under the bill and continuing law.
- Requires the PCSA, if ODJFS determines that it is not compliant, to develop and submit a compliance assurance plan to ODJFS, no later than 60 days following the determination, that describes the steps the PCSA and other concerned officials will take in order to become compliant.
- Requires ODJFS to create a model MOU to provide guidance to PCSAs and other concerned officials in creating an MOU in compliance with the bill's requirements.
- Requires ODJFS to maintain on its website a current list of counties with MOUs and whether ODJFS has determined a county's MOU to be compliant or not compliant.

MOU requirements

- Requires MOUs to include, in addition to requirements in continuing law, all of the following after the bill's effective date:

- A statement that Ohio law requires a PCSA to disclose confidential information discovered during a child abuse or neglect investigation to any federal, state, or local government entity;
- A description of the following:
 - ❖ The type of information that may be discovered during a child abuse or neglect investigation that a law enforcement agency may share with a PCSA;
 - ❖ How information is to be shared between a PCSA and a law enforcement agency;
 - ❖ Information that may be obtained from an investigation that a law enforcement agency and a PCSA is permitted to, or prohibited from, disclosing to the public.
- Requires a county's reviewed, signed, and updated, as applicable, MOU to go into effect and supersede any previous MOU upon ODJFS' determination of compliance.
- Requires the county MOU that is in effect to be posted to the county's general website.

Recodification

- Recodifies the section of law governing the creation of county MOUs.

Report referral and notification changes

- Requires a PCSA that receives a report of child abuse, or a report of child neglect that alleges a type of neglect identified by ODJFS in rules adopted under the bill, to notify the appropriate law enforcement agency in accordance with the county's MOU requirements on sharing information between a PCSA and law enforcement agency.
- Requires the ODJFS Director, no later than 90 days after the bill's effective date, to adopt rules to identify the types of neglect of a child that a PCSA is required to notify law enforcement about.
- Specifies that the continuing law requirement that a peace officer must refer a report, upon receipt, to the PCSA must be done in accordance with the county's MOU requirements on sharing information between a PCSA and law enforcement agency.

Reporters' right to information

- Requires, if a mandatory reporter provides the reporter's name and contact information on making the report, the PCSA that received the report to send both of the following written notices to the reporter, via U.S. mail or email, in accordance with the reporter's preference:
 - Not later than seven calendar days after receipt of the report, a notice providing the status of the PCSA's investigation into the report made, who the reporter may contact for further information, and a description of the reporter's rights.
 - Not later than seven calendar days after the PCSA closes the investigation into the case reported, a notice that the PCSA has closed the investigation.

Court order to interview and examine a child

- Allows a juvenile court, if it determines probable cause exists, to issue an order, without a hearing, authorizing a PCSA to interview or examine a child who may be abused, neglected, or dependent if the child’s parent, guardian, custodian, or caretaker refuses the PCSA reasonable access to the child.
- Requires that a PCSA request the order and to submit a sworn affidavit detailing the facts that would support the order.
- Specifies that the order is not a final, appealable order.

Foster care and adoption home study assessor qualifications

- Adds, as an individual qualified to perform foster care and adoption home studies: (1) a current or former PCSA caseworker, (2) a current PCSA caseworker supervisor, and (3) an individual with a master’s degree in social work or a related field who is, and has been, employed for at least two years, in a human-services-related occupation.

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DETAILED ANALYSIS

Children Service Ombudsman Office

Establishment and purpose

The bill creates the Children Service Ombudsman Office (Office) under the Department of Job and Family Services (ODJFS). The Office consists of the following:

- An ombudsman, to be appointed by the Governor;
- A youth advocate, to advocate for the best interests of children involved in concerns investigated by the Office;
- Not fewer than two regional ombudsmen;
- Any necessary support staff.

The Office is required to investigate and resolve concerns made by or on behalf of children and families involved with public children services agencies (PCSAs), Title IV-E agencies, or private provider agencies that administer or oversee foster care or placement services for the children services system. The Office must ensure the independent and impartial review of youth, family, and community complaints or concerns.¹

Duties

The bill requires the Office to perform all of the following duties:

- Receive, investigate, and attempt to resolve complaints from citizens, including children in the custody of a PCSA or in the care and placement of a Title IV-E agency, related to government services regarding child protective services, foster care, and adoption;

¹ R.C. 5101.89.

- Establish procedures for receiving and resolving complaints, consistent with state and federal law;
- Provide an annual report to the Governor, Speaker of the House of Representatives, President of the Senate, minority leadership of the House of Representatives and Senate, and the ODJFS Director.²

Reporting suspected violations

Under the bill, an Office representative is permitted to report to an appropriate authority any suspected violation of state law discovered during the course of a complaint review, to the extent permitted by state or federal law.³

Employee prohibitions

Under the bill, no Office employee is allowed to do any of the following:

- Hold any office of trust or profit;
- Engage in any occupation or business interfering or inconsistent with the duties of the Office;
- Serve on any committee of any political party;
- Have any interest that is, or may be, in conflict with the interests and concerns of the Office.

For purposes of Office employee prohibitions, “office of trust or profit” is defined as any of the following:

- A federal or state elective office or an elective office of a political subdivision in Ohio;
- A position on an Ohio board or commission appointed by the Governor;
- An office described in Ohio law governing administrative department heads appointed by the Governor, specified offices within those departments, and specified assistant directors for the departments;
- An office of the U.S. government appointed by the President of the United States.⁴

Access to ODJFS and PCSA records

The bill requires the Office to have access to only the ODJFS records that are necessary for the administration of the Office under the bill and in the performance of its official duties, including any records maintained in the Uniform Statewide Automated Child Welfare Information System (SACWIS). The Office has the right to request of the ODJFS Director the

² R.C. 5101.891.

³ R.C. 5101.893.

⁴ R.C. 5101.897.

necessary information from any ODJFS work unit having information. The collection, compilation, analysis, and dissemination of information by the Office must be performed in a manner that protects complainants, individuals providing information about a complaint, public entities, and confidential records.

Additionally, the bill requires the Office to have access to any necessary records in the control of a PCSA, a Title IV-E agency, or a private provider agency that administers or oversees foster care or placement services for the children services system.⁵

Record confidentiality

The bill specifies that Office files and any records contained in those files are not public records subject to inspection or copying under Ohio's Public Records Law. Information contained in investigative and other files maintained by the Office can be disclosed only at the discretion of the Office or if disclosure is required by a court order.⁶

ODJFS administration

The bill requires ODJFS to be responsible for all administrative undertakings for the Office, including the provision of offices, equipment, and supplies, as necessary.⁷

Biennial memorandum of understanding (MOU) review

The bill establishes a biennial review process for each county's MOU, which governs how county officials handle child abuse and neglect reports for the county. Continuing law requires each PCSA to prepare an MOU that must be signed by various county officials, including, for example, a senior juvenile judge or juvenile judge or a juvenile judge's representative, the sheriff, chief municipal peace officers, and law enforcement handling child abuse and neglect cases. The bill modifies very slightly the juvenile judge requirement by stating the signatory judge's representative must be reviewed and approved by the judge.⁸

The MOU's purpose under continuing law is to do both of the following:

- Set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities regarding child abuse or neglect;
- Have as two of its primary goals both of the following:
 - The elimination of all unnecessary interviews of children who are the subject of reports of child abuse or neglect;

⁵ R.C. 5101.899(A) and (B). A technical amendment is needed to correct a cross-reference to a Revised Code section.

⁶ R.C. 5101.899(C).

⁷ R.C. 5101.895.

⁸ R.C. 2151.4210(A), 2151.4212, 2151.4216, and 2151.4219.

- When feasible, providing for only one interview of a child who is the subject of a report of child abuse or neglect.⁹

MOU review and update

The bill requires every official who signed an MOU to biennially do the following regarding the MOU:

- Review and evaluate the MOU for necessary updates to terms and procedures;
- Update the MOU's terms and procedures, if the concerned officials determine an update is necessary;
- Sign the reviewed memorandum;
- Submit the memorandum to the board of county commissioners for approval.¹⁰

Review and approval by board of county commissioners

The bill requires, on receipt of a county's submitted MOU, the board of county commissioners to review and evaluate if the MOU meets the requirements under the bill (see below, "**MOU requirements**"). If the board determines the MOU meets those requirements, it must adopt a resolution to approve the memorandum. However, if the board determines the MOU does not meet those requirements, it must notify the responsible PCSA that the MOU does not meet requirements and must be reviewed in accordance with MOU review and update requirements (see above, "**MOU review and update**").¹¹

Completion deadline

Under the bill, the biennial MOU review by MOU officials and the biennial adoption of a resolution by the board of county commissioners to approve the MOU must be completed by December 31 following the first full calendar year after the bill's effective date, and by December 31 every other year thereafter.¹²

Department of Job and Family Services (ODJFS) requirements

ODJFS audit

The bill requires ODJFS to biennially audit each MOU to ensure compliance with the bill's requirements.¹³

⁹ R.C. 2151.4211(A).

¹⁰ R.C. 2151.4212.

¹¹ R.C. 2151.4215.

¹² R.C. 2151.4216.

¹³ R.C. 2151.4219.

Determination of compliance

Under the bill, ODJFS must determine that a PCSA is compliant regarding the MOU if it finds all of the following:

- It meets the requirements under “**Biennial memorandum of understanding (MOU) review**” (see above) and “**MOU requirements**” (see below).
- It has been either (1) reviewed and signed or (2) reviewed, updated, and signed, as applicable, by MOU officials, and ODJFS is in agreement with the review and, if applicable, the update.
- It has been approved by the board of county commissioners’ resolution.¹⁴

Determination of noncompliance

The bill requires the PCSA, if ODJFS determines that it is not compliant, to develop and submit to ODJFS a compliance assurance plan. The plan must describe the steps the PCSA and other concerned officials will take in order to become compliant. The PCSA must submit the plan no later than 60 days after ODJFS determines the PCSA is not compliant.¹⁵

MOU model

Under the bill, ODJFS must create a model MOU to provide guidance to PCSAs and other concerned officials in creating an MOU in compliance with the bill’s requirements. The model MOU must be updated as ODJFS determines is necessary.¹⁶

List of compliant counties

The bill requires ODJFS to maintain on its website a current list of counties with MOUs that ODJFS has determined to be compliant and those that ODJFS has determined not to be compliant.¹⁷

MOU requirements

The bill adds additional requirements to MOUs to those existing under continuing law.

New content

MOUs must include all of the following new requirements after the bill’s effective date:

- A statement that Ohio law requires a PCSA to disclose confidential information discovered during a child abuse or neglect investigation to any federal, state, or local

¹⁴ R.C. 2151.4220. A technical amendment is needed to correct a reference from “division” to “section” regarding a Revised Code section.

¹⁵ R.C. 2151.4221.

¹⁶ R.C. 2151.4218.

¹⁷ R.C. 2151.4223.

government entity that needs the information to carry out its responsibilities to protect children from abuse or neglect.

- A description of the type of information that may be discovered during a child abuse or neglect investigation that a law enforcement agency may share with a PCSA in order for the PCSA to carry out its responsibilities to protect children from abuse or neglect.
- A description of how the information discovered during a child abuse or neglect investigation (above) is to be shared between a PCSA and a law enforcement agency.
- A description of information that may be obtained from a child abuse or neglect investigation that a law enforcement agency and a PCSA is permitted to, or prohibited from, disclosing to the public.¹⁸

Continuing content

Continuing law requires an MOU to include all of the following:

- The roles and responsibilities for handling emergency and nonemergency cases of abuse and neglect;
- Standards and procedures to be used in handling and coordinating investigations of reported cases of child abuse or neglect, methods to be used in interviewing the child who is the subject of the report and who allegedly was abused or neglected, and standards and procedures addressing the categories of persons who may interview the child who is the subject of the report and who allegedly was abused or neglected;
- If a PCSA participated in the execution of the memorandum establishing a children's advocacy center, the PCSA must incorporate the contents of the children's advocacy center memorandum in the MOU.¹⁹

When MOU takes effect

Under the bill, a county's reviewed and signed, or reviewed, updated, and signed, MOU, as applicable, goes into effect and supersedes any previous MOU upon ODJFS' determination of compliance.²⁰

County website

The bill requires the county MOU that is in effect to be posted to the county's general website.²¹

¹⁸ R.C. 2151.4211(B)(4) to (7).

¹⁹ R.C. 2151.4211(B)(1) to (3).

²⁰ R.C. 2151.4222.

²¹ R.C. 2151.4224.

Recodification

The bill recodifies R.C. 2151.421(K) in current law, which governs the creation of county MOUs. The table below gives a brief description of each recodified section and also each new provision of law, the section number under the bill, and, with respect to recodified sections, the section number under current law.

| Recodification of R.C. 2151.421(K) | | |
|---|--------------------|---|
| Subject | New section number | Current section number |
| PCSA prepares MOU; signatory officials | R.C. 2151.4210 | R.C. 2151.421(K)(1) and (5) |
| MOU purpose | R.C. 2151.4211(A) | R.C. 2151.421(K)(2) |
| MOU required content | R.C. 2151.4211(B) | R.C. 2151.421(K)(3) and (4); new provision |
| Biennial review and other signatory official duties | R.C. 2151.4212 | New provision |
| Savings provision: failure to follow MOU | R.C. 2151.4213 | R.C. 2151.421(K)(2) |
| County review and resolution re: MOU | R.C. 2151.4215 | New provision |
| Deadline for biennial review and resolution | R.C. 2151.4216 | New provision |
| ODJFS model MOU | R.C. 2151.4218 | New provision |
| ODJFS biennial audit | R.C. 2151.4219 | New provision |
| ODJFS compliance determination | R.C. 2151.4220 | New provision |
| ODJFS compliance assurance plan | R.C. 2151.4221 | New provision |
| Effective MOU | R.C. 2151.4222 | New provision |
| ODJFS compliant/noncompliant MOU lists | R.C. 2151.4223 | New provision |
| MOU published on county website | R.C. 2151.4224 | New provision |

Report referral and notification changes

PCSA notification to law enforcement

The bill requires a PCSA, unless an arrest is made at the time of a report that results in the appropriate law enforcement agency being contacted concerning the possible child abuse or neglect or threat of child abuse or neglect, and in accordance with the county's MOU requirements on sharing information between a PCSA and law enforcement agency, to notify the appropriate law enforcement agency of the report if it has received either of the following:

- A child abuse report;
- A child neglect report that alleges a type of neglect identified by ODJFS in rules adopted under the bill.²²

The bill requires the ODJFS Director, no later than 90 days after the bill's effective date, to adopt rules under the Administrative Procedure Act (R.C. Chapter 119) to identify the types of neglect of a child that a PCSA is required to notify law enforcement about.²³

Law enforcement referral to PCSA

The bill specifies that the continuing law requiring a peace officer to refer a report, on receipt, to the PCSA must be done in accordance with the county's MOU requirements on sharing information between a PCSA and law enforcement agency.²⁴

Reporters' right to information

Under the bill, if a mandatory reporter provides the reporter's name and contact information on making the report, the PCSA that received or was referred the report must send both of the following written notices to the reporter, via United States mail or electronic mail, in accordance with the reporter's preference:

- Not later than seven calendar days after receipt of the report, a notice providing the status of the PCSA's investigation into the report made, who the reporter may contact at the PCSA for further information, and a description of the reporter's rights to make requests for information.
- Not later than seven calendar days after the PCSA closes the investigation into the case reported, a notice that the PCSA has closed the investigation.²⁵

²² R.C. 2151.421(E)(2)(c).

²³ R.C. 2151.421(L)(2).

²⁴ R.C. 2151.421(E)(1).

²⁵ R.C. 2151.421(K).

Court order to interview and examine a child

PCSA request to juvenile court

The bill permits a PCSA, if it receives a report of child abuse or neglect or a report that a child may be a dependent child, and is denied reasonable access to the child by a parent, guardian, custodian, or caregiver of the child, or to any other information necessary to determine if the child is, or at risk of becoming, an abused, neglected, or dependent child, to request a juvenile court to issue an order granting the PCSA access to examine and interview the child, or to conduct other activities necessary to determine the risk to the child. The PCSA must make the request by submitting a sworn affidavit explaining the need for the order in the juvenile court of the county in which:

- The child has a residence or legal settlement;
- The reported abuse or neglect of the child occurred or the reported conditions exist regarding the child's dependency.²⁶

Under the bill, the juvenile court has exclusive original jurisdiction to hear and determine a request for a court order to examine and interview a child who may be an abused, neglected, or dependent child.²⁷

Affidavit requirements

Under the bill, the affidavit must include the following:

- The particular facts of the allegation or allegations in the report that may indicate the child is an abused, neglected, or dependent child;
- The PCSA's efforts to gather additional information to determine whether or not the child is, or may be, at risk of becoming, an abused, neglected, or dependent child;
- The PCSA's efforts to obtain consent from a parent, guardian, custodian, or caregiver to examine and interview the child, or to conduct other activities necessary to determine the risk to the child;
- The activities the PCSA deems necessary to determine the current risk to the child.

The bill prohibits the affidavit from identifying the source of the allegation or allegations in the report that may indicate the child is an abused, neglected, or dependent child.²⁸

Court determination and order

The bill permits the court, on receipt of a request and a sworn affidavit submitted in accordance with the bill's requirements, if it determines that probable cause exists, to, without

²⁶ R.C. 2151.25(A).

²⁷ R.C. 2151.23(A)(18).

²⁸ R.C. 2151.25(B) and (C).

a hearing, issue an order requiring the parent, guardian, custodian, or caregiver of the child to comply with the PCSA's investigation, including an interview and examination of the child and other activity the court deems necessary to determine the current risk posed to the child.

Under the bill, the court may include within the order specific instructions on the manner and location of the interview and examination of the child, as well as detail any other necessary activities.

The bill specifies that an order issued pursuant to this section is not a final, appealable order.²⁹

Foster care and adoption home study assessor qualifications

Continuing law specifies that individuals may only perform the duties of a foster care and adoption home assessor if the individual (1) is employed or appointed by, or under contract with a court, PCSA, private child placing agency, or private noncustodial agency, and (2) meets certain professional or educational qualifications, such as, for example, being a licensed psychologist or a former PCSA employee who, while so employed, conducted the duties of an assessor.

The bill adds the following professional or educational qualifications:

- A former PCSA employee who, while so employed, conducted the duties of a PCSA caseworker;
- A caseworker or caseworker supervisor;
- An individual with a master's degree in social work or a related field and who is currently employed, and has been employed for at least two years, in a human-services-related occupation.³⁰

HISTORY

| Action | Date |
|---|----------|
| Introduced | 02-03-21 |
| Reported, H. Families, Aging & Human Services | --- |

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²⁹ R.C. 2151.25(D) and (E).

³⁰ R.C. 3107.014.