



**Sub. H.B. 661**

123rd General Assembly  
(As Passed by the General Assembly)

**Reps. Winkler, Allen, Barrett, Britton, Clancy, Hollister, Mottley, O'Brien, Patton, Robinson, Roman, Salerno, Sullivan, Van Vyven, Smith, Boyd, Jones, Bender, Roberts, R. Miller, Mead, Terwilleger, Brading, Ford**

**Effective date:** \*

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**ACT SUMMARY**

- Permits the Department of Rehabilitation and Correction to establish in one or more of the Department's institutions for women a prison nursery program under which eligible inmates and children born to them while in the custody of the Department reside together in the institution.
- Establishes eligibility criteria of inmates for participation in the prison nursery program.
- Establishes participation duties for each inmate selected by the Department to participate in the prison nursery program.
- Requires program participants to assign to the Department any rights they have to child or spousal support.
- Establishes reasons for which an inmate's participation in the program may be terminated by the Department.
- Requires the managing officer in each institution in which the prison nursery program is established to create and maintain a prison nursery program fund to pay expenses associated with the program and an individual nursery account for each participating inmate to help pay for the support of the inmate and child under the program.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Specifically authorizes county sheriffs and the Adult Parole Authority to contract with any private person or entity, subject to specified criteria, for the return of Ohio prisoners from outside of Ohio into Ohio.
- Specifically includes within the definition of "detention" a prisoner's confinement in any vehicle, airplane, or place while being returned to Ohio under such a contract.

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## **CONTENT AND OPERATION**

### **Prison nursery program**

#### **Creation**

The act permits the Department of Rehabilitation and Correction to establish a prison nursery program in one or more of the Department's institutions for women. The program would allow eligible inmates and children born to them while in the custody of the Department to reside together in the institution. If the program is established, the act's provisions apply regarding the program, and the Department is required to adopt rules under the Administrative Procedure Act that establish requirements necessary and appropriate to the establishment, implementation, and operation of the program. If the Department establishes the program and an inmate participates in it, neither the inmate's participation nor any provision of the act affects, modifies, or interferes with the inmate's custodial rights of the child or establishes legal custody of the child with the Department. The Department must adopt the rules prior to implementing the program. (R.C. 5120.65(A) and 5120.657.)

Under the act, notwithstanding any other statute, neither the program nor the Department, with respect to the program, is subject to any regulation, licensing, or oversight by the Ohio Department of Job and Family Services (ODJFS) unless both departments agree to voluntary regulation, licensing, or oversight by ODJFS (R.C. 5120.656).

#### **Program eligibility**

An inmate is eligible to participate in the prison nursery program if all of the following requirements are satisfied (R.C. 5120.651):

- (1) The inmate is pregnant at the time she is delivered into the custody of the Department.
- (2) The inmate gives birth on or after the date the program is implemented.



(3) The inmate is subject to a sentence of imprisonment of not more than 18 months.

(4) The inmate and the child meet any other criteria established by the Department.

**Duties of program participants**

Under the act, each inmate selected by the Department to participate in the prison nursery program is required to do all of the following (R.C. 5120.652):

(1) Agree in writing to do all of the following:

(a) Comply with any program, educational, counseling, and other requirements established by the Department;

(b) If eligible, have the child participate in the Medicaid program or a health insurance program;

(c) Accept the normal risks of childrearing;

(d) Abide by any court decision regarding the allocation of parental rights and responsibilities with respect to the child.

(2) Assign to the Department any rights to child or spousal support from any other person, excluding support assigned by participants in the Ohio Works First program and medical support assigned by recipients of public assistance;<sup>1</sup>

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<sup>1</sup> Under R.C. 5107.20, participation in Ohio Works First constitutes an assignment to ODJFS of any rights members of an assistance group have to support from any other person, excluding medical support. In accordance with federal statutes and regulations, ODJFS is to deposit support payments it receives into the state treasury to the credit of the Child Support Collections Fund or the Child Support Administrative Fund. Money credited to the funds is used to make Ohio Works First cash assistance payments.

*Under R.C. 5101.59, application for or acceptance of public assistance constitutes an automatic assignment of certain rights to ODJFS. "Public assistance" means Ohio Works First, Medicaid, and state disability assistance. A person who is a public assistance applicant, recipient, or participant must assign to ODJFS any rights to medical support available to the person or for other members of the assistance group under an order of a court or administrative agency, excluding Medicare benefits, and any rights to payments from any third party liable for the cost of medical care and services arising out of injury, disease, or disability of the person or other members of the assistance group.*

(3) Specify with whom the child is to be placed in the event the inmate's participation in the program is terminated for a reason other than the inmate's release from imprisonment.

**Termination of program participation**

An inmate's participation in the prison nursery program may be terminated by the Department if any of the following occurs (R.C. 5120.653):

(1) The inmate fails to comply with the agreement entered into under the act.

(2) The inmate's child becomes seriously ill, cannot meet medical criteria established by the Department for the program, or otherwise cannot safely participate in the program.

(3) A court issues an order that designates a person other than the inmate as the child's residential parent and legal custodian.<sup>2</sup>

(4) A juvenile court, in an action brought under R.C. 2151.23(A)(2), grants custody of the child to a person other than the inmate.

(5) An order is issued granting shared parenting of the child.<sup>3</sup>

(6) The child is adjudicated to be an abused, neglected, dependent, unruly, or delinquent child under Ohio's Juvenile Code and an order of disposition is issued under R.C. 2151.353 granting temporary, permanent, or legal custody of the child to a person, other than the inmate, or to a public children services agency or a private child placing agency.<sup>4</sup>

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*The term "support," as used in this provision, has the same meaning as in existing R.C. 3113.21 and, thus, means child support, spousal support, or support for a spouse or former spouse (R.C. 5120.65(B)).*

<sup>2</sup> *The residential parent and legal custodian is the parent who has been allocated by a court order most of the parental rights and responsibilities for the care of the child pursuant to a divorce, dissolution, legal separation, annulment, or child custody proceeding (R.C. 3109.04).*

<sup>3</sup> *A shared parenting order provides for both parents to act as a child's residential parent and legal custodian (R.C. 3109.04).*

<sup>4</sup> *The definitions of "abused child," "neglected child," "dependent child," "unruly child," and "delinquent child" may be found in Revised Code sections 2151.031, 2151.03, 2151.04, 2151.022, and 2151.02, respectively. Current law defines "public children*



(7) The inmate is released from imprisonment.

**Prison nursery program fund**

Under the act, the managing officer of each institution in which the Department establishes a prison nursery program is required to create and maintain a prison nursery program fund to pay expenses associated with the prison nursery program. The act also provides that the Department may receive money assigned or donated to establish and maintain the program. That money must be deposited in the appropriate prison nursery program fund. (R.C. 5120.654(B)(2) and (C) and 5120.655(A).)

**Individual nursery accounts**

Under the act, the managing officer of each institution in which the Department establishes a prison nursery program is required to create and maintain an individual nursery account for each inmate participating in the program at the institution to help pay for the support provided to the inmate and child pursuant to the program (R.C. 5120.655(B)).

The rights to support assigned by the inmate to the Department under the act constitute an obligation of the person who is responsible for providing the support to the Department for the support provided the inmate and child under the program. The Division of Child Support in ODJFS is required to collect support payments made pursuant to the assignment and forward them to the Department. The act also provides that the Department may receive money that is assigned or donated on behalf of, and public assistance provided to, a specific inmate or child participating in the program. All amounts received by the Department for a specific inmate or child must be placed in the individual nursery account created and maintained for the inmate and child for whom the money was received. (R.C. 5120.654(A), (B)(1), and (C).)

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*services agency" as one of the following entities that has assumed the powers and duties of the children services function for the county: a children services board; a county department of job and family services; or a private or government entity designated by the board of county commissioners. "Private child placing agency" is any association certified to accept temporary, permanent, or legal custody of children and place the children for foster care or adoption. Revised Code 2151.353 sets forth permissible dispositions for abused, neglected, and dependent children, but R.C. 2151.354 and 2151.355 permit a court to use any R.C. 2151.353 disposition for an adjudicated unruly or delinquent child.*



**Contract for return of Ohio prisoners into the state by a private entity or person**

The act contains provisions that specifically authorize county sheriffs and the Adult Parole Authority to contract with any private person or entity, subject to specified criteria, for the return of Ohio prisoners from outside of Ohio into Ohio.

**Adoption of rules by the Department of Rehabilitation and Correction**

The act specifies that, not later than nine months after its effective date, the Department of Rehabilitation and Correction, in consultation with the Attorney General, the County Commissioners Association of Ohio, and the Buckeye State Sheriffs Association, must adopt rules under the Administrative Procedure Act regarding the return of Ohio prisoners from outside of Ohio into Ohio by a private person or entity pursuant to a contract entered into with a sheriff or the Adult Parole Authority as described below. The rules must establish all of the following (R.C. 5120.64(B)):

(1) Standards that specify required training of officers and employees of the private person or entity that actually engage in the return of the prisoners, including standards related to the length and nature of the training;

(2) Physical standards for vehicles used in the return of the prisoners;

(3) Standards that govern the responsibility of the private person or entity to do one or more of the following: (a) provide an adequate policy of liability insurance to cover all injuries, death, or loss to person or property that arise from or are related to its return of the prisoners, (b) indemnify and hold harmless the sheriff, the county, and all county officers and employees regarding a contract for the return of prisoners entered into by the sheriff and all state officers and employees regarding a contract for the return of prisoners entered into by the Department, and (c) file a performance bond or another surety to guarantee performance.

(4) Standards requiring the private person or entity to have criminal records checks and pre-employment drug testing performed for officers and employees of the private person or entity that actually engage in the return of the prisoners and to have a random drug-screening policy and be able to document compliance with the policy;

(5) Standards requiring the private person or entity to have 24-hour operations staff to constantly monitor activities in the field and to have on-board, constant communication ability with vehicles in the field;



(6) Standards requiring the officers and employees of the private person or entity that actually engage in the return of the prisoners to be CPR and first-aid certified.

Upon the effective date of the rules adopted by the Department, in no case can a private person or entity return Ohio prisoners from outside of Ohio into Ohio for a sheriff or for the Adult Parole Authority unless the private person or entity complies with all applicable standards that are contained in the rules.

The above-described provisions do not apply regarding any out-of-state prisoner who is brought into Ohio to be housed pursuant to R.C. 9.07 in a correctional facility in Ohio that is managed and operated by a private contractor. (R.C. 5120.64.)

**Contracts between a sheriff or the Adult Parole Authority, and a private person or entity**

The act enacts provisions that specifically authorize a sheriff or the Adult Parole Authority to enter into a contact with a private person or entity for the return of Ohio prisoners who are the responsibility of the sheriff or the Department of Rehabilitation and Correction from outside of Ohio to a location in Ohio specified by the sheriff or the Authority, respectively. A sheriff may enter into such a contract only if there are adequate funds appropriated by the board of county commissioners and there is a certification pursuant to R.C. 5705.41(D) that the funds are available for this purpose, and a contract entered into under this provision by a sheriff is within the coverage of R.C. 325.07. If a sheriff or the Adult Parole Authority enters into a contract under this provision, subject to the restriction described below that applies after the Department of Rehabilitation and Correction's rules take effect, the private person or entity in accordance with the contract may return Ohio prisoners from outside of Ohio to locations in Ohio specified by the sheriff or the Authority, respectively. A contract entered into under this provision must include all of the following:

(1) Specific provisions that assign the responsibility for costs related to medical care of prisoners while they are being returned that is not covered by insurance of the private person or entity;

(2) Specific provisions that set forth the number of days, not exceeding ten, within which the private person or entity, after it receives the prisoner in the other state, must deliver the prisoner to the location in Ohio specified by the sheriff or the Authority, subject to the exceptions adopted as described below;

(3) Any exceptions to the specified number of days for delivery specified as described above;



(4) A requirement that the private person or entity immediately report all escapes of prisoners who are being returned to Ohio, and of the apprehension of all such escaped prisoners, to the sheriff or the Authority, whichever entered into the contract, and to the local law enforcement agency of Ohio or another state that has jurisdiction over the place at which the escape occurs;

(5) A schedule of fines that the sheriff or Adult Parole Authority, whichever entered into the contract, must impose upon the private person or entity if the private person or entity fails to perform its contractual duties, and a requirement that, if the private person or entity fails to perform its contractual duties, the sheriff or Authority must impose a fine on the private person or entity from the schedule of fines and, in addition, may exercise any other rights the sheriff or Authority has under the contract.

(6) If the contract is entered into on or after the effective date of the rules adopted by the Department of Rehabilitation and Correction under the act, as described above, specific provisions that comport with all applicable standards that are contained in those rules.

If the private person or entity that enters into a contract under the above-described provisions fails to perform its contractual duties, the sheriff or Adult Parole Authority, whichever is a party to the contract, must impose upon the private person or entity a fine from the schedule included in the contract, as described above, the money paid in satisfaction of the fine must be paid into the county treasury or state treasury, and the sheriff or Authority may exercise any other rights it has under the contract. If a fine is imposed under this provision, the sheriff or Authority may reduce the payment owed to the private person or entity pursuant to any invoice in the amount of the fine.

Upon the effective date of the rules adopted by the Department under the act, notwithstanding the existence of a contract entered into under the provisions described above, in no case can the private person or entity that is a party to the contract return Ohio prisoners from outside of Ohio into Ohio for a sheriff or the Adult Parole Authority unless the private person or entity complies with all applicable standards that are contained in the rules.

The above-described provisions do not apply regarding any out-of-state prisoner who is brought into Ohio to be housed pursuant to R.C. 9.07 in a correctional facility in Ohio that is managed and operated by a private contractor. (R.C. 311.29(E) and 5149.03(B).)



### **Definitions**

As used in the act's provisions regarding private transportation of prisoners (R.C. 311.29(E), 5120.64(A), and 5149.03(B)):

(1) "Ohio prisoner" means a person who is charged with or convicted of a crime in this state or who is alleged or found to be a delinquent child in this state.

(2) "Out-of-state prisoner" and "private contractor" have the same meanings as in existing R.C. 9.07, not in the act.

### **Definition of detention under R.C. Chapter 2921.**

Under continuing law, for purposes of R.C. Chapter 2921., which includes the offense of escape, "detention" means arrest; confinement in any vehicle subsequent to an arrest; confinement in any public or private facility for custody of persons charged with or convicted of crime in Ohio or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in Ohio or another state or under the laws of the United States; hospitalization, institutionalization, or confinement in any public or private facility that is ordered pursuant to or under the authority of R.C. 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402; confinement in any vehicle for transportation to or from any facility of any of those natures; detention for extradition or deportation; except as provided in this paragraph, supervision by any employee of any facility of any of those natures that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility; or supervision by an employee of the Department of Rehabilitation and Correction of a person on any type of release from a state correctional institution. For a person confined in a county jail who participates in a county jail industry program pursuant to R.C. 5147.30, "detention" includes time spent at an assigned work site and going to and from the work site. (R.C. 2921.01(E).)

The act expands this definition so that it also specifically includes confinement in any vehicle, airplane, or place while being returned from outside of Ohio into Ohio by a private person or entity pursuant to a contract entered into under the act, as described above (R.C. 2921.01(E)).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	4-12-00	p. 1825
Reported, H. Children & Family Services	05-17-00	p. 1997
Passed House (95-0)	05-24-00	pp. 2100-2101
Reported, S. Judiciary	09-20-00	p. 2088
Passed Senate (22-9)	09-20-00	pp. 2102-2103
House concurred in Senate amendments (94-1)	11-08-00	pp. 2305-2306

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