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Bill Analysis
Legislative Service Commission

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**Reps. Metzger, Ford, Harris, Tiberi, O'Brien, Winkler, Hartnett, Olman,
Jerse, Hollister, DePiero, Terwilleger, Britton, Flannery**

BILL SUMMARY

CHILD FATALITIES

- Requires counties, either individually or with other counties, to establish child fatality review boards for the purpose of decreasing the incidence of preventable child deaths.
- Except while an investigation or prosecution is pending, requires individuals and entities that provided services to a child whose death is being reviewed to make any information requested by a child fatality review board, including confidential information, available to the board.
- Provides that all information, documents, or reports presented to a child death review board, all statements made by review board members during meetings, and all work products other than the annual report are confidential and not subject to subpoena or discovery in civil proceedings and not subject to subpoena or discovery in criminal and certain juvenile proceedings except under limited circumstances.
- Requires child fatality review boards to prepare and submit to the Ohio Department of Health (ODH) an annual report that includes information concerning each child death the board reviewed in the previous calendar year.
- Requires ODH and the Children's Trust Fund Board to prepare and publish an annual report organizing and setting forth the data in all the reports provided by child fatality review boards in their annual reports to ODH.

- Requires the executive director of a public children services agency (PCSA) to release, except when a county prosecutor intends to prosecute or a judge described in the bill prohibits release, information about a deceased child whose death may have been caused by abuse, neglect, or criminal conduct.
- Requires a PCSA director, on receipt of a request for information about a deceased child who may have been the victim of abuse, neglect, or criminal conduct, to confer immediately with the county prosecutor to determine (1) whether the prosecutor intends to prosecute a person for causing the child's death and (2) what information the director may release.
- Permits a court to grant a PCSA's motion to prevent the release of information about a deceased child if the release would not be in the best interest of a sibling of the deceased child or another child residing in the household the deceased child resided in at the time of death.
- Requires a local registrar of vital statistics to determine the county of residence of a child who dies in the local registrar's county and to send a copy of the death certificate to the local registrar of the county of the child's residence.

AUDITS AND FINANCIAL REQUIREMENTS

- Establishes requirements for audits of public children services agencies (PCSAs), private child placing agencies (PCPAs), and private noncustodial agencies (PNAs) conducted by the state auditor and requires PCPAs and PNAs to pay the costs of audits to the same extent required by law for PCSAs.
- With regard to PCPAs and PNAs, requires ODHS to adopt internal management rules governing financial and administrative requirements, a single form for reporting Title IV-E and Medicaid reimbursable costs, and procedures to monitor cost reports.
- Requires ODHS to establish penalties for PCSA, PCPA, or PNA failure to comply with procedures ODHS establishes to ensure fiscal responsibility.

OTHER CHILD WELFARE RELATED ITEMS

- Specifies additional information on child abuse and neglect cases to be reported to, and on child welfare services to be maintained by, the statewide automated child welfare information system.
- Permits PCSAs to employ legal counsel in certain situations.

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CONTENT AND OPERATION

CHILD FATALITIES

Child fatalities--Introduction

The bill establishes a procedure for reviewing child deaths occurring in each county of the state and special review boards to conduct those reviews. The bill also provides for release of information held by a public children services agency concerning a deceased child as well as procedures governing the release.

Establishing child fatality review boards

(secs. 307.622, 307.623, and 307.624)

The bill requires the establishment of child fatality review boards. The purpose of the boards is to decrease the incidence of preventable child deaths by doing all of the following:

- (1) Promoting cooperation, collaboration, and communication between all groups, professions, agencies, or entities that serve families and children;
- (2) Maintaining a comprehensive database of all child deaths that occur in the county or counties served by the board to develop an understanding of the causes and incidence of those deaths;
- (3) Recommending and developing plans for implementing local service and program changes and changes to the groups, professions, agencies, or entities that serve families and children that might prevent child deaths;
- (4) Advising the Ohio Department of Health (ODH) of aggregate data, trends, and patterns concerning child deaths.

A county is to either establish its own county child fatality review board or join with at least one other county to establish a regional child fatality review board. To have its own county child fatality review board, a board of county commissioners must appoint a health commissioner of the board of health of a city or general health district that is entirely or partially located in the county to establish the review board. To establish a regional child fatality review board, the board of county commissioners of two or more counties have to adopt a joint resolution creating the review board to serve all participating counties. A majority of the members of each participating board of county commissioners must vote for the resolution. The joint resolution is to appoint, for each county participating in the regional review board, one health commissioner from a board of health of a city or general health district located at least in part in each county. These health commissioners are to select one of their number as the health commissioner to establish the regional review board. Regional review boards are to be established in the same manner as provided for single county review boards.

The board of county commissioners of a county that has a body acting as a child fatality review board on the bill's effective date is required to appoint that body to function as the child fatality review board for that county in lieu of having a health commissioner establish the review board. That body is to have the same duties, obligations, and protections as a child fatality review board appointed by a health commissioner.

The health commissioner appointed to establish a child fatality review board is required by the bill to select the following six members to serve on the review board with the commissioner: (1) a county coroner, (2) the chief of police of a police department or the sheriff that serves the greatest population in the county or region, (3) the executive director of a public children services agency (PCSA), (4) a public health official, (5) the executive director of a board of alcohol, drug addiction, and mental health services (ADAMH board), and (6) a physician or osteopath specializing and currently practicing in pediatric or family medicine. A designee may serve on the review board for the coroner, chief of police or sheriff, PCSA director, public health official, or ADAMH board director. The majority of the members of a child fatality review board are permitted to invite additional members to serve on the board for a period of time the majority determines. Additional members have the same authority, duties, and responsibilities as the six members the health commissioner appoints. Vacancies are to be filled in the same manner as the original appointment.

Convening child fatality review boards

(secs. 307.622, 307.625, and 307.626)

If a county has a single county child fatality review board, the board of county commissioners is required to designate either the health commissioner that establishes the review board or a representative of the commissioner to convene meetings and be the chairperson of the review board. If a county is participating in a regional child fatality review board, the group of health commissioners that select the health commissioner to establish the review board must designate that commissioner or a representative of the commissioner to convene meetings and act as chairperson. If a body existing on the bill's effective date is the child fatality review board, the county commissioners or an individual designated by the commissioners must convene the body.

If a regional child fatality review board serves a county with more than one health district, the board shall convene in that county. If more than one of the counties served by a regional board has more than one health district, the board is to convene in one of those counties as selected by the person convening the meeting. A review board must convene at least once a year to review, in accordance with the bill and rules adopted by ODH, the deaths of all children under age 18 who, at the time of death, were residents of the county or one of the counties the board serves. A review board may not conduct a review of a child's death while an investigation of the death or prosecution of a person for causing the death is pending unless the prosecuting attorney allows the review to be conducted. The law enforcement agency conducting the criminal investigation, on the conclusion of the investigation, and the prosecuting attorney prosecuting the

case, on the conclusion of the prosecution, is required to notify the chairperson of the review board of the conclusion.

Providing a child fatality review board information

(secs. 307.628, 2151.421, and 4731.22)

Notwithstanding statutory provisions that provide for HIV tests and AIDS or AIDS-related condition diagnoses to be confidential or other statutory provisions, the following are required, on the request of a child fatality review board, to make any requested information available to the review board: an individual, PCSA, private child placing agency (PCPA), agency providing services specifically to individuals or families, law enforcement agency, or other public or private entity that provided services to a child whose death is being reviewed. For purposes of the review, the review board is to have access to confidential information. Each member of the review board is required to preserve the confidentiality of the information. But, no person, entity, law enforcement agency, or prosecuting attorney is required to provide information regarding a child's death while an investigation or prosecution is pending unless the prosecuting attorney agrees to allow the review board to review the death.

The bill provides that a physician does not violate the prohibition against willfully betraying a professional confidence by providing information, documents, or reports to a child fatality review board.

Current law provides for PCSAs and municipal and county peace officers to accept reports of child abuse or neglect or suspected child abuse or neglect. A report is confidential except to the extent necessary for a PCSA to advise a person alleged to have inflicted abuse or neglect on a child of the disposition of the investigation into the report. The bill provides that, if a child dies for any reason at any time after a report is made alleging that the child was the victim of abuse or neglect, the PCSA or peace officer to which the report was made or referred is required, on the request of a child fatality review board, to make the report available to the review board of the county in which the child resided at the time of death.

Child fatality review boards to submit reports

(sec. 307.627)

The bill requires the person convening a child fatality review board to prepare and submit to ODH an annual report that includes information concerning each child death the board reviewed in the previous calendar year. The report is due by the first day of each April and must include (1) the cause of death, (2)

factors contributing to death, (3) age, (4) sex, (5) race, (6) the geographic location of death, and (7) the year of death. The report also must specify the number of child deaths that have not been reviewed since the bill's effective date and may include recommendations for actions that might prevent other deaths, as well as any other information the review board determines should be included. The reports are public records for the purpose of Ohio's Open Records Law.

ODH and Children's Trust Fund Board to publish report

(sec. 3701.045)

On or before the 30th day of each September, ODH and the Children's Trust Fund Board are required by the bill to jointly prepare and publish a report organizing and setting forth the data in all the reports provided by child fatality review boards in their annual reports to ODH for the previous calendar year. The report is also to include recommendations for changes to law and policy that might prevent future deaths. ODH and the Children's Trust Fund Board jointly have to provide a copy of their report to the Governor, Speaker and Minority Leader of the House of Representatives, President and Minority Leader of the Senate, each child fatality review board, and each county or regional family and children first council.

Confidentiality of information and materials

(secs. 149.43 and 307.6210)

Except for information concerning a deceased child that the bill permits a PCSA to disclose (see "**PCSAs releasing information concerning deceased children**," below), information, documents, and reports presented to a child fatality review board, all statements made by review board members during meetings, and a review board's work products (other than the annual reports to ODH) are confidential and exempt from Ohio's Open Records Law. A review board and its members are to use the information, documents, reports, statements, and work products only in the exercise of the board's proper functions. The information, documents, reports, statements, and work products are not subject to subpoena or discovery in civil proceedings. In a criminal proceeding or proceeding in which a child is alleged to be an abused, neglected, or dependent child, a court, as described below, at the request of a prosecutor, is permitted to issue a subpoena to obtain, or order that discovery be permitted of, the information, documents, or reports if the prosecutor demonstrates they are necessary to the proceeding and are not available from another source. The bill states that this provision does not affect the privileges or immunities provided by statute or available at common law.

At the request of a prosecutor for a subpoena or discovery, one of the following judges of the common pleas court of the county the deceased child who is the subject of, or is addressed by, the proceeding resided in at the time of death may issue a subpoena or order the discovery:

(1) If the deceased child was never adjudicated an abused, neglected, or dependent child by a judge of the court of common pleas of the county, the judge of the probate division who is most senior in length of service as a common pleas judge of the county;

(2) If the deceased child was adjudicated an abused, neglected, or dependent child by a judge of the common pleas court of the county, one of the following judges of that county:

- If the court has only one judge and the judge did not make the prior adjudication, that judge;
- If the court has only one judge and the judge made the prior adjudication, a judge appointed by the Supreme Court;
- If the court has a probate division that is not combined with any other division, the judge of the probate division who is most senior in length of service as a common pleas judge of the county;
- If the court has a probate division that is combined with one or more other divisions and the judge of the combined division did not make the prior adjudication, that judge;
- If the probate division is combined with one or more other divisions and the judge of the combined division made the prior adjudication, the judge of the general division who is most senior in length of service as a common pleas judge of the county.

In cases in which the court has only one judge and that judge made an adjudication that the deceased child was an abused, neglected, or dependent child, on receipt of the prosecutor's request for a subpoena or discovery, the court must immediately notify the Supreme Court. No later than 14 days after the request is received, the Supreme Court must appoint a judge to make a determination on the prosecutor's request.

Persons are prohibited from permitting or encouraging the unauthorized dissemination of the confidential information described above. Whoever violates the prohibition is guilty of a misdemeanor of the second degree.

Civil immunity

(sec. 307.629)

An individual or public or private entity providing information, documents, or reports to a child fatality review board is immune from any civil liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of providing the information, documents, or reports. Each member of a review board is immune from civil liability for injury, death, or loss to person or property that might otherwise be incurred or imposed as a result of the member's participation on the review board.

ODH rules

(sec. 3701.045)

The bill requires ODH, in consultation with the Children's Trust Fund Board and child fatality review boards that exist on the bill's effective date, to adopt rules in accordance with the Administrative Procedure Act that establish a procedure for child fatality review boards to follow in conducting a review of the death of a child.¹ The rules must do all of the following:

(1) Establish the format for annual reports child fatality review boards must submit to ODH;

(2) Establish guidelines for a child fatality review board to follow in compiling statistics for annual reports so that the reports do not contain any information that would permit any person's identity to be ascertained from a report;

(3) Establish guidelines for a child fatality review board to follow in creating and maintaining a comprehensive database of child deaths, including provisions establishing uniform record-keeping procedures;

(4) Establish guidelines, materials, and training to help educate members of child fatality review boards about the purpose of the review process and the confidentiality of information presented to a review board and to make the members aware that the information is not a public record.

¹ *No child fatality review board will exist on the bill's effective date. It is only possible for bodies acting as review boards to exist on that date. A technical amendment is needed to correct this.*

PCSAAs releasing information concerning deceased children

(secs. 149.43, 5153.171, 5153.172, and 5153.173)

The bill requires the executive director of a PCSA to disclose (except in situations in which a county prosecutor intends to prosecute or a judge prohibits disclosure) certain information when requested about a deceased child under age 18 who was a resident of the county served by the PCSA at the time of death and whose death may have been caused by abuse, neglect, or other criminal conduct. Unless prohibited by the county prosecutor or judge, the PCSA director must release the following information notwithstanding any other state law pertaining to confidentiality:

- (1) The child's name;
- (2) A summary report of the chronology of abuse or neglect reports of which the child is the subject and the final disposition of the investigations of the reports or the status of investigations not completed;
- (3) Services provided to or purchased for the child or to which the child was referred by a PCSA;
- (4) Actions taken by a PCSA in response to a report of abuse or neglect of which the child was the subject.

On receipt of a request for the information, a PCSA director is required to confer immediately with the county prosecutor. If the prosecutor intends to prosecute a person for causing the child's death, the prosecutor must determine what, if any, of the information specified in the preceding paragraph that may be released and notify the PCSA director of the intent to prosecute and the determination of what information may be released. Except when the judge prohibits it, on receipt of the notice, the PCSA director is required to release the information the prosecutor determines may be released, but no other information. If the prosecutor does not intend to prosecute, the prosecutor is required to so notify the PCSA director. Except when the judge prohibits it, on receipt of that notice, the PCSA director is required to release the information specified in the preceding paragraph. The PCSA director is immune from civil or criminal liability for injury, death, or loss to person or property incurred or imposed as a result of providing information under the bill if the director acts in good faith.

A PCSA director is not permitted to disclose the information if one of the following judges of the common pleas court of the county the deceased child resided in at the time of death determines, on motion of the PCSA, that disclosing

the information would not be in the best interest of a sibling of the deceased child or another child residing in the household the child resided in at the time of death:

(1) If the deceased child was never adjudicated an abused, neglected, or dependent child by a judge of the court of common pleas of the county, the judge of the probate division who is most senior in length of service as a common pleas judge of the county;

(2) If the deceased child was adjudicated an abused, neglected, or dependent child by a judge of the common pleas court of the county, one of the following judges of that county:

- If the court has only one judge and the judge did not make the prior adjudication, that judge;
- If the court has only one judge and the judge made the prior adjudication, a judge appointed by the Supreme Court;
- If the court has a probate division that is not combined with any other division, the judge of the probate division who is most senior in length of service as a common pleas judge of the county;
- If the court has a probate division that is combined with one or more other divisions and the judge of the combined division did not make the prior adjudication, that judge;
- If the probate division is combined with one or more other divisions and the judge of the combined division made the prior adjudication, the judge of the general division who is most senior in length of service as a common pleas judge of the county.

In cases in which the court has only one judge and that judge made an adjudication that the deceased child was an abused, neglected, or dependent child, on the filing of the PCSA motion, the court must immediately notify the Supreme Court. No later than 14 days after the motion is filed, the Supreme Court must appoint a judge to make a determination on the motion.

The bill prohibits a person from releasing the following pursuant to the disclosure of information under the bill concerning a deceased child: (1) the name of any person or entity that made a report or participated in making a report of child abuse or neglect of which the child was the subject, (2) the names of the parents or siblings of the child, (3) the contents of any psychological, psychiatric, therapeutic, clinical, or medical reports or evaluations regarding the child, (4)

witness statements, (5) police or other investigative reports, and (6) any information other than information the bill specifies may be released.

The bill provides that records provided to and statements made by the PCSA director or county prosecutor pursuant to this provision of the bill, other than information the director releases, are not subject to Ohio's Public Records Law.

Exemption from open meetings law

(sec. 121.22)

Under the open meetings law, with certain exceptions, meetings of a public body are public meetings open to the public at all times. The bill provides that meetings of a child fatality review board and meetings between a PCSA executive director and county prosecutor regarding the release of information about a deceased child are not subject to the open meetings law.

Duties of local registrar of vital statistics

(sec. 3705.071)

The bill requires a local registrar of vital statistics, on receipt of a death certificate of a person under age 18, to determine the county in which the person resided at the time of death. If the county of residence was other than the county in which the person died, the registrar, after registering the certificate and no later than four weeks after receiving it, must make a copy of the certificate and send it to the local registrar of vital statistics of the county in which the person resided at the time of death.

AUDITS AND FINANCIAL REQUIREMENTS

Audits of PCSAs, PCPAs, and PNAs

(secs. 117.13 and 117.191)

The bill provides that when the Auditor of State audits a public children services agency (PCSA), private child placing agency (PCPA), or private noncustodial agency (PNA), all of the following apply:²

² A private noncustodial agency is an entity certified by the Ohio Department of Human Services that does not accept temporary or permanent legal custody of children, is privately operated in Ohio, and that does one or more of the following: (1) receives and cares for children for two or more consecutive weeks, (2) participates in placing children

- The auditing team must include a representative of a national nonprofit organization with expertise in child welfare issues;
- The audit may only cover a 12-month period and include only transactions that were both billed and paid;
- The audit must focus on fiscal accountability, not clinical decision making;
- The Auditor must communicate initially and throughout the audit with the PCSA, PCPA, or PNA being audited regarding the audit parameters, the procedures used in the audit, and the status of the audit;
- The Auditor must provide the PCSA, PCPA, or PNA with a copy of the audit report and give the agency an opportunity to respond before releasing it.

Current law requires that the Auditor recover certain costs of auditing a public office from that public office. Thus, a PCSA must pay the costs of an audit. The costs of auditing a private entity, such as a PCPA or PNA that receives public money, must also be borne by the public office providing the money. The bill would require that the costs of an audit of a PCPA or PNA be charged to the PCPA or PNA. The costs would be charged in the same manner as costs of an audit of a public office.

Financial rules and penalties for PCSAs, PCPAs, and PNAs

(secs. 5101.141, 5101.145, and 5101.146)

Current law provides that the Ohio Department of Human Services (ODHS) is the single state agency of Ohio to administer federal payments for foster care and adoption assistance pursuant to Title IV-E of the Social Security Act and must adopt rules to implement that authority. ODHS is specifically required to adopt internal management rules governing financial and administrative requirements applicable to PCSAs.

The bill requires that the rules adopted by ODHS governing financial and administrative requirements applicable to PCSAs also be applicable to PCPAs and PNAs. ODHS must, in adopting the rules regarding financial requirements, also establish both of the following:

in family foster homes, or (3) provides adoption services in conjunction with a PCSA or PCPA.

(1) A single form for PCPAs and PNAs to report costs reimbursable under Title IV-E and costs reimbursable under Medicaid;

(2) Procedures to monitor cost reports submitted by PCPAs and PNAs.

The bill requires ODHS to establish the following penalties, which are to be enforced at ODHS discretion, for PCSA, PCPA, or PNA failure to comply with procedures ODHS establishes to ensure fiscal accountability:

(1) For initial failure, the development and implementation of a corrective action plan according to a specific schedule;

(2) For subsequent failures or failure to achieve the goals of the corrective action plan, either of the following:

(a) For PCSAs, withholding of Title IV-E funds;

(b) For PCPAs and PNAs, loss of reimbursement for two years.

OTHER CHILD WELFARE RELATED ITEMS

Information reported to and maintained in the statewide automated child welfare information system

(secs. 2151.421 and 5101.147)

Am. Sub. H.B. 215 of the 122nd General Assembly (the budget bill for FY 1998-99) appropriated funds for the implementation of a statewide automated child welfare information system (SACWIS) to be used by each PCSA. The vendor ODHS contracts with to create the system was to be one able to have SACWIS operational in all 88 counties of the state by June 30, 1999. Am. Sub. H.B. 283 of the 123rd General Assembly (the budget bill for FY 2000-01) contained an appropriation for computer projects, including the continued development and implementation of SACWIS.

According to a representative of ODHS, SACWIS is not yet fully developed and implemented. When fully developed and implemented SACWIS will provide child welfare personnel detailed information about cases of individual children and child welfare in Ohio.

Current law requires PCSAs to report each case of child abuse and neglect to a central registry maintained by ODHS to be used to determine whether prior reports of child abuse or neglect have been made in other counties concerning the child or other principals in the case. The bill provides that if ODHS implements SACWIS, the PCSA must report the child abuse and neglect cases to it instead of

the central registry. The information reported to SACWIS must not include the name of the alleged perpetrator of the abuse or neglect on the child but must include the child's name; demographic information concerning the child; the type of allegation reported; the child's county of residence; and whether the PCSA provided services to the child.

The bill also requires that SACWIS collect and maintain information concerning child welfare services provided to children reported to be abused or neglected or at risk of abuse or neglect.

PCSA employment of counsel

(sec. 305.14)

Under current law, the prosecuting attorney is the legal adviser of a PCSA and has the duty to prosecute and defend all actions involving the PCSA as a party. A PCSA may employ legal counsel only if the court of common pleas, on application of the prosecuting attorney and board of county commissioners, authorizes it. The bill would permit a PCSA, without authorization of the common pleas court, to employ legal counsel to advise it or represent it or any of its members or employees with respect to both of the following:

- (1) Any public business matter coming before the PCSA;
- (2) The prosecution or defense of any action or proceeding in which the PCSA in its official capacity, or a PCSA member or employee, in the member's or employee's official capacity, is a party or has an interest.

However, even if the authorization of the court of common pleas is not required, in any legal proceeding in which the prosecuting attorney is able to perform the prosecuting attorney's statutory duty without a conflict of interest, the bill requires the PCSA to have the prosecuting attorney's consent before employing other counsel. If the prosecuting attorney is unable for any reason to represent the PCSA, the prosecuting attorney also must notify the PCSA. The PCSA may then employ counsel for the proceeding without obtaining further permission from any authority.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-21-99	p. 1222