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Bill Analysis
Legislative Service Commission

H.B. 634

123rd General Assembly
(As Introduced)

Reps. Grendell, Ford, Taylor, Jerse, Netzley, Barnes, Pringle, Schuring

BILL SUMMARY

- Establishes special guidance foster homes for children who have committed an act that if committed by an adult would be an offense of violence, theft offense, or a sex offense involving sexual activity.
- Prohibits a child who has committed an act that if committed by an adult would be an offense of violence, theft offense, or a sex offense involving sexual activity from being placed in any other type of foster home, and permits only those children to be placed in special guidance foster homes.
- Requires the entity placing a child in a special guidance foster home to provide certain information about the child to the sheriff and the juvenile court of the county, and to the township or municipal law enforcement agency of the political subdivision, in which the foster home is located.
- Makes the law requiring the provision to foster caregivers of background and psychological information about a child to be placed in their care inapplicable to any child who may be placed in a special guidance foster home.
- Permits political subdivisions to enact zoning regulations to exclude or restrict special guidance foster homes.

CONTENT AND OPERATION

Establishment of special guidance foster homes

(R.C. 2151.63, 5103.02, 5103.03, and 5103.035)

Current law provides for foster homes, family foster homes, and treatment foster homes. A foster home is a family home in which any child is received apart

from the child's parents for care, supervision, or training. A family foster home is a private residence in which children are received apart from their parents, guardian, or legal custodian by an individual for hire, gain, or reward for nonsecure care, supervision, or training 24 hours a day. A treatment foster home is a family foster home that incorporates special psychological or medical treatment designed to care for the specific needs of the children received in the home and that receives and cares for children who are emotionally or behaviorally disturbed, medically fragile requiring special medical treatment due to physical ailment or condition, mentally retarded, or developmentally disabled.

The Ohio Department of Job and Family Services (ODJFS) is required to pass on the fitness of the foster homes every two years. The Director of ODJFS has authority to delegate the duty to inspect and approve foster family homes and treatment foster homes to public children services agencies (PCSAs), private child placing agencies (PCPAs), or private noncustodial agencies (PNAs).¹

The bill would establish a new type of foster home designated as a "special guidance foster home." Under the bill, a special guidance foster home means a family foster home that provides special supervision, care, and treatment for children adjudicated to be delinquent for committing an act that if committed by an adult would be one of the following or for children who have committed an act that if committed by an adult would be one of the following but the children have not been adjudicated delinquent because of the act:

(1) An offense of violence (which includes, for example, the offenses of murder, aggravated murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, rape, sexual battery, gross sexual imposition, arson, and domestic violence);²

¹ Current law defines "public children 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. "Private noncustodial agency" is any person, organization, association, or society certified by ODJFS that does not accept temporary or permanent legal custody of children, is privately operated in the state, and does any of the following: receives and cares for children for two or more consecutive weeks, participates in the placement of children in family foster homes, or provides adoption services in conjunction with a PCSA or PCPA.

² Section 2151.63(A)(1) in the bill. See R.C. § 2901.01 for the other offenses included within the definition of "offense of violence."

(2) A theft offense (which includes, for example, the offenses of robbery, burglary, safecracking, theft, and forgery);³

(3) A sex offense that involves sexual activity but is not an offense of violence (which includes, for example, the offenses of corruption of a minor, sexual imposition, importuning, compelling prostitution, and promoting prostitution).⁴

The bill also requires ODJFS to adopt rules in accordance with the Administrative Procedure Act governing the special guidance foster homes including the following: (1) a requirement that a foster caregiver maintain visual contact at all times with a child placed in the home when the child is outside the structure of the home, except that visual contact will not be maintained when the child is of the opposite sex of the caregiver and the child is using the restroom or is changing clothes so that the child is wearing only underclothes or is unclothed, or (2) a requirement that a foster caregiver be in such proximity to a child placed in the home who is outside the structure of the home so that the caregiver may make physical contact with the child within 30 seconds, should the need arise. (See **COMMENT 1**.)

The bill also permits ODJFS to delegate the duties to inspect and approve special guidance foster homes to PCSAs, PCPAs, or PNAs.

Placing children in a special guidance foster home

(R.C. 2151.63 and 5103.034)

The bill provides that a PCSA, PCPA, PNA, court, Department of Youth Services (DYS), or any other public or private entity may not place a child who committed the acts described above in any foster home except a special guidance foster home. In addition, the bill provides that only those children may be placed in special guidance foster homes.

Information provided to foster caregivers

(R.C. 2151.62)

³ Section 2151.63(A)(2) in the bill. See R.C. § 2913.01 for the other offenses included within the definition of "theft offense."

⁴ Section 2151.63(A)(3) in the bill. See R.C. Chapter 2907. for the rest of the sex offenses that involve "sexual activity."

Under current law, except in emergency situations, a PCSA, PCPA, PNA, court, DYS, and any other private or government entity may not place certain delinquent children in a foster home until it provides the foster caregivers:

- A written report describing the child's social history;
- A written report describing the acts the child committed the entity knows of that resulted in the child being adjudicated delinquent and the court's disposition, unless the records pertaining to the acts have been sealed;
- A written report describing any other violent act the child committed of which the entity is aware;
- The substantial and material conclusions and recommendations of any psychiatric or psychological examination conducted on the child or, if no such examination is available, the substantial and material conclusions and recommendations of an examination to detect mental and emotional disorders conducted by an independent social worker, social worker, professional clinical counselor, or professional counselor.⁵

In addition to providing foster caregivers the information discussed above, the entity placing the child is required to conduct a psychological examination of the child unless an examination was conducted no more than one year prior to the child's placement. No later than 60 days after placing the child, the entity must provide the child's foster caregivers a written report detailing the substantial and material conclusions and recommendations of the examination.

An entity that places a delinquent child in a foster home must provide the foster caregivers the required information and conduct the psychological examination only if the child has been adjudicated delinquent for an act to which any of the following applies:

(1) The act is a violation of the prohibition against aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, rape, sexual battery, or gross sexual imposition;

⁵ *If a child is placed in the foster home as a result of an emergency removal from the child's home, an emergency change in the child's case plan, or an emergency placement by DYS, the background information must be provided no later than 96 hours after placement.*

(2) The act is a violation of the prohibition against conspiracy and involved an attempt to commit aggravated murder or murder;

(3) The act would be a felony if committed by an adult and the court determines that the child had a firearm, automatic firearm, or firearm equipped with a muffler or silencer, or displayed, brandished, or indicated possession of or used a firearm, during the commission of the act or that the act relates to the possession or use of a firearm.⁶

The bill makes the law requiring the provision of the information and the psychological examination described above apply only to children previously adjudicated to be delinquent for any act described in (3) above. The law governing the provision of the background information and requiring the psychological examination would not apply to children who, under the bill, are eligible to be placed in a special guidance foster home.

Out-of-county placement in a special guidance foster home

(R.C. 2151.555)

The bill provides that when a private or governmental entity places a child in a special guidance foster home in a county other than the county in which the child resided at the time of being removed from home, the placing entity must provide the following information in writing to the sheriff and the juvenile court of the county in which the foster home is located and to the township or municipal law enforcement agency of the political subdivision in which the foster home is located:

(1) The services the child is receiving;

(2) The name of the contact person for the placing entity that is directly responsible for monitoring the child's placement;

(3) The telephone number of the placing entity and, if the child is in the temporary, permanent, or legal custody of a private or government entity other than the placing entity, the telephone number of the entity with custody;

⁶ Current law defines "firearm" as any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm and any firearm that is inoperable but readily can be rendered operable.

(4) A brief description of the facts supporting the adjudication that the child is unruly or delinquent;⁷

(5) The name and address of the foster caregiver;

(6) Safety and well-being concerns with respect to the child and community. (See **COMMENT 2.**)

Zoning law

(R.C. 2151.418)

Under current law, a foster home or a family foster home is required to be considered a residential use of property for purposes of zoning and must be a permitted use in all zoning districts in which residential uses are permitted. No zoning regulation is permitted to require a conditional permit or any other special exception certification for any foster home or family foster home.

The bill provides that a political subdivision that has enacted a zoning ordinance or resolution may (1) exclude special guidance foster homes from a single-family residential district or zone, or (2) regulate such homes in single-family residential districts or zones as a conditionally permitted use or special exception under conditions the political subdivision establishes.

COMMENT

1. The bill makes a child who commits an act listed in the bill but who was not adjudicated a delinquent child because of the act eligible for placement in the new special guidance foster homes. The bill does not provide any method for determining whether a child has committed such an act. In addition, the bill does not describe how a PCSA, PCPA, PNA, court, DYS, or other public or private entity would have custody over a child who committed such an act but was not adjudicated delinquent as a result. Presumably, the bill applies to any child adjudicated to be abused, neglected, dependent, or unruly, a juvenile traffic offender, or delinquent for committing some act other than the ones described in the bill and is already in the custody of one of those entities. But, the term could apply to an even larger group of children who have not been adjudicated for any

⁷ *This provision should probably be changed to require a brief description of the acts the child committed that make the child eligible for placement in the special guidance foster home. Although an unruly child or delinquent child likely could be placed in a special guidance foster home, it is not necessarily the facts supporting the adjudication that makes the child eligible for placement in the home.*

reason under the Juvenile Code. As a result, the bill could be construed as permitting placement of unadjudicated children who are not currently in the custody of the above entities in the restrictively supervised special guidance foster home established under the bill. This could violate both state and federal constitutional guarantees of due process of law.

2. Under current law, when a private or governmental entity intends to place a child in a foster home in a county other than the county in which the child resided at the time of being removed from home, the entity must orally communicate certain information about the child to the intended foster caregiver and the school district in which the foster home is located if the child will attend school in that district. (R.C. 2151.55, 2151.551, and 2151.552.) If the child to be placed has been adjudicated an unruly or delinquent child, the placing entity must provide certain background information about the child to the juvenile court of the county in which the foster home is located. (R.C. 2151.554.) Under current law, it also appears that the definition of foster home includes family foster homes. The bill also specifies that a special guidance foster home is a family foster home. Because a foster home may be construed to include a family foster home and the special guidance foster homes established under the bill are family foster homes, it is possible that the notification requirements described above may also apply to the special guidance foster homes if the bill were enacted.

HISTORY

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