S.B. 192

125th General Assembly
(As Introduced)

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BILL SUMMARY

Voluntary placement agreements

- Requires, under certain circumstances, that a public children services agency (PCSA) enter into a voluntary placement agreement with the parent or custodian of a child with mental illness under which the child is placed in a treatment foster home or residential treatment facility that is appropriate and the least restrictive environment available for the child.

- Requires that the voluntary placement agreement (1) provide for the parent or custodian to maintain legal custody of the child and to participate fully in the child's treatment and (2) specify the child's legal status and the rights and obligations of the child and the parties to the agreement.

- Requires that the voluntary placement agreement specify how the costs for the treatment foster home or residential treatment facility are to be paid as determined in accordance with the county's comprehensive joint service plan.

- Provides for the parent or custodian to contribute to the costs for the treatment foster home or residential treatment facility if required by the county's family and children first council.

- Requires the PCSA to prepare and periodically review a case plan for the child and permits the parent and PCSA to agree that the voluntary placement agreement is the child's case plan.

- Prohibits the PCSA from seeking temporary or permanent custody of the child or requiring that the parent of the child surrender parental rights to the child while the voluntary placement agreement is in effect.

- Requires that the voluntary placement agreement be terminated if both the parent or custodian and PCSA agree that termination is in the child's best interest.

- Permits a party to the voluntary placement agreement to petition a juvenile court for an order terminating the agreement if only one party to the agreement believes it is in the child's best interest to terminate the agreement.

- Requires, if the child has been placed in the treatment foster home or residential treatment facility for more than 180 days, that the PCSA seek a juvenile court's determination that continued placement is in the child's best interest.

- Requires the PCSA to report annually to the Department of Job and Family Services the number of voluntary placement agreements to which it is a party.

County service coordination mechanism

- Requires that a county service coordination mechanism's procedure for assessing the needs of a child with mental illness provide for the assessment to be conducted by a mental health professional designated by a board of alcohol, drug addiction, and mental health services.

- Requires that the service coordination mechanism include a procedure for informing the parent or custodian of a child with mental illness about voluntary placement agreements and that the parent or custodian cannot be required to relinquish legal custody of the child as a condition of entering into the agreement.

- Requires that the service coordination mechanism include a dispute resolution process that a parent or custodian of a child with mental illness may utilize when the parent or custodian disagrees with a decision rendered by the county family and children first council or an agency represented on the county council regarding services or funding for services the child seeks or receives from an agency represented on the council.

Countywide system for children with mental illness

- Requires that a county family and children first council provide for participation in the development of a countywide, comprehensive, coordinated multi-disciplinary, interagency system for children with mental illness and families of those children.

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CONTENT AND OPERATION

Voluntary placement agreements

When agreement is required

(R.C. 5103.40, 5103.41, 5103.53(A), and 5153.16)

The bill requires a public children services agency (PCSA) to enter into a written voluntary placement agreement with the parent or custodian[1] of a minor

[1] *A "custodian" is a person who has legal custody of a child or a PCSA or private child placing agency that has permanent, temporary, or legal custody of a child (R.C. 2151.011(B)(11)).*

child[2] with mental illness[3] if the parent or custodian seeks the voluntary placement agreement, the child has been assessed to need mental health services pursuant to a service coordination mechanism established by a county family and children first council, and the parent or custodian and the council agree that the child is unable to obtain, by means other than a voluntary placement agreement, the mental health services the child is assessed to need pursuant to the service coordination mechanism. The voluntary placement agreement must be entered into in accordance with a time frame that the bill requires the Director of Job and Family Services to establish in rules.

Components of agreement

(R.C. 5103.42, 5103.43, 5103.53(B), and 5153.19)

The bill requires that a voluntary placement agreement do all of the following:

(1) Provide for the PCSA to place the child in a treatment foster home[4] or residential treatment facility[5] that is appropriate and the least restrictive environment[6] available for the child;

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[2] *A "minor child" is an individual who has not attained age 18 or an individual who has not attained age 19 and is a full-time student in a secondary school or in the equivalent level of vocational or technical training (R.C. 5107.02(E)).*

[3] *"Mental illness" is a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life (R.C. 5122.01(A)).*

[4] *A "treatment foster home" is a foster home that incorporates rehabilitative services designed to treat the specific needs of the children received in the foster home and that receives and cares for children who are emotionally or behaviorally disturbed, chemically dependent, mentally retarded, developmentally disabled, or who otherwise have exceptional needs (R.C. 5103.02(G)).*

[5] *The bill defines "residential treatment facility" as a facility that meets the federal definition of "child-care institution" and is either a group home or children's residential center certified by the Department of Job and Family Services or a residential facility licensed by the Department of Mental Health (R.C. 5103.40(E)). Federal law defines "child-care institution" as a private child-care institution, or public child-care institution accommodating no more than 25 children, that is licensed or approved as meeting the standards established for such licensing. "Child-care institution" does not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent. (42 U.S.C. 672(c).)*

(2) Provide for the parent or custodian to maintain legal custody[7] of the child and specifically include a statement that the parent or custodian does not, by entering into the agreement, transfer legal custody of the child to the PCSA;

(3) Provide for the parent or custodian to participate fully in the child's treatment at the treatment foster home or residential treatment facility;

(4) Specify, at a minimum, the child's legal status and the rights and obligations of the parent or custodian, child, and PCSA while the child is placed in the treatment foster home or residential treatment facility;

(5) Specify how the costs for the treatment foster home or residential treatment facility are to be paid as determined in accordance with the county's comprehensive joint service plan;[8]

(6) Provide for the parent or custodian to contribute to the costs for the treatment foster home or residential treatment facility if required by the county council;

(7) Include additional information required by rules that the bill requires the Director of Job and Family Services to adopt;

(8) Require the parent or custodian and PCSA to be bound by the agreement.

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[6] *The bill defines "least restrictive environment" as the most home-like setting for a minor child with a preference for residence in the same community as the child's family so the child may continue to maintain maximum contact with the child's family and community (R.C. 5103.40(B)).*

[7] *"Legal custody" is a legal status that vests in the custodian the rights to have physical care and control of a child and to determine where and with whom the child must live and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care. The rights are subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody must exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by a juvenile court. (R.C. 2151.011(B)(19).)*

[8] *Continuing law requires each county to develop a comprehensive joint service plan. The plan must, in part, designate service responsibilities among the various state and local agencies that provide services to children and their families. (R.C. 121.37(D).)*

Utilization of child support standards

(R.C. 2151.361 and 5103.43)

The bill authorizes a county family and children first council to utilize as a guide the schedules, worksheets, and other standards in state law governing child support enforcement in determining the amount, if any, a parent or custodian is to contribute to the costs of the treatment foster home or residential treatment facility in which the parent or custodian's child is placed pursuant to a voluntary placement agreement.

If a parent who enters into a voluntary placement agreement adopted the child, a juvenile court is authorized by the bill to require the parent to pay for the care, support, maintenance, and education of the child pursuant to an order issued under the child support enforcement law. In determining whether to issue such an order, the court is required to consider all pertinent issues, including the issues a juvenile court is to consider under continuing law when determining whether to issue such an order for an adoptive parent who enters into an agreement with a PCSA or private child placing agency to place a child into the temporary custody[9] of the agency or the child is committed pursuant to the juvenile court law. The issues to be considered also include the parent's ability to pay for the care, support, maintenance, and education of the child; the chances for reunification of the parent and child; and whether the parent has contributed to the child's problems.

Case plan

(R.C. 2151.412(A)(5), 2151.416, and 5103.44)

Continuing law requires a PCSA to prepare and maintain a case plan for any child to whom the agency is providing services if certain circumstances exist. For example, a case plan is required for a child receiving PCSA services if the PCSA filed a complaint under the juvenile court law alleging that the child is an abused, neglected, or dependent child or if the PCSA has temporary or permanent custody[10] of the child. The bill provides that a case plan is also required for a child

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[9] *"Temporary custody" is the legal custody of a child who is removed from the child's home that may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement (R.C. 2151.011(B)(52)).*

[10] *"Permanent custody" means a legal status that vests in a PCSA or a private child placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of all parental rights, privileges, and obligations, including all residual rights and obligations (R.C. 2151.011(B)(30)).*

receiving PCSA services if the child is the subject of a voluntary placement agreement. The parent and PCSA may agree that the voluntary placement agreement is the child's case plan.

A PCSA that prepares a case plan is required by current law to complete a semiannual administrative review of the case plan. The bill requires that the review of a case plan prepared for a child who is the subject of a voluntary placement agreement be completed no later than six months after the date the agreement is executed.[11] Subsequent administrative reviews must be completed no later than every six months.

Restriction on seeking custody

(R.C. 2151.413 and 5103.45)

A PCSA that enters into a voluntary placement agreement is prohibited from seeking temporary or permanent custody of the child who is the subject of the agreement or requiring the parent of the child to surrender parental rights to the child while the agreement is in effect.

Continuing law requires a PCSA to file a motion requesting permanent custody of a child under certain circumstances. For example, the motion must be filed if the child has been in the temporary custody of one or more PCSAs or private child placing agencies for 12 or more months of a consecutive 22-month period. The bill prohibits a PCSA from filing a motion for permanent custody under those provisions if the child has been placed with the agency pursuant to a voluntary placement agreement.

Termination of agreement

(R.C. 2151.23, 5103.46(A) and (B), 5103.47, and 5103.48)

A voluntary placement agreement must be terminated if both the parent or custodian and PCSA that entered into the agreement agree that termination is in the child's best interest. If only one party to the agreement believes it is in the child's best interest to terminate the agreement, that party is permitted to file a petition with the juvenile court serving the same county as the PCSA for the court to issue an order terminating the agreement. On receipt of the petition, the court

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[11] *If the child is also subject to a complaint alleging abuse, neglect, or dependency or has been placed in shelter care, the semiannual review of the case plan must be completed no later than six months after the earliest of the date on which the complaint is filed, the date the child is first placed in shelter care, or the date the voluntary placement agreement is executed.*

must schedule a time and place to hear the petition.[12] The court is required to provide the parent or custodian and PCSA with notice of the time and place of the hearing. At the hearing, the court must determine whether it is in the child's best interest for the agreement to be terminated. If the court determines that termination is in the child's best interest, the court must issue an order terminating the agreement. On termination of the agreement, the child must be returned to the care of his or her parent or custodian.

Court determination of child's continued placement

(R.C. 2151.23, 2151.353, 2151.417, 5103.46(C), 5103.48, 5103.49, 5103.50, and 5103.51)

The bill requires a PCSA to obtain a judicial determination that continued placement is in the best interest of a child if the agency, pursuant to a voluntary placement agreement, places the child in a treatment foster home or residential treatment facility for more than 180 days. To obtain the determination, the PCSA must file a petition with a juvenile court requesting that the court review the child's placement, determine whether continued placement is in the child's best interest, and take other necessary action as provided in the bill.[13] The PCSA must include a copy of the agreement with the petition. The petition must include at least the following information:

(1) A history of the child's mental illness that requires care and treatment;

(2) A description of the child's current placement and the services provided to the child and the child's family;

(3) An explanation of why placement in a treatment foster home or residential treatment facility is necessary to meet the child's needs;

(4) The plan for the child's ongoing care and the parent or custodian's participation in that plan;

(5) A description of the parent or custodian's success in fulfilling the responsibilities specified in the agreement;

(6) A statement of how the placement will serve the child's best interests.

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[12] *The bill gives juvenile courts exclusive original jurisdiction to hear and determine the petition.*

[13] *The bill does not specify a time within which the petition must be filed.*

On filing the petition, the clerk of the juvenile court is required to schedule the petition for a disposition hearing to be held not later than 30 days after the date of the filing.[14] The PCSA is required to provide notice of the time, date, and purpose of the hearing to the child's parent or custodian. Not later than 30 days after the petition is filed, the court must hold a hearing to determine whether continued placement is in the child's best interest. After the hearing, the court is permitted to make any of the following dispositions:

(1) If the court determines that the placement is in the child's best interest, order the child's placement to continue;

(2) If the court determines that the placement is not in the child's best interest, order the termination of the agreement and the child to be returned to the child's parent or custodian and provided with available services and support necessary for the child to remain with the parent or custodian;

(3) Order an amendment to the agreement to address the needs of the child or the child's family;

(4) If necessary to ensure the care, protection, safety, and mental and physical development of the child, order the PCSA to file a complaint with the court under current law that permits any person having knowledge of a child who appears to be an abused, neglected, or dependent child to file a sworn complaint with a juvenile court.

The bill provides that the juvenile court retains jurisdiction over the child for whom the court issues the disposition until the child attains age 18 or, if the child is mentally retarded, developmentally disabled, or physically impaired, until the child attains age 21. However, the court's jurisdiction ends before that time if a final decree of adoption for the child is issued before that time.

After issuing the disposition, the juvenile court is permitted or required to perform a number of the same kinds of duties that the court performs under current law after a child is adjudicated to be an abused, neglected, or dependent child. For example, the juvenile court is permitted to review at any time the child's case plan and the PCSA's actions in implementing the case plan. Also, the court must periodically hold hearings to review the child's case plan.[15] After a hearing, the

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[14] *The bill gives juvenile courts exclusive original jurisdiction to hear and act on these petitions.*

[15] *The first review hearing must be held one year after the date the voluntary placement agreement is executed. If the child is also subject to a complaint alleging abuse, neglect, or dependency or has been placed in shelter care, the first review hearing must be held*

court must approve a permanency plan for the child that specifies whether and, if applicable, when the child will be safely returned home or placed in another permanent placement.

PCSAs to report number of agreements

(R.C. 5103.52)

The bill requires each PCSA to report annually to the Department of Job and Family Services the number of voluntary placement agreements to which it is a party.

Adoption of rules

(R.C. 2151.412(F)(2) and 5103.53)

The Director of Job and Family Services is required by the bill to adopt rules governing voluntary placement agreements. The Director also must adopt rules setting forth the general goals of case plans for children subject to a voluntary placement agreement. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

County service coordination mechanism

Background

Continuing law requires each county to develop a county service coordination mechanism that includes a number of different features. For example, the mechanism must include a procedure for assessing the needs of children and a procedure for assessing the service needs of their families.

Assessment conducted by mental health professional

(R.C. 121.37(C)(1))

The bill requires that a county service coordination mechanism's procedure for assessing the needs of a child provide for the assessment to be conducted by a mental health professional[16] designated by a board of alcohol, drug addiction, and mental health services if the child has mental illness.

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one year after the earliest of the date on which the complaint is filed, the date the child is first placed in shelter care, or the date the voluntary placement agreement is executed.

[16] *A mental health professional is a person qualified to work with mentally ill persons pursuant to standards established by the Director of Mental Health (R.C. 340.02).*

Information about voluntary placement agreements

(R.C. 121.37(C)(3))

A county service coordination mechanism is required by the bill to include a procedure for informing the parent or custodian of a child with mental illness about the bill's voluntary placement agreements. The parent or custodian must be informed that the parent or custodian cannot be required to relinquish legal custody of the child as a condition of entering into the agreement.

Dispute resolution process

(R.C. 121.37(C)(6), 121.381, and 121.382)

The bill requires that a county service coordination mechanism include a dispute resolution process that a parent or custodian of a child with mental illness may utilize when the parent or custodian disagrees with a decision rendered by the county family and children first council or an agency represented on the county council regarding services or funding for services the child seeks or receives from an agency represented on the county council. The dispute resolution process must provide for designation of an individual who is not a party to the dispute to act as decision maker.

A parent or custodian of a child with mental illness is permitted by the bill to initiate the dispute resolution process if the parent or custodian disagrees with a decision rendered by a county council or an agency represented on the county council regarding services or funding for services the child seeks or receives from the agency.

The parent or custodian may have a mental health professional accompany the parent or custodian to the hearings held as part of the dispute resolution process and receive mental health advice from the mental health professional. The parent or custodian may also be represented by legal counsel in the process. As part of the process, the parent or custodian, or legal counsel of the parent or custodian, is permitted to (1) examine all records of the county council and agency involved in the dispute that are relevant to the dispute, including assessments, evaluations, and treatment plans regarding the child, (2) present evidence at hearings held as part of the process, including assessments of the child conducted by a mental health professional who is independent from the county council and agency and whose services the parent or custodian pays for, and (3) present and cross examine witnesses.

The bill gives the individual who is designated decision maker for the dispute resolution process the same power as a judge of a county court to

administer oaths and to enforce the attendance and testimony of witnesses and the production of evidence. The decision maker must enforce the attendance and testimony of witnesses and the production of evidence at the request of the parent or custodian, legal counsel of the parent or custodian, county council, or agency.

The decision maker is required to issue a written determination not later than 30 days after the parent or custodian initiates the dispute resolution process. The determination must direct one or more agencies represented on the county council to provide services or funding for services that the child is eligible to receive and that the decision maker determines are appropriate for the child. In making the determination, the decision maker is required to consider all evidence available to the decision maker. An agency subject to the determination must comply with the decision immediately.

The bill requires each agency represented on a county council that provides services or funding for services to a child with mental illness at the time the child's parent or custodian initiates the dispute resolution process, to continue to provide those services and the funding for those services during the process if the services or funding are the subject of the process.

Countywide system for children with mental illness

(R.C. 121.37(B)(2)(d))

The bill requires a county family and children first council to provide for participation in the development of a countywide, comprehensive, coordinated multi-disciplinary, interagency system for children with a mental illness and families of those children.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-04-04	p. 1509

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