



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 561

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(As Introduced)

**Reps.** Slaby, J. Adams, Huffman, Grossman, Duffey, Garland

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## BILL SUMMARY

- Authorizes a child's guardian or custodian after an acknowledgement of paternity has become final to seek a child support order that orders the mother to pay child support.
- Requires the filing of an application for services administered under Title IV-D of the federal Social Security Act or another Title IV-D referral when the child, mother, alleged father, the personal representative of the child, mother, or alleged father, or the child support enforcement agency (CSEA) of the county in which the child resides requests a CSEA determination of a parent-child relationship between an alleged father and a child.
- Requires a CSEA to schedule an administrative hearing to determine child support upon receipt of a completed application for services administered under Title IV-D of the federal Social Security Act or another Title IV-D referral, if an administrative officer issues an administrative order determining the existence of a parent and child relationship, a presumption of paternity exists, or a duty of support otherwise exists under R.C. 3103.031 or Chapter 3115.
- Requires a CSEA to investigate the possible termination of a child support order upon receipt of a notice from the child's custodian of a reason for termination and the filing of an application for services under Title IV-D of the federal Social Security Act.
- Reduces from 30 to 14 days after the trigger date (issuance of an order, decision, or notice or receipt of notice) the time period for objecting to an administrative order determining parentage, objecting to an administrative support order by bringing an action for the payment of support and provision for a child's health care, requesting

a hearing on modification of child support by a CSEA, requesting an administrative hearing following a CSEA investigation of a reason to terminate child support, and moving for a judicial determination of a CSEA decision following investigation of a reason to terminate child support; and modifies other time limits for requesting administrative or court reviews of or hearings on matters relating to paternity or child support, the time periods for giving notice of reviews or hearings, and the dates on which determinations and orders become effective.

- Specifies that notices sent by a CSEA to obligors and obligees regarding the dates for review of administrative child support orders or modified amounts of child support under administrative or judicial child support orders be sent by ordinary mail.
- Requires a CSEA to schedule an administrative child support hearing if a presumption of paternity exists or a duty of support otherwise exists under specified circumstances, sets forth the required contents of the notice of hearing and of the request for information accompanying the notice, states that the Rules of Civil Procedure apply regarding the sending of any summons related to the hearing, and permits the CSEA to make reasonable assumptions regarding information that is not provided.
- Modifies the contents of an administrative child support or health care order.
- Authorizes rather than requires a CSEA to give written notice to the court of noncompliance with an administrative order to provide health insurance coverage for a child and authorizes a court to punish a noncompliant person for contempt.
- Requires that the person requesting review of a child support order by a CSEA be the one who filed the Title IV-D application; requires both parties to provide the same information regarding income and health care coverage; authorizes the CSEA to make reasonable assumptions regarding information that is not provided; authorizes the CSEA to revise administratively ordered child support payments, including payments on arrearages, or to recommend revisions of court-ordered payments; and allows the CSEA to reconsider the reallocation of the federal income tax deduction only if a party requests a hearing on the matter.
- Adds as reasons for termination of a child support order the child's adoption, the obligor's death, the marriage of the obligor to the obligee, the occurrence of certain events when a grandparent is supporting the child of an unemancipated minor, the reaching of a date specified in a court order as a termination date after a child reaches 19 years of age, or any other appropriate reason brought to the court's attention.

- Defines "intercept directive" as a document sent by a CSEA to a payor to have lump sum payments due an obligor under a child support order either paid to the Office of Child Support in the Department of Job and Family Services (if the obligor is in default or has arrearages under a support order) or paid immediately to the obligor; requires a CSEA to issue an intercept directive on receiving notice that a lump sum of \$150 or more is to be paid to the obligor; and requires a court that before 1998 ordered an employer to withhold an amount from an obligor's personal earnings to issue a supplemental order on receiving notification of a lump sum payment from a CSEA.
- Requires that the notice contained in every support order or modification of a support order include a warning that an obligor or obligee who fails to give required contact information to a CSEA may not receive notice of the changes and requests to change the child support amount, health care provisions, or termination of the child support order.
- Authorizes a CSEA to issue an access restriction notice to a financial institution upon notice or discovery of an obligor's account with the institution and authorizes rather than requires a CSEA to investigate and determine the amount of funds in an account after the entry of information about a support order into the Office of Child Support's case registry.
- Provides that a person other than an obligor who claims ownership of funds in an account subject to a CSEA directive ordering transmission of the funds to the Office of Child Support may file a motion for a hearing with the court of common pleas that issued the child support order or that is located in the county where the CSEA issued the order and that the person who files the motion is a temporary party only for the purposes of objecting to the CSEA's determination.
- Eliminates the requirement that a CSEA request the discharge of a lien on the property of an obligor if the obligor is complying with a withholding or deduction notice or other order relating to cash bonds or lump sums or with a new or modified support order.
- Requires the Office of Child Support to work with the Tax Commissioner to collect overdue support (not just child support) from tax refunds payable to obligors and modifies the amount of arrearages required before support may be collected from refunds.
- Exempts consideration of a CSEA recommendation made pursuant to an administrative review of a court order from the requirement that a court, when issuing or reconsidering a court child support order, must designate which parent

may claim the children as dependents for federal income tax purposes and requires the court to designate which parent may claim the deduction on the request of any party.

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## CONTENT AND OPERATION

### Parentage

#### Recourse once paternity acknowledged

The bill makes various changes to the law governing the child support obligations of parents once paternity has been acknowledged. Under existing law, once

an acknowledgment of paternity becomes final, the mother or other custodian or guardian of the child may do any of the following:<sup>1</sup>

(1) File a complaint in the appropriate court of the county in which the child or the guardian or legal custodian of the child resides requesting that the court order the father to pay an amount for the support of the child;

(2) Contact the child support enforcement agency (CSEA) for assistance in obtaining the order;

(3) Request that an administrative officer of a CSEA issue an administrative child support order.

The bill modifies paragraph (1) by authorizing the mother or other custodian or guardian of the child to file a complaint requesting that the father *or mother* be ordered to pay child support. It modifies paragraph (2) by specifying that the mother, guardian, or custodian may seek assistance from a CSEA in obtaining *a child support order as defined in R.C. 3119.01 (court or administrative child support order)*. The bill eliminates paragraph (3).

#### **Filing of Title IV-D application for determination of parent-child relationship**

Title IV-D of the federal Social Security Act provides states with federal assistance in the enforcement of child support obligations owed by noncustodial parents. To receive federally funded services under Title IV-D, a person must either apply for the services or be referred to the CSEA by an agency that provides public assistance to the person.

Under existing law, the CSEA of the county in which a child resides or in which the guardian or legal custodian of the child resides must determine the existence or nonexistence of a parent and child relationship between an alleged father and the child when requested to do so by the child, the child's mother or alleged father, the personal representative of the child, mother, or alleged father, or the CSEA of the county in which the child resides (if the mother or alleged father is a recipient of public assistance or of services under Title IV-D). The bill requires the completion and filing of an application for services administered under Title IV-D or a Title IV-D referral before the CSEA makes the determination.<sup>2</sup>

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<sup>1</sup> R.C. 3119.29.

<sup>2</sup> R.C. 3111.38 and 3111.04(A) (incorporated by reference in R.C. 3111.38).

## **Objection to determination of parent-child relationship**

The bill reduces from 30 to 14 days after the issuance of an administrative order determining the existence or nonexistence of a parent-child relationship the time within which a mother, alleged father, guardian, or custodian may bring an action objecting to the order. It may be brought in the juvenile court in the county in which the CSEA that employs the administrative officer who issued the order is located. If an action is not brought within the specified period, the administrative order becomes final and enforceable by a court.<sup>3</sup>

## **Child support**

### **Background**

Under existing law, not changed by the bill, a man is presumed to be the natural father of a child under any of the following circumstances:<sup>4</sup>

(1) The man and the child's mother are or have been married to each other, and the child is born during the marriage or is born within 300 days after the marriage is terminated by death, annulment, divorce, or dissolution or after the man and the child's mother separate pursuant to a separation agreement.

(2) The man and the child's mother attempted, before the child's birth, to marry each other by a marriage that was solemnized in apparent compliance with the law of the state in which the marriage took place, the marriage is or could be declared invalid, and either (a) the marriage can only be declared invalid by a court, and the child is born during the marriage or within 300 days after the termination of the marriage by death, annulment, divorce, or dissolution, or (b) the attempted marriage is invalid without a court order, and the child is born within 300 days after the termination of cohabitation.

(3) An acknowledgment of paternity has been filed and has not become final.

### **Obtaining support order**

Under existing law, a parent, guardian, or legal custodian of a child, the person with whom the child resides, or the CSEA of the county in which the child, parent, guardian, or legal custodian of the child resides may do any of the following to require

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<sup>3</sup> R.C. 3111.49.

<sup>4</sup> R.C. 3111.03(A) (not in the bill).

a man to pay support and provide for the health care needs of the child if the man is presumed to be the natural father of the child:<sup>5</sup>

(1) If the presumption is not based on an acknowledgment of paternity, file a complaint for child support pursuant to R.C. 2151.231 in the juvenile court of the county in which the child or parent, guardian, or legal custodian of the child resides;

(2) Ask an administrative officer of a CSEA to issue an administrative support order;

(3) Contact a CSEA for assistance in obtaining an order for support and provision of health care for the child.

The bill eliminates paragraph (2) and modifies paragraph (3) to provide that the person may contact a CSEA *to request* assistance.

### **Administrative hearing for child support**

Existing law requires an administrative officer to schedule an administrative hearing to determine the amount of child support any parent is required to pay, the method of payment, and the method of providing for the child's health care if either of the following occurs:<sup>6</sup>

(1) A request for issuance of an administrative support order is made under R.C. 3111.29 or 3111.78 (see "**Parentage – Recourse once paternity acknowledged**" and "**Child support – Obtaining support order,**" above);

(2) An administrative officer issues an order determining the existence of a parent-child relationship based on genetic test results.

The bill replaces paragraph (1) with the receipt of a completed application for Title IV-D services or other Title IV-D referral (see "**Parentage – Filing of Title IV-D application for determination of parent-child relationship,**" above). The bill also requires an administrative officer to schedule an administrative hearing to make those determinations if a presumption of paternity exists under R.C. 3111.03 (lists the circumstances under which paternity is presumed) or if a duty of support otherwise exists under R.C. 3103.031 (assumption of the parental duty of support) or Chapter 3115. (Uniform Interstate Family Support Act). The bill also specifies that the

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<sup>5</sup> R.C. 3111.78.

<sup>6</sup> R.C. 3111.80.

administrative hearing must be conducted by an administrative officer assigned by the CSEA.

The bill requires that the notice of the date, time, place, and purpose of the administrative hearing that the administrative officer must send to the mother and father include a request for income, health insurance, and related information described in R.C. 3111.801 (see the next paragraph) [and state] (see **COMMENT**) that if either the mother or father fails to comply with the request for information, the CSEA is permitted to make reasonable assumptions regarding the information not provided and must proceed with the determination of support in the same manner as if all requested information had been supplied. The bill also states that the Rules of Civil Procedure apply regarding the sending of any summons related to the hearing as well as the sending of the notice (as in existing law).<sup>7</sup>

If an administrative officer schedules an administrative support hearing as described above, the bill requires that the officer include in the notice of the hearing a request that the mother and father provide the CSEA, not later than the date scheduled for formally beginning the hearing, all of the following:<sup>8</sup>

(1) A copy of the mother's and father's most recently filed federal income tax return and all supporting schedules and documents;

(2) A copy of all pay stubs obtained by the mother and father within the immediately preceding six months;

(3) A copy of all other records evidencing the receipt of any other salary, wages, or compensation by the mother and father within the immediately preceding six months;

(4) A list of the group health insurance and health care policies, contracts, and plans available to the father and mother and their costs;

(5) The current health insurance or health care policy, contract, or plan under which the father and mother are enrolled and its cost;

(6) If the mother or father is a member of the uniformed services and is on active military duty, a copy of the mother's or father's leave and earnings statement;

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<sup>7</sup> R.C. 3111.80.

<sup>8</sup> R.C. 3111.801.

(7) Any other information necessary to properly establish the child support order.

Under existing law, the administrative hearing must be held no later than 60 days after the request for a hearing is made or an administrative order is issued determining the existence of a parent-child relationship based on genetic test results. The bill requires that the hearing be held no later than 60 days after a Title IV-D application is submitted to or the Title IV-D referral is received by the CSEA and the CSEA has sufficient information to complete service of process. Under both existing law and the bill, the hearing may not be held earlier than 30 days after the officer gives the mother and father notice of the hearing. The bill adds that if the mother or father fails to comply with the request for information described above, the CSEA may proceed in accordance with R.C. 3119.72 (see "**CSEA review of child support order – Noncompliance**," below), make reasonable assumptions regarding the information the person failed to provide, and proceed with the determination of support in the same manner as if all requested information had been supplied.<sup>9</sup>

After the administrative hearing, the administrative officer may issue an administrative order for the payment of support and provision for the child's health care. The bill provides that the order becomes effective on the date of the hearing. Under existing law, the order must do all of the following:<sup>10</sup>

(1) Require periodic payments of support that may vary in amount or the purchase of an annuity in lieu of periodic payments if the purchase order provides that the remaining principal will be transferred to the ownership and control of the child on the child's attainment of the age of majority, as ordered by the officer;

(2) Require the parents to provide for the health care needs of the child in accordance with R.C. 3119.29 to 3119.56;

(3) Include a notice that contains the information described in R.C. 3111.84 (see the last paragraph in this section) informing the mother and the father of the right to object to the order by bringing an action for the payment of support and provision of the child's health care under R.C. 2151.231 (support action in juvenile court) and the effect of a failure to timely bring the action.

The bill makes the following three changes to the foregoing language:

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<sup>9</sup> R.C. 3111.80.

<sup>10</sup> R.C. 3111.81.

(1) It specifies that the enumerated actions must be taken in accordance with R.C. Chapters 3119. (calculation of child support) and 3121. (collection of child support).

(2) It requires that the notice described in paragraph (3) state that the administrative order is final and enforceable by a court.

(3) It eliminates the requirement that that notice inform the parents of the effect of the failure to bring an action to object in a timely manner.

Under existing law, a mother or father may object to an administrative support order by bringing an action for the payment of support and provision for the child's health care in the appropriate court of the county in which the CSEA that employs the administrative officer is located. The bill requires the action to be brought in the county in which the CSEA that issues the order is located. The bill also provides that the order remains in effect during the pendency of the objection. The bill reduces from 30 to 14 days after the issuance of the order the time within which the action must be brought. Under existing law, the order is final and enforceable if neither the mother nor the father brings an action within the 30-day period. The bill states that the order is final and enforceable as of the date it is issued.<sup>11</sup>

### **Health insurance**

In an action or proceeding for the issuance or modification of a child support order, the court or CSEA must include in the order provisions for the children's health care. The order must specify the obligor and obligee are both liable for the health care of the children who are not covered by private health insurance or cash medical support. When the order requires payment of cash medical support because private health insurance coverage is unavailable, the CSEA must give the obligor notice and provide the obligor an *opportunity to be heard* if the obligor believes there is a mistake of fact regarding the availability of private health insurance at a reasonable cost as determined by the CSEA. The bill replaces *opportunity to be heard* with *opportunity for an administrative hearing* and gives the obligor 14 days from issuance of the notice to request a hearing.<sup>12</sup>

A CSEA must send a federally required national medical support notice to the employer of a person who is required to provide health insurance coverage for children who are the subject of a child support order.<sup>13</sup> When the CSEA sends the national

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<sup>11</sup> R.C. 3111.84.

<sup>12</sup> R.C. 3119.30(D).

<sup>13</sup> R.C. 3119.33 and 3119.34 (neither section in the bill).

medical support notice, it must also send a notice of medical support enforcement activity to the person required to provide health insurance coverage.<sup>14</sup> A person who receives a notice of medical support enforcement activity may file a written request for an administrative hearing with the CSEA regarding whether a mistake of fact was made in the national medical support notice. The bill increases the time within which the request must be filed from seven business days to 14 calendar days after the date on which the notice of medical support enforcement activity is sent and specifies that the hearing must address whether a mistake of fact was made in the national medical support notice. The CSEA's determination is final unless the person files a written motion with the court for a hearing to determine whether there is still a mistake of fact in the national medical support notice. The bill extends the time within which the person must file the notice from seven business days to 14 calendar days after the CSEA issues (rather than "makes," as in existing law) its determination.<sup>15</sup>

Under existing law, if the person required to obtain health insurance coverage pursuant to a child support order does not obtain the required coverage within 30 days after the order is issued, the CSEA *shall* give written notice of the noncompliance to the court that issued the order or, in the case of an administrative order, to the court of common pleas of the county in which the CSEA is located. The bill changes "shall" to "may." It also states that the court may punish the person for contempt for the failure.<sup>16</sup>

### **CSEA review of child support order**

The Revised Code requires the Director of Job and Family Services to adopt rules establishing a procedure for determining when existing child support orders should be reviewed to determine whether it is necessary and in the best interest of the children who are the subject of the order to change the order. The rules must include, among other things, procedures for giving obligors and obligees notice of their right to request a review of an order that is determined to be subject to review, notice of any proposed revision of the amount of child support to be paid under the order, notice of the procedures for requesting a hearing on any proposed revision of that amount, notice of any administrative hearing to be held on a proposed revision of that amount, *at least 45 days' prior notice* of any review of the order, and *notice that a failure to comply with any request for documents or information to be used in the review is contempt of court.* The bill

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<sup>14</sup> R.C. 3119.35 (not in the bill).

<sup>15</sup> R.C. 3119.38.

<sup>16</sup> R.C. 3119.43.

reduces the minimum period of prior notice from 45 to 30 days and eliminates the notice that noncompliance with a request for documents or information is contempt.<sup>17</sup>

If a CSEA, periodically or on request of an obligor or obligee, plans to review a child support order in accordance with rules of the Director of Job and Family Services or otherwise, it must do certain things before formally beginning the review. The bill specifies that the obligor or obligee requesting review must be one who has completed and filed an application for Title IV-D services. Under the bill, the CSEA must do all of the following before beginning the review (changes made by the bill are in italics or are explained in italics).<sup>18</sup>

(1) Establish a date certain on which the review will formally begin;

(2) Except as otherwise provided for obligors in active military service, at least 45 days (*reduced to 30 days by the bill*) before formally beginning the review, send the obligor and the obligee notice *by ordinary mail* of the planned review, of the date when the review will formally begin, and that the review may revise any addition or adjustment to any payment on arrearages in accordance with R.C. 3123.21 (*rebuttable presumption that the arrearage amount collected with each payment of current support equals 20% of the current support payment*);

(3) Request the *mother and father* (*changed by the bill from obligor here and throughout paragraph (3); the bill eliminates parallel provisions setting forth the obligee's responsibilities*) to provide the CSEA, no later than the scheduled date for formally beginning the review, with all of the following:

(a) A copy of the *mother's and father's* federal income tax return *and all supporting schedules and documentation from the previous year*;

(b) A copy of all pay stubs obtained by the *mother and father* within the preceding six months;

(c) A copy of all other records evidencing the receipt of any other salary, wages, or compensation by the *mother and father* within the preceding six months;

(d) A list of the group health insurance and health care policies, contracts, and plans available to the *mother and father* and their costs (the bill eliminates a reference to the availability to the obligee of the *tricare* program offered by the United States Department of Defense);

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<sup>17</sup> R.C. 3119.76(D).

<sup>18</sup> R.C. 3119.60.

(e) The current health insurance or health care policy, contract, or plan under which the *mother or father* is enrolled and its cost;

(f) If the *mother or father* is a member of the uniformed services and is on active military duty, a copy of the *mother's or father's leaves and earnings statement (changed from the obligor's Internal Revenue Service form W-2, "Wage and Tax Statement," and a copy of a statement detailing the obligor's earnings and leave with the uniformed services)*;

(g) Any other information necessary to properly review the child support order.

(4) Include in the notice described in paragraph (2) one of the following:

(a) If the child support order being reviewed is a court order, a notice that a willful failure to provide the documents and other information requested pursuant to paragraph (3) is contempt of court *or the agency may make reasonable assumptions with respect to the information the person did not provide in accordance with R.C. 3119.72* (see "**CSEA review of child support order – Noncompliance**," below);

(b) If the child support order being reviewed is an administrative order, a notice that if either the *mother or father* fails to comply with the request for information, the agency may *make reasonable assumptions with respect to the information the person did not provide in accordance with R.C. 3119.72 (replaces authority to bring an action under R.C. 3119.72 requesting that the court find the obligor and the obligee in contempt)*.

### **Review of administrative order**

If on review the CSEA determines that a modification (changed to "adjustment" by the bill) is necessary and in the best interest of the child, the CSEA must calculate the amount the obligor is to pay in accordance with R.C. 3119.021, which sets forth child support guidelines based on income and number of children. The bill authorizes the CSEA to also add or adjust payment on arrearages in accordance with R.C. 3123.21, which provides for payment on arrearages by withholding from money due the obligor an amount equal to 20% of the current support amount, subject to evidence justifying a deviation from that figure. Under current law, if the CSEA can modify the child support without deviating from the guidelines, it must notify the obligor and obligee of the revised amount of support and of their right to a hearing on the subject. The bill specifies that the notice must be given by ordinary mail. It also changes the time within which the obligor or obligee may request an administrative hearing on the revised amount from 30 days after receipt of the notice to 14 days after issuance of the notice.<sup>19</sup>

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<sup>19</sup> R.C. 3119.61 first paragraph and (A).

If the obligor or obligee timely requests an administrative hearing on the revised amount of support set by the CSEA and a hearing is held, the CSEA must redetermine at the hearing revised support obligations (replaces "revised amount of child support to be paid"), including, under the bill, adding or adjusting a payment on arrearages in accordance with R.C. 3123.21. The CSEA must modify the order to include the revised amount of child support and must give notice to the obligor and obligee of the amount to be paid under the modified order and that the obligor and obligee may object to the modified order by initiating an action in the appropriate court. The bill requires that the notice be given by ordinary mail, and it changes the county in which the action must be brought from the county in which the mother, father, child, or guardian or custodian resides to the county in which the CSEA that issued the order is located.<sup>20</sup>

If the CSEA cannot set the amount of child support without granting a deviation from the statutory guidelines, the CSEA must bring an action *on behalf of the person who requested that the agency review the existing administrative order or, if no one requested the review, on behalf of the obligee*, in the appropriate court of the county in which the CSEA is located requesting that the court issue a child support order. The bill strikes the italicized language.<sup>21</sup>

### **Review of court order**

Under existing law, when a CSEA reviews a court child support order, it must calculate a revised amount to be paid under the order. The bill requires the CSEA to calculate a revised child support computation worksheet and issue a revised child support recommendation under the order, including adding or adjusting a payment on arrearages. The bill also specifies that the required notice to the obligor and obligee of the revised amount and of the right to a hearing on that amount be sent by ordinary mail and state that the revised amount will be submitted to the court unless the obligor or obligee requests an administrative hearing on the proposed change within 14 days after the notice is issued (rather than 14 days after the notice is received, as in current law).<sup>22</sup>

Current law also requires the CSEA to give the obligor and obligee notice that if the court order contains a deviation from the support guidelines or if the obligor or obligee intends to request a deviation from the amount to be paid under the court order, the obligor and obligee have a right to request a court hearing on the revised amount of support without first requesting an administrative hearing and that the

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<sup>20</sup> R.C. 3119.61(C)(4) and (6).

<sup>21</sup> R.C. 3119.61 (last paragraph).

<sup>22</sup> R.C. 3119.63(A) and (B).

obligor or obligee, in order to exercise this right, must request the hearing no later than 14 days after receipt of the notice. The bill requires that the notice be sent by ordinary mail and changes the time within which a request for a hearing must be made to 14 days after the notice is issued.<sup>23</sup>

If the obligor or obligee under current law timely requests an administrative hearing on the revised child support amount, the CSEA must schedule an administrative hearing, give the obligor and obligee notice of the hearing, and redetermine at the hearing a revised amount of child support to be paid under the child support order. Under the bill, the CSEA must determine at the hearing revised support obligations under the court child support order, including adding or adjusting a payment on arrearages in accordance with R.C. 3123.21. Existing law requires that the CSEA give notice to the obligor and obligee of the revised amount of child support and of the right to request a court hearing on that amount. The bill adds that the notice must state that a court hearing may be requested within 14 days after notice of the revised amount is issued.<sup>24</sup>

The bill provides that when a CSEA submits a recommendation of a revised amount of child support for inclusion in a revised court child support order, the court may reconsider the allocation of the federal income deduction pursuant to R.C. 3119.82 (see "**Miscellaneous**," below) only if a party files a request for a hearing on the matter.<sup>25</sup>

### **Noncompliance**

Under current law, the remedy for failure of an obligor or obligee to comply with a CSEA's request for information in a review of a court child support order is almost the same as the remedy in a review of an administrative child support order. However, noncompliance with respect to the two types of orders is addressed in two separate divisions of the relevant Revised Code section. In the case of a court order, noncompliance is contempt of court. The CSEA must notify the court of the failure to comply and may request the court to issue an order requiring the obligor or the obligee to provide the information or take whatever action is necessary to obtain the information and to make any reasonable assumptions necessary with respect to the information the noncompliant person did not provide to ensure a fair and equitable review of the order. In the case of an administrative order, the procedure is similar, but the CSEA may ask the court to allow the CSEA take the necessary action to obtain the

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<sup>23</sup> R.C. 3119.63(C).

<sup>24</sup> R.C. 3119.63(E) and (F).

<sup>25</sup> R.C. 3119.631.

information and to make the necessary assumptions to ensure a fair and equitable review.<sup>26</sup>

The bill extends the remedy to noncompliance with a request for information for the purpose of issuing an administrative support order (see "**Child support – Administrative hearing for child support**," above) in addition to requests for information under existing law for the review of support orders. Under the bill, if either the obligor or the obligee fails to comply with a request for information made for purposes of issuing an administrative child support order or review of an administrative child support order or court child support order, the CSEA may do either of the following:<sup>27</sup>

(1) Request the court of appropriate jurisdiction of the county in which the CSEA is located to issue an order requiring the parent, obligor, or obligee to provide the requested information;

(2) Make any reasonable assumptions necessary with respect to the information the person did not provide to ensure a fair and equitable review of the child support order or establishment of an administrative order.

Under existing law, if the CSEA decides to conduct the review of an order based on reasonable assumptions with respect to information not provided, the CSEA proceeds in the same manner as if all requested information had been received. The bill extends this provision to the issuance of an administrative order.<sup>28</sup>

## **Termination of child support order**

### **Notice of reason to terminate**

Existing law authorizes the obligor under a child support order and requires the parent who is the residential parent and legal custodian of the child or the person who otherwise has custody of the child to immediately notify the CSEA administering the order of any reason for which the order should terminate. With respect to a court child support order, a willful failure to notify the CSEA is contempt of court. The bill adds that nothing in this section of law precludes a person from notifying the CSEA that a reason for which an order should terminate is imminent.<sup>29</sup>

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<sup>26</sup> R.C. 3119.72.

<sup>27</sup> R.C. 3119.72(A).

<sup>28</sup> R.C. 3119.72(B).

<sup>29</sup> R.C. 3119.87.

## Reasons for termination

The Revised Code lists the following reasons for which a child support order should terminate:<sup>30</sup>

(1) The child attains the age of majority if the child no longer attends an accredited high school on a full-time basis and the order requires support to continue past the age of majority only if the child continuously attends such a high school after attaining that age;

(2) The child ceases to attend an accredited high school on a full-time basis after attaining the age of majority if the order requires support to continue past the age of majority only if the child continuously attends such a high school after attaining that age;

(3) The child's death, marriage, emancipation, enlistment in the armed services, or deportation;

(4) Change of legal custody of the child.

The bill provides that a child support order should *administratively* terminate for the reasons described above and for all of the following reasons:<sup>31</sup>

(1) A court child support order specifies a termination date for the order that is after a child reaches 19 years of age, and the date specified in the order has been reached;

(2) The child's adoption;

(3) The obligor's death;

(4) In the case of a child born to parents who are unmarried and unemancipated minors, the grandparent to whom support is being paid or a grandparent who is paying support reports that the grandparent's support order should terminate as a result of one of the following events described in R.C. 3109.19(D):

(a) The minor reaches the age of 18, dies, marries, enlists in the armed services, is deported, gains legal or physical custody of the child, or is otherwise emancipated.

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<sup>30</sup> R.C. 3119.88.

<sup>31</sup> R.C. 3119.88(A).

(b) The child who is the subject of the order dies, is adopted, is deported, or is transferred to the legal or physical custody of the minor who lives with the grandparent required to pay support.

(c) The grandparent to whom support is being paid is no longer providing any support for the child.

(5) Marriage of the obligor to the obligee.

The bill provides that a child support order may be terminated or suspended by the court for any of the existing or new reasons described above and, unless otherwise prohibited by law, any other appropriate reasons brought to the attention of the court.<sup>32</sup>

### **Investigation of reason to terminate**

Within 20 days after receiving a notice of a reason to terminate a child support order, a CSEA must complete an investigation into the reason. A CSEA may conduct an investigation on its own initiative if it otherwise has reason to believe that there may be a reason for termination. Under the bill, the CSEA's duty to investigate is triggered by receipt of such a notice and the completion and filing of a Title IV-D application for services. The bill also states that nothing in the provisions governing termination precludes a CSEA from initiating an investigation before a reason for which the order should terminate has occurred.<sup>33</sup>

Under existing law, a CSEA that conducts an investigation must notify the obligor and obligee of the results, of their right to an administrative hearing concerning the conclusions of the investigation, of the incorporation of the conclusions into an order, and of the fact that the conclusions will not be incorporated into a revised order if either the obligor or the obligee requests an administrative hearing within 30 days after receipt of the notice. The bill reduces the time within which an administrative hearing must be requested to 14 days after the notice is issued.<sup>34</sup>

### **Notice following administrative hearing**

Current law requires that if the CSEA conducts an administrative hearing regarding the conclusions of an investigation of a reason to terminate, the CSEA's decision must include a notice stating that the obligor or obligee may object to the decision by filing a motion within 30 days after the issuance of the decision in one of the

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<sup>32</sup> R.C. 3119.88(A) and (B).

<sup>33</sup> R.C. 3119.89.

<sup>34</sup> R.C. 3119.90(B)(4).

specified courts requesting a determination as to whether the order should be terminated or whether any other appropriate determination regarding the order should be made. The notice must also state that if no one files a motion within 30 days, the administrative hearing decision is final. The bill changes the time for filing the motion to 14 days after issuance of the decision.<sup>35</sup>

## **Collection of child support**

### **Definitions**

The bill incorporates by reference the following definitions for use in R.C. Chapter 3121. (collection of child support):<sup>36</sup>

"Administrative child support order" means any order issued by a CSEA for the support of a child pursuant to R.C. 3109.19 or 3111.81 or former R.C. 3111.211, R.C. 3111.21 as that section existed before January 1, 1998, or R.C. 3111.20 or 3111.22 as those sections existed before March 22, 2001.

"Obligee" means the person who is entitled to receive the support payments under a support order.

"Obligor" means the person who is required to pay support under a support order.

"Support order" means either an administrative child support order or a court support order.

The bill also defines "intercept directive" as a document sent by a CSEA to a payor that either requires the payor to transmit all or any portion of a lump sum payment to the Office of Child Support in the Department of Job and Family Services if the obligor is in default or has any arrearages under a support order or that requires the payor to immediately pay the full amount of the lump sum payment to the obligor if the obligor is not under a default order and does not have any arrearages under the order.<sup>37</sup>

### **Withholding or deduction from obligor's income or assets**

In an action in which a support order is issued or modified, one of the following applies, as appropriate, to ensure that withholding or deduction from the income or

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<sup>35</sup> R.C. 3119.91 and 3119.92.

<sup>36</sup> R.C. 3121.01(A), incorporating definitions from 3119.01 (not in the bill).

<sup>37</sup> R.C. 3121.01(A) and (E).

assets of the obligor is available from the commencement of the support order for the collection of the support and any arrearages that occur:<sup>38</sup>

(1) The court, with respect to a court support order, or the child support enforcement agency, with respect to an administrative child support order, must require the withholding or deduction of income or assets of the obligor under R.C. 3121.03, which establishes procedures for withholding income or deducting an amount from funds to pay child support.

(2) If the withholding of income is impracticable, the obligor has no income or assets or is unemployed or does not have an account at a financial institution, or the obligor is owed a lump sum, the court, with respect to a court support order, must order the obligor to enter into a cash bond with the court, to seek employment or participate in a work activity, or to notify the CSEA of any change in the obligor's financial circumstances or must issue an order with respect to lump sums due the obligor (see "**Collection of child support – Lump sums**," below).

(3) The CSEA, with respect to an administrative order, must issue an administrative order, or request that the court issue a court order, requiring the obligor to provide a cash bond or seek employment or participate in a work activity or directing the payment of a lump sum.

The Revised Code provides for the actions listed in paragraph (2) in R.C. 3121.03(C) and (D), 3121.04, 3121.05, 3121.06, and 3121.12. Only the last of these, which deals with lump sums due an obligor, is in the bill. The "work activity" referred to in paragraph (2) is the activity required by the federal law that authorizes block grants to states under the Temporary Assistance to Needy Families program. Federal law defines "work activities" as the following:<sup>39</sup>

- (1) Unsubsidized employment;
- (2) Subsidized private sector employment;
- (3) Subsidized public sector employment;
- (4) Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) On-the-job training;

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<sup>38</sup> R.C. 3121.02.

<sup>39</sup> 42 U.S.C. § 607(d).

- (6) Job search and job readiness assistance;
- (7) Community service programs;
- (8) Vocational educational training (not to exceed 12 months with respect to any individual);
- (9) Job skills training directly related to employment;
- (10) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- (11) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate;
- (12) The provision of child care services to an individual who is participating in a community service program.

The bill modifies paragraph (2) by specifying that the court may issue an order under division (C) of R.C. 3121.12 (see the second paragraph under "**Collection of child support – Lump sums**," below). The bill modifies paragraph (C) by eliminating the CSEA's authority to issue an administrative order and striking the reference to R.C. 3121.12, which deals with the procedure concerning lump sum payments received by an obligor.

A court or CSEA, within 15 days after an obligor under a support order is located following issuance or modification of the support order by the court or CSEA, must do one of the following: (1) if a withholding or deduction notice described in R.C. 3121.03 is appropriate, send the notice by regular mail or *via secure federally managed data transmission interface* to each person required to comply with it, or (2) if another of certain specified types of orders is appropriate, issue and send the appropriate order. The bill changes the italicized language to "electronic means."<sup>40</sup>

### **Lump sums**

Under existing law, on receiving notice that a lump sum of \$150 or more is to be paid to an obligor, a court, with respect to a court support order, or a CSEA, with respect to an administrative support order, must do one of the following:

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<sup>40</sup> R.C. 3121.035(A).

(1) If the obligor is in default or has any arrearages under the support order, issue an order requiring the transmittal of the lump sum payment, or any portion of the lump sum payment sufficient to pay the arrearage in full, to the Office of Child Support;

(2) If the obligor is not in default and does not have any arrearages, issue an order directing the person who gave the notice to the court or CSEA to immediately pay the full amount of the lump sum payment to the obligor.

The bill eliminates references to courts, court orders, and administrative orders in paragraphs (1) and (2) and provides instead that a CSEA that receives such a lump sum notice with respect to an obligor who is in default or has arrearages under the support order must issue an intercept directive requiring transmittal of all or a portion of the lump sum sufficient to pay the arrearages to the Office of Child Support and that a CSEA that receives such an order with respect to an obligor who is not in default must order the immediate release of the lump sum to the obligor. The bill makes intercept directives final and enforceable by the court and requires that a person obliged to comply with an intercept directive must do so without the need for any amendment to the support order.<sup>41</sup>

Existing law requires a court that issued an order prior to January 1, 1998, requiring an employer to withhold an amount from an obligor's personal earnings for the payment of support to issue a supplemental order that does not change the original order or the related support order requiring the employer to do all of the following: (1) notify the CSEA of any lump sum payment of any kind of \$150 or more that is to be paid to the obligor, (2) hold the lump sum payment for 30 days after the date on which it would otherwise be paid to the obligor, and (3) on order of the court, pay any specified amount of the lump sum payment to the Office of Child Support. Under the bill, in the case of a notice of a lump sum payment made in accordance with such a support order issued before January 1, 1998, the CSEA that receives notification of the lump sum payment from the payor must notify the court that issued the order. The court then must issue the supplemental order to comply with paragraphs (1), (2), and (3) above.<sup>42</sup>

Under current law, the Office of Child Support must distribute any money it receives under the first paragraph in accordance with rules adopted by the Director of Job and Family Services. The bill requires that all money received from lump sum payments (including those received in accordance with support orders issued before January 1, 1998) be distributed pursuant to those rules. Current law makes an employer

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<sup>41</sup> R.C. 3121.12(A), 3121.33, and 3121.34.

<sup>42</sup> R.C. 3121.12(C).

that knowingly fails to notify the CSEA of any lump sum payment to be made to an obligor liable for any support payment not made to the obligee as a result of the failure. The bill changes "employer" to "payor."<sup>43</sup>

### **Notice of obligor's and obligee's responsibilities**

Every support order or modification of a support order must contain a notice in boldface, capital letters stating the duty of the obligor and obligee to provide their current mailing and resident addresses, current residence telephone numbers, and current driver's license numbers, and changes in that information, in writing to the CSEA. The notice must also warn the obligor and obligee of the consequences of a failure to provide the information, including possible fines, imprisonment, and contempt orders and the possibility of not receiving notices of enforcement actions against the obligor or obligee such as liens, the loss of professional or occupational licenses, driver's licenses, or recreational licenses, income withholding, and financial account deductions and access restrictions. The bill adds the requirement that the notice include a warning that an obligor or obligee who fails to give the required notices to the CSEA may not receive notice of the changes and requests to change the child support amount, health care provisions, or termination of the child support order.<sup>44</sup>

### **Defaults under child support orders**

#### **Notice of default**

When the Office of Child Support identifies a default under a child support order, it must send a default notice to the obligor. The notice must include, among other things, that date on which it is *sent*, the amount of arrearages the obligor owes due to the default as of the date the notice is *sent*, and a statement that any arrearages owed by the obligor that arise after the notice is *sent* and during the period of default will be added to the obligor's total child support obligation and will be subject to collection efforts without further default notice. In each of these cases, the bill changes "sent" to "issued." The bill also modifies required statements in the notice concerning the period within which a request for an administrative hearing may be made or a motion for a court hearing may be filed (see the next paragraph).<sup>45</sup>

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<sup>43</sup> R.C. 3121.12(B) and (D).

<sup>44</sup> R.C. 3121.29.

<sup>45</sup> R.C. 3123.031(A), (C), (D), (G), and (H).

## **Time period for requesting hearings on defaults**

An obligor who receives a default notice may request an administrative hearing with the CSEA regarding whether the notice contains a mistake of fact. The bill changes the time within which the request must be made from seven business days after the date on which the notice is sent to 14 days after the date on which the notice is issued. If the CSEA holds an administrative hearing after the obligor's request for a hearing, its determinations, under current law, become final unless the obligor files a written motion for a court hearing within seven business days after the CSEA makes its determinations. The bill changes the time within which the motion must be filed to 14 days after the CSEA issues its determinations.<sup>46</sup>

## **Order on determination of default**

Under existing law, if a court or CSEA makes a final determination that an obligor is in default and if no notice was issued to an employer to withhold arrearage amounts, the court or CSEA must issue one or more notices requiring withholding or deduction of the obligor's income or assets or imposing other appropriate requirements under various Revised Code sections, including R.C. 3121.12 (lump sums due the obligor). In accordance with amendments to that section made by the bill (see "**Collection of child support – Lump sums**," above), the bill limits this reference to division (C) of R.C. 3121.12 (support orders issued before 1998).<sup>47</sup>

## **Arrearages owed after termination of support order**

Arrearages may be due under a support order after the order is terminated. Current law authorizes an obligee in such a case to apply to the CSEA to maintain any *action or proceeding on behalf of the obligee to obtain a judgment, execution of a judgment through any available procedure, an order, or other relief*. Under the bill, the obligee may ask the CSEA to maintain any *administrative or judicial action or proceeding to enforce the order on behalf of the obligee to obtain relief*.<sup>48</sup>

## **Collection from accounts in financial institutions**

The Office of Child Support maintains a case registry of all support orders being administered or otherwise handled by a CSEA, and it may enter into account information access agreements with financial institutions for the purposes of

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<sup>46</sup> R.C. 3123.04 and 3123.05 (conforming change).

<sup>47</sup> R.C. 3123.06(A)(1).

<sup>48</sup> R.C. 3123.14.

establishing, modifying, or enforcing support orders.<sup>49</sup> Current law allows a CSEA to issue an access restriction notice to a financial institution prohibiting the withdrawal or transfer of funds if *after examining the case registry* it finds that an obligor in default has an account with the institution and is subject to a final and enforceable determination of default. The bill changes the italicized phrase to *upon notice or discovery of an account*.<sup>50</sup>

Existing law requires a CSEA, no later than five business days after information is entered into the case registry, to investigate and determine the amount of funds in the account that is available to satisfy the obligor's arrearages under a support order. The bill removes the time limit and authorizes rather than requires the investigation and determination.<sup>51</sup>

If a CSEA finds that someone other than an obligor has an ownership interest in an account, it must send a written notice by first-class mail to that person stating the date the notice is sent, that another of the account holders is an obligor under a support order, the name of the obligor, that the support order is in default, the amount of the arrearage owed by the obligor, the amount that will be withdrawn, the type of account from which the amount will be withdrawn, the name of the financial institution from which the amount will be withdrawn, and a statement of the time within which the person may object to the withdrawal by filing a request for an administrative hearing with the CSEA. Current law requires that a request for a hearing be filed within ten days from the date on which the notice is sent. The bill requires that the request be filed within 14 days from the date the notice is issued.<sup>52</sup>

If a CSEA determines that the total amount in an account belongs to someone other than the obligor, it must order the financial institution to release the access restriction on the account and notify the person of that action. If the CSEA determines that only some of the funds belong to that person, it must order the financial institution to release the access restriction in the amount of those funds and issue a withdrawal directive ordering transmission of the remaining funds to the Office of Child Support unless the person files a written motion with the court of common pleas of the county served by the CSEA for a hearing to determine whether any amount contained in the account is the property of the person. The notice sent to the person must state the time within which the person may file the motion. The bill changes that time from ten days after the CSEA makes its determination to 14 days after the CSEA issues its

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<sup>49</sup> R.C. 3121.81 and 3121.74 (neither in the bill).

<sup>50</sup> R.C. 3123.25(B).

<sup>51</sup> R.C. 3123.27.

<sup>52</sup> R.C. 3123.29 (not in the bill), 3123.30, and 3123.31.

determination. The bill also provides that the motion must be filed with the court of common pleas that issued the child support order or that is located in the county where the CSEA issued the order and that the person who files the motion is a temporary party for the purposes of objecting to the CSEA's determination only.<sup>53</sup>

### **Liens on property of the obligor**

If a court or CSEA makes a final and enforceable determination that an obligor is in default under a support order, the CSEA may assert a lien on real and personal property of the obligor located in Ohio.<sup>54</sup> Existing law requires the CSEA to file a notice requesting that the county recorder discharge the lien if one of the following applies:<sup>55</sup>

(1) The lien is satisfied through an execution sale of the property.

(2) The obligor makes full payment of the arrearage on which the lien is based to the Office of Child Support or to the CSEA.

(3) An appropriate withholding or deduction notice or other appropriate order (see "**Collection of child support – Withholding or deduction from obligor's income or assets**" (paragraph (2)) and "**Lump sums**," above) has been issued to collect current support and arrearages due, and the obligor is complying with the notice or order.

(4) A new support order has been issued, or the support order that was in default has been modified to collect current support and any arrearage due under the support order that was in default, and the obligor is complying with the new or modified support order.

(5) The agency releases the lien on receiving adequate assurance of payment or if the release will facilitate the collection of the arrearage for which the lien was imposed.

The bill eliminates paragraphs (3) and (4).

### **Collection from tax refunds due the obligor**

Existing law requires the Office of Child Support to work with the Tax Commissioner to collect overdue child support from refunds of paid state income taxes that are payable to obligors and overpaid child support from refunds of paid state income taxes that are payable to obligees. With regard to overdue support, the bill

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<sup>53</sup> R.C. 3123.34 and 3123.35.

<sup>54</sup> R.C. 3123.66 (not in the bill).

<sup>55</sup> R.C. 3123.72.

eliminates the word "child" so that the collection from refunds payable to obligors applies to support generally. The bill provides for the collection of overdue "support" rather than "child support" and for collection from "state income taxes paid by an obligor or obligee" instead of from "paid state income taxes." Existing law also provides that no overdue or overpaid child support may be collected from refunds of paid state income taxes unless the following three conditions are met:<sup>56</sup>

(1) Any reduction for money owed to the state has first been made (no change).

(2) The refund payable to the obligor or obligee is at least \$25 after any reduction for amounts owed to the state (no change).

(3) Either of the following applies:

(a) With respect to overpaid child support, the amount overpaid is not less than \$150 (no change).

(b) With respect to overdue child support, the obligor is not less than three months in arrears, and the amount of the arrearage is not less than \$150. The bill applies this condition to support generally, not just child support, and requires that the obligor "maintains an arrearage in the payment of support for three months and the amount of the total arrearage during each of the three months is at least \$150."<sup>57</sup>

Existing law requires that overdue or overpaid child support be collected from refunds before any part of a refund is used as a contribution to any of the various funds to which taxpayers may voluntarily contribute by checking a box on their tax returns and before any part of the refund is credited against a future year's tax liability. The bill gives this priority to overdue support (rather than overdue *child* support) and to overpaid child support.<sup>58</sup>

## Miscellaneous

Under existing law, whenever a court issues or modifies, reviews, or otherwise reconsiders a court child support order, it must designate which parent may claim the children who are the subject of the order as dependents for federal income tax purposes. The bill excepts from this requirement any consideration of a CSEA recommendation made pursuant to an administrative review of a court order (see "**CSEA review of child support order – Review of court order**," above). The bill also

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<sup>56</sup> R.C. 3123.821(A) and 3123.822.

<sup>57</sup> R.C. 3123.822.

<sup>58</sup> R.C. 3123.822.

requires the court to designate the parent who may claim the deduction upon the request of any party.<sup>59</sup>

The bill corrects an error in a reference to a federal law authorizing military powers of attorney.<sup>60</sup>

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## COMMENT

The discussion of administrative hearings for child support (see "**Child support – Administrative hearing for child support**," above) says that the bill requires that the notice of the date, time, place, and purpose of the administrative hearing that the administrative officer must send to the mother and father must include a request for certain information and [must state] that that CSEA is permitted to make certain assumptions if either the mother or father fails to comply with the request. This is the apparent intent of the bill, but the language is unclear. In line 105 of the bill, the comma probably should be deleted and the words "and state" inserted.

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## HISTORY

ACTION	DATE
Introduced	05-24-12

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<sup>59</sup> R.C. 3119.82.

<sup>60</sup> R.C. 3119.77(D).