

Fiscal Note & Local Impact Statement

123rd General Assembly of Ohio

BILL: H.B. 424 DATE: January 5, 2000

STATUS: As Introduced SPONSOR: Rep. Ford

LOCAL IMPACT STATEMENT REQUIRED: Yes

CONTENTS: To revise the law governing foster care, to require the establishment in each county or region of a board for the purpose of reviewing deaths of children under age eighteen, and to permit public children services agencies to employ legal counsel without the consent of the court of common pleas

State Fiscal Highlights

STATE FUND	FY 2000	FY 2001	FUTURE YEARS
General Revenue Fund			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Increase up in the tens of thousands of dollars	Around \$100,000 increase	Around \$100,000 increase
Reparations Fund (a.k.a. Victims of Crime Fund)			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	- 0 -	- 0 -
General Reimbursement Fund 106			
Revenues	Minimal loss	Minimal loss	Minimal loss
Expenditures	Negligible decrease	Negligible decrease	Negligible decrease

Note: The state fiscal year is July 1 through June 30. For example, FY 2000 is July 1, 1999 – June 30, 2000.

- Requirements set forth in the bill concerning the publication of an annual statewide child fatality report by the Ohio Department of Health (DOH) and the Ohio Childrens' Trust Fund Board will increase General Revenue Fund expenditures in the DOH budget by \$90,000 to \$95,000 each year.
- Negligible increases in General Revenue Fund and Reparations Fund revenues may occur as a result of a very small number of new cases under provisions of the bill which make unauthorized dissemination of child fatality review board information a second-degree misdemeanor.
- The Attorney General's Bureau of Criminal Identification and Investigation (BCII) will experience a minimal loss of revenue associated with an indeterminate decrease in the number of background checks performed as a result of the bill. This revenue is deposited in the General Reimbursement Fund (Fund 106) which essentially finances BCII's background check system. However, costs borne by BCII in association with the notification of background check results will decrease negligibly as the bill reduces the notification to cases involving a match and "as appropriate."



- The Department of Human Services (ODHS) may experience an indeterminate, but likely minimal increase in expenditures associated with the provisions of the bill that require it to develop and implement internal management rules governing the financial and administrative requirements for the administration of federal Title IV-E foster care funds.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2000	FY 2001	FUTURE YEARS
Counties			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Minimal increase	Minimal increase	Minimal increase
Other Local Governments			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Potential negligible increase	Potential negligible increase	Potential negligible increase

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Those counties without an existing child fatality review board will experience a minimal increase in expenditures associated with the establishment of (multi-) county child fatality review boards (CFRBs) and the preparation of each CFRB’s annual report to the Ohio Department of Health.
- Some counties and municipalities will experience a potential negligible increase in expenditures associated with the adjudication of a very small number of new cases under provisions of the bill that make unauthorized dissemination of child fatality review board information a second-degree misdemeanor.
- Counties and municipalities could receive a small amount of court cost and fine revenue associated with the new cases of unauthorized dissemination of child fatality review board information, an act that the bill makes a second-degree misdemeanor.
- School districts that currently do not extend to foster caregivers the opportunity to participate in the development of a foster child’s Individual Educational Plan, may experience negligible additional administrative costs associated with notification of the foster caregivers concerning the IEP, which is required under the bill.
- Counties whose public children services agency does not currently notify individuals alleged to have inflicted abuse or neglect upon a child of the disposition of the investigation of such an allegation will experience a minimal increase in expenditures associated with the notification requirement in the bill.

Detailed Fiscal Analysis

The bill establishes county-level child fatality review boards and proposes several changes with fiscal impact in the law governing foster care and the operations of public and private children services agencies.

Child Fatality Review Boards

Provisions of the bill. The bill requires the boards of county commissioners to establish a six-person Child Fatality Review Boards (CFRB). A CFRB may serve one county or a region, with the joint approval of boards of commissioners of both or all affected counties. The bill requires CFRBs to review the deaths of all children under age 18, maintain a comprehensive database of all child deaths occurring in a county or region, recommend plans for implementing local services to reduce the incidence of preventable child deaths, and advise the Department of Health regarding aggregate data and trends. Each CFRB must meet at least once a year to review child deaths and must prepare and submit an annual report on child fatalities in the county or region to the Department of Health (DOH) by April 1, which DOH and the Ohio Children’s Trust Fund Board are required to publish. All public children services agencies (PCSAs), private placement agencies, law enforcement agencies, or other public or private entities are required to cooperate with the CFRB, with the exception of law enforcement agencies and prosecutors during the period of an active investigation/prosecution. The bill grants immunity from civil liability to CFRB members and those reporting deaths to the Board and exempts the meetings and records of the CFRB from provisions of Ohio’s open records law and the definition of public records.

Existing Boards and Effects on Counties. Currently, child death review teams exist in several Ohio counties. LBO has confirmed that county-wide, multi-agency teams operate in eight counties: Cuyahoga, Delaware/Union (joint team), Franklin, Greene, Hamilton, Montgomery, and Summit. These teams vary in size and organization—some are convened by the county coroner, others coordinated by local Family and Children First Councils or the county health department—but all of these teams include representatives from multiple agencies and all review child deaths that occur in each team’s area of operation, which may or may not include all fatalities in a particular county or group of counties. For example, the Summit County Children Services Board is administrative host to a child fatality review board that investigates all child deaths that occur in Summit County including those deaths that occur in a regional hospital that serves a 14 county region. In perhaps a dozen other counties there are review teams that investigate selected child fatalities or exist within only one agency.

As far as LBO can determine, the administrative cost of such existing child death review boards is borne largely by the host agency (a county children services bureau or county department of human services), with board members’ service time included as part of their regular job duties. Since the bill does not address the subject of compensation for the members of CFRBs, LBO assumes that service on such boards also would be donated or considered a part of a person’s regular job duties. Additionally, the bill does not specify an administrative support agency for the CFRBs. Therefore, LBO estimates those counties without an existing child fatality review board will experience a minimal increase

in expenditures related to the administrative costs associated with CFRB meetings and the compilation and dissemination of the CFRBs reports to the Department of Health.

Department of Health. The bill requires the Ohio Department of Health (DOH) to adopt rules that establish procedures, guidelines, and reporting formats for CFRBs. It also requires DOH, with the assistance of the Ohio Children's Trust Fund Board, to prepare and publish an annual statewide child fatality report based on the annual reports of the individual CFRBs.

Currently, DOH prepares tabular reports concerning births, deaths, and marriages in Ohio pursuant to ORC 3705.02 each year. The Department compiles this information from birth, death, and marriage certificates issued by municipal and county officials. These reports, published as *The Vital Statistics Annual Report* and in many cases available on-line, generally indicate the quantitative extent of births, deaths, and marriages. The tabular information in *Vital Statistics* primarily relates to deaths of children age 0-3 and is presented without analysis or recommendation.

According to DOH, the preparation and dissemination of the annual statewide child fatality report based on the annual reports of CFRBs will require at a minimum the addition of one full-time position and additional staff time totaling \$65,000 including benefits, as well as additional costs for printing and postage, and for training local CFRB officials in preparing reports. The Department estimates the preparation of the annual report will entail additional expenditures of \$90,000-95,000 annually. LBO believes the actual fiscal effect may be muted somewhat as the Department already prepares and publishes statistical reports of a similar nature and the annual report required in the bill will be based largely on reports submitted by the individual county boards.

New criminal offense. The bill also creates a new offense of unauthorized dissemination of confidential CFRB information, a misdemeanor of the second degree. A second-degree misdemeanor is punishable by a fine of not more than \$750 and/or a jail term of not more than 90 days. LBO estimates that few, if any, new cases will result from this provision of the bill. Additional court cost and fine revenue may be generated for counties and municipalities, but as there most likely will be few additional criminal cases created by the bill, the amount of revenue to be generated should be extremely small. One of the general rules for the distribution of fines in Ohio directs fines for violations of state law for deposit into the treasury of the county in which the municipal or county court is located. Although LBO estimates that few if any new cases annually will result from this provision of the bill, it will represent a potential negligible increase in expenditures for some municipalities and counties for the costs of adjudication and prosecution of cases and the sanctioning of convicted offenders.

In addition, when an individual is convicted of or pleads guilty to a misdemeanor offense, the court generally is required to collect an additional \$11 in court costs and then pay it into the state's GRF. Although never referred to expressly in any of its enactments, the General Assembly intended that these moneys were to be used to assist public defender offices. Additionally, if an individual is convicted of or pleads guilty to a misdemeanor offense, the court generally is required to collect an additional \$9 in court costs and then pay it into the Reparations Fund, a.k.a., Victims of Crime fund. Assuming that there will be few additional criminal cases created as a result of the bill, the amount of additional revenue generated for the GRF and the Reparations Fund will be extremely small.

Out-of-county Child Fatality Notification. A related provision of the bill requires local registrars of vital statistics to determine the county of residence of a child who dies in the local registrar's county and to forward a copy of the death certificate to the local registrar of the deceased child's county of residence. Currently, in some counties this notification is done as a matter of courtesy, however the requirement in the bill will increase county expenditures negligibly.

Foster Care Provisions

Certification in Current Law. Currently, prospective foster parents apply to a public children services agency (PCSA), a private child placing agency (PCPA), or a private non-custodial agency (PNA), which perform assessments of the applicants and recommend successful applicants to the Department of Human Services (ODHS) for certification. The state requires, in administrative rule, that foster parents complete a minimum of 12 hours of pre-certification training and 12 hours of continuing training each year. In addition to training, prospective foster caregivers must complete a home study that includes a safety audit and fire inspection, a criminal records check, completion of a medical history, and other assessments. Assessors, local public and private agency caseworkers, then evaluate the home study and application and make a recommendation to ODHS. Statewide information on the number of applicants does not exist, however, ODHS certifies approximately 2000 new foster parents annually.

Criminal Records Checks. The bill would make some changes to current law in regard to background checks. The bill requires that criminal records checks be made by the Bureau of Criminal Identification and Investigation (BCII) on all persons resident in the homes of persons seeking to become responsible for a child's out-of-home care, seeking to become foster caregivers, or seeking to become adoptive parents. Such background checks must include determination of whether a person resident with the prospective foster caregiver or prospective adoptive parent has been adjudicated a delinquent child for committing certain acts. The bill clarifies that background checks are required in cases of those applicants under final consideration, rather than in cases of all applicants seeking to become out-of-home caregivers. The bill changes the requirements for notification regarding records checks performed by BCII pursuant to ORC 109.572, requiring notification only if there is a match and "as appropriate."

The cost of BCII criminal records checks, normally \$15, is paid by the appointing or hiring officer, director, or attorney and normally is passed on to the applicant in the form of a fee. Revenues from such background check fees are used to fund BCII's background check system. Provisions of the bill include offsetting effects regarding the number of such checks performed by BCII, both expanding the number of individuals in an applicant's household on whom checks must be done, as well as reducing the statutory requirement concerning the number of applicant cases (those under final consideration vs. all) in which criminal background checks must be performed. The net effect is indeterminate, but LBO believes it will likely result in a decrease in the number of background checks performed by BCII as current practice, which varies somewhat from county to county, appears to be to conduct checks on all applicants. LBO estimates that BCII will experience a minimal loss in revenue associated with the indeterminate decrease in the number of background checks performed as a result of the bill. In addition, costs borne by BCII in association with the notification of background check results will decrease negligibly as the bill reduces the notification to cases involving a match and at the discretion of BCII.

Single Foster Care and Adoption Home Study Process. Although an estimated 60 percent of adoptions involve a foster caregiver adopting their foster child, in some cases foster parents must complete a second, adoption-specific home study in order to proceed with an adoption. While the two home studies cover many of the same topics, and in some cases can be completed by the same assessor, due process applies only to the foster care home studies process. Still, at the time a prospective foster caregiver undergoes the home study, they may request a “foster care only” home study or a joint foster care/adoption home study, although many opt for the former.

The bill requires ODHS to revise its rules regarding home studies of prospective foster caregivers and adoptive parents, requiring that assessors conduct home studies of prospective foster caregivers in a manner that satisfies the requirements for adoption home studies. A single foster care and adoption home study program likely will reduce the costs involved with duplicative home studies, many of which are completed by county children services caseworkers.

In addition, the bill requires ODHS to provide training to foster care and adoption assessors and to develop “a schedule of educational programs” for adoption assessors and must provide the schedule to all agencies to allow for equal access to the programs.

Penalty for Placement in Uncertified Foster Homes. The bill clarifies that no person shall operate a foster home without a valid certificate issued by ODHS and that the penalty for violating this provision is a fine of not less than \$5 nor more than \$500. In addition, the bill clarifies that a PCSA, PCPA, or PNA shall not place a child in a certified foster home; failure to comply with this provision of the bill will result in withholding of Title IV-E funds (in the case of a PCSA) or loss of Title IV-E reimbursement (in the cases of a PCPA or PNA). No data is available on the frequency with which children in the foster care system are placed in homes that do not have a valid foster home certificate from ODHS.

Foster Parent Rights

Surrogate Parent Status regarding School District Parental Involvement Policies. The bill makes two changes in the area of foster parent rights, with at most minimal fiscal effect. The bill requires foster children and caregivers to be included in the parental involvement policy required of each school district, specifically that foster caregivers acquire surrogate parent status for the purpose of being involved in the development of a foster child’s Individual Educational Plan (IEP).

Current practice regarding the inclusion of foster caregivers in the development varies by school district. In those districts that do not extend to foster caregivers the opportunity to participate in the development of the IEP, there may be negligible additional administrative costs associated with notification of the foster caregivers concerning the IEP, under the bill.

Notification of the Disposition of a Child Abuse or Neglect Investigation. The bill requires PCSAs to advise in writing a person alleged to have inflicted abuse or neglect upon a child of the disposition of the investigation of that allegation. According to the Public Children Services Association of Ohio, an association representing the 88 county children services agencies, approximately 100,000 reports of abuse and neglect are made annually and each results in some form of investigation.

Currently, the law does not specify that such notice must be provided in writing, although in some counties that is the practice. This provision may increase county expenditures by minimally increasing the operating costs of PCSAs that are not now printing and mailing such notices.

Foster Care Fiscal Accountability

The bill proposes a number of changes to the law governing foster care; changes aimed at tightening financial controls and ensuring fiscal accountability.

Financial Rules and Penalties. The bill requires the Department of Human Services (ODHS), as the single state agency authorized to administer federal payments for foster care and adoption assistance made under Title IV-E of the Social Security Act, to adopt internal management rules governing the financial and administrative requirements applicable not only to public children services agencies (PCSAs), as under current law, but also to private child placing agencies (PCPAs) and private non-custodial agencies (PNAs).

The bill requires that in adopting internal management rules governing Title IV-E financial and administrative requirements ODHS must establish the following:

- (1) procedures for monitoring cost reports submitted by PCPAs and PNAs to assure that they comply with federal and state laws and accurately report Title IV-E foster care maintenance costs;
- (2) an accurate determination of the costs that should have been reported to the federal Department of Health and Human Services and appropriately reimburse any overstatements;
- (3) procedures to ensure that county match funds are used in accordance with Title IV-E requirements;
- (4) procedures for analysis and comparison of financial statements submitted by PCSAs against cost reports submitted by PCPAs and PNAs, and for investigation and resolution of any discrepancies that are discovered; and
- (5) a single form for such agencies to report costs reimbursable under Title IV-E and under Medicaid and procedures to monitor such cost reports.

In addition, the bill prohibits the use of county children services fund monies—which include Title IV-E reimbursement dollars—to provide a personal loan to the executive director or chief executive officer of a PCSA, PCPA, or PNA.

Counties negotiate the purchase of foster care services from providers and receive Title IV-E reimbursement through ODHS. Currently, foster care providers submit cost reports to ODHS, which determines the level of Title IV-E reimbursement due the counties. The Department has no direct Medicaid-based relationship with foster care providers, who separately may seek Medicaid reimbursement through other state departments such as the departments of Mental Health, Alcohol and Drug Addiction Services, Mental Retardation and Developmental Disabilities. The bill does not alter these arrangements, nor does it make specific changes in the existing rules to assure accuracy in reporting and reimbursing Title IV-E costs. ODHS has not determined what such new or revised procedures might be and it is thus not possible to estimate a cost related to this section of the bill. However, these provisions are likely to reduce the risks faced by the Department when audited for

compliance with federal requirements for Title IV-E reimbursement. For example, requiring Medicaid reimbursable costs to be reported on the same form with IV-E reimbursable costs will permit ODHS to more easily “back out” Medicaid costs from the calculation of foster care reimbursement. ODHS may experience an indeterminate, but likely minimal increase in costs associated with developing and implementing these rules in the first year.

Under the bill, ODHS also is required to adopt rules that require a PCSA to monitor the spending of the PCPAs or PNAs with which the PCSA contracts for child welfare services; to monitor the ratio of payments for direct services to payments for administrative costs made to a PCPA or PNA; to establish policies governing the personal use of PCPA or PNA assets acquired with public funds; and to include in its agreement with a PCPA or PNA a description of allowable and unallowable costs for foster care reimbursement.

The bill also establishes penalties, to be enforced by ODHS at its discretion, for the failure of a PCSA, PCPA, or PNA to comply with the procedures established by the Department to ensure fiscal accountability. For initial failure, the agency not in compliance must develop and implement a corrective action plan. Subsequent failure to comply with established procedures or failure to achieve the goals of the corrective action plan will result in the withholding of Title IV-E funds until compliance is achieved, if the agency is a PCSA; or, if the agency is a PNA or PCPA, the loss of Title IV-E reimbursement altogether for two years. To the extent that agencies will fail to comply with established cost reporting procedures, the supply of foster care providers may be interrupted, an effect likely to exert an upward pressure, the magnitude of which is unknown, on the foster care per diem rates each county negotiates with providers.

Audits. The bill requires that PCPAs and PNAs submit to independent annual audits that demonstrate fiscal accountability with regard to federal and state laws, rules, and agreements with PCSAs, as a condition of renewal of their certification. Currently, independent annual audits are required in administrative code only. The cost of such regular annual audits is borne by the private agencies, and this bill does not alter that.

ODHS and Recovery of Misspent Title IV-E Funds. ODHS is required to seek recovery of lost public funds which the Department determines have been inappropriately expended by a PCSA, PCPA, or PNA, from the agency or any of its officers or employees involved in the misappropriation, unless another government entity has filed for recovery. To the extent that such inappropriate expenditure will be discovered, ODHS will experience an increase in expenditures associated with this requirement that it take legal action to recover misspent funds.

PCSA Legal Representation

The bill adds public children services agencies (PCSAs) to the exemption currently extended only to county boards of mental retardation and developmental disabilities, which permits these agencies to retain legal counsel without the specific authorization of a court of common pleas. According to the Public Children Services Association of Ohio, an organization representing the 88 county children service agencies, most PCSAs likely to make use of this permissive provision of the bill have staff attorneys on whom they would call for such representation.

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