

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. S.B. 163** DATE: **April 29, 2008**

STATUS: **As Enacted – Effective August 14, 2008** SPONSOR: **Sen. Niehaus**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Improves foster caregiver background checks, clarifies when a court must order a person to be fingerprinted, modifies the retained applicant fingerprint database, removes the requirement that the Ohio Department of Mental Health conduct a study of children placed using the child placement level of care tool, and makes other changes in the law regarding approval of out-of-home care workers, adoptive parents, foster caregivers, and child day-cares**

State Fiscal Highlights

STATE FUND	FY 2009	FY 2010	FUTURE YEARS
General Reimbursement Fund (Fund 106)			
Revenues	Potential gain of uncertain magnitude from criminal records check fees		
Expenditures	Potential minimal increase associated with administration of the Retained Applicant Fingerprint Database		
	Potential increase to process additional criminal records checks, offset by related fee collections		
Various State and Federal Funds in the Department of Job and Family Services			
Revenues	- 0 -		
Expenditures	Potential increase to collaborate with BCII		- 0 -
	Potential increase of over \$7.1 million to extend SACWIS to private agencies		- 0 -
	Potential increase due to revocation for no children		
	Potential increase due to central registry search		
	Potential increase to receive notification of prior revocation with offsetting cost savings		
	Potential increase to notify a recommending agency, review and, if necessary, revoke a certification		
	Potential increase due to work group involvement		
	Potential minimal decrease due to fewer day-care licensures		
	Potential minimal decrease due to fewer foster caregiver certifications and recertifications		
	Potential minimal decrease due to provision of rules electronically		
	Potential minimal decrease due to not having to appear in court		



STATE FUND	FY 2009	FY 2010	FUTURE YEARS
Various Funds in the Department of Mental Health			
Revenues		- 0 -	
Expenditures	Savings due to repeal of Child Placement Level of Care Tool study		- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- **Retained Applicant Fingerprint Database.** The bill makes several modifications to the Retained Applicant Fingerprint Database (RAFD), which is maintained by the Office of the Attorney General.¹ These changes are expected to only minimally increase the annual administrative costs incurred by the Office of the Attorney General.
- **Weekly case report summaries.** The Bureau of Criminal Identification and Investigation (BCII) may incur costs associated with the need to modify and distribute a new form to capture certain new information in the weekly report summaries sent by clerks of courts. As of this writing, LSC fiscal staff has acquired no information suggesting that the need to collect this additional information will create a significant ongoing fiscal effect for BCII.
- **Criminal records checks.** Presumably, as a result of the bill, additional criminal records checks will be requested and performed, and related records check fees will be collected. Currently, the Attorney General charges \$22 per BCII records check and an additional \$24 per FBI national records check (if applicable). The \$24 pays for the \$22 cost from the FBI as well as an additional \$2 to pay for BCII's administrative processing costs. All of this cash flow activity takes place within the Attorney General's General Reimbursement Fund (Fund 106). As of this writing, the number of additional criminal records checks that will be performed is uncertain, as is the magnitude of the effect on Fund 106's annual cash flow activity.
- **Notifications of an arrest, guilty plea, or conviction.** The bill requires the Ohio Department of Job and Family Services (ODJFS) to work with BCII to develop procedures and formats necessary to produce notices of the arrest, guilty plea, or conviction for a disqualifying offense of a person connected to a participating entity of the RAFD. This provision will increase administrative costs for ODJFS to work with BCII.
- **Access to SACWIS.** The bill grants public entities with which ODJFS has a Title IV-E grant agreement in effect, private child placing agencies, private noncustodial agencies, and prosecuting attorney's access to the database and the authority to enter information. ODJFS estimates that the cost of rolling out SACWIS to the 243 private agencies could cost as much as \$7,150,000 (see Footnote 7 in Detailed Fiscal Analysis section). ODJFS will be conducting additional research to determine if 50% of these costs will be eligible for federal reimbursement under Title IV-E.
- **Search of the central registry.** If the provision regarding search of the central registry is interpreted to mean that ODJFS is to contact another state and request a check of that state's registry on behalf of the recommending agency, there may be a significant increase in costs to ODJFS to make these contacts and pass on any information received from other states.
- **Foster caregiver notices.** The provision requiring notification of a prior revocation or the presence of a minor in the home who has been convicted of, plead guilty to, or been adjudicated delinquent for

¹ The RAFD was created through the enactment of Am. Sub. S.B. 97 of the 127th General Assembly.

committing any of a list of specified offenses, and the prohibition against ODJFS issuing a foster home certificate to the prospective foster caregiver may have a minimal increase in administrative costs for ODJFS to receive such notification. However, there would be an offsetting decrease in administrative costs since ODJFS would not be continuing the certification process if a prospective foster caregiver were to make such notification.

- **Notification of an offense of a foster caregiver.** The provision directing ODJFS to provide notice of the conviction or guilty plea to the recommending agency relative to the foster caregiver and the custodial agency of any child currently placed with that caregiver may result in an increase in administrative costs for ODJFS to notify the recommending agency and when necessary review and possibly revoke a foster caregiver's certificate.
- **Certification of institutions and associations for children.** This provision, essentially prohibiting a type A family day-care home from also being a foster home and prohibiting a type B family day-care home from also being a specialized day-care home, may decrease administrative costs of ODJFS as there may be fewer foster families to certify or recertify. However, any decrease in costs is likely to be minimal.
- **No licensure or certification if the home is a foster home.** The provision in the bill regarding licensure of type A family day-care homes may decrease administrative costs to ODJFS as it may conduct fewer licensures due to the restrictions on being both any kind of foster home and type A day-care provider. Any decrease in administrative costs would be minimal.
- **No foster children within 12-month period.** The provision of the bill allowing ODJFS to revoke the certificate of a foster caregiver who has not cared for one or more foster children in the foster caregiver's home within the preceding 12 months may increase administrative costs to ODJFS to continually review the status of a foster caregiver's placements or lack thereof and move to revoke the caregiver's certificate.
- **Provision of proposed rules.** The provision in the bill permitting ODJFS to provide authorized day-care providers copies of proposed rules in either paper or electronic form may minimally decrease printing and postage costs to ODJFS.
- **Putative father's consent to the adoption of a child born prior to January 1, 1997.** The provision of the bill removing reference to ODJFS from the provision of law regarding a putative father's consent to the adoption of a child born prior to January 1, 1997, may result in a decrease in costs to ODJFS for not having to appear in court.
- **ODJFS work group.** To the extent that those who are involved in the work group do so in their official capacity as ODJFS employees, ODJFS will incur an increase in administrative costs (time and travel reimbursement) for those employees to participate in the work group. ODJFS will also incur some administrative costs in preparing the executive summary of the work group's recommendation and distribution to the Governor and legislative leaders of the majority party.
- **Adoption of rules.** There are several provisions in the bill that requires ODJFS to adopt rules. ODJFS maintains a staff that works specifically on the formulation and codification of rules. Therefore, any additional administrative costs to develop the rules will be absorbed within ODJFS's existing resources.
- **Child Placement Level of Care Tool study.** The bill repeals a provision of law enacted in Am. Sub. H.B. 119 of the 127th General Assembly that required the Department of Mental Health (DMH) to conduct

a study of children placed using the Child Placement Level of Care Tool. Repealing this provision will result in cost savings to DMH.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
County and Municipal Civil and Criminal Justice Systems			
Revenues		- 0 -	
Expenditures	Potential one-time increase to modify databases generating weekly case report summaries		- 0 -
	Potential one-time increase to establish and equip new fingerprint areas		- 0 -
	Potential increase to staff new fingerprint areas and comply with notification requirements		
	Potential increase for additional permanent custody motions		
	Potential increase to fingerprint and report information pertaining to certain additional misdemeanor offenders		
	Potential increase due to consideration of placement options		
Public Children's Services Agencies			
Revenues		- 0 -	
Expenditures	Potential increase due to initial FBI checks and subsequent checks		
	Potential increase due to work group involvement		
	Potential increase due to assessment once notification of an offense is received		
	Potential decrease due to sharing of records checks		
	Potential decrease due to fewer day-care certifications		
County departments of job and family services			
Revenues		- 0 -	
Expenditures	Potential decrease due to provision of rules electronically		

- **Clerks of all courts of record.** The bill's requirement that the clerks of courts add certain information to the weekly report sent under current law to the state's Bureau of Criminal Identification and Investigation (BCII) may necessitate one-time database modifications, the cost of which is, as of this writing, uncertain.
- **Local law enforcement agencies.** Based on conversations with the Buckeye State Sheriffs' Association (BSSA), it appears that the bill's fingerprinting requirement relative to: (1) a person appearing pursuant to a summons, and (2) fingerprinting certain additional misdemeanor offenders may in fact generate a noticeable increase in the expenditures of certain local law enforcement agencies. To effectively implement this requirement, separate fingerprinting areas may need to be constructed, or provided for, that are independent of the intake process for new arrests. This would mean that additional fingerprinting machines and equipment (Webcheck, AFIS² or standard ink card stations) would be necessary to accommodate persons appearing pursuant to a summons. It should also be noted that it is often the case that sheriffs perform most of the fingerprinting duties within the county, as most municipal police departments have disbanded their internal booking systems and instead rely on the services of the sheriff. If additional AFIS machines are needed, each affected local jurisdiction may experience a one-time cost increase estimated at \$6,200 (the

² AFIS: Automated Fingerprint Identification System.

cost of an AFIS machine), plus additional costs in other staffing and related equipment costs (i.e., computer work station, desk, and chairs).

- **Clerks of probate courts.** The bill's requirement that the administrative officer or an attorney who arranges an adoption for a prospective parent provide to the clerk of the probate court either the results of a criminal records check or notification that the individual required to undergo such a check has failed to do so may increase the clerk's workload. However, the cost, if any, associated with such an increase is expected to be no more than minimal annually.
- **Sheriffs and chiefs of police.** The bill's requirement that the sheriff or chief of police provide written notification to a court if a person or child failed to appear or provide impressions of the person's or child's fingerprints, if that individual was required to do so by the court, may result in additional administrative costs to sheriffs and chiefs of police. However, the cost associated with such an increase will depend primarily on the number of individuals who do not comply with a court's order to submit for fingerprinting.
- **Confidentiality of criminal records check.** The bill adds a public children services agency to the list of who may have access to the otherwise confidential criminal records check. The changes made by the bill will make sharing of such information permissible, thereby reducing costs of the public agency that would otherwise be required to request and pay for a new check.
- **Criminal records checks.** The bill requires the criminal records check at the time of the initial home study in the case of adoption, before recommendation of a foster parent for certification, and before certification of a type B family day-care home, include an FBI check and a criminal records check, with optional inclusion of the FBI component, every four years thereafter. The bill also provides that the agency or attorney who arranges for an adoption must provide the probate clerk with information received from the criminal records check. These provisions will increase costs for PCSAs to conduct criminal records checks and provide information to the probate clerk. While this provision could have a significant fiscal impact on the public agencies, it should be noted that Am. Sub. H.B. 119 of the 127th General Assembly (main operating budget) includes \$9.0 million in general revenue funds that have been identified for supporting the county child welfare agencies in implementing the reforms to the child welfare system included in this bill and other pending legislation.
- **Notification of an offense of a foster caregiver.** The provision directing ODJFS to provide notice of the conviction or guilty plea to the recommending agency relative to the foster caregiver and the custodial agency of any child currently placed with that caregiver may result in an increase in administrative costs for a PCSA (if it is the recommending agency) to assess the foster caregiver's overall situation for safety and concerns and forward any recommendations, if applicable, to ODJFS.
- **No licensure or certification if the home is a foster home.** The provision in the bill regarding certification of type B family day-care homes may decrease administrative costs to county departments of job and family services as they may conduct fewer certifications due to the restrictions on being both a specialized foster home and type B day-care provider. Any decrease in administrative costs would be minimal.
- **Provision of proposed rules.** The provision in the bill permitting a county department of job and family services to provide authorized day-care providers and in-home aides copies of proposed rules in either paper or electronic form may minimally decrease printing and postage costs to the county agency.
- **Permanent custody of a child.** If, due to consideration of time spent in temporary custody in another state, an agency were to move forward more quickly on filing a motion requesting permanent custody, there may

be an increase in costs to the courts to entertain such motions and rule on the case. The magnitude of this impact is difficult to estimate since LSC was not able to obtain information on the number of children who were in temporary custody in another state and for how long.

- **Review hearings that pertain to permanency plans.** The provision of the bill requiring consideration of in-state or the out-of-state placement may cause an increase in administrative costs for the court to meet with the child and consider all placement options when deciding on a permanency plan for the child.
 - **ODJFS work group.** To the extent that those who are involved in the work group do so in their official capacity as employees of a local government entity, those employers will incur an increase in administrative costs (time and travel reimbursement) for those employees to participate in the work group.
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Detailed Fiscal Analysis

Criminal justice system

For the purposes of this fiscal analysis, from a criminal justice perspective, the bill most notably:

- Expands the list of offenses for which a person who is arrested or taken into custody is subjected to fingerprinting to include certain misdemeanor offenses, with those fingerprints, as under current law, being forwarded to the Bureau of Criminal Identification and Investigation (BCII).
- Requires clerks of courts to include additional information in the weekly report of case summaries sent to BCII.
- Clarifies that if a person or child has not been arrested and first appears before a court or magistrate in response to a summons, the court must order the person or child to appear before the sheriff or chief of police within 24 hours for fingerprinting.
- Imposes additional requirements relative to criminal records checks for out-of-home care providers, foster parents, and adoptive parents.
- Permits the clerks of courts of common pleas to sign the public children services agency memorandum of understanding.
- Expands the categories of professions to which the state's existing mandatory child abuse and neglect reporting provision applies.

Clerks of courts and weekly BCII reports

The bill requires the clerks of all courts of record to add the date of the offense, summons, or arraignment to the weekly report sent under current law to the state's Bureau of Criminal Identification and Investigation (BCII). During a conversation with the Lucas County Clerk of Courts relative to this provision, LSC fiscal staff was informed that clerks of courts might need to modify their databases so that this additional information is captured in their weekly report. Such modifications may result in a one-time expense to alter computer-related applications, the cost of which is uncertain. As of this writing, however, LSC fiscal staff has not

acquired any more precise information on how this requirement to provide additional information will affect clerks of courts of common pleas, municipal courts, and county courts.

BCII may also incur costs associated with modifying and distributing new forms to include a space for the date of offense, summons, or arraignment for each case. As of this writing, LSC fiscal staff has acquired no information suggesting that the need to collect this additional information will create a significant ongoing fiscal effect for BCII.

Court-ordered fingerprinting

The bill requires fingerprinting of: (1) a person who is not arrested, but appears in court for any of certain offenses pursuant to a criminal summons, and (2) certain additional misdemeanor offenders. The bill also requires the sheriff or chief of police to provide written notification to the court if the person or child failed to appear or provide impressions of the person's or child's fingerprints. Based on conversations with the Buckeye State Sheriffs' Association (BSSA), it appears that this requirement may in fact generate a noticeable increase in the expenditures of certain local law enforcement agencies.

Criminal summons. As the bill clarifies that the court must order the person or child to appear before the sheriff or chief of police within 24 hours for fingerprinting, BSSA envisions that a new system will be necessary to accommodate these persons who appear for fingerprinting. To effectively implement this requirement, it is BSSA's belief that separate fingerprinting areas will need to be constructed, or provided for, that are independent of the intake process for new arrests. Arrested individuals are processed in secure areas and their mingling with persons who report for fingerprinting pursuant to a summons would be strongly discouraged.

This would mean that additional fingerprinting machines and equipment (Webcheck, AFIS³ or standard ink card stations) would be necessary to accommodate persons appearing pursuant to a summons. It should also be noted that it is often the case that sheriffs perform most of the fingerprinting duties within the county, as most municipal police departments have disbanded their internal booking systems and instead rely on the services of the sheriff.

If additional AFIS machines are needed, each affected local jurisdiction may experience a one-time cost increase estimated at \$6,200 (the cost of an AFIS machine), plus additional costs in other staffing and related equipment costs (i.e., computer work station, desk, and chairs).

Misdemeanor offenders. Currently, there are no readily available statewide statistical resources to determine how many additional misdemeanor offenders would be required to be fingerprinted under the bill. As such, it is difficult to quantify the potential fiscal impact on both the state and local criminal justice agencies.

Retained Applicant Fingerprint Database

The bill makes several modifications to the Retained Applicant Fingerprint Database (RAFD), which is maintained by the Office of the Attorney General.⁴ The bill adds a provision

³ AFIS: Automated Fingerprint Identification System.

⁴ The RAFD was created through the enactment of Am. Sub. S.B. 97 of the 127th General Assembly.

requiring the Attorney General to adopt rules providing for the expungement or sealing of records of individuals who are no longer granted licensure or approved for adoption by the public office that required submission of the person's fingerprints. The bill also expands the purpose of the RAFD to include determining eligibility for approval for adoption by a public office. These changes are expected to only minimally increase the Attorney General's annual administrative costs.

Clerk of the court of common pleas and the memorandum of understanding

The bill permits the clerks of courts of common pleas to sign a required memorandum of understanding to minimize interviews of children who are the subjects of alleged child abuse. Under current law, unchanged by the bill, each public children services agency is required to prepare a memorandum of understanding signed by various public officials. The memorandum must set forth the normal operating procedure for all concerned officials in the execution of their respective responsibilities in the investigation and prosecution of child abuse. If the clerk signs the memorandum, the clerk must execute all relevant responsibilities as required of officials specified in the memorandum. At the time of this writing, the potential effect on the workload and related operating expenses of any participating clerk of court is unclear.

Criminal background checks

The bill requires: (1) that, if an FBI check is performed as part of BCII's criminal records check for out-of-home care providers, foster parents, or prospective adoptive parents, it must include fingerprint based checks of national crime information databases, and (2) requires that for a prospective foster caregiver and any adult who resides with the foster caregiver the check must include certain information from the FBI prior to issuing a foster home certificate, or upon every other foster home recertification.

Currently, the Attorney General charges \$22 per BCII records check and an additional \$24 per FBI national records check (if applicable). The \$24 pays for the \$22 cost from the FBI as well as an additional \$2 to pay for BCII's administrative processing costs. All of this cash flow activity takes place within the Attorney General's General Reimbursement Fund (Fund 106). Presumably, as a result of the bill, additional criminal records checks will be requested and performed, and related records check fees will be collected. As of this writing, the number of additional criminal records checks that will be performed is uncertain, as is the magnitude of the effect on Fund 106's annual cash flow activity.

Child Welfare System

Notifications of an arrest, guilty plea, or conviction

The bill requires the Ohio Department of Job and Family Services (ODJFS) to work with BCII to develop procedures and formats necessary to produce notices of the arrest, guilty plea, or conviction of a disqualifying offense of a person connected to a participating entity of the RAFD. ODJFS must also adopt rules, as if they were internal management rules, necessary for this collaboration. Additionally, ODJFS may adopt rules that are necessary for utilizing the information received from the database, with the final effective date that is not later than December 31, 2008.

This provision will increase administrative costs for ODJFS to work with BCII and, if ODJFS chooses, to adopt rules. With regard to the rules, ODJFS maintains a staff that works specifically on the formulation and codification of rules. Therefore, any additional administrative costs to develop the rules discussed here will be absorbed within ODJFS' existing resources.⁵

Statewide Automated Child Welfare Information System

Access and Statewide Implementation. ODJFS operates a uniform statewide automated child welfare information system (SACWIS). This information system contains records regarding investigations of children and families and children's care in out-of-home care, care and treatment provided to children and families, and other information related to children and families that state or federal law, regulation, or rule requires ODJFS or a public children services agency to maintain.

Current law specifies that this information may only be accessed by ODJFS and a public children services agency in specified circumstances.

The bill changes the term "public children services agency" to "title IV-E agency," which means a public children services agency or a public entity with which ODJFS has a Title IV-E subgrant agreement in effect. Additionally, the bill permits a prosecuting attorney, a private child placing agency, and a private noncustodial agency to both enter and access the information.

Although state law specifies that statewide implementation of SACWIS is to be finalized in public agencies by January 1, 2008, ODJFS is still working to complete the rollout of the system. The bill extends access to SACWIS to private agencies and prosecuting attorneys. The bill also provides that, until the system is implemented statewide, agencies or persons required to include a summary report under adoption or foster care provisions must request a check of the Ohio Central Registry of Abuse and Neglect and that after SACWIS is implemented statewide, all private agencies must request a check of SACWIS until they can access the system and conduct their own search.

ODJFS is currently in the process of rolling out SACWIS to the 88 county agencies and is in the process of planning how and when to extend SACWIS to about 240 private agencies. There are some challenges ODJFS is considering, such as making sure that the private agency has the proper computer equipment and Internet capabilities to run the system, as well as issues like training and security. At present, 73 county agencies are connected to SACWIS. ODJFS plans to have the remaining agencies connected by the end of FY 2008. Once that is complete, ODJFS can then turn its attention to bringing the private agencies and other statutorily permitted users into the system. Based on current contract negotiations with the vendor that is conducting the rollout of SACWIS to the public agencies, ODJFS estimates that the cost of rolling out SACWIS to the 243 private agencies could cost as much as \$7,150,000.⁶ ODJFS will be

⁵ Am. Sub. H.B. 119 of the 127th General Assembly (main operating budget) includes funding that will support state level administrative expenses for reforms to the child welfare system included in this bill and other pending legislation.

⁶ This estimate is based on the most recent information ODJFS provided to LSC. ODJFS is currently working to update this figure and a revised estimate will be provided if it becomes available.

conducting additional research to determine if 50% of these costs will be eligible for federal reimbursement under Title IV-E.

Currently, ODJFS handles all requests for SACWIS and the central registry searches for the public and private agencies. Once SACWIS has been rolled out to all 88 public agencies, the burden on ODJFS to provide the summary reports will be lessened as the public agencies will then be able to conduct their own searches and then even more so once the private agencies have direct access to SACWIS and are able to conduct their own searches as well.

Search of SACWIS and the central registry. Under current law, *before a child is placed in a foster home, an association or institution* certified to place a child into a foster home must obtain a summary report of a search of SACWIS.

The bill requires that *before a foster home is certified or recertified, a recommending agency* must obtain this summary report from an entity that is authorized to access the system. Based on the summary report, and when considered within the totality of the circumstances, ODJFS may deny a foster home certification or recertification. ODJFS may not deny certification or recertification solely based on the summary report.

Additionally, the bill requires that, whenever a prospective foster parent, prospective adoptive parent, or a person 18 or older who lives in the home has resided in a state other than Ohio in the last five years, the recommending agency working with the prospective foster parent, or administrative director of an agency or attorney, who arranges the adoption, which ever is applicable, must request a check of the Ohio Central Registry of Abuse and Neglect from ODJFS regarding the prospective foster parent, prospective adoptive parent, or the other persons to enable the agency to check any child abuse and neglect registry maintained by that other state. The agencies or attorney must make the request and review the results before the prospective foster parent may be finally approved for placement of a child or before a final decree or interlocutory order of adoption may be made. Information received pursuant to such a request is considered as if it were the required summary report. ODJFS must comply with any request to check the central registry that is similar to the request described in this paragraph and that is received from another state.

The bill also specifies that the information and documents to be included in a home study report, as required by rule of ODJFS, must include, in addition to the currently required information, a report of a check of a central registry of a state other than Ohio if such a check is required.

The provision described above regarding when a summary report must be obtained affects only the timing of when a private agency must obtain a summary report of a search of SACWIS.

It is unclear what effect the requirement of a central registry check will have on ODJFS. LSC was not able to obtain clarification of how a search of Ohio's central registry will enable an agency to check a child abuse and neglect registry maintained by another state. If this provision is interpreted to mean that ODJFS is to contact another state and request a check of that state's registry on behalf of the recommending agency, there may be a significant increase in costs to ODJFS to make these contacts and pass on any information received from other states.

Criminal records checks for out-of-home care providers, foster parents, and prospective adoptive parents

Timing of required criminal records checks. Under current law, criminal background checks are required for out-of-home care providers, prospective foster and adoptive parents, and all other persons 18 years of age or older who reside in a prospective foster or adoptive home. If a person subject to a criminal records check does not present proof that the person has been an Ohio resident for the past five years or does not provide evidence that in the last five years that BCII has requested information about the person from the FBI in a criminal records check, then BCII must also request information from the FBI regarding the person. If the person does present proof of Ohio residency for the prior five years, the criminal records check may include information from the FBI.

As stated earlier, the bill requires that if an FBI check is performed, it must include fingerprint based checks of national crime information databases as described in federal law.

The bill specifies that the administrative director of an agency, or attorney who arranges an adoption must request a criminal records check at the time of the initial home study and every four years after the initial home study at the time of an update, and at the time that an adoptive home study is completed as a new home study. Similarly, before a recommending agency submits a recommendation to ODJFS regarding issuance of a foster home certificate, the agency must request a criminal records check (current law) and the bill requires additional checks every four years thereafter prior to recertification. Under the bill, the initial checks *must* include an FBI check and all subsequent checks *may* include an FBI check. In addition, the bill provides that prior to a hearing on a final decree of adoption or interlocutory order of adoption by a probate court, the administrative director of an agency, or an attorney, who arranges an adoption for a prospective parent must provide any information received from BCII or the FBI as part of the criminal records check to the probate clerk.

This provision will result in increased costs for county agencies to conduct criminal records checks for foster care and adoption and provide the required information to the probate court. The current cost for a BCII check is \$22 and an FBI check is \$24. (The FBI does not accept all arrests and convictions and without both checks certain crimes committed in Ohio could be missed.) This provision not only requires the initial check to include both types of checks but also that checks be done subsequently. While this provision could have a significant fiscal impact on the public agencies, it should be noted that Am. Sub. H.B. 119 of the 127th General Assembly (main operating budget) includes \$9.0 million in general revenue funds that have been identified for supporting the county child welfare agencies in implementing the reforms to the child welfare system included in this bill and other pending legislation.

Disqualifying offenses. Current law includes a list of offenses that disqualifies a person from providing out-of-home care, being an adoptive parent, or being a foster caregiver (if a person age 18 or older who resides with the prospective adoptive parent or foster caregiver who has been convicted of or pleads guilty to one of the defined offenses, the prospective adoptive parent or foster caregiver is disqualified).⁷

⁷ For a complete list of current disqualifying offenses, see the LSC bill analysis.

The bill expands the list of disqualifying offenses to include the following: cruelty to animals, permitting child abuse, menacing by stalking, menacing, soliciting or providing support for an act of terrorism, making terroristic threat, terrorism, identity fraud, inciting violence, aggravated riot, ethnic intimidation, or two or more operating a vehicle while intoxicated (OVI) or operating a vehicle after underage consumption (OVUAC) violations in the past three years.

Additionally, the bill requires the Director of ODJFS to adopt rehabilitation standards that a person who has been convicted of or pleaded guilty to a disqualifying offense must satisfy in order for ODJFS to not revoke a foster home certificate for the violation.

When BCII conducts a check, all offenses that the person who is the subject of the check has committed appear on the report. Therefore, the additional crimes that must be checked for under the bill will not cause any increase in costs to BCII.

ODJFS already has in place rules establishing the rehabilitation standards that a person who has been convicted of or pleaded guilty to a disqualifying offense must satisfy in order for an appointing or hiring officer to appoint or employ an individual responsible for a child's care, a probate court to issue a final decree of adoption or interlocutory order of adoption, or ODJFS to issue a foster home certificate. Adding an additional rule related to revocation will be a minimal increase in administrative costs to ODJFS.

Confidentiality of criminal records check. Under current law, a criminal records check for an out-of-home care provider, prospective adoptive parent, or prospective foster caregiver is not a public record under the Public Records Law. Only certain persons have authority to access the information.

The bill adds a public children services agency to the list of who may have access to the otherwise confidential criminal records check.

Under current law, if a prospective adoptive parent or prospective foster caregiver was working with a private agency that recently conducted a criminal records check on that person and that person switches to working with the public agency, the private agency cannot share the criminal records check with the public agency. The changes made by the bill will make sharing of such information permissible, thereby reducing costs of the public agency that would otherwise be required to request and pay for a new check.

Foster caregiver notices

Prior to certification or recertification as a foster caregiver, the bill requires the foster caregiver to notify the recommending agency of the revocation of any foster home license, certificate, or other similar authorization in another state occurring within five years prior to the date of application to become a foster caregiver in Ohio. If a person has had such a revocation, ODJFS is prohibited from issuing a foster home certificate to the prospective foster caregiver. The failure of a prospective foster caregiver to notify the recommending agency of any revocation of that type in another state that occurred in the last five years is grounds for denial of the person's application or the revocation of the person's foster home certificate.

Additionally, the bill expands a provision of current law that prohibits a foster caregiver or prospective foster caregiver from failing to notify the recommending agency if a person at

least 12 years old but less than 18 years old who resides in the home has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any of a list of specified offenses so that it also applies regarding a conviction, guilty plea, or adjudication for OVI or OVUAC in this or another state if the person previously was convicted of or pleaded guilty to one or more such offenses in the last three years. Under existing law, unchanged by the bill, a recommending agency that learns that a foster caregiver has failed to comply with this requirement must notify ODJFS and ODJFS must revoke the foster caregiver's certificate.

This provision may result in a minimal increase in administrative costs for ODJFS to receive such notification. However, there could be an offsetting decrease in administrative costs since ODJFS would not be continuing the certification or recertification process if a prospective foster caregiver were to make such notification.

Possible revocation of the foster caregiver's certificate

Notification of an offense of a foster caregiver. Within 96 hours after receiving notice from BCII, or learning in any other manner, that a foster caregiver has been arrested for, convicted of, or pled guilty to any foster caregiver-disqualifying offense, the bill directs ODJFS to provide notice of the conviction or guilty plea to the recommending agency relative to the foster caregiver and the custodial agency of any child currently placed with that caregiver. If the recommending agency receives such notice from ODJFS, the recommending agency must assess the foster caregiver's overall situation for safety and concerns and forward any recommendations, if applicable, for ODJFS' review for possible revocation.

This provision may result in an increase in administrative costs for ODJFS to notify the recommending agency and, (when necessary) review and possibly revoke a foster caregiver's certificate. This provision may also result in an increase in administrative costs for a PCSA (if it is the recommending agency) to assess the foster caregiver's overall situation and forward any recommendations, if applicable, to ODJFS.

No foster children within 12-month period

The bill authorizes ODJFS to revoke the certificate of any foster caregiver who has not cared for one or more foster children in the foster caregiver's home within the preceding 12 months, but specifies that, prior to the revocation, the recommending agency must have the opportunity to provide good cause for ODJFS to continue the certification and not revoke the certification and that, if ODJFS decides to revoke the certification, ODJFS must notify the recommending agency that the certification will be revoked.

This provision may increase administrative costs to ODJFS to continually review the status of a foster caregiver's placements or lack thereof and move to revoke the caregiver's certificate.

Certification of institutions and associations for children

Under continuing law, every two years, ODJFS must pass upon the fitness of every institution and association that receives, or desires to receive and care for children, or places children in private homes (except for facilities under the control of the Department of Youth Services, places of detention for children, and child day-care centers). When ODJFS is satisfied as to the care given such children, and that the requirements of the statutes and rules covering the management of such institutions and associations are being complied with, ODJFS is to issue to the institution or association a certificate to that effect.

The bill specifically prohibits ODJFS from issuing a certificate to a prospective foster home or prospective specialized foster home pursuant to this specific statutory authority if the prospective foster home operates as a type A family day-care home. Additionally, the bill prohibits ODJFS from issuing a certificate to a prospective specialized foster home if the prospective specialized foster home operates as a type B family day-care home.

ODJFS is required by the bill to adopt rules that require a foster caregiver or other individual certified to operate a foster home, as described above, to notify the recommending agency that the foster caregiver or other individual is certified to operate a type B family day-care home.

This provision may result in a decrease in administrative costs for ODJFS, as there may be fewer foster families to certify or recertify due to the restrictions described above. However, any decrease in costs is likely to be minimal since a recent assessment by ODJFS revealed only 65 out of approximately 10,300 foster homes are also child care providers (all were type B homes). Not every one of the 65 homes identified would necessarily have to make the choice between being a foster home or child care provider since it is permissible for a family foster home to also be a type B child care provider. The bill only restricts specialized foster homes from also being a type B day-care home.

Provisions regarding child day-care centers, type A homes, and type B homes

Requirement that a type B family day-care home notify parents that the home is also certified as a foster home. Current law requires ODJFS to adopt rules governing the certification of type B family day-care homes. Current law also includes a list of topics that ODJFS must address in these rules. The bill adds to the required rules that ODJFS must adopt by specifying that the type B family day-care rules must include requirements for the type B home to notify parents with children in the home that the home is also certified as a foster home.

ODJFS maintains a staff that works specifically on the formulation and codification of rules. Therefore, any additional administrative costs to develop the rules discussed here will be absorbed within ODJFS' existing resources.⁸

⁸ Am. Sub. H.B. 119 of the 127th General Assembly (main operating budget) includes funding that will support state level administrative expenses for reforms to the child welfare system included in this bill and other pending legislation.

Criminal records checks. Existing law, unchanged by the bill, requires ODJFS, as part of the process of licensure of child day-care centers and type A family day-care homes, to request BCII to conduct a criminal records check with respect to any owner, licensee, or administrator of a child day-care center or type A family home, and, for a type A family home, any person 18 years of age or older who resides in the type A home. Current law also requires the director of a county department of job and family services, as part of the process of certification of type B family day-care homes, to request BCII to conduct a criminal records check with respect to any authorized provider of a certified type B family day-care home and any person 18 years of age or older who resides in the home.

Currently, if a person subject to a criminal records check does not present proof that the person has been an Ohio resident for the five-year period immediately prior to the date upon which the criminal records check is requested or does not provide evidence that within that five-year period BCII has requested information about the person from the FBI in a criminal records check, then BCII must also request information from the FBI regarding the person. If the person does present proof of Ohio residency for the prior five years, the criminal records check may include information from the FBI.

The bill removes the provision regarding the five-year period and instead requires that an FBI check, including fingerprint-based checks in national crime information databases, be included in the criminal records check at initial licensure or certification. Additionally, the bill requires every four years thereafter at the time of license or certification renewal that a criminal records check be conducted and permits the request for the check to include an FBI check. The bill further requires that state and county directors review the results of a records check prior to approval of a license or certification.

The person seeking licensure or certification is responsible for paying the fee associated with obtaining a criminal records check. Therefore, there will be no additional costs to ODJFS or county agencies as a result of these provisions.

No licensure or certification if the home is a foster home

The bill prohibits ODJFS from licensing a prospective type A family day-care home if that prospective home is certified to be a foster home or specialized foster home. Additionally, the bill prohibits a county department of job and family services from certifying a prospective type B family day-care home if that home is certified as a specialized foster home.

This provision may result in a decrease in administrative costs to ODJFS as it may conduct fewer licensures of type A homes due to the restrictions on being both a foster home and type A day-care provider. However, as noted earlier, a recent assessment by ODJFS revealed only 65 out of approximately 10,300 foster homes are also child-care providers and all were type B homes. Therefore, any decrease in administrative costs would be minimal.

Of the 65 foster homes identified as being certified type B home providers, it is not known how many of those are specialized foster homes. There could be a decrease in administrative costs to county agencies in certifying fewer type B day-care homes. However, since it would be some number less than 65, unless there is a concentration in a particular county, the fiscal impact will be minimal.

Provision of proposed rules regarding child day-care centers, type A family day-care homes, type B family day-care homes, and in-home aides

In provisions that require the Director of ODJFS to provide to each day-care licensee notice of proposed rules governing the licensure of child day-care centers and type A homes and require a county director of job and family services to provide to authorized providers and in-home aides copies of proposed rules, the bill specifies that the notice or copies may be provided or made available in either paper or electronic form.

This provision may minimally decrease printing and postage costs to ODJFS and county agencies if the proposed rules are provided electronically.

Permanent custody of a child who has been in the temporary custody of a public children services agency for 12 or more months of a consecutive 22-month period

Under current law, if a child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999, the agency with custody of the child, unless specified circumstances are present, must file a motion with the court who issued the current temporary order requesting permanent custody. If the court finds that it is in the best interests of the child and specified circumstances are present, the court may grant permanent custody of the child to the agency.

The bill specifies that time spent in temporary custody in another state must be applied to the time in temporary custody in Ohio and allows the court to consider such time when deciding custody of the child. The bill also removes the March 18, 1999 date reference. Unless specified circumstances are present, if the time spent in temporary custody equals 12 months or more of a consecutive 22-month period, the agency with custody may file a motion requesting permanent custody.

If, due to consideration of time spent in temporary custody in another state, an agency were to move forward more quickly on filing a motion requesting permanent custody, there may be an increase in costs to the courts to entertain such motions and rule on the case. The magnitude of this impact is difficult to estimate since LSC was not able to obtain information on the number of children who were in temporary custody in another state and for how long.

Review hearings that pertain to permanency plans

The bill provides that, in any review hearing that pertains to a permanency plan for a child who will not be returned to the parent, the court must consider in-state and out-of-state placement options and must determine whether the in-state or the out-of-state placement continues to be appropriate and in the best interests of the child and that in any review hearing that pertains to a permanency plan, the court or a citizens board appointed by the court must consult with the child, in an age-appropriate manner, regarding the proposed permanency plan for the child.

To the extent that a court is not already doing this, there may be some additional administrative costs to meet with the child and consider all placement options when deciding on a permanency plan for the child.

Putative father's consent to the adoption of a child born prior to January 1, 1997

The bill removes reference to the Department of Human Services (the predecessor department to ODJFS) in former versions of certain sections of law regarding a putative father's consent to the adoption of a child born prior to January 1, 1997 that still apply.

It is LSC's understanding that in any adoption case in which the identity of the father is unknown, ODJFS must go to court and state that there has been no filing of an objection to the adoption by a putative father. Apparently, to date, ODJFS has never received such an objection filing. By removing reference to ODJFS from this provision of law, ODJFS may experience a decrease in costs for not having to appear in court.

ODJFS work group

Not later than 30 days after the effective date of the bill, the bill requires the Director of ODJFS to convene a work group to study and make recommendations to the Director regarding both of the following:

- (1) Support for positive child and family outcomes offered to public children services agencies, private child placing agencies, and private noncustodial agencies by ODJFS;
- (2) The establishment of fines and sanctions for public children services agencies, private child placing agencies, and private noncustodial agencies that do not comply with foster care related laws or rules.

The work group must include representatives of public children services agencies, private child placing agencies, private noncustodial agencies, the Ohio Family Care Association, the Ohio Association of Child Caring Agencies, the Public Children Services Association of Ohio, the Ohio Job and Family Services Directors' Association, the County Commissioners' Association of Ohio, foster caregivers, and current and former foster children. By June 30, 2009, the work group must prepare a report that contains recommendations regarding ODJFS's support for local agencies and the establishment of fines and sanctions either in law, rule, or both. The Director of ODJFS must review the recommendations and create an executive summary of the recommendations for submission to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The work group ceases to exist upon submission of the executive summary.

To the extent that those who are involved in the work group do so in their official capacity as employees of the state or a local government entity, those employers will incur an increase in administrative costs (time and travel reimbursement) for those employees to participate in the work group. Presumably, those who attend from private entities will do so voluntarily at their own expense.

ODJFS will also incur some administrative costs in preparing the executive summary of the work group's recommendation and distribution to the Governor and legislative leaders of the majority party.

References to former Ohio laws and the laws of other states

The bill includes references to existing or former laws of Ohio, any other state, or the United States that are substantially equivalent to specified sections of the Revised Code in provisions that:

- (1) Require a court to enter a finding that a child for whom a public children services agency or a private child placing agency is requesting permanent custody cannot be placed with either parent within a reasonable period of time or should not be placed with either parent because the parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to R.C. 2151.214, 2151.353, or 2151.415 *or under an existing or former law of this state, another state, or the United States that is substantially equivalent to those sections.*
- (2) Require a court to make a determination that a public children services agency or a private child placing agency is not required to make reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the child's home, and return the child to the child's home because the parent from whom the child was removed has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to R.C. 2151.353, 2151.414, or 2151.415 *or under an existing or former law of this state, another state, or the United States that is substantially equivalent to those sections.*

This provision will not have a fiscal impact on the court besides the costs to consider additional factors in the cases described above. However, there may be an indirect increase in costs to the child welfare system in so far as more children may come in to the state's custody when legal actions in another state are considered.

Child Placement Level of Care Tool and the Ohio Scales

The bill repeals a provision of law enacted in Am. Sub. H.B. 119 of the 127th General Assembly that required the Department of Mental Health (DMH) to conduct a study of children placed using the Child Placement Level of Care Tool. The study was to use both the Child Placement Level of Care Tool and the Ohio Scales in a simultaneous collection of information about children at the time a placement decision is made. Data collection was to be coordinated through DMH and an independent evaluator. DMH was to analyze data from subsequent administration of the Ohio Scales Tool and changes in placement level of care for any correlations. Once completed, DMH was to send a copy of the study to an independent evaluator. Repealing this provision will result in cost savings to DMH.

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