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## DEPARTMENT OF CHILDREN AND YOUTH

### Creation of the Department

- Creates the Department of Children and Youth to serve as the state’s primary children’s services agency and establishes the position of Director of Children and Youth.
- Requires the Department to facilitate and coordinate the delivery of children’s services in Ohio.
- Requires the Directors of Children and Youth, ODJFS, Education, ODH, Developmental Disabilities, ODM, OhioMHAS, and Development to develop a plan to transfer children’s services duties, functions, programs, and staff resources to the new department by January 1, 2025.
- Transfers various programs and duties from ODJFS, Education, ODH, Developmental Disabilities, and OhioMHAS to the Department of Children and Youth on January 1, 2025, and makes conforming changes throughout the Revised Code.

### Youth online parental notification

- Requires an online operator that requires a consumer to register, sign up, or otherwise create a unique username to access or utilize the online website, service, product, or feature to obtain parental consent from any consumer who is under 16 and not emancipated.
- Provides the specified methods in which parental consent must be obtained in order to comply with the requirement.
- Gives the Attorney General exclusive authority to enforce the new requirement and specifies civil penalties for violations, which include up to \$1,000 for each day the operator fails to comply with the new requirement, and increased civil penalties if the violation continues past 60 days and 90 days.
- Prohibits a private right of action for any violation.

### Department of Children and Youth

(R.C. 5180.01 and 5180.02 (primary), 121.02, 121.03, 121.35, 121.37, 121.40, 3109.15, 3109.16, 3109.17, 3109.179, 5101.34, 5101.341, and 5101.342; Sections 130.10 to 130.16)

The bill creates the Department of Children and Youth to serve as the state’s primary children’s services agency and establishes the position of Director of Children and Youth as a member of the Governor’s cabinet. Under the bill, the Department must facilitate and coordinate the delivery of children’s services in Ohio, including services provided by government programs that focus on the following:

- Adoption, child welfare, and foster care services;

- Early identification and intervention regarding behavioral health, including early intervention services, early childhood mental health initiatives, multi-system youth services, and family support services administered through the Ohio Family Children First Cabinet Council, Ohio Commission on Fatherhood, and Children’s Trust Fund Board;
- Early learning and education, including child care and preschool licensing, early learning assessments, Head Start, preschool special education, publicly funded child care, and the Step Up to Quality program;
- Maternal and child physical health, including infant vitality, home visiting, maternal and child health, maternal and infant support, and Medicaid-funded child health services.

### **Administering the Department**

The bill requires the Director of Children and Youth, the Department’s chief executive and appointing authority, to administer the Department and implement the delivery of children’s services, including by doing the following:

- Adopting rules in accordance with state law;
- Approving and entering into contracts, agreements, and other business arrangements on the Department’s behalf;
- Making appointments to the Department and approving actions related to departmental employees and officers, including their hiring, promotion, termination, discipline, and investigation;
- Directing the performance of employees and officers;
- Applying for grants and allocating any funds awarded;
- Any other action as necessary to implement the bill’s provisions.

As part of administering the Department and implementing the delivery of children’s services, the bill grants the Director the authority to organize the Department for its efficient operation, including by creating divisions or offices within it. The Director also may establish procedures for the Department’s governance and performance, employee and officer conduct, and the custody, preservation, and use of departmental books, documents, papers, property, and records. The bill requires the Director or Director’s designee to fulfill any duty or perform any action that, by law, is imposed on or required of the Department.

The bill also requires each state and local agency involved in the delivery of children’s services to comply with any directive issued by the Director and to collaborate with the Department.

### **Children’s Trust Fund Board, Ohio Commission on Fatherhood, and Ohio Family and Cabinet First Cabinet Council**

The bill maintains the Children’s Trust Fund Board and Ohio Commission on Fatherhood, but transfers them to the Department rather than ODJFS as under current law. The bill also

includes the Director of Children and Youth in the membership of the Ohio Family and Children First Cabinet Council. These changes take effect 90 days after the bill's effective date.

### **Transitional language related to transfer to Department of Children and Youth**

The bill addresses the transfer of duties, functions, and programs to the Department as well as other issues relating to its creation, including by doing the following:

- Requiring the Directors of Children and Youth, ODJFS, Education, ODH, Developmental Disabilities, ODM, OhioMHAS, and Development or their designees to identify duties, functions, programs, and staff resources related to children's services within their departments;
- Requiring the Directors to develop a detailed organizational plan to implement the transfer of the identified duties, functions, programs, and resources to the new department by January 1, 2025, and enter into a memorandum of understanding regarding the transfer;
- Specifying that any business commenced but not completed by January 1, 2025, within the other departments that is slated to be transferred to the new department is to be completed by the Department of Children and Youth or its Director in the same manner, and with the same effect, as if completed by the other departments;
- Transferring all employees and staff resources identified by the Directors on January 1, 2025, or an earlier date chosen by the Directors and specifying that they retain their same positions and benefits;
- Authorizing the Directors to jointly or separately enter into contracts for staff training and development to facilitate the transfer;
- Specifying that no validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer but is to be administered by the Department of Children and Youth;
- Specifying that no action or proceeding pending on the date of the transfer is affected by the transfer and is to be prosecuted or defended in the name of the Department or Director;
- Specifying that all rules, orders, and determinations relating to children's services programs made or undertaken before the transfer continue in effect as rules, orders, and determinations of the new Department until modified or rescinded by it;
- Transferring to the new Department all records, documents, files, equipment, assets, and other materials of the transferred programs and staff resources;
- Requiring the OBM Director to make budget and accounting changes to implement the transfer of duties, programs, and functions.

## **Collective bargaining**

The bill specifies that the creation of the new Department and transfer of programs, duties, and employees are not appropriate subjects for public employees' collective bargaining.

## **Authority regarding employees**

The bill authorizes the Director of Children and Youth to establish, change, and abolish positions for the Department and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote employees who are not subject to state law governing public employees' collective bargaining.

This authority includes assigning or reassigning an exempt employee to a bargaining unit classification if the Director determines that the bargaining unit classification is the proper classification for that employee. If an employee in the E-1 pay range is to be assigned, reassigned, classified, reclassified, transferred, reduced, or demoted to a position in a lower classification, the Director, or in the case of a position transferred outside of the Department, the Director of Administrative Services, must assign the employee to the appropriate classification and place the employee in Step X. The employee is not to receive any increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation.

Actions of the Director of Children and Youth taken under this authority are not subject to appeal to the State Personnel Review Board.

## **Retirement incentive plan**

The bill authorizes the Directors included in the transition workgroup described above, with the approval of OBM, to establish a retirement incentive plan for employees of the departments who are members of the Ohio Public Employees Retirement System and whose job duties will be transferred to the new Department of Children and Youth. Any such plan must remain in effect until December 31, 2024.

## **Renumbering administrative rules**

On and after January 1, 2025, if necessary to ensure the integrity of the numbering of the Administrative Code, the Legislative Service Commission Director must renumber the rules related to children's services programs transferred to the Department of Children and Youth to reflect the transfer.

## **Conforming amendments**

In Sections 130.12 to 130.16, the bill makes extensive conforming changes throughout the Revised Code to reflect the transfer of the following children's services programs to the Department of Children and Youth effective January 1, 2025:

- Adoption;
- Child care;
- Child welfare, including foster care;

- Early childhood education (note that the Department of Education retains authority over preschool teachers and staff, but the Department of Children and Youth will license preschool programs);
- Early intervention services under Part C of the federal Individuals with Disabilities Education Act;<sup>15</sup>
- Help Me Grow and home visiting;
- Maternal and infant vitality, including the Commission on Infant Mortality, shaken baby syndrome education, and safe sleep screening and education;
- Preschool special education.

It also adds the Director of Children and Youth to various boards and commissions involving children's services, such as the Child Care Advisory Council, the Commission on Infant Mortality, and the Ohio Home Visiting Consortium.

### **Delegation of legislative authority**

There are a number of Ohio programs and duties impacting children and youth that are not expressly transferred to the new Department by the bill. Examples include child support and paternity establishment, the Youth and Family Ombudsman's office, the Children's Health Insurance Program, the Program for Medically Handicapped Children, child fatality and fetal-infant mortality review boards, and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), among others.

With regard to the workgroup of directors described above and the organizational plan and memorandum of understanding to transfer children's services programs to the new Department, it is unclear to what extent that plan could assign other children's services programs and duties not included in this bill to the new Department without amending the Revised Code. Under the Ohio Constitution, legislative authority is vested in the General Assembly.<sup>16</sup>

### **Youth online parental notification**

(R.C. 1349.09)

The bill prohibits any online operator from allowing a child consumer to register, sign up, or otherwise create a unique username to access the online website, service, product, or feature ("online services") unless the online operator obtains parental consent as specified in the bill prior to authorizing a child to access the online services. "Child" is defined as any consumer under 16 who is not emancipated. The bill's provisions only apply to those online operators whose online services target children or are reasonably anticipated to be accessed by a child. The bill lists several factors that may be considered as evidence that the online service targets children

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<sup>15</sup> 20 United States Code (U.S.C.) 1431 *et seq.* and regulations implementing that part in 34 Code of Federal Regulations (C.F.R.) part 303.

<sup>16</sup> Ohio Constitution Article II, Sections 1 and 26.

or is reasonably anticipated to be accessed by a child. These include factors such as subject matter, language, visual and audio content, and other listed factors.

The online operator must obtain verifiable parental or legal guardian consent to the contractual terms of the service by doing all of the following:

1. Requiring a parent or legal guardian to sign and return to the operator a form consenting to the terms of service by postal mail, fax, or email;
2. Requiring a parent or legal guardian, in connection with a monetary transaction, to use a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder;
3. Requiring a parent or legal guardian to call a toll-free telephone number implemented by the operator and staffed by trained personnel;
4. Requiring a parent or legal guardian to connect to trained personnel via videoconference;
5. Verifying a parent's identity by checking a form of government-issued identification against databases of such information, where the parent's identification is deleted by the operator from its records promptly after such verification is complete.

After obtaining verified parental or legal guardian consent, the online operator must send written confirmation of the consent to the parent or legal guardian via email, postal mail, or fax. If the online operator made every reasonable effort but cannot secure the necessary contact information to send the written confirmation, the operator can verify consent via telephone. If the parent or legal guardian fails to give consent or refuses to give consent to the terms of service, the operator must deny access or use of the online services to the child. If the parent or legal guardian receives confirmation but determines the consent was given in error or chooses to withdraw consent, the parent or guardian must notify the operator and the operator must terminate the child's use or access to the online service within 30 days of receiving the notification from the parent or guardian.

Enforcement of the bill's provisions is exclusively under the authority of the Attorney General. The bill does not allow for a private right of action. The Attorney General has the authority to bring a civil action for the appropriate relief, including a temporary restraining order, preliminary or permanent injunction, and civil penalties. If a court finds that an online operator knew or should have known that it entered into a contract with a child without parental or legal guardian consent, the operator is liable to the Attorney General for the Attorney General's costs in conducting an investigation and bringing an action. In addition, the court must impose a \$1,000 civil penalty for each day the operator failed to comply with the bill's provisions. If the violation continues past 60 days, the court must impose a \$5,000 civil penalty for each day starting on the 61<sup>st</sup> day of the continued violation. If the violation continues past 90 days, the court must impose a \$10,000 civil penalty for each day starting on the 91<sup>st</sup> day that the violation continues. The civil penalties must be deposited to the Consumer Protection Enforcement Fund under existing law.

If an online operator is in substantial compliance, the Attorney General must provide written notice to the business before initiating a civil action, identifying the specific provisions

that have been or are being violated. If, within 90 days of this notice, the online operator cures any noticed violation and provides the Attorney General written documentation that the alleged violations have been cured, and sufficient measures have been taken to prevent future violations, the online operator cannot be liable for a civil penalty for any violation that is cured.