



Ohio Legislative Service Commission

Bill Analysis

Amy L. Archer

Sub. H.B. 63

131st General Assembly

(As Reported by H. Community and Family Advancement)

Reps. Pelanda and Grossman, Slaby, Boose, Maag, Becker, Buchy, Leland, Sears, Dever, Hill, Barnes, Fedor, Blessing, Boyd, Sheehy, Driehaus

BILL SUMMARY

- Expands the crime of endangering children to prohibit a person from selling or transferring, or attempting to sell or transfer, a child for anything of value.
- Expands the crime of endangering children to prohibit a person from receiving or placing a child with the intent that the child remain in the custody of another person for more than one year or for a reason not permitted under the bill's provisions.
- Provides that a person who violates the bill's criminal prohibitions is guilty of a fifth degree felony on the first offense and a fourth degree felony on subsequent offenses.
- Requires mandatory reporters who are requested to provide services to a child by an attorney in fact (AIF) under authority of a document other than a court order, grandparent's power of attorney, or caretaker authorization affidavit to investigate the request.
- Requires the persons requested to provide services to report the request to the county public children services agency (PCSA) if the investigation shows that the child has been placed with the AIF:
 - For more than one year; or
 - For a reason other than because of a vacation, school sponsored function or activity, or because of a parent's incarceration, military service, medical treatment, or incapacity.

- Requires a PCSA to investigate the child's placement with the AIF, consistent with the investigation requirements under the bill, and to file a complaint in the juvenile court if it finds that the placement is unsafe for the child.
- Requires the Ohio Department of Jobs and Family Services' (ODJFS) training for prospective adoptive parents to include instruction on the expansion of the crime of endangering children and the investigation requirements established under the bill.
- Requires a petition for adoption to include a certification that the adoptive parent is aware of the expansion of the crime of endangering children and the investigation requirements established under the bill.
- Includes a statement that the General Assembly recommends that every board, commission, or agency requiring licensure or certification adopt rules to require training in recognizing and handling children subject to the bill's requirements to receive or maintain licensure or certification.
- Requires the ODJFS to adopt rules establishing guidelines and procedures for a PCSA to conduct investigations of children subject to the bill's requirements and criteria for determining if the placement with an AIF is unsafe for the child.
- Permits the ODJFS to create an intake type for unregulated child custody transfers in the Statewide Automated Child Welfare Information System (SACWIS) for records of investigations and determinations a PCSA makes regarding the investigations and determinations required under the bill.

CONTENT AND OPERATION

Overview

The bill expands the crime of endangering children by adding a prohibition against the sale or transfer of a child or by receiving or placing a child with the intent that the child remain in the custody of another person for more than one year or for reasons not permitted in the bill.

Further, the bill addresses documents that purport to grant parental rights and responsibilities regarding the care, physical custody, and control of a child to a person with whom the child is living through a document other than a court order, grandparent's power of attorney, or caretaker authorization affidavit. Under the bill, mandatory reporters of child abuse and neglect are required to investigate the circumstances of the child subject to such alternative documents and, if the child is believed to be not lawfully placed, must report to a county public children services agency (PCSA). The PCSA is then required to conduct an investigation, except in



situations specified in the bill's provisions, and file a complaint in the appropriate juvenile court if the child is determined to be unsafe.

Finally, the bill expands the training and certification requirements for prospective adoptive parents regarding the expansion of the crime of endangering children and the new investigative requirements.

Nonjudicial child custody transfer prohibition

Criminal prohibitions

Under the bill, the crime of endangering children is expanded to prohibit a person from doing any of the following to a child:¹

- Sell or transfer, or attempt to sell or transfer, a child for anything of value;
- Receive or place a child in the custody of another person, with the intent that the child remain in the person's custody for more than one year;
- Receive or place a child in the custody of another person, with the intent that the child remain in that person's custody for a reason other than a vacation or school sponsored function or activity or because of a parent's incarceration, military service, medical treatment, or incapacity.

The bill defines "receive or place a child in the custody of another person" to mean both granting or being granted any of the parent's, guardian's, or custodian's rights and responsibilities regarding the care, custody, and control of the child and to have the child reside with the person.²

Exceptions to prohibition

The expanded prohibition does not apply in the following situations:³

- The child is 30 days old or younger and has been voluntarily delivered to an emergency medical service worker, peace officer, or hospital employee without expressing an intent to return for the child;
- The child is related by blood or affinity within the fifth degree to the person receiving the child;

¹ R.C. 2919.22(B)(7) and (8)(a).

² R.C. 2919.22(B)(8)(b).

³ R.C. 2919.22(E).



- The child is placed in foster care;
- Placement is in accordance with a court order.

Penalty for violation

If a person violates the bill's expanded criminal prohibition on a first offense, that violation is a fifth degree felony. For each subsequent violation of the expanded offense, if the person has previously been convicted of the expanded offense, the violation is a fourth degree felony.⁴

Mandatory reporter's duty to report documents

When report required

Under the bill, when an attorney in fact (AIF) under a document that grants care, physical control, and custody of a child, requests registration in a school, medical treatment, or other services for a child and presents the document as authority for requesting the services, the mandatory reporter must promptly investigate whether the child has been placed with the AIF due to a vacation, school sponsored function or activity, or because of a parent's incarceration, military service, medical treatment, or incapacity. The service reporter must also investigate how long the child has been placed with the AIF.

If the provider determines that the child has been placed for more than one year or that the child has been placed for a reason other than because of a vacation, school sponsored function or activity, or because of a parent's incarceration, military service, medical treatment, or incapacity, the provider must promptly report the request, in writing, to the PCSA of the county in which the child resides. The report must include the name and address of the AIF and child, the child's age, and the nature of the services requested.⁵ "Mandatory reporters" include attorneys, physicians, nurses, other health care professionals, school teachers, school employees, school authorities, and various other individuals listed as mandatory reporters because they may have contact with children through their work.⁶ The bill also applies existing law definitions of "child," "custodian," "guardian," "legal custody," and "residual parental rights, privileges, and responsibilities."⁷

⁴ R.C. 2919.22(F)(5).

⁵ R.C. 3109.811(A).

⁶ R.C. 2151.421(A)(1)(b) (unchanged by the bill) and 3109.81.

⁷ R.C. 3109.51.



When report not required

A mandatory reporter need not make a report if the document presented appears to be a valid court order, statutorily authorized power of attorney given to a grandparent, or statutorily authorized caretaker authorization affidavit executed by a grandparent,⁸ or if one of the following applies:⁹

- The child is 30 days old or younger and has been voluntarily delivered to an emergency medical service worker, peace officer, or hospital employee without expressing an intent to return for the child;
- The child is related by blood or affinity within the fifth degree to the person receiving the child;
- The child is placed in foster care;
- Placement is in accordance with a court order.

PCSA's duties on receipt of report of document

When investigation required

On receiving a report from a service provider that an AIF requested services for a child as described above, a PCSA must investigate the child's placement with the AIF. The PCSA must determine the extent of the investigation based upon the facts in the report, the PCSA's familiarity with the parties involved, and other factors it determines relevant. The investigation may include a criminal records check, a check of court records for any child-related civil proceedings, and, if the PCSA determines that the records check warrants it, a study following standard protocols.¹⁰ If the PCSA determines that the placement of the child with the AIF is unsafe for the child, it must file a complaint with the juvenile court.¹¹

When investigation not required

A PCSA is not required to conduct an investigation if the child has been:¹²

⁸ R.C. 3109.811(B)(1).

⁹ R.C. 3109.811(B)(2) and 2919.22(E).

¹⁰ R.C. 3109.812(A).

¹¹ R.C. 3109.813.

¹² R.C. 3109.812(B).



- Placed for a designated period of less than one year due to vacation, school sponsored activity or function, or because of a parent's incarceration, military service, medical treatment, or incapacity;
- Voluntarily delivered to an emergency medical service worker, peace officer, or hospital employee without expressing an intent to return for the child and the child is 30 days old or younger;
- Received by a person who is related by blood or affinity within the fifth degree of the child;
- Placed in foster care; or
- Placed in accordance with a court order.

Adoption procedures

Training

The bill requires any training that the Ohio Department of Jobs and Family Services (ODJFS) may require for a prospective adoptive parent to include instruction on the bill's provisions regarding the expansion of the crime of endangering children and the investigation requirements regarding children subject to nonjudicial grants of parental rights.¹³

Required certification

A petition for adoption must include a certification by the petitioner (the adoptive parent) that the petitioner is aware of the bill's provisions regarding the expansion of the crime of endangering children and the investigation requirements regarding children subject to nonjudicial grants of parental rights.¹⁴

Recommendation for training

The bill provides that the General Assembly strongly recommends that every board, commission, or agency created under Title XLVII of the Revised Code and that is authorized to grant licensure or certification to persons who may encounter a child subject to this bill's provisions in the normal course of their work to adopt rules under Administrative Procedure Act (R.C. Chapter 119.) requiring those persons to receive

¹³ R.C. 3107.035.

¹⁴ R.C. 3107.05(A)(11).



training in the recognition and handling of such cases as a condition of receiving or maintaining licensure or certification.¹⁵

ODJFS requirements

ODJFS guidelines and procedures

The bill requires ODJFS to adopt rules establishing guidelines and procedures for a PCSA to conduct investigations as described above and criteria for determining if the placement of a child with an AIF is unsafe.¹⁶

Statewide Automated Child Welfare Information System (SACWIS) records

The bill requires the ODJFS, which maintains the Statewide Automated Child Welfare Information System (SACWIS), to collect and maintain in the SACWIS system records on PCSA investigations and determinations concerning children who have been placed with an AIF in the situation covered by the bill.¹⁷ Under current law, SACWIS must contain 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 any other information related to children and families that state or federal law, regulation, or rule requires ODJFS or a PCSA to maintain.¹⁸ ODJFS is further required to adopt rules by June 30, 2017, creating an intake type for unregulated child custody transfers in SACWIS for the records of investigations and determinations made under the bill.¹⁹

COMMENT

On receipt of a request for the provision of services for a child, the bill requires a "mandatory reporter" to investigate the reason the child was placed with the requesting AIF. But, the bill requires the "provider" to determine how long the child has been placed with the AIF and also to report to the appropriate PCSA if the child has been placed for more than a year or for a reason not permitted under the bill. Finally, the bill establishes conditions for when the "mandatory reporter" is not required to conduct an investigation or make a report to the PCSA.²⁰ The alternate usage of the terms,

¹⁵ R.C. 3109.814.

¹⁶ R.C. 3109.815.

¹⁷ R.C. 5101.13(A)(1)(b).

¹⁸ R.C. 5101.13(A).

¹⁹ R.C. 5101.13(D).

²⁰ R.C. 3109.811.



especially regarding the same activity required under the bill, could lead to confused application of the provisions if the bill were enacted.

HISTORY

ACTION	DATE
Introduced	02-11-15
Reported, H. Community and Family Advancement	05-04-16

H0063-RH-131.docx/emr

