

SECTION I. Confidentiality

Confidentiality protection is mandated by § 5101:2-33-21 of the Ohio Administrative Code.

The release of confidential information is a misdemeanor of the fourth degree resulting in a maximum of 30 days in jail and/or a \$250 fine.

O.A.C. § 5101:2-33-21. Confidentiality and dissemination of child welfare information.

(current as of 07/1/2014; emphasis added)

(A) **Each referral, assessment/investigation and provision of services related to reports of child abuse, neglect, dependency, or family in need of services (FINS) is confidential. Information contained in the statewide automated child welfare information system (SACWIS) is confidential pursuant to section 5101.131 of the Revised Code. This information may be shared only when dissemination is authorized by this rule.**

(B) **If any information is disseminated, the public children services agency (PCSA) shall notify the receiver of the information that all of the following apply:**

(1) The information is confidential and is not subject to disclosure pursuant to section 149.43 or 1347.08 of the Revised Code by the agency to whom the information was disclosed.

(2) Unauthorized dissemination of the contents of the information is in violation of section 2151.421 of the Revised Code.

(3) Anyone who permits or encourages unauthorized dissemination of the contents of the information violates section 2151.99 of the Revised Code and such a violation is a misdemeanor of the fourth degree.

(C) **The PCSA shall document in SACWIS that the dissemination of information occurred.** Documentation shall include a summary of all of the following:

- (1) The specific information disseminated.
- (2) The date the information was disseminated.
- (3) The agency, organization, or individual to whom the information was disseminated.
- (4) The reason for the dissemination of information.
- (5) If required, written authorization to disseminate information pursuant to paragraphs (H) and (R) of this rule.

(D) **When any person commits, causes, permits, or encourages unauthorized dissemination of information, the PCSA shall give written notification of such unauthorized dissemination to the county prosecutor or city director of law and the Ohio department of job and family services (ODJFS).** A copy of the written notification shall be maintained in the case record.

(E) The **PCSA shall not release the identities of the referent/reporter, and any person providing information during the course of an assessment/investigation shall remain confidential.** The identities of these individuals shall not be released or affirmed by the PCSA to any party without the written consent of the individual(s) involved, except to those individuals outlined in paragraph (F) of this rule.

(F) The **PCSA shall release child welfare information** to the following persons or entities:

- (1) **ODJFS staff with supervisory responsibility** in the administration of Ohio's child welfare program.
- (2) **Law enforcement officials who are investigating a report of child abuse or neglect** or that a person violated section 2921.14 of the Revised Code by knowingly making or causing another person to make a false report.
- (3) The **county prosecutor** who is investigating a report of child abuse or neglect or that a person violated section 2921.14 of the Revised

Code by knowingly making or causing another person to make a false report.

(4) Any **PCSA or children services agency (CSA)**

assessing/investigating a child abuse or neglect report involving a principal of the case.

(5) The **court**, for the purpose of the issuance of a subpoena to the referent/reporter.

(G) The **PCSA shall promptly disseminate all information determined to be relevant**, except as specified in paragraph (E) of this rule, **to any federal, state, or local governmental entity, or any agent of such entity, with a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect including but not limited to:**

(1) **Law enforcement officials**, as set forth in the child abuse and neglect memorandum of understanding, to investigate a PCSA report of child abuse or neglect, a report of a missing child, or a report that a person has violated section 2921.14 of the Revised Code, by knowingly making or causing another person to make a false report of child abuse or neglect.

(2) The **county prosecutor**, to provide legal advice or initiate legal action on behalf of an alleged child victim; and to prosecute any person who has violated section 2921.14 of the Revised Code, by knowingly making or causing another person to make a false report of child abuse or neglect.

(3) **A guardian ad litem or court appointed special advocate.**

(4) **Any PCSA or CSA** as defined in rule 5101:2-1-01 of the Administrative Code, **which is currently assessing/investigating a report of child abuse or neglect involving a principal of the case or providing services to a principal of the case.** In an emergency situation, the requested information may be released by telephone to a verified representative of a CSA. The PCSA releasing information will verify the identity, job title and authority/job duties of the CSA

representative prior to releasing any information. All of the following information shall be released:

- (a) The name and role of each principal of the case registered in any prior report.
 - (b) The date, allegation and disposition of each report or allegation.
 - (c) The name and telephone number of the county PCSA that conducted an assessment/investigation or provided services for each report.
- (5) **A coroner**, to assist in the evaluation of a child's death due to alleged child abuse and/or neglect.
- (6) **Child abuse and neglect multidisciplinary team members**, for consultation regarding investigative findings or the development and monitoring of a case plan.
- (7) **Public service providers** working with a parent, guardian, custodian or caretaker or children of the family about whom the information is being provided, including but not limited to:
- (a) **Probation officers** and caseworkers employed by the court, adult parole authority, rehabilitation and corrections, or the department of youth services.
 - (b) Employees of the local **county boards of developmental disabilities** and **employees of the local county boards of alcohol drug addiction** and mental health.
- (8) **A school administrator or designee when a PCSA intends to place a child in a foster home in a county other than the county in which the child resided at the time the child was removed from his home.**

(9) **The licensing and supervising authorities of a public or non-public out-of-home care setting in which child abuse or neglect is alleged to have occurred.**

(10) **The approving authority of a kinship care setting in which child abuse or neglect is alleged to have occurred.**

(11) **Administrators of public out-of-home care settings in which child abuse or neglect is alleged to have occurred** including but not limited to:

(a) Psychiatric hospitals managed by the Ohio department of mental health.

(b) Institutions managed by county courts for unruly or delinquent children.

(c) Institutions managed by the Ohio department of youth services.

(d) Institutions or programs managed by the Ohio department of developmental disabilities or local boards of developmental disabilities.

(12) **Child abuse citizen review boards** upon request.

(13) **A child fatality review board** recognized by the Ohio department of health, upon request except when a county prosecutor intends to prosecute or a judge prohibits release according to procedures contained in sections 5153.171, 5153.172 and 5153.173 of the Revised Code.

(14) **A grand jury or court**, as ordered.

(15) **A children's advocacy center**, as set forth in the PCSA child abuse and neglect memorandum of understanding, to comply with the protocols and procedures for receiving referrals and conducting investigations, to coordinate activities, and to provide services for reports alleging sexual abuse or other types of abuse.

(16) **A CDJFS, for child care licensure** pursuant to section 5153.175 of the Revised Code and for joint planning and sharing of information pursuant to rule 5101:2-33-28 of the Administrative Code.

(H) Except as specified in paragraph (E) of this rule or if disclosure would jeopardize a criminal investigation or proceeding, **the PCSA shall promptly disseminate all information it determines to be relevant to an individual or agency, with written authorization from the PCSA director, when it is believed to be in the best interest of any of the following:**

(1) **An alleged child victim, a child subject of the report, the family, or the caretaker.**

(2) Any child residing within, or participating in an activity conducted by an out-of-home care setting when necessary to protect children in that setting.

(3) A child who is an alleged perpetrator.

(I) Upon receiving a request for disclosure to the public regarding the findings or information about a case of child abuse or neglect which has resulted in either a child fatality or a near fatality that, as certified by a physician, placed the child in serious or critical condition, **the PCSA shall prohibit disclosure of such information if it is determined by the PCSA that any of the following would occur:**

(1) **Harm to the child or the child's family.**

(2) **Jeopardize a criminal investigation or proceeding.**

(3) **Interfere with the protection of those who report child abuse or neglect.**

(J) If the PCSA has determined to disclose to the public information pursuant to paragraph (I) of this rule, the PCSA shall provide all of the following:

(1) The cause of and circumstances regarding the fatality or near fatality.

(2) The age and gender of the child.

(3) Information describing and the findings of any previous reports of child abuse or neglect assessment/investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

(4) Any services provided by the PCSA on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

(5) Any actions, including but not limited to court filings, removals or implementation of safety plans on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

(K) Upon request, the PCSA shall promptly disseminate to a mandated reporter, who makes a report of child abuse or neglect, information pursuant to section 2151.421 of the Revised Code.

(1) Whether the PCSA has initiated an investigation.

(2) Whether the PCSA is continuing to investigate.

(3) Whether the PCSA is otherwise involved with the child who is the subject of the report.

(4) The general status of the health and safety of the child who is the subject of the report.

(5) Whether the report has resulted in the filing of a complaint in juvenile court or of criminal charges in another court.

(L) The PCSA shall promptly disseminate all information it determines to be relevant to the principals of the case, in accordance with Chapter 5101:2-36 of the Administrative Code, to inform them of the following:

(1) Each allegation contained in the report.

(2) All report dispositions resulting from the assessment/investigation.

(3) All case decisions resulting from the alternative response assessment.

(M) **The PCSA shall promptly disseminate all information determined to be relevant**, except as specified in paragraph (E) of this rule, **to** all of the following persons or entities:

(1) **The non-custodial parent of the alleged child victim or child subject of the report, and children being provided services by the PCSA when the PCSA believes such sharing would be in the best interest of the child.**

(2) **A physician**, for the diagnostic assessment of a child where there is reason to believe the child may be a victim of abuse or neglect.

(3) **A private service provider**, for diagnostic evaluations of and service provision to the alleged child victim or child subject of the report and his family.

(4) The administrator of a non-public out-of-home care setting in which child abuse or neglect is alleged to have occurred.

(5) **A foster, relative and non-relative caregiver**, as required by rule 5101:2-42-90 of the Administrative Code.

(6) The superintendent of public instruction, pursuant to section 5153.176 of the Revised Code, when the report involves a person who holds a license issued by the state board of education where the agency has determined that child abuse or neglect occurred and that abuse or neglect is related to the person's duties and responsibilities under the license.

(N) The PCSA shall utilize information outlined in paragraph (O) of this rule obtained from the alleged perpetrator search within SACWIS for the purpose of a background check for any of the following:

(1) Foster care licensure, pursuant to Chapters 5101:2-5 and 5101:2-7 of the Administrative Code.

(2) An adoption home study, pursuant to Chapter 5101:2-48 of the Administrative Code.

(3) A relative or non-relative caregiver approval for placement, pursuant to rule 5101:2-42-18 of the Administrative Code.

(O) The PCSA shall consider reports that meet the following criteria when the information is being used for a background check in accordance with paragraphs (N) and (G) (16) of this rule:

(1) **Substantiated reports** where the subject of the search was the alleged perpetrator.

(2) **Indicated reports** where the subject of the search was the alleged perpetrator.

(P) If releasing information pursuant to paragraphs (N) and (G) (16) of this rule, the PCSA shall not release any information pertaining to an unsubstantiated report or an alternative response report.

(Q) The PCSA shall refer any individual who inquires whether his or her name has been placed or remains within SACWIS as the subject of a report of alleged child abuse and/or neglect to ODJFS. An individual may submit a written request to ODJFS. The written request must contain the original signature of the individual who is the subject of the inquiry and the following:

(1) The individual's full name, including maiden and any other names utilized; address; date of birth and social security number.

(2) A copy of two of the following forms of identification, with at least one containing the individual's social security number:

(a) Social security card.

(b) Driver license.

(c) State identification card.

(d) Birth certificate.

(e) Passport or travel visa.

(3) In lieu of the two copies of the forms of identification required in paragraph (Q)(2) of this rule, an individual may submit a notarized request containing the individual's name, address, date of birth and social security number.

(R) At his or her sole discretion, a PCSA director may disseminate information to a researcher in the area of child welfare, if the information is determined to be relevant to the researcher, and the results of the research will be beneficial to the county PCSA in administering child welfare programs/services. Authorization of the dissemination shall be documented. No direct access to SACWIS or any other state of Ohio database shall be requested by or on behalf of, nor approved for or granted to, any researcher pursuant to rule 5101:2-33-70 of the Administrative Code. The PCSA shall disclose only the minimum information needed by the researcher to perform the study, and, prior to disseminating information to any researcher, the PCSA shall require the researcher to sign an agreement which addresses all of the following:

(1) The researcher shall not disseminate confidential information containing names or data by which any individual or out-of-home care setting could be identified or deductively inferred.

(2) The PCSA shall review the research prior to its dissemination or publication to ensure that the research is void of names or data by which any individual or out-of-home care setting could be identified or deductively inferred.

(3) The researcher shall accept liability for unauthorized dissemination of information.

SECTION II. Ohio Revised Code (O.R.C.) and Ohio Administrative Code (O.A.C.) Pertaining to Child Abuse, Neglect, and Dependency

O.R.C. § 2151.031. Abused child defined.

As used in this chapter, an "abused child" includes any child who:

(A) Is the victim of "sexual activity" as defined under Chapter 2907. of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

(B) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

(C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code.

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.

(E) Is subjected to out-of-home care child abuse.

Effective Date: 08-03-1989

O.R.C. § 2907.01 Sex offenses general definitions.

As used in sections 2907.01 to 2907.38 of the Revised Code:

(A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) "Sexual activity" means sexual conduct or sexual contact, or both. (See the chart, "When Sexual Conduct is Illegal." It appears at the end of this statute.)

(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) "Harmful to juveniles" means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex.

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

...

(I) "Juvenile" means an unmarried person under the age of eighteen.

(J) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

(K) "Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

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Effective Date: 01-01-2004; 08-03-2006; 08-17-2006; 2007 SB10 01-01-2008

When Sexual Conduct Is Illegal

	Consensual: child participates agreeably, not in presence of force or by deception, absent of impaired judgment/control resulting from perpetrator(s) administering drugs/intoxicants to child.		Non-Consensual: child participates as a result of force, threat of force, deception, or impaired judgment/control due to perpetrator(s) administering drugs/intoxicants to child.	
Age of Child Victim	Conduct: vaginal/anal intercourse; fellatio; cunnilingus; penetration (however slight)	Contact: touching of erogenous zone(s) (thigh, genitals, buttocks, pubic region, breast (if female)) for purpose of sexually arousing/gratifying	Conduct: vaginal/anal intercourse; fellatio; cunnilingus; penetration (however slight)	Contact: touching of erogenous zone(s) (thigh, genitals, buttocks, pubic region, breast (if female)) for purpose of sexually arousing/gratifying
under 13	Illegal where Perpetrator is ANYONE/ANY AGE	Illegal where Perpetrator is ANYONE/ANY AGE	Always Illegal for all Perpetrators ANYONE/ANY AGE	Always Illegal for all Perpetrators ANYONE/ANY AGE
13 to 15	Illegal where Perpetrator is ANYBODY and Perpetrator is 18 YEARS OR OLDER	Illegal where Perpetrator is ANYBODY and is 18 YEARS OR OLDER and is 4 YEARS OLDER THAN CHILD VICTIM	Always Illegal for all Perpetrators ANYONE/ANY AGE	Always Illegal for all Perpetrators ANYONE/ANY AGE
16 and 17 (or mentally or physically handicapped under age 21)	Illegal where Perpetrator is the Natural Parent, Adoptive Parent, Step-Parent, Person in Loco Parentis (standing in the place of the parent), Supervisor of a child in the custody of the State, or Supervisor of a child in the custody of a hospital or institution COULD BE TRIED AS ABUSE UNDER ORC 2151.031(A) AS A VICTIM OF SEXUAL ACTIVITY EVEN THOUGH NOT A CRIME	Not Illegal THIS IS NOT CONSIDERED TO BE IN VIOLATION OF CHAPTER 2907 SEX OFFENSES THIS COULD BE TRIED AS NEGLECT UNDER ORC 2151.03(C)	Always Illegal for all Perpetrators ANYONE/ANY AGE	Always Illegal for all Perpetrators ANYONE/ ANY AGE

O.R.C. § 2151.03 Neglected child defined - failure to provide medical or surgical care for religious reasons.

(A) As used in this chapter, "neglected child" includes any child:

- (1) Who is abandoned by the child's parents, guardian, or custodian;
- (2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;
- (3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;
- (4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;
- (5) Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code;
- (6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;
- (7) Who is subjected to out-of-home care child neglect.

(B) Nothing in this chapter shall be construed as subjecting a parent, guardian, or custodian of a child to criminal liability when, solely in the practice of religious beliefs, the parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for the child. This division does not abrogate or limit any person's responsibility under section 2151.421 of the Revised Code to report child abuse that is known or reasonably suspected or believed to have occurred, child neglect that is known or reasonably suspected or believed to have occurred, and children who are known to face or are reasonably suspected or believed to be facing a threat of suffering abuse or neglect and does not preclude any exercise of

the authority of the state, any political subdivision, or any court to ensure that medical or surgical care or treatment is provided to a child when the child's health requires the provision of medical or surgical care or treatment.

Effective Date: 08-08-1996; 08-03-2006

O.R.C. § 2151.04 Dependent child defined.

As used in this chapter, "dependent child" means any child:

(A) Who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian;

(B) Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian;

(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;

(D) To whom both of the following apply:

(1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.

(2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

Effective Date: 08-08-1996

“Adequate parental care” – O.R.C. § 2151.011 Juvenile court definitions.

(B) As used in this chapter:

(1) "Adequate parental care" means the provision by a child's parent or parents, guardian, or custodian of adequate food, clothing, and shelter to ensure the child's health and physical safety and the provision by a child's parent or parents of specialized services warranted by the child's physical or mental needs.

O.R.C. § 2151.05 Child without proper parental care.

Under sections [2151.01](#) to [2151.54](#) of the Revised Code, a child whose home is filthy and unsanitary; whose parents, stepparents, guardian, or custodian permit him to become dependent, neglected, abused, or delinquent; whose parents, stepparents, guardian, or custodian, when able, refuse or neglect to provide him with necessary care, support, medical attention, and educational facilities; or whose parents, stepparents, guardian, or custodian fail to subject such child to necessary discipline is without proper parental care or guardianship.

Effective Date: 11-28-1975.

O.R.C. § 2151.3516 Delivery of child by parent to persons authorized to take possession of deserted child.

A parent may voluntarily deliver his or her child who is not older than thirty days, without intent to return for the child, to a person specified in section [2151.3517](#) of the Revised Code or a newborn safety incubator provided by an entity described in that section that meets the requirements of section 2151.3532 of the Revised Code.

Added by 131st General Assembly File No. TBD, SB 332, § 1, eff. 4/6/2017.

O.R.C. § 2151.3517 Persons authorized to take possession of deserted child.

The following entities or persons, while acting in an official capacity on behalf of any of the entities, shall take possession of a child delivered in accordance with section 2151.3516 of the Revised Code:

(A) A law enforcement agency or a peace officer employed by the agency ;

(B) A hospital or a person granted the privilege to practice at, or employed by, the hospital ;

(C) An emergency medical service organization or an emergency medical service worker employed by or providing services to the organization.

Renumbered from § 2151.3516 and amended by 131st General Assembly File No. TBD, SB 332, § 1, eff. 4/6/2017.

Effective Date: 04-09-2001

O.R.C. § 2919.22 Endangering Children.

(A) **No person**, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, **shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support** under this division when the parent, guardian, custodian, or person having custody or control of a child **treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.**

(B) **No person shall do any of the following to a child** under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:

(1) **Abuse** the child;

- (2) **Torture or cruelly abuse** the child;
- (3) **Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;**
- (4) **Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;**
- (5) **Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed** for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is **sexually oriented matter**, or is nudity-oriented matter;
- (6) **Allow the child to be on the same parcel of real property and within one hundred feet of, or, in the case of** more than one housing unit on the same parcel of real property, in the same housing unit and within one hundred feet of, any act in violation of section 2925.04 (note: this refers to **illegal manufacture of drugs or cultivation of marijuana**) or 2925.041 (note: this refers to **illegal assembly or possession of chemicals for the manufacture of drugs**) of the Revised Code **when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of section 2925.04 or 2925.041** of the Revised Code that is the basis of the violation of this division.
- (C) (1) **No person shall** operate a vehicle, streetcar, or trackless trolley within this state in violation of division (A) of section 4511.19 of the Revised Code when one or more children under eighteen years of age are in the vehicle, streetcar, or trackless trolley. . . .

(D) ...

(2) Mistake of age is not a defense to a charge under division (B)(5) of this section.

...

(4) As used in this division and division (B)(5) of this section:

...

(b) "Nudity-oriented matter" means any material or performance that shows a minor in a state of nudity and that, taken as a whole by the average person applying contemporary community standards, appeals to prurient interest.

(c) "Sexually oriented matter" means any material or performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality.

(E) (1) Whoever violates this section is guilty of endangering children.

(2) If the offender violates division (A) or (B)(1) of this section, endangering children is one of the following, and, in the circumstances described in division (E)(2)(e) of this section, that division applies:

(a) Except as otherwise provided in division (E)(2)(b), (c), or (d) of this section, a misdemeanor of the first degree;

(b) If the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in division (E)(2)(c) or (d) of this section, a felony of the fourth degree;

(c) If the violation is a violation of division (A) of this section and results in serious physical harm to the child involved, a felony of the third degree;

(d) If the violation is a violation of division (B)(1) of this section and results in serious physical harm to the child involved, a felony of the second degree.

(e) If the violation is a felony violation of division (B)(1) of this section and the offender also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code.

(3) If the offender violates division (B)(2), (3), (4), or (6) of this section, except as otherwise provided in this division, endangering children is a felony of the third degree. If the violation results in serious physical harm to the child involved, or if the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, endangering children is a felony of the second degree.

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Amended by 129th General Assembly File No.29, HB 86, §1, eff. 9/30/2011.

Effective Date: 01-01-2004; 08-11-2004; 05-17-2006; 08-17-2006; 2008 HB280 04-07-2009

O.R.C. § 2903.15 Permitting child abuse.

(A) No parent, guardian, custodian, or person having custody of a child under eighteen years of age or of a mentally or physically handicapped child under twenty-one years of age shall cause serious physical harm to the child, or the death of the child, as a proximate result of permitting the child to be abused, to be tortured, to be administered corporal punishment or other physical disciplinary measure, or to be physically restrained in a cruel manner or for a prolonged period.

(B) It is an affirmative defense to a charge under this section that the defendant did not have readily available a means to prevent the harm to the child or the death of the child and that the defendant took timely and reasonable steps to summon aid.

(C) Whoever violates this section is guilty of permitting child abuse. If the violation of this section causes serious physical harm to the child, permitting child abuse is a felony of the third degree. If the violation of this section causes the death of the child, permitting child abuse is a felony of the first degree.

Effective Date: 08-25-1999

O.R.C. § 2901.01 General provisions definitions.

(A) As used in the Revised Code:

...

(3) **"Physical harm to persons"** means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

...

(5) **"Serious physical harm to persons"** means any of the following:

(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(b) Any physical harm that carries a substantial risk of death;

(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

...

(7) "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

(8) "**Substantial risk**" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

...

Amended by 131st General Assembly File No. TBD, SB 227, §1, eff. 4/6/2017.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 04-08-2003; 07-01-2007

O.R.C. § 2151.421 Reporting child abuse or neglect.

[revised 3/14/2017; emphasis added]

(A) (1) (a) **No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age, or a person, under twenty-one years of age with a developmental disability or physical impairment, has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the entity or persons specified in this division.** Except as provided in section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section 5120.173 of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Division (A)(1)(a) of this section applies to any person who is an attorney; health care professional; practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code; licensed school psychologist; independent marriage and family therapist or marriage and family therapist; coroner; administrator or employee of a child day-care center; administrator or employee of a residential camp, child day camp, or private, nonprofit therapeutic wilderness camp; administrator or employee of a certified child care agency or other public or private children services agency; school teacher; school employee; school authority; agent of a county humane society; person, other than a cleric, rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; **employee of a county department of job and family services who is a professional and who works**

with children and families; superintendent or regional administrator employed by the department of youth services; superintendent, board member, or employee of a county board of developmental disabilities; investigative agent contracted with by a county board of developmental disabilities; employee of the department of developmental disabilities; employee of a facility or home that provides respite care in accordance with section 5123.171 of the Revised Code; employee of an entity that provides homemaker services; a person performing the duties of an assessor pursuant to Chapter 3107. or 5103. of the Revised Code; **third party employed by a public children services agency to assist in providing child or family related services;** court appointed special advocate; or **guardian ad litem.**

...

(B) **Anyone who knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar circumstances to suspect,** that a child under eighteen years of age, or a person under twenty-one years of age with a developmental disability or physical impairment, has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child **may report** or cause reports to be made of that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the public children services agency or to a municipal or county peace officer. In the circumstances described in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the entity specified in that section.

(C) **Any report** made pursuant to division (A) or (B) of this section shall be made forthwith either by telephone or in person and **shall be followed by a written report,** if requested by the receiving agency or officer. The written report shall contain:

- (1) The names and addresses of the child and the child's parents or the person or persons having custody of the child, if known;

- (2) The child's age and the nature and extent of the child's injuries, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist, including any evidence of previous injuries, abuse, or neglect;
- (3) Any other information, including, but not limited to, results and reports of any medical examinations, tests, or procedures performed under division (D) of this section, that might be helpful in establishing the cause of the injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist.
- (D) (1) **Any person, who is required by division (A) of this section to report child abuse or child neglect that is known or reasonably suspected or believed to have occurred, may take or cause to be taken color photographs of areas of trauma visible on a child** and, if medically necessary for the purpose of diagnosing or treating injuries that are suspected to have occurred as a result of child abuse or child neglect, perform or cause to be performed radiological examinations and any other medical examinations of, and tests or procedures on, the child.
- (2) The results and any available reports of examinations, tests, or procedures made under division (D)(1) of this section shall be included in a report made pursuant to division (A) of this section. Any additional reports of examinations, tests, or procedures that become available shall be provided to the public children services agency, upon request.
- ...
- (E) (1) When a municipal or county peace officer receives a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, upon receipt of the report, the municipal or county peace officer who receives the report shall refer the report to the appropriate public children services agency.

(2) When a public children services agency receives a report pursuant to this division or division (A) or (B) of this section, upon receipt of the report, the public children services agency shall do both of the following:

(a) Comply with section 2151.422 of the Revised Code [the public children services agency shall determine whether the child subject to the report is living in a shelter for victims of domestic violence or a homeless shelter and whether the child was brought to that shelter pursuant to an agreement with a shelter in another county. If the child is living in a shelter and was brought there from another county, the agency shall immediately notify the public children services agency of the county from which the child was brought of the report and all the information contained in the report];

(b) If the county served by the agency is also served by a children's advocacy center and the report alleges sexual abuse of a child or another type of abuse of a child that is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, comply regarding the report with the protocol and procedures for referrals and investigations, with the coordinating activities, and with the authority or responsibility for performing or providing functions, activities, and services stipulated in the interagency agreement entered into under section 2151.428 of the Revised Code relative to that center.

(F) No township, municipal, or county peace officer shall remove a child about whom a report is made pursuant to this section from the child's parents, stepparents, or guardian or any other persons having custody of the child without consultation with the public children services agency, unless, in the judgment of the officer, and, if the report was made by physician, the physician, immediate removal is considered essential to protect the child from further abuse or neglect. The agency that must be consulted shall be the agency conducting the investigation of the report as determined pursuant to section 2151.422 of the Revised Code.

- (G) (1) Except as provided in section 2151.422 of the Revised Code or in an interagency agreement entered into under section 2151.428 of the Revised Code that applies to the particular report, **the public children services agency shall investigate, within twenty-four hours, each report of child abuse or child neglect that is known or reasonably suspected or believed to have occurred and of a threat of child abuse or child neglect that is known or reasonably suspected or believed to exist that is referred to it under this section to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible.** The investigation shall be made in cooperation with the law enforcement agency and in accordance with the memorandum of understanding prepared under division (K) of this section. **A representative of the public children services agency shall, at the time of initial contact with the person subject to the investigation, inform the person of the specific complaints or allegations made against the person. The information shall be given in a manner that is consistent with division (I)(1) of this section and protects the rights of the person making the report under this section.**

A failure to make the investigation in accordance with the memorandum is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from the report or the suppression of any evidence obtained as a result of the report and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person. **The public children services agency shall report each case to the uniform statewide automated child welfare information system that the department of job and family services shall maintain in accordance with section 5101.13 of the Revised Code. The public children services agency shall submit a report of its investigation, in writing, to the law enforcement agency.**

(2) The public children services agency shall make any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention.

- (H) (1) (a) Except as provided in divisions (H)(1)(b) and (I)(3) of this section, any person, health care professional, hospital, institution, school, health department, or **agency shall be immune from any civil or criminal liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of any of the following:**
- (i) Participating in the making of reports pursuant to division (A) of this section or in the making of reports in good faith, pursuant to division (B) of this section;
 - (ii) Participating in medical examinations, tests, or procedures under division (D) of this section;
 - (iii) Providing information used in a report made pursuant to division (A) of this section or providing information in good faith used in a report made pursuant to division (B) of this section;
 - (iv) Participating in a judicial proceeding resulting from a report made pursuant to division (A) of this section or participating in good faith in a proceeding resulting from a report made pursuant to division (B) of this section.
- ...
- (2) In any civil or criminal action or proceeding in which it is alleged and proved that participation in the making of a report under this section was not in good faith or participation in a judicial proceeding resulting from a report made under this section was not in good faith, the court shall award the prevailing party reasonable attorney's fees and costs and, if a civil action or proceeding is voluntarily dismissed, may award reasonable attorney's fees and costs to the party against whom the civil action or proceeding is brought.
- (I) (1) Except as provided in divisions (I)(4) and (O) of this section, **a report made under this section is confidential.** The information provided in a report made pursuant to this section and the name of the person

who made the report shall not be released for use, and shall not be used, as evidence in any civil action or proceeding brought against the person who made the report. Nothing in this division shall preclude the use of reports of other incidents of known or suspected abuse or neglect in a civil action or proceeding brought pursuant to division (N) of this section against a person who is alleged to have violated division (A)(1) of this section, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker of the report is not the defendant or an agent or employee of the defendant, has been redacted. In a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure.

- (2) (a) Except as provided in division (I)(2)(b) of this section, **no person shall permit or encourage the unauthorized dissemination of the contents of any report made under this section.**

...

- (3) A person who knowingly makes or causes another person to make a false report under division (B) of this section that alleges that any person has committed an act or omission that resulted in a child being an abused child or a neglected child is guilty of a violation of section 2921.14 of the Revised Code.

...

- (5) A public children services agency shall advise a person alleged to have inflicted abuse or neglect on a child who is the subject of a report made pursuant to this section, including a report alleging sexual abuse of a child or another type of abuse of a child referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, in writing of the disposition of the investigation. The agency shall not provide to the person any information that identifies the person who made the report, statements of witnesses, or police or other investigative reports.

(J) Any report that is required by this section, other than a report that is made to the state highway patrol as described in section 5120.173 of the Revised Code, shall result in protective services and emergency supportive services being made available by the public children services agency on behalf of the children about whom the report is made, in an effort to prevent further neglect or abuse, to enhance their welfare, and, whenever possible, to preserve the family unit intact. The agency required to provide the services shall be the agency conducting the investigation of the report pursuant to section 2151.422 of the Revised Code.

...

(L) (1) Except as provided in division (L)(4) or (5) of this section, **a person who is required to make a report pursuant to division (A) of this section may make a reasonable number of requests of the public children services agency that receives or is referred the report, or** of the children's advocacy center that is referred the report if the report is referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, **to be provided with the following information:**

(a) Whether the agency or center has initiated an investigation of the report;

(b) Whether the agency or center is continuing to investigate the report;

(c) Whether the agency or center is otherwise involved with the child who is the subject of the report;

(d) The general status of the health and safety of the child who is the subject of the report;

(e) Whether the report has resulted in the filing of a complaint in juvenile court or of criminal charges in another court.

(2) A person may request the information specified in division (L)(1) of this section only if, at the time the report is made, the person's name,

address, and telephone number are provided to the person who receives the report.

When a municipal or county peace officer or employee of a public children services agency receives a report pursuant to division (A) or (B) of this section the recipient of the report shall inform the person of the right to request the information described in division (L)(1) of this section. The recipient of the report shall include in the initial child abuse or child neglect report that the person making the report was so informed and, if provided at the time of the making of the report, shall include the person's name, address, and telephone number in the report.

Each request is subject to verification of the identity of the person making the report. If that person's identity is verified, the agency shall provide the person with the information described in division (L)(1) of this section a reasonable number of times, except that the agency shall not disclose any confidential information regarding the child who is the subject of the report other than the information described in those divisions.

(3) A request made pursuant to division (L)(1) of this section is not a substitute for any report required to be made pursuant to division (A) of this section.

(4) If an agency other than the agency that received or was referred the report is conducting the investigation of the report pursuant to section 2151.422 of the Revised Code, the agency conducting the investigation shall comply with the requirements of division (L) of this section.

...

(M) The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The department of job and family services may enter into a plan of cooperation with any other governmental entity to aid in ensuring that children are protected from abuse and neglect. The department shall make recommendations to the attorney general that the department determines are necessary to protect children from child abuse and child neglect.

(N) Whoever violates division (A) of this section is liable for compensatory and exemplary damages to the child who would have been the subject of the report that was not made. A person who brings a civil action or proceeding pursuant to this division against a person who is alleged to have violated division (A)(1) of this section may use in the action or proceeding reports of other incidents of known or suspected abuse or neglect, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker is not the defendant or an agent or employee of the defendant, has been redacted.

(O)

...

(2) No later than the end of the day following the day on which a public children services agency receives a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall provide written notice of the allegations contained in and the person named as the alleged perpetrator in the report to the administrator, director, or other chief administrative officer of the out-of-home care entity that is the subject of the report unless the administrator, director, or other chief administrative officer is named as an alleged perpetrator in the report. If the administrator, director, or other chief administrative officer of an out-of-home care entity is named as an alleged perpetrator in a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved the out-of-home care entity, the agency shall provide the written notice to the owner or governing board of the out-of-home care entity that is the subject of the report. The agency shall not provide witness statements or police or other investigative reports.

(3) No later than three days after the day on which a public children services agency that conducted the investigation as determined pursuant to section 2151.422 of the Revised Code makes a disposition of an investigation involving a report of alleged child abuse or child

neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall send written notice of the disposition of the investigation to the administrator, director, or other chief administrative officer and the owner or governing board of the out-of-home care entity. The agency shall not provide witness statements or police or other investigative reports.

(P) As used in this section:

...

(3) "Investigation" means the public children services agency's response to an accepted report of child abuse or neglect through either an alternative response or a traditional response.

Amended by 131st General Assembly File No. TBD, HB 493, §1, eff. 3/14/2017.

Amended by 131st General Assembly File No. TBD, HB 158, §1, eff. 10/12/2016.

Amended by 130th General Assembly File No. TBD, HB 213, §1, eff. 9/29/2015.

Effective Date: 01-30-2004; 09-16-2004; 04-11-2005; 05-06-2005; 08-03-2006; 09-21-2006; 2008 HB314 06-20-2008; 2008 SB163 08-14-2008; 2008 HB280 04-07-2009 .

SECTION III: STATUTES AND REGULATION REGARDING TAKING CHILDREN INTO CUSTODY

The Emergency Custody Statute

The general rule is that, after taking a child into custody, you have 24 hours to initiate proceedings (file a complaint).

O.R.C. § 2151.31 Taking child into custody. (emphasis added)

(A) **A child may be taken into custody** in any of the following ways:

- (1) Pursuant to an **order of the court . . .** ;
- (2) Pursuant to the laws of arrest;
- (3) **By a law enforcement officer or duly authorized officer of the court when** any of the following conditions are present:
 - (a) **There are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care**, as described in section [2151.03](#) of the Revised Code, **and** the child's removal is **necessary to prevent immediate or threatened physical or emotional harm**;
 - (b) There are reasonable grounds to believe that the **child is in immediate danger** from the child's surroundings **and** that the child's removal **is necessary to prevent immediate or threatened physical or emotional harm**;
 - (c) There are reasonable grounds to believe that a parent, guardian, custodian, or other household member of the child's household has **abused or neglected another child** in the household **and** to **believe that the child is in danger of immediate or threatened physical or emotional harm from that person**.

(6) By a law enforcement officer or duly authorized officer of the court when any of the following apply:

(a) **There are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child.**

(C) (1) Except as provided in division (C)(2) of this section, a **child taken into custody shall not be confined in a place of juvenile detention or placed in shelter care prior to the implementation of the court's final order of disposition, unless detention or shelter care is required to protect the child from immediate or threatened physical or emotional harm**, because the child is a danger or threat to one or more other persons and is charged with violating a section of the Revised Code that may be violated by an adult, because the child may abscond or be removed from the jurisdiction of the court, because the child has no parents, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or because an order for placement of the child in detention or shelter care has been made by the court pursuant to this chapter.

(2) A child alleged to be a delinquent child who is taken into custody may be confined in a place of juvenile detention prior to the implementation of the court's final order of disposition if the confinement is authorized under section 2152.04 of the Revised Code or if the child is alleged to be a serious youthful offender under section 2152.13 of the Revised Code and is not released on bond.

(D) **Upon receipt of notice** from a person that the person intends to take an alleged abused, neglected, or dependent child into custody pursuant to division (A)(3) of this section, **a juvenile judge** or a designated referee **may grant by telephone an ex parte emergency order authorizing the taking of the child into custody** if there is probable cause to believe that any of the conditions set forth in divisions (A)(3)(a) to (c) of this section are present. The judge or referee shall journalize any ex parte emergency order issued

pursuant to this division. If an order is issued pursuant to this division and the child is taken into custody pursuant to the order, a sworn complaint shall be filed with respect to the child before the end of the next business day after the day on which the child is taken into custody and a hearing shall be held pursuant to division (E) of this section and the Juvenile Rules. **A juvenile judge or referee shall not grant an emergency order by telephone pursuant to this division until after the judge or referee determines that reasonable efforts have been made to notify the parents, guardian, or custodian of the child that the child may be placed into shelter care and of the reasons for placing the child into shelter care, except that, if the requirement for notification would jeopardize the physical or emotional safety of the child or result in the child being removed from the court's jurisdiction, the judge or referee may issue the order for taking the child into custody and placing the child into shelter care prior to giving notice to the parents, guardian, or custodian of the child.**

(E) If a judge or referee pursuant to division (D) of this section issues an ex parte emergency order for taking a child into custody, **the court shall hold a hearing to determine whether there is probable cause for the emergency order. The hearing shall be held before the end of the next business day after the day on which the emergency order is issued,** except that it shall not be held later than seventy-two hours after the emergency order is issued.

If the court determines at the hearing that there is not probable cause for the issuance of the emergency order issued pursuant to division (D) of this section, it shall order the child released to the custody of the child's parents, guardian, or custodian. If the court determines at the hearing that there is probable cause for the issuance of the emergency order issued pursuant to division (D) of this section, the court shall do all of the following:

- (1) Ensure that a complaint is filed or has been filed;
- (2) Comply with section 2151.419 of the Revised Code;
- (3) Hold a hearing pursuant to section 2151.314 of the Revised Code to determine if the child should remain in shelter care.

(F) If the court determines at the hearing held pursuant to division (E) of this section that there is probable cause to believe that the child is an abused child, as defined in division (A) of section 2151.031 of the Revised Code, the court may do any of the following:

(1) Upon the motion of any party, the guardian ad litem, the prosecuting attorney, or an employee of the public children services agency, or its own motion, issue reasonable protective orders with respect to the interviewing or deposition of the child;

(2) Order that the child's testimony be videotaped for preservation of the testimony for possible use in any other proceedings in the case;

(3) Set any additional conditions with respect to the child or the case involving the child that are in the best interest of the child.

(G) This section is not intended, and shall not be construed, to prevent any person from taking a child into custody, if taking the child into custody is necessary in an emergency to prevent the physical injury, emotional harm, or neglect of the child.

Effective Date: 05-16-2002

O.R.C. § 2151.311 Procedure upon taking a child into custody.

(A) A person taking a child into custody shall, with all reasonable speed and in accordance with division (C) of this section, either:

(1) Release the child to the child's parents, guardian, or other custodian, unless the child's detention or shelter care appears to be warranted or required as provided in section 2151.31 of the Revised Code;

(2) Bring the child to the court or deliver the child to a place of detention or shelter care designated by the court and promptly give notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court.

(B) If a parent, guardian, or other custodian fails, when requested by the court, to bring the child before the court as provided by this section, the court may issue its warrant directing that the child be taken into custody and brought before the court.

Amended by 131st General Assembly File No. TBD, HB 410, §1, eff. 4/6/2017.

Amended by 130th General Assembly File No. TBD, SB 143, §1, eff. 9/19/2014.

Effective Date: 01-01-2002

O.A.C § 5101:2-39-01 Removal of a child from the child's own home.

(A) If the public children services agency (PCSA) or private child placing agency (PCPA) has determined a child cannot be maintained safely through the implementation of voluntary safety planning, the PCSA or PCPA shall pursue removal of the child from the home.

(B) If a child has Indian heritage, tribal eligibility or tribal membership and is removed from the child's own home, the PCSA or PCPA shall act in accordance with procedures outlined in rules 5101:2-53-03 and 5101:2-53-06 of the Administrative Code.

(C) If removal of a child from the home is necessary, as determined by the PCSA or PCPA, the agency shall do one of the following:

(1) **File a complaint** with the juvenile court with a motion requesting removal of the child.

(a) Provide the court with **documentation of the provision of reasonable efforts** to prevent removal or documentation identifying reasonable efforts are not required pursuant to paragraph (L) of this rule.

(b) Request the court make a determination of one of the following:

(i) Reasonable efforts to prevent removal were made through the provision of supportive services.

(ii) Reasonable efforts were not possible due to the urgent nature of the child's removal.

(iii) Reasonable efforts were not required pursuant to paragraph (L) of this rule.

(2) **Petition the court for an ex parte emergency order** authorizing the continued placement of the child within twenty-four hours or the next business day from the date of the child's removal from the home.

(3) **Request the assistance of a law enforcement officer or a duly authorized officer of the court**, if exigent circumstances requiring immediate intervention exist, and time does not permit obtaining a court order.

(D) Upon removal of the child, the PCSA or PCPA shall provide the child if age and developmentally appropriate and the child's parent, guardian, or custodian with the following information verbally and in writing:

(1) Reason for the removal.

(2) PCSA or PCPA name, telephone number, address, and name of person to contact regarding the case.

(3) Visitation schedule prior to a journalized case plan, inclusive of sibling visitation if not placed together.

(4) Time and place of court hearings, if applicable.

(5) The name and telephone number of the employee designated by the court to provide the appointment of counsel to a parent, guardian, or custodian who cannot afford to hire an attorney if known.

(E) In the absence of the parent, guardian, or custodian, the PCSA or PCPA shall provide or attempt to provide the parent, guardian, or custodian with the information stated in paragraph (D) of this rule within twenty-four hours of the removal.

(F) The PCSA or PCPA shall make reasonable efforts to place siblings in the same foster home, kinship home, or adoptive placement unless the PCSA or PCPA has documented that joint placement would be contrary to the safety or well-being of any of the siblings.

(G) If siblings are not placed together the PCSA or PCPA shall do one of the following:

(1) Develop a written visitation plan pursuant to rule 5101:2-38-05 of the Administrative Code.

(2) Develop a written visitation plan pursuant to rule 5101:2-38-07 of the Administrative Code.

(H) The PCSA or PCPA shall do all of the following within thirty days after removal of a child from his or her parent, guardian or custodian:

(1) Exercise due diligence in identifying the following relatives:

(a) All maternal and paternal grandparents.

(b) Other adult relatives of the child.

(c) Any adult relatives suggested by the child's parents.

(d) A parent who has legal custody of the child's sibling including blood, half-blood or adoption.

(2) Provide notice to all adult relatives identified in paragraphs (H)(1)(a) to (H)(1)(d) of this rule specifying all of the following and documenting the date and method of notification in the case record in accordance with rule 5101:2-33-23 of the Administrative Code:

(a) The child has been or is being removed from the parents' custody.

(b) The options the relative has to participate in the care and placement of the child including any options that may be lost by failing to respond to the notice.

(c) The requirements to become a licensed foster home and the additional services and supports available for children placed in a foster home.

(3) Document in the case record if any adult relative identified pursuant to paragraph (H)(1) of this rule has a history of family violence. The PCSA or PCPA is not required to notify adult relatives with a history of family violence pursuant to paragraph (H)(2) of this rule.

(4) Assess relative respondents pursuant to rule 5101:2-42-18 or 5101:2-52-04 of the Administrative Code to determine whether or not placement is approved. Upon placement of the child with an approved relative, the PCSA or PCPA is not required to assess any other relative respondent; but shall keep a recorded list of the identified adult relatives in the case record.

(I) Nothing in paragraph (H) of this rule shall preclude the PCSA or PCPA from identifying and notifying relatives or kin not expressly identified in paragraph (H) (1) of this rule, that the child has been or is being removed from the parents' custody.

(J) At any hearing on the continued placement of the child, the PCSA or PCPA shall provide the court with documentation and request the court make a determination of one of the following:

(1) Reasonable efforts have been made and continue to be made to make it possible for the child to safely return home through the provision of supportive services.

(2) Reasonable efforts were made and continuation of reasonable efforts to make it possible for the child to safely return home is inconsistent with the permanency plan for the child.

(K) The PCSA or PCPA shall provide the court with documentation and request the court make a judicial determination that reasonable efforts have been made to finalize the permanency plan in accordance with rule 5101:2-47-22 of the Administrative Code.

(L) Reasonable efforts to prevent removal or to return the child home are not required if the PCSA or PCPA finds the parent from whom the child was removed has:

(1) Been convicted of or pleaded guilty to one of the following:

(a) An offense under section 2903.01 [aggravated murder], 2903.02 [murder], or 2903.03 [involuntary manslaughter] of the Revised Code or under an existing or former law of this state, another state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;

(b) An offense under section 2903.11 [felonious assault] , 2903.12 [aggravated assault], or 2903.13 [assault] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(c) An offense under division (B)(2) of section 2919.22 [child endangering] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;

(d) An offense under section 2907.02 [rape], 2907.03 [sexual battery], 2907.04 [unlawful sexual conduct with a minor], 2907.05 [gross sexual imposition], or 2907.06 [sexual; imposition] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(e) An offense under section 2905.32 [trafficking in persons], 2907.21 [compelling prostitution], and 2907.22 [promoting prostitution] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;

(f) A conspiracy or attempt to commit, or complicity to committing, an offense described in paragraph (L)(1)(a), (L)(1)(d), or (L)(1)(e) of this rule.

(2) **Been required to register with a sex offender registry** in accordance with section 113(a) of the Adam Walsh Child Protection and Safety Act of 2006.

(3) **Repeatedly withheld medical treatment or food from the child** if the parent has the means to provide the treatment or food. If the parent withholds medical treatment in order to treat the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body, the agency shall comply with the requirements of division (A)(1) of section 2151.419 of the Revised Code.

(4) **Placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and rejects treatment two or more times or refuses to participate in further treatment two or more**

times after a case plan is developed pursuant to rule 5101:2-38-07 or 5101:2-38-05 of the Administrative Code requiring treatment of the parent and is journalized as part of a dispositional order issued with respect to the child or an order is issued by any other court requiring such treatment of the parent.

(5) **Abandoned the child.**

(6) **Had parental rights terminated** pursuant to section 2151.353, 2151.414, or 2151.415 of the Revised Code with respect to a sibling of the child.

(7) **Deserted the child** pursuant to section 2151.3515 of the Revised Code.

(M) If the PCSA or PCPA removes a child from the home due to abuse, neglect or dependency and the family is a participant in Ohio works first (OWF), the PCSA or PCPA shall notify the county department of job and family services (CDJFS) of the child's removal according to procedures contained in the OWF county plan of cooperation.

(N) At the end of each month for the first five months after the PCSA or PCPA takes the child into custody, the agency shall provide the CDJFS with the following information:

(1) Whether or not the parent, guardian, or custodian is cooperating with the case plan prepared pursuant to rule 5101:2-38-05 or 5101:2-38-07 of the Administrative Code.

(2) Whether or not the PCSA or PCPA is making reasonable efforts to return the child to the home of the OWF assistance group.

(O) **The PCSA or PCPA shall document all activities, notifications and copies of court documents required by this rule in the case record.**

Effective: 7/15/2016

O.R.C. § 2151.419 Court's determination as to whether agency made reasonable efforts to prevent removal or to return child safely home.

(A) (1) Except as provided in division (A)(2) of this section, **at any hearing held pursuant to section 2151.28, division (E) of section 2151.31, or section 2151.314, 2151.33, or 2151.353 of the Revised Code at which the court removes a child from the child's home or continues the removal of a child from the child's home, the court shall determine whether the public children services agency or private child placing agency that filed the complaint in the case, removed the child from home, has custody of the child, or will be given custody of the child has made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home. The agency shall have the burden of proving that it has made those reasonable efforts.** If the agency removed the child from home during an emergency in which the child could not safely remain at home and the agency did not have prior contact with the child, the court is not prohibited, solely because the agency did not make reasonable efforts during the emergency to prevent the removal of the child, from determining that the agency made those reasonable efforts. **In determining whether reasonable efforts were made, the child's health and safety shall be paramount.**

(2) If any of the following apply, the court shall make a determination that the 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:

(a) The parent from whom the child was removed has been convicted of or pleaded guilty to one of the following:

(i) An offense under section 2903.01 [aggravated murder], 2903.02 [murder], or 2903.03 [involuntary manslaughter] of the Revised Code or under an existing or former law of this state, any other state, or the United

States that is substantially equivalent to an offense described in those sections and **the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;**

(ii) An offense under section 2903.11 [**felonious assault**], 2903.12 [**aggravated assault**], or 2903.13 [**assault**] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections **and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;**

(iii) An offense under division (B)(2) of section 2919.22 [**child endangering**] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section **and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;**

(iv) An offense under section 2907.02 [**rape**], 2907.03 [**sexual battery**], 2907.04 [**unlawful sexual conduct with a minor**], 2907.05 [**gross sexual imposition**], or 2907.06 [**sexual imposition**] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections **and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;**

(v) An offense under section 2905.32 [**trafficking in persons**], 2907.21 [**compelling prostitution**], or 2907.22 [**promoting prostitution**] of the Revised Code or under an existing or former law of this state, any other state, or

the United States that is substantially equivalent to the offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(vi) A conspiracy or **attempt to commit**, or complicity in committing, **an offense described in division (A)(2)(a)(i), (iv), or (v) of this section.**

(b) **The parent from whom the child was removed has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food.** If the parent has withheld medical treatment in order to treat the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body, the court or agency shall comply with the requirements of division (A)(1) of this section.

(c) The parent from whom the child was removed has **placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued** pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring such treatment of the parent.

(d) The parent from whom the child was removed has **abandoned the child.**

(e) The parent from whom the child was removed has had **parental rights involuntarily terminated with respect to a sibling of the child** pursuant to section 2151.353 [2151.35.3], 2151.414 [2151.41.4], or 2151.415 [2151.41.5] of the Revised Code or under an existing or former law of this state, any other

state, or the United States that is substantially equivalent to those sections.

*Amended by 130th General Assembly File No. TBD, HB 130, §1, eff. 6/20/2014.
Effective Date: 10-29-1999; 2008 SB163 08-14-2008*

O.R.C. § 2151.314 Hearing on detention or shelter care.

(A) When a child is brought before the court or delivered to a place of detention or shelter care designated by the court, the intake or other authorized officer of the **court shall immediately make an investigation and shall release the child unless** it appears that the child's detention or **shelter care is warranted** or required under section [2151.31](#) of the Revised Code.

If the child is not so released, **a complaint** under section [2151.27](#) or [2152.021](#) or an information under section [2152.13](#) of the Revised Code **shall be filed . . . and an informal detention or shelter care hearing held promptly, not later than seventy-two hours after the child is placed in detention or shelter care, to determine whether detention or shelter care is required. Reasonable oral or written notice** of the time, place, and purpose of the detention or shelter care hearing shall be given to the child and, if they can be found, to the child's parents, guardian, or custodian. **In cases in which the complaint alleges a child to be an abused, neglected, or dependent child, the notice given the parents, guardian, or custodian shall inform them that a case plan may be prepared for the child, the general requirements usually contained in case plans, and the possible consequences of the failure to comply with a journalized case plan.**

Prior to the hearing, the court **shall inform the parties of their right to counsel and to appointed counsel** or to the services of the county public defender or joint county public defender, if they are indigent, of the child's right to remain silent with respect to any allegation of delinquency, and of the name and telephone number of a court employee who can be contacted during the normal business hours of the court to arrange for the prompt appointment of counsel for any party who is indigent. Unless it appears from the hearing that the child's detention or shelter care is required under the

provisions of section [2151.31](#) of the Revised Code, the court shall order the child's release as provided by section [2151.311](#) of the Revised Code. If a parent, guardian, or custodian has not been so notified and did not appear or waive appearance at the hearing, upon the filing of an affidavit stating these facts, the court shall rehear the matter without unnecessary delay.

(B) When the court conducts a hearing pursuant to division (A) of this section, all of the following apply:

(1) The court shall determine whether an alleged abused, neglected, or dependent child should remain or be placed in shelter care;

(2) The court shall determine whether there are any relatives of the child who are willing to be temporary custodians of the child. If any relative is willing to be a temporary custodian, the child would otherwise be placed or retained in shelter care, and the appointment is appropriate, the court shall appoint the relative as temporary custodian of the child, unless the court appoints another relative as temporary custodian. If it determines that the appointment of a relative as custodian would not be appropriate, it shall issue a written opinion setting forth the reasons for its determination and give a copy of the opinion to all parties and to the guardian ad litem of the child.

The court's consideration of a relative for appointment as a temporary custodian does not make that relative a party to the proceedings.

(3) The court shall comply with section [2151.419](#) of the Revised Code.

(C) If a child is in shelter care following the filing of a complaint pursuant to section [2151.27](#) or [2152.021](#) of the Revised Code, the filing of an information, or the obtaining of an indictment or following a hearing held pursuant to division (A) of this section, any party, including the public children services agency, and the guardian ad litem of the child may file a motion with the court requesting that the child be released from shelter care. The motion shall state the reasons why the child should be released from shelter care and, if a hearing has been held pursuant to division (A) of this section, any changes in the situation of the child or the parents, guardian, or custodian of the child that have occurred since that hearing and that justify the release of

the child from shelter care. Upon the filing of the motion, the court shall hold a hearing in the same manner as under division (A) of this section.

Effective Date: 07-05-2002

O.R.C. § 2151.353 Orders of disposition of abused, neglected or dependent child.

(A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

(1) Place the child in protective supervision;

(2) Commit the child to the temporary custody of any of the following:

- (a) A public children services agency;
- (b) A private child placing agency;
- (c) Either parent;
- (d) A relative residing within or outside the state;
- (e) A probation officer for placement in a certified foster home ;
- (f) Any other person approved by the court.

(3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. A person identified in a complaint or motion filed by a party to the proceedings as a proposed legal custodian shall be awarded legal custody of the child only if the person identified signs a statement of understanding for legal custody that contains at least the following provisions:

- (a) That it is the intent of the person to become the legal custodian of the child and the person is able to assume legal responsibility for the care and supervision of the child;
- (b) That the person understands that legal custody of the child in question is intended to be permanent in nature and that the person will be responsible as the custodian for the child until the child reaches the age of majority. Responsibility as custodian for the child shall continue beyond the age of majority if, at the time the child reaches the age of majority, the child is pursuing a diploma granted by the board of education or other governing authority, successful completion of the curriculum of

any high school, successful completion of an individualized education program developed for the student by any high school, or an age and schooling certificate. Responsibility beyond the age of majority shall terminate when the child ceases to continuously pursue such an education, completes such an education, or is excused from such an education under standards adopted by the state board of education, whichever occurs first.

(c) That the parents of the child have residual parental rights, privileges, and responsibilities, including, but not limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support;

(d) That the person understands that the person must be present in court for the dispositional hearing in order to affirm the person's intention to become legal custodian, to affirm that the person understands the effect of the custodianship before the court, and to answer any questions that the court or any parties to the case may have.

(4) Commit the child to the permanent custody of a public children services agency or private child placing agency, if the court determines in accordance with division (E) of section 2151.414 of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D)(1) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child. If the court grants permanent custody under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding.

(5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if a public children services agency or private child placing agency requests the court to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence,

that a planned permanent living arrangement is in the best interest of the child, that the child is sixteen years of age or older, and that one of the following exists:

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to section 2151.35 of the Revised Code.

(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D)(1) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.

(c) The child has been counseled on the permanent placement options available to the child, and is unwilling to accept or unable to adapt to a permanent placement.

(6) Order the removal from the child's home until further order of the court of the person who committed abuse as described in section 2151.031 of the Revised Code against the child, who caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child's siblings.

(B) (1) When making a determination on whether to place a child in a planned permanent living arrangement pursuant to division (A)(5)(b) or (c) of this section, the court shall consider all relevant information that has been presented to the court, including information gathered from the child, the child's guardian ad litem, and the public children services agency or private child placing agency.

(2) A child who is placed in a planned permanent living arrangement pursuant to division (A)(5)(b) or (c) of this section shall be placed in an independent living setting or in a family setting in which the caregiver has been provided by the agency that has custody of the child with a notice that addresses the following:

(a) The caregiver understands that the planned permanent living arrangement is intended to be permanent in nature and that

the caregiver will provide a stable placement for the child through the child's emancipation or until the court releases the child from the custody of the agency, whichever occurs first.

(b) The caregiver is expected to actively participate in the youth's independent living case plan, attend agency team meetings and court hearings as appropriate, complete training, as provided in division (B) of section 5103.035 of the Revised Code, related to providing the child independent living services, and assist in the child's transition into adulthood.

(3) The department of job and family services shall develop a model notice to be provided by an agency that has custody of a child to a caregiver under division (B)(2) of this section. The agency may modify the model notice to apply to the needs of the agency.

(C) No order for permanent custody or temporary custody of a child or the placement of a child in a planned permanent living arrangement shall be made pursuant to this section unless the complaint alleging the abuse, neglect, or dependency contains a prayer requesting permanent custody, temporary custody, or the placement of the child in a planned permanent living arrangement as desired, **the summons served on the parents of the child contains as is appropriate a full explanation that the granting of an order for permanent custody permanently divests them of their parental rights, a full explanation that an adjudication that the child is an abused, neglected, or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests the parents of their parental rights, or a full explanation that the granting of an order for a planned permanent living arrangement will result in the removal of the child from their legal custody** if any of the conditions listed in divisions (A)(5)(a) to (c) of this section are found to exist, and the summons served on the parents contains a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent.

If after making disposition as authorized by division (A)(2) of this section, a motion is filed that requests permanent custody of the child, the court may grant permanent custody of the child to the movant in accordance with section 2151.414 of the Revised Code.

(D) If the court issues an order for protective supervision pursuant to division (A)(1) of this section, the court may place any reasonable restrictions upon the child, the child's parents, guardian, or custodian, or any other person, including, but not limited to, any of the following:

- (1) Order a party, within forty-eight hours after the issuance of the order, to vacate the child's home indefinitely or for a specified period of time;
- (2) Order a party, a parent of the child, or a physical custodian of the child to prevent any particular person from having contact with the child;
- (3) Issue an order restraining or otherwise controlling the conduct of any person which conduct would not be in the best interest of the child.

(E) As part of its dispositional order, the court shall journalize a case plan for the child. The journalized case plan shall not be changed except as provided in section 2151.412 of the Revised Code.

- (F) (1) The court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section or pursuant to section 2151.414 or 2151.415 of the Revised Code until the child attains the age of eighteen years if the child is not mentally retarded, developmentally disabled, or physically impaired, the child attains the age of twenty-one years if the child is mentally retarded, developmentally disabled, or physically impaired, or the child is adopted and a final decree of adoption is issued, except that the court may retain jurisdiction over the child and continue any order of disposition under division (A) of this section or under section 2151.414 or 2151.415 of the Revised Code for a specified period of time to enable the child to graduate from high school or vocational school. The court shall retain jurisdiction over a person who meets the requirements described in division (A)(1) of section 5101.1411 of the Revised Code and who is subject to a voluntary participation agreement that is in effect. The court shall make an entry continuing its jurisdiction under this division in the journal.
- (2) Any public children services agency, any private child placing agency, the department of job and family services, or any party, other than any parent whose parental rights with respect to the child have been terminated pursuant to an order issued under division (A)(4) of

this section, by filing a motion with the court, may at any time request the court to modify or terminate any order of disposition issued pursuant to division (A) of this section or section 2151.414 or 2151.415 of the Revised Code. The court shall hold a hearing upon the motion as if the hearing were the original dispositional hearing and shall give all parties to the action and the guardian ad litem notice of the hearing pursuant to the Juvenile Rules. If applicable, the court shall comply with section 2151.42 of the Revised Code.

(G) Any temporary custody order issued pursuant to division (A) of this section shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, except that, upon the filing of a motion pursuant to section 2151.415 of the Revised Code, the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section. In resolving the motion, **the court shall not order an existing temporary custody order to continue beyond two years after the date on which the complaint was filed or the child was first placed into shelter care, whichever date is earlier, regardless of whether any extensions have been previously ordered** pursuant to division (D) of section 2151.415 of the Revised Code.

(H) (1) No later than one year after the earlier of the date the complaint in the case was filed or the child was first placed in shelter care, a party may ask the court to extend an order for protective supervision for six months or to terminate the order. A party requesting extension or termination of the order shall file a written request for the extension or termination with the court and give notice of the proposed extension or termination in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. If a public children services agency or private child placing agency requests termination of the order, the agency shall file a written status report setting out the facts supporting termination of the order at the time it files the request with the court. If no party requests extension or termination of the order, the court shall notify the parties that the court will extend the order for six months or terminate it and that it may do so without a hearing unless one of the parties requests a hearing. All parties and the guardian ad litem shall have seven days from the date a notice is sent pursuant to this division to object to and request a hearing on the proposed extension or termination.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall extend the order for six months.

(b) If it does not receive a timely request for a hearing, the court may extend the order for six months or terminate it without a hearing and shall journalize the order of extension or termination not later than fourteen days after receiving the request for extension or termination or after the date the court notifies the parties that it will extend or terminate the order. If the court does not extend or terminate the order, it shall schedule a hearing to be held no later than thirty days after the expiration of the applicable fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the child's guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall issue an order extending the order for protective supervision six months.

(2) If the court grants an extension of the order for protective supervision pursuant to division (H)(1) of this section, a party may, prior to termination of the extension, file with the court a request for an additional extension of six months or for termination of the order. The court and the parties shall comply with division (H)(1) of this section with respect to extending or terminating the order.

(3) If a court grants an extension pursuant to division (H)(2) of this section, **the court shall terminate the order for protective supervision at the end of the extension.**

(I) The court shall not issue a dispositional order pursuant to division (A) of this section that removes a child from the child's home unless the court complies with section 2151.419 of the Revised Code and includes in the dispositional order the findings of fact required by that section.

(J) If a motion or application for an order described in division (A)(6) of this section is made, the court shall not issue the order unless, prior to the issuance of the order, it provides to the person all of the following:

- (1) Notice and a copy of the motion or application;
- (2) The grounds for the motion or application;
- (3) An opportunity to present evidence and witnesses at a hearing regarding the motion or application;
- (4) An opportunity to be represented by counsel at the hearing.

(K) The jurisdiction of the court shall terminate one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, the date of the latest further action subsequent to the award, if the court awards legal custody of a child to either of the following:

- (1) A legal custodian who, at the time of the award of legal custody, resides in a county of this state other than the county in which the court is located;
- (2) A legal custodian who resides in the county in which the court is located at the time of the award of legal custody, but moves to a different county of this state prior to one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, one year after the date of the latest further action subsequent to the award.

The court in the county in which the legal custodian resides then shall have jurisdiction in the matter.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Effective Date: 01-01-2001; 04-11-2005; 09-21-2006; 2008 HB7 04-07-2009.

O.R.C. § 2151.415 Motion for order of disposition upon termination of temporary custody order.

(A) Except for cases in which a motion for permanent custody described in division (D)(1) of section 2151.413 of the Revised Code is required to be made, **a public children services agency or private child placing agency that has been given temporary custody of a child pursuant to section 2151.353 of the Revised Code, not later than thirty days prior to the**

earlier of the date for the termination of the custody order pursuant to division (H) of section 2151.353 of the Revised Code or the date set at the dispositional hearing for the hearing to be held pursuant to this section, shall file a motion with the court that issued the order of disposition requesting that any of the following orders of disposition of the child be issued by the court:

- (1) An order that the child be returned home and the custody of the child's parents, guardian, or custodian without any restrictions;**
- (2) An order for protective supervision;**
- (3) An order that the child be placed in the legal custody of a relative or other interested individual;**
- (4) An order permanently terminating the parental rights of the child's parents;**
- (5) An order that the child be placed in a planned permanent living arrangement;**
- (6) In accordance with division (D) of this section, an order for the extension of temporary custody.**

(B) Upon the filing of a motion pursuant to division (A) of this section, the court shall hold a dispositional hearing on the date set at the dispositional hearing held pursuant to section 2151.35 of the Revised Code, with notice to all parties to the action in accordance with the Juvenile Rules. After the dispositional hearing or at a date after the dispositional hearing that is not later than one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, the court, in accordance with the best interest of the child as supported by the evidence presented at the dispositional hearing, shall issue an order of disposition as set forth in division (A) of this section, except that all orders for permanent custody shall be made in accordance with sections 2151.413 and 2151.414 of the Revised Code. In issuing an order of disposition under this section, the court shall comply with section 2151.42 of the Revised Code.

- (C) **(1) If an agency pursuant to division (A) of this section requests the court to place a child into a planned permanent living arrangement, the agency shall present evidence to indicate why a planned permanent living arrangement is appropriate for the child, including, but not limited to, evidence that the agency has**

tried or considered all other possible dispositions for the child. A court shall not place a child in a planned permanent living arrangement, unless it finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child, that the child is sixteen years of age or older, and that one of the following exists:

- (a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care.
- (b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D)(1) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative;
- (c) The child has been counseled on the permanent placement options available, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing for independent living.

(2) If the court issues an order placing a child in a planned permanent living arrangement, both of the following apply:

- (a) The court shall issue a finding of fact setting forth the reasons for its finding;
- (b) **The agency may make any appropriate placement for the child and shall develop a case plan for the child that is designed to assist the child in finding a permanent home outside of the home of the parents.**

- (D) **(1) If an agency pursuant to division (A) of this section requests the court to grant an extension of temporary custody for a period of up to six months, the agency shall include in the motion an explanation of the progress on the case plan of the child and of its expectations of reunifying the child with the child's family, or placing the child in a permanent placement, within the extension period.** The court shall schedule a hearing on the motion, give notice of its date, time, and location to all parties and the guardian ad litem

of the child, and at the hearing consider the evidence presented by the parties and the guardian ad litem. The court may extend the temporary custody order of the child for a period of up to six months, if it determines at the hearing, by clear and convincing evidence, that the extension is in the best interest of the child, there has been significant progress on the case plan of the child, and there is reasonable cause to believe that the child will be reunified with one of the parents or otherwise permanently placed within the period of extension. In determining whether to extend the temporary custody of the child pursuant to this division, the court shall comply with section 2151.42 of the Revised Code. If the court extends the temporary custody of the child pursuant to this division, upon request it shall issue findings of fact.

(2) Prior to the end of the extension granted pursuant to division (D)(1) of this section, the agency that received the extension shall file a motion with the court requesting the issuance of one of the orders of disposition set forth in divisions (A)(1) to (5) of this section or requesting the court to extend the temporary custody order of the child for an additional period of up to six months. If the agency requests the issuance of an order of disposition under divisions (A)(1) to (5) of this section or does not file any motion prior to the expiration of the extension period, the court shall conduct a hearing in accordance with division (B) of this section and issue an appropriate order of disposition. In issuing an order of disposition, the court shall comply with section 2151.42 of the Revised Code.

If the agency requests an additional extension of up to six months of the temporary custody order of the child, the court shall schedule and conduct a hearing in the manner set forth in division (D)(1) of this section. The court may extend the temporary custody order of the child for an additional period of up to six months if it determines at the hearing, by clear and convincing evidence, that the additional extension is in the best interest of the child, there has been substantial additional progress since the original extension of temporary custody in the case plan of the child, there has been substantial additional progress since the original extension of temporary custody toward reunifying the child with one of the parents or otherwise permanently placing the child, and there is reasonable cause to believe that the child will be reunified with one of the parents

or otherwise placed in a permanent setting before the expiration of the additional extension period. In determining whether to grant an additional extension, the court shall comply with section 2151.42 of the Revised Code. If the court extends the temporary custody of the child for an additional period pursuant to this division, upon request it shall issue findings of fact.

(3) Prior to the end of the extension of a temporary custody order granted pursuant to division (D)(2) of this section, the agency that received the extension shall file a motion with the court requesting the issuance of one of the orders of disposition set forth in divisions (A)(1) to (5) of this section. Upon the filing of the motion by the agency or, if the agency does not file the motion prior to the expiration of the extension period, upon its own motion, the court, prior to the expiration of the extension period, shall conduct a hearing in accordance with division (B) of this section and issue an appropriate order of disposition. In issuing an order of disposition, the court shall comply with section 2151.42 of the Revised Code.

(4) No court shall grant an agency more than two extensions of temporary custody pursuant to division (D) of this section and the court shall not order an existing temporary custody order to continue beyond two years after the date on which the complaint was filed or the child was first placed into shelter care, whichever date is earlier, regardless of whether any extensions have been previously ordered pursuant to division (D) of this section.

(E) After the issuance of an order pursuant to division (B) of this section, the court shall retain jurisdiction over the child until the child attains the age of eighteen if the child does not have a developmental disability or physical impairment, the child attains the age of twenty-one if the child has a developmental disability or physical impairment, or the child is adopted and a final decree of adoption is issued, unless the court's jurisdiction over the child is extended pursuant to division (F) of section 2151.353 of the Revised Code.

(F) The court, on its own motion or the motion of the agency or person with legal custody of the child, the child's guardian ad litem, or any other party to the action, may conduct a hearing with notice to all parties to determine whether any order issued pursuant to this section should be modified or terminated or whether any other dispositional order set forth in divisions (A)(1) to (5) of this section should be issued. After the hearing and

consideration of all the evidence presented, the court, in accordance with the best interest of the child, may modify or terminate any order issued pursuant to this section or issue any dispositional order set forth in divisions (A)(1) to (5) of this section. In rendering a decision under this division, the court shall comply with section 2151.42 of the Revised Code.

(G) If the court places a child in a planned permanent living arrangement with a public children services agency or a private child placing agency pursuant to this section, the agency with which the child is placed in a planned permanent living arrangement shall not remove the child from the residential placement in which the child is originally placed pursuant to the case plan for the child or in which the child is placed with court approval pursuant to this division, unless the court and the guardian ad litem are given notice of the intended removal and the court issues an order approving the removal or unless the removal is necessary to protect the child from physical or emotional harm and the agency gives the court notice of the removal and of the reasons why the removal is necessary to protect the child from physical or emotional harm immediately after the removal of the child from the prior setting.

(H) If the hearing held under this section takes the place of an administrative review that otherwise would have been held under section 2151.416 of the Revised Code, the court at the hearing held under this section shall do all of the following in addition to any other requirements of this section:

- (1) Determine the continued necessity for and the appropriateness of the child's placement;
- (2) Determine the extent of compliance with the child's case plan;
- (3) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating the child's placement in foster care;
- (4) Project a likely date by which the child may be returned to the child's home or placed for adoption or legal guardianship;
- (5) Approve the permanency plan for the child consistent with section 2151.417 of the Revised Code.

Amended by 131st General Assembly File No. TBD, HB 158, §1, eff. 10/12/2016
Amended by 130th General Assembly File No. TBD, HB 213, §1, eff. 9/17/2014.

Effective Date: 10-29-1999; 2008 HB7 04-07-2009

SECTION IV: Statutes Related to Permanent Custody

A. Permanent Custody Summary

Summary of Language of Statutes Requesting Permanent Custody- When and on What Grounds

(O.R.C. § 2151.413 (effective 7-1-00; 2008 SB 163 08-4-2008),
§ 2151.414 (effective 10-12-16), § 2151.419 (effective 6-20-14).

1. **“Any agency that files a motion for permanent custody** under this section **shall include in the case plan** of the child who is the subject of the motion, **a specific plan of the agency's actions to seek an adoptive family for the child and to prepare the child for adoption”** [quoting O.R.C. § 2151.413(E)].
2. **When an agency may file a motion:**
 - a. **“A public children services agency** or private child placing agency **that ... is granted temporary custody** of a child who is not abandoned or orphaned **may file a motion** in the court that made the disposition of the child **requesting permanent custody** of the child. (If the child is abandoned or orphaned, the agency may file a motion whenever it can show that no relative of the child is able to take legal custody of the child.) [quoting O.R.C. § 2141.413(A) and (B)]
 - b. **“A public children services agency** or private child placing agency **that ... places a child in a planned permanent living arrangement may file a motion** in the court that made the disposition of the child **requesting permanent custody** of the child.” [quoting O.R.C. § 2151.413(C)]
3. **When an agency shall file a motion:** [quoting O.R.C. § 2151.413(D)]
 - a. **[I]f a child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period , the agency with**

custody shall file a motion requesting permanent custody of the child.... For the purposes of this division, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

- b. "Except as provided in division (D)(3) of this section, **if a court makes a determination** pursuant to division (A)(2) of section 2151.419 of the Revised Code [**that the 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**], the public children services agency or private child placing agency required to develop the permanency plan for the child under division (K) of section 2151.417 of the Revised Code shall file a motion in the court that made the determination requesting permanent custody of the child." [quoting O.R.C. § 2151.413(D)(2)(emphasis added)] [* See H, below]
- 4. "An agency **shall not file a motion for permanent custody ... if any of the following apply:** [quoting § 2151.413 (D)(3)(emphasis added)]
 - a. The agency documents in the case plan or permanency plan a **compelling reason that permanent custody is not in the best interest of the child.**
 - b. If **reasonable efforts to return the child to the child's home are required** under section 2151.419 of the Revised Code, **[and] the agency has not provided the services required** by the case plan to the parents of the child or the child to ensure the safe return of the child to the child's home.
 - c. The **agency has been granted permanent custody** of the child.

- d. The **child has been returned home** pursuant to court order in accordance with division (A)(3) of section 2151.419 of the Revised Code."

B. Scheduling of Hearing, Notice to Parties [quoting O.R.C. § 2151.414 (A)(1)](emphasis added)

"Upon the filing of a motion pursuant to section 2151.413 of the Revised Code for permanent custody of a child,

[1] the court shall schedule a hearing and give notice of the filing of the motion and of the hearing ... to all parties to the action and to the child's guardian ad litem. [2] The notice also shall contain a full explanation that the granting of permanent custody permanently divests the parents of their parental rights, a full explanation of their right to be represented by counsel and to have counsel appointed ... if they are indigent, and the name and telephone number of the court employee designated by the court ... to arrange for the prompt appointment of counsel for indigent persons.

[3] **The court shall conduct a hearing ... to determine if it is in the best interest of the child to permanently terminate parental rights and grant permanent custody to the agency that filed the motion.** The adjudication that the child is an abused, neglected, or dependent child and any dispositional order that has been issued in the case under section 2151.353 of the Revised Code pursuant to the adjudication shall not be readjudicated at the hearing and shall not be affected by a denial of the motion for permanent custody."

C. Timing of the Hearing and the Issuance of Orders [quoting O.R.C. § 2151.414 (A)(2)](emphasis added)

"[1] The court **shall hold the hearing ... not later than [120] days after the agency files the motion for permanent custody, except that, for good cause shown, the court may continue the hearing** for a reasonable period of time beyond the [120]-day deadline.

[2] The court shall issue an order that grants, denies, or otherwise disposes of the motion for permanent custody, and journalize the order, not later than [200] days after the agency files the motion. . . .

[3] The failure of the court to comply with the time periods set forth in ... this section does not affect the authority of the court to issue any order under this chapter and does not provide any basis for attacking the jurisdiction of the court or the validity of any order of the court."

D. Factors Court Shall Not Consider

1. **"In making the determinations required by this section or division (A)(4) of section 2151.353 of the Revised Code, a court shall not consider the effect the granting of permanent custody to the agency would have upon any parent of the child." [quoting § 2151.414 (C)(emphasis added)].**
2. **"The court shall not deny an agency's motion for permanent custody solely because the agency failed to implement any particular aspect of the child's case plan." [quoting O.R.C. § 2151.414 (A)(2)(emphasis added)].**

E. When Court May or Shall Grant Permanent Custody of Child to Movant [quoting O.R.C. §§ 2151.413 and 2151.414].

1. **"[T]he court may grant permanent custody of a child to a movant if the court determines at the hearing ..., by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:**
 - a. The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, ... and **the**

child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

- b. The child is abandoned.
- c. The child is orphaned, and there are no relatives of the child who are able to take permanent custody.
- d. The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period
- e. The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

For the purposes of ... this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.” [quoting § 2151. 414(B)(1)]

- 2. **“With respect to a motion made pursuant to division (D)(2) of section 2151.413 of the Revised Code** [if a court makes a determination pursuant to division (A)(2) of section 2151.419 of the Revised Code, the public children services agency or private child placing agency required to develop the permanency plan for the child under division (K) of section 2151.417 . . . shall file a motion], **the court shall grant permanent custody of the child to the movant if the court determines in accordance with division (E) of this section that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D) of this section that permanent custody is in the child's best interest.”**

3. Unless the court has determined that the agency is not required to make reasonable efforts to return the child to the child's home, [because E (7) – (11) apply—see below]

- **“the court shall determine whether the public children services agency or private child placing agency that filed the complaint in the case, removed the child from home, has custody of the child, or will be given custody of the child has made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home.**
- **The agency shall have the burden of proving that it made those reasonable efforts....**
- **In determining whether reasonable efforts were made, the child's health and safety shall be paramount.” (O.R.C. § 2151.419(A)(1))**

F. Determining the Best Interests of the Child

[quoting O.R.C. § 2151.414(D)(1)(emphasis added)].

“[T]he court shall consider all relevant factors, including, but not limited to, the following:

- (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child;
- (b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;
- (c) The custodial history of the child, including whether the child has been in the temporary custody of a public children services agency

or private child placing agency for twelve [12] or more months of a consecutive twenty-two [22] month period ...;

- (d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;
- (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child. [See the list below.]

For the purposes of ... of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home."

G. Determining if the Child Cannot or Should Not Be Placed with Either Parent (quoting O.R.C. § 2151.414 (E) (emphasis added)).

"In determining ... whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence ... that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

- (1) Following the placement of the child outside the child's home and **notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical,**

psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

- (2) **Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing** pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;
- (3) **The parent committed any abuse** as described in section 2151.031 of the Revised Code against the child, **caused the child to suffer any neglect** as described in section 2151.03 of the Revised Code, **or allowed the child to suffer any neglect** as described in section 2151.03 of the Revised Code **between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody;**
- (4) The **parent has demonstrated a lack of commitment toward the child** by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;
- (5) The **parent is incarcerated for an offense committed against the child** or a sibling of the child;
- (6) The **parent has been convicted of or pleaded guilty to an offense** [numerous child **endangering offenses** listed] ... and the child or a sibling of the child was a victim of the offense, and the parent who committed the offense poses an ongoing danger to the child or a sibling of the child.

- (7) The parent has been convicted of or pleaded guilty to one of the following:
- (a) – (e) [Certain offenses against a child – (e.g. murder, manslaughter, assault, endangering children, or a sex-related offense)] ... and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense; ...
 - (f) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a) , (d), or (e) of this section.
- (8) The **parent has repeatedly withheld medical treatment or food** from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.
- (9) The **parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times** or refused to participate in further treatment two or more times **after a case plan issued** pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.
- (10) The **parent has abandoned the child.**
- (11) The **parent has had parental rights involuntarily terminated with respect to a sibling** of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

- (12) The **parent is incarcerated at the time of the filing of the motion for permanent custody or the dispositional hearing of the child and will not be available to care for the child for at least eighteen months** after the filing of the motion for permanent custody or the dispositional hearing.
- (13) The **parent is repeatedly incarcerated, and the repeated incarceration prevents the parent from providing care for the child.**
- (14) The **parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.**
- (15) The parent has committed abuse as described in section 2151.031 of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, and the court determines that **the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.**
- (16) **Any other factor** the court considers relevant.

H. Determining whether Reasonable Efforts to Prevent Removal of a Child are Required [paraphrasing O.R.C. § 2151.419 (A)(2)]

1. Except as provided in (2) (see below), “at any hearing . . . at which the court removes a child from the child's home or continues the removal of a child from the child's home, the court shall determine whether the public children services agency ... **made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home.** The agency shall have the burden of proving those reasonable efforts. If the agency removed the child from home

during an emergency in which the child could not safely remain at home and the agency did not have prior contact with the child, the court is not prohibited, solely because the agency did not make reasonable efforts during the emergency to prevent the removal of the child, from determining that the agency made those reasonable efforts. **In determining whether reasonable efforts were made, the child's health and safety shall be paramount.**" [quoting 2151.419(A)(1)].

2. **If any of the factors lettered numbered 7 - 11 listed in O.R.C. § 2151.414 (E) apply** (see page 75), "the court shall make a determination that the **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. . . ."
3. The court may issue an order that returns the child to the child's home even if factors 7, 8, 9, 10, or 11 listed in O.R.C. § 2151.414 (E) are present. 2151.419 (A)(3).
4. "Except as provided in 2151.413(D)(3) . . . , if a court makes a determination pursuant to [2151.419 (A)(2) that the public children services agency or private child placing agency is **not required to make reasonable efforts**], the public children services agency or private child placing agency required to develop the permanency plan for the child under division (K) of section 2151.417 of the Revised Code shall file a motion in the court that made the determination requesting permanent custody of the child." [quoting O.R.C. § 2151.413 (D)(2)].

I. If the Court Grants Permanent Custody of a Child to a Movant Under This Division

"If the court grants permanent custody of a child to a movant under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding. The court shall not deny an agency's motion for permanent custody solely because the agency failed to implement any particular aspect of the child's case plan." [quoting O.R.C. § 2151.414(C)]

"The parents of a child for whom the court has issued an order granting permanent custody pursuant to this section, upon the issuance of the order, cease to be parties to the action. This division is not intended to eliminate or restrict any right of the parents to appeal the granting of permanent custody of their child to a movant pursuant to this section." [quoting O.R.C. § 2151.414(F)]

OHIO RULES OF EVIDENCE

A. Relevant Evidence Rules

Rule 401. Definition of “Relevant Evidence”

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

[Effective: July 1, 1980.]

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio, by these rules, or by other rules prescribed by the Supreme Court of Ohio. Evidence which is not relevant is not admissible.

[Effective: July 1, 1980.]

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay

(A) Exclusion mandatory. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

(B) Exclusion discretionary. Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay or needless presentation of cumulative evidence.

[Effective: July 1, 1980; amended effective July 1, 1996.]

B. Hearsay Rules

Rule 801. Definitions

The following definitions apply under this article:

(A) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(B) Declarant. A "declarant" is a person who makes a statement.

(C) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(D) Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at trial or hearing and is subject to cross-examination concerning the statement, and the statement is (a) inconsistent with declarant's testimony, and was given under oath subject to cross-examination by the party against whom the statement is offered and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) consistent with declarant's testimony and is offered to rebut an express or implied charge against declarant of recent fabrication or improper influence or motive, or (c) one of identification of a person soon after perceiving the person, if the circumstances demonstrate the reliability of the prior identification.

(2) Admission by party-opponent. The statement is offered against a party and is (a) the party's own statement, in either an individual or a representative capacity, or (b) a statement of which the party has manifested an adoption or belief in its truth, or (c) a statement by a person authorized by the party to make a statement concerning the subject, or (d) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (e) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy upon independent proof of the conspiracy.

[Effective: July 1, 1980; amended effectively July 1, 2007.]

RULE 802. Hearsay Rule

Hearsay is not admissible except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio, by these rules, or by other rules prescribed by the Supreme Court of Ohio.

[Effective: July 1, 1980.]

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter unless circumstances indicate lack of trustworthiness.

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing, mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purposes of medical diagnosis or treatment.

Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown by the testimony of the witness to have been made or adopted when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness or as provided by Rule 901(B)(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in record kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (a)

the activities of the office or agency, or (b) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, unless offered by defendant, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirement of law.

(10) Absence of public record. Testimony—or a certification under Evid.R.901(B)(10)—that a diligent search failed to disclose a public record or statement if:

- (a) the testimony or certification is admitted to prove that
 - (i) the record or statement does not exist; or
 - (ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and
- (b) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice — unless the court sets a different time for the notice or the objection.

(11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on

rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation concerning personal or family history. Reputation among members of the declarant's family by blood, adoption, or marriage or among the declarant's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship

by blood, adoption or marriage, ancestry, or other similar fact of the declarant's personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation as to character. Reputation of a person's character among the person's associates or in the community.

(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of no contest or the equivalent plea from another jurisdiction), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to personal, family, or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

[Effective: July 1, 1980; amended effective July 1, 2006; July 1, 2007; July 1, 2016.]