



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Joseph Baker**, Director

### MEMORANDUM

**TO:** Mike Lynch, Ohio Department of Job and Family Services

**FROM:** Michael Bender, Business Advocate

**DATE:** November 23, 2022

**RE:** **CSI Review – Indian Child Welfare Act Five Year Review (OAC 5101:2-53-04, 5101:2-53-05, 5101:2-53-06, 5101:2-53-07, and 5101:2-53-09)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Department as provided for in ORC 107.54.

### Analysis

This rule package consists of five amended rules proposed by the Ohio Department of Job and Family Services (ODJFS) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on October 26, 2022, and the public comment period was held open through November 2, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on October 26, 2022.

Ohio Administrative Code (OAC) 5101:2-53-04 sets forth notification requirements for a public children services agency (PCSA) or a private child placing agency (PCPA) concerning a child custody proceeding that involves an Indian child. The rule is amended to update the mailing address for the Midwest Regional Office of the Bureau of Indian Affairs. OAC 5101:2-53-05 specifies requirements for PCSAs and PCPAs should they accept a voluntary agreement for temporary custody of an Indian child. The rule is amended to remove the revision date for the JFS 01645 "Agreement for Temporary Custody of Child." OAC 5101:2-53-06 specifies requirements for PCSAs and PCPAs when they have involuntary custody of an Indian child. The rule is amended to update the mailing address for the Midwest Regional Office of the Bureau of Indian Affairs. OAC 5101:2-53-07

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describes the responsibilities of PCSAs and PCPAs when accepting the permanent surrender of an Indian child for adoption. The rule is amended to remove the revision date for the JFS 01666 “Permanent Surrender of Child.” OAC 5101:2-53-09 sets forth the procedures for transferring a child custody proceeding to a Tribal court, a Tribal Title IV-E agency, or a Tribe with a Title IV-E agreement. The rule is amended to remove review dates for the JFS 01661 “Interstate Compact Placement Request (ICPC 100A)” and the JFS 01662 “Interstate Compact Report on Child’s Placement Status (ICPC 100B).”

During early stakeholder outreach, ODJFS made the draft rules available via external clearance for a two-week period in September and October 2022. The draft rules were also shared with the Public Children Services Association of Ohio, which in turn shared them in its weekly update in early October 2022. ODJFS received no comments from stakeholders during this time period. No comments were received during the CSI public comment period.

The business community impacted by the rules includes PCSAs and PCPAs. ODJFS notes that there are twenty-five certified PCPAs in Ohio. The adverse impacts created by the rules include providing notifications, information, reports, and records, documenting various information in court case records, and facilitating the transfer of a foster care or termination of parental rights proceeding to the jurisdiction of a child’s Tribe when a request is made by a parent, Indian custodian, or the Tribe to do so. The Office of Families and Children within ODJFS reached out to PCPAs and to the Ohio Children’s Alliance for examples of costs incurred when implementing Indian Child Welfare Act (ICWA) regulations. Responses from two agencies that worked on four different cases indicated that the estimated cost of implementing ICWA regulations was approximately \$2,000-\$2,500 per case. According to ODJFS, the requirements of the rules must be met in order to obtain and/or maintain certification by the State of Ohio. ODJFS states that the adverse impacts to business are justified to ensure compliance with federal regulations, protect the best interests of Indian children, and promote the stability of Indian tribes and families.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that ODJFS should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.