

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 477 Session of 2015

INTRODUCED BY HICKERNELL, TOOHL, BISHOP, COHEN, DUSH, FEE, HARHART, HEFFLEY, MENTZER, MILLARD, MURT, PICKETT, ROEBUCK, ROZZI, YOUNGBLOOD AND ZIMMERMAN, FEBRUARY 17, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, OCTOBER 20, 2015

AN ACT

1 Providing for activities and experiences for children in out-of-  
2 home placements.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Activities  
7 and Experiences for Children in Out-of-Home Placements Act.

8 Section 2. Legislative intent.

9 The General Assembly finds and declares as follows:

10 (1) Parents and guardians make important decisions every  
11 day regarding the participation of their children in  
12 activities. Caregivers of children in out-of-home placements  
13 are faced with making the same decisions for children in  
14 their care.

15 (2) When a caregiver of a child in an out-of-home  
16 placement makes a decision regarding the child's  
17 participation in an activity, the caregiver must consider

1 applicable laws and policies designed to safeguard the  
2 child's health and safety. However, these laws and policies  
3 are sometimes interpreted to prohibit a child from  
4 participating in age-appropriate ~~and~~ OR developmentally <--  
5 appropriate extracurricular and community activities that are  
6 important to healthy child and adolescent development.

7 (3) Participation in activities in school and the  
8 community is important to a child's well-being, both  
9 emotionally and in terms of developing valuable life skills  
10 and building healthy supportive relationships with peers and  
11 caring adults. Providing children with age-appropriate ~~and~~ OR <--  
12 developmentally appropriate opportunities to experience  
13 freedom and responsibility are central to making a successful  
14 transition to adulthood.

15 (4) It is the intent of the General Assembly to  
16 recognize the importance of normalizing the lives of children  
17 in out-of-home placements and to empower their caregivers to  
18 approve or disapprove a child's participation in activities  
19 without prior approval of the department, the child's COUNTY <--  
20 AGENCY OR PRIVATE AGENCY caseworker or the court.

21 Section 3. Definitions.

22 The following words and phrases when used in this act shall  
23 have the meanings given to them in this section unless the  
24 context clearly indicates otherwise:

25 "Age-appropriate or developmentally appropriate." The  
26 following:

27 (1) activities or items that are generally accepted as  
28 suitable for children of the same chronological age or level  
29 of maturity or that are determined to be developmentally  
30 appropriate for a child, based on the development of

1 cognitive, emotional, physical and behavioral capacities that  
2 are typical for an age or age group; and

3 (2) in the case of a specific child, activities or items  
4 that are suitable for the child based on the developmental  
5 stages attained by the child with respect to the cognitive,  
6 emotional, physical and behavioral capacities of the child.

7 "Caregiver." A person with whom the child is placed in an  
8 out-of-home placement, including a resource family or an  
9 individual designated by a ~~facility licensed under 55 Pa. Code~~ <--  
10 ~~Ch. 3800 (relating to child residential and day treatment~~  
11 ~~facilities) or any other setting in which a dependent child is~~  
12 ~~placed by a court under 42 Pa.C.S. § 6351 (relating to~~  
13 ~~disposition of dependent child).~~ COUNTY AGENCY OR PRIVATE <--  
14 AGENCY. THE RESOURCE FAMILY IS THE CAREGIVER FOR ANY CHILD  
15 PLACED WITH THEM.

16 "County agency." The county children and youth social  
17 service agency established in accordance with section 405 of the  
18 act of June 24, 1937 (P.L.2017, No.396), known as the County  
19 Institution District Law, or its successor, and supervised by  
20 the department under Article IX of the act of June 13, 1967  
21 (P.L.31, No.21), known as the Public Welfare Code.

22 "Department." The Department of Human Services of the  
23 Commonwealth.

24 "Out-of-home placement." ~~An out of home placement under 42~~ <--  
25 ~~Pa.C.S. 6351.~~ A SETTING THAT PROVIDES 24-HOUR SUBSTITUTE CARE <--  
26 FOR A CHILD AWAY FROM THE CHILD'S PARENTS OR GUARDIANS AND FOR  
27 WHOM THE COUNTY AGENCY HAS PLACEMENT CARE AND RESPONSIBILITY.  
28 THE TERM INCLUDES RESOURCE FAMILY HOMES AND SUPERVISED SETTINGS  
29 IN WHICH A CHILD IS LIVING, AND, FOR A CHILD WHO HAS ATTAINED 18  
30 YEARS OF AGE, A SUPERVISED SETTING IN WHICH THE INDIVIDUAL IS

1 LIVING INDEPENDENTLY. THE TERM DOES NOT INCLUDE SECURE  
2 FACILITIES, FACILITIES OPERATED PRIMARILY FOR THE DETENTION OF  
3 CHILDREN WHO HAVE BEEN ADJUDICATED DELINQUENT, ACCREDITED  
4 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES OR HOSPITALS.

5 "Private agency." ~~A children and youth social service agency <--~~  
6 ~~subject to the requirements of 55 Pa. Code Ch. 3680 (relating to~~  
7 ~~administration and operation of a children and youth social~~  
8 ~~service agency).~~ AN ENTITY THAT PROVIDES OUT-OF-HOME PLACEMENT <--  
9 SERVICES TO CHILDREN UNDER A CONTRACT WITH A COUNTY AGENCY.

10 "Reasonable and prudent parent standard." The standard,  
11 characterized by careful and sensible parental decisions that  
12 maintain the health, safety and best interests of a child while  
13 encouraging the emotional and developmental growth of the child,  
14 that a caregiver must use when determining whether to allow a  
15 child in ~~foster care~~ AN OUT-OF-HOME PLACEMENT under the <--  
16 responsibility of the county agency to participate in  
17 extracurricular, enrichment, cultural and social activities.

18 "RESOURCE FAMILY." AS DEFINED UNDER SECTION 3 OF THE ACT OF <--  
19 NOVEMBER 22, 2005 (P.L.404, NO.73), KNOWN AS THE RESOURCE FAMILY  
20 CARE ACT.

21 Section 4. Access and standard.

22 (a) Access to activities and experiences.--Subject to  
23 subsection (b), a child in an out-of-home placement is ~~entitled~~ <--  
24 ALLOWED AND AFFORDED AN OPPORTUNITY to engage in, to the <--  
25 greatest extent possible, age-appropriate ~~and~~ OR developmentally <--  
26 appropriate activities and experiences. A child with a  
27 disability or special needs in an out-of-home placement shall  
28 have the same access to age-appropriate ~~and~~ OR developmentally <--  
29 appropriate activities and experiences as the child's  
30 nondisabled peers, even if reasonable accommodations are

1 required.

2 (b) Caregiver authority.--Caregivers have the authority to  
3 provide or withhold permission for children in their care to  
4 participate in and experience age-appropriate ~~and~~ OR <--  
5 developmentally appropriate activities and experiences in  
6 accordance with this section. The authority of a caregiver:

7 (1) Must be exercised using the reasonable and prudent  
8 parent standard and does not conflict with any applicable  
9 court order ~~and~~ OR service plan. <--

10 (2) May be exercised without the prior approval of a  
11 county agency or private agency OR THE COURT. <--

12 (c) Reasonable and prudent parent standard.--When using the  
13 reasonable and prudent parent standard, a caregiver must  
14 consider all of the following:

15 (1) The child's age, maturity and developmental level to  
16 maintain the overall health and safety of the child.

17 (2) The potential risk factors TO THE CHILD OR TO OTHERS <--  
18 and the appropriateness of the extracurricular, enrichment, <--  
19 CULTURAL or social activity or experience.

20 (3) The best interest of the child, based on information  
21 known by the caregiver.

22 (4) The child's wishes.

23 (5) The importance of encouraging the child's emotional  
24 and developmental growth.

25 (6) The importance of supporting the child in developing  
26 skills to successfully transition to adulthood.

27 (7) The importance of providing the child with the most  
28 family-like living experience possible.

29 (8) Any special needs or accommodations that the child  
30 may need to safely participate in the activity or experience.

1 (d) Limitation of liability.--A caregiver, county agency and  
2 private agency shall not be liable for harm caused to a child  
3 while engaged in an activity or experience approved by the  
4 caregiver if:

5 (1) THE CAREGIVER HAS COMPLETED THE REQUIRED TRAINING <--  
6 RELATING TO THE REASONABLE AND PRUDENT PARENT STANDARD;

7 ~~(1)~~ (2) the caregiver has ~~used~~ MADE A GOOD FAITH EFFORT <--  
8 TO USE the reasonable and prudent parent standard in  
9 approving the activity or experience; and

10 ~~(2)~~ (3) the approval does not conflict with any <--  
11 applicable court order ~~and~~ OR service plan. <--

12 (e) Other liability protection.--This section shall not  
13 remove or limit any existing liability protection afforded by  
14 any other law.

15 Section 5. Obligations of department.

16 The Office of Children, Youth and Families of the department  
17 shall do all of the following:

18 (1) Require, as a condition of licensure for COUNTY AND <--  
19 PRIVATE foster family care agencies and facilities providing  
20 out-of-home placements, the development of standards and  
21 training relating to the reasonable and prudent parent  
22 standard. The standards and training shall include, but are  
23 not limited to, the following:

24 (i) knowledge and skills relating to the  
25 developmental stages of the cognitive, emotional,  
26 physical and behavioral capacities of a child; and

27 (ii) knowledge and skills relating to applying the  
28 reasonable and prudent parent standard to:

29 (A) decisions such as whether to allow a child  
30 to engage in extracurricular, enrichment, cultural

1 and social activities, including sports, field trips  
2 and overnight activities lasting one or more days;  
3 ~~and~~ <--

4 (B) decisions involving the signing of  
5 permission slips and arranging transportation for the  
6 child to and from extracurricular, enrichment,  
7 cultural and social activities; AND <--

8 (C) METHODS FOR APPROPRIATELY CONSIDERING THE  
9 CONCERNS OF THE BIOLOGICAL PARENTS OF A CHILD IN  
10 DECISIONS RELATED TO PARTICIPATION OF THE CHILD IN  
11 ACTIVITIES, WITH THE UNDERSTANDING THAT THOSE  
12 CONCERNS SHOULD NOT NECESSARILY DETERMINE THE  
13 PARTICIPATION OF THE CHILD IN ANY ACTIVITY.

14 (2) Verify, at yearly licensure reviews, that county and  
15 private agencies providing out-of-home placement do all of  
16 the following:

17 (i) Promote and protect the ability of a child to  
18 participate in age-appropriate ~~and~~ OR developmentally <--  
19 appropriate activities and experiences.

20 (ii) Implement policies consistent with this act.

21 (III) PROVIDE AND DOCUMENT THAT THE REQUIRED <--  
22 TRAINING UNDER PARAGRAPH (1) HAS BEEN PROVIDED TO  
23 CAREGIVERS.

24 (3) Develop standards and a process by which individuals  
25 employed by facilities providing out-of-home placements are  
26 designated to make decisions for children based on the  
27 reasonable and prudent parent standard.

28 (4) DEVELOP A TEMPLATE FOR THE REQUIRED TRAINING RELATED <--  
29 TO THE REASONABLE AND PRUDENT PARENT STANDARD IN ACCORDANCE  
30 WITH THIS ACT.

1 (5) WORK WITH INTERESTED PARTIES, INCLUDING CHILDREN, TO  
2 DEVELOP AGE-APPROPRIATE WRITTEN MATERIALS THAT EXPLAIN THE  
3 REQUIREMENTS UNDER THIS ACT.

4 Section 6. County obligations.

5 A county agency shall do all of the following:

6 (1) Ensure that all COUNTY-OPERATED out-of-home <--  
7 placement ~~facilities~~ SETTINGS OTHER THAN A RESOURCE FAMILY <--  
8 HOME designate an individual to provide decision-making  
9 authority under the reasonable and prudent parent standard  
10 for children residing in their care. The individual  
11 designated should consult with ~~social workers~~ COUNTY AGENCY <--  
12 CASEWORKERS or ~~treatment~~ staff members who are most familiar <--  
13 with the child ~~at the applicable facility~~ in applying and <--  
14 using the reasonable and prudent parent standard.

15 (2) ENSURE THAT CONTRACTS FOR PURCHASED SERVICES BETWEEN <--  
16 THE COUNTY AND A PRIVATE AGENCY THAT OPERATES AN OUT-OF-HOME  
17 PLACEMENT SETTING OTHER THAN A RESOURCE FAMILY HOME INCLUDE A  
18 REQUIREMENT FOR THE AGENCY TO DESIGNATE AN INDIVIDUAL TO  
19 PROVIDE DECISION-MAKING AUTHORITY UNDER THE REASONABLE AND  
20 PRUDENT PARENT STANDARD FOR CHILDREN RESIDING IN THEIR CARE  
21 IN ACCORDANCE WITH STAFFING AND SUPERVISION REQUIREMENTS  
22 APPLICABLE TO THE SETTING. THE INDIVIDUAL DESIGNATED SHOULD  
23 CONSULT WITH COUNTY AGENCY AND PRIVATE AGENCY CASEWORKERS OR  
24 STAFF MEMBERS WHO ARE MOST FAMILIAR WITH THE CHILD IN  
25 APPLYING AND USING THE REASONABLE AND PRUDENT PARENT  
26 STANDARD.

27 (3) ENSURE THAT CONTRACTS FOR PURCHASED SERVICES BETWEEN  
28 THE COUNTY AND A PRIVATE AGENCY INCLUDE A REQUIREMENT FOR THE  
29 PRIVATE AGENCY TO PROVIDE TRAINING AND MONITORING OF RESOURCE  
30 FAMILIES REGARDING THE APPLICATION AND USE OF THE REASONABLE

1 AND PRUDENT PARENT STANDARD.

2 (4) PROVIDE TRAINING AND MONITORING OF COUNTY AGENCY  
3 RESOURCE FAMILIES REGARDING THE APPLICATION AND USE OF THE  
4 REASONABLE AND PRUDENT PARENT STANDARD.

5 ~~(2)~~ (5) Consistent with its case and placement planning <--  
6 responsibilities under Federal and State law, ensure that the  
7 child's service plan provides the opportunity to participate  
8 in age-appropriate or developmentally appropriate activities  
9 and experiences to the greatest extent possible to promote  
10 healthy child and adolescent development ~~consistent with~~ <--  
11 ~~Federal law and this act.~~ A child's service plan shall  
12 include goals and objectives, and the child's progress toward  
13 meeting the goals and objectives, for the following:

14 (i) Participation in extracurricular, enrichment,  
15 cultural and social activities.

16 (ii) For a child who is 14 years of age or older,  
17 providing opportunities to gain experience in mastering  
18 skills needed to transition to successful adulthood and  
19 managing freedom and responsibility.

20 ~~Section 7. Dispositional review and permanency hearings.~~ <--

21 ~~At a permanency hearing under 42 Pa.C.S. § 6351 (relating to~~  
22 ~~disposition of dependent child), the court shall make findings~~  
23 ~~that the child be provided with the opportunity to participate~~  
24 ~~in age appropriate or developmentally appropriate activities and~~  
25 ~~experiences, to the greatest extent possible, to promote healthy~~  
26 ~~child and adolescent development, consistent with Federal law~~  
27 ~~and this act.~~

28 Section 8 7. Notifications. <--

29 (a) Caregiver.--The appropriate county agency shall ~~provide~~ <--  
30 ENSURE THAT a caregiver ~~with~~ IS PROVIDED WITH A written <--

1 notification of the caregiver's responsibilities and rights  
2 under this act. The notification shall be provided at the time  
3 of ~~the caregiver's licensure or court approval~~ A RESOURCE FAMILY <--  
4 HOME CERTIFICATION OR THE DESIGNATION OF A CAREGIVER BY A COUNTY  
5 AGENCY OR PRIVATE AGENCY and annually thereafter.

6 (b) Child.--~~The county agency shall:~~ <--

7 ~~(1) Explain the rights of children under this act at~~  
8 ~~least annually as part of the family service and permanency~~  
9 ~~planning process and provide a child in an out of home~~  
10 ~~placement with a written explanation of the requirements of~~  
11 ~~this act. Consistent with the act of November 23, 2010~~  
12 ~~(P.L.1264, No.119), known as the Children in Foster Care Act,~~  
13 ~~the requirements of this paragraph shall be included in the~~  
14 ~~list of requirements under section 3 of the Children in~~  
15 ~~Foster Care Act, along with the explanation of the grievance~~  
16 ~~policy. A notation that these notifications have been~~  
17 ~~completed must be made in the child's record.~~

18 ~~(2) Work with interested parties, including children, to~~  
19 ~~develop age appropriate written materials that explain~~  
20 ~~children's rights under this act.~~

21 COUNTY AGENCY SHALL ENSURE THAT CHILDREN IN OUT-OF-HOME <--  
22 PLACEMENT HAVE THEIR OPPORTUNITIES UNDER THIS ACT EXPLAINED TO  
23 THEM IN A MANNER APPROPRIATE TO THE CHILD'S AGE, DEVELOPMENT AND  
24 MATURITY AND THAT THE CHILDREN ARE PROVIDED WITH A WRITTEN  
25 EXPLANATION OF THE REQUIREMENTS OF THIS ACT AT INITIAL  
26 PLACEMENT, FOR ANY SUBSEQUENT MOVE, AND AT LEAST ANNUALLY AS  
27 PART OF THE FAMILY SERVICE AND PERMANENCY PLANNING PROCESS.  
28 CONSISTENT WITH THE ACT OF NOVEMBER 23, 2010 (P.L.1264, NO.119),  
29 KNOWN AS THE CHILDREN IN FOSTER CARE ACT, THE REQUIREMENTS OF  
30 THIS SUBSECTION SHALL BE INCLUDED IN THE LIST OF REQUIREMENTS

1 UNDER SECTION 3 OF THE CHILDREN IN FOSTER CARE ACT, ALONG WITH  
2 THE EXPLANATION OF THE GRIEVANCE POLICY. A NOTATION THAT THESE  
3 NOTIFICATIONS HAVE BEEN COMPLETED MUST BE MADE IN THE CHILD'S  
4 RECORD.

5 SECTION 8. TRAINING.

6 THE REASONABLE AND PRUDENT PARENT STANDARD TRAINING REQUIRED  
7 UNDER THIS ACT MUST BE COMPLETED AS FOLLOWS:

8 (1) A CURRENT CAREGIVER MUST COMPLETE THE TRAINING BY  
9 DECEMBER 31, 2015.

10 (2) AN INDIVIDUAL WHO BECOMES A CAREGIVER AFTER THE  
11 EFFECTIVE DATE OF THIS SECTION MUST COMPLETE THE TRAINING  
12 PRIOR TO A CHILD'S PLACEMENT, UNLESS THERE IS AN EMERGENCY  
13 PLACEMENT.

14 (3) IF A CHILD IS PLACED IN AN EMERGENCY PLACEMENT AFTER  
15 THE EFFECTIVE DATE OF THIS SECTION, THE CAREGIVER SHALL  
16 COMPLETE THE TRAINING WITHIN 60 DAYS OF THE EMERGENCY  
17 PLACEMENT.

18 Section 9. This act shall take effect ~~in 60 days~~ IMMEDIATELY. <--