



Ohio Revised Code

Section 5139.43 Felony delinquent care and custody program.

Effective: September 10, 2012

Legislation: House Bill 487 - 129th General Assembly

(A) The department of youth services shall operate a felony delinquent care and custody program that shall be operated in accordance with the formula developed pursuant to section 5139.41 of the Revised Code, subject to the conditions specified in this section.

(B)(1) Each juvenile court shall use the moneys disbursed to it by the department of youth services pursuant to division (B) of section 5139.41 of the Revised Code in accordance with the applicable provisions of division (B)(2) of this section and shall transmit the moneys to the county treasurer for deposit in accordance with this division. The county treasurer shall create in the county treasury a fund that shall be known as the felony delinquent care and custody fund and shall deposit in that fund the moneys disbursed to the juvenile court pursuant to division (B) of section 5139.41 of the Revised Code. The county treasurer also shall deposit into that fund the state subsidy funds granted to the county pursuant to section 5139.34 of the Revised Code. The moneys disbursed to the juvenile court pursuant to division (B) of section 5139.41 of the Revised Code and deposited pursuant to this division in the felony delinquent care and custody fund shall not be commingled with any other county funds except state subsidy funds granted to the county pursuant to section 5139.34 of the Revised Code; shall not be used for any capital construction projects; upon an order of the juvenile court and subject to appropriation by the board of county commissioners, shall be disbursed to the juvenile court for use in accordance with the applicable provisions of division (B)(2) of this section; shall not revert to the county general fund at the end of any fiscal year; and shall carry over in the felony delinquent care and custody fund from the end of any fiscal year to the next fiscal year. The maximum balance carry-over at the end of each respective fiscal year in the felony delinquent care and custody fund in any county from funds allocated to the county pursuant to sections 5139.34 and 5139.41 of the Revised Code in the previous fiscal year shall not exceed an amount to be calculated as provided in the formula set forth in this division, unless that county has applied for and been granted an exemption by the director of youth services. Beginning June 30, 2008, the maximum balance carry-over at the end of each respective fiscal year shall be determined by the following formula: for fiscal year 2008, the maximum balance carry-over shall be one hundred per cent of the allocation for fiscal year 2007, to be applied in determining the fiscal year



2009 allocation; for fiscal year 2009, it shall be fifty per cent of the allocation for fiscal year 2008, to be applied in determining the fiscal year 2010 allocation; for fiscal year 2010, it shall be twenty-five per cent of the allocation for fiscal year 2009, to be applied in determining the fiscal year 2011 allocation; and for each fiscal year subsequent to fiscal year 2010, it shall be twenty-five per cent of the allocation for the immediately preceding fiscal year, to be applied in determining the allocation for the next immediate fiscal year. The department shall withhold from future payments to a county an amount equal to any moneys in the felony delinquent care and custody fund of the county that exceed the total maximum balance carry-over that applies for that county for the fiscal year in which the payments are being made and shall reallocate the withheld amount. The department shall adopt rules for the withholding and reallocation of moneys disbursed under sections 5139.34 and 5139.41 of the Revised Code and for the criteria and process for a county to obtain an exemption from the withholding requirement. The moneys disbursed to the juvenile court pursuant to division (B) of section 5139.41 of the Revised Code and deposited pursuant to this division in the felony delinquent care and custody fund shall be in addition to, and shall not be used to reduce, any usual annual increase in county funding that the juvenile court is eligible to receive or the current level of county funding of the juvenile court and of any programs or services for delinquent children, unruly children, or juvenile traffic offenders.

(2)(a) A county and the juvenile court that serves the county shall use the moneys in its felony delinquent care and custody fund in accordance with rules that the department of youth services adopts pursuant to division (D) of section 5139.04 of the Revised Code and as follows:

(i) The moneys in the fund that represent state subsidy funds granted to the county pursuant to section 5139.34 of the Revised Code shall be used to aid in the support of prevention, early intervention, diversion, treatment, and rehabilitation programs that are provided for alleged or adjudicated unruly children or delinquent children or for children who are at risk of becoming unruly children or delinquent children. The county shall not use for capital improvements more than fifteen per cent of the moneys in the fund that represent the applicable annual grant of those state subsidy funds.

(ii) The moneys in the fund that were disbursed to the juvenile court pursuant to division (B) of section 5139.41 of the Revised Code and deposited pursuant to division (B)(1) of this section in the fund shall be used to provide programs and services for the training, treatment, or rehabilitation of



felony delinquents that are alternatives to their commitment to the department, including, but not limited to, community residential programs, day treatment centers, services within the home, and electronic monitoring, and shall be used in connection with training, treatment, rehabilitation, early intervention, or other programs or services for any delinquent child, unruly child, or juvenile traffic offender who is under the jurisdiction of the juvenile court.

The fund also may be used for prevention, early intervention, diversion, treatment, and rehabilitation programs that are provided for alleged or adjudicated unruly children, delinquent children, or juvenile traffic offenders or for children who are at risk of becoming unruly children, delinquent children, or juvenile traffic offenders. Consistent with division (B)(1) of this section, a county and the juvenile court of a county shall not use any of those moneys for capital construction projects.

(iii) Moneys in the fund shall not be used to support programs or services that do not comply with federal juvenile justice and delinquency prevention core requirements or to support programs or services that research has shown to be ineffective. Research-supported, outcome-based programs and services, to the extent they are available, shall be encouraged.

(iv) The county and the juvenile court that serves the county may use moneys in the fund to provide out-of-home placement of children only in detention centers, community rehabilitation centers, or community corrections facilities approved by the department pursuant to standards adopted by the department, licensed by an authorized state agency, or accredited by the American correctional association or another national organization recognized by the department.

(b) Each juvenile court shall comply with division (B)(3)(d) of this section as implemented by the department. If a juvenile court fails to comply with division (B)(3)(d) of this section, the department shall not be required to make any disbursements in accordance with division (C) of section 5139.41 or division (C)(2) of section 5139.34 of the Revised Code.

(3) In accordance with rules adopted by the department pursuant to division (D) of section 5139.04 of the Revised Code, each juvenile court and the county served by that juvenile court shall do all of the following that apply:

(a) The juvenile court shall prepare an annual grant agreement and application for funding that



satisfies the requirements of this section and section 5139.34 of the Revised Code and that pertains to the use, upon an order of the juvenile court and subject to appropriation by the board of county commissioners, of the moneys in its felony delinquent care and custody fund for specified programs, care, and services as described in division (B)(2)(a) of this section, shall submit that agreement and application to the county family and children first council, the regional family and children first council, or the local intersystem services to children cluster as described in sections 121.37 and 121.38 of the Revised Code, whichever is applicable, and shall file that agreement and application with the department for its approval. The annual grant agreement and application for funding shall include a method of ensuring equal access for minority youth to the programs, care, and services specified in it.

The department may approve an annual grant agreement and application for funding only if the juvenile court involved has complied with the preparation, submission, and filing requirements described in division (B)(3)(a) of this section. If the juvenile court complies with those requirements and the department approves that agreement and application, the juvenile court and the county served by the juvenile court may expend the state subsidy funds granted to the county pursuant to section 5139.34 of the Revised Code only in accordance with division (B)(2)(a) of this section, the rules pertaining to state subsidy funds that the department adopts pursuant to division (D) of section 5139.04 of the Revised Code, and the approved agreement and application.

(b) By the thirty-first day of August of each year, the juvenile court shall file with the department a report that contains all of the statistical and other information for each month of the prior state fiscal year. If the juvenile court fails to file the report required by division (B)(3)(b) of this section by the thirty-first day of August of any year, the department shall not disburse any payment of state subsidy funds to which the county otherwise is entitled pursuant to section 5139.34 of the Revised Code and shall not disburse pursuant to division (B) of section 5139.41 of the Revised Code the applicable allocation until the juvenile court fully complies with division (B)(3)(b) of this section.

(c) If the department requires the juvenile court to prepare monthly statistical reports and to submit the reports on forms provided by the department, the juvenile court shall file those reports with the department on the forms so provided. If the juvenile court fails to prepare and submit those monthly statistical reports within the department's timelines, the department shall not disburse any payment of state subsidy funds to which the county otherwise is entitled pursuant to section 5139.34 of the



Revised Code and shall not disburse pursuant to division (B) of section 5139.41 of the Revised Code the applicable allocation until the juvenile court fully complies with division (B)(3)(c) of this section. If the juvenile court fails to prepare and submit those monthly statistical reports within one hundred eighty days of the date the department establishes for their submission, the department shall not disburse any payment of state subsidy funds to which the county otherwise is entitled pursuant to section 5139.34 of the Revised Code and shall not disburse pursuant to division (B) of section 5139.41 of the Revised Code the applicable allocation, and the state subsidy funds and the remainder of the applicable allocation shall revert to the department. If a juvenile court states in a monthly statistical report that the juvenile court adjudicated within a state fiscal year five hundred or more children to be delinquent children for committing acts that would be felonies if committed by adults and if the department determines that the data in the report may be inaccurate, the juvenile court shall have an independent auditor or other qualified entity certify the accuracy of the data on a date determined by the department.

(d) If the department requires the juvenile court and the county to participate in a fiscal monitoring program or another monitoring program that is conducted by the department to ensure compliance by the juvenile court and the county with division (B) of this section, the juvenile court and the county shall participate in the program and fully comply with any guidelines for the performance of audits adopted by the department pursuant to that program and all requests made by the department pursuant to that program for information necessary to reconcile fiscal accounting. If an audit that is performed pursuant to a fiscal monitoring program or another monitoring program described in this division determines that the juvenile court or the county used moneys in the county's felony delinquent care and custody fund for expenses that are not authorized under division (B) of this section, within forty-five days after the department notifies the county of the unauthorized expenditures, the county either shall repay the amount of the unauthorized expenditures from the county general revenue fund to the state's general revenue fund or shall file a written appeal with the department. If an appeal is timely filed, the director of the department shall render a decision on the appeal and shall notify the appellant county or its juvenile court of that decision within forty-five days after the date that the appeal is filed. If the director denies an appeal, the county's fiscal agent shall repay the amount of the unauthorized expenditures from the county general revenue fund to the state's general revenue fund within thirty days after receiving the director's notification of the appeal decision.



(C) The determination of which county a reduction of the care and custody allocation will be charged against for a particular youth shall be made as outlined below for all youths who do not qualify as public safety beds. The determination of which county a reduction of the care and custody allocation will be charged against shall be made as follows until each youth is released:

(1) In the event of a commitment, the reduction shall be charged against the committing county.

(2) In the event of a recommitment, the reduction shall be charged against the original committing county until the expiration of the minimum period of institutionalization under the original order of commitment or until the date on which the youth is admitted to the department of youth services pursuant to the order of recommitment, whichever is later. Reductions of the allocation shall be charged against the county that recommitted the youth after the minimum expiration date of the original commitment.

(3) In the event of a revocation of a release on parole, the reduction shall be charged against the county that revokes the youth's parole.

(D) A juvenile court is not precluded by its allocation amount for the care and custody of felony delinquents from committing a felony delinquent to the department of youth services for care and custody in an institution or a community corrections facility when the juvenile court determines that the commitment is appropriate.