

# As Passed by the Senate

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## A B I L L

To amend sections 2151.28 and 2151.31 of the Revised  
Code to permit confinement of a child who is a  
danger or threat to others and who is not a status  
offender and to generally require the adjudicatory  
hearing for a confined child to be held within 15  
days after the complaint is filed.

### BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

**Section 1.** That sections 2151.28 and 2151.31 of the Revised  
Code be amended to read as follows:

**Sec. 2151.28.** (A) No later than seventy-two hours after the  
complaint is filed, the court shall fix a time for an adjudicatory  
hearing. The court shall conduct the adjudicatory hearing within  
one of the following periods of time:

(1) Subject to division (D) of section 2152.13 of the Revised  
Code and division (A)(3) of this section, if the complaint alleged  
that the child violated section 2151.87 of the Revised Code or is

a delinquent or unruly child or a juvenile traffic offender, the  
adjudicatory hearing shall be held and may be continued in  
accordance with the Juvenile Rules.

(2) If the complaint alleged that the child is an abused,  
neglected, or dependent child, the adjudicatory hearing shall be  
held no later than thirty days after the complaint is filed,  
except that, for good cause shown, the court may continue the  
adjudicatory hearing for either of the following periods of time:

(a) For ten days beyond the thirty-day deadline to allow any  
party to obtain counsel;

(b) For a reasonable period of time beyond the thirty-day  
deadline to obtain service on all parties or any necessary  
evaluation, except that the adjudicatory hearing shall not be held  
later than sixty days after the date on which the complaint was  
filed.

(3) If the child who is the subject of the complaint is in  
detention and is charged with violating a section of the Revised  
Code that may be violated by an adult, the hearing shall be held  
not later than fifteen days after the filing of the complaint.  
Upon a showing of good cause, the adjudicatory hearing may be  
continued and detention extended.

(B) At an adjudicatory hearing held pursuant to division  
(A)(2) of this section, the court, in addition to determining  
whether the child is an abused, neglected, or dependent child,  
shall determine whether the child should remain or be placed in  
shelter care until the dispositional hearing. When the court makes  
the shelter care determination, all of the following apply:

(1) 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 otherwise would remain or be placed 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 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  
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.

(2) The court shall comply with section 2151.419 of the  
Revised Code.

(3) The court shall schedule the date for the dispositional  
hearing to be held pursuant to section 2151.35 of the Revised  
Code. The parents of the child have a right to be represented by  
counsel; however, in no case shall the dispositional hearing be  
held later than ninety days after the date on which the complaint  
was filed.

(C)(1) The court shall direct the issuance of a summons  
directed to the child except as provided by this section, the  
parents, guardian, custodian, or other person with whom the child  
may be, and any other persons that appear to the court to be  
proper or necessary parties to the proceedings, requiring them to  
appear before the court at the time fixed to answer the  
allegations of the complaint. The summons shall contain the name  
and telephone number of the court employee designated by the court  
pursuant to section 2151.314 of the Revised Code to arrange for  
the prompt appointment of counsel for indigent persons. A child  
alleged to be an abused, neglected, or dependent child shall not  
be summoned unless the court so directs. A summons issued for a  
child who is under fourteen years of age and who is alleged to be  
a delinquent child, unruly child, or a juvenile traffic offender

shall be served on the parent, guardian, or custodian of the child  
in the child's behalf.

If the person who has physical custody of the child, or with  
whom the child resides, is other than the parent or guardian, then  
the parents and guardian also shall be summoned. A copy of the  
complaint shall accompany the summons.

(2) In lieu of appearing before the court at the time fixed  
in the summons and prior to the date fixed for appearance in the  
summons, a child who is alleged to have violated section 2151.87  
of the Revised Code and that child's parent, guardian, or  
custodian may sign a waiver of appearance before the clerk of the  
juvenile court and pay a fine of one hundred dollars. If the child  
and that child's parent, guardian, or custodian do not waive the  
court appearance, the court shall proceed with the adjudicatory  
hearing as provided in this section.

(D) If the complaint contains a prayer for permanent custody,  
temporary custody, whether as the preferred or an alternative  
disposition, or a planned permanent living arrangement in a case  
involving an alleged abused, neglected, or dependent child, the  
summons served on the parents shall contain as is appropriate an  
explanation that the granting of permanent custody permanently  
divests the parents of their parental rights and privileges, an  
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 an  
explanation that the issuance of an order for a planned permanent  
living arrangement will cause the removal of the child from the  
legal custody of the parents if any of the conditions listed in  
divisions (A)(5)(a) to (c) of section 2151.353 of the Revised Code  
are found to exist.

(E)(1) Except as otherwise provided in division (E)(2) of 111  
this section, the court may endorse upon the summons an order 112  
directing the parents, guardian, or other person with whom the 113  
child may be to appear personally at the hearing and directing the 114  
person having the physical custody or control of the child to 115  
bring the child to the hearing. 116

(2) In cases in which the complaint alleges that a child is 117  
an unruly or delinquent child for being an habitual or chronic 118  
truant and that the parent, guardian, or other person having care 119  
of the child has failed to cause the child's attendance at school, 120  
the court shall endorse upon the summons an order directing the 121  
parent, guardian, or other person having care of the child to 122  
appear personally at the hearing and directing the person having 123  
the physical custody or control of the child to bring the child to 124  
the hearing. 125

(F)(1) The summons shall contain a statement advising that 126  
any party is entitled to counsel in the proceedings and that the 127  
court will appoint counsel or designate a county public defender 128  
or joint county public defender to provide legal representation if 129  
the party is indigent. 130

(2) In cases in which the complaint alleges a child to be an 131  
abused, neglected, or dependent child and no hearing has been 132  
conducted pursuant to division (A) of section 2151.314 of the 133  
Revised Code with respect to the child or a parent, guardian, or 134  
custodian of the child does not attend the hearing, the summons 135  
also shall contain a statement advising that a case plan may be 136  
prepared for the child, the general requirements usually contained 137  
in case plans, and the possible consequences of failure to comply 138  
with a journalized case plan. 139

(G) If it appears from an affidavit filed or from sworn 140  
testimony before the court that the conduct, condition, or 141  
surroundings of the child are endangering the child's health or 142

welfare or those of others, that the child may abscond or be  
removed from the jurisdiction of the court, or that the child will  
not be brought to the court, notwithstanding the service of the  
summons, the court may endorse upon the summons an order that a  
law enforcement officer serve the summons and take the child into  
immediate custody and bring the child forthwith to the court.

(H) A party, other than the child, may waive service of  
summons by written stipulation.

(I) Before any temporary commitment is made permanent, the  
court shall fix a time for hearing in accordance with section  
2151.414 of the Revised Code and shall cause notice by summons to  
be served upon the parent or guardian of the child and the  
guardian ad litem of the child, or published, as provided in  
section 2151.29 of the Revised Code. The summons shall contain an  
explanation that the granting of permanent custody permanently  
divests the parents of their parental rights and privileges.

(J) Any person whose presence is considered necessary and who  
is not summoned may be subpoenaed to appear and testify at the  
hearing. Anyone summoned or subpoenaed to appear who fails to do  
so may be punished, as in other cases in the court of common  
pleas, for contempt of court. Persons subpoenaed shall be paid the  
same witness fees as are allowed in the court of common pleas.

(K) The failure of the court to hold an adjudicatory hearing  
within any time period set forth in division (A)(2) of this  
section does not affect the ability 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.

(L) If the court, at an adjudicatory hearing held pursuant to  
division (A) of this section upon a complaint alleging that a  
child is an abused, neglected, dependent, delinquent, or unruly

child or a juvenile traffic offender, determines that the child is  
a dependent child, the court shall incorporate that determination  
into written findings of fact and conclusions of law and enter  
those findings of fact and conclusions of law in the record of the  
case. The court shall include in those findings of fact and  
conclusions of law specific findings as to the existence of any  
danger to the child and any underlying family problems that are  
the basis for the court's determination that the child is a  
dependent child.

**Sec. 2151.31.** (A) A child may be taken into custody in any of  
the following ways:

(1) Pursuant to an order of the court under this chapter or  
pursuant to an order of the court upon a motion filed pursuant to  
division (B) of section 2930.05 of the Revised Code;

(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. 204

(4) By an enforcement official, as defined in section 4109.01 205  
of the Revised Code, under the circumstances set forth in section 206  
4109.08 of the Revised Code; 207

(5) By a law enforcement officer or duly authorized officer 208  
of the court when there are reasonable grounds to believe that the 209  
child has run away from the child's parents, guardian, or other 210  
custodian; 211

(6) By a law enforcement officer or duly authorized officer 212  
of the court when any of the following apply: 213

(a) There are reasonable grounds to believe that the conduct, 214  
conditions, or surroundings of the child are endangering the 215  
health, welfare, or safety of the child. 216

(b) A complaint has been filed with respect to the child 217  
under section 2151.27 or 2152.021 of the Revised Code or the child 218  
has been indicted under division (A) of section 2152.13 of the 219  
Revised Code or charged by information as described in that 220  
section and there are reasonable grounds to believe that the child 221  
may abscond or be removed from the jurisdiction of the court. 222

(c) The child is required to appear in court and there are 223  
reasonable grounds to believe that the child will not be brought 224  
before the court when required. 225

(d) There are reasonable grounds to believe that the child 226  
committed a delinquent act and that taking the child into custody 227  
is necessary to protect the public interest and safety. 228

(B)(1) The taking of a child into custody is not and shall 229  
not be deemed an arrest except for the purpose of determining its 230  
validity under the constitution of this state or of the United 231  
States. 232

(2) Except as provided in division (C) of section 2151.311 of 233



the Revised Code, a child taken into custody shall not be held in  
any state correctional institution, county, multicounty, or  
municipal jail or workhouse, or any other place where any adult  
convicted of crime, under arrest, or charged with crime is held.

(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.

**Section 2.** That existing sections 2151.28 and 2151.31 of the 328  
Revised Code are hereby repealed. 329

**Section 3.** The General Assembly hereby requests the Supreme 330  
Court to promptly modify Rule 29 of the Rules of Juvenile 331  
Procedure pursuant to its authority under the Ohio Constitution to 332  
make that rule consistent with the amendments of this act to 333  
section 2151.28 of the Revised Code. 334

The General Assembly further requests the Supreme Court to 335  
promptly modify Rule 7 of the Rules of Juvenile Procedure pursuant 336  
to its authority under the Ohio Constitution to make that rule 337  
consistent with the amendments of this act to section 2151.31 of 338  
the Revised Code. 339

**Section 4.** Section 2151.28 of the Revised Code is presented 341  
in this act as a composite of the section as amended by both Am. 342  
Sub. S.B. 179 and Sub. S.B. 218 of the 123rd General Assembly. The 343  
General Assembly, applying the principle stated in division (B) of 344  
section 1.52 of the Revised Code that amendments are to be 345  
harmonized if reasonably capable of simultaneous operation, finds 346  
that the composite is the resulting version of the section in 347  
effect prior to the effective date of this act. 348