

As Reported by the House Criminal Justice Committee

124th General Assembly

Regular Session

2001-2002

Sub. H. B. No. 180

REPRESENTATIVES Young, Callender, Latell, Willamowski, Latta, Seitz,
Reidelbach

A BILL

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.

50
51
52
53

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

54
55
56

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

57
58

(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.

59
60
61
62
63
64

(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.

65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80

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 this section, the court may endorse upon the summons an order

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 143
removed from the jurisdiction of the court, or that the child will 144

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.

(4) By an enforcement official, as defined in section 4109.01

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 234
any state correctional institution, county, multicounty, or 235

municipal jail or workhouse, or any other place where any adult 236
convicted of crime, under arrest, or charged with crime is held. 237

(C)(1) Except as provided in division (C)(2) of this section, 238
a child taken into custody shall not be confined in a place of 239
juvenile detention or placed in shelter care prior to the 240
implementation of the court's final order of disposition, unless 241
detention or shelter care is required to protect the child from 242
immediate or threatened physical or emotional harm, because the 243
child is a danger or threat to one or more other persons and is 244
charged with violating a section of the Revised Code that may be 245
violated by an adult, because the child may abscond or be removed 246
from the jurisdiction of the court, because the child has no 247
parents, guardian, or custodian or other person able to provide 248
supervision and care for the child and return the child to the 249
court when required, or because an order for placement of the 250
child in detention or shelter care has been made by the court 251
pursuant to this chapter. 252

(2) A child alleged to be a delinquent child who is taken 253
into custody may be confined in a place of juvenile detention 254
prior to the implementation of the court's final order of 255
disposition if the confinement is authorized under section 2152.04 256
of the Revised Code or if the child is alleged to be a serious 257
youthful offender under section 2152.13 of the Revised Code and is 258
not released on bond. 259

(D) Upon receipt of notice from a person that the person 260
intends to take an alleged abused, neglected, or dependent child 261
into custody pursuant to division (A)(3) of this section, a 262
juvenile judge or a designated referee may grant by telephone an 263
ex parte emergency order authorizing the taking of the child into 264
custody if there is probable cause to believe that any of the 265
conditions set forth in divisions (A)(3)(a) to (c) of this section 266
are present. The judge or referee shall journalize any ex parte 267

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 300
of the following: 301

(1) Ensure that a complaint is filed or has been filed; 302

(2) Comply with section 2151.419 of the Revised Code; 303

(3) Hold a hearing pursuant to section 2151.314 of the 304
Revised Code to determine if the child should remain in shelter 305
care. 306

(F) If the court determines at the hearing held pursuant to 307
division (E) of this section that there is probable cause to 308
believe that the child is an abused child, as defined in division 309
(A) of section 2151.031 of the Revised Code, the court may do any 310
of the following: 311

(1) Upon the motion of any party, the guardian ad litem, the 312
prosecuting attorney, or an employee of the public children 313
services agency, or its own motion, issue reasonable protective 314
orders with respect to the interviewing or deposition of the 315
child; 316

(2) Order that the child's testimony be videotaped for 317
preservation of the testimony for possible use in any other 318
proceedings in the case; 319

(3) Set any additional conditions with respect to the child 320
or the case involving the child that are in the best interest of 321
the child. 322

(G) This section is not intended, and shall not be construed, 323
to prevent any person from taking a child into custody, if taking 324
the child into custody is necessary in an emergency to prevent the 325
physical injury, emotional harm, or neglect of the child. 326

327

Section 2. That existing sections 2151.28 and 2151.31 of the 328

Revised Code are hereby repealed. 329

Section 3. Sections 1 and 2 of this act shall take effect on 330
January 1, 2002. 331

Section 4. The General Assembly hereby requests the Supreme 332
Court to promptly modify Rule 29 of the Rules of Juvenile 333
Procedure pursuant to its authority under the Ohio Constitution to 334
make that rule consistent with the amendments of this act to 335
section 2151.28 of the Revised Code. 336

The General Assembly further requests the Supreme Court to 337
promptly modify Rule 7 of the Rules of Juvenile Procedure pursuant 338
to its authority under the Ohio Constitution to make that rule 339
consistent with the amendments of this act to section 2151.31 of 340
the Revised Code. 341

Section 5. Section 2151.28 of the Revised Code is presented 343
in this act as a composite of the section as amended by both Am. 344
Sub. S.B. 179 and Sub. S.B. 218 of the 123rd General Assembly. The 345
General Assembly, applying the principle stated in division (B) of 346
section 1.52 of the Revised Code that amendments are to be 347
harmonized if reasonably capable of simultaneous operation, finds 348
that the composite is the resulting version of the section in 349
effect on and after January 1, 2002. 350