

# As Reported by the Senate Judiciary--Criminal Justice Committee

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REPRESENTATIVES Young, Callender, Latell, Willamowski, Latta, Seitz,  
Reidelbach, Flowers, Niehaus, Grendell, Hagan, Clancy, Manning,  
Carmichael, G. Smith, Collier, Roman, Setzer, Coates, Schneider,  
Damschroder, Lendrum, Gilb, Schaffer, Schmidt, Faber, Womer Benjamin

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## A BILL

To amend sections 2151.28 and 2151.31 of the Revised 1  
Code to permit confinement of a child who is a 2  
danger or threat to others and who is not a status 3  
offender and to generally require the adjudicatory 4  
hearing for a confined child to be held within 15 5  
days after the complaint is filed. 6

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

**Section 1.** That sections 2151.28 and 2151.31 of the Revised 7  
Code be amended to read as follows: 8

**Sec. 2151.28.** (A) No later than seventy-two hours after the 9  
complaint is filed, the court shall fix a time for an adjudicatory 10  
hearing. The court shall conduct the adjudicatory hearing within 11  
one of the following periods of time: 12

(1) Subject to division (D) of section 2152.13 of the Revised 13  
Code and division (A)(3) of this section, if the complaint alleged 14  
that the child violated section 2151.87 of the Revised Code or is 15  
a delinquent or unruly child or a juvenile traffic offender, the 16

adjudicatory hearing shall be held and may be continued in 17  
accordance with the Juvenile Rules. 18

(2) If the complaint alleged that the child is an abused, 19  
neglected, or dependent child, the adjudicatory hearing shall be 20  
held no later than thirty days after the complaint is filed, 21  
except that, for good cause shown, the court may continue the 22  
adjudicatory hearing for either of the following periods of time: 23

(a) For ten days beyond the thirty-day deadline to allow any 24  
party to obtain counsel; 25

(b) For a reasonable period of time beyond the thirty-day 26  
deadline to obtain service on all parties or any necessary 27  
evaluation, except that the adjudicatory hearing shall not be held 28  
later than sixty days after the date on which the complaint was 29  
filed. 30

(3) If the child who is the subject of the complaint is in 31  
detention and is charged with violating a section of the Revised 32  
Code that may be violated by an adult, the hearing shall be held 33  
not later than fifteen days after the filing of the complaint. 34  
Upon a showing of good cause, the adjudicatory hearing may be 35  
continued and detention extended. 36

(B) At an adjudicatory hearing held pursuant to division 37  
(A)(2) of this section, the court, in addition to determining 38  
whether the child is an abused, neglected, or dependent child, 39  
shall determine whether the child should remain or be placed in 40  
shelter care until the dispositional hearing. When the court makes 41  
the shelter care determination, all of the following apply: 42

(1) The court shall determine whether there are any relatives 43  
of the child who are willing to be temporary custodians of the 44  
child. If any relative is willing to be a temporary custodian, the 45  
child otherwise would remain or be placed in shelter care, and the 46  
appointment is appropriate, the court shall appoint the relative 47

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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.

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

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

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(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.

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(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

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in the child's behalf. 80

If the person who has physical custody of the child, or with 81  
whom the child resides, is other than the parent or guardian, then 82  
the parents and guardian also shall be summoned. A copy of the 83  
complaint shall accompany the summons. 84

(2) In lieu of appearing before the court at the time fixed 85  
in the summons and prior to the date fixed for appearance in the 86  
summons, a child who is alleged to have violated section 2151.87 87  
of the Revised Code and that child's parent, guardian, or 88  
custodian may sign a waiver of appearance before the clerk of the 89  
juvenile court and pay a fine of one hundred dollars. If the child 90  
and that child's parent, guardian, or custodian do not waive the 91  
court appearance, the court shall proceed with the adjudicatory 92  
hearing as provided in this section. 93

(D) If the complaint contains a prayer for permanent custody, 94  
temporary custody, whether as the preferred or an alternative 95  
disposition, or a planned permanent living arrangement in a case 96  
involving an alleged abused, neglected, or dependent child, the 97  
summons served on the parents shall contain as is appropriate an 98  
explanation that the granting of permanent custody permanently 99  
divests the parents of their parental rights and privileges, an 100  
explanation that an adjudication that the child is an abused, 101  
neglected, or dependent child may result in an order of temporary 102  
custody that will cause the removal of the child from their legal 103  
custody until the court terminates the order of temporary custody 104  
or permanently divests the parents of their parental rights, or an 105  
explanation that the issuance of an order for a planned permanent 106  
living arrangement will cause the removal of the child from the 107  
legal custody of the parents if any of the conditions listed in 108  
divisions (A)(5)(a) to (c) of section 2151.353 of the Revised Code 109  
are found to exist. 110

(E)(1) Except as otherwise provided in division (E)(2) of 111

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this section, the court may endorse upon the summons an order directing the parents, guardian, or other person with whom the child may be to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.

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

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

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

(G) If it appears from an affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering the child's health or welfare or those of others, that the child may abscond or be

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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.

(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	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 268  
issued pursuant to this division and the child is taken into 269  
custody pursuant to the order, a sworn complaint shall be filed 270  
with respect to the child before the end of the next business day 271  
after the day on which the child is taken into custody and a 272  
hearing shall be held pursuant to division (E) of this section and 273  
the Juvenile Rules. A juvenile judge or referee shall not grant an 274  
emergency order by telephone pursuant to this division until after 275  
the judge or referee determines that reasonable efforts have been 276  
made to notify the parents, guardian, or custodian of the child 277  
that the child may be placed into shelter care and of the reasons 278  
for placing the child into shelter care, except that, if the 279  
requirement for notification would jeopardize the physical or 280  
emotional safety of the child or result in the child being removed 281  
from the court's jurisdiction, the judge or referee may issue the 282  
order for taking the child into custody and placing the child into 283  
shelter care prior to giving notice to the parents, guardian, or 284  
custodian of the child. 285

(E) If a judge or referee pursuant to division (D) of this 286  
section issues an ex parte emergency order for taking a child into 287  
custody, the court shall hold a hearing to determine whether there 288  
is probable cause for the emergency order. The hearing shall be 289  
held before the end of the next business day after the day on 290  
which the emergency order is issued, except that it shall not be 291  
held later than seventy-two hours after the emergency order is 292  
issued. 293

If the court determines at the hearing that there is not 294  
probable cause for the issuance of the emergency order issued 295  
pursuant to division (D) of this section, it shall order the child 296  
released to the custody of the child's parents, guardian, or 297  
custodian. If the court determines at the hearing that there is 298

probable cause for the issuance of the emergency order issued 299  
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  
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**Section 2.** That existing sections 2151.28 and 2151.31 of the Revised Code are hereby repealed.

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

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

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