



Ohio Legislative Service Commission

Bill Analysis

Lisa Sandberg

S.B. 152

130th General Assembly
(As Introduced)

Sens. Lehner, Beagle, Cafaro, Jones, LaRose, Manning, Patton

BILL SUMMARY

- Requires a juvenile court to appoint a guardian ad litem, subject to the rules adopted by the Supreme Court, to protect the interest of a child in any proceeding concerning an alleged dependent child and in any proceeding on a motion requesting permanent custody of a child.
- Repeals a requirement that a juvenile court appoint a guardian ad litem for an alleged dependent child when the child's parent appears to be mentally incompetent or under 18, there is a conflict of interest between the child and the child's parent, guardian, or custodian, or the court believes the parent is not capable of representing the child's best interest.
- Requires a guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child to file any motions and court papers that are in the best interest of the child *in accordance with rules adopted by the Supreme Court*.
- Modifies the circumstances under which a child may be placed in a planned permanent living arrangement.
- Requires that a child who is placed in a planned permanent living arrangement be placed in an independent living setting or a family setting in which the caregiver has signed a statement of understanding that addresses specified matters regarding the caregiver's responsibility for the child.
- Permits a juvenile court to grant a motion for permanent custody of a child to a movant if the court determines, by clear and convincing evidence, that the child or another child in the custody of the parent from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions.

- Requires a foster caregiver to use a "reasonable and prudent parent standard" when considering whether to authorize a foster child to participate in extracurricular, enrichment, or social activities in accordance with policies and procedures of the public children services agency, private child placing agency, or private noncustodial agency that placed the child in the foster caregiver's care.
- Grants to an agency described in the preceding dot point civil immunity for injury, death, or loss to person or property resulting from a foster caregiver's or agency's decisions using a reasonable and prudent parent standard.

CONTENT AND OPERATION

Appointment of guardian ad litem for dependent child

Under current law, in any case involving an alleged dependent child in which the parent of the child appears to be mentally incompetent or is under 18 years of age, there is a conflict of interest between the child and the child's parents, guardian, or custodian, or a juvenile court believes that the parent of the child is not capable of representing the best interest of the child, the court must appoint a guardian ad litem for the child.¹ The bill repeals this provision and instead requires a juvenile court to appoint a guardian ad litem for an alleged dependent child in the same manner as the court is generally required by current law to appoint a guardian ad litem for an alleged abused or neglected child. It requires a juvenile court to appoint a guardian ad litem, subject to rules adopted by the Supreme Court, to protect the interest of a child in any proceeding concerning an alleged dependent child and in any proceeding held pursuant to R.C. 2151.414 (hearing on a motion requesting permanent custody of a child). The guardian ad litem so appointed must not be the attorney responsible for presenting the evidence alleging that the child is a dependent child and cannot be an employee of any party in the proceeding.²

The bill further modifies current law by providing that in any case involving an alleged or adjudicated abused, neglected, or *dependent* (added by the bill) child or an agreement for the voluntary surrender of temporary or permanent custody of a child that is made in accordance with R.C. 5103.15, the court must appoint the guardian ad litem in each case as soon as possible after the complaint is filed, the request for an extension of the temporary custody agreement is filed with the court, or the request for court approval of the permanent custody agreement is filed.³ The bill applies the

¹ R.C. 2151.281(G).

² R.C. 2151.281(B)(1).

³ R.C. 2151.281(G).

provisions in current law to a guardian ad litem appointed for a dependent child under the bill. The guardian ad litem for a dependent child or the guardian ad litem's replacement must continue to serve until any of the following occur (existing law for alleged or adjudicated abused and neglected children):⁴

(1) The complaint is dismissed or the request for an extension of a temporary custody agreement or for court approval of the permanent custody agreement is withdrawn or denied.

(2) All dispositional orders relative to the child have terminated.

(3) The legal custody of the child is granted to a relative of the child, or to another person.

(4) The child is placed in an adoptive home, or, at the court's discretion, a final decree of adoption is issued with respect to the child.

(5) The child reaches the age of 18 if the child is not mentally retarded, developmentally disabled, or physically impaired or the child reaches the age of 21 if the child is mentally retarded, developmentally disabled, or physically impaired.

(6) The guardian ad litem resigns or is removed by the court and a replacement is appointed by the court.

Under current law, unchanged by the bill, if a guardian ad litem ceases to serve a child pursuant to (4) above and the petition for adoption with respect to the child is denied or withdrawn prior to the issuance of a final decree of adoption or prior to the date an interlocutory order of adoption becomes final, the juvenile court must reappoint a guardian ad litem for that child. The public children services agency or private child placing agency with permanent custody of the child must notify the juvenile court if the petition for adoption is denied or withdrawn.⁵

The bill modifies current law by providing that the guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child must perform whatever functions are necessary to protect the best interest of the child, including, but not limited to, investigation, mediation, monitoring court proceedings, and monitoring the services provided the child by the public children services agency or private child placing agency that has temporary or permanent custody of the child and must file any

⁴ R.C. 2151.281(G).

⁵ R.C. 2151.281(G).

motions and other court papers that are in the best interest of the child *in accordance with rules adopted by the Supreme Court* (added by the bill).⁶

Orders of disposition of abused, neglected, or dependent child

Current law authorizes a juvenile court to make any of six specified types of orders of disposition if a child is adjudicated an abused, neglected, or dependent child. One of these orders is to place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if either agency requests the court to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:⁷

(1) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to R.C. 2151.35.

(2) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with R.C. 2151.414(D)(1) (relevant factors in determining best interest of the child), and the child retains a significant and positive relationship with a parent or relative.

(3) The child is 16 years of age or older, has been counseled on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living.

The bill modifies (2) above by additionally requiring the child to be 16 years of age or older. It modifies (3) above by eliminating the requirement that the child is in an agency program preparing the child for independent living.⁸

The bill provides that when making a determination on whether to place a child in a planned permanent living arrangement pursuant to paragraph (2) or (3), above, the court must consider all relevant information that has been presented to the court, including information gathered from the child, the child's guardian ad litem, or the

⁶ R.C. 2151.281(I).

⁷ R.C. 2151.353(A)(5).

⁸ R.C. 2151.353(A)(5)(b) and (c).

public children services agency or private child placing agency.⁹ A child who is placed in a planned permanent living arrangement pursuant to paragraph (2) or (3), above, must be placed in an independent living setting or in a family setting in which the caregiver has signed a statement of understanding of a planned permanent living arrangement that addresses the following:¹⁰

(a) The caregiver understands that the planned permanent living arrangement is intended to be permanent in nature and that the caregiver will be responsible for the child through the child's emancipation or until the court releases the child from the custody of the agency, whichever occurs first.

(b) The caregiver pledges the caregiver will actively participate in the youth's independent living case plan, attend agency team meetings and court hearings as appropriate, and assist in the child's transition into adulthood.

Current law, unchanged by the bill, provides that no order for the placement of a child in a planned permanent living arrangement may be made unless the complaint alleging the abuse, neglect, or dependency contains a prayer requesting the placement of the child in a planned permanent living arrangement, the summons served on the parents of the child contains a full explanation that the granting of an order for a planned permanent living arrangement will result in the removal of the child from their legal custody if any of the conditions listed in paragraphs (1) to (3), above, as modified by the bill, are found to exist, and the summons served on the parents contains a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to R.C. Chapter 120. if they are indigent.¹¹

Motion requesting permanent custody

Under circumstances specified in continuing law, a public children services agency or private child placing agency that is granted temporary custody of a child or places a child in a planned permanent living arrangement may file a motion in the court that made the disposition of the child requesting permanent custody of the child. The court must conduct a hearing, after giving notice of the filing of the motion and of the hearing to all parties to the action and to the child's guardian ad litem, to determine if it is in the best interest of the child to permanently terminate parental rights and grant permanent custody to the agency that filed the motion.¹² Generally, under current law,

⁹ R.C. 2151.353(B)(1).

¹⁰ R.C. 2151.353(B)(2).

¹¹ R.C. 2151.353(C).

¹² R.C. 2151.413, not in the bill, and R.C. 2151.414.

the court may grant permanent custody of a child to a movant if the court determines at the hearing, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:¹³

(1) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for a specified period of time, or has not been in such temporary custody for that period of time if the child was previously in the temporary custody of an equivalent agency in another state, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

(2) The child is abandoned.

(3) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

(4) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for a specified period of time or the child has been in such temporary custody for that period of time and the child was previously in the temporary custody of an equivalent agency in another state.

The bill expands the above bases for the court's determination by permitting the court to grant permanent custody of a child to a movant if the court determines at the hearing, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and the child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.¹⁴

Qualified immunity of foster caregiver

The bill requires a foster caregiver to use a "reasonable and prudent parent standard" (defined below) when considering whether to authorize a foster child who resides in the foster home to participate in extracurricular, enrichment, and social activities in accordance with policies and procedures developed by the public children services agency, private child placing agency, or private noncustodial agency that has

¹³ R.C. 2151.414(B)(1)(a) to (d).

¹⁴ R.C. 2151.413(B)(1)(e).



placed the child in the care of the foster caregiver. It grants a public children services agency, private child placing agency, or private noncustodial agency that serves as the child's custodian or as the supervising agency for the foster caregiver immunity from liability in a civil action to recover damages for injury, death, or loss to person or property that result from a foster caregiver's or agency's decisions using a reasonable and prudent parent standard in accordance with the preceding sentence. The bill defines "reasonable and prudent parent standard" as the standard characterized by careful and sensible parental decisions that maintain the child's health, safety, and best interests while at the same time encouraging the child's emotional and developmental growth, that a caregiver or agency must use when determining whether to allow a child in the care of a foster caregiver to participate in extracurricular, enrichment, and social activities.¹⁵

Current law, not changed by the bill, grants a foster caregiver qualified immunity from liability in a civil action to recover damages for injury, death, or loss to person or property allegedly caused by an act or omission in connection with a power, duty, responsibility, or authorization under R.C. Chapter 5103. (placement of children) or under rules adopted under that chapter. The immunity does not apply to a foster caregiver if, in relation to the act or omission in question, any of the following applies: (1) the act or omission was manifestly outside the scope of the foster caregiver's power, duty, responsibility, or authorization, (2) the act or omission was with malicious purpose, in bad faith, or in a wanton or reckless manner, or (3) liability for the act or omission is expressly imposed by a section of the Revised Code.¹⁶

Technical changes

The bill makes technical changes in references to divisions.¹⁷

HISTORY

ACTION	DATE
Introduced	06-25-13

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¹⁵ R.C. 5103.162(C).

¹⁶ R.C. 5103.162(A) and (B).

¹⁷ R.C. 2151.353, 2151.415, and 2151.417.

