



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 152

130th General Assembly
(As Passed by the Senate)

Sens. Lehner, Beagle, Cafaro, Jones, LaRose, Manning, Patton, Brown, Burke, Coley, Eklund, Gardner, Hite, Kearney, Peterson, Sawyer, Schiavoni, Seitz, Skindell, Smith, Tavares, Turner, Uecker

BILL SUMMARY

- Modifies the conditions under which a court is authorized to appoint a guardian ad litem.
- 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.
- Adds a court appointed special advocate or guardian ad litem to the list of persons who must, when acting in an official or professional capacity, report suspected abuse or neglect of a child under 18 years of age or of a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age.
- 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 been provided, by the agency that has custody of the child, with a notice that addresses specified matters regarding the caregiver's responsibility for the child, and requires the Department of Job and Family Services to develop a model notice.
- Requires a needs assessment and continuing training plan developed and implemented for a foster caregiver to include training that relates to providing independent living services to a child placed in a planned permanent living arrangement.

- 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.
- Provides that a child subject to out-of-home care for alleged or adjudicated abused, neglected, or dependent children is entitled to participate in "age-appropriate" extracurricular, enrichment, and social activities and specifies factors that must be considered when determining whether to permit the child to participate in those activities.
- Grants civil immunity to a person or facility providing the out-of-home care for injury, death, or loss to person or property caused to the child who participates in an activity approved by the person or facility, provided the person or facility considered the specified factors.
- 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.
- Grants to a public children services agency, private child placing agency, or private noncustodial agency serving as the child's custodian or as the supervising agency for a foster caregiver civil immunity for injury, death, or loss to person or property resulting from a foster caregiver's or agency's decisions using the reasonable and prudent parent standard.
- Raises the maximum total period in which the kinship permanency incentive program may provide additional permanency incentive payments for a minor child at six-month intervals from 36 months to 48 months, based on the availability of funds.

CONTENT AND OPERATION

Appointment of guardian ad litem

The bill prohibits the appointment of a guardian ad litem for a child who is under six months of age in any proceeding in which a private child placing agency is seeking permanent custody of the child or seeking approval of a voluntary permanent custody surrender agreement for the sole purpose of the adoption of the child.¹ And,

¹ R.C. 2151.281(B)(1), (2), (G) and (K).

except for the prohibition just described, the bill authorizes, but does not require, a court to appoint a guardian ad litem, subject to rules adopted by the Supreme Court, to protect the interests of the child in any proceeding concerning an alleged dependent child.² Current law requires the court to appoint a guardian ad litem in certain circumstances regardless of the age of the child.

Also, the bill specifies that in any case in which a guardian ad litem is to be appointed for an alleged or adjudicated dependent child, the court must appoint the guardian ad litem, in each case as soon as possible after the complaint or request concerning the custody agreement is filed with the court.³ Current law requires such an expedited appointment to be made in cases involving alleged or adjudicated abused or neglected children, but not for dependent children.

Furthermore, the bill clarifies that any motions and other court papers that are filed by the guardian ad litem must be filed in accordance with rules adopted by the Supreme Court.⁴

Failing to report abuse or neglect

The bill adds a court appointed special advocate or guardian ad litem to the list of persons under existing law who are acting in an official or professional capacity and know, or have reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child and who are prohibited from failing to immediately report that knowledge or reasonable cause to suspect generally to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.⁵

Order of disposition of abused, neglected, or dependent child – planned permanent living arrangement

A juvenile court is authorized to make several types of orders of disposition with regard to a child who has been adjudicated an abused, neglected, or dependent child.

² R.C. 2151.281(B)(3).

³ R.C. 2151.281(G).

⁴ R.C. 2151.281(I).

⁵ R.C. 2151.421(A)(1)(a) and (b).

One of the orders is to place such a child in a planned permanent living arrangement. To issue such an order the juvenile court must make several findings with regard to the child. One required finding is that the parents of the child have significant physical, mental, or psychological problems, are unable to care for the child because of those problems, adoption is not in the child's best interest, and the child retains a significant and positive relationship with a parent or relative. The bill limits availability of this finding to children who are 16 years of age or older. Another required finding is that the child is 16 years of age or older, has been counseled on the permanent placement options available to the child, and is unwilling to accept or unable to adapt to a permanent placement. The bill eliminates an element of this finding specifying that the child must be in an agency program preparing the child for independent living.

The bill provides that when making a determination on whether to place a child in a planned permanent living arrangement as explained 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, and the public children services agency or private child placing agency.⁶ A child who is placed in a planned permanent living arrangement as explained above must be placed in an independent living setting or in a family setting in which the caregiver has been provided by the agency that has custody of the child with a notice that addresses the following:⁷

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

(2) The caregiver is expected to actively participate in the youth's independent living case plan, attend agency team meetings and court hearings as appropriate, complete training related to providing the child independent living services, and assist in the child's transition into adulthood.

The bill requires that each needs assessment and continuing training plan developed and implemented for a foster caregiver by a public children services agency, private child placing agency, or private noncustodial agency acting as a recommending agency for a foster caregiver include training for the caregiver that relates to providing

⁶ R.C. 2151.353(B)(1).

⁷ R.C. 2151.353(B)(2).

independent living services to a child placed as explained above in addition to other requirements under continuing law.⁸

The bill requires the Department of Job and Family Services to develop a model notice to be provided by an agency that has custody of a child to a caregiver as explained above, and permits the agency to modify the model notice to apply to its needs.⁹

Motion requesting permanent custody

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 to the parties 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.¹⁰ The bill expands the bases for such a determination by permitting the court to grant permanent custody of a child to the movant if the court determines, by clear and convincing evidence, that 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.¹¹

Allowing children to participate in certain activities

The bill provides that a child who is subject to out-of-home care for alleged or adjudicated abused, neglected, or dependent children is entitled to participate in age-appropriate extracurricular, enrichment, and social activities.¹² A person or facility that is providing out-of-home care for an alleged or adjudicated abused, neglected, or dependent child is required to consider all of the following when determining whether to give permission for that child to participate in extracurricular, enrichment, or social activities:¹³

⁸ R.C. 5103.035(B).

⁹ R.C. 2151.353(B)(3).

¹⁰ R.C. 2151.413, not in the bill, and R.C. 2151.414.

¹¹ R.C. 2151.414(B)(1)(e).

¹² R.C. 2151.315(B).

¹³ R.C. 2151.315(C).



- The child's age, maturity, and developmental level to maintain the overall health and safety of the child;
- The potential risk factors and the appropriateness of the extracurricular, enrichment, or social activity;
- The best interest of the child based on information known by the person or facility providing the out-of-home care for the child;
- The importance of encouraging the child's emotional and developmental growth;
- The importance of providing the child with the most family-like living experience possible; and
- The behavioral history of the child and the child's ability to safely participate in the extracurricular, enrichment, or social activity.

Civil immunity of person or facility providing out-of-home care

The bill provides that a person or facility that provides out-of-home care to an alleged or adjudicated abused, neglected, or dependent child is immune from liability in a civil action to recover damages for injury, death, or loss to person or property caused to the child who participates in an extracurricular, enrichment, or social activity approved by the person or facility, provided that the person or facility considered the above factors.¹⁴

Definition

For purposes of the foregoing provisions, the bill defines "age-appropriate" as activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity. Age appropriateness is based on the development of cognitive, emotional, physical, and behavioral capacity that is typical for an age or age group.¹⁵

¹⁴ R.C. 2151.315(D).

¹⁵ R.C. 2151.315(A).



Qualified immunity

The bill requires a foster caregiver to use a reasonable and prudent parent standard when considering whether to authorize a foster child who resides in the foster home to participate in extracurricular, enrichment, and social activities.¹⁶

The bill 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 as explained above. The bill provides that the immunity does not affect, limit, abridge, or otherwise modify the immunities and defenses available to a public children services agency as a political subdivision under the Political Subdivision Sovereign Immunity Law.¹⁷

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.¹⁸

Continuing law, 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 the law and rules governing the placement of children. 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.¹⁹

¹⁶ R.C. 5103.162(C)(1).

¹⁷ R.C. 5103.162(C)(2) and (3).

¹⁸ R.C. 5103.162(C)(4).

¹⁹ R.C. 5103.162(A) and (B).



Kinship Permanency Incentive Program

The Kinship Permanency Incentive Program promotes permanency for a minor child in the legal and physical custody of a kinship caregiver. The program provides an initial one-time incentive payment to the kinship caregiver to defray the costs of initial placement of the minor child in the kinship caregiver's home. The bill permits the program to provide additional permanency incentive payments for the minor child at six month intervals for a total period not to exceed 48 months, based on the availability of funds, instead of 36 months under current law.²⁰

HISTORY

ACTION	DATE
Introduced	06-18-13
Reported, S. Civil Justice	11-21-13
Passed Senate (33-0)	12-04-13

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²⁰ R.C. 5101.802(B).

