Ohio Legislative Service Commission

Bill Analysis

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Am. Sub. H.B. 213

130th General Assembly
(As Reported by S. Civil Justice)

Reps. Pelanda and Celebrezze, Blair, Thompson, Mallory, Strahorn, Grossman, Reece, Milkovich, Stebelton, Stinziano, Fedor, Butler, Pillich, R. Adams, Amstutz, Anielski, Antonio, Ashford, Baker, Barborak, Barnes, Beck, Bishoff, Blessing, Boyce, Brown, Buchy, Burkley, Carney, Cera, Conditt, Damschroder, Driehaus, Green, C. Hagan, Hall, Hayes, Heard, Huffman, Johnson, Letson, McClain, O'Brien, Patmon, Patterson, Perales, Ramos, Retherford, Rogers, Rosenberger, Sears, Sheehy, Slesnick, Smith, Sprague, Wachtmann, Batchelder

Sens. Coley, Kearney, Brown

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 under the same circumstances as in current law, *except in a proceeding concerning a dependent child involving the permanent custody of an infant under six months of age for the sole purpose of placement for adoption by a private child placing agency*.

- Permits the court to appoint a guardian ad litem, subject to rules adopted by the Supreme Court, in any other proceeding concerning an alleged dependent child, with the same exception as in the preceding dot point.

- Prohibits the appointment of a guardian ad litem for a child 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 child's adoption.

- 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*.

- Prohibits a court appointed special advocate or guardian ad litem from failing to report knowledge of or reasonable cause to suspect a condition reasonably indicating abuse or neglect of a child under 18 years of age or 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.

- Specifies the factors that a person or facility providing the above out-of-home care must consider in 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 a 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.

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CONTENT AND OPERATION

Appointment of guardian ad litem for dependent child

The bill modifies current law by providing that in any *proceeding* 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, except in a proceeding concerning a dependent child involving the permanent custody of an infant under the age of six months for the sole purpose of placement for adoption by a private child placing agency, the court must appoint a guardian ad litem, subject to rules adopted by the Supreme Court, to protect the interest of the child.[1]

In any other proceeding concerning an alleged dependent child, except in a proceeding concerning a dependent child involving the permanent custody of an infant

[1] R.C. 2151.281(B)(2).

under the age of six months for the sole purpose of placement for adoption by a private child placing agency, the bill permits the court to appoint a guardian ad litem, subject to rules adopted by the Supreme Court, to protect the interest of the child.[2]

Appointment of guardian ad litem for abuse, neglected, or dependent child

The bill modifies current law which requires the court to appoint a guardian ad litem, subject to rules adopted by the Supreme Court, to protect the interest of the child in any proceeding concerning an alleged abused or neglected child or a motion requesting permanent custody of a child, by providing that a guardian ad litem cannot be appointed 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.[3] The bill further modifies current law by providing that, *except as previously described with respect to a child under six months of age*, in any case in which a guardian ad litem *is to be appointed for* an alleged or adjudicated abused, neglected, or *dependent* child or in any case involving an agreement for the voluntary surrender of temporary or permanent custody of a child, 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.[4]

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 motions and other court papers that are in the best interest of the child *in accordance with rules adopted by the Supreme Court*.[5]

Prohibition against failing to report child 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

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[2] R.C. 2151.281(B)(3).

[3] R.C. 2151.281(B)(1) and (K).

[4] R.C. 2151.281(G).

[5] R.C. 2151.281(I).

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 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.[6]

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

Continuing 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. The bill modifies one of these orders, which 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.

(2) The *child is 16 years of age or older*, 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 and is unwilling to accept or unable to adapt to a permanent placement (the bill eliminates "and is 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 pursuant to paragraph (2) or (3), above, the

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[6] R.C. 2151.421(A)(1)(a) and (b).

[7] R.C. 2151.353(A)(5).

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.[8] 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 been provided by the agency that has custody of the child with a notice that addresses the following:[9]

(a) 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.

(b) 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, as described below, 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 independent living services, as defined in R.C. 2151.81, to a child placed as described above in (b), in addition to other requirements under continuing law.[10]

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 described above, and permits the agency to modify the model notice to apply to its needs.[11]

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, among other things, a full explanation that the granting of

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[8] R.C. 2151.353(B)(1).

[9] R.C. 2151.353(B)(2).

[10] R.C. 5103.035(B).

[11] R.C. 2151.353(B)(3).

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.[12]

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.[13] The bill expands the bases under current law 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]

Generally, under current law, 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:[15]

(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

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[12] R.C. 2151.353(C).

[13] R.C. 2151.413, not in the bill, and R.C. 2151.414.

[14] R.C. 2151.414(B)(1)(e).

[15] R.C. 2151.414(B)(1)(a) to (d).

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.

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" (see "**Definition**" below) extracurricular, enrichment, and social activities.[16] It requires a person or facility that is providing out-of-home care for an alleged or adjudicated abused, neglected, or dependent child to consider all of the following when determining whether to give permission for that child to participate in extracurricular, enrichment, or social activities:[17]

- 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;

[16] R.C. 2151.315(B).

[17] R.C. 2151.315(C).

- 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.[18]

Definition

For purposes of the above 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.[19]

Qualified immunity

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.[20]

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 in accordance with the preceding paragraph. It provides that nothing in the above provisions affects, limits, abridges, or otherwise modifies the immunities and defenses available to a public children services agency as a political subdivision under the Political Subdivision Sovereign Immunity Law.[21]

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[18] R.C. 2151.315(D).

[19] R.C. 2151.315(A).

[20] R.C. 5103.162(C)(1).

[21] R.C. 5103.162(C)(2) and (3).

The bill defines "reasonable and prudent parent standard" for purposes of its provisions 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.[22]

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.[23]

Kinship permanency incentive program

Continuing law created the kinship permanency incentive program to promote permanency for a minor child in the legal and physical custody of a kinship caregiver. The program must provide 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.[24]

Technical changes

The bill makes technical changes in references to divisions.[25]

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[22] R.C. 5103.162(C)(4).

[23] R.C. 5103.162(A) and (B).

[24] R.C. 5101.802(B).

[25] R.C. 2151.353, 2151.415, and 2151.417.

HISTORY

ACTION	DATE
Introduced	06-18-13
Reported, H. Judiciary	11-21-13
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