



# House of Representatives

General Assembly

**File No. 40**

January Session, 2001

Substitute House Bill No. 6589

*House of Representatives, March 14, 2001*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING JUVENILE MATTERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-129a of the general statutes is repealed and  
2 the following is substituted in lieu thereof:

3 In proceedings in the Superior Court under section 46b-129: (1) The  
4 court may order the child, the parents, the guardian, or other persons  
5 accused by a competent witness with abusing the child, to be  
6 examined by one or more competent physicians, psychiatrists or  
7 psychologists appointed by the court; (2) a child shall be represented  
8 by counsel knowledgeable about representing such children who shall  
9 be appointed by the court to represent the child [whose fee shall be  
10 paid by the parents or guardian, or the estate of the child, or, if such  
11 persons are unable to pay, by the court. In all cases in which the court  
12 deems it appropriate, the court shall also appoint a person, other than  
13 the person appointed to represent the child, as guardian ad litem for  
14 such child to speak on behalf of the best interests of the child, which

15 guardian ad litem is not required to be an attorney-at-law but shall be  
16 knowledgeable about the needs and protection of children and whose  
17 fee] and to act as guardian ad litem for the child, provided (A) the  
18 primary role of any counsel for the child including the counsel who  
19 also serves as guardian ad litem, shall be to advocate for the child in  
20 accordance with the Rules of Professional Conduct, (B) a separate  
21 guardian ad litem shall be appointed to speak on behalf of the best  
22 interests of the child if it appears that there is a conflict of interest  
23 between the stated position or wishes of the child and the best interests  
24 of the child, and (C) in the event that a separate guardian ad litem is  
25 appointed, the person previously serving as both counsel and  
26 guardian ad litem for the child shall continue to serve as counsel for  
27 the child and a different person shall be appointed as guardian ad  
28 litem, unless the court for good cause also appoints a different person  
29 as counsel for the child. No person who has served as both counsel and  
30 guardian ad litem for a child shall thereafter serve solely as the child's  
31 guardian ad litem. The guardian ad litem is not required to be an  
32 attorney-at-law but shall be knowledgeable about the needs and  
33 protection of children. The counsel and guardian ad litem's fees, if any,  
34 shall be paid by the parents or guardian, or the estate of the child, or, if  
35 such persons are unable to pay, by the court; (3) the privilege against  
36 the disclosure of communications between husband and wife shall be  
37 inapplicable and either may be compelled to testify as to any relevant  
38 matter; and (4) evidence that the child has been abused or has  
39 sustained a nonaccidental injury shall constitute prima facie evidence  
40 that shall be sufficient to support an adjudication that such child is  
41 uncared for or neglected.

42 Sec. 2. Section 46b-142 of the general statutes is repealed and the  
43 following is substituted in lieu thereof:

44 (a) The Chief Court Administrator, in consultation with the judges  
45 of the Superior Court, shall establish districts for the purpose of  
46 establishing venue in juvenile matters. All petitions concerning

47 delinquent children shall be heard within the district where the  
48 delinquency is alleged to have occurred or where the child resides, in  
49 the discretion of the court. All other petitions shall be heard within the  
50 district where the child or youth resided at the time of the filing of the  
51 petition, but for the purposes of this section any child or youth born in  
52 any hospital or institution where the mother is confined at the time of  
53 birth shall be deemed to have residence in the district wherein [his]  
54 such child's or youth's mother was living at the time of her admission  
55 to such hospital or institution.

56 (b) The Department of Children and Families, or any party at  
57 interest aggrieved by any final judgment or order of the court, may  
58 appeal to the Appellate Court in accordance with the provisions of  
59 section 52-263. The clerk in charge of such juvenile matters shall  
60 forthwith, after notice of any appeal, prepare and file with the clerk of  
61 the Appellate Court the certified copy of the record of the case from  
62 which such appeal has been taken. The name of the child or youth  
63 involved in any such appeal shall not appear on the record of the  
64 appeal, and the records and papers of any juvenile case filed in the  
65 Appellate Court shall be open for inspection only to persons having a  
66 proper interest therein and upon order of the court.

67 (c) Pending such appeal, the Superior Court may cause the child or  
68 youth to be detained in some suitable place as the court may direct, or  
69 may release the child or youth in the care of a parent, probation officer  
70 or other suitable person, and may require the appellant to enter into a  
71 bond or recognizance to the state, with surety or security conditioned  
72 that the child or youth shall appear before the Appellate Court and  
73 abide by the order and judgment.

74 (d) Notwithstanding subsections (a), (b) and (c) of this section, the  
75 Department of Children and Families, or any party at interest  
76 aggrieved by a final judgment in a termination of parental rights  
77 proceeding, shall be entitled to an expedited hearing before the

78 Appellate Court. A final decision of the Appellate Court shall be  
79 issued as soon as practicable after the date on which the certified copy  
80 of the record of the case is filed with the clerk of the Appellate Court.

81 Sec. 3. Section 46b-150 of the general statutes is repealed and the  
82 following is substituted in lieu thereof:

83 Any minor who has reached [his] such minor's sixteenth birthday  
84 and is residing in this state, or any parent or guardian of such minor,  
85 may petition the superior court for juvenile matters or the probate  
86 court for the district in which either the minor or [his] the parents or  
87 guardian of such minor resides for a determination that the minor  
88 named in the petition be emancipated. The petition shall be verified  
89 and shall state plainly: (1) The facts which bring the minor within the  
90 jurisdiction of the court, (2) the name, date of birth, sex and residence  
91 of the minor, (3) the name and residence of [his] the minor's parent,  
92 parents or guardian, and (4) the name of the petitioner and [his] the  
93 petitioner's relationship to the minor. Upon the filing of the petition in  
94 the Superior Court, the court shall cause a summons to be issued to the  
95 [minor and his] minor's parent, parents or guardian, in the manner  
96 provided in section 46b-128. Upon the filing of the petition in the  
97 Probate Court, the court shall assign a time, not later than thirty days  
98 thereafter, and a place for hearing such petition. The court shall cause a  
99 citation and notice to be served on the minor and [his] the minor's  
100 parent, if the parent is not the petitioner, at least seven days prior to  
101 the hearing date, by a state marshal, constable or indifferent person.  
102 The court shall direct notice by certified mail to the parent, if the  
103 parent is the petitioner. The court shall order such notice as it directs to  
104 the Commissioner of Children and Families, and other persons having  
105 an interest in the minor.

***Statement of Legislative Commissioners:***

In section 1, "attorney" was changed to "counsel" for consistency.

***JUD***      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** Potential Savings, Uncertain

**Affected Agencies:** Department of Children and Families, Judicial Department

**Municipal Impact:** None

**Explanation**

**State Impact:**

The bill could result in savings due to expedited hearings in appeals of termination of parental rights judgments and results in an uncertain impact related to appointment of guardian ad litem.

**Appointment of Guardian Ad Litem**

The bill changes the standard of appointing separate guardian ad litem in child neglect and abuse cases from when the court deems it appropriate to when it appears that there is a conflict of interest between the stated position or wishes of the child and the best interests of the child. The Judicial Department spends about \$8.7 million on court-appointed attorneys in juvenile cases. Guardian ad litem costs represent a small portion of this total. Although it is uncertain how the court would implement the bill's provisions statewide, it is anticipated that if costs were to increase, that such costs would likely be absorbable. It should be noted, however, that the bill could result in

savings in guardian ad litem costs. Any savings would not be significant.

### ***Expedited Hearings***

The bill authorizes an expedited hearings process for appeals of final judgments in termination of parental rights proceedings. A total of 39 such appeals were decided in 1999, and 54 were decided in 2000.

Should this change result in expedited adoptions of children who might otherwise be maintained in foster care, the Department of Children and Families (DCF) will experience a savings when the child is not deemed to meet the statutory definition of a special needs child (Section 17a-116 CGS). This will result because monthly maintenance payments to foster parents on the child's behalf will cease at the time of adoption. Effective September 1, 1999, the average monthly foster care payment is approximately \$693 per month (or \$8,318 annually). In these cases, the Department of Social Services will also experience savings, as the child's Medicaid eligibility would cease. Any savings to both agencies would be partially offset by reduced federal financial participation.

However, the majority of adopted children who leave foster care are deemed to be special needs children. In these cases, DCF provides a monthly subsidy slightly less than that paid to foster parents and Medicaid eligibility is continued until age eighteen. Thus, the state will experience a minimal per child savings for each special needs child who may be adopted more rapidly given the expedited appeals process. As children in subsidized adoptive care are not carried on the agency's caseload for purposes of determining social work staffing under the Juan F. Consent Decree, a workload reduction, which may lead to administrative savings, might occur. The magnitude of any potential savings would be dependent upon how many additional children leave foster care, which cannot be determined at this time.

Due to the relatively small number of these appeals brought to the court, the court can absorb the expedited hearings within normal budgetary resources.

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**OLR Bill Analysis**

sHB 6589

**AN ACT CONCERNING JUVENILE MATTERS.**

**SUMMARY:**

This bill:

1. requires Superior Court judges to appoint guardians ad litem (a person who represents a child's best interest) in all neglect cases, rather than only those they deem appropriate;
2. eliminates a requirement that the child's attorney and guardian ad litem be different people, but specifies criteria when separate representation is required;
3. specifies that spouses can be ordered to testify in neglect proceedings, including about their private conversations;
4. gives the Department of Children and Families and parties adversely affected by a Superior Court's final termination of parental rights decision the right to an expedited Appellate Court hearing and directs that court to render a final decision as soon as practicable once it receives the certified trial record; and
5. eliminates a requirement that the Superior Court for Juvenile Matters (Juvenile Court) serve a summons and copy of an emancipation petition on the affected child, in addition to his parents or guardian.

EFFECTIVE DATE: October 1, 2001

**ATTORNEYS AND GUARDIANS AD LITEM**

The bill requires the attorney appointed to represent a child in a neglect proceeding to also act as the child's guardian ad litem in most cases. It requires the attorney to be knowledgeable about representing

abused and neglected children, and specifies that his primary role is to advocate for the child's wishes. If it appears that the child's wishes and best interest conflict, the court must appoint a separate guardian ad litem to make recommendations about his best interest. This person need not be a lawyer but must be knowledgeable about child abuse and children's needs.

If the court appoints a separate guardian ad litem, the person previously serving in both capacities can continue to serve as attorney, unless the court for good cause appoints another person to do so. But he cannot serve solely as the guardian ad litem.

As under current law, the court must pay the attorney's and guardian's fees if the family cannot afford them.

### **COMPELLED TESTIMONY**

The bill makes explicit the authority of a judge to order a spouse to testify about matters relevant to a neglect proceeding, even if the spouse does not wish to do so. (Judges handling juvenile matters currently have the authority to compel any witness to testify.) In neglect proceedings, spouses do not have the legal privilege to refuse to answer questions about their private conversations.

### **EMANCIPATION PETITION SERVICE**

Any 16 or 17 year old living in Connecticut or his parent or guardian may petition either the Juvenile or Probate Court for emancipation (i.e., an order giving the child the legal rights of an adult and relieving his parents or guardian of their obligations to support and supervise him). Currently, both types of courts must serve a copy of the petition and a summons or notice to appear on the affected child and his parents or guardian. Under the bill, the Juvenile Court need not serve the child. It is unclear, however, whether in the absence of this service a court has the power to make decisions affecting the child's legal interests, particularly when he is not the petitioning party.

### **BACKGROUND**

#### ***Adoption and Safe Families Act of 1997***

Among other things, the federal Adoption and Safe Families Act requires states to appoint guardians ad litem to make court recommendations about a child's best interests in all abuse and neglect cases (42 USC § 5106a(b)(2)(A)(ix)). The federal Administration on Children and Families may reduce funding to states that fail to do so.

**COMMITTEE ACTION**

Joint Favorable Substitute

Yea 37    Nay 0