



House of Representatives

File No. 813

General Assembly

January Session, 2001

(Reprint of File No. 40)

Substitute House Bill No. 6589
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 24, 2001

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 Section 46b-129a of the general statutes is repealed and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. When a conflict arises
18 between the child's wishes or position and that which counsel for the
19 child believes is in the best interest of the child, the court shall appoint
20 another person as guardian ad litem for the child. The guardian ad
21 litem shall speak on behalf of the best interest of the child and is not
22 required to be an attorney-at-law but shall be knowledgeable about the
23 needs and protection of children. In the event that a separate guardian
24 ad litem is appointed, the person previously serving as both counsel
25 and guardian ad litem for the child shall continue to serve as counsel
26 for the child and a different person shall be appointed as guardian ad
27 litem, unless the court for good cause also appoints a different person
28 as counsel for the child. No person who has served as both counsel and
29 guardian ad litem for a child shall thereafter serve solely as the child's
30 guardian ad litem. The counsel and guardian ad litem's fees, if any,
31 shall be paid by the parents or guardian, or the estate of the child, or, if
32 such persons are unable to pay, by the court; (3) the privilege against
33 the disclosure of communications between husband and wife shall be
34 inapplicable and either may testify as to any relevant matter; and (4)
35 evidence that the child has been abused or has sustained a
36 nonaccidental injury shall constitute prima facie evidence that shall be
37 sufficient to support an adjudication that such child is uncared for or
38 neglected.

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 Section 46b-142 of the general statutes is repealed and the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

41 (a) The Chief Court Administrator, in consultation with the judges
42 of the Superior Court, shall establish districts for the purpose of
43 establishing venue in juvenile matters. All petitions concerning
44 delinquent children shall be heard within the district where the
45 delinquency is alleged to have occurred or where the child resides, in
46 the discretion of the court. All other petitions shall be heard within the
47 district where the child or youth resided at the time of the filing of the
48 petition, but for the purposes of this section any child or youth born in
49 any hospital or institution where the mother is confined at the time of

50 birth shall be deemed to have residence in the district wherein [his]
51 such child's or youth's mother was living at the time of her admission
52 to such hospital or institution.

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

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

71 (d) Notwithstanding subsections (a), (b) and (c) of this section, the
72 Department of Children and Families, or any party to the action
73 aggrieved by a final judgment in a termination of parental rights
74 proceeding, shall be entitled to an expedited hearing before the
75 Appellate Court. A final decision of the Appellate Court shall be
76 issued as soon as practicable after the date on which the certified copy
77 of the record of the case is filed with the clerk of the Appellate Court.

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

80 Any minor who has reached [his] such minor's sixteenth birthday
81 and is residing in this state, or any parent or guardian of such minor,

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

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:

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 \$9.1 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 any costs were to occur, 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.

House "A" made various minor and technical changes and

minimally affected the fiscal impact to the Judicial Department.

OLR Amended Bill Analysis

sHB 6589 (as amended by House "A")*

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. gives the Department of Children and Families and legal 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
4. eliminates a requirement that the juvenile court serve a summons and copy of an emancipation petition on the person who filed it.

*House Amendment "A" (1) specifies that the court must appoint a separate guardian and litem when a conflict arises between a child's wishes or position and what his attorney believes is in his best interest, (2) eliminates a provision that spouses can be ordered to testify about their private communications in neglect proceedings, (3) limits expedited appeal rights to aggrieved legal parties, rather than aggrieved parties at interest, and (4) eliminates a provision in the bill that would have exempted the affected minor from being served with emancipation petitions and instead exempts all petitioners.

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. If it appears to the attorney 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.

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 petitioner.

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

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 0