



General Assembly

January Session, 2007

Committee Bill No. 907

LCO No. 4723

04723SB00907KID

Referred to Committee on Select Committee on Children

Introduced by:
(KID)

AN ACT CONCERNING TEMPORARY CUSTODY OF A CHILD IN JUVENILE MATTERS.

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

1 Section 1. Section 46b-129 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) Any selectman, town manager, or town, city or borough welfare
4 department, any probation officer, or the Commissioner of Social
5 Services, the Commissioner of Children and Families or any child-
6 caring institution or agency approved by the Commissioner of
7 Children and Families, a child or such child's representative or
8 attorney or a foster parent of a child, having information that a child or
9 youth is neglected, uncared-for or dependent, may file with the
10 Superior Court that has venue over such matter a verified petition
11 plainly stating such facts as bring the child or youth within the
12 jurisdiction of the court as neglected, uncared-for or dependent, within
13 the meaning of section 46b-120, the name, date of birth, sex and
14 residence of the child or youth, the name and residence of such child's
15 parents or guardian, and praying for appropriate action by the court in
16 conformity with the provisions of this chapter. Upon the filing of such

17 a petition, except as otherwise provided in subsection (k) of section
18 17a-112, the court shall cause a summons to be issued requiring the
19 parent or parents or the guardian of the child or youth to appear in
20 court at the time and place named, which summons shall be served not
21 less than fourteen days before the date of the hearing in the manner
22 prescribed by section 46b-128, and the court shall further give notice to
23 the petitioner and to the Commissioner of Children and Families of the
24 time and place when the petition is to be heard not less than fourteen
25 days prior to the hearing in question.

26 (b) If it appears from the specific allegations of the petition and
27 other verified affirmations of fact accompanying the petition and
28 application, or subsequent thereto, that there is reasonable cause to
29 believe that (1) the child or youth is suffering from serious physical
30 illness or serious physical injury or is in immediate physical danger
31 from the child's or youth's surroundings, and (2) that as a result of said
32 conditions, the child's or youth's safety is endangered and immediate
33 removal from such surroundings is necessary to ensure the child's or
34 youth's safety, the court shall [either (A)] issue an order to the parents
35 or other person having responsibility for the care of the child or youth
36 to appear at such time as the court may designate to determine
37 whether the court should vest in some suitable agency or person the
38 child's or youth's temporary care and custody pending disposition of
39 the petition. [, or (B) issue an order ex parte vesting in some suitable
40 agency or person the child's or youth's temporary care and custody. A
41 preliminary hearing on any ex parte custody order or order to appear
42 issued by the court shall be held not later than ten days after the
43 issuance of such order.] The service of such [orders] order may be
44 made by any officer authorized by law to serve process, or by any
45 probation officer appointed in accordance with section 46b-123,
46 investigator from the Department of Administrative Services, state or
47 local police officer or indifferent person. Such [orders] order shall
48 include a conspicuous notice to the respondent written in clear and
49 simple language containing at least the following information: [(i)] (A)
50 That the order contains allegations that conditions in the home have

51 endangered the safety and welfare of the child or youth; [(ii)] (B) that a
52 hearing will be held on the date on the form; [(iii)] (C) that the hearing
53 is the opportunity to present the parents' position concerning the
54 alleged facts; [(iv)] (D) that an attorney will be appointed for parents
55 who cannot afford an attorney; [(v)] (E) that such parents may apply
56 for a court-appointed attorney by going in person to the court address
57 on the form and are advised to go as soon as possible in order for the
58 attorney to prepare for the hearing; and [(vi)] (F) if such parents have
59 any questions concerning the case or appointment of counsel, any such
60 parent is advised to go to the court or call the clerk's office at the court
61 as soon as possible. Upon application for appointed counsel, the court
62 shall promptly determine eligibility and, if the respondent is eligible,
63 promptly appoint counsel. [The expense for any temporary care and
64 custody shall be paid by the town in which such child or youth is at
65 the time residing, and such town shall be reimbursed for such expense
66 by the town found liable for the child's or youth's support, except that
67 where a state agency has filed a petition pursuant to the provisions of
68 subsection (a) of this section, the agency shall pay such expense. The
69 agency shall give primary consideration to placing the child or youth
70 in the town where such child or youth resides. The agency shall file in
71 writing with the clerk of the court the reasons for placing the child or
72 youth in a particular placement outside the town where the child or
73 youth resides. Upon issuance of an ex parte order, the court shall
74 provide to the commissioner and the parent or guardian specific steps
75 necessary for each to take to address the ex parte order for the parent
76 or guardian to retain or regain custody of the child or youth. Upon the
77 issuance of such order, or not later than sixty days after the issuance of
78 such order, the court shall make a determination whether the
79 Department of Children and Families made reasonable efforts to keep
80 the child or youth with his or her parents or guardian prior to the
81 issuance of such order and, if such efforts were not made, whether
82 such reasonable efforts were not possible, taking into consideration the
83 child's or youth's best interests, including the child's or youth's health
84 and safety.]

85 (c) In any proceeding under this section, any grandparent of the
86 child may make a motion to intervene and the court shall grant such
87 motion except for good cause shown. Upon the granting of such
88 motion, such grandparent may appear by counsel or in person.

89 (d) The preliminary hearing on the [order of temporary custody or]
90 order to appear or the first hearing on a petition filed pursuant to
91 subsection (a) of this section shall be held in order for the court to: (1)
92 Advise the parent or guardian of the allegations contained in all
93 petitions and applications that are the subject of the hearing; (2) assure
94 that an attorney, and where appropriate, a separate guardian ad litem
95 has been appointed to represent the child or youth in accordance with
96 sections 46b-129a and 46b-136; (3) upon request, appoint an attorney to
97 represent the respondent when the respondent is unable to afford
98 representation, as determined by the court; (4) advise the parent or
99 guardian of the right to a hearing on the petitions and applications, to
100 be held not later than ten days after the date of the preliminary hearing
101 if the hearing is pursuant to [an order of temporary custody or] an
102 order to show cause; (5) accept a plea regarding the truth of such
103 allegations; (6) make any interim orders [, including visitation,] that
104 the court determines are in the best interests of the child or youth,
105 except an order of temporary custody. The court, after a hearing
106 pursuant to this subsection, shall order specific steps the commissioner
107 and the parent or guardian shall take for the parent or guardian [to
108 regain or] to retain custody of the child or youth; (7) take steps to
109 determine the identity of the father of the child or youth, including
110 ordering genetic testing, if necessary, and order service of the petition
111 and notice of the hearing date, if any, to be made upon him; (8) if the
112 person named as the father appears, and admits that he is the father,
113 provide him and the mother with the notices that comply with section
114 17b-27 and provide them with the opportunity to sign a paternity
115 acknowledgment and affirmation on forms that comply with section
116 17b-27. Such documents shall be executed and filed in accordance with
117 chapter 815y and a copy delivered to the clerk of the superior court for
118 juvenile matters; and (9) in the event that the person named as a father

119 appears and denies that he is the father of the child or youth, advise
120 him that he may have no further standing in any proceeding
121 concerning the child, and either order genetic testing to determine
122 paternity or direct him to execute a written denial of paternity on a
123 form promulgated by the Office of the Chief Court Administrator.
124 Upon execution of such a form by the putative father, the court may
125 remove him from the case and afford him no further standing in the
126 case or in any subsequent proceeding regarding the child or youth
127 until such time as paternity is established by formal acknowledgment
128 or adjudication in a court of competent jurisdiction.

129 (e) If any parent or guardian fails, after service of such order, to
130 appear at the preliminary hearing, the court may enter or sustain an
131 order of temporary custody.

132 (f) Upon request, or upon its own motion, the court shall schedule a
133 hearing on the order for temporary custody or the order to show cause
134 to be held not later than ten days after the date of the preliminary
135 hearing. Such hearing shall be held on consecutive days except for
136 compelling circumstances or at the request of the parent or guardian.

137 (g) At a contested hearing on the order for temporary custody or
138 order to appear, credible hearsay evidence regarding statements of the
139 child or youth made to a mandated reporter or to a parent may be
140 offered by the parties and admitted by the court upon a finding that
141 the statement is reliable and trustworthy and that admission of such
142 statement is reasonably necessary. A signed statement executed by a
143 mandated reporter under oath may be admitted by the court without
144 the need for the mandated reporter to appear and testify unless called
145 by a respondent or the child, provided the statement: (1) Was provided
146 at the preliminary hearing and promptly upon request to any counsel
147 appearing after the preliminary hearing; (2) reasonably describes the
148 qualifications of the reporter and the nature of his contact with the
149 child; and (3) contains only the direct observations of the reporter, and
150 statements made to the reporter that would be admissible if the

151 reporter were to testify to them in court and any opinions reasonably
152 based thereupon. If a respondent or the child gives notice at the
153 preliminary hearing that he intends to cross-examine the reporter, the
154 person filing the petition shall make the reporter available for such
155 examination at the contested hearing.

156 (h) If any parent or guardian fails, after due notice of the hearing
157 scheduled pursuant to subsection (g) of this section and without good
158 cause, to appear at the scheduled date for a contested hearing on the
159 order of temporary custody or order to appear, the court may enter or
160 sustain an order of temporary custody.

161 (i) When a petition is filed in said court for the commitment of a
162 child or youth, the Commissioner of Children and Families shall make
163 a thorough investigation of the case and shall cause to be made a
164 thorough physical and mental examination of the child or youth if
165 requested by the court. The court after hearing may also order a
166 thorough physical or mental examination, or both, of a parent or
167 guardian whose competency or ability to care for a child or youth
168 before the court is at issue. The expenses incurred in making such
169 physical and mental examinations shall be paid as costs of
170 commitment are paid.

171 (j) Upon finding and adjudging that any child or youth is uncared-
172 for, neglected or dependent, the court may commit such child or youth
173 to the Commissioner of Children and Families. Such commitment shall
174 remain in effect until further order of the court, except that such
175 commitment may be revoked or parental rights terminated at any time
176 by the court, or the court may vest such child's or youth's care and
177 personal custody in any private or public agency that is permitted by
178 law to care for neglected, uncared-for or dependent children or youths
179 or with any person or persons found to be suitable and worthy of such
180 responsibility by the court. The court shall order specific steps that the
181 parent must take to facilitate the return of the child or youth to the
182 custody of such parent. The commissioner shall be the guardian of

183 such child or youth for the duration of the commitment, provided the
184 child or youth has not reached the age of eighteen years or, in the case
185 of a child or youth in full-time attendance in a secondary school, a
186 technical school, a college or a state-accredited job training program,
187 provided such child or youth has not reached the age of twenty-one
188 years, by consent of such youth, or until another guardian has been
189 legally appointed, and in like manner, upon such vesting of the care of
190 such child or youth, such other public or private agency or individual
191 shall be the guardian of such child or youth until such child or youth
192 has reached the age of eighteen years or, in the case of a child or youth
193 in full-time attendance in a secondary school, a technical school, a
194 college or a state-accredited job training program, until such child or
195 youth has reached the age of twenty-one years or until another
196 guardian has been legally appointed. The commissioner may place any
197 child or youth so committed to the commissioner in a suitable foster
198 home or in the home of a person related by blood to such child or
199 youth or in a licensed child-caring institution or in the care and
200 custody of any accredited, licensed or approved child-caring agency,
201 within or without the state, provided a child shall not be placed
202 outside the state except for good cause and unless the parents or
203 guardian of such child are notified in advance of such placement and
204 given an opportunity to be heard, or in a receiving home maintained
205 and operated by the Commissioner of Children and Families. In
206 placing such child or youth, the commissioner shall, if possible, select a
207 home, agency, institution or person of like religious faith to that of a
208 parent of such child or youth, if such faith is known or may be
209 ascertained by reasonable inquiry, provided such home conforms to
210 the standards of said commissioner and the commissioner shall, when
211 placing siblings, if possible, place such children together. As an
212 alternative to commitment, the court may place the child or youth in
213 the custody of the parent or guardian with protective supervision by
214 the Commissioner of Children and Families subject to conditions
215 established by the court. Upon the issuance of an order committing the
216 child or youth to the Commissioner of Children and Families, or not

217 later than sixty days after the issuance of such order, the court shall
218 determine whether the Department of Children and Families made
219 reasonable efforts to keep the child or youth with his or her parents or
220 guardian prior to the issuance of such order and, if such efforts were
221 not made, whether such reasonable efforts were not possible, taking
222 into consideration the child's or youth's best interests, including the
223 child's or youth's health and safety.

224 (k) (1) Nine months after placement of the child or youth in the care
225 and custody of the commissioner pursuant to a voluntary placement
226 agreement, or removal of a child or youth pursuant to section 17a-101g
227 or an order issued by a court of competent jurisdiction, whichever is
228 earlier, the commissioner shall file a motion for review of a
229 permanency plan. Nine months after a permanency plan has been
230 approved by the court pursuant to this subsection, the commissioner
231 shall file a motion for review of the permanency plan. Any party
232 seeking to oppose the commissioner's permanency plan shall file a
233 motion in opposition not later than thirty days after the filing of the
234 commissioner's motion for review of the permanency plan, which
235 motion shall include the reason therefor. A permanency hearing on
236 any motion for review of the permanency plan shall be held not later
237 than ninety days after the filing of such motion. The court shall hold
238 evidentiary hearings in connection with any contested motion for
239 review of the permanency plan. The commissioner shall have the
240 burden of proving that the proposed permanency plan is in the best
241 interests of the child or youth. After the initial permanency hearing,
242 subsequent permanency hearings shall be held not less frequently than
243 every twelve months while the child or youth remains in the custody
244 of the Commissioner of Children and Families. The court shall provide
245 notice to the child or youth, and the parent or guardian of such child or
246 youth of the time and place of the court hearing on any such motion
247 not less than fourteen days prior to such hearing.

248 (2) At a permanency hearing held in accordance with the provisions
249 of subdivision (1) of this subsection, the court shall approve a

250 permanency plan that is in the best interests of the child or youth and
251 takes into consideration the child's or youth's need for permanency.
252 The child's or youth's health and safety shall be of paramount concern
253 in formulating such plan. Such permanency plan may include the goal
254 of (A) revocation of commitment and reunification of the child or
255 youth with the parent or guardian, with or without protective
256 supervision; (B) transfer of guardianship; (C) long-term foster care
257 with a relative licensed as a foster parent or certified as a relative
258 caregiver; (D) adoption and filing of termination of parental rights; or
259 (E) such other planned permanent living arrangement ordered by the
260 court, provided the Commissioner of Children and Families has
261 documented a compelling reason why it would not be in the best
262 interest of the child or youth for the permanency plan to include the
263 goals in subparagraphs (A) to (D), inclusive, of this subdivision. Such
264 other planned permanent living arrangement may include, but not be
265 limited to, placement of a child or youth in an independent living
266 program or long term foster care with an identified foster parent.

267 (3) At a permanency hearing held in accordance with the provisions
268 of subdivision (1) of this subsection, the court shall review the status of
269 the child, the progress being made to implement the permanency plan,
270 determine a timetable for attaining the permanency plan, determine
271 the services to be provided to the parent if the court approves a
272 permanency plan of reunification and the timetable for such services,
273 and determine whether the commissioner has made reasonable efforts
274 to achieve the permanency plan. The court may revoke commitment if
275 a cause for commitment no longer exists and it is in the best interests of
276 the child or youth.

277 (4) If the court approves the permanency plan of adoption: (A) The
278 Commissioner of Children and Families shall file a petition for
279 termination of parental rights not later than sixty days after such
280 approval if such petition has not previously been filed; (B) the
281 commissioner may conduct a thorough adoption assessment and
282 child-specific recruitment; and (C) the court may order that the child

283 be photo-listed within thirty days if the court determines that such
284 photo-listing is in the best interest of the child. As used in this
285 subdivision, "thorough adoption assessment" means conducting and
286 documenting face-to-face interviews with the child, foster care
287 providers and other significant parties and "child specific recruitment"
288 means recruiting an adoptive placement targeted to meet the
289 individual needs of the specific child, including, but not limited to, use
290 of the media, use of photo-listing services and any other in-state or
291 out-of-state resources that may be used to meet the specific needs of
292 the child, unless there are extenuating circumstances that indicate that
293 such efforts are not in the best interest of the child.

294 (l) The Commissioner of Children and Families shall pay directly to
295 the person or persons furnishing goods or services determined by said
296 commissioner to be necessary for the care and maintenance of such
297 child or youth the reasonable expense thereof, payment to be made at
298 intervals determined by said commissioner; and the Comptroller shall
299 draw his or her order on the Treasurer, from time to time, for such part
300 of the appropriation for care of committed children or youths as may
301 be needed in order to enable the commissioner to make such
302 payments. The commissioner shall include in the department's annual
303 budget a sum estimated to be sufficient to carry out the provisions of
304 this section. Notwithstanding that any such child or youth has income
305 or estate, the commissioner may pay the cost of care and maintenance
306 of such child or youth. The commissioner may bill to and collect from
307 the person in charge of the estate of any child or youth aided under
308 this chapter, including such child's or youth's decedent estate, or the
309 payee of such child's or youth's income, the total amount expended for
310 care of such child or youth or such portion thereof as any such estate
311 or payee is able to reimburse.

312 (m) The commissioner, a parent or the child's attorney may file a
313 motion to revoke a commitment, and, upon finding that cause for
314 commitment no longer exists, and that such revocation is in the best
315 interests of such child or youth, the court may revoke the commitment

316 of such child or youth. No such motion shall be filed more often than
317 once every six months.

318 (n) Upon service on the parent, guardian or other person having
319 control of the child or youth of any order issued by the court pursuant
320 to the provisions of subsections (b) and (j) of this section, the child or
321 youth concerned shall be surrendered to the person serving the order
322 who shall forthwith deliver the child or youth to the person, agency,
323 department or institution awarded custody in the order. Upon refusal
324 of the parent, guardian or other person having control of the child or
325 youth to surrender the child or youth as provided in the order, the
326 court may cause a warrant to be issued charging the parent, guardian
327 or other person having control of the child or youth with contempt of
328 court. If the person arrested is found in contempt of court, the court
329 may order such person confined until the person complies with the
330 order, but for not more than six months, or may fine such person not
331 more than five hundred dollars, or both.

332 (o) A foster parent shall have the right to be heard for the purposes
333 of this section in Superior Court on a motion for review of a
334 permanency plan and in matters concerning the placement or
335 revocation of commitment of a foster child living with such parent. A
336 foster parent shall receive notice of any motion for review of a
337 permanency plan or a motion to revoke commitment or any hearing on
338 such motion. A foster parent who has cared for a child or youth for not
339 less than six months shall have the right to be heard and comment on
340 the best interests of such child or youth in any matter under this
341 section which is brought not more than one year after the last day the
342 foster parent provided such care.

343 (p) Upon motion of any sibling of any child committed to the
344 Department of Children and Families pursuant to this section, such
345 sibling shall have the right to be heard concerning visitation with, and
346 placement of, any such child. In awarding any visitation or modifying
347 any placement, the court shall be guided by the best interests of all

348 siblings affected by such determination.

349 (q) The provisions of section 17a-152, regarding placement of a child
350 from another state, and section 17a-175, regarding the Interstate
351 Compact on the Placement of Children, shall apply to placements
352 pursuant to this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2007	46b-129

Statement of Purpose:

To prevent the court from issuing an order of temporary custody prior to an evidentiary hearing.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

Co-Sponsors: SEN. HARP, 10th Dist.; REP. KIRKLEY-BEY, 5th Dist.

S.B. 907