



# House of Representatives

General Assembly

**File No. 704**

January Session, 2011

Substitute House Bill No. 6442

*House of Representatives, May 3, 2011*

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING THE APPOINTMENT OF COUNSEL AND GUARDIANS AD LITEM IN CHILD PROTECTION MATTERS, AND THE APPOINTMENT OF PERMANENT LEGAL GUARDIANS.***

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 Section 46b-129a of the general statutes is repealed and  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 (*Effective October 1, 2011*):

3 In proceedings in the Superior Court under section 46b-129, as  
4 amended by this act:

5 (1) The court may order the child, the parents, the guardian, or other  
6 persons accused by a competent witness [with] of abusing the child, to  
7 be examined by one or more competent physicians, psychiatrists or  
8 psychologists appointed by the court;

9 (2) [a] (A) A child shall be represented by counsel knowledgeable  
10 about representing such children who shall be [appointed by the court]  
11 assigned to represent the child [and to act as guardian ad litem for the  
12 child.] by the Chief Child Protection Attorney, or appointed by the

13 court if there is an immediate need for the appointment of counsel  
14 during a court proceeding. The court shall give the parties prior notice  
15 of such assignment or appointment. Counsel for the child shall act  
16 solely as attorney for the child.

17 (B) If a child requiring assignment of counsel in a proceeding under  
18 section 46b-129, as amended by this act, is represented by an attorney  
19 for a minor child in an ongoing probate or family matter proceeding,  
20 the court may appoint the attorney to represent the child in the  
21 proceeding under section 46b-129, as amended by this act, provided (i)  
22 such counsel is knowledgeable about representing such children, and  
23 (ii) the court notifies the Chief Child Protection Attorney of the  
24 appointment. Any child who is subject to an ongoing probate or family  
25 matters proceeding who has been appointed a guardian ad litem in  
26 such proceeding shall be assigned a separate guardian ad litem in a  
27 proceeding under section 46b-129, as amended by this act, if it is  
28 deemed necessary pursuant to subparagraph (D) of this subdivision.

29 (C) The primary role of any counsel for the child [including the  
30 counsel who also serves as guardian ad litem,] shall be to advocate for  
31 the child in accordance with the Rules of Professional Conduct. [When  
32 a conflict arises between the child's wishes or position and that which  
33 counsel for the child believes is in the best interest of the child, the  
34 court shall appoint another person as guardian ad litem for the child.]

35 (D) If the court, based on evidence before it, or counsel for the child,  
36 determines that the child cannot adequately act in his or her own best  
37 interests and the child's wishes, as determined by counsel, if followed,  
38 could lead to substantial physical, financial or other harm to the child  
39 unless protective action is taken, counsel may request and the court  
40 may order that a separate guardian ad litem be assigned for the child,  
41 in which case the court shall either appoint a guardian ad litem to  
42 serve on a voluntary basis or notify the Chief Child Protection  
43 Attorney who shall assign a separate guardian ad litem for the child.  
44 The guardian ad litem shall [speak on behalf] perform an independent  
45 investigation of the case and may present at any hearing information

46 pertinent to the court's determination of the best [interest] interests of  
47 the child. [and] The guardian ad litem shall be subject to cross  
48 examination upon the request of opposing counsel. The guardian ad  
49 litem is not required to be an attorney-at-law but shall be  
50 knowledgeable about the needs and protection of children and  
51 relevant court procedures. [In the event that] If a separate guardian ad  
52 litem is [appointed] assigned, the person previously serving as [both]  
53 counsel [and guardian ad litem] for the child shall continue to serve as  
54 counsel for the child and a different person shall be [appointed]  
55 assigned as guardian ad litem, unless the court for good cause also  
56 [appoints] determines that a different person should serve as counsel  
57 for the child, in which case the court shall notify the Chief Child  
58 Protection Attorney who shall assign a different person as counsel for  
59 the child. No person who has served as both counsel and guardian ad  
60 litem for a child shall thereafter serve solely as the child's guardian ad  
61 litem.

62 (E) The counsel and guardian ad litem's fees, if any, shall be paid by  
63 the Chief Child Protection Attorney unless the parents or guardian, or  
64 the estate of the child, [or, if such persons] are [unable] able to pay, [by  
65 the court] in which case the court shall assess the rate the parent or  
66 guardian is able to pay and the Chief Child Protection Attorney may  
67 seek reimbursement for the costs of representation from the parents,  
68 guardian or estate of the child;

69 (3) [the] The privilege against the disclosure of communications  
70 between husband and wife shall be inapplicable and either may testify  
71 as to any relevant matter; and

72 (4) [evidence] Evidence that the child has been abused or has  
73 sustained a nonaccidental injury shall constitute prima facie evidence  
74 that shall be sufficient to support an adjudication that such child is  
75 uncared for or neglected.

76 Sec. 2. Section 46b-129 of the general statutes is repealed and the  
77 following is substituted in lieu thereof (*Effective October 1, 2011*):

78 (a) Any selectman, town manager, or town, city or borough welfare  
79 department, any probation officer, or the Commissioner of Social  
80 Services, the Commissioner of Children and Families or any child-  
81 caring institution or agency approved by the Commissioner of  
82 Children and Families, a child or such child's representative or  
83 attorney or a foster parent of a child, having information that a child or  
84 youth is neglected, uncared-for or dependent, may file with the  
85 Superior Court that has venue over such matter a verified petition  
86 plainly stating such facts as bring the child or youth within the  
87 jurisdiction of the court as neglected, uncared-for or dependent, within  
88 the meaning of section 46b-120, the name, date of birth, sex and  
89 residence of the child or youth, the name and residence of such child's  
90 parents or guardian, and praying for appropriate action by the court in  
91 conformity with the provisions of this chapter. Upon the filing of such  
92 a petition, except as otherwise provided in subsection (k) of section  
93 17a-112, the court shall cause a summons to be issued requiring the  
94 parent or parents or the guardian of the child or youth to appear in  
95 court at the time and place named, which summons shall be served not  
96 less than fourteen days before the date of the hearing in the manner  
97 prescribed by section 46b-128, and the court shall further give notice to  
98 the petitioner and to the Commissioner of Children and Families of the  
99 time and place when the petition is to be heard not less than fourteen  
100 days prior to the hearing in question.

101 (b) If it appears from the specific allegations of the petition and  
102 other verified affirmations of fact accompanying the petition and  
103 application, or subsequent thereto, that there is reasonable cause to  
104 believe that (1) the child or youth is suffering from serious physical  
105 illness or serious physical injury or is in immediate physical danger  
106 from the child's or youth's surroundings, and (2) that as a result of said  
107 conditions, the child's or youth's safety is endangered and immediate  
108 removal from such surroundings is necessary to ensure the child's or  
109 youth's safety, the court shall either (A) issue an order to the parents or  
110 other person having responsibility for the care of the child or youth to  
111 appear at such time as the court may designate to determine whether  
112 the court should vest the child's or youth's temporary care and custody

113 in a person related to the child or youth by blood or marriage or in  
114 some other person or suitable agency pending disposition of the  
115 petition, or (B) issue an order ex parte vesting the child's or youth's  
116 temporary care and custody in a person related to the child or youth  
117 by blood or marriage or in some other person or suitable agency. A  
118 preliminary hearing on any ex parte custody order or order to appear  
119 issued by the court shall be held not later than ten days after the  
120 issuance of such order. The service of such orders may be made by any  
121 officer authorized by law to serve process, or by any probation officer  
122 appointed in accordance with section 46b-123, investigator from the  
123 Department of Administrative Services, state or local police officer or  
124 indifferent person. Such orders shall include a conspicuous notice to  
125 the respondent written in clear and simple language containing at least  
126 the following information: (i) That the order contains allegations that  
127 conditions in the home have endangered the safety and welfare of the  
128 child or youth; (ii) that a hearing will be held on the date on the form;  
129 (iii) that the hearing is the opportunity to present the parents' position  
130 concerning the alleged facts; (iv) that an attorney will be appointed for  
131 parents who cannot afford an attorney; (v) that such parents may  
132 apply for a court-appointed attorney by going in person to the court  
133 address on the form and are advised to go as soon as possible in order  
134 for the attorney to prepare for the hearing; (vi) that such parents, or a  
135 person having responsibility for the care and custody of the child or  
136 youth, may request the Commissioner of Children and Families to  
137 investigate placing the child or youth with a person related to the child  
138 or youth by blood or marriage who might serve as a licensed foster  
139 parent or temporary custodian for such child or youth. The  
140 commissioner, where practicable, shall investigate such relative or  
141 relatives prior to the preliminary hearing and provide a report to the  
142 court at such hearing as to such relative's suitability; and (vii) if such  
143 parents have any questions concerning the case or appointment of  
144 counsel, any such parent is advised to go to the court or call the clerk's  
145 office at the court as soon as possible. Upon application for appointed  
146 counsel, the court shall promptly determine eligibility and, if the  
147 respondent is eligible, promptly appoint counsel. The expense for any

148 temporary care and custody shall be paid by the town in which such  
149 child or youth is at the time residing, and such town shall be  
150 reimbursed for such expense by the town found liable for the child's or  
151 youth's support, except that where a state agency has filed a petition  
152 pursuant to the provisions of subsection (a) of this section, the agency  
153 shall pay such expense. The agency shall give primary consideration to  
154 placing the child or youth in the town where such child or youth  
155 resides. The agency shall file in writing with the clerk of the court the  
156 reasons for placing the child or youth in a particular placement outside  
157 the town where the child or youth resides. Upon issuance of an ex  
158 parte order, the court shall provide to the commissioner and the parent  
159 or guardian specific steps necessary for each to take to address the ex  
160 parte order for the parent or guardian to retain or regain custody of the  
161 child or youth. Upon the issuance of such order, or not later than sixty  
162 days after the issuance of such order, the court shall make a  
163 determination whether the Department of Children and Families made  
164 reasonable efforts to keep the child or youth with his or her parents or  
165 guardian prior to the issuance of such order and, if such efforts were  
166 not made, whether such reasonable efforts were not possible, taking  
167 into consideration the child's or youth's best interests, including the  
168 child's or youth's health and safety.

169 (c) The preliminary hearing on the order of temporary custody or  
170 order to appear or the first hearing on a petition filed pursuant to  
171 subsection (a) of this section shall be held in order for the court to: (1)  
172 Advise the parent or guardian of the allegations contained in all  
173 petitions and applications that are the subject of the hearing and the  
174 parent's or guardian's right to counsel pursuant to subsection (b) of  
175 section 46b-135; (2) assure that an attorney, and where appropriate, a  
176 separate guardian ad litem has been appointed to represent the child  
177 or youth in accordance with subsection (b) of section 46b-123e and  
178 sections 46b-129a, as amended by this act, and 46b-136; (3) upon  
179 request, appoint an attorney to represent the respondent when the  
180 respondent is unable to afford representation, in accordance with  
181 subsection (b) of section 46b-123e; (4) advise the parent or guardian of  
182 the right to a hearing on the petitions and applications, to be held not

183 later than ten days after the date of the preliminary hearing if the  
184 hearing is pursuant to an order of temporary custody or an order to  
185 show cause; (5) accept a plea regarding the truth of such allegations;  
186 (6) make any interim orders, including visitation, that the court  
187 determines are in the best interests of the child or youth. The court,  
188 after a hearing pursuant to this subsection, shall order specific steps  
189 the commissioner and the parent or guardian shall take for the parent  
190 or guardian to regain or to retain custody of the child or youth; (7) take  
191 steps to determine the identity of the father of the child or youth,  
192 including, if necessary, inquiring of the mother of the child or youth,  
193 under oath, as to the identity and address of any person who might be  
194 the father of the child or youth and ordering genetic testing, and order  
195 service of the petition and notice of the hearing date, if any, to be made  
196 upon him; (8) if the person named as the father appears, and admits  
197 that he is the father, provide him and the mother with the notices that  
198 comply with section 17b-27 and provide them with the opportunity to  
199 sign a paternity acknowledgment and affirmation on forms that  
200 comply with section 17b-27. Such documents shall be executed and  
201 filed in accordance with chapter 815y and a copy delivered to the clerk  
202 of the superior court for juvenile matters; (9) in the event that the  
203 person named as a father appears and denies that he is the father of the  
204 child or youth, advise him that he may have no further standing in any  
205 proceeding concerning the child, and either order genetic testing to  
206 determine paternity or direct him to execute a written denial of  
207 paternity on a form promulgated by the Office of the Chief Court  
208 Administrator. Upon execution of such a form by the putative father,  
209 the court may remove him from the case and afford him no further  
210 standing in the case or in any subsequent proceeding regarding the  
211 child or youth until such time as paternity is established by formal  
212 acknowledgment or adjudication in a court of competent jurisdiction;  
213 (10) identify any person or persons related to the child or youth by  
214 blood or marriage residing in this state who might serve as licensed  
215 foster parents or temporary custodians and order the Commissioner of  
216 Children and Families to investigate and determine, not later than  
217 thirty days after the preliminary hearing, the appropriateness of

218 placement of the child or youth with such relative or relatives; and (11)  
219 in accordance with the provisions of the Interstate Compact on the  
220 Placement of Children pursuant to section 17a-175, identify any person  
221 or persons related to the child or youth by blood or marriage residing  
222 out of state who might serve as licensed foster parents or temporary  
223 custodians, and order the Commissioner of Children and Families to  
224 investigate and determine, within a reasonable time, the  
225 appropriateness of placement of the child or youth with such relative  
226 or relatives.

227 (d) (1) (A) If not later than thirty days after the preliminary hearing,  
228 or within a reasonable time when a relative resides out of state, the  
229 Commissioner of Children and Families determines that there is not a  
230 suitable person related to the child or youth by blood or marriage who  
231 can be licensed as a foster parent or serve as a temporary custodian,  
232 and the court has not granted temporary custody to a person related to  
233 the child or youth by blood or marriage, any person related to the child  
234 or youth by blood or marriage may file, not later than ninety days after  
235 the date of the preliminary hearing, a motion to intervene for the  
236 limited purpose of moving for temporary custody of such child or  
237 youth. If a motion to intervene is timely filed, the court shall grant  
238 such motion except for good cause shown.

239 (B) Any person related to a child or youth may file a motion to  
240 intervene for purposes of seeking temporary custody of a child or  
241 youth more than ninety days after the date of the preliminary hearing.  
242 The granting of such motion shall be solely in the court's discretion,  
243 except that such motion shall be granted absent good cause shown  
244 whenever the child's or youth's most recent placement has been  
245 disrupted or is about to be disrupted.

246 (C) A relative shall appear in person, with or without counsel, and  
247 shall not be entitled to court appointed counsel or the assignment of  
248 counsel by the Chief Child Protection Attorney except as provided in  
249 section 46b-136.

250 (2) Upon the granting of intervenor status to such relative of the

251 child or youth, the court shall issue an order directing the  
252 Commissioner of Children and Families to conduct an assessment of  
253 such relative and to file a written report with the court not later than  
254 forty days after such order, unless such relative resides out of state, in  
255 which case the assessment shall be ordered and requested in  
256 accordance with the provisions of the Interstate Compact on the  
257 Placement of Children, pursuant to section 17a-175. The court may also  
258 request such relative to release such relative's medical records,  
259 including any psychiatric or psychological records and may order such  
260 relative to submit to a physical or mental examination. The expenses  
261 incurred for such physical or mental examination shall be paid as costs  
262 of commitment are paid. Upon receipt of the assessment, the court  
263 shall schedule a hearing on such relative's motion for temporary  
264 custody not later than fifteen days after the receipt of the assessment. If  
265 the Commissioner of Children and Families, the child's or youth's  
266 attorney or guardian ad litem, or the parent or guardian objects to the  
267 vesting of temporary custody in such relative, the agency or person  
268 objecting at such hearing shall be required to prove by a fair  
269 preponderance of the evidence that granting temporary custody of the  
270 child or youth to such relative would not be in the best interests of  
271 such child or youth.

272 (3) If the court grants such relative temporary custody during the  
273 period of such temporary custody, such relative shall be subject to  
274 orders of the court, including, but not limited to, providing for the care  
275 and supervision of such child or youth and cooperating with the  
276 Commissioner of Children and Families in the implementation of  
277 treatment and permanency plans and services for such child or youth.  
278 The court may, on motion of any party or the court's own motion, after  
279 notice and a hearing, terminate such relative's intervenor status if such  
280 relative's participation in the case is no longer warranted or necessary.

281 (4) Any person related to a child or youth may file a motion to  
282 intervene for purposes of seeking [permanent] guardianship of a child  
283 or youth more than ninety days after the date of the preliminary  
284 hearing. The granting of such motion to intervene shall be solely in the

285 court's discretion, except that such motion shall be granted absent  
286 good cause shown whenever the child's or youth's most recent  
287 placement has been disrupted or is about to be disrupted. The court  
288 may, in the court's discretion, order the Commissioner of Children and  
289 Families to conduct an assessment of such relative granted intervenor  
290 status pursuant to this subdivision.

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

294 (f) Upon request, or upon its own motion, the court shall schedule a  
295 hearing on the order for temporary custody or the order to appear to  
296 be held not later than ten days after the date of the preliminary  
297 hearing. Such hearing shall be held on consecutive days except for  
298 compelling circumstances or at the request of the parent or guardian.

299 (g) At a contested hearing on the order for temporary custody or  
300 order to appear, credible hearsay evidence regarding statements of the  
301 child or youth made to a mandated reporter or to a parent may be  
302 offered by the parties and admitted by the court upon a finding that  
303 the statement is reliable and trustworthy and that admission of such  
304 statement is reasonably necessary. A signed statement executed by a  
305 mandated reporter under oath may be admitted by the court without  
306 the need for the mandated reporter to appear and testify unless called  
307 by a respondent or the child, provided the statement: (1) Was provided  
308 at the preliminary hearing and promptly upon request to any counsel  
309 appearing after the preliminary hearing; (2) reasonably describes the  
310 qualifications of the reporter and the nature of his contact with the  
311 child; and (3) contains only the direct observations of the reporter, and  
312 statements made to the reporter that would be admissible if the  
313 reporter were to testify to them in court and any opinions reasonably  
314 based thereupon. If a respondent or the child gives notice at the  
315 preliminary hearing that he intends to cross-examine the reporter, the  
316 person filing the petition shall make the reporter available for such  
317 examination at the contested hearing.

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

323 (i) When a petition is filed in said court for the commitment of a  
324 child or youth, the Commissioner of Children and Families shall make  
325 a thorough investigation of the case and shall cause to be made a  
326 thorough physical and mental examination of the child or youth if  
327 requested by the court. The court after hearing may also order a  
328 thorough physical or mental examination, or both, of a parent or  
329 guardian whose competency or ability to care for a child or youth  
330 before the court is at issue. The expenses incurred in making such  
331 physical and mental examinations shall be paid as costs of  
332 commitment are paid.

333 (j) (1) Upon finding and adjudging that any child or youth is  
334 uncared-for, neglected or dependent, the court may (A) commit such  
335 child or youth to the Commissioner of Children and Families, [ Such]  
336 and such commitment shall remain in effect until further order of the  
337 court, except that such commitment may be revoked or parental rights  
338 terminated at any time by the court; [ or the court may] (B) vest such  
339 child's or youth's legal guardianship in any private or public agency  
340 that is permitted by law to care for neglected, uncared-for or  
341 dependent children or youths or with any other person or persons  
342 found to be suitable and worthy of such responsibility by the court,  
343 including, but not limited to, any relative of such child or youth by  
344 blood or marriage; (C) vest such child's or youth's permanent legal  
345 guardianship with any person or persons found to be suitable and  
346 worthy of such responsibility by the court, including, but not limited  
347 to, any relative of such child or youth by blood or marriage in  
348 accordance with the requirements set forth in subdivision (2) of this  
349 subsection; or (D) place the child or youth in the custody of the parent  
350 or guardian with protective supervision by the Commissioner of  
351 Children and Families subject to conditions established by the court. If

352 the court determines that the commitment should be revoked and the  
353 child's or youth's legal guardianship or permanent legal guardianship  
354 should vest in someone other than the respondent parent, parents or  
355 former guardian, or if parental rights are terminated at any time, there  
356 shall be a rebuttable presumption that an award of legal guardianship  
357 or permanent legal guardianship upon revocation to, or adoption upon  
358 termination of parental rights by, any relative who is licensed as a  
359 foster parent for such child or youth, or who is, pursuant to an order of  
360 the court, the temporary custodian of the child or youth at the time of  
361 the revocation or termination, shall be in the best interests of the child  
362 or youth and that such relative is a suitable and worthy person to  
363 assume legal guardianship or permanent legal guardianship upon  
364 revocation or to adopt such child or youth upon termination of  
365 parental rights. The presumption may be rebutted by a preponderance  
366 of the evidence that an award of legal guardianship or permanent legal  
367 guardianship to, or an adoption by, such relative would not be in the  
368 child's or youth's best interests and such relative is not a suitable and  
369 worthy person. The court shall order specific steps that the parent  
370 must take to facilitate the return of the child or youth to the custody of  
371 such parent. The commissioner shall be the guardian of such child or  
372 youth for the duration of the commitment, provided the child or youth  
373 has not reached the age of eighteen years or, in the case of a child or  
374 youth in full-time attendance in a secondary school, a technical school,  
375 a college or a state-accredited job training program, provided such  
376 child or youth has not reached the age of twenty-one years, by consent  
377 of such youth, or until another guardian has been legally appointed,  
378 and in like manner, upon such vesting of the care of such child or  
379 youth, such other public or private agency or individual shall be the  
380 guardian of such child or youth until such child or youth has reached  
381 the age of eighteen years or, in the case of a child or youth in full-time  
382 attendance in a secondary school, a technical school, a college or a  
383 state-accredited job training program, until such child or youth has  
384 reached the age of twenty-one years or until another guardian has  
385 been legally appointed. The commissioner may place any child or  
386 youth so committed to the commissioner in a suitable foster home or in

387 the home of a person related by blood or marriage to such child or  
388 youth or in a licensed child-caring institution or in the care and  
389 custody of any accredited, licensed or approved child-caring agency,  
390 within or without the state, provided a child shall not be placed  
391 outside the state except for good cause and unless the parents or  
392 guardian of such child are notified in advance of such placement and  
393 given an opportunity to be heard, or in a receiving home maintained  
394 and operated by the Commissioner of Children and Families. In  
395 placing such child or youth, the commissioner shall, if possible, select a  
396 home, agency, institution or person of like religious faith to that of a  
397 parent of such child or youth, if such faith is known or may be  
398 ascertained by reasonable inquiry, provided such home conforms to  
399 the standards of said commissioner and the commissioner shall, when  
400 placing siblings, if possible, place such children together. [As an  
401 alternative to commitment, the court may place the child or youth in  
402 the custody of the parent or guardian with protective supervision by  
403 the Commissioner of Children and Families subject to conditions  
404 established by the court.] Upon the issuance of an order committing  
405 the child or youth to the Commissioner of Children and Families, or  
406 not later than sixty days after the issuance of such order, the court shall  
407 determine whether the Department of Children and Families made  
408 reasonable efforts to keep the child or youth with his or her parents or  
409 guardian prior to the issuance of such order and, if such efforts were  
410 not made, whether such reasonable efforts were not possible, taking  
411 into consideration the child's or youth's best interests, including the  
412 child's or youth's health and safety. For the purposes of this section,  
413 "permanent legal guardianship" means a legal guardianship, as  
414 defined in section 45a-604, as amended by this act, which establishes a  
415 permanent legal relationship between a child or youth and a person  
416 who has been caring for such child or youth that is intended to endure  
417 until the child or youth attains the age of majority without the  
418 termination of the parental rights of the child's or youth's biological  
419 parent or parents.

420 (2) Prior to issuing an order for permanent legal guardianship, the  
421 court shall find by clear and convincing evidence that the permanent

422 legal guardianship is in the best interests of the child or youth, and the  
423 following have been proven by clear and convincing evidence:

424 (A) One of the statutory grounds for termination of parental rights,  
425 as set forth in subsection (j) of section 17a-112 exists, or the parents  
426 have voluntarily consented to the establishment of the permanent legal  
427 guardianship;

428 (B) Adoption of the child or youth is not possible or appropriate;

429 (C) (i) If the child or youth is at least twelve years of age, such child  
430 or youth consents to the proposed permanent legal guardianship, or  
431 (ii) if the child is under twelve years of age, the proposed permanent  
432 legal guardian is: (I) a relative, or (II) already serving as the permanent  
433 legal guardian of at least one of the child's or youth's siblings;

434 (D) The child or youth has resided with the proposed permanent  
435 legal guardian for at least a year; and

436 (E) The proposed permanent legal guardian is (i) a suitable and  
437 worthy person, and (ii) committed to remaining the permanent legal  
438 guardian and assuming the right and responsibilities for the child or  
439 youth until the child or youth attains the age of majority.

440 (3) A disposition of permanent legal guardianship may be reopened  
441 and modified and the permanent legal guardian removed upon the  
442 filing of a motion with the court, provided it is proven by a fair  
443 preponderance of the evidence that the permanent legal guardian is no  
444 longer suitable and worthy. A parent may not file a motion to  
445 terminate a permanent legal guardianship. If, after a hearing, the court  
446 terminates a permanent legal guardianship, the court, in appointing a  
447 successor legal guardian or permanent legal guardian for the child or  
448 youth shall do so in accordance with this subsection.

449 (k) (1) Nine months after placement of the child or youth in the care  
450 and custody of the commissioner pursuant to a voluntary placement  
451 agreement, or removal of a child or youth pursuant to section 17a-101g  
452 or an order issued by a court of competent jurisdiction, whichever is

453 earlier, the commissioner shall file a motion for review of a  
454 permanency plan. Nine months after a permanency plan has been  
455 approved by the court pursuant to this subsection, the commissioner  
456 shall file a motion for review of the permanency plan. Any party  
457 seeking to oppose the commissioner's permanency plan, including a  
458 relative of a child or youth by blood or marriage who has intervened  
459 pursuant to subsection (d) of this section and is licensed as a foster  
460 parent for such child or youth or is vested with such child's or youth's  
461 temporary custody by order of the court, shall file a motion in  
462 opposition not later than thirty days after the filing of the  
463 commissioner's motion for review of the permanency plan, which  
464 motion shall include the reason therefor. A permanency hearing on  
465 any motion for review of the permanency plan shall be held not later  
466 than ninety days after the filing of such motion. The court shall hold  
467 evidentiary hearings in connection with any contested motion for  
468 review of the permanency plan. The commissioner shall have the  
469 burden of proving that the proposed permanency plan is in the best  
470 interests of the child or youth. After the initial permanency hearing,  
471 subsequent permanency hearings shall be held not less frequently than  
472 every twelve months while the child or youth remains in the custody  
473 of the Commissioner of Children and Families. The court shall provide  
474 notice to the child or youth, the parent or guardian of such child or  
475 youth, and any intervenor of the time and place of the court hearing on  
476 any such motion not less than fourteen days prior to such hearing.

477 (2) At a permanency hearing held in accordance with the provisions  
478 of subdivision (1) of this subsection, the court shall approve a  
479 permanency plan that is in the best interests of the child or youth and  
480 takes into consideration the child's or youth's need for permanency.  
481 The child's or youth's health and safety shall be of paramount concern  
482 in formulating such plan. Such permanency plan may include the goal  
483 of (A) revocation of commitment and reunification of the child or  
484 youth with the parent or guardian, with or without protective  
485 supervision; (B) transfer of guardianship or permanent legal  
486 guardianship; (C) long-term foster care with a relative licensed as a  
487 foster parent; (D) filing of termination of parental rights and adoption;

488 or (E) another planned permanent living arrangement ordered by the  
489 court, provided the Commissioner of Children and Families has  
490 documented a compelling reason why it would not be in the best  
491 interest of the child or youth for the permanency plan to include the  
492 goals in subparagraphs (A) to (D), inclusive, of this subdivision. Such  
493 other planned permanent living arrangement may include, but not be  
494 limited to, placement of a child or youth in an independent living  
495 program or long term foster care with an identified foster parent.

496 (3) At a permanency hearing held in accordance with the provisions  
497 of subdivision (1) of this subsection, the court shall review the status of  
498 the child, the progress being made to implement the permanency plan,  
499 determine a timetable for attaining the permanency plan, determine  
500 the services to be provided to the parent if the court approves a  
501 permanency plan of reunification and the timetable for such services,  
502 and determine whether the commissioner has made reasonable efforts  
503 to achieve the permanency plan. The court may revoke commitment if  
504 a cause for commitment no longer exists and it is in the best interests of  
505 the child or youth.

506 (4) If the court approves the permanency plan of adoption: (A) The  
507 Commissioner of Children and Families shall file a petition for  
508 termination of parental rights not later than sixty days after such  
509 approval if such petition has not previously been filed; (B) the  
510 commissioner may conduct a thorough adoption assessment and  
511 child-specific recruitment; and (C) the court may order that the child  
512 be photo-listed within thirty days if the court determines that such  
513 photo-listing is in the best interest of the child. As used in this  
514 subdivision, "thorough adoption assessment" means conducting and  
515 documenting face-to-face interviews with the child, foster care  
516 providers and other significant parties and "child specific recruitment"  
517 means recruiting an adoptive placement targeted to meet the  
518 individual needs of the specific child, including, but not limited to, use  
519 of the media, use of photo-listing services and any other in-state or  
520 out-of-state resources that may be used to meet the specific needs of  
521 the child, unless there are extenuating circumstances that indicate that

522 such efforts are not in the best interest of the child.

523 (l) The Commissioner of Children and Families shall pay directly to  
524 the person or persons furnishing goods or services determined by said  
525 commissioner to be necessary for the care and maintenance of such  
526 child or youth the reasonable expense thereof, payment to be made at  
527 intervals determined by said commissioner; and the Comptroller shall  
528 draw his or her order on the Treasurer, from time to time, for such part  
529 of the appropriation for care of committed children or youths as may  
530 be needed in order to enable the commissioner to make such  
531 payments. The commissioner shall include in the department's annual  
532 budget a sum estimated to be sufficient to carry out the provisions of  
533 this section. Notwithstanding that any such child or youth has income  
534 or estate, the commissioner may pay the cost of care and maintenance  
535 of such child or youth. The commissioner may bill to and collect from  
536 the person in charge of the estate of any child or youth aided under  
537 this chapter, or the payee of such child's or youth's income, the total  
538 amount expended for care of such child or youth or such portion  
539 thereof as any such estate or payee is able to reimburse, provided the  
540 commissioner shall not collect from such estate or payee any  
541 reimbursement for the cost of care or other expenditures made on  
542 behalf of such child or youth from (1) the proceeds of any cause of  
543 action received by such child or youth; (2) any lottery proceeds due to  
544 such child or youth; (3) any inheritance due to such child or youth; (4)  
545 any payment due to such child or youth from a trust other than a trust  
546 created pursuant to 42 USC 1396p, as amended from time to time; or  
547 (5) the decedent estate of such child or youth.

548 (m) The commissioner, a parent or the child's attorney may file a  
549 motion to revoke a commitment, and, upon finding that cause for  
550 commitment no longer exists, and that such revocation is in the best  
551 interests of such child or youth, the court may revoke the commitment  
552 of such child or youth. No such motion shall be filed more often than  
553 once every six months.

554 (n) Upon service on the parent, guardian or other person having

555 control of the child or youth of any order issued by the court pursuant  
556 to the provisions of subsections (b) and (j) of this section, the child or  
557 youth concerned shall be surrendered to the person serving the order  
558 who shall forthwith deliver the child or youth to the person, agency,  
559 department or institution awarded custody in the order. Upon refusal  
560 of the parent, guardian or other person having control of the child or  
561 youth to surrender the child or youth as provided in the order, the  
562 court may cause a warrant to be issued charging the parent, guardian  
563 or other person having control of the child or youth with contempt of  
564 court. If the person arrested is found in contempt of court, the court  
565 may order such person confined until the person complies with the  
566 order, but for not more than six months, or may fine such person not  
567 more than five hundred dollars, or both.

568 (o) A foster parent, prospective adoptive parent or relative caregiver  
569 shall receive notice and have the right to be heard for the purposes of  
570 this section in Superior Court in any proceeding concerning a foster  
571 child living with such foster parent, prospective adoptive parent or  
572 relative caregiver. A foster parent, prospective adoptive parent or  
573 relative caregiver who has cared for a child or youth shall have the  
574 right to be heard and comment on the best interests of such child or  
575 youth in any proceeding under this section which is brought not more  
576 than one year after the last day the foster parent, prospective adoptive  
577 parent or relative caregiver provided such care.

578 (p) Upon motion of any sibling of any child committed to the  
579 Department of Children and Families pursuant to this section, such  
580 sibling shall have the right to be heard concerning visitation with, and  
581 placement of, any such child. In awarding any visitation or modifying  
582 any placement, the court shall be guided by the best interests of all  
583 siblings affected by such determination.

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

588        (r) The provisions of section 46b-59 shall apply to any request by a  
589        person related to a child or youth by blood or marriage who is seeking  
590        visitation rights to such child or youth subsequent to any order of  
591        protective supervision, transfer of legal guardianship to a person or  
592        agency other than the Department of Children and Families or transfer  
593        of permanent legal guardianship by the Juvenile Court. All such  
594        matters shall be heard by a judge assigned to hear dissolution of  
595        marriage cases in the Family Division of the Superior Court.

596        [(r)] (s) In any proceeding under this section, the Department of  
597        Children and Families shall provide notice to [every] each attorney of  
598        record for each party involved in the proceeding when the department  
599        seeks to transfer a child or youth in its care, custody or control to an  
600        out-of-state placement.

601        Sec. 3. Section 45a-604 of the general statutes is repealed and the  
602        following is substituted in lieu thereof (*Effective October 1, 2011*):

603        As used in sections 45a-603 to 45a-622, inclusive, and section 4 of  
604        this act:

605        (1) "Mother" means a woman who can show proof by means of a  
606        birth certificate or other sufficient evidence of having given birth to a  
607        child and an adoptive mother as shown by a decree of a court of  
608        competent jurisdiction or otherwise;

609        (2) "Father" means a man who is a father under the law of this state  
610        including a man who, in accordance with section 46b-172, executes a  
611        binding acknowledgment of paternity and a man determined to be a  
612        father under chapter 815y;

613        (3) "Parent" means a mother as defined in subdivision (1) of this  
614        section or a "father", as defined in subdivision (2) of this section;

615        (4) "Minor" or "minor child" means a person under the age of  
616        eighteen;

617        (5) "Guardianship" means guardianship of the person of a minor,

618 and includes: (A) The obligation of care and control; (B) the authority  
619 to make major decisions affecting the minor's education and welfare,  
620 including, but not limited to, consent determinations regarding  
621 marriage, enlistment in the armed forces and major medical,  
622 psychiatric or surgical treatment; and (C) upon the death of the minor,  
623 the authority to make decisions concerning funeral arrangements and  
624 the disposition of the body of the minor;

625 (6) "Guardian" means [one] a person who has the authority and  
626 obligations of "guardianship", as defined in subdivision (5) of this  
627 section;

628 (7) "Termination of parental rights" means the complete severance  
629 by court order of the legal relationship, with all its rights and  
630 responsibilities, between the child and the child's parent or parents so  
631 that the child is free for adoption, except that it shall not affect the right  
632 of inheritance of the child or the religious affiliation of the child;

633 (8) "Permanent guardianship" means a guardianship, as defined in  
634 subdivision (5) of this section, that is intended to endure until the  
635 minor reaches the age of majority without termination of the parental  
636 rights of the minor's parents; and

637 (9) "Permanent guardian" means a person who has the authority  
638 and obligations of a permanent guardianship, as defined in  
639 subdivision (8) of this section.

640 Sec. 4. (NEW) (*Effective October 1, 2011*) (a) In appointing a guardian  
641 of the person of a minor pursuant to section 45a-616 of the general  
642 statutes, or at any time following such appointment, the court of  
643 probate may establish a permanent guardianship if the court finds by  
644 clear and convincing evidence that the establishment of a permanent  
645 guardianship is in the best interests of the minor and that the following  
646 have been proven by clear and convincing evidence:

647 (1) One of the grounds for termination of parental rights, as set forth  
648 in subparagraphs (A) to (G), inclusive, of subdivision (2) of subsection

649 (g) of section 45a-717 of the general statutes exists, or the parents have  
650 voluntarily consented to the appointment of a permanent guardian;

651 (2) Adoption of the minor is not possible or appropriate;

652 (3) (A) If the minor is at least twelve years of age, such minor  
653 consents to the proposed appointment of a permanent guardian, or (B)  
654 if the minor is under twelve years of age, the proposed permanent  
655 guardian is a relative or already serving as the permanent guardian of  
656 at least one of the minor's siblings;

657 (4) The minor has resided with the proposed permanent guardian  
658 for at least one year; and

659 (5) The proposed permanent guardian is suitable and worthy and  
660 committed to remaining the permanent guardian and assuming the  
661 rights and responsibilities for the minor until the minor reaches the age  
662 of majority.

663 (b) If a permanent guardian appointed under this section becomes  
664 unable or unwilling to serve as permanent guardian, the court may  
665 appoint a successor guardian or permanent guardian in accordance  
666 with this section and sections 45a-616 and 45a-617 of the general  
667 statutes, as amended by this act, or may reinstate a parent of the minor  
668 who was previously removed as guardian of the person of the minor if  
669 the court finds that the factors that resulted in the removal of the  
670 parent as guardian have been resolved satisfactorily, and that it is in  
671 the best interest of the child to reinstate the parent as guardian.

672 Sec. 5. Section 45a-611 of the general statutes is repealed and the  
673 following is substituted in lieu thereof (*Effective October 1, 2011*):

674 (a) [Any] Except as provided in subsection (d) of this section, any  
675 parent who has been removed as the guardian of the person of a minor  
676 may apply to the court of probate which removed him or her for  
677 reinstatement as the guardian of the person of the minor, if in his or  
678 her opinion the factors which resulted in removal have been resolved  
679 satisfactorily.

680 (b) In the case of a parent who seeks reinstatement, the court shall  
681 hold a hearing following notice to the guardian, to the parent or  
682 parents and to the minor, if over twelve years of age, as provided in  
683 section 45a-609. If the court determines that the factors which resulted  
684 in the removal of the parent have been resolved satisfactorily, the court  
685 may remove the guardian and reinstate the parent as guardian of the  
686 person of the minor, if it determines that it is in the best interests of the  
687 minor to do so. At the request of a parent, guardian, counsel or  
688 guardian ad litem representing one of the parties, filed within thirty  
689 days of the decree, the court shall make findings of fact to support its  
690 conclusions.

691 (c) The provisions of this section shall also apply to the  
692 reinstatement of any guardian of the person of a minor other than a  
693 parent.

694 (d) Notwithstanding the provisions of this section, and subject to the  
695 provisions of subsection (b) of section 4 of this act, a parent who has  
696 been removed as guardian of the person of a minor may not petition  
697 for reinstatement if a court has established a permanent guardianship  
698 for the person of the minor under section 4 of this act.

699 Sec. 6. Section 45a-613 of the general statutes is repealed and the  
700 following is substituted in lieu thereof (*Effective October 1, 2011*):

701 (a) Any guardian, [or] coguardians or permanent guardian of the  
702 person of a minor appointed under section 45a-616 or section 4 of this  
703 act, or appointed by a court of comparable jurisdiction in another state,  
704 may be removed by the court of probate which made the appointment,  
705 and another guardian, [or] coguardian or permanent guardian  
706 appointed, in the same manner as that provided in sections 45a-603 to  
707 45a-622, inclusive, for removal of a parent as guardian.

708 (b) Any removal of a guardian under subsection (a) of this section  
709 shall be preceded by notice to the guardian, [or] coguardians or  
710 permanent guardian, the parent or parents and the minor if over  
711 twelve years of age, as provided by section 45a-609.

712 (c) If a new guardian is appointed, the court shall send a copy of  
713 that order to the parent or parents of the minor.

714 Sec. 7. Section 45a-614 of the general statutes is repealed and the  
715 following is substituted in lieu thereof (*Effective October 1, 2011*):

716 (a) [The] Except as provided in subsection (b) of this section, the  
717 following persons may apply to the court of probate for the district in  
718 which the minor resides for the removal as guardian of one or both  
719 parents of the minor: (1) Any adult relative of the minor, including  
720 those by blood or marriage; (2) the court on its own motion; or (3)  
721 counsel for the minor.

722 (b) Notwithstanding the provisions of subsection (a) of this section,  
723 a parent may not petition for the removal of a permanent guardian  
724 appointed pursuant to section 4 of this act.

725 Sec. 8. Section 45a-617 of the general statutes is repealed and the  
726 following is substituted in lieu thereof (*Effective October 1, 2011*):

727 When appointing a guardian, [or] coguardians or permanent  
728 guardian of the person of a minor, the court shall take into  
729 consideration the following factors: (1) The ability of the prospective  
730 guardian, [or] coguardians or permanent guardian to meet, on a  
731 continuing day to day basis, the physical, emotional, moral and  
732 educational needs of the minor; (2) the minor's wishes, if he or she is  
733 over the age of twelve or is of sufficient maturity and capable of  
734 forming an intelligent preference; (3) the existence or nonexistence of  
735 an established relationship between the minor and the prospective  
736 guardian; [or] coguardians or permanent guardian; and (4) the best  
737 interests of the child. There shall be a rebuttable presumption that  
738 appointment of a grandparent or other relative related by blood or  
739 marriage as a guardian is in the best interests of the minor child.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	46b-129a

Sec. 2	<i>October 1, 2011</i>	46b-129
Sec. 3	<i>October 1, 2011</i>	45a-604
Sec. 4	<i>October 1, 2011</i>	New section
Sec. 5	<i>October 1, 2011</i>	45a-611
Sec. 6	<i>October 1, 2011</i>	45a-613
Sec. 7	<i>October 1, 2011</i>	45a-614
Sec. 8	<i>October 1, 2011</i>	45a-617

**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 12 \$</b>	<b>FY 13 \$</b>
Child Protection Comm.	GF - Savings	403,000	537,000

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

The bill revises the circumstances for which the court can appoint a guardian ad litem (GAL) to a child. Specifically, it eliminates the appointment of a separate GAL in a child protection case, and clarifies the circumstances for which the court can appoint a GAL for a child in addition to an attorney. To the extent that fewer GAL's are appointed by the court, a savings to the Child Protection Commission of \$403,000 in FY 12<sup>1</sup> and \$537,000 in FY 13 would result.<sup>2</sup>

The bill also creates a "permanent legal guardianship" in Superior Court as an alternative living arrangement for child abuse and neglect victims. While this may avert a small number of contested parental rights cases, minimally reducing the Department of Children and Families' (DCF) attorneys' and paralegals' workloads, it is not anticipated to lead to direct operational savings and, therefore, will not result in a fiscal impact to DCF.

### **The Out Years**

### **State Impact:**

<sup>1</sup> The FY 12 figure reflects an October 1, 2011 effective date.

<sup>2</sup> In 2010, approximately 644 children were being served by two separate representatives, an attorney and a guardian ad litem. The cost to the Child Protection Commission for this additional representation was \$537,000.

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<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 14 \$</b>	<b>FY 15 \$</b>	<b>FY 16 \$</b>
Child Protection Comm.	GF - Savings*	547,740	558,695	569,869

Note: GF=General Fund

\*These figures have been adjusted for inflation at a rate of 2%

**Municipal Impact:** None

Sources: Core-CT Financial Accounting System

**OLR Bill Analysis****sHB 6442*****AN ACT CONCERNING THE APPOINTMENT OF COUNSEL AND GUARDIANS AD LITEM IN CHILD PROTECTION MATTERS, AND THE APPOINTMENT OF PERMANENT LEGAL GUARDIANS.*****SUMMARY:**

Children who are subjects of abuse and neglect litigation generally have an attorney to represent their wishes (legal interests) and a guardian ad litem (GAL) to represent their best interests. In Connecticut, the law currently requires the child's attorney to simultaneously perform both functions, creating a conflict when the child's legal choices contradict what the attorney determines are in his or her best interests. In cases where there is a conflict, current law allows the child's attorney to notify the court and the court to appoint a separate GAL.

The bill requires the attorney to act solely in the child's legal interests. It narrows the circumstances when courts appoint GALs and sets up new procedures for paying them, limiting their court responsibilities, and subjecting them to cross-examination.

The bill also creates a "permanent legal guardianship" in Superior Court as an alternative living arrangement for abuse and neglect victims. It makes similar changes regarding Probate Court procedures to expand this arrangement to reach the same population.

The bill contains a relative visitation provision covering relatives of abused or neglected children who are already under protective supervision, transferred to legal guardianships to a person or agency other than the Department of Children and Families (DCF), or transferred to a permanent legal guardianship by Juvenile Court order. It provides that when disputes arise, they must be heard and resolved

by a family court judge assigned to hear divorce cases.

Finally, the bill adds as an option for abused and neglected children placement in the custody of the parent or guardian with protective DCF supervision subject to court-ordered conditions.

EFFECTIVE DATE: October 1, 2011

## **§ 1 — ATTORNEYS AND GUARDIANS AD LITEM**

### ***Appointment of Attorneys***

Under the bill, the chief child protection attorney (CCPA), rather than the judge, assigns attorneys to represent children in abuse and neglect proceedings. Judges can still appoint them based on immediate need. In either case, the judge must give the parties advance notice of the assignment or appointment.

When a child who needs representation in an abuse or neglect case is already represented in an ongoing probate or family matter, the judge can appoint that attorney to represent the child in the abuse or neglect matter. He must notify the CCPA when he does this. The appointed attorney must be knowledgeable about representing such children.

The bill thus narrows the circumstances under which a GAL is appointed. Under current law, he or she is appointed automatically at the beginning of every abuse and neglect case (with the child's attorney fulfilling both roles) and a GAL being appointed as soon as a conflict arises between the child's wishes and legal interests. Under the bill, GALs do not serve in all cases.

### ***Appointment of a GAL***

Under the bill, either the court or the child's attorney can determine that the child cannot adequately protect his or her best interests. If the attorney then determines that following the child's legal wishes could lead to substantial physical, financial, or other harm, the child's attorney may ask, and the judge may order, that a separate GAL be assigned. The court must either appoint a volunteer or notify the

CCPA to assign one. A GAL already representing the interests of the child in another matter cannot be selected in the current matter (if it is determined that appointment of a GAL is necessary).

***Role of a GAL***

By law, the GAL need not be an attorney but must be knowledgeable about the needs and protection of children. The bill additionally requires that a GAL be knowledgeable about relevant court procedures. The bill eliminates provisions requiring the GAL to (1) act in conformity with the Rules of Professional Conduct (which do not regulate non-attorney conduct) and (2) speak on behalf of the child's best interests. The bill instead requires the GAL to perform an independent investigation and to present at any hearing information pertinent to the court's best interests determination. He or she may be cross-examined at opposing attorney's request.

***Removal of Attorney for Cause***

By law, when a GAL is appointed in a case, the child's attorney generally continues to represent the child's legal interests unless the court finds good cause for removal. Under the bill, when such good cause is found, the judge must notify the CCPA and CCPA, rather than the court, must assign a different attorney.

***Fees***

Currently, the law requires the court to pay attorneys and GALs when the parents or the child's estate cannot do so. Under the bill, the CCPA pays the fees unless the parents, guardian, or child's estate are able to pay. When some ability to pay is established, the court must assess the rate and the CCPA may seek reimbursement from the parents or the estate.

**§§ 2 & 4 — GUARDIANSHIPS**

The bill expands the court options for placing children found to have been abused or neglected by adding the option of permanent legal guardianship. With some small differences, it permits the arrangement to be established in either the Superior or Probate court.

Under the bill, the arrangement established in the Superior Court is called a permanent legal guardianship; in the Probate Court it is a permanent guardianship. (For ease of reference, unless the context requires otherwise, we refer to both arrangements as a “permanent legal guardianship.”)

### **Definitions**

**Guardianship.** Under the bill, the probate definition of guardianship applies to both Superior and Probate courts. It means guardianship of the person of a minor and includes:

1. the obligation of care and control;
2. the authority to make basic decisions affecting the minor’s education and welfare, including consent determinations regarding marriage, enlistment in the armed forces, and major medical, psychiatric, or surgical treatment; and
3. upon the death of the minor, the authority to make decisions concerning funeral arrangements and the body’s disposition.

**Permanent Legal Guardianships.** Under the bill, a permanent legal guardianship is a legal guardianship that establishes a permanent legal arrangement between a child or youth and a person who has been caring for a child or youth for at least one year. It is intended to last until age 18 without termination of the child’s or youth’s parental rights.

In Probate Court, a “permanent guardianship” is a guardianship that is intended to endure until the minor reaches the age of majority without termination of the parental rights of the minor’s parents.

### **Appointment Standard – Clear and Convincing Evidence**

Under the bill, before appointing someone legal guardian, either the Probate or Superior court must find by clear and convincing evidence that the arrangement is in the child’s or youth’s best interest. There is a rebuttable presumption in Superior Court that granting a permanent

legal guardianship to a relative who has been taking care of a child is in the child's best interests, which is the same as current law's presumption upon revocation of parental rights.

Under the bill, the court must additionally find that at least one statutory ground exists for terminating parental rights. Finally, the court must also find the following:

1. adoption is not possible or appropriate;
2. if the child or youth is (a) at least age 12, he or she consents, or, (b) under 12, the proposed guardian is either a family member or already serving as permanent legal guardian of at least one sibling;
3. the child or youth has lived with the proposed guardian for at least one year; and
4. the proposed legal guardian is (a) a suitable and worthy person and (b) committed to remaining the legal guardian and assuming the rights and responsibilities for the child or youth until he or she reaches age 18.

### ***Permanent Legal Guardians – Removal***

The bill permits the Probate Court to open or modify a permanent legal guardianship order when a motion to do so is filed by anyone other than the parent. It must hold a hearing at which it finds by a preponderance of evidence that the person is no longer suitable and worthy. If the arrangement is terminated, the court must adopt the standards described above in appointing a different permanent guardian.

### ***Parental Reinstatement as Guardian***

In addition to making parents ineligible to petition for the removal of a permanent legal guardian, the bill makes them ineligible for reinstatement as guardian in Probate Court after a permanent legal guardian has been appointed. However, the rights of a parent whose

guardianship rights have been removed may be reinstated if a permanent guardian is unable to continue to serve. The court must find the arrangement to be in the child's best interests and that the factors that resulted in the parent's removal as guardian have been resolved satisfactorily.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (04/14/2011)