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## **OLR Bill Analysis**

### **sSB 417**

#### ***AN ACT CONCERNING JUVENILE MATTERS AND PERMANENT GUARDIANSHIPS.***

#### **SUMMARY:**

This bill:

1. specifies that juvenile courts and Family with Service Needs (FWSN) services and programs are not available to children who were under age seven when they allegedly committed an otherwise-qualifying act;
2. creates a procedure, similar to that used in adult court, when there is a question about the competency of a child charged with a delinquent or status FWSN offense (see BACKGROUND);
3. expedites paternity determinations in abuse and neglect cases;
4. clarifies the role of a child's attorney when the child is incapable of expressing his or her wishes;
5. eliminates the court's authority to order, as the disposition of a case involving a child it has convicted of committing a delinquent act, that the child be placed in a child-caring institution;
6. modifies Department of Children and Families (DCF) laws to conform with its creation of the status of "permanent legal guardian" and makes similar changes in probate court laws;
7. eliminates appointment as permanent guardian as an option for relatives in certain abuse and neglect cases;
8. permits courts to admit credible hearsay evidence on a party's compliance with court orders at contested hearings concerning

permanent living arrangements for a child in DCF custody;

9. prohibits parents filing probate court petitions seeking removal of a permanent legal guardian; and
10. modifies court procedures for transferring cases involving children charged with serious felonies between the delinquency and adult court dockets.

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2012, except the provisions regarding the professional responsibilities of a child's attorney and the court's authority to order institutionalization of children adjudicated as delinquent, which are effective upon passage.

### **§ 3 — JUVENILE COMPETENCY**

Under existing law unchanged by the bill, children and youth (hereafter "children" or "child") are presumed to be competent. But if it appears at any time during a juvenile court delinquency, FWSN, or other proceeding on a juvenile matter that the child may not be competent, the law and bill prohibit his or her being tried, convicted, adjudicated, or subject to any court disposition. The bill states that transfers from juvenile to adult court dockets are not dispositions and are therefore permissible, even if the child is not competent.

#### ***Court Hearing to Determine if Mental Examination is Warranted***

Under the bill, the child's attorney or the prosecutor may request a hearing to determine if a competency examination is warranted. The judge can also raise this question on his or her own motion. The bill requires that the child be represented by an attorney whenever the court is considering a request for such an examination. (Existing law entitles children to legal representation throughout delinquency and FWSN proceedings.).

Under the bill, the party raising the question of competency bears the burden going forward with the evidence and proving, by a preponderance of the evidence, that the child is not competent. The

prosecutor bears the burden of going forward with the evidence when the judge raises the issue. The judge may call his or her own witnesses and ask questions at this proceeding.

***Competency Examinations***

Under the bill, the court must order a competency examination after the initial hearing if a preponderance of the evidence shows that (1) the examination is justified and (2) probable cause exists to believe that the child committed the offense with which he or she is charged. The bill requires that the examination be conducted by (1) a three-person clinical team constituted under policies and procedures established by the chief court administrator or (2) if the parties agree, a physician specializing in psychiatry with experience in conducting forensic interviews and in child and adult psychiatry (“psychiatrist”).

The bill requires clinical teams to be composed of a clinical psychologist with experience in child and adolescent psychiatry and two of the following: a (1) licensed clinical social worker, (2) child psychiatric nurse clinical specialist holding a master’s degree in nursing, or (3) physician specializing in psychiatry. At least one must have experience in conducting forensic interviews and at least one must have experience in child and adolescent psychiatry.

At the child’s expense, the bill allows him or her to select a mental health professional with one of the above qualifications to observe the examination. If the child is represented by an attorney appointed through the Public Defender Services Commission, the Chief Public Defender’s Office will provide an observer. In such cases, the bill also allows a social worker employed by the commission to attend the examination.

Examinations must be completed within 15 business days of the date they were ordered, unless the court finds good cause for granting more time. The bill directs the court to resume delinquency or FWSN matters whenever it finds the child competent.

***Examination Reports.*** The bill requires the clinical team or

psychiatrist to prepare, sign, and file its report within 21 business days of the date of the court's examination order. The report need not be notarized, but must address the child's (1) ability to understand the proceedings and (2) assist in his or her own defense.

If the opinion of the clinical team or psychiatrist is that the child does not meet one or both of the above criteria, the report must also include:

1. a determination if there is a substantial probability that the child will attain or regain competency within 90 days of a court-ordered intervention and
2. the nature and type of recommended intervention and the least restrictive setting possible for implementing it.

The bill requires the court clerk to send the attorneys representing the state and child copies of the report at least 48 hours in advance of the competency hearing.

### ***Competency Hearing***

The bill requires the court to hold an evidentiary competency hearing within 10 business days of receipt of the clinical report. The child may waive his or her rights to this hearing if none of the examiners found the child incompetent.

At the hearing, either party can introduce the examination report or other evidence regarding a child's competency. If the report is introduced as evidence, the bill requires at least one member of the clinical team or the psychiatrist, as appropriate, to be present to explain the basis for the report's determinations. The prosecutor and child can jointly waive this requirement.

### ***Competency-Restoration Considerations***

If the court finds that the child is incompetent, it must decide if (1) there is a substantial probability that competency will be restored within 90 days of a court-ordered intervention and (2) any proposed intervention is appropriate. To make the latter finding, the bill allows it

to consider:

1. the nature and circumstances of the alleged offense,
2. how long the clinical team or psychiatrist estimates it will take to restore the child to competence,
3. whether the child poses a substantial risk of reoffending, and
4. whether he or she can receive community-based services or treatment that could prevent reoffending.

***When Competency Restoration is Not Likely.*** If the judge finds there is not a substantial probability that the child will attain or regain competency within 90 days or that the recommended intervention is not appropriate, it can order one of the following:

1. dismissal, if the child is charged with a delinquent act or FWSN offense;
2. that DCF assume temporary custody and notify the public defender's office, which must assign an attorney to serve as the child's guardian ad litem (representative of the child's best interest) and investigate whether an abuse and neglect petition should be filled on the child's behalf; or
3. that DCF or some other person, agency, mental health facility or treatment program, or the child's probation officer conduct or obtain an appropriate assessment and, where appropriate, propose a plan for services that appropriately address the child's needs in the least restrictive setting available and appropriate.

Under the bill, any plan for services may include a provision allowing for interagency collaborations in order to transition the child to adult service providers when he or she reaches age 18.

When the court chooses to issue an order under options 2 or 3 above, it must hold a hearing within 10 business days to review the order of temporary custody or any recommendations made by DCF

and the child's probation officer, attorney, and guardian ad litem.

***When Competency Restoration is Likely***

If the court finds a substantial probability that the child will attain or regain competency within 90 days if provided an appropriate intervention, the bill requires it to schedule an intervention implementation hearing within five business days.

Under the bill, such interventions must (1) not exceed 90 days, unless extended for an additional 90 days under criteria the bill establishes and (2) be provided by DCF, unless the child's parents agree to pay for these services to be administered by another appropriate person, agency, mental health facility, or treatment program that agrees to provide appropriate intervention services in the least restricting setting available and to comply with the bill's competency provisions. (It is unclear to which provisions the bill is referring.)

Before the hearing, the court must notify the DCF commissioner or her designee, or the alternative service provider that it will be ordering an intervention at the hearing. It must provide the appropriate entity a copy of the clinical team's or psychiatrist's report. Before the hearing, the participating entity must inform the court of how it proposes to implement the intervention plan.

At the hearing, the court must review the clinical report and order an appropriate intervention lasting no longer than 90 days and occurring in the least restrictive setting available. The court must base its determination of "appropriateness" on the same criteria the bill requires it to use in making this decision after the initial competency examination (see above). The court must also set a hearing date to reconsider the child's competency. The hearing cannot be held for at least 10 business days after the intervention period expires.

At least 10 business days before the scheduled hearing, the bill requires the DCF commissioner, or designee, or the alternative treatment provider to file a report with the clinical team or psychiatrist

regarding the progress of its intervention efforts. Under the bill, the same clinical team or psychiatrist must then reassess the child. If one of these individuals is not available, the bill authorizes the appointment of a new team that, where possible, includes at least one of the original members. The newly-appointed health care providers must have the same professional credentials as the original members, and must be given access to the intervention services provider's clinical information.

The bill requires the team or psychiatrist to submit a court report reassessing the child's competency. The report must include:

1. the clinical findings of the intervention service provider and the facts upon which the findings are based;
2. the team's or examining physician's opinion as to whether the child has attained or regained competency or is making progress towards restoration within the 90 days covered by the court's order; and
3. other information the court requests, including what method of intervention is being used and the type, dosage, and effect of any medication the child is being given.

The court must hold a hearing within two business days of the date on which the reassessment report was filed. The hearing's purpose is to determine if the child attained or regained competency during the intervention period. If the child remains incompetent, the court must determine whether further efforts are appropriate. It must consider the same criteria described above.

If the court finds that further efforts to attain or regain competency are appropriate, it must order a new competency restoration period lasting no more than 90 days. If it finds that further intervention is not appropriate or the child remains incompetent when the additional period expires, it must enter an order meeting the same requirements as those the bill requires in situations where competency restoration is not likely or appropriate (see above).

***When DCF Finds the Child to Be Abused or Neglected***

If DCF substantiates a claim of abuse or neglect or the court approves a plan for services, the bill permits the court to dismiss the delinquency or FWSN complaint or order that the prosecution be suspended for up to 18 months. It may also direct DCF to provide periodic reports while the prosecution is suspended to ensure that the child is receiving appropriate services.

If the child or his or her parent or guardian does not comply with the plan for services, the court may hold a hearing to decide whether to file its own DCF petition. Otherwise, it must dismiss the delinquency or FWSN matter on the earlier of the date on which (1) it finds that the suspension is no longer necessary or (2) the 18-month suspension period expires.

These provisions in the bill apparently apply whether or not the child is competent.

**§ 4 — ESTABLISHING PATERNITY**

The bill increases the emphasis on establishing paternity in DCF abuse and neglect proceedings. Currently, when a man who has been named as the father of a DCF-involved child (a putative father) appears at the department's initial hearing and denies paternity, the court must advise him that he may be barred from participating in further legal proceedings concerning the child and either (1) order genetic testing or (2) direct him to fill out and sign a court form used for denying paternity.

The bill, instead, directs the court to order the testing. It creates a rebuttable presumption that the man is the child's father when (1) the test results indicate at least a 99% chance of paternity and (2) the court finds evidence that the child's mother and putative father engaged in sexual intercourse during the period in which the child was conceived. After giving the putative father the opportunity for a hearing, the bill allows the court to issue a judgment adjudicating paternity.

If the test results indicate that the person tested is not the child's

father, the court must issue a judgment to that effect. Under current law, this action is permissive.

### ***Filing Paternity Documents***

The bill directs the court clerk to send a copy of the paternity judgment to the Department of Public Health for inclusion in the department's paternity registry. It also directs the clerk to do this with paternity acknowledgment documents a man voluntarily signs at the initial court hearing. In the latter situation, the bill requires the clerk to keep certified copies in the court's file.

### **§ 5 — ROLE OF CHILD'S ATTORNEY IN ABUSE AND NEGLECT PROCEEDINGS**

Current law and the Rules of Professional Conduct specify that an attorney's primary role when representing a child is to advocate for his or her legal interests. The bill creates an exception if the child's age or other incapacity makes him or her incapable of expressing his or her wishes to the attorney by requiring attorneys to advocate for their clients' best interests.

### **§ 6 — LIMITING COURT DISPOSITIONS FOR DELINQUENT CHILDREN**

The bill eliminates the court's authority to order that a child it has adjudicated as delinquent be placed in the care of any institution or agency legally permitted to care for children. It retains its authority to order all other dispositions permitted under current law.

### **§ 7 — RELATIVES SEEKING GUARDIANSHIP**

Current law generally allows a child's relatives to intervene in abuse and neglect proceedings in order to request that the court grant them permanent guardianship of a DCF-involved child. By law, the court has the discretion to permit any relative to intervene after the expiration of a 90-day period following the department's initial hearing in the matter. The law requires the court to grant the relative's motion when the child's most recent placement has been, or is about to be interrupted unless it has good cause to rule otherwise.

The same standards apply under the bill, but the court cannot make

this guardianship appointment permanent.

### **§ 8 — CREATION OF “PERMANENT LEGAL GUARDIANSHIP” STATUS**

The bill creates the status of “permanent legal guardianship,” which it defines as the same as the bill’s revised definition of “permanent guardianship” under the state’s Probate Code. This guardianship is one intended to last until the minor reaches age 18, without terminating the parents’ parental rights.

The new status applies to a person who has the following obligations and authority with respect to a minor child:

1. the obligation of care and control;
2. the authority to make major decisions affecting the minor's education and welfare, such as 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 disposition of the minor’s body.

#### ***Appointing a Permanent Legal Guardian: Court Requirements***

When the court determines a child has been abused, neglected, or uncared-for, existing law gives it discretion to commit the child to DCF’s custody or grant legal guardianship to (1) an agency legally authorized to care for abused and neglected children under age 18 or (2) any other person, including a relative, it finds “suitable and worthy” of such responsibility. The law also allows the court to place the child in a parent’s or guardian’s custody with protective supervision by DCF, subject to any conditions the court establishes.

The bill gives courts an additional option by permitting the court to grant permanent legal guardianship to a suitable or worthy person, including one related to the child by blood or marriage. To grant permanent legal guardianship, the bill requires the court to first notify

the child's parents that they may not file a court motion to terminate the permanent legal guardianship, or indicate on the record why it could not provide this notice. It may order permanent legal guardianship if it finds, by clear and convincing evidence, that this is in the child's best interests and:

1. one of the statutory grounds for termination of parental rights exists or the parents have voluntarily consented to the guardianship;
2. adoption is not possible or appropriate;
3. the child, if over age 12, consents to the appointment or, if he or she is younger, the proposed permanent legal guardian is (a) a relative or (b) already a sibling's or siblings' permanent legal guardian;
4. the child has lived with the applicant for at least a year; and
5. the person seeking this status is a suitable and worthy person, committed to remaining the child's permanent legal guardian and assuming the right and responsibilities for the child until he or she reaches age 18.

***Reopening and Modifying a Permanent Legal Guardianship Appointment***

The bill allows the court to reopen and modify such an appointment and may remove a person serving as a child's permanent legal guardian when a motion is filed by someone other than the parent. The moving party must prove by a fair preponderance of the evidence that the guardian is no longer suitable and worthy. Under the bill, the court must hold a hearing before terminating a permanent legal guardianship. It is authorized to appoint a successor to serve as the child's legal or permanent legal guardian using the same method described above.

**§ 8 — PETITIONS TO REINSTATE GUARDIANSHIP OF A PARENT OR OTHER FORMER GUARDIAN**

The bill creates a court procedure that allows parents or other former guardians to file a court petition asking for reinstatement as guardians. When a reinstatement petition is filed, the court may order DCF to investigate and report on the current home conditions and needs of the child and those of the person seeking reinstatement.

The bill authorizes it to grant the petition if it finds that the cause for removing guardianship no longer exists and that reinstatement is in the child's best interests.

The bill allows someone to file such a petition no more than once every six months. The petitioner is generally not entitled to court-appointed counsel, but the court can order such counsel if justice requires.

#### **§ 9-11 — PERMANENT GUARDIANSHIP APPOINTMENTS IN PROBATE COURT**

The bill applies the standards it creates for permanent legal guardianship appointments in Superior Court to probate court proceedings, but refers to this status as "permanent guardianship." It also contains a provision, absent in the Superior Court provisions, for replacing a permanent guardian when he or she becomes unwilling or unable to remain in that status. It allows the court to follow existing law in appointing a successor guardian or permanent guardian or to reinstate a parent as guardian, and takes into account the same considerations as are used in the bill's Superior Court provisions.

#### **§ 15 — CRIMINAL MATTERS TRANSFERRED BETWEEN DELINQUENCY AND ADULT DOCKETS**

The law requires juvenile courts presiding over delinquency matters to automatically transfer cases involving children at least age 14 charged with capital or class A or B felonies or arson murder to the adult criminal docket once an attorney has been appointed. The bill removes a 10-working-day deadline for prosecutors to file motions to return to the juvenile docket cases involving class B felonies and statutory rape and for courts to rule on these motions. It also makes a conforming change to the current requirement that transferred case

files be sealed for 10 days.

***Hearings on Motions to Return Certain Felony Cases to the Juvenile Docket***

Current law permits a juvenile court to rule on a prosecutor's motion to transfer the case of any child charged with a class C or D or unclassified felony without first holding a hearing. The bill eliminates this practice. It also eliminates a requirement that courts rule on these motions within 10 days of the date of transfer, instead allowing the court to order their return at any time for good cause shown.

Currently, juvenile courts cannot grant a prosecutor's transfer order unless it finds that the offense was committed after the child reached age 14 and makes an *ex parte* finding that there is probable cause to believe that the child committed the act with which he or she was charged.

The bill eliminates the provision that requires the court to rule *ex parte* on the issue of probable cause. It also prohibits the court from granting such transfer motions unless it also finds that the best interests of the child and public will not be served by maintaining the case on the adult docket. The bill directs courts to consider:

1. the child's prior criminal or juvenile court convictions and their seriousness,
2. any evidence that the child has an intellectual disability or mental illness, and
3. the availability of juvenile court services that can serve the child's needs.

It requires that motions filed under this provision be made, and any hearing held, within 30 days after the child's arraignment.

**BACKGROUND**

***Family With Service Needs Offense***

A FWSN offense occurs when a child under age 17 (age 18,

beginning July 1, 2012) runs away without good cause, is truant or beyond control of his or her parents or school authorities, or engages in certain forms of sexual or immoral conduct. The matter must be referred to a juvenile probation officer who investigates and recommends that the child receive a program of services through the court (CGS § 46b-120).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 45 Nay 0 (03/28/2012)