



Judicial Impact Statement

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PLANNED PERMANENT LIVING ARRANGEMENTS

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TITLE INFORMATION

To amend sections 2151.353 and 2151.415 of the Revised Code to permit a juvenile court, upon its own motion, to place a child in a planned permanent living arrangement without a motion by a public children services agency or a private child placing agency.

IMPACT SUMMARY

This proposal, which is part of the Ohio Judicial Conference's 2015 - 2016 Legislative Platform, will positively impact Ohio's juvenile courts by granting judges the additional discretion to order, upon the court's own motion, a planned permanent living arrangement (PPLA) in the limited circumstances that one is statutorily permissible and in the best interests of the child. In addition to granting judges additional discretion, the proposal will improve public confidence in the law, and reduce court caseload and court workload.

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

BACKGROUND

Current Revised Code

Under current Revised Code section 2151.353, juvenile courts are authorized to place children who have been adjudicated abused, neglected, and/or dependent into one of six types living arrangements. The court may (1) place the child into protective supervision, (2) commit the child to temporary custody, (3) award legal custody of the child to either parent or to any other appropriate person, (4) commit the child to the permanent custody of a public children services agency or private child placing agency, (5) place the child in a planned permanent living arrangement (PPLA) with a public children services agency or private child placing agency, or (6) order the removal of the child from the home until further order of the court.

This statute authorizes the juvenile court to order a PPLA if a public

children services agency requests the placement, if the court finds by clear and convincing evidence that the PPLA is in the best interests of the child, and if one of the following exists:

- The child, because of physical, mental, or psychological problems or needs, is unable to function in a family like setting and must remain in residential or institutional care;
- The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interests of the child, as determined in accordance with R.C. 2151.414(D), and the child retains a significant and positive relationship with a parent or relative; or
- The child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living.

Historically, judges have used PPLA's as a placement of last resort because judges believe that it is not in the best interests of children to allow them to remain in foster care for an indefinite period of time. There is, however, a misconception that children who would otherwise be willing candidates for adoption are "parked" in PPLA's as a default until they age out of foster care. In reality, PPLA's are most often ordered when an older child is unable to live with a parent for one of the statutory reasons listed above, but otherwise maintains a relationship with the parent, siblings, grandparents and/or other relatives and does not wish to sever those emotional and legal ties through adoption.

Although increasing the number of children adopted in Ohio is an important and worthy goal, Ohio judges believe that it is also important to retain alternative options to protect a child's legal ties to his or her birth parents and other relatives in appropriate cases.

In re A.B.

In *In re A.B.*,¹ four siblings were removed from the home of their parents after a finding that they were dependent and neglected. The juvenile court then granted temporary custody to children services and the children were placed together in the same foster home. Ultimately, several months before the temporary custody order was set to expire, children services filed a motion for permanent custody of the children with the goal of placing the children for adoption. The attorney for the children subsequently filed a motion for an extension of the order of temporary custody and later a motion for a planned permanent living arrangement. After hearing testimony on the motions from the father, the children services caseworker, the GAL, and a chemical dependency counselor, the court determined that a planned permanent living arrangement would be in the best interests of the children. This decision was appealed based on the question of whether the court had the authority to order a PPLA without a request for such a placement from the children services board.

In 2006, the Supreme Court of Ohio held that the statutory language of R.C. 2151.353(A)(5) does not permit a juvenile court to order a PPLA for a child unless the children services agency has filed a motion requesting such a disposition. This ruling was based on the plain meaning of the statute which says that a court may "place the child in a planned permanent living arrangement...if a public children services agency or private child placing agency requests" it. In a dissenting opinion,

¹ *In re A.B.*, 110 Ohio St. 3d 230 (2006).

however, Justice Pfeiffer, looking at the entire statutory scheme of the abuse, neglect and dependency statute, noted the anomalous result of giving more power to agencies than to juvenile courts with regards to the determination of what is in the child's best interests when the scheme suggests that such decisions rest with the juvenile court.

JUDICIAL IMPACT

Judicial Discretion

This proposal will positively impact Ohio juvenile courts by giving juvenile judges greater discretion to do what is in the best interests of children. In granting courts the authority to order PPLA's upon their own motion, rather than solely upon a motion of the children services board, judges will be better able to weigh all of the evidence and make a decision that they feel is in the best interests of that child. This will allow judges to better fulfill a role that has traditionally been played by the courts rather than by state agencies.

Public Confidence in the Law

This proposal will improve public confidence in the law by enabling the courts to promote familial stability when it finds that to do so would be in the best interests of the child. The United States Supreme Court has long held that parents have a fundamental constitutional right to rear their children² and public confidence in the law is improved when fundamental rights are upheld. Moreover, the Supreme Court has historically looked to the lower courts rather than state agencies to make decisions regarding the best interests of children. Granting courts the authority to order PPLA's when such a placement would be in the best interests of the child or children, would therefore, improve public confidence in the law by allowing courts to better enforce a parent's fundamental rights and by restoring the courts' authority to make decisions regarding the best interests of children.

Caseload and Workload

This proposal will cause a small reduction in both court caseload and court workload. While PPLA's are a legal placement of last resort and their use has declined in recent years, the inability of courts to use PPLA's when to do so is in the best interests of the child often requires the court to make an alternative order granting children services permanent custody of the child. In granting permanent custody then, the court is severing all legal ties with the child's birth parent or parents, a process that can be lengthy and complex. If the court is at least given the option of placing children in PPLA's when it is appropriate to do so, the court will not have to go through the more complex permanent custody procedure.

RECOMMENDATION

The General Assembly should amend R.C. 2151.353, which governs order of dispositions of abused, neglected, or dependent children, to eliminate the provision of the statute requiring children services to request a PPLA. This will permit the court, in the best interests of the child, to either grant permanent custody of the child to children services or in the alternative order a PPLA when the other existing statutory criteria are met.

² *Troxel v. Granville*, 530 U.S. 57 (2000)

Additionally, R.C. 2151.415, which governs motions for orders of disposition upon termination of temporary custody orders, should be amended to permit a child to be placed in a PPLA upon the termination of temporary custody order if requested by an agency, by the child's guardian ad litem, or by the court.