

# The Legal Process For GAL's

Daniel W. Sullenberger, Staff Attorney, CASA of Franklin County,  
He/Him/His

Rachel Thompson, Staff Attorney, CASA of Franklin County,  
She/Her/Hers



# Roadmap

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# Changes to The Ohio Supreme Court Rules of Superintendence



## Rule 8 (Former Rule 48)

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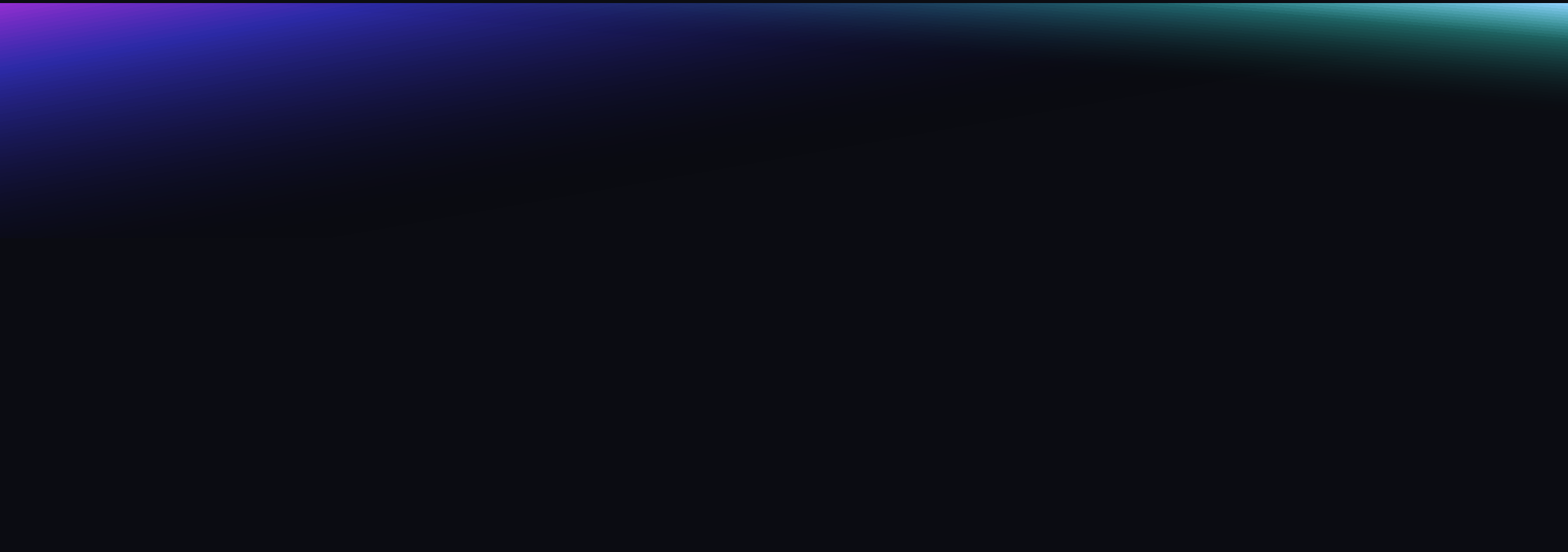
Former Rule 48 is now Rule 8. The sections that apply to GAL's are 8.00 to 8.07.

Most significant changes were made to the language required on Court Appointments and Court Reports

- The New Language Follows:

“The Guardian ad Litem (GAL) has provided this report in accordance with the Rules of Superintendence for the Court of Ohio. No party receiving a copy of this report may reproduce, copy, share, or distribute the report, or any part, excerpt, or image from it, by any means without the permission of the court. Any violation may result in Court Action, including the penalties for contempt, which include a fine and/or incarceration.”

# Adjudication



# Dependent: Definition

R.C. 2151.04 Defines a dependent child as one

- (A) who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian;
- (B) Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian;
- (C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship
- (D) To whom both of the following apply
  - 1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis of an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.
  - 2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.



# Dependent: Homelessness Case Law

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*In re J.L.*, 2023-Ohio-1127, (9th Dist.).

## 1. Facts

Mother and children had no permanent address. Mother and children had been staying at different friend's houses at night and had been staying at one house for several weeks. Agency was unable to meet mother and walk through house to ensure it was adequate for the children. Agency filed complaint alleging dependency based on R.C. 2151.04(A). Court adjudicated kiddos dependent and removed them from mother's care. Mother appealed

## 2. Law

R.C. 2151.04(A) defines adequate parental care as "the provision by a child's parent or parents \* \* \* of adequate food, clothing, and shelter to ensure the child's health and physical safety[.]" *In re J.L.*, 2023-Ohio-1127, (9th Dist.). *P.* 25.

## 3. Holding

Court remanded case to trial court because the agency did not prove by clear and convincing evidence that mother and children were homeless at the time the complaint was filed.

# Dependency: Sibling Dependency

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*In re W.C.*, 2005-Ohio-2968, (9th Dist.).

## 1) Facts

Prior to W.C.'s birth Mother had her rights to her four other children involuntarily terminated. After learning this information, hospital staff made a call to the local children services agency. A caseworker met with mother and father at the hospital. Mother had a history of homelessness, employment struggles, a history of depression, and was engaging in couples counseling with father to help handle their anger better when fighting. Father of W.C. admitted to caseworker that he had been convicted of child endangerment after shaking his child by another woman. As a result, he was ordered to have no contact with his other child. Based on the gathered information, the agency received emergency custody of W.C. The Court adjudicated W.C. dependent based on R.C. 2151.04(D). Parents appealed contending that the agency did not consider the current conditions of mother's life/home.

## 2) Law

The Court interpreted R.C. 2151.04(D)(1)-(2) and distinguished this case from *In re Bishop*, 521 N.E.2d 838 (5th Dist.1987). *In re W.C.* came before the court after the Ohio Legislature added R.C. 2151.04(D) to the ORC.

## 3) Holding

The Appellate Court determined that the Trial Court did not err in adjudicating W.C. dependent based on R.C. 2151.04(D). Mother did not contest that she had her parental rights involuntarily terminated to her four other children which satisfies R.C. 2151.04(D)(1). In addition, the agency considered several current conditions of the home required by R.C. 2151.04(D)(2). Those conditions include, mother's complete reliance on father to support her after she stopped working before having W.C., mother and father engaging in couples counseling because they admitted they get angry when fighting easily, and father's prior child endangerment conviction. Specifically, The Court stated that a child abuser's presence in the home can be considered as a condition in the household which might place the child in danger of being abused or neglected.

# Dependency: Sibling Dependency

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*In re T. P.-M.*, 2008-Ohio-6437, (9th Dist.).

The Court determined that R.C. 2151.04(D) does not presume that where a parent has had one child abused, neglected, or dependent, another of the parent's children will inevitably be in danger of being abused or neglected.

There must be a causal relationship, or nexus, between past circumstances and present conditions, on the one hand, and resultant danger to the child, on the other.

R.C. 2151.04(D) requires three things. First, that the child at issue must reside in the same household in which a sibling of that child was adjudicated abused, neglected, or dependent. Second, that a member of the child's present household committed an act that was the basis of the prior adjudication. Third, the trial court must find that the child is presently in danger of being abused or neglected by a member of that child's household due to the circumstances surrounding the prior abuse, neglect, or dependency as well as the current conditions in the household.

An infant can be found dependent before they have ever been released into their parent's custody. In *In re Pieper Children*, it was determined that the state need not subject a child to a potentially detrimental environment where a court has made a prospective findings of dependency pursuant to R.C. 2151.04. Additionally, a juvenile court should not be forced to experiment with the health and safety of a newborn where the state can show by clear and convincing evidence, that placing the child in such environment would be threatening to the health and safety of that child. *In re Campbell* (1983)

# Neglect: Definition



R.C. 2151.03 defines a neglected child as one

- (1) Who is abandoned by the child's parents, guardians, or custodian;
- (2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;
- (3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;
- (4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;
- (5) Whose parents, legal custodian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the revised code;
- (6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;
- (7) Who is subjected to out-of-home care child neglect.

Parents, guardians, or custodians are not subjected to criminal liability based on this chapter when the failure to provide adequate medical or surgical care or treatment for the child solely in the practice of religious beliefs.

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## Neglect: Case Law—Truancy

*In Re M.O.* provides that “Although poor school attendance may be one of the underlying facts in an adjudication of dependency or neglect, it is generally coupled with other problems in the home, such as deplorable living conditions, a lack of food, domestic violence, and or drug use by the parents.” *In re M. O.*, 2010-Ohio-5107, (9th Dist.), P16. R.C. 2151 and R.C. 3321.191

*In Re M.O.* was reversed and remanded because the state did not provide evidence that the children were in an unsuitable environment during their school absences or that Mother was ‘willfully’ at fault in refusing to provide for her children’s educational needs. The caseworker testified to trash and flies on the front porch, possible dog feces on the floor in the house, clutter, and no sheets on one of the children’s beds. This did not reach the level of home conditions. In addition, the caseworker was not able to speak with mother about the absences before the children were adjudicated.

In contrast, *In Re E.V.* found the trial courts determination that E.V. was a neglected minor was affirmed. The caseworker attempted several visits at mother’s address, letters were sent to mother and father, and mother and father were both called. Neither mother nor father responded to these attempts. Mother also rebuffed any help to resolve the child’s truancy issue offered by the agency and the school. (Neither parent attended a meeting required by law to set up a plan to help with school attendance). P 91

# Neglect: Case Law—Home Conditions

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*In re D.H.*, quoting *In re J.A.*, provides that a parent fails to provide care that is necessary for her child's health and well-being by failing to provide her children with a safe and sanitary home. *In re J.A.*, 2009-Ohio-589, (9th Dist.) at P28.

*In re D.H.* involves a home that had a severe cockroach infestation. The roaches were so severe the caseworker had to watch where she was walking to avoid stepping on a cockroach. Roaches were observed coming in and out of the woodwork, on the ceiling and sofa, all over the kitchen sink, and in the refrigerator (both alive and dead). Mother admitted that she needed to shake out the sheets before going to bed because of the severity of the infestation. *In re D.H.*, 2010-Ohio-422, (9th Dist.).



# Abuse: Definition

R.C. 2151.031 defines an abused child as one who

- (A) Is the victim of “sexual activity” as defined under chapter 2907 of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;
- (B) Is the victim of disseminating, obtaining, or displaying “materials” or “performances” that are “harmful to juveniles” as defined under Chapter 2907 of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;
- (C) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;
- (D) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury of death which is at variance with the history given of it. Except as provided in division € of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, caretaker, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2912.22 of the revised code.
- (E) Because of the acts of the child's parents, guardian, custodian, or caretaker, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.
- (F) Is subjected to out-of-home care child abuse

# Abuse: Parental Fault

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*In re Pitts*, 525 N.E.2d 814 (5th Dist.1987) determined that during the adjudicatory phase of the proceedings, the trial court does not have to find any fault on the part of the parent, guardian, or custodian in order to find that the child is abused pursuant to the plain meaning of R.C. 2151.031. The court goes on to say, “All that is necessary is that the child be a victim, regardless of who is responsible for the abuse. The focus is upon harm to the child, not upon parental or custodial blame-worthiness. “

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## Abuse: Substance Abuse

In *In Re Blackshear*, held that when a newborn child's toxicology screen yields a positive result for an illegal drug due to prenatal maternal drug abuse, the newborn is, for purposes of R.C. 2151.031(D), per se an abused child. *In re Blackshear*, 90 Ohio St.3d 197 (2000). In this case, the child tested positive for cocaine and appeared to be jittery after birth.

In *Huffman v. Eachus*, a mother who admitted to ingesting marijuana while pregnant did not provide enough evidence to find the child to be abused in section D. There was no evidence presented (1) that the newborn tested positive for illegal substances at birth or (2) regarding the newborn's physical and mental health at birth. If the newborn had been exhibiting withdrawal symptoms at birth, then there may have been clear and convincing evidence to adjudicate the child an abused child under R.C. 2151.031(D). *Huffman v. Eachus*, 2019-Ohio-910, (3rd Dist.).

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## Abuse: Child Endangering

Under R.C. 2151.031(C) an abused child is defined by the criminal code in R.C. 2919.22. Essentially any child who is the victim of an endangering children offense is considered to also be an abused child for purposes of Chapter 2151 of the revised code.

*State v. Gray*, 62 Ohio St.3d 514, 516, 584 N.E.2d 710 (1992) held that a parent may not be prosecuted for child endangering pursuant to R.C. 2919.22(A) due to substance abuse occurring before the birth of the child. *State v. Gray*, 62 Ohio St.3d 514 (1992)

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# Abused: Corporal Punishment

R.C. 2119.22: Endangering Children

- (3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;
- (4) Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;

# Complaint Sufficiency

R.C. 2151.27 provides that any person who has knowledge that a child is abused, neglected, or dependent may file a sworn complaint with respect to that child in the juvenile court of the county in which the child has a residence or legal settlement or in which the abuse, neglect, or dependency allegation occurred...The Sworn complaint may be upon the information and belief, and, in addition to the allegation that the child is abused, neglected, or dependent, the complaint shall allege the particular facts upon which the allegation that the child is abused, neglected, or dependent is based.

Ohio Juv. R. 10(B) states that a complaint must satisfy all of the following requirements

- (1) State in ordinary and concise language the essential facts that bring the proceeding within the jurisdiction,...,shall contain the numerical designation of the statute or ordinance alleged to have been violated;
- (2) Contain that name and address of parent, guardian, or custodian of the child or state that the name or address is unknown;
- (3) Be made under oath.

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# Complaint Sufficiency

An Ohio Supreme Court Case, [\*In re Hunt\*, 46 Ohio St.2d 378 \(1976\)](#), discussed a parent who requested the court grant a Writ of Habeas Corpus because the complaint filed, which led to the removal of appellant's children, was insufficient to give the juvenile court in Ashtabula County jurisdiction to remove the children. The Supreme Court agreed that the complaint was insufficient as it did not "State in ordinary and concise language the essential facts which bring the proceeding within the jurisdiction of the court." The Court did not grant the Writ of Habeas Corpus because there was an alternative remedy available to appellant including the ability to file a motion to dismiss based upon insufficiency.

# Disposition



# Custodial Orders

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R.C. 2151.353(A)(1)-(6) Provides that if a child is adjudicated abused, neglected, or dependent, the court may make any of the following orders of disposition:

(1) Place the child in protective supervision;

(2) Commit the child to the temporary custody of any of the following;

(a) A public children services agency;

(b) A private child placing agency;

(c) Either parent;

(d) A relative residing within or outside the state;

(e) A probation officer for placement in a certified foster home;

(f) Any other person approved by the court;

(3) Award Legal Custody

(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 with a public children services agency or private child placing agency

(6) “Order the removal from the child’s home until further order of the court of the person who committed abuse...who caused or allowed the child to suffer neglect...or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child’s sibling.”

# Best Interest Determines Disposition

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In *In Re O.-D.*, the 9<sup>th</sup> District Ohio Court of Appeals provided that “In all cases of controverted right to custody, the welfare of the minor is first to be considered. Quoting *Clark v. Bayer* 32 Ohio St.299, 310 (1877).



The legislature has mandated that R.C. Chapter 2151 should be liberally interpreted to “provide for the care, protection, and mental and physical development of children\*\*\*, whenever possible, in a family environment, separating the child from the child’s parents only when necessary for the child’s welfare or in the interests of public safety.” R.C. 2151.01(A).

No specific best interest considerations are contained in R.C. Chapter 2151 outside the context of permanent custody.

Courts are guided by R.C. 2151.414(D) in determining the best interest for permanent custody and R.C. 3109.04(F)(1) in determining the best interest for private legal custody matters. Therefore, it is reasonable to seek guidance from those same factors regarding an award of temporary custody. *In re O.-D.*, 2026-Ohio-1745, (9th Dist.).

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## Best Interest Factors in R.C. 2151.414(D)(1)

- (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;
- (c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;
- (d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;
- (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

## Best Interest Factors in 3109.04(F)(1)

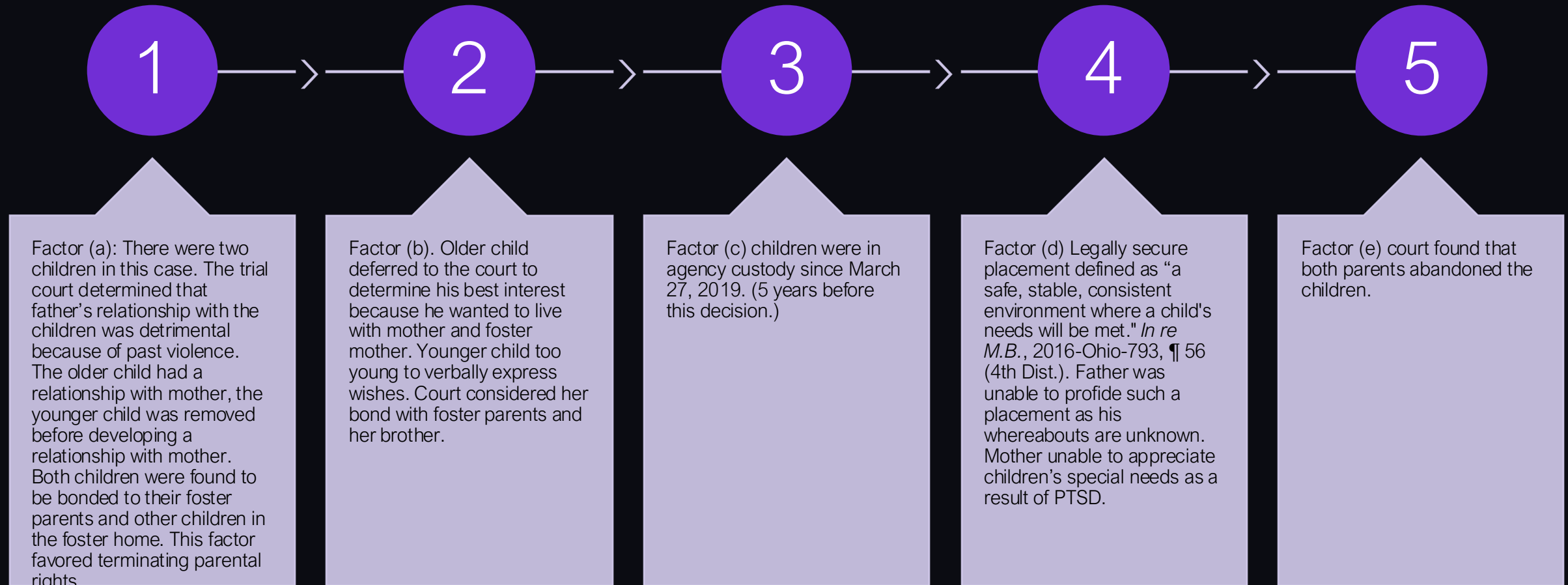
The best interest factors in R.C. 3109.04(F)(1) overlap the above factors to a great extent, but further include

- (1) the child's adjustment to her environment;
- (2) the mental and physical health of all persons involved;
- (3) the parents' history of providing support and honoring companionship orders;
- (4) certain indicia of violence, abuse, or neglect in any household involved; and
- (5) whether a parent plans to or has established a residence outside of Ohio.

*In re O.-D.*, 2026-Ohio-1745, (9th Dist.).



## Best Interest Analysis: In *In re LU.M.-R.*, 2026-Ohio-3344, (10th Dist.).



# GAL Duties

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# Court Reports

Ohio Sup. R. 8.06 dictates court reports. Each jurisdiction can go beyond the requirements in Sup. R. 8.06.

The rule requires a report be filed 7 days before an “initial dispositional hearing, permanent custody hearing, and any hearing upon a motion hearing where a change of disposition is requested.”

The court report must state that the GAL has or has not completed the duties as required by Rule 8. Individual jurisdictions may require the GAL to file a written request for relief when the duties are not completed.

The court report must also contain the following language: “The Guardian ad Litem (GAL) has provided this report in accordance with the Rules of Superintendence for the Court of Ohio. No party receiving a copy of this report may reproduce, copy, share, or distribute the report, or any part, excerpt, or image from it, by any means without the permission of the court. Any violation may result in Court Action, including the penalties for contempt, which include a fine and/or incarceration.”

*In re A.S.* out of Franklin County involved a GAL who did not complete the duties required by then Sup. R. 48 and the local juvenile rules. Despite this, the trial court granted FCCS permanent custody of the child. The record from the permanent custody trial indicates that the GAL only met A.S. once in the three years the case was open. It was unknown if the GAL observed A.S. interacting with the parents, both foster parents, or any siblings. There was no evidence that the GAL spoke to school or medical personnel. The court found that the GAL's report and testimony was not supported "by sustained, independent observations and contact with A.S. and relevant parties over the nearly three years from the time of his appointment to the writing of his final report." *In re A.S.*, 2022-Ohio-1861, (10th Dist.). Because the GAL duties were not completed the PCC was overturned.

*In re A.A.*, also out of Franklin County, in contrast concluded that while the GAL did not observe mother and child interact, the GAL completed several other duties enumerated in then Sup. R. 48. Therefore, the permanent custody determination was not overturned. *In re A.A.*, 2024-Ohio-224 (10th Dist.)

*In re C.A.P.* out of Portage County, considered a grant of permanent custody after the GAL filed a court report that contained only four sentences before the permanent custody trial. The appellate court noted that the GAL report was "subpar at best." *In re C.A.P.*, 2026-Ohio-661, (11th Dist.). The trial court was able to assign weight to the GAL report when considering the permanent custody motion. There was ample evidence presented outside of the GAL report to determine it was in the child's best interest to grant permanent custody to the agency.

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## Informing the court of a conflict

Ohio Juv. R. 4(C) states that if a person is serving as a GAL for a child or ward and the court finds a conflict exists between the role of the GAL and the interest or wishes of the child or the ward, the court shall appoint counsel for the child or ward.

In *In re L.J.*, the court asserted that a trial court is not required to appoint separate counsel for the children in a permanent custody proceeding unless the GAL's recommendations regarding the children's best interest conflict with the children's own wishes.

Sup. R. 8 requires a GAL to move the court at the earliest practical time in writing to promptly resolve the conflict between the GAL's recommendation and the child's wishes.

The existence of a conflict is made on a case-by-case basis. The child's maturity is taken into consideration. In addition, the appointment of independent counsel is necessary when the child has “**consistently and repeatedly** expressed a **strong** desire that is inconsistent with the guardian ad litem's recommendations.” *In re L.J.*, 2016-Ohio-2658, (2nd Dist.). Quoting *In re M.H.*, 2013-Ohio-1063, (12th Dist.).

# Motions



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## R.C. 2151.281(I)

“The guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child shall perform whatever functions are necessary to protect the best interest of the child...and shall file any motions and other court papers that are in the best interest of the child in accordance with the rules adopted by the supreme court.”

### GAL's can File

- 4118
- In Camera Interviews
- Exclude Placement
- SIJS Findings
- Amend Case Plan
- Review hearing
- Shelter Care
- Legal Custody
- Permanent Custody

### GAL's cannot File

- PPLA

# PPLA

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An Ohio Supreme Court Case, *In Re A.B.*, considered a conflict between 8<sup>th</sup> and 9<sup>th</sup> district cases. The 8<sup>th</sup> District Case, *In re M.W.*, father asked the trial court to grant a planned permanent living arrangement for his child. The children services agency filed a motion for permanent custody. Ultimately, the trial court granted permanent custody to the agency and denied father's motion for PPLA.

The 8<sup>th</sup> District Court noted that the trial court could not, contrary to the father's assertions, order a planned permanent living arrangement. The opinion cited R.C. 2151.353(A)(5). This section permits the court to order a planned permanent living arrangement if “\*\*\*a public children services agency or private child placing agency requests the court to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the enumerated factors exists. *In re M.W.*, 2005-Ohio-1302, (8th Dist.).

The 9<sup>th</sup> District case granted child's attorney's motion for PPLA citing R.C. 2151.415(F) which states that “The court, on its own motion or the motion of the agency or person with legal custody of the child, the child's guardian ad litem, or any other party to the action, may conduct a hearing with notice to all parties to determine whether any order pursuant to this section should be modified or terminated or whether any dispositional order set forth in divisions (A)(1)-(5) of this section should be issued.

The Supreme Court of Ohio determined that, when interpreting the meaning and effect of the plain language of R.C. 2151.353(A) (5), only a children services agency may move for PPLA.

The legislature intended to limit “Foster Care Drift,” and encouraged speedy placement, R.C. 2151.353 places limitations upon the use of PPLA.

*In re A.B.*, 110 Ohio St.3d 230, 2006-Ohio-4359

# Foster Parents Made Equal to Kinship Caregivers

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## R.C. 2151.4118

“A court may issue an order that determines, with respect to a child described in section 2151.4116 of the Revised Code who is not receiving care in the home of a kinship caregiver, that the continuation of the child’s current placement is in the child’s best interest and that the intensive efforts to identify and engage an appropriate and willing kinship caregiver for the child are unnecessary if the court makes the findings in section 2151.4119 of the Revised Code.”

R.C. 2151.4116 requires a children services agency to make intensive efforts to identify and engage kinship caregivers if the child is in temporary Custody of the agency or in a planned permanent living arrangement with the agency.

## R.C. 2151.4119

“A court may issue an order under section 2151.4118 of the Revised Code if it finds all of the following:

- A. The child has been living in a stable home environment with the child’s current caregivers for the past twelve consecutive months.
- B. The current caregivers have expressed interest in providing permanency for the child.
- C. The removal of the child from the current caregivers would be detrimental to the child’s emotional well-being.”

# Motions for In Camera Interviews



*In re C.F.*, an Ohio Supreme Court case discussed the necessity of an In Camera interview requested by parents in a child welfare case. The court focused on R.C. 2151.414(D)(2) which states the court, in determining the wishes of the child, is required to consider the wishes of the child as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child." The court held that R.C. 2151.414(D)(2) does not require the trial court to consider the desire of the child to testify or whether testifying would be detrimental to the child. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104.

The trial court in child welfare cases has discretion to accept the testimony of the guardian ad litem on the child's wishes rather than hearing a direct expression of those wishes made by the child. In *In re C.F.*, the guardian ad litem and the children's psychologist testified as to the wishes of the children.

This means that while a party, such as the GAL can move the court to conduct In Camera interviews with the children, a juvenile court is not required to grant said motion.

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# Placement Concerns

R.C. 2151.417(A) provides that “Any court that issues a dispositional order pursuant to section 2151.353, 2151.414, or 2151.415 of the Revised Code may review at any time the child’s placement or custody arrangement, the case plan prepared for the child pursuant to 2151.412 of the Revised Code, the actions of the public children services agency or private child placing agency in implementing that case plan, the child’s permanency plan has been approved, and any other aspect of the child’s placement or custody arrangement.”

Factors to consider include the appropriateness of any agency actions, the safety and appropriateness of continuing the child’s placement or custody arrangement, and whether any changes should be made with respect to the child’s permanency plan or placement or custody arrangement or with respect to the actions of the agency under the child’s placement or custody arrangement.

In *In re J.D.*, the appellate court overruled the Franklin County Juvenile Court’s order requiring FCCS to place the child at a specific residential facility. The appellate court determined that although the juvenile court appropriately may offer guidance or suggestions to FCCS concerning a child’s residence, the court’s granting of legal custody to the agency also grants the authority to decide the specific residence.

*In re J.D.*, 2007-Ohio-3279 (10th Dist.)

Eligibility Criteria (§ 235(d) of the TVPRA (“Traffic Victims Protection Reauthorization Act,” Public Law 110–457, 122 Stat. 5044 (Dec. 23, 2008)) which amended INA § 101(a)(27)(J)(i) & proposed regulations: [76 Fed. Reg. 54985-54986](#)).

- Is present in the United States;
- Is under 21 years of age at the time of filing;
- Is unmarried;
- Has been declared dependent on a juvenile court, or has been legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court. Such dependency, commitment, or custody must be in effect at the time of filing and continue through the time of adjudication, unless the age of the petitioner prevents such continuation;
  - A juvenile is *dependent* upon the court if he or she “has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.” (8 C.F.R. § 204.11(c)(6); proposed rule 8 C.F.R. § 204.11(b)(6), 76 Fed. Reg. 54985).
  - In MA, courts that could exercise jurisdiction over juveniles include the Juvenile Court, the Probate and Family Court, and, in some circumstances, the District court.
- Is the subject of a State or juvenile court determination that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law;
- Has been the subject of a determination in judicial or administrative proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and
- Obtains consent from the Secretary of Homeland Security to classification as a special immigrant juvenile.

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# Shelter Care

R.C. 2151.314 and R.C. 2151.31

# Legal Custody: R.C. 2151.353(3)

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“(3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. A person identified in a complaint or motion filed by a party to the proceedings as a proposed legal custodian shall be awarded legal custody of the child only if the person identified signs a statement of understanding for legal custody that contains at least the following provisions:

(a) That it is the intent of the person to become the legal custodian of the child and the person is able to assume legal responsibility for the care and supervision of the child;

(b) That the person understands that legal custody of the child in question is intended to be permanent in nature and that the person will be responsible as the custodian for the child until the child reaches the age of majority. Responsibility as custodian for the child shall continue beyond the age of majority if, at the time the child reaches the age of majority, the child is pursuing a diploma granted by the board of education or other governing authority, successful completion of the curriculum of any high school, successful completion of an individualized education program developed for the student by any high school, or an age and schooling certificate. Responsibility beyond the age of majority shall terminate when the child ceases to continuously pursue such an education, completes such an education, or is excused from such an education under standards adopted by the department of education and workforce, whichever occurs first.

(c) That the parents of the child have residual parental rights, privileges, and responsibilities, including, but not limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child’s religious affiliation, and the responsibility for support;

(d) That the person understands that the person must be present in court for the dispositional hearing in order to affirm the person’s intention to become legal custodian, to affirm that the person understands the effect of the custodianship before the court, and to answer any questions that the court or any parties to the case may have.”

# PCC



R.C. 2151.28(I) and 2151.415(F) grants a GAL authority to file and prosecute a motion to terminate parental rights and award permanent custody to a public children's services agency. *In re C.T.*, 119 Ohio St.3d 494, 2008-Ohio-4570.

In *In re C.T.* The agency filed a motion for legal custody, and the GAL filed a motion for permanent custody. The trial court granted permanent custody to the agency and mother appealed. The appellate court reversed the granting of permanent custody under the guise that the GAL could not file for PCC. The Supreme Court of Ohio heard the cause upon its acceptance of a discretionary appeal. The Supreme Court held that R.C. 2151.281 (I) and 2151.415(F) provide statutory authority for a guardian ad litem to file a motion to terminate parental rights and grant permanent custody.

The GAL is required to "perform whatever functions are necessary to protect the best interest of the child\*\*\*and shall file any motions and other court papers that are in the best interest of the child." R.C. 2151.281(I).

R.C. 2151.415(F) provides, "The court, on its own motion or the motion of the agency or person with legal custody of the child, the child's guardian ad litem, or any other party to the action, may conduct a hearing with notice to all parties to determine whether any order issued pursuant to this section should be modified or terminated or whether any other dispositional order set forth in divisions (A)(1) to (5) of this section should be issued. After the hearing and consideration of all the evidence presented, the court, in accordance with the best interest of the child, may modify or terminate any order issued pursuant to this section or issue any dispositional order set forth in divisions (A)(1) to (5) of this section."

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## Post Permanent Custody

Once the court grants permanent custody to a public children services agency or private child placing agency, the GAL generally stays on the case until the child is adopted or ages out of the foster care system.



# Case Citations

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## Dependency

*In re J.L.*, 2023-Ohio-1127, (9th Dist.).

*In re W.C.*, 2005-Ohio-2968, (9th Dist.).

*In re T. P.-M.*, 2008-Ohio-6437, (9th Dist.).

*In re Pieper*, 619 N.E.2d 1059 (12th Dist.1993).

*In re Campbell*, 468 N.E.2d 93 (12th Dist.1983).

## Neglect

*In re M. O.*, 2010-Ohio-5107, (9th Dist.).

*In re E.V.*, 2025-Ohio-1728, (8th Dist.).

*In re D. H.*, 2010-Ohio-422, (9th Dist.).

*In re J.A.*, 2009-Ohio-589, (9th Dist.) at P28.

## Abuse

*In re Pitts*, 525 N.E.2d 814 (5th Dist.1987).

*In re Blackshear*, 90 Ohio St.3d 197 (2000).

*Huffman v. Eachus*, 2019-Ohio-910, (3rd Dist.).

*State v. Gray*, 62 Ohio St.3d 514 (1992).

## Complaint Sufficiency

*In re Hunt*, 46 Ohio St.2d 378 (1976).

# Case Citations

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## Best Interest

*In re O.-D.*, 2026-Ohio-1745, (9th Dist.).

*Clark v. Bayer* 32 Ohio St.299, 310 (1877).

*In re LU.M.-R.*, 2026-Ohio-3344, (10th Dist.).

## GAL Duties

*In re L.J.*, 2016-Ohio-2658, (2nd Dist.).

*In re M.H.*, 2013-Ohio-1063, (12th Dist.).

## PPLA

*In re A.B.*, 110 Ohio St.3d 230, 2006-Ohio-4359

*In re C.S.*, 2015-Ohio-618, (2nd Dist.).

## In Camera Interviews

*In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104.

## Placement Concerns

*In re J.D.*, 2007-Ohio-3279 (10th Dist.)

## Permanent Custody

*In re C.T.*, 119 Ohio St.3d 494, 2008-Ohio-4570.