

**OPINION NO. 99-041****Syllabus:**

1. If a juvenile court, in making disposition of an unruly or delinquent child pursuant to R.C. 2151.354 or R.C. 2151.355, places the child into the temporary custody of the county department of human services in accordance with R.C. 2151.353 and the department provides services to that child, the county department of human services is required to develop and file with the court a case plan pursuant to R.C. 2151.412 and to hold semiannual reviews of the case plan pursuant to R.C. 2151.416.
  
  2. If a juvenile court, in making disposition of an unruly or delinquent child pursuant to R.C. 2151.354 or R.C. 2151.355, places the child into the temporary custody of the county department of human services in
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accordance with R.C. 2151.353, the juvenile court is required to hold periodic reviews pursuant to R.C. 2151.417 and Ohio R. Juv. P. 36(A).

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**To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio**  
**By: Betty D. Montgomery, Attorney General, July 29, 1999**

We have received your request for an opinion concerning situations in which an unruly or delinquent child is placed into the temporary custody of the county department of human services. Your question is this: if a juvenile court places an unruly or delinquent child into the temporary custody of the county department of human services, is the department required to develop and file with the court a case plan pursuant to R.C. 2151.412 and hold semiannual reviews pursuant to R.C. 2151.416, and is the court required to hold periodic reviews pursuant to R.C. 2151.417?

In order to answer your question, we must first look to the statutes governing placements of the sort in question. R.C. 2151.354 governs the orders of disposition a court may make with respect to a child who is adjudicated an unruly child, *see* R.C. 2151.022, and R.C. 2151.355 governs the orders of disposition a court may make with respect to a child who is adjudicated a delinquent child, *see* R.C. 2151.02. In each instance, the court is permitted to make any of the dispositions authorized under R.C. 2151.353. *See* R.C. 2151.354(A)(1); R.C. 2151.355(A)(1). R.C. 2151.353 lists a number of orders of a disposition that a court may make when a child is adjudicated an abused, neglected, or dependent child. Those dispositions include committing the child to the temporary custody<sup>1</sup> of a public children services agency. R.C. 2151.353(A)(2).

In the instant case, the public children services agency is the county department of human services. *See* R.C. 5153.02(B). When a child is placed in the temporary custody of the county department of human services, the department has legal custody of the child, including the right to have physical care and control and to determine where and with whom the child shall live, and the right and duty to provide for protection, training, discipline, and physical needs, subject to any residual parental rights, privileges, and responsibilities. R.C. 2151.011(B)(17) and (46); *see* note 1, *supra*.

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<sup>1</sup> *“Temporary custody” means legal custody of a child who is removed from the child’s home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement.*

R.C. 2151.011(B)(46) (emphasis added).

“Legal custody” means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

R.C. 2151.011(B)(17).

Let us turn now to the statutory procedures about which you have inquired. R.C. 2151.412 requires each public children services agency or private child placing agency to prepare and maintain a case plan "for any child to whom the agency is providing services" and to whom one of four descriptions applies: (1) the agency filed a complaint under R.C. 2151.27 alleging that the child is an abused, neglected, or dependent child; (2) the agency has temporary or permanent custody of the child; (3) the child lives at home subject to an order for protective supervision; or (4) the child is in a planned permanent living arrangement. R.C. 2151.412(A). The case plan must be filed with the court "prior to the child's adjudicatory hearing but no later than thirty days after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care." R.C. 2151.412(C). If the agency does not have sufficient information, it must specify how it will obtain the information, and all parts of the case plan must be completed by the earlier of thirty days after the adjudicatory hearing<sup>2</sup> or the date of the dispositional hearing<sup>3</sup> for the child. *Id.*; see also Ohio R. Juv. P. 34(F).

As part of the dispositional order for the child, the court must journalize a case plan, which may be agreed upon by all parties and approved by the court or determined by the court. R.C. 2151.353(D); R.C. 2151.412(D); Ohio R. Juv. P. 34(F); *In re Cummings*, No. 89-CA-11, 1989 Ohio App. LEXIS 3503 (Ct. App. Guernsey County Sept. 6, 1989) (case plan is required when child is judicially placed into temporary custody of relative); see also *In re Johnson*, No. 94 CA 2003, 1995 Ohio App. LEXIS 1365 (Ct. App. Ross County Mar. 29, 1995). All parties, including the parents, guardian, or custodian of the child, are bound by the journalized case plan. R.C. 2151.412(E)(1). The case plan may be modified through appropriate proceedings. R.C. 2151.412(E)(2) and (3). *Id.* All case plans for children in temporary custody have as their general goals achieving a safe out-of-home placement in the least restrictive setting available and eliminating the need for the out-of-home placement so that the child can safely return home. R.C. 2151.412(F)(1).

R.C. 2151.416 requires each agency that must prepare a case plan under R.C. 2151.412 to hold semiannual administrative reviews of the case plan. R.C. 2151.416(A); see also Ohio R. Juv. P. 36(C). Each review is conducted by a panel of at least three persons and includes a joint meeting of the review panel, the parents, guardian, or custodian of the child, the guardian ad litem, and the foster care provider. R.C. 2151.416(B) and (C). The agency must file a summary of the review with the court and may propose changes to the case plan. R.C. 2151.416(D) and (E). The child's health and safety are the paramount concerns of the review process. R.C. 2151.416(A). The review addresses various matters relating to the child, including the appropriateness of the foster care placement, the extent of progress that has been made toward alleviating the circumstances that required the agency to assume temporary custody of the child, an estimated date for the child's return home or placement for adoption or legal custody, and the recommendation as to who should have custodial rights over the child for the next six months. R.C. 2151.416(D).

R.C. 2151.417 provides that, when a court issues a dispositional order pursuant to R.C. 2151.353 (governing the disposition of an abused, neglected, or dependent child), R.C. 2151.414 (governing hearings for permanent custody of a child), or R.C. 2151.415 (gov-

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<sup>2</sup> An adjudicatory hearing is "a hearing to determine whether a child is a juvenile traffic offender, delinquent, unruly, abused, neglected, or dependent or otherwise within the jurisdiction of the court." Ohio R. Juv. P. 2(B).

<sup>3</sup> A dispositional hearing is "a hearing to determine what action shall be taken concerning a child who is within the jurisdiction of the court." Ohio R. Juv. P. 2(L).

erning the disposition of a child at the termination of an order of temporary custody under R.C. 2151.353), the court may at any time review the child's placement or custody arrangement, the case plan, actions of the public children services agency, and other aspects of the child's placement or custody arrangement. R.C. 2151.417(A); *see also* Ohio R. Juv. P. 36(A). The court has continuing jurisdiction over the child and may amend a dispositional order through appropriate procedures. R.C. 2151.417(B). The court is required to hold a review hearing after one year, and is directed to schedule that review hearing at the time of the dispositional hearing under R.C. 2151.35. The court must hold a similar review hearing at least every twelve months, except that the dispositional hearing held pursuant to R.C. 2151.415 takes the place of the first review hearing. R.C. 2151.417(C); Ohio R. Juv. P. 36(A). Following a review hearing regarding a child who is in temporary custody, the court must determine whether the child can and should be returned home, with or without an order for protective supervision, or whether a different person or agency should be given custody of the child. R.C. 2151.417(G)(3); *see also* R.C. 2151.42.

Let us turn now to your specific concerns. You have asked, first, if the court places an unruly or delinquent child into the temporary custody of the county department of human services, whether the department is required to develop and file with the court a case plan pursuant to R.C. 2151.412. The statute imposes upon a county department of human services the duty of preparing and maintaining a case plan for any child who is in the temporary or permanent custody of the department and to whom the department is providing services. R.C. 2151.412(A)(2).<sup>4</sup> Therefore, whenever an unruly or delinquent child is placed into the custody of the county department of human services and the department provides services to that child, the department must develop and file a case plan.<sup>5</sup> *See, e.g., In re Stamper*, No. 14-97-23, 1997 Ohio App. LEXIS 5291 (Ct. App. Union County Nov. 19, 1997) (child adjudi-

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<sup>4</sup> Uncodified provisions of legislation leading to the enactment of existing R.C. 2151.412 (also referred to as new R.C. 2151.412) provided for the application of requirements concerning case plans, administrative review, and judicial review hearings to all circumstances in which a child was in the temporary custody of a public children services agency and not in the physical custody of a parent, guardian or custodian on the effective date of the act. When the child was in the temporary custody of a children services agency and in the physical custody of a parent, guardian, or custodian, the agency could file a motion to terminate the temporary custody and issue an order for protective supervision, accompanied by a case plan. No distinction was made concerning whether there had been an adjudication of abuse, neglect, or dependency under R.C. 2151.353. *See* 1987-1988 Ohio Laws, Part I, 198, 262-64 (Am. Sub. S.B. 89, uncodified sections 5 and 7); *see also* Ohio Legislative Services Comm'n, Summary (Sub. H.B. 89, as reported by H. Children & Youth). The history of R.C. 2151.412 thus indicates that its requirements concerning case plans were not intended to be limited to children who were adjudicated abused, neglected, or dependent.

<sup>5</sup> An earlier version of R.C. 2151.412 stated that a reunification plan was required "[w]hen a child is adjudicated an abused, neglected, or dependent child and the court, pursuant to [R.C. 2151.353(A)(2) or (3)], orders commitment of the child to the temporary custody of the department of public welfare." *See* 1979-1980 Ohio Laws, Part II, 3364, 3370 (Am. Sub. H.B. 695, eff. Oct. 24, 1980). Under that language, it was held that a county children services board was not required to submit a reunification plan to the court when a child was committed to the board's temporary emergency custody if there had not been an adjudication of abuse, neglect, or dependency under R.C. 2151.353. *In re Moloney*, 24 Ohio St. 3d 22, 492 N.E.2d 805 (1986); *see also In re Baby Girl Baxter*, 17 Ohio St. 3d 229, 479 N.E.2d 257 (1985); *In re Covert*, 17 Ohio App. 3d 122, 477 N.E.2d 678 (Seneca County 1984).

cated unruly was placed in temporary custody of county department of human services and case plan was prepared); *In re Amanda Bacorn*, 116 Ohio App. 3d 489, 688 N.E.2d 575 (Portage County 1996) (county department of human services was given temporary custody of child charged with domestic violence, who was placed at a residential treatment center; department included child in case plan, which was subject to periodic reviews); *In re Odie Bacorn*, No. 96-P-0015, 1996 Ohio App. LEXIS 5801 (Ct. App. Portage County Dec. 20, 1996) (child charged with juvenile delinquency was placed in temporary custody of county department of human services upon release from juvenile detention center; department placed child in structured therapeutic foster home and prepared case plan).

Although the language of R.C. 2151.412(A) is phrased to allow for situations in which a public children services agency has temporary custody of a child but is not providing services and therefore is not required to prepare and maintain a case plan, we cannot imagine circumstances in which such a situation could occur. A public children services agency is responsible for providing assistance to children who are in need of public care or protective services. R.C. 5153.16. It has among its duties the acceptance of custody of children committed to it by a court, R.C. 5153.16(A)(3), and making its services available and acting as the agent of the courts in matters relating to the welfare of children, R.C. 5153.16(A)(12). When a public children services agency takes temporary custody of an unruly or delinquent child, it has the legal responsibility of providing for the care and control of the child and must assure that necessary services are provided to secure the well-being of the child. R.C. 2151.011(B)(17) and (46); *see also* R.C. 2151.01(B) (one of the purposes of R.C. Chapter 2151 is to provide a program of supervision, care, and rehabilitation for children who commit delinquent acts). Thus, the placement of an unruly or delinquent child into the temporary custody of the county department of human services will require the department to provide services to the child, so that the department will come within the provisions of R.C. 2151.412 requiring it to develop and file a case plan for the child. *See generally In re Amanda Bacorn; In re Lawson*, 98 Ohio App. 3d 456, 648 N.E.2d 889 (Franklin County 1994); *In re Odie Bacorn*.

You have also asked, in a situation in which the court places an unruly or delinquent child into the temporary custody of the county department of human services, whether the department must hold semiannual reviews pursuant to R.C. 2151.416. The provisions of R.C. 2151.416 that require semiannual reviews apply to "[e]ach agency that is required by [R.C. 2151.412] to prepare a case plan for a child." R.C. 2151.416(A); *see also* Ohio R. Juv. P. 36(C). Therefore, if the answer to the first question is affirmative, the answer to this question must also be affirmative. Hence, if a juvenile court, in making disposition of an unruly or

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R.C. 2151.412 has been amended and the case plan now required is not limited to situations in which a child is adjudicated an abused, neglected, or dependent child. *See* 1987-1988 Ohio Laws, Part II, 3553, 3560-65, 3587 (Sub. H.B. 403, eff. Dec. 15, 1988, with R.C. 2151.412 eff. Jan. 1, 1989) (reconciling inconsistencies and maintaining substantive provisions of 1987-1988 Ohio Laws, Part I, 198, 233-37 (Am. Sub. S.B. 89, enacting new section 2151.412) and 1987-1988 Ohio Laws, Part II, 3546, 3548-50 (Am. Sub. H.B. 399, amending R.C. 2151.412)); *see also In re Beasley*, No. 16275, 1993 Ohio App. LEXIS 5410, slip op. at 4 (Ct. App. Summit County Nov. 3, 1993) (discussing *In re Moloney* and going on to state: "R.C. 2151.412 requires an agency possessing temporary custody of a child to prepare and maintain a case plan with respect to the care of that child"); 2 James G. Carr and Don J. Young, *Anderson's Ohio Family Law* § 17.1, at 240-41 (1989) (under R.C. 2151.412, as revised by S.B. 89, case plans "are to be prepared, as a practical matter, with regard to all children and families with whom the agency is working").

delinquent child pursuant to R.C. 2151.354 or R.C. 2151.355, places the child into the temporary custody of the county department of human services in accordance with R.C. 2151.353 and the department provides services to that child, the county department of human services is required to develop and file with the court a case plan pursuant to R.C. 2151.412 and to hold semiannual reviews of the case plan pursuant to R.C. 2151.416.

The reasonableness of this conclusion is apparent. Whether a child is placed into the temporary custody of the county department of human services as an unruly or delinquent child or because of abuse, neglect, or dependency, the department has legal responsibility for the child's safety and welfare. It is appropriate for the department to have a plan for the child's future, and it is reasonable to construe the statutes as requiring a plan and periodic reviews of that plan. This reading of the statutes is consistent with their purposes, as expressed by the General Assembly.<sup>6</sup>

Your final matter of concern involves a situation in which the court places an unruly or delinquent child into the temporary custody of the county department of human services and asks whether the court is required to hold periodic reviews pursuant to R.C. 2151.417. As discussed above, R.C. 2151.417 requires that a court hold periodic review hearings of dispositional orders issued pursuant to R.C. 2151.353, R.C. 2151.414, or R.C. 2151.415. R.C. 2151.417(C); *see also* Ohio R. Juv. P. 36(A). A dispositional order regarding an unruly or delinquent child is made pursuant to R.C. 2151.354 or R.C. 2151.355, and those sections, by reference, permit the issuance of any dispositional order that is authorized by R.C. 2151.353.

While it might be argued that a dispositional order relating to an unruly or delinquent child is not included under R.C. 2151.417 because it is made by statutory cross-reference to R.C. 2151.353, rather than directly pursuant to that provision, *see generally* 1996 Op. Att'y Gen. No. 96-014, we believe that the better reading is that a dispositional order is made "pursuant" to R.C. 2151.353 for purposes of R.C. 2151.417(C) when the

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<sup>6</sup> The general purposes of R.C. Chapter 2151 have been set forth as follows:

The sections in Chapter 2151. of the Revised Code, with the exception of those sections providing for the criminal prosecution of adults, shall be liberally interpreted and construed so as to effectuate the following purposes:

(A) To provide for the care, protection, and mental and physical development of children subject to Chapter 2151. of the Revised Code;

(B) To protect the public interest in removing the consequences of criminal behavior and the taint of criminality from children committing delinquent acts and to substitute therefor a program of supervision, care, and rehabilitation;

(C) To achieve the foregoing purposes, whenever possible, in a family environment, separating the child from its parents only when necessary for his welfare or in the interests of public safety;

(D) To provide judicial procedures through which Chapter 2151. of the Revised Code is executed and enforced, and in which the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced.

making of such an order is authorized by the reference to R.C. 2151.353 appearing in R.C. 2151.354(A)(1) or R.C. 2151.355(A)(1). This reading is consistent with the second sentence of Ohio R. Juv. P. 36(A), which states simply that “[a] court that issues a dispositional order shall hold a review hearing” at the prescribed time, thereby encompassing all cases in which a court issues a dispositional order, including cases involving unruly or delinquent children.<sup>7</sup> See also Ohio R. Juv. P. 2(B) and (L); Ohio R. Juv. P. 29(F); Ohio R. Juv. P. 34. The result of such a reading is that periodic reviews are required whenever a child is placed into the temporary custody of a public children services agency, whether the court’s initial examination of the child’s condition was based on complaints of unruliness or delinquency or on allegations of abuse, neglect, or dependency. See generally R.C. 2151.01; note 4, *supra*. Therefore, if a juvenile court, in making disposition of an unruly or delinquent child pursuant to R.C. 2151.354 or R.C. 2151.355, places the child into the temporary custody of the county department of human services in accordance with R.C. 2151.353, the juvenile court is required to hold periodic reviews pursuant to R.C. 2151.417 and Ohio R. Juv. P. 36(A).

Therefore, it is my opinion, and you are advised, as follows:

1. If a juvenile court, in making disposition of an unruly or delinquent child pursuant to R.C. 2151.354 or R.C. 2151.355, places the child into the temporary custody of the county department of human services in accordance with R.C. 2151.353 and the department provides services to that child, the county department of human services is required to develop and file with the court a case plan pursuant to R.C. 2151.412 and to hold semiannual reviews of the case plan pursuant to R.C. 2151.416.
2. If a juvenile court, in making disposition of an unruly or delinquent child pursuant to R.C. 2151.354 or R.C. 2151.355, places the child into the temporary custody of the county department of human services in accordance with R.C. 2151.353, the juvenile court is required to hold periodic reviews pursuant to R.C. 2151.417 and Ohio R. Juv. P. 36(A).

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<sup>7</sup> The first sentence of Ohio R. Juv. P. 36(A) states: “A court that issues a dispositional order in an abuse, neglect, or dependency case may review the child’s placement or custody arrangement, the case plan, and the actions of the public or private agency implementing that plan at any time.” We reject the argument that the language “in an abuse, neglect, or dependency case” applies also to the second sentence of the rule and operates to limit its applicability to only those kinds of cases. Rather, we find that the different language used in the second sentence indicates that a different result was intended. See, e.g., *Kiefer v. State*, 106 Ohio St. 285, 139 N.E. 852 (1922).