



Ohio Legislative Service Commission

Bill Analysis

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Reps. Grossman and Driehaus, Yuko, Combs, Boyd, Reece, Letson, Henne, Martin, Goyal, Burke, Bubb, Conditt, R. Adams, Antonio, Barnes, Blair, Celebrezze, Celeste, Cera, Fedor, Fende, Foley, Garland, Hackett, R. Hagan, Heard, Johnson, Kozlowski, Mallory, Milkovich, Murray, Newbold, O'Brien, Patmon, Phillips, Pillich, Ramos, Ruhl, Sprague, Winburn

BILL SUMMARY

- Requires a public children services agency or private child placing agency that receives temporary custody of a child in a proceeding brought upon a complaint or other document filed in a juvenile court concerning that child to exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child, including any adult relatives suggested by the parents, within 30 days of the child's removal from the custody of the child's parents.
- Eliminates the automatic termination of a power of attorney granting parental rights and responsibilities to a grandparent that occurs when one year elapses from the date the power of attorney is notarized or when the child ceases to live with the grandparent.
- Eliminates the automatic termination of a caretaker authorization affidavit by which a grandparent assumes parental rights and responsibilities that occurs when one year elapses from the date the affidavit is notarized.
- Repeals provisions relating to second or subsequent powers of attorney and caretaker authorization affidavits.
- Creates a procedure by which a grandparent who has physical custody and care of a child may petition a juvenile court for custody when the child's parent revokes a power of attorney or terminates a caretaker authorization affidavit that gives the grandparent parental rights and responsibilities.

- Allows a putative father of a minor to put his name on the Department of Job and Family Services' putative father registry at any time and requires that registration must occur not later than 30 days after the child's birth in order to preserve the requirement of the putative father's consent to the child's adoption.
- Specifies the types of agencies (a public children services agency, a private noncustodial agency, or a private child placing agency) that may request search of the putative father registry and makes clear that the right of a mother or agency to make a request is not limited to situations involving adoptions.
- Encourages any public children services agency that obtains custody of a child as part of a sibling group or after the previous placement of a sibling to make reasonable efforts to place the siblings together or, if siblings are not placed together, to ensure the siblings maintain frequent connections, unless contrary to the siblings' placement or well-being.
- Requires a public children services agency to file a missing child report with a local law enforcement agency upon becoming aware that a child in the custody of the agency is or may be missing.
- Allows a public children services agency to provide care for an abused, neglected, or dependent child in the home of a nonrelative adult whom a child or the child's current custodial caretaker identifies as having a familiar and longstanding relationship or bond with the child or the child's family that will ensure the child's social and cultural ties.
- Requires the Department of Job and Family Services to develop recommendations for implementation of a subsidized relative guardianship program in accordance with federal law, to submit to the Governor, the Speaker of the House of Representatives, and the President of the Senate a preliminary report work by December 31, 2012, and a final report within 18 months of the bill's effective date.

CONTENT AND OPERATION

Notification to relatives of child's removal from custody of parents

Federal law provides funding to states for foster care, adoption assistance, and transitional independent living programs. To be eligible for funding, a state must have a plan that, among other things, requires the state, within 30 days after the removal of a child from the custody of the parent or parents of the child, to exercise due diligence to identify and provide a notice of the removal to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents),

subject to exceptions due to family or domestic violence. The notice must (1) specify that the child has been or is being removed from the custody of its parent or parents, (2) explain the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice, (3) describe the requirements to become a foster family home and the additional services and supports that are available for children placed in such a home, and (4) if the state has elected to make kinship guardianship assistance payments under the federal statute, describe how the relative guardian of the child may subsequently enter into an agreement with the state to receive the payments.¹

The bill conforms Ohio law to the federal statute. In a proceeding alleging that a child is an unruly, abused, neglected, or dependent child, is a juvenile traffic offender, or appears to have violated the law relating to use of tobacco products by a minor, the juvenile court must make appropriate orders during the pendency of the proceeding and on final disposition to protect the child's best interest. The court may place a child who is the subject of a complaint in the custody of a public children services agency (PCSA) or private child placing agency (PCPA). An agency that receives temporary custody has certain statutory obligations regarding the placement of the child and record-keeping relating to that placement. The bill requires that a PCSA or PCPA that receives temporary custody of a child in a proceeding of the type described above exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child, including any adult relatives suggested by the parents, within 30 days of the child's removal from the custody of the child's parents, in accordance federal law.²

Power of attorney granting parental rights and responsibilities

Under existing law, a child's parent, guardian, or custodian may create a power of attorney that grants to a grandparent of the child with whom the child is residing any of the parent's, guardian's, or custodian's rights and responsibilities regarding the care, physical custody, and control of the child. The rights include the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child. The power of attorney may not grant authority to consent to the child's marriage or adoption. It does not affect the rights of the child's parent, guardian, or custodian in any future proceeding concerning the allocation of parental rights and responsibilities for the care of the child and does not grant legal custody to the grandparent. Existing law provides

¹ 42 U.S.C. § 671(a)(29).

² R.C. 2151.33(F).

a statutory form for the power of attorney and specifies that it must be signed by the parent, guardian, or custodian granting it and by the designated attorney in fact. The signatures must be notarized.³

The power of attorney terminates whenever one of the following occurs:⁴

- (1) One year elapses following the date it is notarized.
- (2) It is revoked in writing by the person who created it.
- (3) The child ceases to reside with the grandparent.
- (4) It is terminated by court order.
- (5) The child or grandparent dies.

If the person who created a power of attorney terminates it by written revocation, a copy of the revocation must, within five days after termination, be filed with the court with which the power of attorney was filed (see second following paragraph below).⁵

Upon termination of a power of attorney for any reason other than the death of the grandparent, the grandparent must give written notice, within one week after the date of termination, to the child's school district, health care providers, and health insurance coverage provider, the court in which the power of attorney was filed (see the next paragraph), the parent who is not the residential parent and legal custodian in most circumstances (notice is unnecessary if the parent is prohibited from receiving a notice of relocation in a divorce, dissolution, legal separation, or annulment proceeding, the parent's parental rights have been terminated by a juvenile court, the parent cannot be located with reasonable efforts, or the power of attorney is created by both parents), and any other person or entity that has an ongoing relationship with the child or grandparent such that the person or entity would reasonably rely on the power of attorney unless notified of the termination.⁶

A person who creates a power of attorney granting parental rights and responsibilities to a grandparent must, within five days after the power of attorney is

³ R.C. 3109.52, 3109.53, and 3109.54.

⁴ R.C. 3109.59(A).

⁵ R.C. 3109.59(B).

⁶ R.C. 3109.60.

created or executed, file it with the juvenile court of the county in which the grandparent resides or any other court that has jurisdiction over the child under a previously filed motion or proceeding. R.C. 3109.74 requires that the power of attorney be accompanied by information specified in R.C. 3109.27, which was renumbered R.C. 3127.23 in 2005. If the grandparent provides information that the grandparent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child's being an abused or neglected child or previously has been determined, in a case in which a child has been adjudicated an abused or neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication, or if the court has other reason to believe that a power of attorney is not in the best interest of the child, the court may report that information to the PCSA pursuant to the child abuse reporting law. Upon receipt of that information, the agency must initiate an investigation.⁷

A parent, guardian, or custodian may create a second or subsequent power of attorney, which must be filed with the juvenile court of the county in which the grandparent designated as attorney in fact resides or with any other court that has jurisdiction over the child under a previously filed motion or proceeding. When the power of attorney is filed, the court must hold a hearing as to whether the power of attorney is in the child's best interest. After the hearing, the court may approve the power of attorney, terminate the power of attorney and order the child returned to the parent, guardian, or custodian; if the parent, guardian, or custodian cannot be located, treat the filing of the power of attorney as a complaint that the child is a dependent child, or treat the filing of the power of attorney as a petition for legal custody.⁸

Termination of power of attorney

The bill eliminates the automatic termination of the power of attorney that occurs under current law when a year elapses from the date the power of attorney is notarized. Existing law also provides for termination by revocation. The bill requires a person who revokes a power of attorney to give written notice of the revocation to the grandparent and to the juvenile court with which the power of attorney was filed.⁹

Under the bill, if the person who creates a power of attorney revokes it in accordance with the bill's provisions, the grandparent having physical custody of the child under the power of attorney may file a complaint in the juvenile court seeking a determination of custody if the grandparent believes that the revocation or child's

⁷ R.C. 3109.74.

⁸ R.C. 3109.76 and 3109.77.

⁹ R.C. 3109.59.

removal from the grandparent's home is not in the child's best interest. The complaint must be filed within 14 days from the date of revocation or removal. Pending a hearing and decision, the court may make any temporary disposition of any child that it considers necessary to protect the child's best interest.¹⁰

If the person creating a power of attorney revokes it, the grandparent may retain custody of the child until the 14-day period for filing a complaint for custody expires or, if the grandparent files a complaint, until the court orders otherwise.¹¹

The elimination of automatic termination makes unnecessary the statutory provisions relating to the creation of a second or subsequent power of attorney. The bill repeals these provisions.¹²

The bill amends the statutory power of attorney form and a section of law requiring a grandparent to give certain notifications upon termination to conform to the foregoing changes.¹³

Caretaker authorization affidavit to assume parental rights and responsibilities

Under existing law, if a child is living with a grandparent who has made reasonable attempts to locate and contact both of the child's parents or the child's guardian or custodian but has been unable to do so, the grandparent may execute a caretaker authorization affidavit. A caretaker authorization affidavit gives the grandparents the authority to exercise care, physical custody, and control of the child, including authority to enroll the child in school, to discuss with the school district the child's educational progress, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child. A grandparent may execute a caretaker authorization affidavit without attempting to locate the child's father if paternity has not been established and without attempting to locate a parent (1) who is prohibited from receiving a notice of relocation because the parent has committed domestic violence or (2) whose parental rights have been terminated by a juvenile court. Existing law provides a statutory form of the affidavit and specifies that it must be signed by the grandparent and notarized. Existing law also specifies that the affidavit does not affect the rights and responsibilities of the parent,

¹⁰ R.C. 3109.76(A) and (C).

¹¹ R.C. 3109.76(D).

¹² R.C. 3109.76 and 3109.77.

¹³ R.C. 3109.53 and 3109.60

guardian, or custodian or give to the grandparent legal custody of the child or the authority to consent to the child's marriage or adoption.¹⁴

A caretaker authorization affidavit terminates whenever one of the following occurs:¹⁵

(1) One year elapses following the date the affidavit is notarized.

(2) The child ceases to reside with the grandparent.

(3) The parent, guardian, or custodian of the child acts, in accordance with the law (see "**Termination of caretaker authorization affidavit**," below) to negate, reverse, or otherwise disapprove an action or decision of the grandparent.

(4) A court terminates the affidavit.

(5) The child or grandparent dies.

Upon termination of the affidavit for any reason other than the death of the grandparent, the grandparent must give written notice, within one week after the date of termination, to the child's school district, health care providers, health insurance coverage provider, the court in which the affidavit was filed, and any other person or entity that has an ongoing relationship with the child or grandparent such that the person or entity would reasonably rely on the affidavit unless notified of the termination.¹⁶

A person may execute a second or subsequent caretaker authorization affidavit, which must be filed with the juvenile court of the county in which the grandparent who executed the affidavit resides or with any other court that has jurisdiction over the child under a previously filed motion or proceeding. When the affidavit is filed, the court must hold a hearing as to whether the affidavit is in the child's best interest. After the hearing, the court may approve the affidavit, terminate the affidavit and order the child returned to the parent, guardian, or custodian; if the parent, guardian, or custodian cannot be located, treat the filing of the affidavit as a complaint that the child is a dependent child, or treat the filing of the affidavit as a petition for legal custody.¹⁷

¹⁴ R.C. 3109.65, 3109.66, 3109.67, and 3109.69.

¹⁵ R.C. 3109.70.

¹⁶ R.C. 3109.71.

¹⁷ R.C. 3109.76 and 3109.77.

Termination of caretaker authorization affidavit

The bill eliminates the automatic termination of a caretaker authorization affidavit that occurs under current law when a year elapses from the date the affidavit is notarized. The bill also modifies termination by written notice of negation, reversal, or disapproval. Under existing law, a parent, guardian, or custodian may negate, reverse, or disapprove an action taken or decision made pursuant to a caretaker authorization affidavit by delivering the written notice to the grandparent-caretaker and to the person responding to the grandparent's action or decision in reliance on the affidavit. Delivery of the notice terminates the affidavit. The bill specifies that the termination occurs as of the date the caretaker voluntarily returns the child to the physical custody of the parent, guardian, or custodian or upon the expiration of 14 days from the negation, reversal, or disapproval if the caretaker has not filed a complaint for custody in the interim.¹⁸

Under the bill, if a parent, guardian, or custodian acts to terminate a caretaker authorization affidavit, the grandparent having physical custody of the child under the affidavit may file a complaint in the juvenile court seeking a determination of custody if the grandparent believes that the revocation or child's removal from the grandparent's home is not in the child's best interest. The complaint must be filed within 14 days after the delivery of written notice of the negation, reversal, or disapproval or the removal. Pending a hearing and decision, the court may make any temporary disposition of any child that it considers necessary to protect the child's best interest.¹⁹

If the parent, guardian, or custodian acts to terminate a caretaker authorization affidavit, the grandparent may retain custody of the child until the 14-day period for filing a complaint for custody expires or, if the grandparent files a complaint, until the court orders otherwise.²⁰

The elimination of automatic termination makes unnecessary the statutory provisions relating to the creation of a second or subsequent caretaker authorization affidavit. The bill repeals these provisions.²¹

¹⁸ R.C. 3109.70 and 3109.72.

¹⁹ R.C. 3109.76(B) and (C).

²⁰ R.C. 3109.76(D).

²¹ R.C. 3109.76 and 3109.77 (existing law).

The bill amends the statutory form for a caretaker authorization affidavit and a section of law requiring a grandparent to give certain notifications upon termination to conform to the foregoing changes.²²

Putative father registry

The bill allows a putative father of a minor to put his name on the Department of Job and Family Services' putative father registry at any time, rather than before or not later than 30 days after the birth of the child he claims as his own. However, the bill requires that the putative father must register before or not later than 30 days after the child's birth in order to preserve the requirement of his consent to the child's adoption.²³

Existing law permits a "mother or an agency or attorney arranging a minor's adoption" to request a search of the putative father registry. The bill rewords this provision to avoid a construction that would allow a mother or agency to request a search only in connection with an adoption. It also specifies the types of agencies that may make a request: a public children services agency, a private noncustodial agency, or a private child placing agency.²⁴

Missing child report

The bill requires a public children services agency to file a missing child report with a local law enforcement agency upon becoming aware that a child in the custody of the public children services agency is or may be missing.²⁵

Nonrelative care of an abused, neglected, or dependent child

Existing law authorizes a public children services agency to provide care for an abused, neglected, or dependent child in the child's own home, in the home of a relative, or in a certified foster home, any other home approved by the court, receiving home, school, hospital, convalescent home, or other public or private institution within or outside the county or state. The bill allows an agency to provide for care in the home of a qualified nonrelative, which the bill defines as a nonrelative adult whom a child or the current custodial caretaker of a child identifies as having a familiar and

²² R.C. 3109.66 and 3109.71.

²³ R.C. 3107.062.

²⁴ R.C. 3107.063.

²⁵ R.C. 5153.16(A)(23).

longstanding relationship or bond with the child or the child's family that will ensure the child's social and cultural ties.²⁶

Placement of siblings by public children services agency

The bill encourages any PCSA that obtains custody of a child as part of a sibling group or after the previous placement of a sibling to make reasonable efforts to place the siblings together, unless it would be contrary to the siblings' best interest or well-being. The bill provides that if siblings are not placed together, the agency should make reasonable efforts to ensure the siblings maintain frequent connections through visitation or other ongoing interaction, unless contrary to the siblings' placement or well-being.²⁷ These provisions conform Ohio law to federal requirements.²⁸

Implementation of a subsidized relative guardianship program

The bill requires the Department of Job and Family Services to develop recommendations for implementation of a subsidized relative guardianship program in accordance with federal law. In developing the recommendations, the Department must consult with representatives of the Ohio Kinship Caregiver Advisory Council and county public children services agencies. The recommendations must address required legislative authority, state and local cost implications, and activities necessary for implementation of the program. The Department must submit to the Governor, the Speaker of the House of Representatives, and the President of the Senate a brief preliminary status report of its work by December 31, 2012, and a final report, including a work plan, not later than 18 months after the effective date of the bill.²⁹

HISTORY

ACTION	DATE
Introduced	06-22-11
Reported, H. Judiciary & Ethics	05-09-12
Passed House (94-2)	11-14-12

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²⁶ R.C. 5153.161.

²⁷ R.C. 2151.411.

²⁸ 42 U.S.C. 671(a)(31).

²⁹ Section 3.

