



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 197

128th General Assembly  
(As Introduced)

**Reps.** Harris, Ujvagi, Koziura, Murray, B. Williams, Lehner, Celeste, Foley, Letson, Yuko, Skindell, Chandler, Boyd, S. Williams, Winburn, Moran, Mallory, Heard, Evans, Brown, Fende, Weddington

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## 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.
- Authorizes a child's parent, guardian, or custodian to execute a power of attorney granting the rights and responsibilities of the parent, guardian, or custodian regarding the care, physical custody, and control of the child to any person with whom the child resides or without attempting to locate a father whose paternity has not been established or a parent who is prohibited from receiving a notice of relocation or whose parental rights have been terminated.
- Authorizes any qualified relative of a child to execute a caretaker authorization affidavit to obtain authority to exercise care, physical custody, and control of the child if the child's parents, guardian, or custodian cannot be located or the parents' parental rights have not been established or have been terminated.
- Extends from 36 months to 60 months the period over which permanency incentive payments may be made to a child's kinship caregivers.
- 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.

- Directs the Ohio Department of Job and Family Services (ODJFS) to adopt rules governing the use of the Federal Parent Locator Service by ODJFS's Office of Child Support and the dissemination of information contained within the Service to public children services agencies.
- Directs ODJFS to conduct a feasibility study of current trends in the use of relative caregivers for the placement of children by public children services agencies into relative caregiver homes.

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## **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 (42 U.S.C. § 671(a)(29)).<sup>1</sup>

The bill conforms Ohio law to the federal statute. In a proceeding brought under R.C. 2151.27 on a complaint that a child is an unruly, abused, neglected, or dependent child, is a juvenile traffic offender, or appears to have violated R.C. 2151.87 relating to tobacco products, 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 with a public children services agency or private child placing agency. 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 public children services agency or private child placing agency that receives temporary custody of a

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<sup>1</sup> The notice must specify that the child has been or is being removed from the custody of its parent or parents; 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; 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, 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.

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 with 42 U.S.C. § 671(a)(29) (R.C. 2151.33(F)).

## **Power of attorney granting parental rights and responsibilities**

### **Existing law**

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 parent, guardian, or custodian of the child in any future proceeding concerning custody of the child or 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 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. (R.C. 3109.52, 3109.53, and 3109.54.)

The power of attorney terminates whenever one of the following occurs (R.C. 3109.59(A)):

- (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 (R.C. 3109.59(B)) (see second following paragraph below).

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 and who is required to be given notice under R.C. 3109.55,<sup>2</sup> 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 (R.C. 3109.60).

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 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.<sup>3</sup> 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 public children services agency pursuant to the child abuse reporting law. Upon receipt of that information, the agency must initiate an investigation. (R.C. 3109.74.)

### **Operation of the bill**

The bill authorizes the parent, guardian, or custodian of a child to create a power of attorney granting the parent's, guardian's, or custodian's rights and responsibilities to any person with whom the child resides in the manner discussed above in "**Existing law**" and makes the necessary conforming changes (changes "grandparent" to "person") to all the provisions of law described above ("**Existing law**" under "**Power of attorney granting parental rights and responsibilities**") (R.C. 3109.52, 3109.53, 3109.54, 3109.59, 3109.60, and 3109.74).

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<sup>2</sup> R.C. 3109.55, not in the bill, requires that notice of creation of the power of attorney be sent to a parent who is not the residential parent and legal custodian unless 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.

<sup>3</sup> R.C. 3109.74 requires that the power of attorney be accompanied by information specified in R.C. 3109.27. The latter section was renumbered R.C. 3127.23 in 2005.

# Caretaker authorization affidavit to assume parental rights and responsibilities

## Existing law

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 obtain 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, by executing a caretaker authorization affidavit. 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, 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. (R.C. 3109.65, 3109.66, 3109.67, and 3109.69.)

A caretaker authorization affidavit terminates whenever one of the following occurs (R.C. 3109.70):

- (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 R.C. 3109.72, 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, and health insurance coverage provider, the court in which the affidavit was filed (see next paragraph), 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 (R.C. 3109.71).

### **Operation of the bill**

The bill replaces "grandparent" with "qualified relative" so that any qualified relative can execute a caretaker authorization affidavit and acquire parental rights and responsibilities in the same manner and to the same extent as a grandparent under current law (R.C. 3109.65, 3109.66, 3109.67, 3109.69, 3109.70, 3109.71, 3109.74, 3109.76, 3109.77, 3313.64, 3313.649, and 3313.672).

The bill defines "qualified relative" for purposes of the provisions dealing with caretaker authorization affidavits as any person 18 years of age or older who is related to a child by blood, marriage, or marriage that has been legally terminated, except for (1) a parent of the child who has committed an act resulting in the child's having been adjudicated an abused or neglected child, (2) the residential parent and legal custodian of the child, in cases in which the parents of the child are divorced or their marriage has been dissolved or annulled, (3) the child's guardian, and (4) the child's custodian (R.C. 3109.64).

### **Second and subsequent powers of attorney or caregiver authorization affidavit**

If a second or subsequent power of attorney is created under R.C. 3109.52 regarding a child who is the subject of a prior power of attorney or a second or subsequent caretaker authorization, the person who creates the power of attorney or executes the affidavit must file it with the juvenile court of the county in which the grandparent who is designated as attorney in fact or executed the affidavit resides or with any other court that has jurisdiction over the child under a previously filed motion or proceeding. On the filing of a second or subsequent power of attorney or caregiver authorization affidavit under the above provision,<sup>4</sup> the court in which the power of attorney or caregiver authorization affidavit was filed must schedule a hearing to determine whether the power of attorney or affidavit is in the child's best interest. Following the hearing, the court may approve the power of attorney or affidavit; terminate the power of attorney or affidavit and order the child returned to the parent, guardian, or custodian (or, if the parent, guardian, or custodian cannot be located, treat the power of attorney or affidavit as a complaint that the child is a dependent child); or treat the filing of the power of attorney or affidavit as a petition for legal custody and

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<sup>4</sup> R.C. 3109.76 requires a "best interest" hearing on the filing of a second or subsequent power of attorney. It does not expressly require such a hearing on the filing of the initial power of attorney.

award legal custody to the grandparent designated as attorney in fact or who executed the affidavit. (R.C. 3109.76 and 3109.77.)

In the provisions discussed in the preceding paragraph, the bill changes "grandparent designated as attorney in fact" to "attorney in fact" and changes "grandparent who executed the affidavit" to "qualified relative" in a manner consistent with the other provisions of the bill (R.C. 3109.76 and 3109.77).

### **Residency of a child for school purposes**

Whenever a power of attorney is executed under R.C. 3109.51 to 3109.62 that pertains to a child who is a pupil in a public or nonpublic school, the grandparent who is the attorney in fact or who executed the affidavit must notify the school of the power of attorney by providing the person in charge of admission with a copy. In determining the school district in which a child resides, the grandparent who is designated as attorney in fact or who executed the affidavit is regarded as the child's parent and may enroll the child in the district in which the grandparent resides. The bill changes "grandparent designated as attorney in fact" to "person designated as attorney in fact" and changes "grandparent that executed the affidavit" to "qualified relative that executed the affidavit" in the above provisions in the manner consistent with the other provisions of the bill. (R.C. 3313.64(A)(1)(b), 3313.649, and 3313.672(B)(2).)

### **Kinship caregiver payments**

Existing law creates the Kinship Permanency Incentive Program to promote permanency for a minor child in the legal and physical custody of a kinship caregiver. The program provides an initial one-time incentive payment to the kinship caregiver to defray the costs of initial placement of the minor child in the kinship caregiver's home. The program may provide additional permanency incentive payments for the minor child at six-month intervals for a total period not to exceed 36 months. Under current rules of the Ohio Department of Job and Family Services (ODJFS), the program is funded from Ohio's award under the federal Temporary Assistance to Needy Families program and the maximum benefit payable under the program, including the initial and additional payments, may not exceed \$3,500 per child per placement or per kinship caregiver(s). (R.C. 5101.802 and O.A.C. 5101:9-6-81(A) and (B).)

The bill extends the period over which the additional permanency incentive payments may be received to 60 months (R.C. 5101.802(B)).

### **Placement of siblings by public children services agency**

In an uncodified section of the bill, the General Assembly 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, 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. (Section 3.)

### **Rules for the use of the Federal Parent Locator Service**

The bill requires ODJFS, upon receiving further guidance from the United States Department of Health and Human Services regarding the coordination of the use of the Federal Parent Locator Service between states and the federal Office of Child Support Enforcement, to adopt rules governing the use of the Service by ODJFS's Office of Child Support and the dissemination of information contained within the Service to public children services agencies (Section 4).

### **Feasibility study of trends in the use of relative caregivers**

The bill requires ODJFS to conduct a feasibility study of current trends in the use of relative caregivers for the placement of children by public children services agencies into relative caregiver homes. It requires that the study (1) focus on a continuum of options, including informal relative placements, judicial transfer of legal custody or guardianship to a relative caregiver and the Kinship Permanency Incentive Program, use of approved relative caregivers, relatives becoming certified foster caregivers, and relatives as adoptive parents and (2) include agency and court practices; child outcomes addressing safety, stability and permanency; and state and local cost implications of adding a subsidized relative guardianship program in accordance with 42 U.S.C. 671(a)(28) (providing that the state plan adopted to receive federal funding for foster care, adoption assistance, and transitional independent living programs may include optional provisions for the state to enter into kinship guardianship assistance agreements to provide kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have cared as foster parents and for whom they have committed to care on a permanent basis). (Section 5(A).)

The bill requires that ODJFS complete the study by December 31, 2010, and submit its report to the Governor, the Speaker of the House of Representatives, and the President of the Senate (Section 5(B)).



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## HISTORY

ACTION

DATE

Introduced

05-27-09

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