



Aida Montano

*Final Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 191**

123rd General Assembly  
(As Passed by the General Assembly)

**Reps. Clancy, Allen, Cates, DePiero, Ford, Grendell, Jolivette, Krebs, O'Brien, Pringle, Sullivan, Terwilleger, Thomas, Williams, Winkler, Womer Benjamin, Flannery, Metzger, Willamowski, Ferderber, Salerno, Harris, Calvert, Brading, Verich, Bender, Jones, Perry, Young, Taylor, Distel, Maier, Jacobson, Patton, Hollister, Schuler, Schuring, Jerse, Britton, Barrett**

**Sens. Latta, Blessing, Watts, Nein, Cupp, Oelslager, Hottinger, Gardner, Spada**

**Effective date: October 20, 1999**

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### **ACT SUMMARY**

- Prohibits a court from granting custody of, or visitation rights with respect to, a child to a parent of the child if that parent has been "convicted of killing" (convicted of or pleaded guilty to aggravated murder, murder, or voluntary manslaughter) the other parent.
- Permits a court to grant custody of, or visitation rights with respect to, a child to a parent who has been convicted of killing the other parent if the court determines it is in the best interest of the child and the child consents.
- Requires termination of existing orders granting custody of, or visitation rights with respect to, a child to a parent of the child if that parent has been convicted of killing the other parent.
- Establishes a procedure to terminate the existing custody and visitation orders.
- Prohibits any person, with the child of the deceased parent present, from visiting the parent convicted of killing the other parent unless a court has

issued an order granting the parent visitation with the child and child's custodian or legal guardian consents to the visit.

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## CONTENT AND OPERATION

### Continuing law

A court may grant custody of and visitation rights with a child to the child's parents in a variety of situations. A custody order designating one or both parents as the residential parent and legal custodian of the child may be granted pursuant to a divorce, dissolution of marriage, legal separation, or annulment proceeding. In the same proceedings, a court may grant visitation rights to a parent who is not designated the residential parent and legal custodian of the child. A court may grant custody of a child to the child's parent in a custody action between a parent and nonparent. A court may also issue a custody order designating the father as the residential parent and legal custodian of, or granting him visitation rights with, the child after a determination of paternity is made. Custody of a child may be granted to a parent in a juvenile proceeding as a temporary order and as final disposition of the proceeding.<sup>1</sup> Visitation rights may also be granted in a juvenile proceeding as a temporary order or pursuant to the child's case plan.<sup>2</sup> Temporary custody and visitation orders may be issued in proceedings to obtain a domestic violence protection order or to approve a domestic violence consent agreement.

### The act

#### Prohibition against granting new custody or visitation orders

The act generally prohibits a court from designating a parent as the residential parent and legal custodian of a child, granting a parent custody of a

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<sup>1</sup> *The temporary order may be issued only with respect to an alleged or adjudicated abused, neglected, or dependent child and only prior to final disposition of the juvenile proceeding involving the child. Temporary or legal custody of a child adjudicated to be abused, neglected, dependent, unruly, delinquent, or a juvenile traffic offender may be granted to a parent of the child as a final dispositional order.*

<sup>2</sup> *A case plan must be established and maintained for any child to whom a public children services agency or private child placing agency is providing services and to whom any of the following apply: the agency filed a complaint alleging the child to be abused, neglected, or dependent; the agency has temporary or permanent custody of the child; the child is living at home under a protective supervision order; or the child is in a planned permanent living arrangement. The case plan must be included in the final dispositional order of the juvenile proceeding.*

child, or granting a parent visitation rights with respect to a child if that parent is convicted of killing the other parent of the child (R.C. 3109.42, 3109.43, and 3109.06). Under the act, a person is "convicted of killing" the other parent if the parent has been convicted of or pleaded guilty to the offense of aggravated murder, murder, or voluntary manslaughter and the victim is the other parent (R.C. 3109.41(A)). But a court may designate the convicted parent the residential parent and legal custodian of the child or grant the convicted parent custody of the child or visitation rights with the child if the court determines, by clear and convincing evidence, that it is in the best interest of the child and the child consents (R.C. 3109.47(A)). When considering the ability of the child to consent and the validity of a child's consent, the court must 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. (R.C. 3109.47(B).)

### **Termination of existing custody or visitation orders**

Upon receipt of notice that a visitation order is pending or has been issued granting visitation rights with a child or a custody order is pending or has been issued designating a parent as the residential parent and legal custodian of a child or granting custody of a child to a parent prior to that parent being convicted of killing the child's other parent, the court in which the parent is convicted must immediately notify the court that issued the visitation or custody order of the conviction. With respect to a visitation order, on receiving the notice from the convicting court, the court that issued the visitation order must terminate it. (R.C. 3109.44 and 3109.45.)

With respect to a custody order, if the court receiving the notice described in the preceding paragraph from the convicting court is a juvenile court, that court is to retain jurisdiction over the custody order. If the court receiving the notice is not a juvenile court, the court must transfer jurisdiction over the custody order to the juvenile court of the county in which the child has a residence or legal settlement. On receipt of the notice from the convicting court in cases in which the custody order was issued by a juvenile court or after jurisdiction is transferred, the juvenile court with jurisdiction must terminate the custody order. (R.C. 3109.46.)

The termination order must be treated as a complaint filed under the Juvenile Code alleging the child subject of the custody order to be a dependent child.<sup>3</sup> If a juvenile court issued the terminated custody order under a prior

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<sup>3</sup> *A complaint initiates a juvenile proceeding that may lead to the issuance of a dispositional order granting custody of, or visitation rights with respect to, a child. A "dependent child" is a child: (1) who is homeless or destitute or without adequate*

juvenile court proceeding in which the child was adjudicated an abused, neglected, dependent, unruly, or delinquent child or a juvenile traffic offender, the court must treat the termination order as a new complaint. (R.C. 3109.46.)

**Prohibition against visiting**

The act prohibits any person, with the child of the parent present, from visiting the parent who has been convicted of killing the child's other parent unless a court has issued an order granting the parent visitation rights with the child and the child's custodian or legal guardian consents to the visit (R.C. 3109.48).

**Definitions**

The act defines the following terms for use in the act's provisions (R.C. 3109.41(B) and (C)):

(1) "Custody order" means an order designating a person as the residential parent and legal custodian of a child under R.C. 3109.04 or any order determining custody of a child under R.C. 2151.23, 2151.33, 2151.353, 2151.354, 2151.355, 2151.356, 2151.415, 2151.417 (juvenile court orders), or 3113.31 (domestic relations court).

(2) "Visitation order" means an order issued under R.C. 2151.33(B)(1)(c) or R.C. 2151.412 (juvenile court) or R.C. 3109.051, 3109.12, or 3113.31 (court of common pleas or domestic relations division of the court).

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	02-17-99	p. 214
Reported, H. Children & Family Services	04-14-99	p. 415

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*parental care through no fault of the parents, guardian, or custodian, (2) who lacks adequate parental care by reason of the mental or physical condition of the parents, guardian, or custodian, (3) whose condition or environment warrants the state, in the interest of the child, in assuming the child's guardianship, or (4) who is residing in a household in which a parent, guardian, custodian, or other member of the household has caused a sibling of the child or another child to be adjudicated abused, neglected, or dependent and the circumstances of that abuse, neglect, or dependency and the household conditions puts the child in danger of being abused or neglected by that parent, guardian, custodian, or other household member. (R.C. 2151.04--not in the act.)*

Passed House (97-0)	04-21-99	pp.	452-453
Reported, S. Judiciary	06-03-99	p.	527
Passed Senate (32-0)	06-03-99	p.	528
House concurred in Senate amendments (98-0)	06-08-99	pp.	777-778

99-HB191.123/rss

