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ACT SUMMARY

- Permits in specified circumstances the execution of a power of attorney or caretaker authorization affidavit that provides a grandparent with whom a child resides authority over the care, physical custody, and control of the child, including ability to enroll the child in school and to consent to medical care for the child.
- Provides that a military power of attorney executed under federal law to grant authority over the care, custody, and control of a child is considered a power of attorney under the act.
- Establishes procedures and forms for executing a power of attorney or caretaker authorization affidavit described above in the first dot point.
- Requires the power of attorney or caretaker authorization affidavit to be filed in 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.
- Provides that execution of a power of attorney or caretaker authorization affidavit does not affect the rights and responsibilities of the parent, guardian, or custodian regarding the child, does not grant legal custody,

and does not grant authority to consent to adoption or marriage of the child.

- Provides that generally a caretaker authorization affidavit may be executed only if both of the parents, or the child's guardian or custodian, cannot be located.
- Permits a parent, guardian, or custodian to take action to negate or reverse any decision made by a grandparent granted authority over a child pursuant to a caretaker authorization affidavit.
- Provides for termination, and notifications that must be made on termination, of a power of attorney or caretaker authorization affidavit.
- Provides immunity from civil and criminal liability for all persons who, in good faith, rely on or take action in reliance on a power of attorney or caretaker authorization affidavit.
- Prohibits the creation of a power of attorney or execution of a caretaker authorization affidavit for the purpose of enrolling a child in school so the child may participate in interscholastic athletic programs or academic programs provided by a specific school or school district.
- Requires the grandparent to include certain specified information with the filing of the power of attorney or caretaker authorization affidavit, including whether the grandparent previously had been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused or neglected child.
- Allows the court to report the above described information related to acts resulting in a child being an abused or neglected child to the Public Children Services Agency and requires the PCSA, upon receipt of that information, to initiate an investigation.
- Allows the court, if the court has reason to believe that a power of attorney or caretaker authorization affidavit is not in the best interest of the child, to report that information to the PCSA and requires the PCSA, upon receipt of that information, to initiate an investigation and submit a report of its investigation not later than 30 or 45 days, depending on certain specified circumstances.



TABLE OF CONTENTS

Introduction	3
Power of attorney	4
Creation	4
Form requirements	5
Execution by parent	5
Notice to parent	6
Termination	6
Immunity	7
Military power of attorney	7
Caretaker authorization affidavit	8
Creation	8
Execution of affidavit	8
Termination	9
Negation, reversal, or disapproval of the grandparent's actions	9
Immunity	9
Filing of documents	10
Limitations	11
When execution of a power of attorney or caretaker authorization affidavit is not permitted	11
One power of attorney or caretaker authorization affidavit	12
Purpose restriction	12
Child support	12
Second or subsequent power of attorney or caretaker authorization affidavit	13
Where the child may attend school	14
Documents provided to school	15
Application of school suspension law	15

CONTENT AND OPERATION

Introduction

The act establishes two new ways to provide authority to a grandparent of a child to exercise care, physical custody, and control over a child who resides with the grandparent. It permits the execution of a power of attorney or a caretaker authorization affidavit that provides authority over the care, physical custody, and control of the child, including the ability to enroll the child in school in the district in which the grandparent resides and to consent to medical care for the child. The power of attorney may be executed by the parent, guardian, or custodian of the

child.¹ A caretaker authorization affidavit may be executed by a grandparent in situations in which the child's parents, guardian, or custodian cannot be located.

Power of attorney

Creation

The act permits the parent, guardian, or custodian of a child, in specified circumstances, to create a power of attorney that grants the parent's, guardian's, or custodian's rights and responsibilities regarding the care, physical custody, and control of the child to a grandparent with whom the child is residing. Those rights and responsibilities 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 grandparent to whom the authority is granted is designated under the form creating the power of attorney as the "attorney in fact."

The power of attorney may not grant authority to consent to the marriage or adoption of the child. Further, it does not affect the rights of the parent, guardian,

¹ For the purposes of the act, terms have the following meanings:

"Child" means "a person under 18 years of age." (R.C. 3109.51(A).)

"Guardian" means an individual granted authority by a probate court to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights, privileges, and responsibilities of the child's parents. (R.C. 3109.51(C).)

"Residual parental rights, privileges, and responsibilities" mean those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support. (R.C. 2151.011(B)(45), not in the act; see also R.C. 3109.51(C).)

"Custodian" means "an individual with legal custody of a child." (R.C. 3109.51(B).)

"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 is to 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 must exercise the rights and responsibilities personally unless otherwise authorized by the Revised Code or the court. (R.C. 2151.011(B)(19), not in the act; see R.C. 3109.51(D).)

or custodian in any future proceeding concerning the custody of the child, or the allocation of parental rights and responsibilities for the care of the child. The power of attorney does not grant legal custody to the attorney in fact. (R.C. 3109.52.)

A parent, guardian, or custodian can create a power of attorney only in certain circumstances, including cases involving the serious illness or incarceration of the parent, guardian, or custodian. The other situations in which a power of attorney may be executed are: (1) when the parent, guardian, or custodian is about to be incarcerated, temporarily unable to provide financial support or parental guidance to the child, temporarily unable to provide adequate care and supervision of the child due to the parent's, guardian's, or custodian's physical or mental condition, homeless or without residence because the current residence is destroyed or otherwise uninhabitable, or in or about to enter a residential treatment program for substance abuse, or (2) when the parent, guardian, or custodian has a well-founded belief that it is in the child's best interest. In addition, if one parent is deceased, the other may execute a power of attorney. (R.C. 3109.57.)

Form requirements

The act provides that, to create a power of attorney, a parent, guardian, or custodian must use a form identical in form and content to the form provided in the act (R.C. 3109.53).² It must be signed by both the parent, guardian, or custodian granting it and the grandparent designated as the attorney in fact. For the power of attorney to be effective, the signatures must be notarized. The child's social security number is not required to appear on the power of attorney for it to be effective. (R.C. 3109.54.)

Execution by parent

The act provides that when a parent seeks to create the power of attorney, if the parents are married to each other and living as husband and wife or if the child is the subject of a shared parenting order, the power of attorney must be executed by both parents. Likewise, if the child is the subject of a custody order, the power of attorney must be executed by both parents unless one of the following applies regarding the parent who is not the residential parent and legal custodian: (1) that parent is prohibited from receiving a notice of relocation under Ohio law regarding granting parenting time or companionship or visitation rights (R.C. 3109.051), (2) that parent's parental rights have been terminated by a juvenile court, or (3) that parent cannot be located with reasonable efforts. In all other cases, the power of

² *The power of attorney form is set forth in COMMENT 1 of this analysis.*

attorney may be executed only by one of the following persons: (1) the parent who is the residential parent and legal custodian of the child,³ or (2) in cases in which there is no order designating a parent as the residential parent and legal custodian of the child and the Revised Code provision governing custody of children born to unmarried females does not apply, the parent with whom the child resides the majority of the school year. (R.C. 3109.56.)

Notice to parent

A person who creates a power of attorney pursuant to the act must send notice of the creation to the parent who is not the residential parent and legal custodian of the child unless one of the following applies regarding that parent: (1) that parent is prohibited from receiving a notice of relocation under Ohio law regarding granting parenting time or companionship or visitation rights (R.C. 3109.051), (2) that parent's parental rights have been terminated by a juvenile court, (3) that parent cannot be located with reasonable efforts, or (4) the power of attorney is being created by both parents. The notice must be sent by certified mail not later than five days after the power of attorney is created. The notice must include the name and address of the person designated as the attorney in fact. (R.C. 3109.55.)

Termination

The power of attorney terminates on the occurrence of whichever of the following events occurs first: (1) one year elapses following the date it is notarized, (2) written revocation by the person who created it, (3) the child ceases to reside with the grandparent designated as the attorney in fact, (4) it is terminated by court order, (5) the death of the child who is the subject of the power of attorney, or (6) the death of the grandparent designated as the attorney in fact. If a power of attorney terminates because the person who created it revokes it in writing, a copy of the revocation of an initial power of attorney or a second or subsequent power of attorney must be filed with the court with which the power of attorney is filed within five days of the termination.⁴ (R.C. 3109.59.)

When a power of attorney terminates under (1), (2), (3), (4), or (5) above, the grandparent designated as the attorney in fact is required to provide written notification to all of the following: (1) the school district in which the child attends school, (2) the child's health care providers, (3) the child's health insurance

³ *This is determined either by court order or by the Revised Code provision governing custody of children born to unmarried females (R.C. 3109.042). (R.C. 3109.56(B)(1).)*

⁴ *These filing requirements are discussed more fully in the "**Filing of Documents**" section of this analysis.*

coverage provider, (4) the court in which it was filed, (5) the nonresidential parent who is not the legal custodian and who is required to be given notice of the creation of the power of attorney, and (6) 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. The grandparent must give the written notifications not later than one week after the date of the termination. (R.C. 3109.60.)

Immunity

The act provides that a person who, in good faith, relies on or takes action in reliance on a power of attorney created under the act is immune from any criminal or civil liability for injury, death, or loss to persons or property that might otherwise be incurred or imposed solely as a result of the person's reliance or action. Similarly, the person is not subject to any disciplinary action from an entity that licenses or certifies the person. Any medical, psychological, or dental treatment provided to a child in reliance on the power of attorney is to be considered to have been provided in good faith if the person providing the treatment had no actual knowledge of opposition by the parent, guardian, or custodian. The act provides that the immunity from civil or criminal liability does not apply to any person for actions that are wanton, reckless, or inconsistent with the ordinary standard of care required to be exercised by anyone acting in the same capacity as the person.⁵ (R.C. 3109.61.)

Military power of attorney

The act provides that a military power of attorney executed pursuant to federal law⁶ that grants a person's rights and responsibilities regarding the care, custody, and control of the person's child, including 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

⁵ *Under general legal usage, "wanton" means "[u]nreasonably or maliciously risking harm while being utterly indifferent to the consequences." (Black's Law Dictionary 1576 (7th ed. 1999).)*

Under general legal usage, "reckless" means "[c]haracterized by the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk; heedless; rash. Reckless conduct is much more than negligence: it is a gross deviation from what a reasonable person would do." (Black's Law Dictionary 1276 (7th ed. 1999).)

⁶ *Section 574(a) of the National Defense Authorization Act for Fiscal Year 1994, 10 U.S.C. 1044b.*

consent to medical, psychological, or dental treatment for the child must be considered a power of attorney created under the act, as long as the military power of attorney remains in effect. (R.C. 3109.62.)

Caretaker authorization affidavit

Creation

The act generally provides that 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. This authority includes 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. The grandparent may obtain this authority by executing the caretaker authorization affidavit form provided in the act.⁷ (R.C. 3109.65(A).)

Inability to locate or contact either parent. While the act generally requires that the grandparent be unable to locate or contact either parent before an affidavit may be executed, there are certain situations in which an attempt to locate is not required. Under the act, if the child is the subject of a custody order, the grandparent does not have to attempt to locate a parent: (1) who is prohibited from receiving a notice of relocation, or (2) whose parental rights have been terminated by a juvenile court. In addition, if the child's paternity has not been established, the grandparent is not required to attempt to locate the child's father. (R.C. 3109.65(B).)

Execution of affidavit

A caretaker authorization affidavit is executed when the affidavit form provided in the act is completed, signed by the grandparent, and notarized (R.C. 3109.67). Once the affidavit is executed, the grandparent may exercise care, physical custody, and control of the child, including enrolling the child in school, discussing with the school district the child's educational progress, consenting to all school-related matters regarding the child, and consenting to medical, psychological, or dental treatment for the child. The affidavit does not affect the rights and responsibilities of the parent, guardian, or custodian regarding the child,

⁷ *The caretaker authorization affidavit must be identical in both form and content to the one provided in the act (R.C. 3109.66). That affidavit is set forth in **COMMENT 2** of this analysis.*

does not grant legal custody to the grandparent, and does not grant authority to the grandparent to consent to the marriage or adoption of the child. (R.C. 3109.69.)

Termination

An executed caretaker authorization affidavit terminates on the occurrence of whichever of the following occurs first: (1) one year elapses following the date the affidavit is notarized, (2) the child ceases to reside with the grandparent who executed the affidavit, (3) the parent, guardian, or custodian of the child acts in accordance with the act to negate, reverse, or otherwise disapprove an action or decision of the grandparent who signed the affidavit with respect to the child, (4) the affidavit is terminated by court order, (5) the grandparent's death, or (6) the death of the child who is the subject of the affidavit. When an affidavit terminates other than by the death of the grandparent, the grandparent must notify, in writing, the school district in which the child attends school, the child's health care providers, the child's 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. The grandparent must make the notifications not later than one week after the date the affidavit terminates. (R.C. 3109.70 and 3109.71.)

Negation, reversal, or disapproval of the grandparent's actions

The act provides that the parent, guardian, or custodian of a child may negate, reverse, or otherwise disapprove any action taken or decision made pursuant to a caretaker authorization affidavit unless it would jeopardize the life, health, or safety of the child. To do so, written notice of the negation, reversal, or disapproval must be delivered to the caretaker and the person responding to the caretaker's action or decision in reliance on the affidavit. The act to negate, reverse, or disapprove the action or decision, regardless of whether it is effective, terminates the affidavit. (R.C. 3109.72.)

Immunity

The act provides that a person who, in good faith, relies on or takes action in reliance on a caretaker authorization affidavit is immune from any criminal or civil liability for injury, death, or loss to persons or property that might otherwise be incurred or imposed solely as a result of the reliance or action. Further, the person is not subject to any disciplinary action from an entity that licenses or certifies the person. Any medical, psychological, or dental treatment provided to a child in reliance on an affidavit with respect to the child is to be considered to have been provided in good faith if the person providing the treatment had no actual knowledge of opposition by the parent, guardian, or custodian. The act

does provide that the immunity from civil or criminal liability does not apply to any person for actions that are wanton, reckless, or inconsistent with the ordinary standard of care required to be exercised by anyone acting in the same capacity. (R.C. 3109.73.)

Filing of documents

A person who creates a power of attorney or executes a caretaker authorization affidavit authorized by the act must file the document with the juvenile court of the county in which the grandparent designated as attorney in fact or grandparent who executed the affidavit resides or any other court that has jurisdiction over the child under a previously filed motion or proceeding. A power of attorney must be accompanied by a receipt showing that notice of creation of the power of attorney was sent by certified mail to the parent who is not the residential parent and legal custodian. The required documents must be filed with the appropriate court not later than five days after the creation of the power of attorney or execution of the affidavit and may be sent to the court by certified mail. On request of specified persons, the court in which the power of attorney or caretaker authorization affidavit was filed must verify the filing of a power of attorney or caretaker affidavit (R.C. 3109.74 and 3109.75).⁸

The grandparent designated as attorney in fact or the grandparent who executed the caretaker authorization affidavit must include with the power of attorney or caretaker authorization affidavit certain specified information (see **COMMENT** 1 and 2). If the grandparent provides information that the grandparent previously had been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child or previously has been determined, in a case in which a child has been adjudicated an abused child or a neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication, the court may

⁸ *The act requires the court in which the power of attorney or caretaker authorization affidavit was filed to verify the filing of these documents to (1) the person in charge of admissions of a school or (2) any of the following persons who are required to report suspected child abuse or neglect: an attorney; physician; dentist; podiatrist; practitioner of massage therapy, cosmetic therapy, naprapathy, or mechanotherapy; nurse; other health care professionals; psychologist or school psychologist; marriage and family therapist; speech pathologist or audiologist; coroner; administrator or employee of a child day-care center, residential camp or child day camp, or certified child care agency or other public or private children services agency; school teacher, employee, or authority; person engaged in social work or the practice of professional counseling; agent of a county humane society; or person rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion. (R.C. 3109.76; R.C. 2151.421 and 4731.15, not in the act.)*

report that information to the Public Children Services Agency pursuant to R.C. 2151.421. Upon the receipt of that information, the PCSA must initiate an investigation pursuant to R.C. 2151.421 (see **COMMENT 3**). (R.C. 3109.74(C)(1) and (2).)

If the court has reason to believe that a power of attorney or caretaker authorization affidavit is not in the best interest of the child, the court may report that information to the PCSA pursuant to R.C. 2151.421. Upon receipt of that information, the PCSA must initiate an investigation pursuant to R.C. 2151.421 and submit a report of its investigation to the court not later than 30 days after the court reports the information to the PCSA or not later than 45 days after the court reports the information to the PCSA when the information that is needed to determine the case disposition cannot be compiled within 30 days and the reasons are documented in the case record. (R.C. 3109.74(C)(3).) The court must waive any filing fee that the court imposes for the filing of the power of attorney or caretaker authorization affidavit (R.C. 3109.74(D)).

Limitations

When execution of a power of attorney or caretaker authorization affidavit is not permitted

The act provides that a power of attorney or caretaker authorization affidavit created under the act may not be executed with respect to a child while any of the following proceedings are pending regarding the child (R.C. 3109.58 and 3109.68):

(1) A proceeding for the appointment of a guardian for, or the adoption of, the child;

(2) A juvenile proceeding in which one of the following applies: (a) the temporary, permanent, or legal custody of the child or the placement of the child in a planned permanent living arrangement has been requested, (b) the child is the subject of an *ex parte* emergency custody order and no shelter care hearing has been held regarding the child, or (c) the child is the subject of a temporary custody order;⁹

⁹ "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)(52), not in the act.)

"Permanent custody" means "a legal status that vests in a public children services agency or a private child placing agency, all parental rights, duties, and obligations,

(3) A proceeding for divorce, dissolution, legal separation, annulment, or allocation of parental rights and responsibilities.

One power of attorney or caretaker authorization affidavit

The act provides that only one power of attorney or caretaker authorization affidavit created under the act may be in effect for a child at one time (R.C. 3109.80).

Purpose restriction

The act prohibits a person from creating a power of attorney or executing an affidavit pursuant to the act for the purpose of enrolling the child in a school or school district so that the child may participate in the interscholastic athletic programs or academic programs provided by the school or school district. A person who violates this prohibition is guilty of falsification¹⁰ and such a power of attorney or affidavit is void as of the date of its creation or execution. (R.C. 3109.78.)

Child support

A power of attorney or caretaker affidavit created or executed pursuant to the act does not affect enforcement of an administrative child support order or court child support order unless a child support enforcement agency or court, as appropriate, issues an order providing otherwise (R.C. 3109.79).

including the right to consent to adoption, and divests the natural parents or adoptive parents of all parental rights, privileges, and obligations, including all residual rights and obligations." (R.C. 2151.011(B)(30), not in the act.)

"Planned permanent living arrangement" means an order of a juvenile court that gives legal custody of a child to a public children services agency or a private child placing agency without the termination of parental rights, and permits the agency to make an appropriate placement of the child and enter into a written agreement with a foster care provider or with another person or agency with whom the child is placed. (R.C. 2151.011(B)(36), not in the act.)

"Shelter care" means "the temporary care of children in physically unrestricted facilities, pending court adjudication or disposition." (Ohio Rules of Juvenile Procedure 2 (Anderson 2002), not in the act.)

¹⁰ *Falsification is a first degree misdemeanor, punishable by up to six months in jail, a fine of up to \$1,000, or both (R.C. 2921.13).*



Second or subsequent power of attorney or caretaker authorization affidavit

The act provides that if a second or subsequent power of attorney or caretaker authorization affidavit regarding the same child is created or executed under the act, the person who created or executed it must file it with the juvenile court of the county in which the grandparent who is designated as attorney in fact or who executed the affidavit resides or with any other court that has jurisdiction over the child under a previously filed motion or proceeding. On filing, the court must schedule a hearing to determine whether the power of attorney or affidavit is in the child's best interest. The court must provide notice of the date, time, and location of the hearing to the parties. This notice must also be given to the parent who is not the residential parent and legal custodian unless that parent is prohibited from receiving a notice of relocation under Ohio law, the parent's parental rights have been terminated by order of a juvenile court, the parent cannot be located with reasonable evidence, or the power of attorney was created by both parents. The hearing must be held within ten days of the filing of the power of attorney or affidavit. At the hearing, the parties and the non-residential parent may present evidence and be represented by counsel. (R.C. 3109.76 and 3109.77(A) and (B).)

The act provides that, at the conclusion of the hearing, the court may do any of the following that it determines is in the child's best interest: (1) approve the power of attorney or affidavit, (2) issue an order terminating the power of attorney or affidavit and ordering the child returned to the parent, guardian, or custodian, or (3) treat the filing of the power of attorney or affidavit as a petition for legal custody and award legal custody to the grandparent who is designated as attorney in fact or who executed the affidavit. If the court approves the power of attorney or affidavit, it remains in effect until otherwise terminated under the act's provisions. If the court issues an order terminating the power of attorney or affidavit, but the child's parent, guardian, or custodian cannot be located, the court is required to treat the filing as a complaint that the child is a dependent child. (R.C. 3109.77(C).)¹¹

¹¹ A "dependent child" is

... any child:

(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;

The act requires the court to conduct a *de novo*¹² review of an order issued under this provision if the parent who is not the residential parent and legal custodian (1) did not appear at the hearing from which the order was issued, (2) was not represented by counsel at the hearing, and (3) filed a motion with the court within 14 days of receiving notice of the hearing. (R.C. 3109.77(D).)

Where the child may attend school

Under continuing law, a child generally must be admitted to the schools of the school district in which the child's parent resides. Continuing law defines "parent" to include either parent, unless the parents are legally separated or their marriage has been terminated, in which case, "parent" means the parent who is the residential parent and legal custodian of the child.¹³ The act amends the definition of "parent" to provide that, when a child is the subject of a power of attorney executed under the act, "parent" means the grandparent designated as the attorney

(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 for 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.

(R.C. 2151.04, not in the act.)

¹² "De novo" means "anew." Black's Law Dictionary 447 (7th ed. 1999). In a de novo review, the judge reviews the evidence and law without deference to the previous ruling. See Black's Law Dictionary 94 (7th ed. 1999).

¹³ When a child is in the legal custody of a government agency or a person other than the child's natural or adoptive parent, "parent" means the parent with residual rights and responsibilities. When a child is in the permanent custody of a government agency or a person other than the child's natural or adoptive parent, "parent" means the parent who was divested of parental rights and responsibilities for the care of the child and the right to have the child live with the parent and be the legal custodian of the child and all residual parental rights, privileges, and responsibilities.

in fact under the power of attorney and that, when a child is the subject of a caretaker authorization affidavit, "parent" means the grandparent that executed the affidavit. The act also specifies that the grandparent in either of those situations may enroll the subject child in a school in the school district in which the grandparent resides, and that, unless another reason exists under statute to exclude the child, the child may attend the schools in that district. (R.C. 3313.64(A)(1)(b) and 3313.649.)

Documents provided to school

Under continuing law, at the time of initial entry to a public or nonpublic school, a pupil must present the following to the person in charge of admission: any records given the pupil by the school the pupil most recently attended; a certified copy of an order or decree, or modification of such an order or decree governing custody of the child; and a birth certificate or comparable certificate for the child. The act additionally includes as one of the items to be provided on initial entry into school a copy of a power of attorney or caretaker authorization affidavit, if either has been executed under the act with respect to the child. The act also requires that, whenever a power of attorney or caretaker affidavit is executed under the act that pertains to a pupil in a public or nonpublic school, the grandparent must notify the school of the power of attorney by providing the person in charge of admission with a copy of the power of attorney or affidavit. (R.C. 3313.672(A)(1) and (B)(2).)

Application of school suspension law

Under continuing law, any school district, after offering an opportunity for a hearing, may temporarily deny admittance to any pupil if (1) the pupil has been suspended from school under Ohio law and the period of the suspension has not expired or (2) the pupil has been expelled from school under Ohio law and the period of expulsion has not expired. Continuing law also provides that any school district, after opportunity for a hearing, may temporarily deny admittance to any pupil if the pupil has been expelled or otherwise removed for disciplinary purposes from a public school in another state and the period of expulsion or removal has not expired. (R.C. 3313.66(J)(1) and (2).)

The act amends the above provisions to specify that they are applicable to a child who is the subject of a power of attorney or caretaker authorization affidavit created or executed under the act (R.C. 3313.66(J)(1) and (2)).

COMMENT

1. The Power of Attorney form authorized by the act is as follows (R.C. 3109.53):



"POWER OF ATTORNEY

I, the undersigned, residing at, in the county of, state of, hereby appoint the child's grandparent,, residing at, in the county of, in the state of Ohio, with whom the child of whom I am the parent, guardian, or custodian is residing, my attorney in fact to exercise any and all of my rights and responsibilities regarding the care, physical custody, and control of the child,, born, having social security number (optional), except my authority to consent to marriage or adoption of the child, and to perform all acts necessary in the execution of the rights and responsibilities hereby granted, as fully as I might do if personally present. The rights I am transferring under this power of attorney 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. This transfer does not affect my rights in any future proceedings concerning the custody of the child or the allocation of the parental rights and responsibilities for the care of the child and does not give the attorney in fact legal custody of the child. This transfer does not terminate my right to have regular contact with the child.

I hereby certify that I am transferring the rights and responsibilities designated in this power of attorney because one of the following circumstances exists:

(1) I am: (a) Seriously ill, incarcerated or about to be incarcerated, (b) Temporarily unable to provide financial support or parental guidance to the child, (c) Temporarily unable to provide adequate care and supervision of the child because of my physical or mental condition, (d) Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable, or (e) In or about to enter a residential treatment program for substance abuse;

(2) I am a parent of the child, the child's other parent is deceased, and I have authority to execute the power of attorney; or

(3) I have a well-founded belief that the power of attorney is in the child's best interest.

I hereby certify that I am not transferring my rights and responsibilities regarding the child for the purpose of enrolling the child in a school or school district so that the child may participate in the academic or interscholastic athletic programs provided by that school or district.



I understand that this document does not authorize a child support enforcement agency to redirect child support payments to the grandparent designated as attorney in fact. I further understand that to have an existing child support order modified or a new child support order issued administrative or judicial proceedings must be initiated.

If there is a court order naming me the residential parent and legal custodian of the child who is the subject of this power of attorney and I am the sole parent signing this document, I hereby certify that one of the following is the case:

- (1) I have made reasonable efforts to locate and provide notice of the creation of this power of attorney to the other parent and have been unable to locate that parent;
- (2) The other parent is prohibited from receiving a notice of relocation; or
- (3) The parental rights of the other parent have been terminated by order of a juvenile court.

This POWER OF ATTORNEY is valid until the occurrence of whichever of the following events occurs first: (1) one year elapses following the date this POWER OF ATTORNEY is notarized; (2) I revoke this POWER OF ATTORNEY in writing; (3) the child ceases to reside with the grandparent designated as attorney in fact; (4) this POWER OF ATTORNEY is terminated by court order; (5) the death of the child who is the subject of the power of attorney; or (6) the death of the grandparent designated as the attorney in fact.

WARNING: DO NOT EXECUTE THIS POWER OF ATTORNEY IF ANY STATEMENT MADE IN THIS INSTRUMENT IS UNTRUE. FALSIFICATION IS A CRIME UNDER SECTION 2921.13 OF THE REVISED CODE, PUNISHABLE BY THE SANCTIONS UNDER CHAPTER 2929. OF THE REVISED CODE, INCLUDING A TERM OF IMPRISONMENT OF UP TO 6 MONTHS, A FINE OF UP TO \$1,000, OR BOTH.

Witness my hand this day of,

.....
Parent/Custodian/Guardian's signature

.....
Parent's signature

.....
Grandparent designated as attorney in fact



State of Ohio)

) ss:

County of)

Subscribed, sworn to, and acknowledged before me this day
of,

.....
Notary Public

Notices:

1. A power of attorney may be executed only if one of the following circumstances exists: (1) The parent, guardian, or custodian of the child is: (a) Seriously ill, incarcerated or about to be incarcerated; (b) Temporarily unable to provide financial support or parental guidance to the child; (c) Temporarily unable to provide adequate care and supervision of the child because of the parent's, guardian's, or custodian's physical or mental condition; (d) Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable; or (e) In or about to enter a residential treatment program for substance abuse; (2) One of the child's parents is deceased and the other parent, with authority to do so, seeks to execute a power of attorney; or (3) The parent, guardian, or custodian has a well-founded belief that the power of attorney is in the child's best interest.
2. The signatures of the parent, guardian, or custodian of the child and the grandparent designated as the attorney in fact must be notarized by an Ohio notary public.
3. A parent, guardian, or custodian who creates a power of attorney must notify the parent of the child who is not the residential parent and legal custodian of the child unless one of the following circumstances applies: (a) the parent is prohibited from receiving a notice of relocation in accordance with section 3109.051 of the Revised Code of the creation of the power of attorney; (b) the parent's parental rights have been terminated by order of a juvenile court; (c) the parent cannot be located with reasonable efforts; (d) both parents are executing the power of attorney. The notice must be sent by certified mail not later than five days after the power of attorney is created and must state the name and address of the person designated as the attorney in fact.
4. A parent, guardian, or custodian who creates a power of attorney must file it with the juvenile court of the county in which the attorney in fact resides, or



any other court that has jurisdiction over the child under a previously filed motion or proceeding. The power of attorney must be filed not later than five days after the date it is created and be accompanied by a receipt showing that the notice of creation of the power of attorney was sent to the parent who is not the residential parent and legal custodian by certified mail.

5. A parent, guardian, or custodian who creates a second or subsequent power of attorney regarding a child who is the subject of a prior power of attorney must file the power of attorney with the juvenile court of the county in which the attorney in fact resides, or any other court that has jurisdiction over the child under a previously filed motion or proceeding. On filing, the court will schedule a hearing to determine whether the power of attorney is in the child's best interest.
6. This power of attorney does not affect the rights of the child's parents, guardian, or custodian regarding any future proceedings concerning the custody of the child or the allocation of the parental rights and responsibilities for the care of the child and does not give the attorney in fact legal custody of the child.
7. A person or entity that relies on this power of attorney, in good faith, has no obligation to make any further inquiry or investigation.
8. This power of attorney terminates on the occurrence of whichever of the following occurs first: (1) one year elapses following the date the power of attorney is notarized; (2) the power of attorney is revoked in writing by the person who created it; (3) the child ceases to live with the grandparent who is the attorney in fact; (4) the power of attorney is terminated by court order; (5) the death of the child who is the subject of the power of attorney; or (6) the death of the grandparent designated as the attorney in fact.

If this power of attorney terminates other than by the death of the attorney in fact, the grandparent who served as the attorney in fact shall notify, in writing, all of the following:

(a) Any schools, health care providers, or health insurance coverage provider with which the child has been involved through the grandparent;

(b) Any other person or entity that has an ongoing relationship with the child or grandparent such that the other person or entity would reasonably rely on the power of attorney unless notified of the termination;

(c) The court in which the power of attorney was filed after its creation;
and



(d) The parent who is not the residential parent and legal custodian of the child who is required to be given notice of its creation. The grandparent shall make the notifications not later than one week after the date the power of attorney terminates.

9. If this power of attorney is terminated by written revocation of the person who created it, or the revocation is regarding a second or subsequent power of attorney, a copy of the revocation must be filed with the court with which that power of attorney was filed.

Additional information:

To the grandparent designated as attorney in fact:

1. If the child stops living with you, you are required to notify, in writing, any school, health care provider, or health care insurance provider to which you have given this power of attorney. You are also required to notify, in writing, any other person or entity that has an ongoing relationship with you or the child such that the person or entity would reasonably rely on the power of attorney unless notified. The notification must be made not later than one week after the child stops living with you.
2. You must include with the power of attorney the following information:
 - (a) The child's present address, the addresses of the places where the child has lived within the last five years, and the name and present address of each person with whom the child has lived during that period;
 - (b) Whether you have participated as a party, a witness, or in any other capacity in any other litigation, in this state or any other state, that concerned the allocation, between the parents of the same child, of parental rights and responsibilities for the care of the child and the designation of the residential parent and legal custodian of the child or that otherwise concerned the custody of the same child;
 - (c) Whether you have information of any parenting proceeding concerning the child pending in a court of this or any other state;
 - (d) Whether you know of any person who has physical custody of the child or claims to be a parent of the child who is designated the residential parent and legal custodian of the child or to have parenting time rights with respect to the child or to be a person other than a parent of the child who has custody or visitation rights with respect to the child;

(e) Whether you previously have been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child or previously have been determined, in a case in which a child has been adjudicated an abused child or a neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication.

To school officials:

1. Except as provided in section 3313.649 of the Revised Code, this power of attorney, properly completed and notarized, authorizes the child in question to attend school in the district in which the grandparent designated as attorney in fact resides and that grandparent is authorized to provide consent in all school-related matters and to obtain from the school district educational and behavioral information about the child. This power of attorney does not preclude the parent, guardian, or custodian of the child from having access to all school records pertinent to the child.
2. The school district may require additional reasonable evidence that the grandparent lives in the school district.
3. A school district or school official that reasonably and in good faith relies on this power of attorney has no obligation to make any further inquiry or investigation.

To health care providers:

1. A person or entity that acts in good faith reliance on a power of attorney to provide medical, psychological, or dental treatment, without actual knowledge of facts contrary to those stated in the power of attorney, is not subject to criminal liability or to civil liability to any person or entity, and is not subject to professional disciplinary action, solely for such reliance if the power of attorney is completed and the signatures of the parent, guardian, or custodian of the child and the grandparent designated as attorney in fact are notarized.
2. The decision of a grandparent designated as attorney in fact, based on a power of attorney, shall be honored by a health care facility or practitioner, school district, or school official."
2. The Caretaker Affidavit authorized by the act is as follows (R.C. 3109.66):

"CARETAKER AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by sections 3109.65 to 3109.73 of the Ohio Revised Code.



Completion of items 1-7 and the signing and notarization of this affidavit is sufficient to authorize the grandparent signing to exercise care, physical custody, and control of the child who is its subject, 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.

The child named below lives in my home, I am 18 years of age or older, and I am the child's grandparent.

1. Name of child:
2. Child's date and year of birth:
3. Child's social security number (optional):
4. My name:
5. My home address:
6. My date and year of birth:
7. My Ohio driver's license number or identification card number:
8. Despite having made reasonable attempts, I am either:
 - (a) Unable to locate or contact the child's parents, or the child's guardian or custodian; or
 - (b) I am unable to locate or contact one of the child's parents and I am not required to contact the other parent because paternity has not been established; or
 - (c) I am unable to locate or contact one of the child's parents and I am not required to contact the other parent because there is a custody order regarding the child and one of the following is the case:
 - (i) The parent has been prohibited from receiving notice of a relocation; or
 - (ii) The parental rights of the parent have been terminated.
9. I hereby certify that this affidavit is not being executed for the purpose of enrolling the child in a school or school district so that the child may participate in the academic or interscholastic athletic programs provided by that school or district.



I understand that this document does not authorize a child support enforcement agency to redirect child support payments. I further understand that to have an existing child support order modified or a new child support order issued administrative or judicial proceedings must be initiated.

WARNING: DO NOT SIGN THIS FORM IF ANY OF THE ABOVE STATEMENTS ARE INCORRECT. FALSIFICATION IS A CRIME UNDER SECTION 2921.13 OF THE REVISED CODE, PUNISHABLE BY THE SANCTIONS UNDER CHAPTER 2929. OF THE REVISED CODE, INCLUDING A TERM OF IMPRISONMENT OF UP TO 6 MONTHS, A FINE OF UP TO \$1,000, OR BOTH.

I declare that the foregoing is true and correct:

Signed:..... Date:.....
Grandparent

State of Ohio)

) ss:

County of)

Subscribed, sworn to, and acknowledged before me this day of,

.....
Notary Public

Notices:

1. The grandparent's signature must be notarized by an Ohio notary public.
2. The grandparent who executed this affidavit must 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 not later than five days after the date it is executed.
3. A grandparent who executes a second or subsequent caretaker authorization affidavit regarding a child who is the subject of a prior caretaker authorization affidavit must file the affidavit 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. On filing, the court will schedule a hearing to determine whether the caretaker authorization affidavit is in the child's best interest.



4. This affidavit does not affect the rights of the child's parents, guardian, or custodian regarding the care, physical custody, and control of the child, and does not give the grandparent legal custody of the child.
5. A person or entity that relies on this affidavit, in good faith, has no obligation to make any further inquiry or investigation.
6. This affidavit terminates on the occurrence of whichever of the following occurs first: (1) one year elapses following the date the affidavit is notarized; (2) the child ceases to live with the grandparent who signs this form; (3) the parent, guardian, or custodian of the child acts to negate, reverse, or otherwise disapprove an action or decision of the grandparent who signed this affidavit; or (4) the affidavit is terminated by court order; (5) the death of the child who is the subject of the affidavit; or (6) the death of the grandparent who executed the affidavit.

A parent, guardian, or custodian may negate, reverse, or disapprove a grandparent's action or decision only by delivering written notice of negation, reversal, or disapproval to the grandparent and the person acting on the grandparent's action or decision in reliance on this affidavit.

If this affidavit terminates other than by the death of the grandparent, the grandparent who signed this affidavit shall notify, in writing, all of the following:

- (a) Any schools, health care providers, or health insurance coverage provider with which the child has been involved through the grandparent;
- (b) 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;
- (c) The court in which the affidavit was filed after its creation.

The grandparent shall make the notifications not later than one week after the date the affidavit terminates.

7. The decision of a grandparent to consent to or to refuse medical treatment or school enrollment for a child is superseded by a contrary decision of a parent, custodian, or guardian of the child, unless the decision of the parent, guardian, or custodian would jeopardize the life, health, or safety of the child.

Additional information:

To caretakers:



1. If the child stops living with you, you are required to notify, in writing, any school, health care provider, or health care insurance provider to which you have given this affidavit. You are also required to notify, in writing, any other person or entity that has an ongoing relationship with you or the child such that the person or entity would reasonably rely on the affidavit unless notified. The notifications must be made not later than one week after the child stops living with you.
2. If you do not have the information requested in item 7 (Ohio driver's license or identification card), provide another form of identification such as your social security number or medicaid number.
3. You must include with the caretaker authorization affidavit the following information:
 - (a) The child's present address, the addresses of the places where the child has lived within the last five years, and the name and present address of each person with whom the child has lived during that period;
 - (b) Whether you have participated as a party, a witness, or in any other capacity in any other litigation, in this state or any other state, that concerned the allocation, between the parents of the same child, of parental rights and responsibilities for the care of the child and the designation of the residential parent and legal custodian of the child or that otherwise concerned the custody of the same child;
 - (c) Whether you have information of any parenting proceeding concerning the child pending in a court of this or any other state;
 - (d) Whether you know of any person who has physical custody of the child or claims to be a parent of the child who is designated the residential parent and legal custodian of the child or to have parenting time rights with respect to the child or to be a person other than a parent of the child who has custody or visitation rights with respect to the child;
 - (e) Whether you previously have been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child or previously have been determined, in a case in which a child has been adjudicated an abused child or a neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication.

To school officials:



1. This affidavit, properly completed and notarized, authorizes the child in question to attend school in the district in which the grandparent who signed this affidavit resides and the grandparent is authorized to provide consent in all school-related matters and to discuss with the school district the child's educational progress. This affidavit does not preclude the parent, guardian, or custodian of the child from having access to all school records pertinent to the child.
2. The school district may require additional reasonable evidence that the grandparent lives at the address provided in item 5.
3. A school district or school official that reasonably and in good faith relies on this affidavit has no obligation to make any further inquiry or investigation.
4. The act of a parent, guardian, or custodian of the child to negate, reverse, or otherwise disapprove an action or decision of the grandparent who signed this affidavit constitutes termination of this affidavit. A parent, guardian, or custodian may negate, reverse, or disapprove a grandparent's action or decision only by delivering written notice of negation, reversal, or disapproval to the grandparent and the person acting on the grandparent's action or decision in reliance on this affidavit.

To health care providers:

1. A person or entity that acts in good faith reliance on a CARETAKER AUTHORIZATION AFFIDAVIT to provide medical, psychological, or dental treatment, without actual knowledge of facts contrary to those stated in the affidavit, is not subject to criminal liability or to civil liability to any person or entity, and is not subject to professional disciplinary action, solely for such reliance if the applicable portions of the form are completed and the grandparent's signature is notarized.
2. The decision of a grandparent, based on a CARETAKER AUTHORIZATION AFFIDAVIT, shall be honored by a health care facility or practitioner, school district, or school official unless the health care facility or practitioner or educational facility or official has actual knowledge that a parent, guardian, or custodian of a child has made a contravening decision to consent to or to refuse medical treatment for the child.
3. The act of a parent, guardian, or custodian of the child to negate, reverse, or otherwise disapprove an action or decision of the grandparent who signed this affidavit constitutes termination of this affidavit. A parent, guardian, or custodian may negate, reverse, or disapprove a grandparent's action or decision only by delivering written notice of negation, reversal, or disapproval to the

grandparent and the person acting on the grandparent's action or decision in reliance on this affidavit."

3. Generally, the Public Children Services Agency must investigate, within 24 hours, each report of known or suspected child abuse and each report of a known or suspected threat of child abuse or child neglect that is referred to it to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible. The investigation is made in cooperation with the law enforcement agency and in accordance with the memorandum of understanding that is prepared by the PCSA. The PCSA must make any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention. (R.C. 2151.421.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-18-03	p. 259
Reported, H. Juvenile & Family Law	06-19-03	pp. 939-940
Passed House (92-7)	06-25-03	pp. 969-971
Reported, S. Civil Justice	02-10-04	p. 1520
Passed Senate (32-0)	03-17-04	pp. 1633-1634
House concurred in Senate amendments (97-0)	03-23-04	pp. 1721-1722

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