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Bill Analysis
Legislative Service Commission

H.B. 459

126th General Assembly
(As Introduced)

**Reps. Woodard, Fende, Ujvagi, J. McGregor, Brown, Healy, Perry, Skindell,
Chandler, Allen**

BILL SUMMARY

- Allows a person to petition the court to be designated a de facto custodian of a child under certain circumstances.
- Permits the court to designate a person as de facto custodian and grant full parental rights and responsibilities and legal custody to the de facto custodian.
- Preserves the full parental rights and responsibilities of the parents of the child.

CONTENT AND OPERATION

Existing law

Parents have a fundamental right to the care, custody, and control of their children. The Due Process Clause of the Fourteenth Amendment of the United States Constitution as well as Article I, Section 16 of the Ohio Constitution protects this right. Sometimes parents are unable or unwilling to care for their child. When this happens, the parent may voluntarily leave the child with a relative, a friend, a public children services agency, or private child placing agency. The child may also be involuntarily taken away from the parent by a public children services agency. These nonparent caregivers have limited rights and any rights afforded to them depend on the legal status between the caregiver and the child. Under current law, there are several different options for nonparent caregivers to attain legal status regarding a child including (1) legal custodianship, (2) executing a caretaker authorization affidavit or power of attorney, (3) legal guardianship, (4) becoming the child's foster caregiver, (5) adopting the child, or (6) seeking certain types of assistance (primarily financial) as a kinship caregiver.

The bill

The bill creates *de facto custodianship* as an additional option for nonparent caregivers to attain legal standing, with regard to the care and control of the child, to those existing options under current law.

What is a de facto custodian?

The bill defines a de facto custodian as a person who has been the primary caretaker and financial supporter of a child, and who has resided with that person for either (1) at least six months, if the child is under three years old and has not been placed in that person's care by a public children services agency (PCSA) or private child placing agency (PCPA), or (2) at least one year, if the child is at least three years old or was placed in that person's care by a PCSA or PCPA (R.C. 2151.34(B)).

Process

A person may petition the juvenile court of the county in which he or she resides to be designated de facto custodian of a child. The court must designate the person de facto custodian and grant legal custody¹ to that person if that person has established, by clear and convincing evidence, that the person meets the definition of de facto custodian *and* the de facto custodianship is in the best interest of the child. (R.C. 2151.34(A).)

De facto custodian's rights and responsibilities

If the court designates a person de facto custodian, the de facto custodian has *the same* parental rights and responsibilities of a parent for the duration of the de facto custodianship, including equal standing as a parent (1) during custody proceedings, and (2) when applying for financial aid or social services (see **COMMENT**) (R.C. 2151.34(C)).

¹ "Legal custody" means a legal status that vests in the custodian (1) the right to have physical care and control of the child and to determine where and with whom the child will live, and (2) the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care. These rights and duties are subject to any residual parental rights, privileges, and responsibilities. And an individual granted legal custody generally must exercise the rights and responsibilities personally. (R.C. 2151.011(B)(19).)

Duration

A de facto custodianship terminates if the court that established the custodianship determines that termination of a de facto custodianship is in the best interest of the child and either the de facto custodian petitions the court to terminate the order or the child's parent petitions that court requesting that the custodianship be terminated. (R.C. 2151.34(D).)

Parental rights and responsibilities

Under the bill, the parents retain full parental rights and responsibilities regarding the child for the duration of the de facto custodianship (R.C. 2151.34(E)).

COMMENT

Under R.C. 2151.34(A) in the bill, the court must designate a person as the legal custodian of the child. Under current law, a legal custodian has a wide range of rights regarding the child, but the parent retains certain residual rights, privileges, and responsibilities such as reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support. However, under R.C. 2151.34(C), a designation as a de facto custodian appears to give that person full parental rights and responsibilities. Thus, it is unclear whether a de facto custodian will attain full or partial parental rights and responsibilities.

HISTORY

ACTION	DATE
Introduced	12-29-05

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