



Ohio Legislative Service Commission

Final Analysis

Andrea Holmes

Am. Sub. H.B. 279 129th General Assembly (As Passed by the General Assembly)

- Reps.** Grossman and Driehaus, Yuko, Combs, Boyd, Reece, Letson, Henne, Martin, Goyal, Burke, Bubb, Conditt, R. Adams, Antonio, Barnes, Blair, Celebrezze, Celeste, Cera, Fedor, Fende, Foley, Garland, Hackett, R. Hagan, Heard, Johnson, Kozlowski, Mallory, Milkovich, Murray, Newbold, O'Brien, Patmon, Phillips, Pillich, Ramos, Ruhl, Sprague, Winburn
- Sens.** Bacon, Brown, Burke, Cafaro, Eklund, Hite, Hughes, Kearney, Lehner, Manning, Niehaus, Oelslager, Patton, Sawyer, Schiavoni, Seitz, Smith, Tavares, Turner, Wagoner, Widener

Effective date: December 20, 2012; certain provisions effective March 20, 2013

ACT SUMMARY

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

- Creates a procedure by which a grandparent who has physical custody and care of a child may petition a juvenile court for custody when the child's parent revokes a power of attorney or terminates a caretaker authorization affidavit that gives the grandparent parental rights and responsibilities.
- Allows a putative father of a minor to put his name on the Department of Job and Family Services' putative father registry at any time and requires that registration must occur not later than 30 days after the child's birth in order to preserve the requirement of the putative father's consent to the child's adoption.
- Specifies the types of agencies (a public children services agency, a private noncustodial agency, or a private child placing agency) that may request search of the putative father registry and makes clear that the right of a mother or agency to make a request is not limited to situations involving adoptions.
- Encourages any public children services agency that obtains custody of a child as part of a sibling group or after the previous placement of a sibling to make reasonable efforts to place the siblings together or, if siblings are not placed together, to ensure the siblings maintain frequent connections, unless contrary to the siblings' placement or well-being.
- Requires a public children services agency to file a missing child report with a local law enforcement agency upon becoming aware that a child in the custody of the agency is or may be missing.
- Allows a public children services agency to provide care for an abused, neglected, or dependent child in the home of a nonrelative adult whom a child or the child's current custodial caretaker identifies as having a familiar and longstanding relationship or bond with the child or the child's family that will ensure the child's social and cultural ties.
- Requires the Department of Job and Family Services to develop recommendations for implementation of a subsidized relative guardianship program in accordance with federal law, to submit to the Governor, the Speaker of the House of Representatives, and the President of the Senate a preliminary report work by December 31, 2013, and a final report within 12 months of the act's effective date.
- Creates an instructional assistant permit for individuals that provide services to a child under the Autism Scholarship Program.
- Makes changes regarding the administration of the Autism Scholarship Program.

- Declares an emergency with respect to the provisions described in the previous two dot points.

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

The act conforms Ohio law to the federal statute. In a proceeding alleging that a child is an unruly, abused, neglected, or dependent child, is a juvenile traffic offender,

¹ 42 U.S.C. § 671(a)(29).

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

Power of attorney granting parental rights and responsibilities

Under continuing law largely unchanged by the act, a child's parent, guardian, or custodian may create a power of attorney that grants to a grandparent of the child with whom the child is residing any of the parent's, guardian's, or custodian's rights and responsibilities regarding the care, physical custody, and control of the child. The rights include the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child. The power of attorney may not grant authority to consent to the child's marriage or adoption. It does not affect the rights of the child's parent, guardian, or custodian in any future proceeding concerning the allocation of parental rights and responsibilities for the care of the child and does not grant legal custody to the grandparent. Continuing 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.³

Under former law, the power of attorney terminated whenever one of the following occurred:⁴

- (1) One year elapsed following the date it was notarized.
- (2) It was revoked in writing by the person who created it.

² R.C. 2151.33(F).

³ R.C. 3109.52, 3109.53, and 3109.54.

⁴ R.C. 3109.59(A).

- (3) The child ceased to reside with the grandparent.
- (4) It was terminated by court order.
- (5) The child or grandparent died.

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

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

A person who creates a power of attorney granting parental rights and responsibilities to a grandparent must, within five days after the power of attorney is created or executed, file it with the juvenile court of the county in which the grandparent resides or any other court that has jurisdiction over the child under a previously filed motion or proceeding. R.C. 3109.74 requires that the power of attorney be accompanied by information specified in R.C. 3109.27, which was renumbered R.C. 3127.23 in 2005. If the grandparent provides information that the grandparent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child's being an abused or neglected child or previously has been determined, in a case in which a child has been adjudicated an abused or neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication, or if the court has other reason to believe that a power of attorney is not in the best interest of the child, the court may report that information to the PCSA

⁵ R.C. 3109.59(B).

⁶ R.C. 3109.60.

pursuant to the child abuse reporting law. Upon receipt of that information, the agency must initiate an investigation.⁷

Under former law, a parent, guardian, or custodian could create a second or subsequent power of attorney, which was required to be filed with the juvenile court of the county in which the grandparent designated as attorney in fact resided or with any other court that had jurisdiction over the child under a previously filed motion or proceeding. When the power of attorney was filed, the court was required to hold a hearing as to whether the power of attorney was in the child's best interest. After the hearing, the court could approve the power of attorney, terminate the power of attorney and order the child returned to the parent, guardian, or custodian; if the parent, guardian, or custodian could not be located, treat the filing of the power of attorney as a complaint that the child was a dependent child, or treat the filing of the power of attorney as a petition for legal custody.⁸

Termination of power of attorney

The act eliminates the automatic termination of the power of attorney that occurred under former law when a year elapsed from the date the power of attorney was notarized. Continuing law also provides for termination by revocation. The act requires a person who revokes a power of attorney to give written notice of the revocation to the grandparent and to the juvenile court with which the power of attorney was filed.⁹

Under the act, if the person who creates a power of attorney revokes it in accordance with the act's provisions, the grandparent having physical custody of the child under the power of attorney may file a complaint in the juvenile court seeking a determination of custody if the grandparent believes that the revocation or child's removal from the grandparent's home is not in the child's best interest. The complaint must be filed within 14 days from the date of revocation or removal. Pending a hearing and decision, the court may make any temporary disposition of any child that it considers necessary to protect the child's best interest.¹⁰

⁷ R.C. 3109.74, not in the act.

⁸ R.C. 3109.76 and 3109.77.

⁹ R.C. 3109.59.

¹⁰ R.C. 3109.76(A) and (C).

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

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

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

Caretaker authorization affidavit to assume parental rights and responsibilities

Under continuing law largely unchanged by the act, if a child is living with a grandparent who has made reasonable attempts to locate and contact both of the child's parents or the child's guardian or custodian but has been unable to do so, the grandparent may execute a caretaker authorization affidavit. A caretaker authorization affidavit gives the grandparents the authority to exercise care, physical custody, and control of the child, including authority to enroll the child in school, to discuss with the school district the child's educational progress, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child. A grandparent may execute a caretaker authorization affidavit without attempting to locate the child's father if paternity has not been established and without attempting to locate a parent (1) who is prohibited from receiving a notice of relocation because the parent has committed domestic violence or (2) whose parental rights have been terminated by a juvenile court. Continuing law provides a statutory form of the affidavit and specifies that it must be signed by the grandparent and notarized. Continuing 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.¹⁴

¹¹ R.C. 3109.76(D).

¹² R.C. 3109.76 and 3109.77.

¹³ R.C. 3109.53 and 3109.60

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

Under former law, a caretaker authorization affidavit terminated whenever one of the following occurred:¹⁵

(1) One year elapsed following the date the affidavit was notarized.

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

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

(4) A court terminated the affidavit.

(5) The child or grandparent died.

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

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

Termination of caretaker authorization affidavit

The act eliminates the automatic termination of a caretaker authorization affidavit that occurred under former law when a year elapsed from the date the

¹⁵ R.C. 3109.70.

¹⁶ R.C. 3109.71.

¹⁷ R.C. 3109.76 and 3109.77.

affidavit was notarized. The act also modifies termination by written notice of negation, reversal, or disapproval. Under continuing law, a parent, guardian, or custodian may negate, reverse, or disapprove an action taken or decision made pursuant to a caretaker authorization affidavit by delivering the written notice to the grandparent-caretaker and to the person responding to the grandparent's action or decision in reliance on the affidavit. Under former law, delivery of the notice terminated the affidavit. The act specifies that the termination occurs as of the date the caretaker voluntarily returns the child to the physical custody of the parent, guardian, or custodian or upon the expiration of 14 days from the negation, reversal, or disapproval if the caretaker has not filed a complaint for custody in the interim.¹⁸

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

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

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

¹⁸ R.C. 3109.70 and 3109.72.

¹⁹ R.C. 3109.76(B) and (C).

²⁰ R.C. 3109.76(D).

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

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

Putative father registry

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

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

Missing child report

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

Nonrelative care of an abused, neglected, or dependent child

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

²² R.C. 3109.66 and 3109.71.

²³ R.C. 3107.062.

²⁴ R.C. 3107.063.

²⁵ R.C. 5153.16(A)(23).

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

Placement of siblings by public children services agency

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

Implementation of a subsidized relative guardianship program

The act requires the Department of Job and Family Services to develop recommendations for implementation of a subsidized relative guardianship program in accordance with federal law. In developing the recommendations, the Department must consult with representatives of the Ohio Kinship Caregiver Advisory Council and county public children services agencies. The recommendations must address required legislative authority, state and local cost implications, and activities necessary for implementation of the program. The Department must submit to the Governor, the Speaker of the House of Representatives, and the President of the Senate a brief preliminary status report of its work by December 31, 2013, and a final report, including a work plan, not later than 12 months after the effective date of the act.²⁹

Autism Scholarship Program

The act creates an instructional assistant permit for individuals that provide services to a child under the Autism Scholarship Program and makes changes regarding the administration of the program. This program pays scholarships to the parents of identified autistic children in grades pre-kindergarten to 12.³⁰ It began as a temporary pilot project, first authorized in 2003³¹ and reauthorized in 2005,³² and was codified and

²⁶ R.C. 5153.161.

²⁷ R.C. 2151.411.

²⁸ 42 U.S.C. 671(a)(31).

²⁹ Section 3.

³⁰ R.C. 3310.41.

³¹ Section 41.33 of Am. Sub. H.B. 95 of the 125th General Assembly, as subsequently amended (not part of the act).

made permanent in legislation that passed in 2006.³³ The scholarship is to be used solely to pay all or part of the cost of sending the child to a public or an approved nonpublic special education program instead of the one provided by the child's resident school district. The scholarship amount is the lesser of the amount charged by the special education program or \$20,000. The scholarship is to be used to pay for only those services specified in the child's "individualized education program" (IEP) prepared by the child's resident school district.

Instructional assistant permit

The act authorizes the State Board of Education to issue a one-year, renewable instructional assistant permit to an individual, upon the request of a registered private provider, qualifying that individual to provide services to a child under the Autism Scholarship Program.³⁴ Continuing law defines a registered private provider as a nonpublic school or other nonpublic entity that has been approved by the Department of Education to participate in the program.³⁵ The act specifies that individuals that provide services to a child under the program are not required to obtain a permit until 12 months after the act's (immediate) effective date.³⁶

For an individual to qualify for a permit, the registered private provider must assure the State Board of all of the following:

- (1) The individual is of good moral character;
- (2) The individual possesses the appropriate skills necessary to perform the duties of an instructional assistant, including the supervision of children and assistance with instruction tasks;
- (3) The individual demonstrates the potential to benefit from and consents to participating in in-service training, as required by the registered private provider; and
- (4) The individual either has an associate degree or higher from an accredited institution of higher education or has completed at least two years of study (the

³² Section 209.09.84 of Am. Sub. H.B. 66 of the 126th General Assembly, as subsequently amended (not part of the act).

³³ R.C. 3310.41, as codified by Am. Sub. H.B. 699 of the 126th General Assembly.

³⁴ R.C. 3310.43.

³⁵ R.C. 3310.41(A).

³⁶ Section 4.

equivalent of 48 semester hours or 72 quarter hours) at an accredited institution of higher education.

The act provides that an individual issued a permit may provide instructional services in the home of a child so long as the individual is subject to adequate training and supervision. The State Board must adopt rules regarding how providers will demonstrate this supervision.

An individual issued a permit is subject to the background check requirements and disciplinary procedures of the State Board.³⁷

Program administration

The act makes the following changes regarding the administration of the Autism Scholarship Program.

(1) The act provides that, in addition to paying for tuition for the child to attend a special education program that implements the child's IEP, the scholarship may be used to pay for other services agreed to by the provider and the parent of a qualified special education child that are not included in the IEP but are associated with educating the child. Additionally, the act provides that, upon agreement with the parent of a qualified special education child, the provider may modify the services provided to the child.³⁸

(2) The act specifies that, except for development of the child's IEP, the child's school district is not obligated to provide the child with a "free appropriate public education" for as long as the child continues to attend the special education program under the Autism Scholarship Program. Additionally, the act specifies that, if at any time, the eligible applicant for the child decides no longer to accept scholarship payments and enrolls the child in the special education program of the school district in which the child is entitled to attend school, that district's obligation to provide the child with a free appropriate public education resumes.³⁹

(3) The act requires that the rules adopted by the State Board regarding the Autism Scholarship Program specify that intervention services may be provided by a qualified, credentialed provider, including, but not limited to, all of the following:

³⁷ R.C. 3310.43.

³⁸ R.C. 3310.41(B).

³⁹ R.C. 3310.41(B).

(a) A behavior analyst certified by a nationally recognized organization that certifies behavior analysts;

(b) A licensed psychologist;

(c) A licensed school psychologist;

(d) Any person employed by a licensed psychologist or licensed school psychologist, while carrying out specific tasks, under the licensee's supervision, as an extension of the licensee's legal and ethical authority who is ascribed as "psychology trainee," "psychology assistant," "psychology intern," or other appropriate term that clearly implies their supervised or training status;

(e) Unlicensed persons holding a doctoral degree in psychology or special education from a program approved by the State Board;

(f) Any other qualified individual as determined by the State Board.⁴⁰

(4) The act requires the Department of Education to provide reasonable notice to all parents of children receiving a scholarship and service providers of any amendment to a rule governing, or change in the administration of, the program.⁴¹

(5) Finally, the act provides that, if a parent of a qualified special education child received payment for a provider's services under the program during the 2011-2012 school year but did not receive payment for services provided by the same provider between July 1, 2012, and the act's (immediate) effective date, the Department of Education must, within 30 days after receiving a written request from the parent, make a payment to the parent to account for services provided during that period by that provider. These payments must be made in accordance with the allocation procedures agreed upon by the parents prior to the 2012-2013 school year, as filed with the Department. A parent's written request must be submitted to the Department not later than 60 days after the act's effective date and must include a description of all services for which the parent wishes to receive payment and the amount paid or owed by the parent for those services.⁴²

⁴⁰ R.C. 3310.41(E).

⁴¹ R.C. 3310.41(F).

⁴² Section 5.

Effective dates

The act declares an emergency in order to facilitate timely certification of instructional aides to provide services to children with special needs, including those on the autism spectrum. The act specifies that all provisions within the act other than the provisions described above under "**Autism Scholarship Program,**" "**Instructional assistant permit,**" and "**Program administration**" take effect 90 days after the effective date of the act. The provisions described above under "**Autism Scholarship Program,**" "**Instructional assistant permit,**" and "**Program administration**" take effect immediately.⁴³

HISTORY

ACTION	DATE
Introduced	06-22-11
Reported, H. Judiciary & Ethics	05-09-12
Passed House (94-2)	11-14-12
Reported, S. Judiciary	12-12-12
Passed Senate (33-0)	12-12-12
House concurred in Senate amendments (89-0)	12-13-12

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⁴³ Sections 6 and 7.

