



# Ohio Legislative Service Commission

## Bill Analysis

David M. Gold

### H.B. 438

130th General Assembly  
(As Introduced)

**Reps.** Pelanda and Grossman, Stebelton, Hackett, Phillips, Fedor, Buchy, Blair

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## BILL SUMMARY

- Authorizes the parent, guardian, or custodian of a child to create a temporary physical care power of attorney (TPCPOA) that grants to a person 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.
- Sets forth a form that must be used to create a TPCPOA and the requirements for execution of the form.
- Requires that notice of the creation of a TPCPOA be furnished to a child's parent, subject to certain exceptions.
- Prohibits the creation of a TPCPOA for a child who is the subject of certain juvenile, domestic relations, or other proceedings.
- Requires the filing of a TPCPOA 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.
- Requires a designated attorney in fact to file certain information with a TPCPOA, including information relating to known proceedings concerning the child or claims of other persons to rights regarding the child.
- Authorizes a court to report information concerning abuse or neglect of a child who is the subject of a TPCPOA to a public children services agency and requires the agency to initiate an investigation on receipt of the information.

- Requires a court to report the filing of a TPCPOA to a public children services agency and requires the agency to treat the child who is the subject of the TPCPOA as a dependent child.
- Provides for the termination of a TPCPOA and requires the attorney in fact to notify certain persons and entities of the termination in all cases in which termination is not due to the death of the attorney in fact.
- Provides immunity from civil and criminal liability for persons who rely in good faith on TPCPOA, except for liability due to actions that are reckless, wanton, or inconsistent with the ordinary standard of care.
- Requires a court, on request of a school or mandatory report or of child abuse or neglect, to verify the filing of a TPCPOA.
- Prohibits the creation of a TPCPOA for the purpose of enrolling a child in a school or school district so that the child may participate in the academic or interscholastic athletic programs provided by the school or school district.
- Authorizes an attorney in fact under a TPCPOA to enroll the child in a school in the school district in which the attorney in fact resides.
- Provides that a TPCPOA does not affect the enforcement of an administrative or court child support order unless a child support enforcement agency or court orders otherwise.

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## CONTENT AND OPERATION

### Temporary physical care power of attorney (TPCPOA)

The bill authorizes the parent, guardian, or custodian of a child to create a temporary physical care power of attorney (TPCPOA) that grants to a person 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, 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 consent to medical, psychological, or dental treatment for the child. A TPCPOA may not grant authority to consent to the marriage or adoption of the child. A TPCPOA does not affect the rights of the parent, guardian, or custodian in any future proceeding concerning custody of the child or the allocation of parental rights and responsibilities for the care of the child and does not grant legal custody to the attorney in fact.<sup>1</sup>

Only one TPCPOA may be in effect for a child at one time.<sup>2</sup>

### Creation of TPCPOA

#### Form

To create a TPCPOA, a parent, guardian, or custodian must use the following form:<sup>3</sup>

#### TEMPORARY PHYSICAL CARE POWER OF ATTORNEY

I, the undersigned, residing at ....., in the county of ....., state of ....., hereby appoint, ....., 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 starting on this date, ....., 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 temporary physical care power of attorney include the ability to enroll the child in school, to obtain from the

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<sup>1</sup> R.C. 3109.81.

<sup>2</sup> R.C. 3109.80.

<sup>3</sup> R.C. 3109.82.



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 temporary physical care power of attorney on a temporary basis and that this transfer is not intended to be permanent.

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 person 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 temporary physical care 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 temporary physical care 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 TEMPORARY PHYSICAL CARE POWER OF ATTORNEY is valid until the occurrence of whichever of the following events occurs first: (1) I revoke this TEMPORARY PHYSICAL CARE POWER OF ATTORNEY in writing and give notice of the revocation to the person designated as attorney in fact and the juvenile court with which this TEMPORARY PHYSICAL CARE POWER OF ATTORNEY was filed; (2) the child ceases to reside with the person designated as attorney in fact; (3) this TEMPORARY PHYSICAL CARE POWER OF ATTORNEY is terminated by court order;



(4) the death of the child who is the subject of the temporary physical care power of attorney; or (5) the death of the person designated as the attorney in fact.

WARNING: DO NOT EXECUTE THIS TEMPORARY PHYSICAL CARE 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  
.....  
Person designated as attorney in fact

State of Ohio )

) sis:

County of .....)

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

.....

.....  
Notary Public

Notices:

1. The signatures of the parent, guardian, or custodian of the child and the person designated as the attorney in fact must be notarized by an Ohio notary public.
2. A parent, guardian, or custodian who creates a temporary physical care 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 temporary physical care power of attorney; (b) the parent's parental rights have been terminated by order of a juvenile court pursuant to Chapter 2151. Of the



Revised Code; (c) the parent cannot be located with reasonable efforts; (d) both parents are executing the temporary physical care power of attorney. The notice must be sent by certified mail not later than five days after the temporary physical care power of attorney is created and must state the name and address of the person designated as the attorney in fact.

3. A parent, guardian, or custodian who creates a temporary physical care 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 temporary physical care 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 temporary physical care power of attorney was sent to the parent who is not the residential parent and legal custodian by certified mail.
4. This temporary physical care 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.
5. This temporary physical care power of attorney terminates on the occurrence of whichever of the following occurs first: (1) the temporary physical care power of attorney is revoked in writing by the person who created it and that person gives written notice of the revocation to the person who is the attorney in fact and the juvenile court with which the temporary physical care power of attorney was filed; (2) the child ceases to live with the person who is the attorney in fact; (3) the temporary physical care power of attorney is terminated by court order; (4) the death of the child who is the subject of the temporary physical care power of attorney; or (5) the death of the person designated as the attorney in fact.

If this temporary physical care power of attorney terminates other than by the death of the attorney in fact, the person 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 person who served as the attorney in fact;

(b) Any other person or entity that has an ongoing relationship with the child or person who served as the attorney in fact such that the other person or entity would reasonably rely on the temporary physical care power of attorney unless notified of the termination;

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

(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 person who served as the

attorney in fact shall make the notifications not later than one week after the date the temporary physical care power of attorney terminates.

6. If this temporary physical care 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 person 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 temporary physical care 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 temporary physical care 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 temporary physical care 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's 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.
3. If you receive written notice of revocation of the temporary physical care power of attorney or the parent, custodian, or guardian removes the child from your home and if you believe that the revocation or removal is not in the best interest of the child, you may, within fourteen days, file a complaint in the juvenile court to seek custody. You may retain physical custody of the child until the fourteen-day period elapses or, if you file a complaint, until the court orders otherwise.

To school officials:

1. Except as provided in section 3313.649 of the Revised Code, this temporary physical care power of attorney, properly completed and notarized, authorizes the child in question to attend school in the district in which the person designated as attorney in fact resides and that person 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 temporary physical care 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 person lives in the school district.

To health care providers:

1. A person or entity that acts in good faith reliance on a temporary physical care power of attorney to provide medical, psychological, or dental treatment, without actual knowledge of facts contrary to those stated in the temporary physical care 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 temporary physical care power of attorney is completed and the signatures of the parent, guardian, or custodian of the child and the person designated as attorney in fact are notarized.
2. The decision of a person designated as attorney in fact, based on a temporary physical care power of attorney, shall be honored by a health care facility or practitioner, school district, or school official.

## Execution

The form must be signed by the parent, guardian, or custodian granting the TPCPOA and by the person designated as the attorney in fact. The signatures must be notarized. The child's social security number need not appear on the form.<sup>4</sup>

The form must be executed by both parents if any of the following apply:<sup>5</sup>

- (1) The parents are married to each other and are living as husband and wife.
- (2) The child is the subject of a shared parenting order.
- (3) The child is the subject of a custody order unless one of the following applies:
  - The parent who is not the residential parent and legal custodian is prohibited from receiving a notice of relocation.
  - The parental rights of the parent who is not the residential parent and legal custodian have been terminated by order of a juvenile court.
  - The parent who is not the residential parent and legal custodian cannot be located with reasonable efforts.

In all other cases, the form may be executed only by one of the following persons:<sup>6</sup>

(1) The parent who is the residential parent and legal custodian of the child by virtue of a court order or the statute designating an unmarried mother as the residential parent and legal custodian in the absence of a court order;

(2) The parent with whom the child is residing the majority of the school year in cases in which no court has issued an order designating a parent as the residential parent and legal custodian or the statute designating an unmarried mother as the residential parent and legal custodian does not apply.

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<sup>4</sup> R.C. 3109.83.

<sup>5</sup> R.C. 3109.85(A).

<sup>6</sup> R.C. 3109.85(B).

## Notice of TPCPOA

A person who creates a TPCPOA must send notice of the creation to the parent of the child who is not the residential parent and legal custodian of the child unless one of the following is the case:<sup>7</sup>

(1) The parent is prohibited from receiving a notice of relocation of the residential parent under the statute governing parenting time because of domestic violence or child abuse.

(2) The parent's parental rights have been terminated by order of a juvenile court.

(3) The parent cannot be located with reasonable efforts.

(4) The TPCPOA is being created by both parents.

The notice must be sent by certified mail not later than five days after the TPCPOA is created. The notice must state the name and address of the person designated as the attorney in fact.<sup>8</sup>

## When TPCPOA may not be created

A TPCPOA may not be executed with respect to a child while any of the following proceedings is pending regarding the child:<sup>9</sup>

(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:

- The temporary, permanent, or legal custody of the child or the placement of the child in a planned permanent living arrangement has been requested.
- The child is the subject of an ex parte emergency custody order issued for the protection of an allegedly abused, neglected, or dependent child and no hearing has yet been held regarding the child's detention or shelter care.

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<sup>7</sup> R.C. 3109.84(A).

<sup>8</sup> R.C. 3109.84(B).

<sup>9</sup> R.C. 3109.86(B).



- The child is the subject of a temporary custody order issued pending the hearing of a complaint involving the child or on motion by the court or one of the parties.

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

## **Filing of TPCPOA**

A person who creates a TPCPOA must file the form with the juvenile court of the county in which the person designated as attorney in fact resides or any other court that has jurisdiction over the child under a previously filed motion or proceeding. The TPCPOA must be filed not later than five days after the date it is created and may be sent to the court by certified mail. The form must be accompanied by a receipt showing that the notice of creation of the TPCPOA was sent by certified mail to the parent who is not the residential parent and legal custodian. The court must waive any filing fee imposed for the filing of the TPCPOA.<sup>10</sup>

The bill requires the person designated as attorney in fact to include with the TPCPOA, when it is filed, the following information, which is required of parties in a pleading in a child custody proceeding:<sup>11</sup>

(1) Information if reasonably ascertainable under oath as to the child's present address or whereabouts, 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;

(2) Whether the person has participated as a party, a witness, or in any other capacity in any other proceeding concerning the allocation, between the parents of the same child, of parental rights and responsibilities for the care of the child including any designation of parenting time rights and the designation of the residential parent and legal custodian of the child or that otherwise concerned the custody of or visitation with the same child and, if so, the court, case number and the date of the child custody determination, if any;

(3) Whether the person knows of any proceedings that could affect the current proceeding, including proceedings for enforcement of child custody determinations, proceedings relating to domestic violence or protection orders, proceedings to adjudicate the child as an abused, neglected, or dependent child, proceedings seeking

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<sup>10</sup> R.C. 3109.87(A), (B), and (D).

<sup>11</sup> R.C. 3109.87(C) (incorporating by reference R.C. 3127.23).

termination of parental rights, and adoptions, and, if so, the court, the case number, and the nature of the proceeding;

(4) Whether the person knows of any person who is not a party to the proceeding and 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 and, if so, the names and addresses of those persons;

(5) If the declaration under paragraph (2), (3), or (4) is in the affirmative, any additional information as required by the court.

### **Public children services agency**

If the person who is designated as attorney in fact provides information that the person previously has 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 report that information to the public children services agency. Upon the receipt of that information, the public children services agency must initiate an investigation.<sup>12</sup>

Within five days after a TPCPOA is filed, the court must notify the public children services agency for the county where the court is located of the filing. As part of the notice, the court must include a copy of the TPCPOA and any related documents filed with the court. On receiving the notice, the agency must treat the filing of the TPCPOA as an allegation that the child who is the subject of the TPCPOA is a dependent child. The agency may take whatever actions it determines are necessary to investigate the allegation.<sup>13</sup>

### **Termination of TPCPOA**

#### **Methods**

A TPCPOA terminates on the occurrence of whichever of the following events occurs first:<sup>14</sup>

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<sup>12</sup> R.C. 3109.88.

<sup>13</sup> R.C. 3109.89 and 3109.90.

<sup>14</sup> R.C. 3109.91(A).

(1) Written revocation of the TPCPOA by the person who created it, with written notice of the revocation to the attorney in fact and the juvenile court with which the TPCPOA was filed;

(2) Cessation of the child's residence with the attorney in fact;

(3) Termination of the TPCPOA by court order;

(4) The death of the child;

(5) The death of the attorney in fact.

A copy of a revocation must be filed with the court with which the TPCPOA was filed not later than five days after the revocation.<sup>15</sup>

### **Notice**

When a TPCPOA terminates by any method other than the death of the attorney in fact, the attorney in fact must give written notice to all of the following within one week after the date of termination:<sup>16</sup>

(1) The school district in which the child attends school;

(2) The child's health care providers;

(3) The child's health insurance coverage provider;

(4) The court in which the TPCPOA was filed;

(5) The parent who is not the residential parent and legal custodian and who is required to be given notice of the creation of a TPCPOA (see "**Notice of TPCPOA**," above);

(6) Any other person or entity that has an ongoing relationship with the child or attorney in fact such that the other person or entity would reasonably rely on the TPCPOA unless notified of the termination.

### **Immunity**

A person who, in good faith, relies on or takes action in reliance on a TPCPOA is immune from any criminal or civil liability for injury, death, or loss to persons or

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<sup>15</sup> R.C. 3109.91(B).

<sup>16</sup> R.C. 3109.92.

property that might otherwise be incurred or imposed solely as a result of the person's reliance or action. 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 a TPCPOA is 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 immunity does not extend 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.<sup>17</sup>

### **Verification of filing of TPCPOA**

On the request of the person in charge of admissions of a school or a person who is required by statute to report known or suspected child abuse or neglect, the court in which the TPCPOA was filed must verify whether a TPCPOA was filed with respect to a child.<sup>18</sup>

### **School enrollment**

The bill prohibits a person from creating a TPCPOA for the purpose of enrolling a child in a school or school district so that the child may participate in the academic or interscholastic athletic programs provided by the school or school district, and it voids a TPCPOA created for such a purpose. However, the bill authorizes an attorney in fact under a TPCPOA to enroll the child who is the subject of the TPCPOA in a school in the school district in which the attorney in fact resides, unless another reason exists under the Revised Code to exclude the child from the district's schools.<sup>19</sup>

### **Effect of TPCPOA on child support orders**

Under the bill, a TPCPOA does not affect the enforcement of an administrative or court child support order unless a child support enforcement agency, with respect to an administrative order, or a court, with respect to either order, issues an order providing otherwise.<sup>20</sup>

### **Definitions**

The bill incorporates into the new sections dealing with TPCPOA's the definitions of "child," "custodian," "guardian," "legal custody," and "residual parental

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<sup>17</sup> R.C. 3109.93.

<sup>18</sup> R.C. 3109.94.

<sup>19</sup> R.C. 3109.78(A) and (C) and 3313.649(B).

<sup>20</sup> R.C. 3109.79.

rights, privileges, and responsibilities" that are used in the Revised Code chapter of the Domestic Relations Law governing children.<sup>21</sup>

The bill incorporates into the new section prohibiting creation of a TPCPOA under certain circumstances (see "**When TPCPOA may not be created**," above) the definitions of "temporary custody," "permanent custody," and "planned permanent living arrangement" that are used in the Juvenile Court Law.<sup>22</sup>

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## HISTORY

ACTION	DATE
Introduced	02-11-14

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<sup>21</sup> R.C. 3109.51.

<sup>22</sup> R.C. 3109.86(A).

