



Juvenile and Family Law Committee House of Representatives

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Supportive Testimony for HB 197 Representative Marian Harris, sponsor

Crystal Ward Allen
January 27, 2010

Good morning Chairman Harwood, and members of the House Judiciary Committee.

My name is Crystal Ward Allen and I am the Executive Director of the Public

Children Services Association of Ohio. PCSAO represents the 88 county public child protection agencies here in Ohio, working for safe children, stable families and supportive communities.

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I have also been a long time member of the Ohio Kinship Caregiver Advisory Council to ODJFS, PCSAO is the umbrella organization for an HHS Fostering Connections Kinship Navigator Grant for a number of counties in Ohio, and my father was raised by his aunt. I value kinship caregivers, and I am here to strongly support passage of HB 197, the budget neutral Kinship Bill before you.

Responsible Extended Family Caregivers

For many children in Ohio and throughout the nation, their family is not your traditional two parent family, but a kinship or extended family. According to the 2000 Census, over 86,000 grandparents in Ohio are the sole caregiver for the children being raised in their home - many with sibling groups, and most without judicial custody. Many other children are being raised by aunts, uncles, older siblings, or other kin - we will be anxious to see 2000 Census numbers.

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Relatives and other kin that are raising their extended family children often do so without significant governmental intervention, but because they have stepped up in time of need to help "family." Unfortunately, they often experience difficulties obtaining normal services for the children in their home due to the lack of legal documentation - particularly enrolling the child in school and participating in their education, and accessing routine and emergency medical and dental care.

Back in 2004, the Ohio General Assembly passed HB 130 as a way to provide legal documentation for grandparent caregivers. The bill created a Power of Attorney Form and a Caregiver Authorization Affidavit to allow grandparent caregivers to enroll children in their care in their local school and participate in school decisions; also to allow the grandparent caregiver to authorize routine and emergency medical and dental care. Since that time, many grandparent caregivers across the state have more easily provided a safe, healthy environment. For your information, a detailed outline of HB 130 as passed is attached – HB 197 only changes these forms by allowing additional kin caregivers to use them, as described below.

- **The Power of Attorney Form** would apply to a caretaker of the custodial parent(s)' choice; it can be used in consensual situations between the custodial parent and kin caregiver.
- **The Caregiver Authorization Affidavit** would be limited to relative caregivers, who are physically caring for the child, and after reasonable efforts, cannot locate the child's parent(s).

Why did the House Judiciary Committee, and then the full General Assembly, back in 2004 limit use of the forms to Grandparent caregivers? Frankly, much attention was given to safeguarding parental rights, ensuring child safety, and worry about school funding issues. While detailed language was crafted to address all of these issues, policy makers still heard from the judiciary that they were worried that a child's well-being could be at risk without judicial oversight, and they heard from schools, worry that families might intentionally misuse the opportunity to change school attendance.

Thus, a compromise to limit the policy to Grandparent caregivers was made, with a promise that Ohio could try it out and extend to others later, if the forms worked well for grandparents, or change policy if children seemed at risk.

We now have six years of experience with the Grandparent Power of Attorney and Caregiver Authorization Affidavit forms. They have been invaluable to many grandparents – you have both caregivers and community professionals that work with these grandparents to attest to that.

We also have an evaluation of use of the HB 130 forms, done by Wright State University in Dayton. While the study was limited in scope (due to limited funds to devote to research and evaluation), it did note the following, as reprinted below from the evaluation:

1. *HB 130 has been successful in supporting informal caregiving relationships by removing problems with school enrollment and obtaining medical care for grandchildren. Generally, grandparents liked the program.*
2. *HB 130 has not added substantial time and cost burdens to the courts who responded to our questionnaire.*
3. *While there were reports of using POA/CAAs to enroll students in school inappropriately, it does not appear that this is a widespread problem.*
4. *Neither the courts nor the PCSAs reported any incidents of abuse and/or neglect of the children affected by the POA/CAA program.*

5. *Grandparents would like the POA/CAA to remain in effect for longer than one year without having to go through a renewal process.*
6. *The reaction to allowing other relatives to obtain a POA/CAA was mixed. Overwhelmingly, the grandparents and PCSAs favored such an expansion, while almost half of the judges and school principals did not.*
7. *Judges remain concerned about having limited oversight.*
8. *The law is not uniformly implemented or widely known. Courts will have to make decisions about how the law is to be implemented. More education and outreach is needed for grandparents, the public, and other stakeholders.*

An additional resource for you is the American Bar Association Center on Children and the Law webpage, <http://www.abanet.org/child/kinshipcare.shtml> which summarizes a variety of state kinship policies. Ohio is positively mentioned for its HB 130 Grandparent Caretaker laws, but the recommendations clearly address needs of all kinship caregivers (not just grandparents), and mention that many states have laws that includes other relatives and close family kin.

HB 197 also includes other important policies to support kin, all addressed within the federal Fostering Connections to Success Act of 2008 (unanimously passed by Congress) –

- child welfare agencies are to **seek out and notify relatives** if we bring a child into our care
- **siblings should be placed together** whenever possible – and if not placed together, every effort must be made for frequent contact and visitation among those siblings
- once the federal government issues guidance for **collaboration between child welfare and child support to more efficiently find kin**, Ohio should embrace the opportunity.
- ODJFS would do a cost impact **feasibility study of implementing the new Title IV-E Relative Guardianship Subsidy** as a permanency exit from foster care. Eleven states have already adopted this new federal partnership option, but the current budget situation in Ohio is not ripe at this time. The study will provide good information when we can consider this.

PCSAO strongly supports HB 197, and we would like to thank Representative Harris for her leadership on child and kinship caregiver issues. We know from research that safe, familiar relatives and other kin often provide a safe and stable family for a child in need. We also know that child outcomes such as school attendance and academic performance are better for children in kin homes than in unrelated foster care, and these children and youth experience fewer unruly and delinquent behaviors.

We support family ties and responsibility without governmental involvement whenever possible. In the present budget environment, **it is critical to focus on budget neutral policies that safely support Ohio children and families.** When child safety is at risk, the child welfare system stands ready to intervene, and to bring it to the attention of the judicial system – that's what we are here for. Thank you for the opportunity to explain and support this bill. I would be happy to respond to any questions.

Supporting Children Being Raised By Relatives and Other Kin Caregivers

HB 197, Representative Marian Harris, Sponsor
http://www.legislature.state.oh.us/bills.cfm?ID=128_HB_197

Supporting Permanency for Children (additional POA and CAA detail attached)

- **Expands use of the Power Of Attorney (POA) form from only grandparents to a kin caregiver of the parent's choice** in consensual arrangements, when the custodial parent(s) are temporarily unable to care for their children. All other current power of attorney law remains the same; forms continue to provide legal documentation for educational enrollment, information and consent for activities, plus authorizes caregiver to access medical, dental and psychological services for the child (3109.52, 3109.53)
- **Expands use of the Caretaker Authorization Affidavit (CAA) from only grandparents to "qualified relatives"** (related by blood or marriage), when the location of the birth parent is unknown. All other current CAA law remains the same and forms continue to provide legal documentation for educational and medical services. (3109.65, 3109.66)
- **Requires ODJFS to conduct a cost impact feasibility study of implementing a Title IV-E subsidized relative guardianship program;** involves looking at relative care placement trends across the continuum of options (*Temp Law Sec 5; option with the federal Fostering Connections Act of 2008*)

Honoring Importance of Family Connections

- **Relative Notification** - requires, within 30 days of receiving temporary custody of child, the custodial agency to do their due diligence to identify and notify relatives (2151.33)
- **Sibling Connections** - encourages public children service agency to make reasonable efforts to place siblings together; best interest and well-being of child part of decision; in cases where siblings are not placed together, make reasonable efforts to maintain frequent communication (*Temp Law Sec 3; required federal Fostering Connections Act of 2008*)
- **Finding Families** - requires ODJFS to adopt rules for use of Federal Parent Locator Service, upon guidance from US Dept of HHS (*Temp Law Sec 4; option with the federal Fostering Connections Act of 2008*)

**HB 197, Kinship Caregiver
Power of Attorney and Caregiver Authorization Affidavit Provisions
Representative Marian Harris, sponsor**

PURPOSE - HB 197 supports extended family responsibility for the raising of Ohio's children. According to the 2000 Census, over 86,000 children are being raised by their grandparents – many more by other relatives and kin; less than 20% have any type of legal custody, making it difficult to access needed services. HB 197 extends HB 130 (which was limited to grandparent caregivers) to additional kin caregivers, as below.

- **The Power of Attorney** provides legal documentation for the caregiver of a parents' choice, in consensual arrangements, when the custodial parent(s) are temporarily unable to care for their child.
- **The Caretaker Affidavit** provides legal documentation for qualified relative caregivers, when location of the birth parent is unknown.

POWER OF ATTORNEY (POA) – Parent(s), or other legal custodian to create POA with an individual, when temporarily unable to care for child. Allows Caregiver / Attorney in Fact authority for child's educational enrollment, information, and consent for activities; also for medical, dental, psychological treatment of the child. Prohibits authority for adoption, marriage, or legal custody of child. (Sec. 3109.52, 3109.54, 3109.55)

Power Of Attorney (POA) Form Provisions – Form is in legislation. (Sec. 3109.52)

- **Parent initiates POA** and signs form awarding authority for educational and medical service access to grandparent caregiver; indicates the POA is in effect for up to one year, or as long as child is residing with caregiver; parent may revoke at any time, may also be terminated by court.
- **Caregiver / Attorney in Fact must sign POA and list criminal convictions.**
- **Notary Public is required to witness signatures.**
- **Specific notices are required** – Parent must notify the non-custodial parent, and file the POA with the juvenile court where the caregiver resides (or other court of original jurisdiction) within 5 days; a second year of the POA must be filed with the juvenile court for the purpose of a best interest hearing; upon termination of the POA, the Caregiver / Attorney in Fact is responsible to notify schools, healthcare providers, insurance providers, court, and the non-residential parent.
- **Instructions to Caregiver / Attorney in Fact** – Required written notices upon POA termination (to school, healthcare providers, non-residential parent, juvenile court).
- **Instructions to School Officials** – POA authorizes enrollment in district of caregiver residence; authorizes caregivers to consent to school related matters and to obtain educational information on child; does not preclude parent access to school related information; allows school district to seek evidence caregiver resides in school district; imparts good faith status to accept signed POA.
- **Instructions to Health Care Provider** – Imparts good faith civil, criminal, and professional disciplinary immunity for competent care provided, based on signed POA; instructs health care provider to accept decisions of Caregiver / Attorney in Fact.

Power of Attorney Parameters (in additional to what is mentioned in POA Form)

- **POA signature requirements** for custodial parents (3109.56)
- **Specific reasons for temporary inability of parent to care for child** (3109.57)
- **Judicial circumstances in which use of POA is prohibited**, such as custodial hearings pending or in progress (Sec. 3109.58)
- **POA Termination provisions** – after one year, the child ceases to live with caregiver, the parent revokes in writing, or if the court terminates (Sec. 3109.59)
- **Good Faith Immunity for Professionals Relying on POA** – does not include actions that are reckless, wonton, on inconsistent with professionals standards. (Sec. 3109.61)
- **Military Use of POA** – Consistent with the National Defense Authorization Act, allows Military POA to stay in effect beyond the one year limit. (Sec. 3109.62)

RELATIVE CARETAKER AUTHORIZATION AFFIDAVIT – To be used in situations in which whereabouts of the parent(s) of a child living with a relative are unknown, after reasonable attempts to locate and contact. Allows a relative authority for child's educational enrollment, participation in educational services and activities, consent for medical, dental, psychological treatment of the child. Prohibits Caregiver authority for adoption, marriage, or legal custody of child. (Sec. 3109.65)

Caregiver Authorization Affidavit Form Provisions – In legislation (Sec. 3109.66)

- **Relative Caregiver initiates** and signs form which allows authority for educational and medical service access to grandparent; form lists any criminal convictions by caregiver; indicates the Affidavit is in effect for up to one year, or as long as child is residing with caregiver, parent may revoke at any time, may also be terminated by court.
- **Notary Public is required to witness signatures.**
- **Specific notices are required by Relative** – The relative caregiver must file the Affidavit with the local juvenile court or court of original jurisdiction within 5 days; a second year of the Affidavit must be filed with the juvenile court for the purpose of a best interest hearing; upon termination of the Affidavit, the caregiver is responsible to notify schools, healthcare givers, insurance providers.
- **Instructions to School Officials** – Relative Affidavit authorizes enrollment in district of caregiver residence; authorizes caregivers to consent to school related matters and to obtain educational information on child; allows school district to seek evidence caregiver resides in school district; imparts good faith status to accept signed Affidavit; allows a parent to reverse a caregiver decision thru written notification – such will terminate the Affidavit.
- **Instructions to Health Care Provider** – Imparts good faith civil, criminal, and professional disciplinary immunity for competent care provided, based on signed Affidavit; instructs health care provider to accept decisions of relative caregiver; allows a parent to reverse a caregiver decision thru written notification –such will terminate the Affidavit.

Relative Caretaker Authorization Affidavit Parameters (in additional to those mentioned in Form)

- **Judicial circumstances in which use of Relative Affidavit is prohibited**, such as custodial hearings pending or in progress (Sec. 3109.68)
- **Parent Reversal or Negation of any decision** – may be done *in writing* at anytime, unless it would jeopardize the health or safety of the child; regardless of application, it will immediately terminate the Affidavit. (Sec. 3109.72)
- **Good Faith Immunity for Professionals Relying on an Affidavit**– does not include actions that are reckless, wonton, on inconsistent with professionals standards. (Sec. 3109.73)

SAFETY PROVISIONS pertaining to both POA and Caregiver Affidavit

- **POA or Affidavit will be filed with Juvenile Court in court of caregiver (or other court of original jurisdiction)** - must be accompanied by certified mail receipt, to non-custodial and non-residential parent (Sec. 3109.75)
- **Verification of POA or Affidavit** – a school may contact the local court to verify that a POA or Affidavit is on file. (Sec. 3109.76)
- **Permanency / Best Interest Review for Second or Subsequent Relative POA or Affidavit** – the person initiating a second POA or Affidavit must file it with the juvenile court within 10 days; the juvenile court will then schedule a Best Interest hearing, and provide notice to non-residential parent. Dispositional options include continuance of the POA or Affidavit, termination of the POA or affidavit and return to the parent or legal custodian, any disposition option for Dependent children in ORC 2151.27, or treating the filing of the POA or Affidavit as a petition for legal custody. If the non-residential parent is not present, but files a motion, the court shall conduct a de novo review of any Best Interest review hearing. (Sec. 3109.78)
- **Prohibition from using POA or Caregiver Affidavit for purposes of academic or athletic participation** – violation is offense of falsification. (Sec. 3109.79)
- **Child Support Enforcement** – existing orders remain in effect (Sec. 3109.80)
- **Prohibition from multiple POAs or Caregiver Affidavits** (Sec. 3109.81)
- **School Funding to Follow the Child** – Relative is viewed as "parent" for purposes of school funding – no tuition shall be charged. (Sec. 3313.64)

Ohio's Continuum of Care Kinship, Foster and Adoptive Families

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PCSAO
PUBLIC CHILDREN SERVICES
association of ohio

	Informal Relative Caregivers	"Approved" Kinship Caregivers	Certified Foster Caregivers	Kinship Permanency Incentive Program	Guardianship Subsidy	Adoptive Families
Amount fiscal support	\$245 / month for first child; approx \$91 / month each sibling OWF Child Only TANF Grant	Same as for informal caregivers	\$600 / month average reimbursement to caregiver Higher for therapeutic or medically fragile children.	\$500 initial incentive, then \$300 each six months for up to 3 years. Concern after 3 yrs In addition to OWF Child Only TANF grant	none	\$240 / month state base Higher monthly subsidies negotiated and funded locally, based on child's needs.
Funding Source	100% federal TANF funds	100% federal TANF funds	If Title IV-E eligible children (3/4 of Ohio foster children), 60% fed, 40% local/state \$. If not IV-E eligible, 100% local/state cost.	100% federal TANF funds	Fed Title IV-E State option approved in Fostering Connections to Success Act '08, 60% FFP, need 40% State /local match, feasibility study in HB 197	AA - IV-E Eligible Special needs children (93% in Ohio) 60% fed, 40% state/local SAMS - Non- IV-E special needs children, 100% GRF
Eligibility	Child must reside in household, custody not required. Informal arrangement HB 130 Grandparent Caregiver Authorization Affidavit / Power of Attorney allow school enrollment and medical care – need expansion to other kin caregivers HB197 Relative caregivers, Legal Guardians or Legal Custodians Child welfare involvement is irrelevant.	Child in Custody of child protection agency Temporary placement Relative or Non-relative <u>Approval Requirements</u> BCI&I criminal check Health & safety check of home. Assessment of child's needs, caregiver's ability & willingness to access & provide for needs. Case management support Training offered <i>Kin caregivers are eligible to become certified foster caregiver, receive higher reimbursements.</i>	Child in Custody of child protection agency Temporary placement Certified foster caregiver <u>Certification Requirements</u> BCI&I criminal check Strict housing regulations Lengthy assessment 36 hrs pre-service training 20 hr/year ongoing training. Case management support Significant regulation and oversight.	Judicial custody awarded to caregiver post July 1, 2005. Permanent family for child Relative or non-relative <u>Approval Requirements</u> BCI&I criminal check Health & safety check of home Assessment of child's needs, caregiver's ability & willingness to access & provide for needs. Caregiver income cannot exceed 300% FPL.	Permanent family for child Relative caregivers, exit out of foster care <u>Approval Requirements</u> Same as for certified foster caregivers: BCI&I criminal check Strict housing regulations Lengthy assessment 36 hrs pre-service training 20 hr/year ongoing training Some non-safety items could be individually waived.	Parental Rights have been terminated, Probate court finalizes adoption. Permanent family for child Approval Requirements BCI&I criminal check Strict housing regulations Lengthy assessment 36 hour pre-adopt training (Lesser training required for infant adoptions) No ongoing training No ongoing regulation or oversight Post Adopt Services available as needed