



Public Children Services Association of Ohio

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Supportive Testimony for HB 178

Crystal Ward Allen, Public Children Services Association of Ohio
May 11, 2005

Good afternoon Chairman Gilb, and members of the House Juvenile and Family Law 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.

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. Many other children are being raised by aunts, uncles, older siblings, or other kin. While the willingness of relatives to step up in time of need has been historical, societal trends do seem to indicate more and more children are being raised by relatives.

Relatives and other kin that are raising their extended family children have experienced difficulties obtaining normal services for their children – particularly enrolling the child in school and participating in their education, and accessing routine and emergency medical and dental care, due to the lack of legal documentation.

Based on the 2000 census report documenting the increasing numbers of grandparents raising grandchildren, and the 1998 Department of Aging's report, *Grandparents Raising Grandchildren*, the 125th General Assembly passed HB 130, sponsored by Representative Linda Reidelbach. The bill created two processes to provide a grandparent caregiver legal documentation.

HB 178 would extend the same forms and processes created in HB 130, for Grandparent caregivers, to other caregivers:

- **The Power of Attorney Form** would apply to *any caretaker of the custodial parent(s)' choice*; it can be used in consensual situations where the custodial parent is awarding the caregiver authority for certain decisions
- **The Caregiver Authorization Affidavit** would apply to *any relative caregiver, if they are physically caring for the child, and after reasonable efforts, cannot locate the child's parent(s)*.

Both processes can be achieved by completing the form within the legislation, and having it signed by a notary.

HB 178 carefully allows the kin caregiver the ability to access and participate in routine medical and educational decisions, services and activities. It also provides authority for educational and medical professionals to provide their services under the caregiver's authority. Key educational activities would include school enrollment, participation in parent/teacher conferences and Individual Education Plans for students receiving special education services. Health related activities would include well baby visits and immunizations, regular check-ups, dental care, and emergency medical care.

Safeguarding Parental Rights

HB 178's Power of Attorney or Kinship Affidavit processes will allow an accessible and affordable solution for the purposes of normal, routine or emergency needs of Ohio's children. Life altering decisions such as marriage, termination of parental rights / adoption or commitment to a mental health facility can only be made by a parent or someone within a judicial / custodian framework. Also, the parent maintains override authority over a caregiver with a power of attorney or affidavit, by re-assuming physical care and custody of their child.

Thus, parental rights are maintained; if life altering decisions are contemplated, or if there is serious controversy about parenting, then the parent can override, or a judicial authority will become involved. HB 178 would not eliminate the need for judicial custody decisions in every case - just most of them.

Good government safeguards for Ohio's Children

- Children would be allowed to attend school tuition free, in the caregiver's school district, as the caregiver is a local taxpayer. Language expressly prohibits use of these processes for the purpose of an athletic or academic opportunity.

- Educators, courts and other mandated reporters that have a specific concern about a child being placed with a particular caregiver, may request a best interest Assessment to be done by the Public Children Services Agency.
- The POA and CAA are both valid for a period of one year. At that time, if they are continuing the relationship, the forms must be refiled, and the Juvenile Court will hold a best interest hearing to consider whether to renew the forms, discontinue the forms, hold a child dependency hearing, or even transfer legal custody to the kinship caregiver. This process will allow families to care for their children in times of temporary crisis without undue governmental intervention, while ensuring children are accounted for, and offer a path to permanency for the child.
- Educational, healthcare, and other service or funding responsibilities, as they apply within the power of attorney or kinship affidavit situations, have been framed within existing law, as much as possible. Thus, eligibility for public assistance such as cash assistance (child only Ohio Works First benefits), Medicaid, Food Stamps, child care and other supportive services are based upon existing eligibility qualifications and benefits for each program.
- Existing child support orders are also maintained - if a child is in a Power of Attorney situation (a consensual agreement), then there is probably a financial agreement between the parent and caregiver. If the caregiver has accessed a kinship affidavit, then by definition the parent is not only absent, but his or her whereabouts are unknown; thus it is not expected that child support would be paid or received.

Along with the Ohio Department of Aging, ODJFS, the Ohio Grandparent & Kinship Coalition and the Statewide Kinship Advisory Board to ODJFS, PCSAO has led in a communication campaign to publicize HB 130 to Grandparent caregivers. While the response has been favorable, the primary complaint has been from non-grandparent caregivers. I have personally spoken with many caregivers, child welfare professionals, and judges. **It is time to extend the good policy developed in HB 130, out to other caregivers, as proposed by HB 178.**

PCSAO strongly supports HB 178, and we would like to thank Representative Reidelbach for her leadership on child and kinship caregiver issues. As a child welfare system, we know from research that safe extended family and kin provide a more stable and permanent family for a given child, than unrelated foster parents can. We not only support family responsibility without child welfare involvement when possible, but we support family responsibility without judicial involvement when possible. When child safety is at risk, we stand ready to intervene, and to bring it to the attention of the judicial system. Thank you for the opportunity to explain and support this bill. I would be happy to respond to any questions.

HB 178, KINSHIP AFFIDAVIT & POWER OF ATTORNEY BILL Representative Linda Reidelbach, sponsor

PURPOSE - HB 178 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 178 establishes two legal mechanisms to assist caregivers to access educational and medical services for children in their residential care, as an alternative to intrusive children services intervention or expensive legal processes.

HB 130, limited to Grandparents as caregivers, became effective in July 2004. The only concern experienced has been that it is limited to Grandparents. *HB 178 merely expands the HB 130 law to allow for other caregivers to utilize this effective law.*

- **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 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 givers, 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)