



ENACTMENT NEWS

House Bill 130 POA/CAA Effective July 20, 2004

House Bill 130 creates two ways for grandparents to obtain “care, physical custody, and control” over grandchildren *without changing legal custody*: 1) Power of Attorney (POA) completed by parent(s), a custodian, or a guardian of a child; and 2) Child Caretaker Authorization Affidavit (CAA), created by the grandparent when the child’s parent(s), guardian, or custodian cannot be located. The documents must be properly signed and notarized [§3109.54 and §3109.67, respectively]. They are valid for one year unless terminated earlier as specified in the bill [3109.59 and 3109.70, respectively]. They may be renewed after one year, subject to court review (see below).

These documents may not be used if there are certain pending court proceedings. [§3109.58 and §3109.68, respectively]

Within five days of being properly signed and notarized, the executed documents are to be filed with the juvenile court of the county where the grandparent resides or any other court that has jurisdiction over the child. The filing also needs to include information specified in §3109.27. [§3109.74(C) (1)]

Courts *may* report to the Public Childrens Services Agency (PCSA) if the grandparent provides information that the grandparent has a criminal or child abusing history. [§3109.74 (C)(2)]. In addition, if the court has reason to believe that a POA or CAA is not in the best interest of the child, the court *may* report that information to the local Public Children’s Services Agency under §2151.421. [§2151.74 (C)(3)]

The PCSA has 30-45 days to report on the results of its investigation to the court. [§3109.74 (C)(3)]

The bill requires courts to waive filing fees for these documents and related documents. [§3109.74 (C)(4)]

The bill requires courts to verify the filing of a POA or CAA upon the request of schools or others who will be relying upon the POA or CAA. [§3109.75]

Second and Subsequent filings. Courts have additional responsibilities for second or subsequent POA or CAAs, as follows:

Second or subsequent POA or CAAs must also be filed with the juvenile court of the county where the grandparent resides or any other court that has jurisdiction over the child. [§3109.76].

Upon the filing of a second/subsequent POA/CAA, the court is required to schedule a hearing to determine whether the POA or CAA is in the child’s best interest. The court shall provide notice of the hearing to parties, including non-residential parents, as appropriate under the bill. [§3109.77 (A)]

The hearing must be held within ten days of the filing. At the hearing, parties, including the non-residential parent (see above), may present evidence and be represented by counsel. The bill is silent as to appointment of counsel. [§3109.77 (B)]

Upon the conclusion of the hearing, the court has the following three options :

- 1) Approve POA/CAA
- 2) Terminate POA/CAA
- 3) Treat filing as a petition for legal custody and award legal custody to the grandparent designated in the POA or CAA. [§3109.77 (C)]

The Court shall conduct *de novo* review of orders if all of the following apply:

- 1) The parent named in the document did not appear at the hearing,
- 2) The parent was not represented by counsel, and
- 3) The parent filed a motion with the court not later than fourteen days after receiving notice of the hearing. [§3109.77 (D)]

Child Support. The bill states that the POA/CAA shall have no impact on child support enforcement [§3109.79]

Only one POA/CAA may be in effect at one time. [§3109.80]

Attached are reprints of POA/CAA forms as printed in the Act. The forms include notices to those who create and who may rely on the documents.

Note:

Ohio Revised Code §2111.50 (A)(2)(c) states, “For good cause shown, the probate court may limit or deny, by order or rule, any power that is granted to a guardian by a section of the Revised Code, or relevant decisions of the courts of this state.”

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