



# Ohio Legislative Service Commission

## Bill Analysis

Amy L. Archer

### **S.B. 328**

131st General Assembly  
(As Introduced)

**Sens.** Coley, Eklund, Hite, Patton, Jones

---

## **BILL SUMMARY**

- Permits a parent, guardian, or custodian of a child to delegate authority to a person ("host family") for temporary care, custody, and control of the child through the creation and execution of a host family affidavit using a form created by the bill.
- Permits a host family under the host family affidavit to enroll a child in school and obtain information on and consent to all education and health care related matters.
- Establishes the responsibilities and limitations on the authority of a host family under the host family affidavit.
- Requires that the host family affidavit form be completed, signed by specified signatories, and notarized.
- Provides that a host family affidavit does not:
  - Affect the rights and responsibilities of the parent, guardian, or custodian;
  - Supersede any court order regarding the care and custody of the child;
  - Grant legal custody of the child to the host family; or
  - Grant authority to the host family to consent to the child's marriage or adoption.
- Prohibits the execution of a host family affidavit if the child is subject to certain pending probate, juvenile, or domestic relations court proceedings.

- Provides that a host family affidavit is valid for a period not to exceed 365 days or, for a parent, guardian, or custodian who is subject to an active military service order, a period not to exceed the term of the order plus 30 days.
- Permits another host family affidavit to be executed upon the expiration of the previous affidavit.
- Provides that only one host family affidavit may be in effect for a child at a time.
- Provides that a host family affidavit may be terminated at any time by any of the affidavit's signatories or upon the occurrence of one of the specified events described in the bill.
- Requires that the child subject of a host family affidavit be returned to the parent, guardian, or custodian within 72 hours of the affidavit's termination.
- Provides immunity from criminal or civil liability for injury, death, or loss to persons or property for persons and entities that take action or provide services in relation to, in reliance on, and under the authority of a host family affidavit.
- Relieves any person that has criminal or civil immunity from being subject to any disciplinary action from an entity that licenses or certifies the person.
- Specifies that nothing in the bill provides immunity from criminal or civil liability for behavior that is wanton, reckless, or inconsistent with ordinary standards of care.
- Specifies that nothing in the bill precludes any investigation of suspected child abuse or neglect by a public children services agency (PCSA) or law enforcement agency.
- Provides that a host family is not regulated under laws governing requirements for foster care and adoption, child placement, or child day-care facilities.
- Prohibits a host family from receiving compensation for care of a child, but permits a host family to receive reimbursement for actual expenses for providing temporary care for the child.
- Permits a qualified nonprofit organization to establish a program to provide support and services for individuals involved in a host family affidavit if the program meets certain requirements.
- Provides that a host family program created by a qualified nonprofit organization is not regulated under laws governing requirements for foster care and adoption, child placement, or child day-care facilities.

- Provides that a child who is subject to a host family affidavit is not to be defined as an abandoned, abused, dependent, or neglected child while the affidavit is in effect.
- Provides that a PCSA may conduct an investigation for suspected child abuse or neglect if the parent, guardian, or custodian fails to do either of the following:
  - Take physical custody of the child within 72 hours of the affidavit's termination;
  - Execute another host family affidavit after the previous affidavit expires.
- Prohibits a host family affidavit from being executed for the purpose of participating in a school's academic or interscholastic athletic program.
- Includes a host family in the definitions of "parent" for the purpose of enrolling a child in a school and "eligible applicant" for the purpose of the Jon Peterson special needs scholarship program.
- Requires the pupil to provide a copy of the host family affidavit to the person in charge of school admissions upon initial entry to school.
- Requires the host family or assisting qualified nonprofit organization to notify the school and provide a copy of the host family affidavit to the person in charge of school admissions upon the execution of an affidavit.
- Prohibits a court from considering a previous execution of a host family affidavit when allocating parental rights and responsibilities for the care of children.
- Provides that a host family affidavit does not affect the enforcement of any child support order, unless the issuing agency or court provides otherwise.
- Requires a PCSA, if any investigation of suspected child abuse or neglect does not result in filing a complaint, to notify the subject of the investigation of resources for families in crisis.

---

## TABLE OF CONTENTS

Host family affidavit.....	4
Temporary delegation of care, custody, and control.....	4
Execution of an affidavit.....	4
Host family affidavit form.....	4
Affidavit signatories.....	5
Limitations.....	5
Limitations on rights and responsibilities.....	5
Prohibitions on affidavit execution.....	6



Period of time affidavit is in effect.....	6
Termination of affidavit.....	7
Reasons for termination.....	7
Responsibilities for notification on termination.....	7
Return of child to parent, guardian, or custodian.....	8
Immunity.....	8
Foster care and day care regulations not applicable.....	9
Reimbursement of costs.....	9
Qualified nonprofit organization assistance creating affidavits.....	9
Child abuse and neglect.....	10
School admission and enrollment.....	11
Special education scholarships.....	11
Effect on allocating of parental rights and responsibilities.....	12
Effect on enforcement of a child support order.....	12
Respite care and other support.....	12

---

## CONTENT AND OPERATION

### Host family affidavit

#### Temporary delegation of care, custody, and control

Under the bill, parents, guardians, and custodians of a child may execute a host family affidavit (using a form created in the bill; see "**Execution of an affidavit**," below) to delegate to another person ("host family") the authority to exercise temporary care, physical custody, and control of the child. The host family affidavit provides the host family 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.<sup>1</sup>

#### Execution of an affidavit

A host family affidavit is executed when the host family affidavit form provided in the bill is completed, signed by the specified signatories, and notarized by an Ohio notary public.<sup>2</sup>

#### Host family affidavit form

The bill provides the form that is "legally sufficient" for use in executing a host family affidavit. The form allows the parent, guardian, or custodian to delegate general power and authority regarding the care and custody of a child or specific powers and

---

<sup>1</sup> R.C. 3109.841.

<sup>2</sup> R.C. 3109.846.



responsibilities for the limited time periods provided by the bill regarding how long the affidavit may remain in effect. The form further provides notices for host families, parents, guardians, custodians, school officials, and health care providers regarding their rights, responsibilities, and limits under the host family affidavit.<sup>3</sup>

### **Affidavit signatories**

A host family affidavit must be signed by the host family and the parent or parents, guardian, or custodian of the child who is subject to the affidavit.<sup>4</sup> The signatory or signatories for the appointed host family must be either a single adult or, if a married couple is appointed, both spouses. The signatory or signatories for the parent, guardian, or custodian must be the legal guardian or custodian, both parents, or only the custodial parent if one of the following applies:<sup>5</sup>

- The child's other parent is deceased;
- Reasonable attempts to locate the child's other parent have failed;
- Paternity has not been established with regard to the child and the child's father;
- The child is subject to a custody order, and the other parent is:
  - Prohibited from receiving a notice of relocation in accordance with a court order;
  - A parent whose parental rights have been terminated by order of a juvenile court.

### **Limitations**

#### **Limitations on rights and responsibilities**

The execution of a host family affidavit does not do any of the following:<sup>6</sup>

- Affect the rights and responsibilities of the parent, guardian, or custodian;
- Supersede any court order regarding the care and custody of the child;

---

<sup>3</sup> R.C. 3109.8415.

<sup>4</sup> R.C. 3109.847(A).

<sup>5</sup> R.C. 3109.847(B).

<sup>6</sup> R.C. 3109.848.



- Grant legal custody of the child to the host family;
- Grant authority to the host family to consent to marriage or adoption of the child.

### **Prohibitions on affidavit execution**

The bill prohibits the execution of a host family affidavit while any of the following proceedings are pending regarding the child:<sup>7</sup>

- A proceeding for the appointment of a guardian for, or adoption of, the child;
- A juvenile proceeding in which any of the following apply:
  - 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 and no hearing has yet been held regarding the child;
  - The child is the subject of a temporary custody order.
- A proceeding for divorce, dissolution, legal separation, annulment, or allocation of parental rights and responsibilities regarding the child.

A court with applicable jurisdiction of the child who is subject to any pending proceedings as described above may allow the execution of a host family affidavit if the court determines that it is in the best interests of the child.<sup>8</sup>

### **Period of time affidavit is in effect**

A host family affidavit is valid for a period not longer than 365 days, unless the parent, guardian, or custodian is subject to an order for active military service. If the parent, guardian, or custodian is subject to such an order, the host family affidavit is valid for a period not longer than the term of active duty service plus 30 days.<sup>9</sup> If necessary, another host family affidavit may be executed following the expiration of the

---

<sup>7</sup> R.C. 3109.849(A).

<sup>8</sup> R.C. 3109.849(B).

<sup>9</sup> R.C. 3109.845(A).

previous affidavit.<sup>10</sup> Only one host family affidavit may be in effect for a child at one time.<sup>11</sup>

## **Termination of affidavit**

### **Reasons for termination**

A host family affidavit will terminate upon the occurrence of one of the following, whichever comes first (see **COMMENT 1**):

- The parent, guardian, or custodian terminates the host family affidavit;
- The child ceases to reside with the host family;
- The death of the child who is the subject of the affidavit;
- The death of the host family who signed the affidavit.

A host family affidavit may be terminated at any time by any signatories of the affidavit.<sup>12</sup>

### **Responsibilities for notification on termination**

Upon the termination of a host family affidavit, the host family is responsible for notifying all of the following within one week after the date the affidavit terminates:

- The school district in which the child attends school;
- The child's health care providers;
- The assisting qualified nonprofit organization, if applicable;
- Any other person or entity that has an ongoing relationship with the child such that the person or entity would reasonably rely on the host family affidavit unless notified of the termination.<sup>13</sup>

---

<sup>10</sup> R.C. 3109.845(B).

<sup>11</sup> R.C. 3109.80.

<sup>12</sup> R.C. 3109.8412.

<sup>13</sup> R.C. 3109.8414.



## **Return of child to parent, guardian, or custodian**

The child who is the subject of a host family affidavit must be returned to the physical custody of the parent, guardian, or custodian within 72 hours of the affidavit's termination.<sup>14</sup>

### **Immunity**

Under the bill, all of the following, with respect to a host family affidavit, are immune from any criminal or civil liability for injury, death, or loss to persons or property that might otherwise be incurred or imposed solely as a result of the following actions:

- A licensed social worker who, in their clinical judgment, provides services or takes action in relation to the creation or implementation of a host family affidavit;
- Any staff or volunteer of a qualified nonprofit organization who, in good faith, provides services or takes any reasonable action in relation to the creation or implementation of a host family affidavit;
- A host family who, in good faith, makes a decision or takes action that a reasonable or prudent parent would make or take pursuant to the authority granted to the host family under a host family affidavit;
- Any of the following who, in good faith, relies on or takes action in reliance on a host family affidavit:
  - The school district in which the child attends school;
  - The child's health care providers;
  - The assisting qualified nonprofit organization, if applicable;
  - Any other person or entity that has an ongoing relationship with the child such that the person or entity would reasonably rely on the host family affidavit.

Any person described above is not subject to any disciplinary action from an entity that licenses or certifies that person.

---

<sup>14</sup> R.C. 3109.8413.



Any medical, psychological, or dental treatment provided to a child in reliance on a host family affidavit is to be 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.

Nothing in the bill provides immunity from civil or criminal liability to a 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. Furthermore, nothing in the bill precludes any investigation of suspected child abuse or neglect by a public children services agency (PCSA) or law enforcement agency.<sup>15</sup>

### **Foster care and day care regulations not applicable**

The host family is not subject to the foster care and adoption requirements under R.C. Chapter 3107., child placement requirements under R.C. Chapter 5103., or child day-care requirements under R.C. Chapter 5104.<sup>16</sup>

### **Reimbursement of costs**

The host family must exercise authorized care, custody, and control of the child on a continuous basis without compensation. However, the host family may receive reimbursement for actual expenses of providing temporary care for the child while the host family affidavit is in force.

### **Qualified nonprofit organization assistance creating affidavits**

The bill permits a qualified nonprofit organization to establish a program that provides resources and services to assist, support, and educate parents, guardians, custodians, host families, children, and any person involved in the creation and execution of a host family affidavit.<sup>17</sup> A program established for the purposes described above must do all of the following:<sup>18</sup>

- Conduct a criminal background check on the intended host family and all adults residing in the host family's household;

---

<sup>15</sup> R.C. 3109.8410.

<sup>16</sup> R.C. 3109.843.

<sup>17</sup> R.C. 3109.844(A).

<sup>18</sup> R.C. 3109.844(B).



- Access the Statewide Automated Child Welfare System in order to conduct a child neglect and abuse background check on the intended host family and all adults residing in the host family's household;
- Ensure that the host family is trained on the rights, responsibilities, and limitations conferred through the host family affidavit;
- Conduct regular supervision of a child who is subject of the host family affidavit while the affidavit is in force.

Any program described above that is established by the qualified nonprofit organization shall not be subject to the foster care and adoption requirements under R.C. Chapter 3107., child placement requirements under R.C. Chapter 5103., or child day-care requirements under R.C. Chapter 5104.<sup>19</sup>

Under the bill, a "qualified nonprofit organization" means a 501(c) tax-exempt private association, organization, corporation, or other entity that is able to meet the statutory requirements for host family affidavit assistance.<sup>20</sup>

### **Child abuse and neglect**

A child who is the subject of a host family affidavit is not to be defined as an abandoned, abused, dependent, or neglected child while the host family affidavit is in force.<sup>21</sup> The bill, by this provision, prohibits the application of the definitions that exist under Ohio juvenile court law for abused, neglected, and dependent children.<sup>22</sup> Under that law, an abandoned child is included in the definition of a neglected child.<sup>23</sup>

The bill, however, permits a PCSA to conduct an investigation for suspected child abuse or neglect if the parent, guardian, or custodian fails to do either of the following:<sup>24</sup>

- Take physical custody of the child after the host family affidavit has expired;

---

<sup>19</sup> R.C. 3109.844(C).

<sup>20</sup> R.C. 3109.84(H).

<sup>21</sup> R.C. 3109.8411(A).

<sup>22</sup> R.C. 3109.84(A), (D), and (G).

<sup>23</sup> R.C. 2151.011, not in the bill.

<sup>24</sup> R.C. 3109.8411(B).

- Execute another host family affidavit after a host family affidavit expires.

### **School admission and enrollment**

The bill prohibits the execution of a host family affidavit 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.<sup>25</sup> A violation of this provision is falsification, a first degree misdemeanor, and will result in the voiding of the host family affidavit as of the date of its creation or execution.<sup>26</sup>

The bill additionally includes a person that executed the host family affidavit in the definition of "parent" under laws regarding free schooling for the purposes of allowing the host family to enroll the child who is subject to a host family affidavit in a school district where the host family resides (see **COMMENT 2**).<sup>27</sup>

Upon initial entry to a public or nonpublic school, the pupil must present to the person in charge of admission a copy of the host family affidavit to which the child is subject, in addition to other documents required under the law.<sup>28</sup> Whenever a host family affidavit is executed, the host family who executed the affidavit or the qualified nonprofit organization that assisted in the execution of the affidavit<sup>29</sup> must notify the school of the affidavit by providing the person in charge of admission with a copy of the affidavit.<sup>30</sup>

### **Special education scholarships**

The bill additionally includes a host family who has the care, physical custody, and control of a qualified special education child under a host family affidavit in the definition of "eligible applicant" under the Jon Peterson special needs scholarship program.<sup>31</sup>

---

<sup>25</sup> R.C. 3109.78(A)(3).

<sup>26</sup> R.C. 3109.78(B) and (C).

<sup>27</sup> R.C. 3313.64(A)(1)(b) and 3313.649.

<sup>28</sup> R.C. 3313.672(A).

<sup>29</sup> This provision requiring the qualified nonprofit organization to provide notice was included in error and needs a corrective amendment.

<sup>30</sup> R.C. 3313.672(B)(2).

<sup>31</sup> R.C. 3310.51(C)(4).

## **Effect on allocating of parental rights and responsibilities**

In a proceeding for the allocation of parental rights and responsibilities regarding the child, the bill prohibits the court from considering a previous execution of a host family affidavit when determining the allocation.<sup>32</sup>

## **Effect on enforcement of a child support order**

The bill provides that the execution of a host family affidavit does not affect the enforcement of an administrative child support order or court child support order, unless a child support enforcement agency, with regard to an administrative order, or a court, with respect to either type of order, issues an order providing otherwise.<sup>33</sup>

## **Respite care and other support**

Under the bill, if an investigation of any report of child abuse or neglect does not result in the filing of a juvenile complaint, the PCSA that conducted the investigation must inform the person subject to the investigation of respite care and other available support services and benefits for families in crisis.<sup>34</sup>

---

## **COMMENT**

1. Although the bill provides time limits for how long a host family affidavit can remain in effect, the bill does not expressly provide that the expiration of the applicable time limit results in termination of the affidavit. In addition, the actual affidavit form created in the bill lists a few other reasons for termination that are not enumerated in R.C. 3109.8412 as reasons for termination. Those other reasons include: the host family voluntarily returns the child to the physical custody of the parent, guardian or custodian; the affidavit is terminated by court order; and the death of the parent, guardian, or custodian who executed the affidavit.<sup>35</sup>

2. For purposes of the law governing where a child may attend school, the bill's definition of parent may need to be clarified. It provides that a parent "means the person that executed the host family affidavit."<sup>36</sup> The bill also provides that the person who executed a host family affidavit may enroll the child in the school district in which

---

<sup>32</sup> R.C. 3109.04(F)(4).

<sup>33</sup> R.C. 3109.79.

<sup>34</sup> R.C. 5153.164.

<sup>35</sup> R.C. 3109.8412 and 3109.8415.

<sup>36</sup> R.C. 3313.64(A)(1)(b).

the person resides.<sup>37</sup> However, the person who executes the affidavit is the parent, guardian, or custodian of the child, and not the host family.<sup>38</sup> The host family is required to sign the affidavit.<sup>39</sup>

---

## HISTORY

ACTION	DATE
Introduced	05-10-16

S0328-I-131.docx/ks

---

<sup>37</sup> R.C. 3313.649(B).

<sup>38</sup> R.C. 3109.841.

<sup>39</sup> R.C. 3109.842 and 3109.847.

