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HB 359 - Power of Attorney

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DOMESTIC RELATIONS

Child Custody Proceedings: Amend Title 19 of the Official Code of Georgia Annotated, Relating to Domestic Relations, so as to Provide for the Creation, Authorization, Procedure, Revocation, Rescission, and Termination of a Power of Attorney from a Parent to an Agent for the Temporary Delegation of Certain Power and Authority for the Care and Custody of His or Her Child; Repeal the "Power of Attorney for the Care of a Minor Child Act"; Provide for Definitions; Provide for Procedure; Grandfather Certain Provisions Relating to a Power of Attorney Given to a Grandparent; Provide a Short Title; Provide for Legislative Findings; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 19-9-120, -129 (amended)
BILL NUMBER:	HB 359
ACT NUMBER:	N/A
VETO NUMBER:	4
GEORGIA LAWS:	N/A
SUMMARY:	The bill would have repealed and replaced Georgia's Power of Attorney for the Care of a Minor Child Act. The category of people who could be given power of attorney for the care of a minor child would have expanded from only grandparents and great-grandparents to a broad category of the child's relatives, and anyone associated with a non-profit organization focused on child or family services or a licensed child-placing agency.
EFFECTIVE DATE:	N/A

History

Occasionally, parents have a temporary inability to care for their children due to serious illness, substance abuse, incarceration,

military service, or other short term difficulty.[1] When parents are temporarily unable to care for their child, they grant another individual power of attorney, giving that individual the rights necessary to effectively care for their child.[2] Under Georgia's current Power of Attorney for the Care of a Minor Child Act, only grandparents and great-grandparents are authorized to receive power of attorney to care for a minor child when a parent is temporarily unable to do so.[3]

The 2015-2016 legislative session saw the first introduction of a bill to expand the class of people to whom parents can delegate power of attorney.[4] SB 3 would have allowed parents to give any person power of attorney to care for their child.[5] SB 3 passed in the Senate but failed in the House.[6] A second bill, incorporated into HB 887, again attempted to expand power of attorney eligibility, and was passed by both houses and signed by Governor Nathan Deal (R) on April 26, 2016.[7] However, Governor Deal later signed another bill addressing the same code section, supplanting HB 887.[8]

HB 359's purpose is to allow people who are close to a child to take care of that child when a parent is temporarily unable to do so.[9] The child can remain with someone they already know and are close to, thereby preventing the involvement of the Division of Family and Children's Services (DFCS).[10] The idea to introduce HB 359 and expand the class of people eligible to receive power of attorney arose from measures introduced in other states.[11]

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1. *When is Temporary Guardianship Granted for a Child?*, ADOPTION L. GROUP, http://adoptionlawgroup.com/temporary-guardianship-granted-child/ (last visited Aug. 4, 2017).

2. *See generally* O.C.G.A. § 19-9-122 (2017).

3. *Id.*

4. SB 3, as introduced, 2015 Ga. Gen. Assemb.

5. SB 3, as introduced, § 2, p. 2, ll. 43–44, 2015 Ga. Gen. Assemb.

6. State of Georgia Final Composite Status Sheet, SB 3, May 5, 2016.

7. 2016 Ga. Laws 134, §§ 2-1 to 2-2, at 136–44; 2016 State of Georgia Final Composite Sheet, HB 887, May 5, 2016; Video Recording of House Judiciary Committee Meeting at 15 min., 32 sec. (Feb. 28, 2017) (remarks by Rep. Regina Quick (R-117th)), https://livestream.com/accounts/19771794/events/6811961/videos/150646904 [hereinafter House Judiciary Committee Video].

8. 2016 Ga. Laws 304, § 15, at 311; House Judiciary Committee Video, *supra* note 7, at 13 min., 29 sec. (remarks by Rep. Barry Fleming (R-121st)).

9. House Judiciary Committee Video, *supra* note 7, at 13 min., 29 sec. (remarks by Rep. Barry Fleming (R-121st)).

10. *Id.*

11. *Id.*

An existing mechanism allows extended family to care for children in the event a parent is temporarily unable.[12] However, DFCS must approve family members seeking to use this mechanism.[13] Unless it is an emergency situation, the approval process requires a "comprehensive home assessment" and a criminal background check.[14] DFCS, when assessing the suitability of a child's placement with a family member, considers a laundry list of factors.[15] Notably, the relative must become a foster parent, and the court must be notified of the plan to place the child with a family member.[16]

One goal of HB 359 was to relieve pressure on DFCS by allowing extended family and others to temporarily care for children without involving DFCS.[17] Recent reports suggest that DFCS does not operate as effectively as it could.[18] DFCS has been criticized because of the number of "children dying under its watch."[19] In 2014, DFCS reported it was "behind on 4,000 child welfare investigations" due to

12. *Options for Relatives*, GA. DIVISION OF FAM. AND CHILD. SERVS., http://fostergeorgia.com/options-for-relatives/ (last visited Aug. 4, 2017) (outlining the process by which a child's relative's home may be approved for that child's temporary placement).

13. *Id.*

14. *Id.*

15. *Id.*

> To facilitate the approval of placement with a relative/kinship caregiver DFCS considers:
> The age, desires, and needs of the child;
> Any special needs the child may have and the relative's ability to meet those needs;
> The impact the abuse/neglect may have had on the child;
> The extent to which the relative was or should have been aware of the child's circumstances and what was done to intervene;
> The extent of the relationship between the child and relative;
> The level of cooperation between the relative(s) and parents towards the goal of reunification;
> The relative is notified of the requirements for becoming a foster parent;
> The relative has an understanding of the financial and non-financial supports available to assist in caring for the child;
> The court is notified of the plan to place the child with a relative.

Id.

16. *Id.*

17. Telephone Interview with Rep. Barry Fleming (R-121st) at 5 min. (Apr. 1, 2017) (on file with Georgia State University Law Review) [hereinafter Fleming Interview].

18. Craig Schneider, *Three Georgia Child Protection Workers Fired After 10-year-old's Death*, ATLANTA J.-CONST. (May 16, 2017, 3:22 PM), http://www.myajc.com/news/breaking-news/three-georgia-child-protection-workers-fired-after-year-old-death/mUS9hNipw0m7pWvXH2FpML/.

19. *Id.*

staffing shortages.[20] Representative Fleming suggests that reducing the number of children DFCS must care for would increase the agency's effectiveness.[21]

Another driving force behind HB 359 was the national movement towards "kinship care." Kinship care is defined as "the full-time care, nurturing, and protection of a child by relatives, members of their tribe or clan, godparents, stepparents, or other adults who have a family relationship to a child."[22] Those listed are often collectively referred to as "fictive kin."[23] Advocates of kinship care say that placing children with fictive kin when parents are unable to care for them is in the best interest of the child.[24] Benefits to placing children with fictive kin include "increased stability and safety as well as the ability to maintain family connections and cultural traditions."[25]

Bill Tracking of HB 359

Consideration and Passage by the House

Representative Barry Fleming (R-121st) sponsored HB 359 in the House.[26] The House read the bill for the first time on February 15, 2017, and committed it to the House Judiciary Committee.[27] The House read the bill for the second time on February 16, 2017.[28] On March 1, 2017, the House Judiciary Committee amended the bill in part and favorably reported the bill by substitute.[29]

The Committee substitute included most of the introduced bill's text, but a few subsections were added or changed.[30] The Committee

20. Elizabeth Rawlings, *State of Georgia enforcing changes to DFCS*, WTOC.COM (June 22, 2017, 3:08 PM), http://www.wtoc.com/story/35728212/state-of-georgia-enforcing-changes-to-dfcs.

21. Fleming Interview, *supra* note 17, at 4 min., 45 sec.

22. *About Kinship Care*, CHILD WELFARE INFO. GATEWAY, https://www.childwelfare.gov/topics/outofhome/kinship/about/ (last visited Aug. 4, 2017).

23. *Kinship Care*, CHILD WELFARE INFO. GATEWAY, https://www.childwelfare.gov/topics/outofhome/kinship/ (last visited Aug. 4, 2017).

24. *About Kinship Care*, *supra* note 22.

25. *Id.*

26. Georgia General Assembly, HB 359, Bill Tracking, http://www.legis.ga.gov/legislation/en-US/Display/20172018/HB/359.

27. State of Georgia Final Composite Status Sheet, HB 359, May 11, 2017.

28. *Id.*

29. *Id.*

30. *Compare* HB 359, as introduced, 2017 Ga. Gen. Assemb., *with* HB 359 (HCS), 2017 Ga. Gen.

added a new subsection in Section 2 of the bill that required licensed child-placing agencies to "maintain a record of all powers of attorney executed by individuals approved as their agents . . . for at least five years after the expiration of such powers of attorney."[31]

The Committee substitute also modified the language in Code section 19-9-129, specifically in subsections (b), (c), and (d).[32] The Committee removed language stating that an agent delegated caregiving authority is not subject "to the requirements of any other child care facility or foster care licensing provisions, and such delegation shall not constitute an out-of-home child placement" in subsection (b).[33] In its place, the Committee substitute stated more simply that "[c]aregiving authority delegated under this article shall not constitute an out-of-home child placement."[34] This change did not substantively alter the bill, but instead functioned to "clarify under what circumstances the child has been placed with [the caregiver] under the power of attorney."[35]

The Committee substitute also removed subsection (c), which stated, "[t]his article shall not be construed to exempt an individual from the requirements of Chapter 5 of Title 49 regarding the licensing and inspection of child welfare agencies if such individual fails to have evidence of a power of attorney executed under this article."[36] The Committee added language in its place that requires agents of child-placing agencies or nonprofit entities to comply with current Georgia law regarding the licensing and inspection of child welfare agencies.[37] Finally, the Committee substitute added a new

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Assemb.

31. HB 359 (HCS), § 2, p. 3, ll. 74–78, 2017 Ga. Gen. Assemb.

32. *Compare* HB 359, as introduced, 2017 Ga. Gen. Assemb., *with* HB 359 (HCS), 2017 Ga. Gen. Assemb.

33. HB 359, as introduced, § 2, p. 6, ll. 166–68, 2017 Ga. Gen. Assemb.

34. HB 359 (HCS), § 2, p. 5, ll. 157–58, 2017 Ga. Gen. Assemb.

35. House Judiciary Committee Video, *supra* note 7, at 1 hr., 7 min., 56 sec. (remarks by Rep. Wendell Willard (R-51st)).

36. HB 359, as introduced, § 2, p. 6, ll. 169–71, 2017 Ga. Gen. Assemb.

37. HB 359 (HCS), § 2, p. 6, ll. 159–63, 2017 Ga. Gen. Assemb.

> An individual who is approved as an agent by an organization licensed as a child-placing agency or a nonprofit entity in good standing with the Internal Revenue Service as provided for in subsection (a) of Code Section 19-9-122 shall not be exempt from the requirements of Chapter 5 of Title 49 regarding the licensing and inspection of child welfare agencies.

Id.

subsection (d) to Code section 19-9-129 that prohibits the delegation of caregiving authority over multiple children other than siblings or stepsiblings.[38] This change would prevent individuals from abusing the power of attorney by executing a single form for multiple unrelated children.[39]

The House read the bill for the third time on March 3, 2017.[40] Representative Fleming offered a floor amendment by inserting the language "that is focused on child or family services" after "entity" throughout the bill.[41] Further, the word "may" on line 69 was replaced with "shall," so that the language now reads, "[t]he parent executing a power of attorney *shall* require an agent to provide him or her with a criminal background check."[42] This change made the criminal background check mandatory, because HB 359's critics raised concerns that the bill's initial draft neither required criminal background checks nor mandated reporting of sex-offender status, therefore placing children at greater risk of being victimized by sex-offenders.[43] Representative Fleming's floor amendment was subsequently adopted without objection.[44] The House passed the Committee substitute of HB 359 as amended on March 3, 2017, by a vote of 124 to 39.[45]

Consideration and Passage by the Senate

Senator Renee Unterman (R-45th) sponsored HB 359 in the Senate.[46] The Senate first read HB 359 on March 6, 2017, and

38. HB 359 (HCS), § 2, p. 6, ll. 164–66, 2017 Ga. Gen. Assemb. ("The execution of a power of attorney under this article shall not delegate caregiving authority for more than one child unless such power of attorney delegates caregiving authority for children who are siblings or stepsiblings[.]").

39. House Judiciary Committee Video, *supra* note 7, at 1 hr., 9 min., 28 sec. (remarks by Rep. Wendell Willard (R-51st)).

40. State of Georgia Final Composite Status Sheet, HB 359, May 11, 2017.

41. HB 359 (HCSFA), § 2, pp. 2, 3, 6, 11, ll. 37, 63, 75, 160, 305, 2017 Ga. Gen. Assemb.

42. House Floor Amendment to HB 359 (AM 41 0258), introduced by Rep. Barry Fleming (R-121st), Mar. 3, 2017.

43. HB 359 (HCSFA), § 2, p. 3, ll. 69–70, 2017 Ga. Gen. Assemb.; Telephone Interview with Karl Lehman at 9 min., 30 sec. (May 8, 2017) (on file with Georgia State University Law Review) [hereinafter Lehman Interview].

44. Video Recording of House Proceeding at 2 hr., 22 min., 46 sec. (Mar. 3, 2017) (remarks by Speaker David Ralston (R-7th)), http://www.gpb.org/lawmakers/2017/crossover-day-28 [hereinafter House PM2 Day 28 Video].

45. Georgia House of Representatives Voting Record, HB 359, Vote #245 (Mar. 3, 2017).

46. Georgia General Assembly, HB 359, Bill Tracking, http://www.legis.ga.gov/legislation/en-

assigned the bill to the Senate Committee on Health and Human Services.[47] The Senate Committee made no changes to the bill and favorably reported HB 359 on March 10, 2017.[48]

The Senate read the bill for the second time on March 13, 2017, and for the third time on March 15, 2017.[49] Senator David Lucas (D-26th) offered a floor amendment, proposing to strike the language "or a nonprofit entity that is focused on child or family services and that is in good standing with the Internal Revenue Service" from lines 37–39, 63–65, and 306–308.[50] Additionally, the floor amendment proposed striking the language "or nonprofit entities that are focused on child or family services and that are in good standing with the Internal Revenue Service" from lines 75–77.[51] Finally, the floor amendment proposed striking lines 160–164, which were added by the House Judiciary Committee.[52] The purpose of the floor amendment was to delegate oversight authority to the Department of Human Services so that a state agency could monitor the individuals that would be granted power of attorney.[53] Senator Unterman objected to Senator Lucas' floor amendment, stating that "the government should not [interfere] in a parental role," and urged other senators to vote against the amendment.[54] Senator Lucas' floor amendment was not adopted after losing the vote 30 to 14.[55] The Senate passed HB 359 on March 15, 2017, by a vote of 40 to 11.[56]

The House sent the bill to Governor Deal on April 3, 2017.[57] The Governor vetoed the bill on May 9, 2017.[58] The Governor's veto

US/Display/20172018/HB/359.

47. State of Georgia Final Composite Status Sheet, HB 359, May 11, 2017.

48. *Id.*

49. *Id.*

50. Failed Senate Floor Amendment to HB 359, introduced by Sen. David Lucas (D-26th), Mar. 15, 2017.

51. *Id.*

52. *Id.*

53. Video Recording of Senate Proceedings at 1 hr., 32 min., 3 sec. (Mar. 15, 2017) (remarks by Sen. David Lucas (D-26th)), http://www.gpb.org/lawmakers/2017/day-34.

54. *Id.* at 1 hr., 33 min., 52 sec. (remarks by Sen. Renee Unterman (R-45th)).

55. *Id.* at 1 hr., 37 min., 16 sec. (remarks by LG Casey Cagle).

56. Georgia Senate Voting Record, HB 359, Vote #192 (Mar. 15, 2017).

57. State of Georgia Final Composite Status Sheet, HB 359, May 11, 2017.

58. *Id.*

message stated:

> House Bill 359, while well-intentioned, creates a parallel and unchecked system to our Department of Family and Children Services (DFCS), unintentionally placing children at risk. The Power of Attorney created by HB 359 allows parents and "agents" to go around the well-established confines of legal adoption and/or our child welfare system, granting a power of attorney for a child to an individual, or even a non-profit corporation, with no oversight.[59]

The Bill

The bill would have amended Article 4 of Chapter 9 of Title 19, relating to the power of attorney for the care of a minor child. Section 1 of the bill acknowledges that short-term difficulties can impair parents' ability to provide care and support for their children.[60] The bill would have aimed to enhance family preservation and stability by providing a statutory mechanism for a parent to grant temporary caregiving authority to certain individuals without involving DFCS or going through probate court.[61]

The bill would have allowed a parent or legal custodian of a child to use a power of attorney to delegate caregiving authority to the following individuals: (1) a relative of the child as defined in the bill or (2) anyone who is "approved as an agent" by a licensed child-placing agency or a non-profit organization that is focused on child or family services.[62] This power of attorney would be executed in writing using any form that substantially complies with the sample form provided in the bill.[63]

The bill would have prohibited a parent from executing a power of attorney in two circumstances. First, if DFCS had an open case

59. Press Release, Office of the Governor, Deal Issues 2017 Veto Statements (May 9, 2017), https://gov.georgia.gov/press-releases/2017-05-09/deal-issues-2017-veto-statements.

60. HB 359, as passed, § 1, p. 1, ll. 12–14.

61. *Id.* § 1, p. 1, ll. 15–19.

62. *Id.* § 2, p. 2, ll. 33–40. The bill would have limited the categories of relatives to whom caregiving authority could be granted, however, to any "grandparent, great-grandparent, stepparent, former stepparent, step-grandparent, aunt, uncle, great aunt, great uncle, cousin, or sibling." *Id.*

63. *Id.* § 2, p. 2, l. 40.

against the executing parent, the child, or any of the executing parent's other children, then the execution of a power of attorney would be prohibited.[64] Second, the power of attorney would have been prohibited if it was being used to subvert a DFCS investigation of the child's welfare.[65]

Finally, a child whose care was delegated under this bill would not have been in any way considered abandoned by his or her parents or placed in foster care.[66] Georgia law considers a child "abandoned" by his or her mother or father when such parent "does not furnish sufficient food, clothing, or shelter for the needs of the child."[67] A parent that abandons his or her child is guilty of a misdemeanor, and the penalty escalates to a felony if the parent abandons the child and then leaves the state.[68] This bill would have expanded the definition of abandoned by stating that a child is considered abandoned if the child's parents fail to take custody of the child or execute a new power of attorney upon the expiration or revocation of the power of attorney.[69]

Duration of the Power of Attorney

The duration of the power of attorney was not to exceed one year, unless the parents executed a new power of attorney for an additional year.[70] When a power of attorney granted caregiving authority to a grandparent, however, the duration of such delegation would have been unlimited.[71] An exception also existed for a parent who is a member of the armed forces of the United States, allowing delegations of longer than one year if the parent is on active duty service.[72] This exception limited the delegation term to a service member's deployment term plus thirty days.[73] A parent would have

64. *Id.* § 2, p. 4, ll. 103–08.
65. *Id.*
66. HB 359, as passed, § 2, p. 5, l. 148, 2017 Ga. Gen. Assemb.; *id.* § 2, p. 5, ll. 154–55.
67. O.C.G.A. § 19-10-1(a) (2017).
68. O.C.G.A. § 19-10-1(b).
69. HB 359, as passed, § 2, p. 5, ll. 150–52, 2017 Ga. Gen. Assemb.
70. *Id.* § 2, p. 5, ll. 150–52.
71. *Id.* § 2, p. 6, ll. 169–70.
72. *Id.* § 2, p. 6, ll. 171–79.
73. *Id.* § 2, p. 6, ll. 179–80.

been able to withdraw or revoke the power of attorney at any time.[74] The parent was required to provide notice of such revocation in writing, and the agent was required to return the child to the parent's custody "as soon as reasonably possible."[75]

Agent's Rights and Responsibilities

The child's agent was required to always act in the best interests of the child and generally had the same responsibilities that would otherwise be exercised by the child's parents pursuant to Georgia law,[76] including the power to make appropriate healthcare decisions on behalf of the child.[77] An agent had to acknowledge his or her acceptance of these responsibilities in writing, provide a criminal background check, and certify that he or she is not currently on any states' sexual offender or child abuse registry.[78]

Limits on the Delegation of Power

Section 2 of the bill would have limited the power and authority that may be granted to an agent exercising power of attorney.[79] An agent would not have had the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parents' rights to the child.[80] Further, the power of attorney would not have allowed the agent to modify or change any parental or legal rights, obligations, or authority established by an existing court order, nor could it have been used to interfere with any custody, visitation, or child support agreements.[81]

74. *Id.* § 2, p. 4, l. 120.
75. HB 359, as passed, § 2, p. 4, ll. 121–27, 2017 Ga. Gen. Assemb.
76. *Id.* § 2, p. 3, l. 71, 2017 Ga. Gen. Assemb.; *id.* § 2, p. 3, ll. 57–60.
77. *Id.* § 2, p. 3, ll. 72–74.
78. *Id.* § 2, p. 3, ll. 61–70.
79. *See generally*, HB 359, as passed, § 2, 2017 Ga. Gen. Assemb.
80. *Id.* § 2, p. 2, ll. 41–44.
81. *Id.* § 2, p. 2, ll. 46–49.

Notice Provisions

Section 2 of the bill also would have required a parent with sole custody of a child to provide the noncustodial parent thirty days' written notice of the parent's intention to execute a power of attorney.[82] Notice had to be provided using certified mail with either a return receipt requested or statutory overnight delivery.[83] Such notice would have constituted a change in material conditions or circumstances for the purpose of a child custody modification proceeding.[84] The non-custodial parent could have objected to the power of attorney by serving his or her objection on the parent intending to execute such power of attorney within twenty-one days of such notice's delivery.[85] Further, the bill would have required a parent with sole custody who executes a power of attorney to provide the court and other parent with the child's change in residence.[86] Finally, the bill contained language consistent with current requirements under Georgia law regarding court orders for custody, visitation, or child support agreements.[87]

Analysis

Evaluating the Strengths of HB 359

HB 359's sponsors introduced the bill to provide parents with more options for the temporary care of their children.[88] Some parents face temporary challenges that prevent them from caring for their children.[89] Currently, only grandparents and great-grandparents can receive power of attorney when parents are temporarily unable to care for their children.[90] This bill sought to expand the category of people that parents could turn to for help in these situations.[91]

82. *Id.* § 2, p. 3, ll. 81–83.
83. HB 359, as passed, § 2, p. 3, ll. 83–84, 2017 Ga. Gen. Assemb.
84. *Id.* § 2, p. 3, ll. 84–86.
85. *Id.* § 2, p. 3, ll. 87–90.
86. *Id.* § 2, p. 3, ll. 93–96.
87. *Id.*
88. Fleming Interview, *supra* note 17, at 5 min.
89. *Id.* at 4 min., 55 sec.
90. O.C.G.A. § 19-9-122 (2017).
91. Fleming Interview, *supra* note 17, at 5 min., 38 sec.

Expanding the category of people that can execute power of attorney to care for a child is sometimes in the best interest of the child.[92] The bill would have allowed extended family or individuals the children know to care for the children, rather than putting them through the foster care system.[93] This goal is part of a national trend toward kinship care,[94] which is based on the idea that children are better served when cared for by family or fictive kin rather than by the state.[95]

Further, HB 359 sought to relieve some of the current pressure on DFCS.[96] Some reports suggest that DFCS is "overrun" with children who have no one to care for them.[97] If extended family or non-profit organizations were permitted to temporarily care for children, the number of children involved with DFCS could be reduced.[98] Additionally, HB 359 sought to allow parents to benefit from temporary caregiving without the time and expense of a court proceeding.[99]

Lack of Background Investigation of Candidates for Power of Attorney

Critics of the bill recognized the "admirable goals" of HB 359 but expressed concern about the lack of mandatory background investigation into those seeking power of attorney.[100] The first draft of the bill did not require power of attorney candidates to undergo a criminal background check.[101] The final bill included a provision that the "parent executing a power of attorney shall require an agent to provide him or her with a criminal background check."[102] However, critics argued this language did not specify the type of criminal

92. *Id.* at 6 min., 25 sec.
93. Lehman Interview, *supra* note 43, at 3 min., 30 sec.
94. *Id.* at 3 min., 45 sec.
95. *Id.* at 4 min.
96. Fleming Interview, *supra* note 17, at 4 min., 45 sec.
97. *Id.*
98. *Id.* at 5 min., 4 sec.
99. HB 359, as passed, § 1, p. 1, l. 16, 2017 Ga. Gen. Assemb.
100. Lehman Interview, *supra* note 43, at 4 min.
101. *Id.* at 4 min., 30 sec.
102. HB 359, as passed, § 2, p. 3, ll. 69–70, 2017 Ga. Gen. Assemb.

background check required.[103] Not all criminal background checks investigate the same sources.[104] Some criminal background checks do not look at the child abuse registry or whether Child Protective Services has ever investigated the candidate.[105] Therefore, power of attorney candidates could potentially undergo a much less stringent background check than the background check required for foster parents.[106]

Under HB 359, those seeking power of attorney are required to disclose whether they are on the sex-offender registry.[107] Critics of the bill argued that such a determination should be mandated, and not left up to self-disclosure by the person seeking the power of attorney. [108] Oftentimes, child molesters are predators who intentionally seek situations where they have access to children.[109] There is a risk that sex-offenders will seek to gain greater access to children by abusing any expansion of power of attorney.[110]

Lack of Specificity of the Types of Non-Profit Organizations Seeking Power of Attorney

HB 359 expanded the category of people who could be given power of attorney not only to extended family, but also to child-placing agencies and non-profits focused on child and family protective services.[111] These organizations must be in good standing with the Internal Revenue Service (IRS) to qualify for power of attorney.[112] Child-placing agencies require a state license to operate, and the state maintains a high degree of supervision over their operations.[113] However, non-profits focusing on child and family protective services that are in good standing with the IRS are not

103. Lehman Interview, *supra* note 43, at 6 min.
104. *Id.* at 6 min., 20 sec.
105. *Id.*
106. *Id.* at 6 min., 15 sec.
107. HB 359, as passed, § 2, p. 3, ll. 65–79, 2017 Ga. Gen. Assemb.
108. Lehman Interview, *supra* note 43, at 7 min., 45 sec.
109. *Id.* at 8 min., 45 sec.; Georgia M. Winters & Elizabeth L. Jeglic, *Stages of Sexual Grooming: Recognizing Potentially Predatory Behaviors of Child Molesters*, 38 DEVIANT BEHAVIOR 724, 724 (2017).
110. Lehman Interview, *supra* note 43, at 10 min.
111. HB 359, as passed, § 2, p. 2, ll. 36–39, 2017 Ga. Gen. Assemb.
112. *Id.*
113. Lehman Interview, *supra* note 43, at 11 min., 30 sec; O.C.G.A. § 49-5-12(b) (2017).

subject to the same level of oversight.[114] The fact that a non-profit is in good standing with the IRS is not always a sufficient "positive reflection" on the organization because the IRS maintains fairly relaxed oversight of tax-exempt organizations.[115] Critics argue that even non-profits in good standing with the IRS may not necessarily look out for the best interests of the child.[116] Some critics even discussed the risk that extreme religious groups or cults seeking access to children would take advantage of the bill.[117] Finally, representatives of non-profit organizations may often be strangers to the children in their care, eliminating the goal of prioritizing kinship care.[118]

Bypassing the Judicial System

In seeking to enact HB 359, proponents argued that expanding the class of people eligible to receive power of attorney would save parents the time and expense of going to court.[119] However, critics argued that children benefit from judicial oversight that independently guards the best interests of the child.[120] Even proponents of the bill acknowledge parents do not always make the best decisions for their children and that, under HB 359, parents could choose the wrong person to care for their children.[121] Critics note that there are already mechanisms that allow extended family and others to care for children when parents are temporarily unable, requiring parents to go through DFCS and the court.[122] They stress that those mechanisms benefit from experienced professionals and independent judges evaluating whether the temporary care solution is

114. Lehman Interview, *supra* note 43, at 11 min., 30 sec.
115. *Id.* at 19 min.
116. *Id.* at 18 min.
117. *Id.* at 17 min., 30 sec.
118. GA, HOUSE DEMOCRATIC CAUCUS, MINORITY REPORT TO HB 359 (2017), https://www.gahousedems.com/minority-reports.
119. HB 359, as passed, § 1, p. 1, l. 16, 2017 Ga. Gen. Assemb.
120. Lehman Interview, *supra* note 43, at 16 min.
121. Fleming Interview, *supra* note 17, at 8 min.
122. Lehman Interview, *supra* note 43, at 12 min., 55 sec.

in the best interest of the child.[123] Governor Deal vetoed HB 359 in part because of his concern regarding this lack of oversight.[124]

For now, parents must continue going through DFCS and the court system if they want extended family to temporarily care for their children. DFCS and the courts can provide the level of oversight necessary for the protection of children. However, some children may be unable to benefit from kinship care because the process is too onerous, expensive, or time-consuming for parents. Thus, the idea behind HB 359—expanding the category of relatives that can execute power of attorney for a child's temporary care—will likely resurface in future legislative sessions.

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123. *Id.* at 16 min.
124. Press Release, *supra* note 59.