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BILL ANALYSIS

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Senate Bill 137 (as passed without amendment)  
Senate Bill 138 (substitute S-1 as passed by the Senate)  
Sponsor: Senator John N. Damoose (S.B. 137)  
          Senator Jeff Irwin (S.B. 138)  
Committee: Housing and Human Services

Date Completed: 4-19-23

### **INTRODUCTION**

The bills would amend the Guardianship Assistance Act to specify that guardianship orders from out-of-State or tribal courts would be eligible for the Guardianship Assistance Program (GAP). Senate Bill 137 would modify the eligibility requirements for a child whose permanency plan included placement with a guardian to include, among other things, steps a child planning agency or tribal child welfare agency would have to include in a case service plan. The bill would allow a judicially created relationship as provided for by another state's law or code, or tribal law or code when the child was a ward of Michigan to meet this requirement. Senate Bill 138 would prescribe the eligibility requirements for a child to receive guardianship assistance and specify a child could be placed in the same relative guardianship arrangement in accordance with another state's law or code or tribal law or code.

The bills are tie-barred.

### **BRIEF RATIONALE**

The Guardianship Assistance Program provides financial assistance to court-appointed guardians for children who may otherwise remain in foster care. Apparently, it has been determined that only guardianship orders granted under the juvenile code are eligible for the GAP, and that guardianship orders from out-of-State courts or tribal courts do not qualify, leaving a population of children unable to access this program. It has been suggested that this language should include tribal court decisions and out-of-State court decisions.

### **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State and local government. To the extent that there was an increase in guardian assistance payments that stemmed from these bills, there could be an increase in the cost of the GAP; however, it would not be immediate. The bills would include tribal cases in the GAP explicitly, which would ensure that tribal children were eligible for GAP payments. Current policy does not exclude tribal cases from the GAP; however, if there are tribal cases that are not currently receiving payments, there could be an increased cost if tribal caseload increased. The increase would be determined by the number of cases and the eligibility for Federal Title IV-E funding, which is paid 50% by the State, or if they are fully State-funded cases, 100%. The base daily rate for children under 13 is \$20.69 per day, while the over 13 rate is \$24.71, with a possible additional determination of care premium.

MCL 722.875 (S.B. 137)  
722.872-722.874 (S.B. 138)

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## **CONTENT**

**Senate Bill 137 would amend the Guardianship Assistance Act to do the following:**

- Delete a provision requiring a guardianship agreement to specify the amount of assistance to be provided under a guardianship agreement.**
- Require the Department of Health and Human Services (DHHS) to determine eligibility without regard to the income of the prospective guardian.**
- Modify requirements for a permanency placement plan.**
- Include tribal child welfare agency or child placing agency to a permanency placement plan.**
- Allow the provisions of legal guardianship to extend to another state's law or code or tribal law or code when the child is a ward of Michigan.**

**Senate Bill 138 (S-1) would amend the Guardianship Assistance Act to do the following:**

- Specify that a child would be eligible to receive guardianship assistance if the child had been removed from his or her home because of a judicial determination by a State court or tribal court in Michigan.**
- Modify eligibility requirements for a child to receive guardianship assistance.**
- Specify a child could be placed in the same relative guardianship arrangement in accordance with another state's law or code or tribal law or code.**
- Modify certain terms and definitions.**

### **Senate Bill 137**

#### **Guardianship Assistance Payment**

The Act allows the DHHS to pay guardianship assistance to an eligible guardian on behalf of an eligible child. To do so, the DHHS must enter into guardianship assistance agreement with the child's prospective guardian. A guardianship assistance agreement must specify, among other things, the amount of the guardianship assistance to be provided under the agreement for each eligible child, and the way the payment can be adjusted periodically in consultation with the guardian, based on the guardian's circumstances and the child's needs. The bill would delete this requirement.

Under the bill, the DHHS would have to determine eligibility for the guardianship assistance without regard to the prospective guardian's income. The payment would include the determination of care rate that was paid or would have been paid for the child in a foster care placement, except that the amount would have to be increased to reflect the increase made in standard age-appropriate foster care rate paid by the DHHS.

The Act requires the DHHS to make an eligibility determination within 30 days after receiving a *request* for guardianship. The bill would modify this provision and instead, the DHHS would have to make an eligibility determination within 30 days after receiving a *complete application* for guardianship.

#### **Permanency Placement**

Currently, for a child whose permanency plan includes a placement with a guardian and will include the receipt of a guardianship assistance payment, the DHHS must include in the case service plan for the child all of the following:

- The steps that the child placing agency or the DHHS has taken to determine the reunification and placing the child for adoption are not appropriate permanency options.**

- The reason for separation of siblings during placement.
- The reason a permanent placement through guardianship is in the child's best interest.
- The way in which the child meets the eligibility criteria for guardianship assistance payment.
- The efforts the child placing agency or DHHS has made to discuss adoption by the prospective guardian as a permanent alternative to legal guardianship and documentation of the reasons the prospective guardian has chosen not to pursue adoption,
- In cases where parental rights have not been terminated, the efforts the DHHS has made to discuss the child's birth parent or parents the guardianship arrangement, or the reasons why the efforts were not made.

Under the bill, instead, for a child whose permanency plan included placement with a guardian and would include receiving guardianship assistance payments, the DHHS, the child planning agency, or *tribal child welfare agency* would have to include in a case service plan for the child the following:

- The steps the DHHS, child planning agency, or the tribal child welfare agency had taken to determine that reunification and placing the child for adoption had been determined not to be in the child's best interest and ruled out as appropriate permanency options.
- The reason for a separation of sibling during placement.
- The reason a permanent placement through guardianship until the child reached 18 years of age was in the child's best interest.
- The reason why reunification and adoption had or had not been ruled out.
- The efforts the DHHS, child placing agency, or the tribal child welfare agency, had made to discuss adoption by the prospective guardian as a permanent alternative to legal guardianship and documentation for the reason the prospective guardian had chosen not to pursue adoption.
- In cases where the parental rights had not been terminated, the efforts the DHHS, the child placing agency, or the tribal welfare agency had made to discuss the arrangement, or the reasons why the efforts were not made.

The Act requires legal guardianship to be a judicially created relationship as provided for under Sections 19a and 19c of the juvenile code. In addition, the bill would allow a judicially created relationship as provided for by another state's law or code, or tribal law or code when the child was a ward of Michigan to meet this requirement. (Generally, Section 19a of the juvenile code specifies the process by which a court must conduct a permanency planning hearing for a child who remains in foster care and the parental rights to the child have not been terminated. Section 19c of the Code specifies the process for a court to conduct a review hearing when a child remains in a placement following the termination of parental rights.)

The Act prohibits the DHHS from providing guardianship assistance after certain events occur, including the adoption of the child by the guardian or another individual under the Michigan Adoption Code, the Probate Code, or adoption of another state or country. The bill would delete reference to country and instead refer to tribal court.

### **Senate Bill 138 (S-1)**

#### Guardianship Assistance Eligibility Requirement

The Act specifies that a child is eligible to receive guardianship assistance if the DHHS determines that certain conditions have been met, including that the child has been removed from his or her home as a result of a judicial determination that allowing the child to remain in the home would be contrary to the child's welfare. Instead, a child would be eligible to receive guardianship assistance if the DHHS determined that the child had been removed from his or her home as a result of a judicial determination *by a State court or tribal court*

*within the State* that allowing the child to remain in the home would be contrary to the child's welfare.

In addition, the bill would include the following in the list of eligibility requirements described above:

- Certification had been made before the child's 18<sup>th</sup> birthday.
- The guardianship assistance agreement had been signed by the prospective guardian and the DHHS before the guardianship had been finalized by the court before the child's 18<sup>th</sup> birthday.

The bill specifies that a determination by the DHHS on the eligibility of guardianship assistance could not affect a judicial finding that guardianship should be ordered for the child.

#### Title IV-E-Funded Guardianship Assistance

Under the Act, if a child is eligible for Title IV-E-funded guardianship assistance but has a sibling who is not eligible, Title IV-E-funded relative guardianship assistance payments may be paid on behalf of each sibling placed under these provisions.

In addition, the child and any of the child's siblings may be placed in the same relative guardianship arrangement in accordance with the juvenile code if the DHHS and the relative agree on the appropriateness of the arrangement for the sibling. Under the bill, the child and any of his or her siblings could be placed in the same relative guardianship arrangement in accordance with the juvenile code, another state's law or code, or tribal law or code, if the DHHS and the relative agreed on the appropriateness of the arrangement.

(Generally, Title IV-E is a Federally funded program that provides assistance to states for the cost of certain children who are removed from their homes because of child abuse or neglect. Eligibility is based on certain criteria when the child is removed from his or her home and placed under the care of the DHHS.)

#### Definitions

Under the Act, "guardian" means a person appointed by the court to act as a legal guardian for the child under Section 19a or 19c of the juvenile code. Under the bill, the term would mean a person appointed by the court to act as a legal guardian for the child under Section 19a or 19c of the juvenile code, another state's law of code, or applicable tribal law or code.

"Legal custodian" means an individual who is at least 18 years or age and in whose care a child remains or is placed after a court makes a finding under Section 13a of the juvenile code. Under the bill, the term would mean an individual who is at least 18 years of age and in whose care a child remains or is placed after a court makes a finding under Section 13a of the juvenile code, another state's law or code, or applicable tribal law or code.

"Prospective guardian" would mean an individual seeking guardianship of a child if an order appointing that guardianship has not been finalized by the court.

"Successor guardian" means a person appointed by the court to act as a legal guardian when the preceding guardian is no longer able to act, as a result of his or her death or incapacitation, under Section 19a and 19c of the juvenile code. Under the bill, the term would mean a person appointed by the court to act as a legal guardian when the preceding guardian is no longer able to act, as a result of his or her death or incapacitation, under Section 19a and 19c of the juvenile code, another state's law or code, or tribal law or code.

"Certification" would mean a determination of eligibility by the DHHS that a foster child is eligible for guardianship assistance or a medical subsidy or both.

"Child placing agency" would mean that terms as defined in Section 1 of the child care licensing Act: a governmental organization or agency organized under the Nonprofit Corporation Act, for the purpose of receiving children for placement in private family homes for foster care or for adoption.