



Senate Fiscal Agency
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Senate Bills 137 and 138 (as enacted)
Sponsor: Senator John N. Damoose
Senate Committee: Housing and Human Services
House Committee: Family, Children and Seniors

PUBLIC ACTS 68 & 69 OF 2023

Date Completed: 6-6-24

RATIONALE

The Guardianship Assistance Program (GAP) provides financial assistance to court-appointed guardians of children who may otherwise remain in foster care (see **BACKGROUND**). Apparently, it has been determined that only guardianship orders granted under the juvenile code are eligible for GAP, specifically through orders made by a State court. Reportedly, guardianship orders from out-of-state courts or Tribal courts are not granted under the juvenile code and therefore do not qualify, leaving a population of children and guardians of those children unable to access GAP. It was suggested that GAP eligibility be expanded to include Tribal court decisions and out-of-state court decisions.

CONTENT

Senate Bill 137 amended 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 amended the Guardianship Assistance Act to do the following:

- Specify that a child is eligible to receive guardianship assistance if the child has 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 that a child may 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.

The bills took effect July 12, 2023.

Senate Bill 137

Guardianship Assistance Payment

Previously, the Act allowed the DHHS to pay guardianship assistance to an eligible guardian

on behalf of an eligible child. To do so, the DHHS had to enter into guardianship assistance agreement with the child's prospective guardian. A guardianship assistance agreement had to 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 had to be adjusted periodically in consultation with the guardian, based on the guardian's circumstances and the child's needs. The bill deleted these requirements.

The bill specifies that, the DHHS must determine eligibility for the guardianship assistance without regard to the prospective guardian's income. The payment must 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 must be increased to reflect the increase made in standard age-appropriate foster care rate paid by the DHHS.

The Act required the DHHS to make an eligibility determination within 30 days after receiving a *request* for guardianship. Instead, under the bill, the DHHS must make an eligibility determination within 30 days after receiving a *complete application* for guardianship.

Permanency Placement

Previously, for a child whose permanency plan included a placement with a guardian and would have included the receipt of a guardianship assistance payment, the DHHS had to include in the case service plan for the child all the following:

- The steps that the child placing agency or the DHHS took to determine the reunification and placing the child for adoption were not appropriate permanency options.
- The reason for separation of siblings during placement.
- The reason a permanent placement through guardianship was in the child's best interest.
- The way in which the child met the eligibility criteria for guardianship assistance payment.
- The efforts the child placing agency or DHHS 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 had not been terminated, the efforts the DHHS made to discuss the child's birth parent or parents the guardianship arrangement, or the reasons why the efforts were not made.

Instead, under the bill, for a child whose permanency plan includes placement with a guardian and will include receiving guardianship assistance payments, the DHHS, the child planning agency, or *Tribal child welfare agency* must include in a case service plan for the child the following:

- The steps the DHHS, child planning agency, or the Tribal child welfare agency has taken to determine that reunification and placing the child for adoption has 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 reaches 18 years of age is in the child's best interest.
- The reason why reunification and adoption has or has not been ruled out.
- The efforts the DHHS, child placing agency, or the Tribal child welfare agency, have made to discuss adoption by the prospective guardian as a permanent alternative to legal guardianship and documentation for the reason the prospective guardian has chosen not to pursue adoption.
- In cases where the parental rights have not been terminated, the efforts the DHHS, the child placing agency, or the Tribal welfare agency have 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 allows a judicially created relationship as provided for by another state's law or code, or Tribal law or code when the child is 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 law of another state. The Act previously included an adoption under the adoption laws of another country in this prohibition. The bill deletes reference to the adoption laws of another country and instead refers to adoption laws of a Tribal government.

Senate Bill 138

Guardianship Assistance Eligibility Requirement

Previously, the Act specified that a child was eligible to receive guardianship assistance if the DHHS determined that certain conditions had been met, including that the child had 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, under the bill, a child is eligible to receive guardianship assistance if the DHHS determines that the child has been removed from the child's 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 to the provision above, the bill adds the following to the list of eligibility requirements described above:

- Certification has been made before the child's 18th birthday.
- The guardianship assistance agreement has been signed by the prospective guardian and the DHHS before the guardianship is finalized by the court before the child's 18th birthday.

The bill specifies that a determination by the DHHS on the eligibility of guardianship assistance may 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 may 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 agree 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

Previously, "guardian" meant 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 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, another state's law or code, or applicable Tribal law or code.

"Legal custodian" meant 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. Under the bill, the term means 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.

The bill defines "prospective guardian" as an individual seeking guardianship of a child if an order appointing that guardianship has not been finalized by the court.

Previously, "successor guardian" meant 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 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, another state's law or code, or Tribal law or code.

The bill defines "certification" as 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" means 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.

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

BACKGROUND

The Guardianship Assistance Program provides financial support to those providing permanent guardianship to children when adoption or family reunification are not viable options and who may otherwise remain in foster care. The DHHS Adoption and Guardian Assistance Office is responsible for approving assistance and the amount of assistance provided to guardians is tied to certain foster care rates. Juvenile guardians are appointed by a State court until the child reaches 18 years of age and generally are the child's extended family providing a secure placement.¹

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

¹ Michigan Courts, "Guardianship Assistance Program FAQ".

Supporting Argument

Tribal courts should have equitable treatment and access to GAP under State law. Previously, GAP eligibility was limited to decisions made by State courts and there was an oversight in the law that did not allow for financial support to guardians appointed by Tribal courts or out of state courts. Michigan has 12 Federally recognized Tribes, each operating a robust court system as a part of each Tribal government. According to testimony before the Senate Committee on Housing and Human Services, the guardianship orders of approximately 100 Tribal children were previously ineligible for GAP and that may change under the bill. Access to financial assistance should be available for all children.

Supporting Argument

Permanent placement of Tribal children outside of their homes is difficult to achieve without financial support. According to testimony before the Senate Committee on Housing and Human Services, many extended families cannot afford to step into a guardianship role despite being otherwise willing. Eligibility for GAP assistance is often the difference between a child being in the foster care system and a family being able provide a permanent placement to a child. Foster families receive assistance in caring for a child in foster care, and so similarly funds should be directed to the guardian family or community.

Supporting Argument

When guardians cannot provide a permanent placement, the child is often placed in a foster care situation with strangers outside of the child's community. According to testimony before the Senate Committee on Housing and Human Services, subsidized guardianships are a preferred method of permanent placement when reunification cannot be achieved, and it is important to keep children with families and within their communities whenever possible. These guardianships allow a court to finalize a permanent relationship that provides a child stability while not necessarily formally terminating parental rights. They also can help the community support the child while allowing a child to retain a relationship with the child's biological parents. Extending eligibility to Tribal children will keep children in environments that are respectful to, and knowledgeable about, their community values.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bills will have an indeterminate fiscal impact on State and local government. To the extent that there is an increase in guardian assistance payments that stemmed from these bills, there may be an increase in the cost of GAP; however, it will not be immediate. The bills include Tribal cases in GAP explicitly, which would ensure that Tribal children are eligible for GAP payments. Current policy does not exclude Tribal cases from GAP; however, if there are Tribal cases that are not currently receiving payments, there may be an increased cost if Tribal caseload increases. The increase will 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, while the over 13 rate is \$24.71, with a possible additional determination of care premium.

Fiscal Analyst: Humphrey Akujobi

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.