

# Legislative Analysis



## GUARDIANSHIP ASSISTANCE ELIGIBILITY

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<http://www.house.mi.gov/hfa>

**Senate Bill 137 as passed by the Senate**  
**Sponsor: Sen. John Damoose**

Analysis available at  
<http://www.legislature.mi.gov>

**Senate Bill 138 (S-1) as passed by the Senate**  
**Sponsor: Sen Jeff Irwin**

**House Committee: Families, Children and Seniors**  
**Senate Committee: Housing and Human Services**  
**Complete to: 5-8-23**

### SUMMARY:

Senate Bills 137 and 138 would amend the Guardianship Assistance Act to provide for guardianship assistance program (GAP) eligibility for guardianship arrangements made by tribal and out-of-state courts. The guardianship assistance program provides financial support to guardians in support of eligible children, with the goal of ensuring a stable, permanent home for children who may otherwise remain in foster care until they are 18.<sup>1</sup> The bills would revise certain eligibility requirements and other provisions related to guardianship assistance and also would modify or add certain terms and definitions.

#### **Senate Bill 138**

Currently under the act, the terms *guardian*, *legal custodian*, and *successor guardian* are specifically defined to mean individuals acting in those respective capacities due to an action or finding of a court under Chapter XIIA of the Probate Code. (Chapter XIIA is known as the juvenile code.) The bill would amend these definitions to also include actions or findings of a court under another state's law or code or under tribal law or code.

A child is now eligible for guardianship assistance under the act if the Department of Health and Human Services (DHHS) determines that all of the following apply:<sup>2</sup>

- The child has been removed from their home as a result of a judicial determination that allowing them to remain there would be contrary to their welfare. [The bill would amend this requirement to instead refer to a judicial determination *by a state or tribal court in Michigan*.]
- The child has resided in the prospective guardian's home for at least six consecutive months.
- Reunification and placing the child for adoption are not appropriate permanency options.
- The child demonstrates a strong attachment to the prospective guardian.
- The guardian has a strong commitment to caring permanently for the child until the child reaches 18 years of age.
- The child (if 14 or older) has been consulted regarding the guardianship arrangement.

<sup>1</sup> See <https://dhhs.michigan.gov/OLMWEB/EX/GD/Public/GDM/700.pdf>

<sup>2</sup> In addition, for a guardian to be eligible to receive guardianship assistance on behalf of an eligible child, the guardian must be the child's relative or legal custodian; the guardian must be a licensed foster parent and approved for guardianship assistance by DHHS; and the child must have resided in the prospective guardian's home for at least six months before the application for assistance is received by DHHS.

Under the bill, the following additional criteria would also apply:

- **Certification** would have to be made before the child reaches 18 years of age.
- The guardianship assistance agreement would have to be signed by the **prospective guardian** and DHHS before the guardianship is finalized by the court and before the child reaches 18 years of age.

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

**Prospective guardian** would mean an individual seeking guardianship of a child if an order appointing that guardianship has not been finalized by the court.<sup>3</sup>

The bill also would provide that a determination by DHHS on the eligibility of guardianship assistance does not affect a judicial finding that a guardianship should be ordered for the child.

#### Title IV-E guardianship assistance

Currently, if a child is eligible for federal Title IV-E guardianship assistance<sup>4</sup> but has a sibling who is not eligible, the child and any of the child's siblings may be placed in the same relative guardianship arrangement *under the juvenile code* if DHHS and the relative agree on the appropriateness of the arrangement for the sibling. In addition, Title IV-E funded guardianship assistance payments may be paid on behalf of each sibling placed in the same arrangement under this provision.

The bill would amend the above to allow the child and siblings to be placed in the same relative guardianship arrangement *under the juvenile code, another state's law or code, or tribal law or code* if DHHS and the relative agree on its appropriateness for the sibling.

MCL 722.872, 722.873, and 722.874

#### Senate Bill 137

The act requires a legal guardianship under the act to be a relationship between the child and guardian that is intended to be permanent and self-sustaining, as evidenced by the transfer of specified parental rights, and that is judicially created under the juvenile code. The bill would amend last clause to also allow guardianships that are judicially created under another state's law or code or, when the child is a ward of the state of Michigan, under tribal law or code.

In addition, the act currently *allows* DHHS to enter into a guardianship assistance agreement with the child's prospective guardian. The bill would *require* DHHS to do so. In addition, an agreement now must specify the amount of the guardianship assistance to be provided for each eligible child and the way the payment can be adjusted periodically, in consultation with the guardian, based on the child's needs and the guardian's circumstances. The bill would remove this requirement.

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<sup>3</sup> This term is already used in the act, but its definition would be newly added by the bill. The bill also would newly define **child placing agency**, also already used in the act, to mean that term as defined in 1973 PA 116, known as the child care licensing act. (See <http://legislature.mi.gov/doc.aspx?mcl-722-111>.)

<sup>4</sup> <https://www.acf.hhs.gov/cb/grant-funding/title-iv-e-guardianship-assistance>

The act now requires DHHS to make an eligibility determination within 30 days after receiving a *request* for guardianship assistance. The bill would instead require the department make a determination within 30 days after receiving a *complete application* for assistance. The bill also would require DHHS to determine eligibility for guardianship assistance without regard to the income of the prospective guardian.

Currently and under the bill, a guardianship assistance payment cannot exceed the foster care maintenance payment that would have been paid if the child had remained in a foster family home. The bill would additionally provide that a guardianship assistance payment includes the determination of care rate that was or would have been paid for the child in a foster care placement, but increased to reflect the increase made in the standard age-appropriate foster care rate paid by DHHS.

#### Case service plans

The act now requires *DHHS* to include certain information in the case service plan for a child whose permanency plan includes placement with a guardian and will include guardianship assistance payments. The required information includes the steps *DHHS or the child placing agency* has taken to determine that reunification and placing the child for adoption are not appropriate options for the child; the efforts *DHHS or the child placing agency* has made to discuss adoption by the prospective guardian as an alternative to guardianship; and the efforts *DHHS* had made to discuss the guardianship assistance arrangement with the child's birth parents (if parental rights have not been terminated).

The bill would amend the above provisions to apply or refer to DHHS, the child placing agency, or the tribal child welfare agency in places (italicized) that now apply or refer only to DHHS or the child placing agency.

In addition, a description of how the child meets the eligibility criteria for a guardianship assistance payment is now required to be included in the child's case service plan. The bill would delete this requirement and would instead require the plan to include a description of why reunification and adoption have (or have not) been ruled out.

#### Adoption

Finally, the act now provides that DHHS cannot make guardianship assistance payments after the child is adopted by the guardian or someone else under the Michigan Adoption Code or the adoption laws of any other state or country.

The bill would remove all adoptions under the laws of other countries from this provision. However, it would add adoptions under the laws of tribal government.

MCL 722.875 et seq.

The bills are tie-barred to one another, which means that neither bill can take effect unless both bills are enacted.

### **FISCAL IMPACT:**

Senate Bills 137 and 138 would increase costs for DHHS and local units of government by an indeterminate amount. The fiscal impact of the bills would be dependent on an increased

number of tribal members who become juvenile guardians as well as an increase in the number of children placed under guardianship. Licensed foster parents, unlicensed relative caregivers, adoptive parents, and juvenile guardians receive a daily maintenance rate based on the age of the child placed in their care. Currently, caregivers of children aged 0-12 are paid a maintenance rate of \$20.69 per day. Caregivers of children aged 13-17 receive a maintenance payment of \$24.71 per day. Caregivers may also receive additional funds through determination of care (DOC) payments for children who require additional care. Funding for daily maintenance payments comes from a combination of state, federal title IV-E, federal TANF, and local funds. If a child is not eligible to receive federal Title IV-E funded maintenance payments, they may still be eligible to receive state funded maintenance payments, which would further increase state expenditures.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.