

# SENATE BILL NO. 138

March 02, 2023, Introduced by Senators IRWIN, CAVANAGH, DAMOOSE, MCMORROW, CHANG, SANTANA, BAYER, WOJNO, POLEHANKI, KLINEFELT, GEISS, SHINK and CHERRY and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 2008 PA 260, entitled "Guardianship assistance act," by amending sections 2, 3, and 4 (MCL 722.872, 722.873, and 722.874), section 2 as amended by 2022 PA 210, section 3 as amended by 2015 PA 227, and section 4 as amended by 2019 PA 95.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1           Sec. 2. As used in this act:
- 2           (a) "Certification" means a determination of eligibility by
- 3 the department that a foster child is eligible for guardianship

1 **assistance or a medical subsidy, or both.**

2 (b) ~~(a)~~—"Child" means ~~a person~~ **an individual** less than 18  
3 years of age.

4 (c) **"Child placing agency" means that term as defined in**  
5 **section 1 of 1973 PA 116, MCL 722.111.**

6 (d) ~~(b)~~—"Department" means the department of health and human  
7 services.

8 (e) ~~(e)~~—"Eligible child" means a child who meets the  
9 eligibility criteria under section 3 for receiving guardianship  
10 assistance.

11 (f) ~~(d)~~—"Guardian" means a person appointed by the court to  
12 act as a legal guardian for a child under section 19a or 19c of  
13 chapter XIIIA of the probate code, MCL 712A.19a and 712A.19c, **or**  
14 **applicable tribal law or code.**

15 (g) ~~(e)~~—"Guardianship assistance agreement" means a negotiated  
16 binding agreement regarding financial support as described in  
17 section 5 for children who meet the qualifications for guardianship  
18 assistance as specified in this act or in the department's  
19 administrative rules.

20 (h) ~~(f)~~—"Legal custodian" means an individual who is at least  
21 18 years of age in whose care a child remains or is placed after a  
22 court makes a finding under section 13a of chapter XIIIA of the  
23 probate code, MCL 712A.13a.

24 (i) ~~(g)~~—"Probate code" means the probate code of 1939, 1939 PA  
25 288, MCL 710.21 to 712B.41.

26 (j) **"Prospective guardian" means an individual seeking**  
27 **guardianship of a child if an order appointing that guardianship**  
28 **has not been finalized by the court.**

29 (k) ~~(h)~~—"Relative" means that term as defined in section 13a

1 of chapter XIIIA of the probate code, MCL 712A.13a.

2 (l) ~~(i)~~—"Successor guardian" means a person appointed by the  
 3 court to act as a legal guardian when the preceding guardian is no  
 4 longer able to act, as a result of his or her death or  
 5 incapacitation, under section 19a or 19c of chapter XIIIA of the  
 6 probate code, MCL 712A.19a and 712A.19c, **another state's law or**  
 7 **code, or tribal law or code.** Successor guardian does not include a  
 8 ~~person~~**an individual** appointed as a guardian if that ~~person's~~  
 9 **individual's** parental rights to the child have been terminated or  
 10 suspended.

11 (m) ~~(j)~~—"Title IV-E" refers to the federal assistance provided  
 12 through the United States Department of Health and Human Services  
 13 to reimburse states for foster care, adoption assistance payments,  
 14 and guardianship assistance payments.

15 Sec. 3. (1) A child is eligible to receive guardianship  
 16 assistance if the department determines that all of the following  
 17 ~~apply~~**have been met:**

18 (a) The child has been removed from his or her home as a  
 19 result of a judicial determination **by a state court or tribal court**  
 20 **within this state** that allowing the child to remain in the home  
 21 would be contrary to the child's welfare.

22 (b) The child has resided in the home of the prospective  
 23 guardian for, at a minimum, 6 consecutive months.

24 (c) Reunification and placing the child for adoption are not  
 25 appropriate permanency options.

26 (d) The child demonstrates a strong attachment to the  
 27 prospective guardian and the guardian has a strong commitment to  
 28 caring permanently for the child until the child reaches 18 years  
 29 of age.

1 (e) If the child has reached 14 years of age, he or she has  
2 been consulted regarding the guardianship arrangement.

3 (f) **Certification has been made before the child's eighteenth**  
4 **birthday.**

5 (g) **The guardianship assistance agreement has been signed by**  
6 **the prospective guardian and the department before the guardianship**  
7 **is finalized by the court and before the child's eighteenth**  
8 **birthday.**

9 (2) **A determination by the department on the eligibility of**  
10 **guardianship assistance does not affect a judicial finding that a**  
11 **guardianship should be ordered for the child.**

12 Sec. 4. (1) Subject to subsection (2), a guardian who meets  
13 all of the following criteria may receive guardianship assistance  
14 on behalf of an eligible child:

15 (a) The guardian is the eligible child's relative or legal  
16 custodian.

17 (b) The guardian is a licensed foster parent and approved for  
18 guardianship assistance by the department. The approval process  
19 ~~shall~~**must** include criminal record checks and child abuse and child  
20 neglect central registry checks on the guardian, all successor  
21 guardians, and all adults living in the guardian's or successor  
22 guardian's home as well as submission of the guardian's or  
23 successor guardian's fingerprints to the department of state police  
24 and the Federal Bureau of Investigation for a criminal history  
25 check.

26 (c) The eligible child has resided with the prospective  
27 guardian in the prospective guardian's residence for a minimum of 6  
28 months before the application for guardianship assistance is  
29 received by the department.

1           (2) Only a relative who is a licensed foster parent caring for  
2 a child who is eligible to receive title IV-E-funded foster care  
3 payments for 6 consecutive months **after licensure of the family** is  
4 eligible for federal funding under title IV-E for guardianship  
5 assistance. A child who is not eligible for title IV-E funding who  
6 is placed with a licensed foster parent, related or unrelated, and  
7 who meets the requirements of section 3(a) to (e) may be eligible  
8 for state-funded guardianship assistance.

9           (3) If a child is eligible for title IV-E-funded guardianship  
10 assistance under section 3 but has a sibling who is not eligible  
11 under section 3, both of the following apply:

12           (a) The child and any of the child's siblings may be placed in  
13 the same relative guardianship arrangement in accordance with  
14 chapter XIIIA of the probate code, MCL 712A.1 to 712A.32, **another**  
15 **state's law or code, or tribal law or code**, if the department and  
16 the relative agree on the appropriateness of the arrangement for  
17 the sibling.

18           (b) Title IV-E-funded relative guardianship assistance  
19 payments may be paid on behalf of each sibling placed in accordance  
20 with this subsection.

21           (4) A successor guardian may receive guardianship assistance  
22 payments if the eligibility criteria set forth in section 3 are  
23 met.

24           Enacting section 1. This amendatory act does not take effect  
25 unless Senate Bill No. 137 of the 102nd Legislature is enacted into  
26 law.