# Ohio Legislative Service Commission

*Maggie Wolniewicz and other LSC staff*

# Fiscal Note & Local Impact Statement

**Bill**: Sub. H.B. 213 of the 130th G.A. **Date**: December 3, 2013

**Status**: As Reported by House Judiciary **Sponsor**: Reps. Pelanda and Celebrezze

**Local Impact Statement Procedure Required**: Yes

**Contents**: Child custody

## State Fiscal Highlights

- **Ohio Department of Job and Family Services**. The bill increases the length of time the Ohio Department of Job and Family Services (ODJFS) may provide additional Kinship Permanency Incentive Program (KPIP) payments after the required initial payment from 36 months to 48 months. ODJFS estimates this change would cost approximately $885,600 per year, if implemented.

## Local Fiscal Highlights

- **Counties**. The bill explicitly permits a court of common pleas to appoint a guardian ad litem in certain cases concerning an alleged dependent child, which may increase the costs that the court incurs in paying for those services. In jurisdictions that do not already do so and that utilize paid attorneys as guardians ad litem, in particular those with a relatively large number of dependency cases, that cost increase could easily total tens of thousands of dollars or more annually.

# Detailed Fiscal Analysis

## Guardian ad litem for dependent child

Under current law, a court of common pleas must appoint a guardian ad litem to protect the interest of a child in certain proceedings concerning an alleged abused or neglected child and in some cases concerning an alleged dependent child. The bill amends that law to explicitly "permit" the court to appoint a guardian ad litem in any other proceeding concerning an alleged dependent child. As a result, it is possible that the utilization of guardians ad litem by the court of common pleas may increase to some degree in certain counties, as will the related costs. The magnitude of those increases will depend upon: (1) the degree to which the court, under current law and practice, is already appointing a guardian ad litem in dependency cases, (2) the extent to which the court opts to use this permissive authority, and (3) the degree to which the court is using unpaid volunteers versus paid attorneys. It is possible that the resulting annual cost increase for certain courts could easily be in the tens of thousands of dollars or more.

### Dependency case statistics

In many instances, Ohio court statistics aggregate abuse, neglect, and dependency cases into a single composite category, which makes it difficult to determine the number of those cases that involve dependency. That said, we have identified to date six counties that do disaggregate these statistics in a manner that is readily available. The following table provides a breakdown of abuse, neglect, and dependency cases for those six counties for 2012.

| Abuse, Neglect, & Dependency Cases for Certain Counties, 2012 | | | | |
|---|---|---|---|---|
| **County** | **Abuse** | **Neglect** | **Dependency** | **Total** |
| Cuyahoga* | 368 | 1,369 | 946 | 2,683 |
| Delaware | 18 | 9 | 24 | 51 |
| Lake | 65 | 49 | 233 | 347 |
| Portage | 86 | 109 | 136 | 331 |
| Ross | 45 | 7 | 140 | 192 |
| Shelby | 16 | 47 | 7 | 70 |
| **Total** | **598** | **1,590** | **1,486** | **3,674** |

*Most recent data available was from 2011.

As seen in the table, for those counties as a group, dependency cases totaled 1,486, or 40.4%, of the 3,674 abuse, neglect, and dependency cases. According to the Supreme Court of Ohio's Composite Report for the Entire State, there were 13,103 abuse, neglect, and dependency cases filed in 2012. Using this percentage and extrapolating to the state as a whole, one can estimate that as many as 5,294 dependency cases statewide may have resulted in the appointment of a guardian ad litem in 2012

(13,103 x 40.4%). As current law requires the appointment of a guardian ad litem in certain dependency cases, that number would have been lower, but by how much is uncertain.

### Guardian ad litem

A guardian ad litem may be either a trained volunteer known as a court appointed special advocate (CASA), or a paid attorney. The costs a court incurs to appoint a guardian ad litem will likely be minimized to some degree if CASA services are available. In the event that CASA services are not available or the demand exceeds CASA service capacity, and paid attorneys have to be utilized, additional costs will be incurred. Of note is that, of the 13,103 new cases alleging abuse, neglect, or dependency that were reported to the Supreme Court of Ohio in 2012, CASAs were appointed in 7,238, or 55.2%.

The following table lists the 38 counties that currently have CASA programs.

| Counties with CASA Programs | | | | |
|---|---|---|---|---|
| Allen | Erie | Huron | Pickaway | Stark |
| Athens | Franklin | Logan | Preble | Summit |
| Butler | Geauga | Lorain | Putnam | Warren |
| Clark | Greene | Lucas | Richland | Wayne |
| Clermont | Guernsey | Mahoning | Ross | Wood |
| Columbiana | Hamilton | Miami | Sandusky | Wyandot |
| Darke | Hancock | Montgomery | Seneca | |
| Delaware | Henry | Ottawa | Shelby | |

According to the Office of the Public Defender, assigned counsel was utilized in 14,135 abuse, neglect, and dependency cases in FY 2013, accruing total costs of approximately $11.9 million.[1] This averages out to approximately $839 per case.[2] This suggest that, if the annual increase in the number of dependency cases utilizing the appointment of a guardian ad litem were as few as 12, and the court uses paid attorneys, then the additional cost could reach $10,000 per year (12 x $839). If the increase was more on the order of 120 cases, then the additional cost could reach $100,000 per year (120 x $839).

### State reimbursement

Under current law, Ohio counties are required to provide and pay for legal counsel for persons who cannot afford to hire their own attorney when a right to counsel exists. The Office of the Ohio Public Defender reimburses counties up to 50% of the costs incurred to provide such representation. For both attorneys appointed to

[1] FY 2013 statistics reflect caseload and expenses incurred from March 2012 through February 2013.

[2] This figure provides an average for all cases utilizing assigned counsel and does not differentiate between cases in which assigned counsel was acting as an attorney or acting as a guardian ad litem.

represent individuals in juvenile court, including those appointed as a guardian ad litem, the maximum fee permitted is $1,000. If the amount appropriated for reimbursement is insufficient to pay the full 50%, whatever funds are available are prorated and distributed to the counties. In FY 2012, the state reimbursement rate was 35%. To the extent that counties incur additional costs to provide guardian ad litem services as a result of the bill, the Office of the Ohio Public Defender may find that it needs to adjust the state reimbursement rate as the total amount appropriated for that purpose is fixed.

### Motion requesting permanent custody

Under current law, in certain situations, a court may terminate parental rights and grant permanent custody of a child to a county public children services agency (PCSA) or private child placing agency that files a motion for permanent custody if the court determines, by clear and convincing evidence that it is in the best interest of the child. The bill essentially broadens current law by creating an additional situation in which parental rights may be terminated and custody granted to such an agency. As a result, there may be an increase in the number of permanent custody motions filed by a PCSA or private child placing agency with the court of common pleas. The increase in such motions is expected to be relatively small, which means that the potential cost of the additional time and effort that a PCSA and court of common pleas expend on such matters will be minimal at most annually.

### Planned permanent living arrangements

Under current law, a court may order a child who has been adjudicated an abused, neglected, or dependent child to be placed in a planned permanent living arrangement with a PCSA or private child placing agency if it is in the best interest of the child and certain conditions exist. The bill modifies one of these conditions by restricting the use of planned permanent living arrangements to children who are 16 years of age and older. This restriction is unlikely to generate any discernible costs for a PCSA or the court of common pleas.

The bill further requires the court of common pleas to consider several additional factors prior to making a determination to place a child in a planned permanent living arrangement. There are unlikely to be any discernible costs for the court of common pleas to comply with this requirement.

The bill also requires the Ohio Department of Job and Family Services (ODJFS) to develop a model notice to be provided by a PCSA or a private child placing agency that has custody of a child to a caregiver in certain planned permanent arrangements. A PCSA or private child placing agency may modify the notice to apply to the needs of the agency. There would be a minimal increase in administrative costs to ODJFS to develop the model notice. There would be a minimal increase in administrative costs to PCSAs to provide the notice and to modify the model notice if a PCSA elects to modify the notice.

### Kinship Permanency Incentive Program

The bill increases the length of time ODJFS may provide additional Kinship Permanency Incentive Program (KPIP) payments after the required initial payment from 36 months to 48 months. The KPIP provides time-limited incentive payments to kinship caregivers who meet eligibility criteria. Under current law, kinship permanency incentive payments are paid every six months. H.B. 59 of the 130th General Assembly appropriates $5.25 million for the KPIP in FY 2014 and FY 2015, including a $1.75 million earmark of federal Temporary Assistance for Needy Families funds in both fiscal years. ODJFS currently pays $525 for the initial payment and $300 for subsequent payments. According to ODJFS, approximately 1,476 children would be eligible for a seventh and eighth redetermination annually. ODJFS estimates this change would cost approximately $885,600 per year, if implemented.

### Extracurricular activities

The bill requires ODJFS to adopt rules that establish policies and procedures for determining whether a child who resides in a foster home may participate in extracurricular, enrichment, and social activities. The bill also requires ODJFS to adopt rules that establish similar policies and procedures for a person or facility providing out-of-home care for an alleged or adjudicated abused, neglected, or dependent child. There would be a minimal cost to ODJFS to adopt rules.

### Qualified immunity of foster caregiver

The bill grants a PCSA, private child placing agency, or private noncustodial agency serving as a foster child's supervising agency or custodian immunity from civil liability for any injury to person or property resulting from a foster caregiver's or an agency's decisions allowing a foster child to participate in an extracurricular, enrichment, or social activity. Under the bill, immunity is contingent on the foster caregiver using a reasonable and prudent standard. This reasonable and prudent standard is established by ODJFS in the rules described in the section above and must maintain the child's health, safety, and best interests and encourage the child's emotional and developmental growth.

Current law already grants a foster caregiver qualified immunity from liability in a civil action to recover damages. The bill's immunity provision may further limit a PCSA's liability than is the case under current law, which could in turn save a PCSA expenses that might otherwise have been incurred to litigate and settle certain matters.

### Public children services agency training

The bill requires that training for a foster caregiver provided by a PCSA, child placing agency, or private noncustodial agency acting as a recommending agency for a foster caregiver include training for the caregiver that relates to providing independent living services to a child placed in certain settings. There could be an increase in costs to PCSAs to provide the new training, if they are not already providing similar training.

## Duty to report child abuse

Current law requires certain persons acting in a official or professional capacity and know, or have reasonable cause to suspect based on facts, that a child under 18 or a mentally retarded, developmentally disabled, or physically impaired child under 21 has suffered or faces a threat of suffering any form of abuse or neglect to report the abuse to a PCSA or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or occurred. The bill expands this list of persons to include court-appointed special advocates and guardians ad litem. There could be an increase in costs to PCSAs and local law enforcement agencies to take additional reports and to investigate any new allegations if new reports are taken.

HB0213HR.docx/jc