



# OHIO LEGISLATIVE SERVICE COMMISSION

Robert Meeker

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 595 of the 132nd G.A.

**Status:** As Passed by the Senate

**Sponsor:** Rep. Cupp

**Local Impact Statement Procedure Required:** No

**Subject:** Probate law related to trusts, wills, medical records, and guardianship services

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### State & Local Fiscal Highlights

- The bill's trust, will validation, involuntary manslaughter exclusion, and medical records provisions will generate minimal additional annual expenses for the probate divisions of the courts of common pleas that likely can be handled with existing staff and appropriated resources. The payment of an application fee to the probate division for release of medical records will likely generate some revenue.
- The bill permits the creation of probate court guardianship funds, guardianship services boards (including the hiring of employees), and the charging of fees for specified services. The cost to operate a board, as well as the amount of money that may be generated and disbursed from such funds annually, is uncertain.
- The bill's notice of person's death and disposition of property provisions are unlikely to create additional expenses for county coroners.
- The bill's requirements to waive certain advance deposits and securities on the filing of civil actions and the requirements to determine indigency may increase costs and decrease revenues for local civil court systems, the magnitude of which is unknown.
- The bill has no direct fiscal effect on the state.

### Detailed Fiscal Analysis

#### Trusts and wills

The bill makes various changes to the probate law concerning the validity of wills and trusts and the processes within the probate courts concerning wills and trusts. The bill may increase the number of probate court hearings by allowing a person to validate a trust prior to death in the same way that a will may be validated under current law. The bill's trust and will validation provisions will generate minimal additional annual expenses for the probate divisions of the courts of common pleas that likely can be handled with existing staff and appropriated resources.

## **Involuntary manslaughter**

The bill excludes a person who is convicted of, pleads guilty to, or is found not guilty by reason of insanity of involuntary manslaughter (with exceptions) from benefiting from the death of the person who is deceased as a result of the offense. This provision may create additional work for the courts to determine whether a person is ineligible to benefit and to adjudicate any resulting complaints to restore a person's right to benefit. This work likely can be handled with existing staff and appropriated resources. Under continuing law, exclusions exist for aggravated murder, murder, and voluntary manslaughter.

## **Medical records**

The bill allows any person who is named as executor in a will or who is eligible to be appointed as a personal representative of an estate to file an application in a probate court seeking the release of the decedent's medical records and medical billing records. The court may order the release of such records, and may charge a filing fee. The court is required to send a copy of the application and judgement entry to the decedent's spouse, children, next of kin, legatees, and devisees, if any. This work likely can be handled with existing staff and appropriated resources.

## **Guardianship services**

### **Probate court guardianship services fund**

The bill allows probate courts to accept funds (or other program assistance) from or charge fees for services to certain entities.<sup>1</sup> Those moneys are to be credited to the county probate court guardianship services fund, which the bill creates. Counties are also permitted to accept funds and charge fees jointly and to establish a multi-county probate court guardianship services fund. The amount of money that may be generated and disbursed from such funds annually is uncertain.

These moneys are required to be used to help ensure the treatment of any person who is subject to a guardianship including involuntary commitment proceedings, and the establishment and management of adult guardianships and all associated expenses. Permitted uses include the acquisition of equipment, hiring and training of staff, community services programs, volunteer guardianship training services, employment of magistrates, related services for the efficient operation of the county or multi-county guardianship services board, and establishment of a county or multi-county guardianship services board.

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<sup>1</sup> Entities include individuals, corporations, agencies, or organizations, including a county board of alcohol, drug addiction, and mental health services or a county board of developmental disabilities. A county board of alcohol, drug addiction, and mental health services or a county board of developmental disabilities is not required to pay a fee unless they agree to payment of those fees.

### **Guardianship services boards**

Under the bill, the judge of a probate court is permitted to establish a county or multi-county guardianship services board and, when a board is established, the probate court is required to appoint one member. The board of directors for the county board of developmental disabilities and the county board of alcohol, drug addiction, and mental health services are each required to appoint one member. The purpose of the board is to serve as guardians for wards appointed by the probate court. The guardianship services board may hire employees, including a director, to be paid from the probate court guardianship services fund and may charge a reasonable fee to wards overseen by the board.

### **Juvenile court jurisdiction**

The bill (1) prohibits a juvenile court from exercising jurisdiction on child custody and child support orders under certain conditions defined by the bill, (2) permits a juvenile court to transfer such cases to the appropriate division of the court of common pleas, and (3) requires a juvenile court to notify the child support agency and the appropriate domestic relations division of the court of common pleas of certain custody orders issued by the juvenile court as a result of an adjudication of a child as delinquent, unruly, abused, neglected, or dependent if the child is subject to a support order. These provisions may shift cases and related workload between divisions of the courts of common pleas, and increase the workload of the juvenile division due to the notification requirement.

### **Civil filing fees and indigency**

The bill requires municipal, county, and common pleas courts to waive advance deposits and securities in the filing of civil actions when a person qualifies as an indigent litigant and establishes a process through which the courts determine indigency. The bill defines indigency as income which does not exceed 187.5% of the federal poverty guidelines<sup>2</sup> and monthly income more than or equal to liquid assets. If an indigent litigant is the prevailing party, the clerk of the court is required by the bill to recover any outstanding costs prior to the disbursement of funds to the indigent litigant, although the judge or magistrate may waive this. As courts are permitted to waive certain costs under current law, and the number of litigants who may be found indigent and from whom costs are not recovered under the bill is unknown, the fiscal effect on the courts is indeterminate. It can be assumed that the process to determine indigency may increase the workload and expenses of the courts and the requirement to waive certain fees may decrease revenues. The net effect of the respective increase and decrease is unknown.

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<sup>2</sup> As determined by the U.S. Department of Health and Human Services for the state of Ohio.

## **County coroners**

Under current law, a coroner is required to notify any relatives of a deceased person of the death, while under the bill a coroner is required to make a reasonable effort. The bill also requires coroners (1) to make a reasonable effort to determine the identity of the person who has been assigned rights of disposition for the deceased person, (2) to notify that person of the death, (3) to return the body to that person, and (4) to release all money, clothing, and other valuable personal effects of the deceased to that person. County coroners generally should be able to absorb the bill's notice of person's death and disposition of property provisions into their daily operations with no discernible ongoing fiscal effects.