



Ohio Judicial Conference

The Voice of Ohio Judges

House Civil Justice Committee

Judge Laura Gallagher

Proponent Testimony on House Bill 488

December 1, 2021

Chair Hillyer, Vice Chair Grendell, Ranking Member Galonski and members of the House Civil Justice Committee, I thank you for this opportunity to submit proponent testimony for House Bill 488 on behalf of the Ohio Judicial Conference.

I am Laura Gallagher, Cuyahoga County Probate Judge. I am currently in my third term, serving since 2009. I am President of the Ohio Probate Judges Association and Co-Chair of the Probate Law and Procedure Committee of the Ohio Judicial Conference. I also serve on the Subcommittee on Adult Guardianship under the Supreme Court's Advisory Committee on Children & Families and as Chair of the Monitoring Guardianships of the Estate Workgroup under the Supreme Court's Children & Families Section.

The Ohio Judicial Conference and Ohio Association of Probate Judges support H.B. 488 for the opportunity to codify long-overdue updates to guardianship law and address the appointment of counsel for courts.

Guardianship Modernization

The Ohio Association of Probate Judges formed a Modernization Committee to review, update and propose amendments to statutes under probate court jurisdiction. The Committee, made up of judges and magistrates with extensive experience in probate matters, met numerous times since 2019 to review each section of Ohio Revised Code Chapter 2111 and submit recommendations to the legislature. We thank Representative Galonski and Representative Grendell for introducing this bill to initiate the process of modernizing the guardianship statutes.

The bill's proposed changes conform the statute to the practicalities of administering guardianships. The new language includes necessary definitions for less-restrictive guardianship orders, such as a "limited guardian." These changes reflect 2016 amendments to Superintendence Rule 66, which have not yet been addressed in the Revised Code. The bill also includes new language to expand the duties of the guardian to identify family and non-family members with whom the ward desires contact. These changes stem from recent efforts to protect against alienating the ward from family and friends, as introduced in H.B. 500 of the 133rd General Assembly by Representative Kick and Representative McClain. H.B. 500 started a conversation among probate judges and elder abuse advocates that prompted amended language in this bill and proposed amendments to Sup. R. 66 that are pending approval by the Supreme Court of Ohio.

The bill will clarify the rights of an adult ward to review hearings and sets forth the duty of the guardian to provide statements of expert evaluation to determine the need for establishing and maintaining the

guardianship. Proposed changes expand the list of professionals allowed to sign a statement of expert evaluation.

The bill would update the Revised Code to better reflect the duties of a guardian of a minor ward and clarify the ability of the natural parents to nominate a guardian. The bill would change the age at which a minor may select their guardian from age 14 to age 12 to be consistent with the adoption statutes which require minor consent at age 12.

The proposed changes include expanded language describing the requirements of restricted bank account deposits to address continuing issues of confusion and compliance with the banks. Changes also address the sale of the ward's property, use of the ward's funds for improving real property and the allowance of appointing a guardian ad litem when the court determines that there may be a conflict of interest between the guardian and the ward.

Appointment of Counsel for Courts

H.B. 488 would modify R.C. 305.14 to allow common pleas judges the ability to employ legal counsel of their choosing in any matter of public business coming before the court or in the prosecution or defense of any action or proceeding in which the judge or other court official is a party or has an interest in their official capacity. Proposed R.C. 309.09 would allow the judge to set the amount of compensation for legal services by order and allows the judge discretion to have the compensation to be paid from the county general fund or from another court fund. The hourly compensation for legal services cannot exceed the highest hourly compensation paid by the board of county commissioners for an attorney to represent the board or other county officials. These provisions would balance the separation of powers between the branches of government to allow a court to attain fair representation by an attorney of their choosing.

We thank you for the opportunity to testify in support of H.B. 488. We would be happy to work with this Committee on any improvements to the bill, if needed. I am available to answer any questions you may have.