

As Introduced

**128th General Assembly
Regular Session
2009-2010**

H. B. No. 438

Representatives Letson, Stautberg

**Cosponsors: Representatives Murray, Blessing, Grossman, Zehringer,
Huffman, Derickson, Bubp, Stebelton, Hackett, Harwood, Wagner, Harris,
Mecklenborg, Brown, Domenick, Pillich, Boyd, Batchelder**

—

A B I L L

To amend sections 2101.11 and 2151.13 of the Revised 1
Code to eliminate personal liability for probate 2
and juvenile judges for the default, malfeasance, 3
or nonfeasance of any appointee or employee. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2101.11 and 2151.13 of the Revised 5
Code be amended to read as follows: 6

Sec. 2101.11. (A)(1) The probate judge shall have the care 7
and custody of the files, papers, books, and records belonging to 8
the probate court. The probate judge is authorized to perform the 9
duties of clerk of the judge's court. The probate judge may 10
appoint deputy clerks, stenographers, a bailiff, and any other 11
necessary employees, each of whom shall take an oath of office 12
before entering upon the duties of the employee's appointment and, 13
when so qualified, may perform the duties appertaining to the 14
office of clerk of the court. 15

(2)(a) The probate judge shall provide for one or more 16
probate court investigators to perform the duties that are 17

established for a probate court investigator by the Revised Code 18
or the probate judge. The probate judge may provide for an 19
investigator in any of the following manners, as the court 20
determines is appropriate: 21

(i) By appointing a person as a full-time or part-time 22
employee of the probate court to serve as investigator, or by 23
designating a current full-time or part-time employee of the 24
probate court to serve as investigator; 25

(ii) By contracting with a person to serve and be compensated 26
as investigator only when needed by the probate court, as 27
determined by the court, and by designating that person as a 28
probate court investigator during the times when the person is 29
performing the duties of an investigator for the court; 30

(iii) By entering into an agreement with another department 31
or agency of the county, including, but not limited to, the 32
sheriff's department or the county department of job and family 33
services, pursuant to which an employee of the other department or 34
agency will serve and perform the duties of investigator for the 35
court, upon request of the probate judge, and designating that 36
employee as a probate court investigator during the times when the 37
person is performing the duties of an investigator for the court. 38

(b) Each person appointed or otherwise designated as a 39
probate court investigator shall take an oath of office before 40
entering upon the duties of the person's appointment. When so 41
qualified, an investigator may perform the duties that are 42
established for a probate court investigator by the Revised Code 43
or the probate judge. 44

(c) Except as otherwise provided in this division, a probate 45
court investigator shall hold at least a bachelor's degree in 46
social work, psychology, education, special education, or a 47
related human services field. A probate judge may waive the 48

education requirement of this division for a person the judge 49
appoints or otherwise designates as a probate court investigator 50
if the judge determines that the person has experience in family 51
services work that is equivalent to the required education. 52

(d) Within one year after appointment or designation, a 53
probate court investigator shall attend an orientation course of 54
at least six hours, and each calendar year after the calendar year 55
of appointment or designation, a probate court investigator shall 56
satisfactorily complete at least six hours of continuing 57
education. 58

(e) For purposes of divisions (A)(4), (B), and (C) of this 59
section, a person designated as a probate court investigator under 60
division (A)(2)(a)(ii) or (iii) of this section shall be 61
considered an appointee of the probate court at any time that the 62
person is performing the duties established under the Revised Code 63
or by the probate judge for a probate court investigator. 64

(3)(a) The probate judge may provide for one or more persons 65
to perform the duties of an assessor under sections 3107.031, 66
3107.032, 3107.082, 3107.09, 3107.101, and 3107.12 of the Revised 67
Code or may enter into agreements with public children services 68
agencies, private child placing agencies, or private noncustodial 69
agencies under which the agency provides for one or more persons 70
to perform the duties of an assessor. A probate judge who provides 71
for an assessor shall do so in either of the following manners, as 72
the judge considers appropriate: 73

(i) By appointing a person as a full-time or part-time 74
employee of the probate court to serve as assessor, or by 75
designating a current full-time or part-time employee of the 76
probate court to serve as assessor; 77

(ii) By contracting with a person to serve and be compensated 78
as assessor only when needed by the probate court, as determined 79

by the court, and by designating that person as an assessor during 80
the times when the person is performing the duties of an assessor 81
for the court. 82

(b) Each person appointed or designated as a probate court 83
assessor shall take an oath of office before entering on the 84
duties of the person's appointment. 85

(c) A probate court assessor must meet the qualifications for 86
an assessor established by section 3107.014 of the Revised Code. 87

(d) A probate court assessor shall perform additional duties, 88
including duties of an investigator under division (A)(2) of this 89
section, when the probate judge assigns additional duties to the 90
assessor. 91

(e) For purposes of divisions (A)(4), (B), and (C) of this 92
section, a person designated as a probate court assessor shall be 93
considered an appointee of the probate court at any time that the 94
person is performing assessor duties. 95

(4) Each appointee of the probate judge may administer oaths 96
in all cases when necessary, in the discharge of official duties. 97

(B)(1)(a) Subject to the appropriation made by the board of 98
county commissioners pursuant to this division, each appointee of 99
a probate judge under division (A) of this section shall receive 100
such compensation and expenses as the judge determines and shall 101
serve during the pleasure of the judge. The compensation of each 102
appointee shall be paid in semimonthly installments by the county 103
treasurer from the county treasury, upon the warrants of the 104
county auditor, certified to by the judge. 105

(b) Except as otherwise provided in the Revised Code, the 106
total compensation paid to all appointees of the probate judge in 107
any calendar year shall not exceed the total fees earned by the 108
probate court during the preceding calendar year, unless the board 109
of county commissioners approves otherwise. 110

(2) The probate judge annually shall submit a written request 111
for an appropriation to the board of county commissioners that 112
shall set forth estimated administrative expenses of the court, 113
including the salaries of appointees as determined by the judge 114
and any other costs, fees, and expenses, including, but not 115
limited to, those enumerated in section 5123.96 of the Revised 116
Code, that the judge considers reasonably necessary for the 117
operation of the court. The board shall conduct a public hearing 118
with respect to the written request submitted by the judge and 119
shall appropriate such sum of money each year as it determines, 120
after conducting the public hearing and considering the written 121
request of the judge, is reasonably necessary to meet all the 122
administrative expenses of the court, including the salaries of 123
appointees as determined by the judge and any other costs, fees, 124
and expenses, including, but not limited to, the costs, fees, and 125
expenses enumerated in section 5123.96 of the Revised Code. 126

If the judge considers the appropriation made by the board 127
pursuant to this division insufficient to meet all the 128
administrative expenses of the court, the judge shall commence an 129
action under Chapter 2731. of the Revised Code in the court of 130
appeals for the judicial district for a determination of the duty 131
of the board of county commissioners to appropriate the amount of 132
money in dispute. The court of appeals shall give priority to the 133
action filed by the probate judge over all cases pending on its 134
docket. The burden shall be on the probate judge to prove that the 135
appropriation requested is reasonably necessary to meet all 136
administrative expenses of the court. If, prior to the filing of 137
an action under Chapter 2731. of the Revised Code or during the 138
pendency of the action, the judge exercises the judge's contempt 139
power in order to obtain the sum of money in dispute, the judge 140
shall not order the imprisonment of any member of the board of 141
county commissioners notwithstanding sections 2705.02 to 2705.06 142
of the Revised Code. 143

(C) The probate judge may require any of the judge's 144
appointees to give bond in the sum of not less than one thousand 145
dollars, conditioned for the honest and faithful performance of 146
the appointee's duties. The sureties on the bonds shall be 147
approved in the manner provided in section 2101.03 of the Revised 148
Code. 149

The judge ~~is~~ shall not be personally liable for the default, 150
malfeasance, or nonfeasance of any ~~such~~ appointee, ~~but, if a bond~~ 151
~~is required of the appointee, the liability of the judge is~~ 152
~~limited to the amount by which the loss resulting from the~~ 153
~~default, malfeasance, or nonfeasance exceeds the amount of the~~ 154
~~bond.~~ 155

All bonds required to be given in the probate court, on being 156
accepted and approved by the probate judge, shall be filed in the 157
judge's office. 158

Sec. 2151.13. The juvenile judge may appoint such bailiffs, 159
probation officers, and other employees as are necessary and may 160
designate their titles and fix their duties, compensation, and 161
expense allowances. The juvenile court may by entry on its journal 162
authorize any deputy clerk to administer oaths when necessary in 163
the discharge of ~~his~~ the deputy clerk's duties. Such employees 164
shall serve during the pleasure of the judge. 165

The compensation and expenses of all employees and the salary 166
and expenses of the judge shall be paid in semimonthly 167
installments by the county treasurer from the money appropriated 168
for the operation of the court, upon the warrant of the county 169
auditor, certified to by the judge. 170

The judge may require any employee to give bond in the sum of 171
not less than one thousand dollars, conditioned for the honest and 172
faithful performance of ~~his~~ the employee's duties. The sureties on 173
such bonds shall be approved in the manner provided by section 174

2151.12 of the Revised Code. The judge shall not be personally 175
liable for the default, misfeasance, or nonfeasance of any 176
employee ~~from whom a bond has been required.~~ 177

Section 2. That existing sections 2101.11 and 2151.13 of the 178
Revised Code are hereby repealed. 179