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To: Lisa Webb
Subject: Indigent Care Levy Request
Date: 2/11/2022

The following is the Hamilton County Probate Court's request to the TLRC for the upcoming indigent care levy cycle. Previously the Court had asked for an increase in the allocation which was denied. Based upon historical data and future forecasting the court will once again be requesting an increase in the Court's levy allocation. The Court's total levy reimbursement request is $790,000.00, per year, for the next levy cycle. We will break the request down in two basic areas to help make the request easier to understand as well as highlight the areas the court believes an increase is necessary and to request additional funds.

1. The Hamilton County Probate Court incurs expenses related to mental illness or intellectual disability cases and hearings for those that are indigent in our community. Please see Exhibit A, attached to this document, regarding annual new cases filed in our Court. The costs associated to these cases and hearings are partially funded by the Indigent Care Levy. Our previous allocation has been $650,000.00 per year to offset these costs. Examples of those expenses include attorneys, doctors, sheriffs, deputy clerks, magistrates, and court filing costs and fees. A breakdown of these costs are located in exhibit B, attached to this document. The Probate Court currently funds the mental health hearings in 4 ways, the state reimbursement allocation, billing of other counties for their residents served by the Court, the Indigent Care Levy reimbursement allocation and the County General Fund. Exhibits A and B clearly show the continuing increase in these cases and how costs are effected. As we move forward into this next levy cycle we believe the indigent residents in our community would be best served by helping to offset these costs through an increase in our levy allocation. Our request is $725,000.00. We are not asking for a complete offset of costs, just an increase to keep pace with our expanding expenses to serve these indigent residents. Our previous requests highlighted actual costs from 2010 through 2016 and estimates through 2021. Exhibit B highlights expected expenditures through year 2026. The court's previous forecast, attached to the 2017 levy request, was extremely accurate regarding total program costs, especially considering the Court was forecasting five years into the future and only using court case statistical data to come up with the total program costs. Our estimate for 2021, included with our previous request, was $754,651.00. The actual cost for 2021 was $786,921.03. This was roughly $32,000.00 off our projection 5 years ago. Looking at the future projections attached and using the same methodology, shows the county residents need for this increase in the allocation request.

   Why are expenses increasing? The Court is not exactly sure but as we previously stated we believe the increase ties directly to the number of beds available at the hospitals for the

mentally ill. Beds have decreased at an alarming rate. This usually means that respondents are released sooner and unfortunately; the people are then cycling back into our system sooner after their release. If the beds were available for longer treatment of the respondent, it is more likely that the respondent would remain stable longer and the number of hearings would decrease.

Ohio law provides a procedure for the involuntary treatment of persons who are mentally ill and subject to hospitalization by court order. These procedures are used to obtain treatment for an individual who refuses to seek psychiatric treatment voluntarily. These procedures apply only to those who meet the statutory definition of "mental illness" or "intellectual disability" and who also meet the criteria for being subject to "hospitalization by court order." Although persons who are committed are held against their will in a medical facility for treatment, they are not being detained simply for being mentally ill or intellectually disabled. The purpose of the civil commitment is to provide treatment which the person needs for his or her mental illness or intellectual disability. Note that persons who are suffering solely from alcoholism or drug addiction are generally not subject to civil commitments.

The statutory definition of "mental illness" states that a mentally ill person is one who has a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs his or her judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life and poses a danger to themselves or others. Usually, a psychiatrist or physician makes a diagnosis as to whether an individual is mentally ill. Lay persons, however, may provide information about the symptoms a mentally ill person displays. In addition to meeting the definition of mental illness, a person can be subject to civil commitment only if he or she is "subject to hospitalization by court order." This requires that the mentally ill person:

- Represents a substantial risk of physical harm to his or her own self, as indicated by threats of or attempts at suicide or serious self-inflicted bodily harm; or

- Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior, or other evidence of present danger; or

- Represents a substantial and immediate risk of serious physical impairment or injury to self as indicated by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness, and that appropriate provision of those needs cannot be made immediately available in the community; or

- Would benefit from treatment in a hospital for the person's mental illness and is in need of such treatment as evidenced by behavior that creates a grave and imminent risk to the substantial rights of others or the person.

One method of initiating a civil commitment is via an emergency hospitalization. In this method, the involuntary civil commitment may be started when a psychiatrist, licensed clinical psychologist, licensed physician, health officer, or officer of the court/law who has reason to believe that the person is mentally ill and subject to hospitalization by court order takes the mentally ill person into custody and transfers the person to a hospital for treatment. The person hospitalized must be examined within twenty-four (24) hours of arrival, and after examination, if the Chief Clinical Officer believes the person is not mentally ill and subject to hospitalization by court order, the person must be discharged. However, if the person is found to be mentally ill and subject to hospitalization by court order, the person can be detained no longer than seventy-two (72) hours following examination, unless they are admitted on a voluntary basis; if not, an affidavit is filed with the Probate Court.

A second method of initiating the civil commitment process is via an affidavit filed with the Probate Court alleging the person is mentally ill and in need of hospitalization by court order. Anyone with actual knowledge of the person's actions and statements within the past thirty (30) days that indicate the person is mentally ill and subject to hospitalization by court order may file the affidavit. Upon receipt of the affidavit, a magistrate will review and issue a temporary order of detention if there is probable cause to believe the person named is mentally ill and subject to hospitalization by court order. The police or sheriff is then ordered to locate and transport the person to the hospital pending hearing.

The final method of initiating the civil commitment process is via a transfer from the criminal court system regarding competency or for an NGRI (Not Guilty by Reason of Insanity.)

A person who is detained involuntarily in a hospital under a Temporary Order of Detention is entitled to a court hearing. The hearing is scheduled within five (5) court days and may be continued no later than ten (10) days from the date the person is detained or the affidavit is filed, whichever occurred first. Civil commitment hearings in Hamilton County are currently conducted at Summit Behavioral Health Care in Cincinnati, Ohio.

The person detained has the right to attend the hearing, if he or she desires, with transportation supplied by the Sheriff's department. The Sheriff's Department will not transport patients that require a wheelchair or other medical assistance device. The transportation for these individuals is contracted through a third party ambulance service to ensure their right to attend the hearing is not denied. The person detained also has the right to an attorney, whom the court will normally appoint to represent the person. The court will also appoint an independent expert to conduct a mental status examination of the detained person and that expert will be available to testify at the hearing. The court will also issue subpoenas to witnesses to attend the hearing, as requested by counsel for the Board of Mental Health or the person detained. The individual who completes the affidavit is always subpoenaed to testify at the hearing.

If the court finds the person is not mentally ill and subject to hospitalization, it shall order his or her immediate release and expunge all records of the proceedings. If the person is

found by the court to be mentally ill, subject to hospitalization, it will issue an order for the person to be held in an appropriate facility for further treatment. A second hearing must be held within ninety (90) days to consider the continued need for hospitalization. If at any time the patient's treating physician determines that there is no longer a need for inpatient hospitalization, the physician may release the patient from the hospital without further court order or order outpatient probate treatment subject to court order.

2. Guardian accountability and monitoring has long been high on the list of needed reform for Courts. Guardians are individuals, appointed by the Court, to care for the medical and financial needs of someone (a Ward) deemed incompetent under Ohio law. This section provides a history of some of the guardianship issues that Ohio and the country have been reviewing for almost 30 years. The reviews discuss court monitoring; traces research and recommendations on monitoring over the years; acknowledges the lack of guardianship data as a critical monitoring component; and spotlights some recent innovations. The rationale for court monitoring derives from the ancient concept of parens patriae in which the king, and later the state, through the court, is responsible for the affairs of those who cannot take care of themselves or their property. The court delegates this responsibility to guardians, who serve as agents of the court. The court as principal thus has the responsibility for supervision and oversight of the guardian agent. A number of state courts have confirmed this concept of guardian as agent, in particular a Maryland case found that "in reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility." A line of Ohio cases stemmed from state statutory language stating that "at all times, the probate court is the superior guardian of wards who are subject to its jurisdiction, and all guardians who are subject to the jurisdiction of the court shall obey all orders of the court that concern their wards or guardianships." At the same time, the guardian also acts as a fiduciary, exercising authority for the benefit of the individual, and is bound to perform this duty with the greatest trust, confidence, and good faith, even when not directly supervised or monitored.

   Calls for better court oversight of guardians have spanned more than 30 years. The 1988 Wingspread National Guardianship Symposium made recommendations on accountability of guardians, addressing the need for review of guardian reports, training for guardians and judges, and use of guardianship care plans. In 1991, two American Bar Association Commissions produced a landmark study, "Steps to Enhance Guardianship Monitoring". The study outlined an active role for courts concerning personal and financial guardian reports, guardianship plans, enforcement and review of reports, investigation, sanctions, and case management. That same year, AARP began piloting an innovative model for volunteer guardianship monitoring. The 1993 National Probate Court Standards set out specific monitoring procedures including training and outreach, reports by guardians, review of reports, re-evaluation of the need for guardianship, enforcement of court orders, and final reports before discharge of the guardian. In 1997, the Uniform Guardianship and Protective Proceedings Act required that courts "establish a system for monitoring guardianships, including the filing and review of reports." In 2001, the Wingspan Second National Guardianship Symposium recommendations reinforced the compelling need for stronger court oversight, acknowledging that "courts have the

primary responsibility for monitoring" and suggesting strategies for accomplishing it. In 2004, the U.S. Government Accountability Office found that "all states have laws requiring courts to oversee guardianships, but court implementation of these laws varies." A 2006 AARP Public Policy Institute survey and a 2007 report on court monitoring sought to raise the visibility of the issue and highlight practical court monitoring tools. Also in 2007, a U.S. Senate Special Committee on Aging paper on adult guardianship reform recognized the need for improved court oversight as a key issue. These sources all targeted the urgent need for accurate guardian reports and accountings, timely filing of the reports, a court system for tracking the reports, court review of the reports, and follow-up investigation.

A 2010 national survey of courts by the National Center for State Courts, the Conference of Chief Justices, and the Conference of State Court Administrators concluded that "guardianship monitoring efforts by the courts are generally inadequate," and stated that a "number of courts are unable to adequately monitor guardianships as a result of insufficient staffing and resources." As noted above, the 2010 Government Accountability Office report on "Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors" identified substantial allegations of abuse, neglect, and financial exploitation by guardians. Even as the need for court oversight increases, the funds for court oversight often have been slashed in state and local judicial budget reductions. At the same time, there has been a rise in professional guardians and guardianship agencies, meaning that more "stranger guardians" are making key decisions about the lives of others whom they do not know. Moreover, there has been an increase in cases of financial exploitation of elders generally, with guardians both seeking recovery from exploitation by others, and committing exploitation themselves. Finally, irate family members have called for greater accountability for third-party professional guardians. In essence, we have a "perfect storm" demonstrating the need for greater guardian accountability.

In 2006, a white paper on adult guardianship data for the National Center on Elder Abuse found that many states did not collect or compile state-level data on adult guardianship. The 2007 U.S. Senate Committee on Aging paper lamented the lack of data and recommended that Congress should mandate collection of data on guardianship cases by the states, and the federal government should encourage development of local data systems. The GAO noted in 2004 that most courts it surveyed "did not track the number of active guardianships, and few indicated the number of incapacitated elderly people under guardianship." A resolution by the Conference of Chief Justices confirmed the compelling need for solid statistics and urged that "each state court system should collect and report the data.

Based upon the facts listed above, substantial change regarding guardianships did occur in Ohio in 2015. This started with a Supreme Court committee formation regarding guardianship back in 2007. The committee finally took action after a long series of articles in the Columbus Dispatch regarding an attorney/guardian losing his law license over exploitation and neglect of wards under his care and a series titled "Unguarded" in early 2015 that focused on the guardianship problems in the state of Ohio.

The Hamilton County Probate Court currently employs one full-time guardianship investigator that investigates all new guardianship applications prior to the first hearing in court. The investigator is statutorily required to serve notice of the application for guardianship to the proposed ward. At the time of the service of notice upon an alleged incompetent, as required by ORC section 2111.04, the court shall require the probate court investigator to investigate the circumstances of the alleged incompetent; and, to the maximum extent feasible, to communicate to the alleged incompetent in a language or method of communication that the alleged incompetent can understand, the alleged incompetent's rights, and subsequently to file with the court a report which shall be made a part of the record in the case that contains all of the following:

(1) A statement indicating that the notice was served and describing the extent to which the alleged incompetent's rights to be present at the hearing to contest any application for the appointment of a guardian for the alleged incompetent's person, estate, or both, and to be represented by an attorney were communicated to the alleged incompetent in a language or method of communication understandable to the alleged incompetent;

(2) A brief description, as observed by the investigator, of the physical and mental condition of the alleged incompetent;

(3) A recommendation regarding the necessity for a guardianship or a less restrictive alternative;

(4) A recommendation regarding the necessity of appointing pursuant to ORC section 2111.031 of the Revised Code, an attorney to represent the alleged incompetent.

The probate court investigator is also required to investigate any issues that are brought to the courts attention regarding guardianship cases under its jurisdiction.

The court currently has 4050 open and active guardianship cases with 2635 of them indigent. Exhibit C, attached to this document, shows how many new guardianship cases were opened from 2006 through 2021 as well as how many of those are indigent. Just for comparison, when we submitted to the TLRC back in 2017 we had 3116 open guardianships with 2000 of those indigent.

The sheer number of cases does not allow the one current court investigator to go out and do follow up investigations on wards after they have been appointed a guardian. The only time the court would hear about the status of the ward is when the guardian files their bi-annual report with a physician statement attached, if the ward is deceased, or if someone contacts the court regarding the condition or care of the ward. As the volume of cases continues to increase, so does the number of indigent cases. In a guardianship case, the court is the "superior guardian" and ultimately responsible for decisions about placement, care and welfare of the ward. The appointed guardian "is simply an officer of the court subject to the court's control, direction and supervision." With that responsibility, it is incumbent on the

probate court to not only investigate and act on any concerns about the well-being of wards in guardianship proceedings but to randomly check on the well-being of those wards. As a practical matter, it means that court-appointed guardians, even when they are also the parents or other close family member, are responsible to the probate judge for their decisions about care and placement. The probate judge may investigate, may enter restrictive orders and may even remove guardians when it appears necessary for the ward's safety and/or well-being. For these reasons, the Court is proposing to create and hire a new employee position, the Indigent Guardianship Investigator (IGI). The Court is requesting $65,000.00 per year from the Indigent Care Levy to cover the employee costs during the next levy cycle. This new position would allow the IGI to do follow-up investigations on those in our community that are the most vulnerable to being abused, neglected, and exploited, the indigent incompetent wards of this court. The guardians are appointed by the court to care for the most basic needs of the incompetent wards. Are those needs being meet? Currently the court can only answer those questions by reviewing bi-annual reports of guardians. During the two (2) years between reports the court has no knowledge of the wards status. Not because the Court is unwilling to do follow-ups, but because the current staffing level of the court is unable to keep up with an increasing case load. Are follow-up investigations required by law? The answer to this question is unclear. Nowhere in the ORC is there a section that states the investigator is required to do follow-up investigations except when the court is notified of a possible issue. Is this good enough for those that no longer have a voice of their own, and are so easly neglected? Having an IGI that could focus on the care and maintenance of these indivicuals may not be a statutory requirement, but it just makes sense for those individuals in our community that need our protection. Too many times in the media we hear about caregivers not taking care of those they have been appointed to protect. This ranges from indivicuals taken care of in a personal residence to individuals in a group home or nursing facility.

Exhibit A
Annual New Civil Committment Filings 1991 - 2021

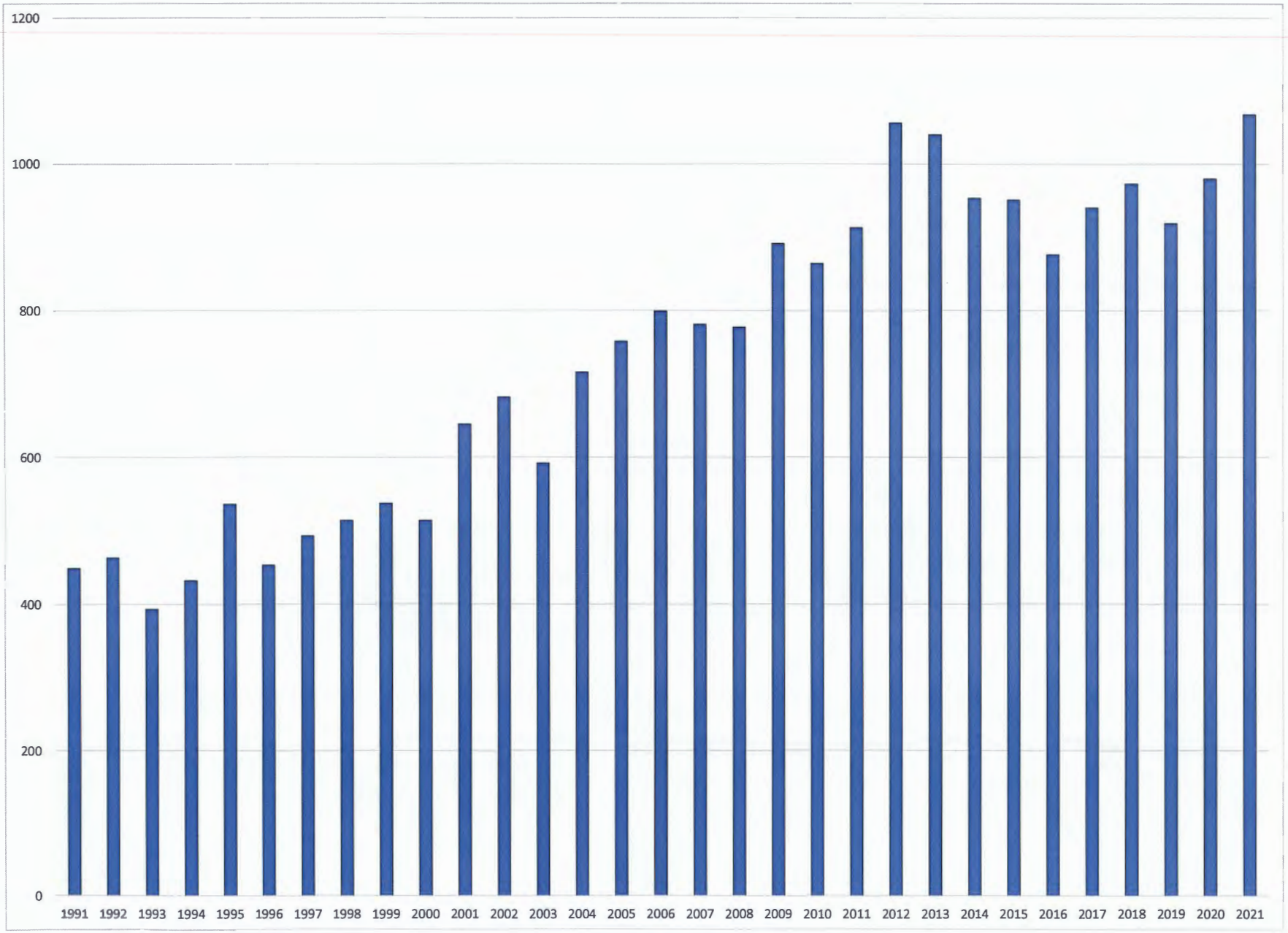
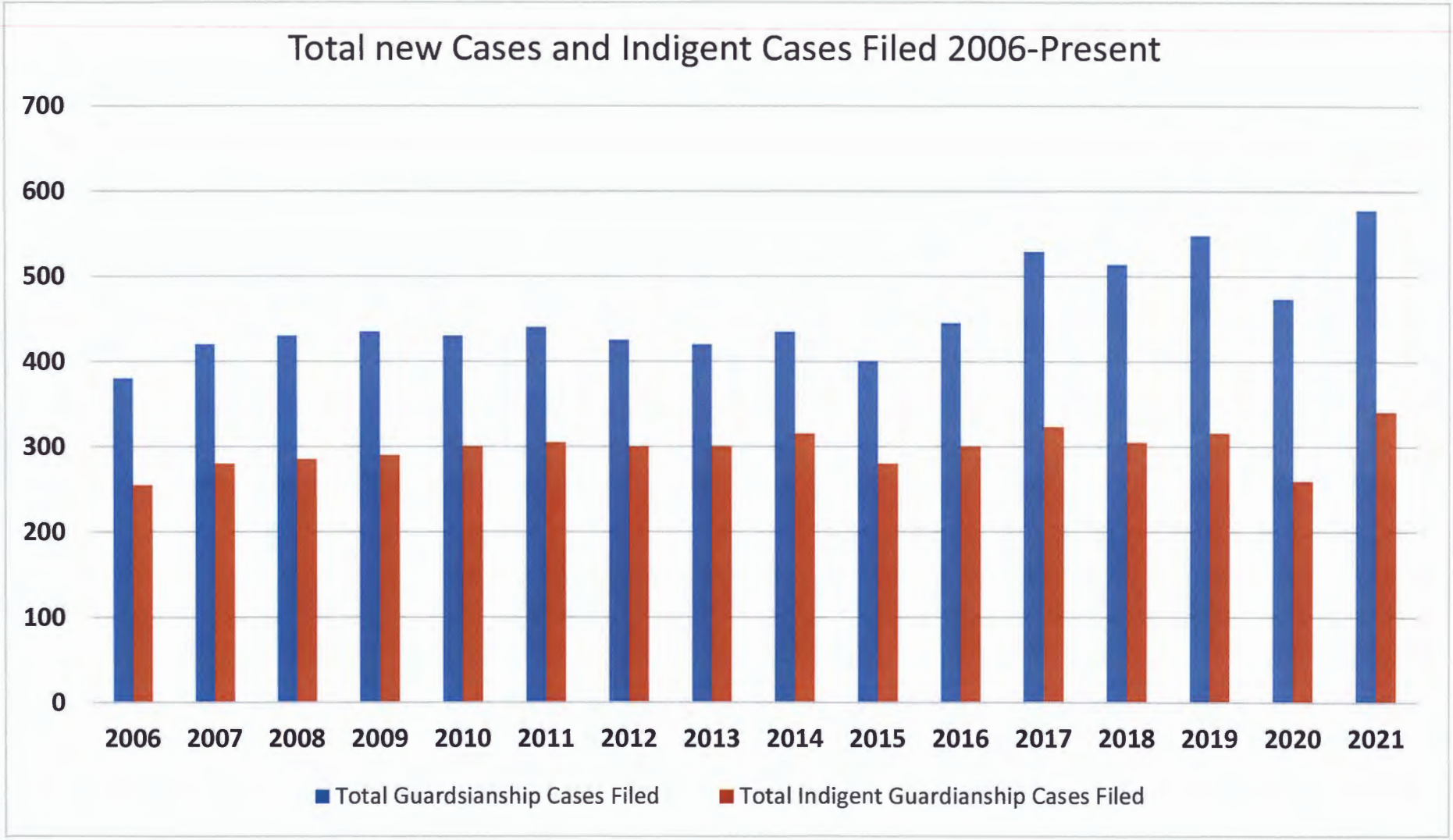


Exhibit B

2016-2021 Actual Costs and 2022-2026 Projected Costs for the Probate Court Civil Committment Program

	2016 Actual	2017 Actual	2018 Actual	2019 Actual	2020 Actual	2021 Actual	2022 Estimate	2023 Estimat	2024 Estimate	2025 Estimate	2026 Estimate
Attorneys, Doctors and Sheriff Fees	$356,561.50	$395,946.00	$398,825.00	$341,999.00	$380,161.00	$418,761.00	$433,417.00	$448,073.00	$462,729.00	$477,385.00	$492,041.00
Employee Costs	$487,738.89	$596,110.14	$584,011.44	$545,342.36	$601,864.53	$586,688.52	$610,742.00	$634,796.00	$658,850.00	$682,904.00	$706,958.00
Applications Fees	$21,875.00	$23,850.00	$24,175.00	$23,050.00	$24,150.00	$27,000.00	$28,296.00	$29,592.00	$30,888.00	$32,184.00	$33,480.00
Filing Fees	$60,494.00	$64,748.00	$65,763.00	$62,325.00	$63,486.00	$67,590.00	$69,212.00	$70,834.00	$72,456.00	$74,078.00	$75,700.00
Docketing and Indexing Fees	$13,125.00	$14,310.00	$14,505.00	$13,803.00	$14,490.00	$16,200.00	$16,929.00	$17,658.00	$18,387.00	$19,116.00	$19,845.00
Forms Fees	$8,750.00	$9,540.00	$9,670.00	$9,220.00	$9,660.00	$10,800.00	$11,318.00	$11,836.00	$12,354.00	$12,872.00	$13,390.00
Subtotal	$948,544.39	$1,104,504.14	$1,096,949.44	$995,739.36	$1,093,811.53	$1,127,039.52	$1,169,914.00	$1,212,789.00	$1,255,664.00	$1,298,539.00	$1,341,414.00
Less 2021 State & County Reimbursements	($242,243.50)	($335,244.00)	($280,846.96)	($247,694.39)	($302,049.21)	($340,118.49)	($354,421.00)	($369,105.00)	($385,486.00)	($399,154.00)	($412,732.00)
Total MH Costs	$706,300.89	$769,260.14	$816,102.48	$748,044.97	$791,762.32	$786,921.03	$815,493.00	$843,684.00	$870,178.00	$899,385.00	$928,682.00
Maximum Reimbursement from Indigent Care Levy	$650,000.00	$650,000.00	$650,000.00	$650,000.00	$650,000.00	$650,000.00					

Exhibit C


Total new Cases and Indigent Cases Filed 2006-Present
700
600
500
400
300
200
100
0
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
Total Guardsianship Cases Filed
Total Indigent Guardianship Cases Filed