



**House
Legislative
Analysis
Section**

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GUARDIANSHIPS FOR MINORS

**Senate Bill 1039 as passed by the Senate
First Analysis (12-5-90)**

**Sponsor: Senator Jack Welborn
Senate Committee: Criminal Justice and Urban
Affairs
House Committee: Judiciary**

THE APPARENT PROBLEM:

Reports are that the numbers of children living with their parents' relatives or friends, rather than with their parents, have been increasing dramatically in recent years, and this rise has highlighted a number of deficiencies in the law on guardianships and child custody. In one of the saddest and most publicized examples, an aunt and uncle were granted limited guardianship of an infant upon his mother's request. Five years later, the child's mother petitioned the probate court to end the guardianship, the state supreme court held that a limited guardianship must be terminated upon petition of the parent at whose request the limited guardianship was created, and the child, Antwon Dumas, was returned to his mother. Although the supreme court also held that the probate court could issue various orders to assist the child in the transition from the home of the guardian to the home of the parent, no transition plan was devised for Antwon Dumas. Less than a year after the supreme court issued its decision (*In re Rankin*, *In Re Dumas*, 433 Mich. 592 [1989]), Antwon Dumas was beaten to death; his mother and her boyfriend plead guilty to a reduced charge of manslaughter on October 25, 1990. (The plea bargain evidently was offered to avoid having another child in the home testify against her mother.)

The Dumas case illustrates a trend in the use of limited guardianships. It appears that such guardianships originally functioned to enable a child to receive medical care and be enrolled in school while a parent was away for a fixed period of time — say away at school or receiving military training. However, more recently it appears that limited guardianships are being used to place unwanted children with family members, or to forestall action by authorities investigating allegations of abuse or neglect in the parent's home. Such children are perceived to be at risk, but the probate code offers little to ensure adequate monitoring of the creation or termination of limited guardianships.

Problems with the law on guardianships are not confined to those of limited guardianships, however. A regular guardianship for a minor can be created only when parental rights have been terminated or suspended or when necessary for the immediate physical well-being of the minor. Thus, when a grandmother who has long been caring for a child abandoned by its mother must enroll the child in school or obtain medical treatment or health insurance for the child, she discovers that she cannot because she lacks the status of a guardian, and the court cannot appoint her guardian if parental rights have not been terminated.

To remedy these and other problems associated with the law on guardianships, House Bill 6018 proposes to amend the Revised Probate Code to require parents and guardians to develop court-approved placement plans for children to be placed under limited guardianships, provide for court-structured plans for

children under regular guardianships, require annual court review of guardianship placements for children under six years of age, specify procedures for termination of both limited and regular guardianships for children, and authorize the court to order various investigations and evaluations in child guardianship situations. A companion bill, House Bill 6019, would amend the Child Custody Act to specify that a guardian or limited guardian of a child would have standing to ask the circuit court to grant custody of the child. The proposal contains a third bill, Senate Bill 1039, to make related amendments to the juvenile code.

THE CONTENT OF THE BILL:

The bill would amend the juvenile code to:

- grant the juvenile court jurisdiction over any minor whose parent failed, without good cause, to comply with a guardian placement plan under House Bill 6018. The court also would have jurisdiction over a child in a guardianship situation whose parent, for two years, had neither provided regular or substantial support nor contacted the child.
- include appointment of a regular guardian among the options for the court when issuing orders on the disposition of a child following a petition from a person interested in the welfare of the child. If the court appointed a guardian, it could dismiss the petition.
- require a hearing on the termination of parental rights when a child remained in the custody of a guardian or limited guardian, and the guardian or custodian of the child petitioned for the hearing (the prosecutor or child also could bring the petition, as they may do now in foster care situations). The bill also would allow a guardian or custodian to bring a petition regarding a child in foster care.
- include among the grounds for termination of parental rights the failure to comply with a guardianship plan to the extent that the parent-child relationship was disrupted, and the failure for two years to contact or provide regular support for a child in a guardianship situation.

The bill could not take effect unless House Bills 6018 and 6019 were enacted.

MCL 712A.2 et al.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Together with House Bill 6018 and 6019, the bill would go far toward improving protections for children placed in

guardianship situations. House Bill 6018 would, among other things, demand guardianship placement plans and mandate regular and thorough court review of situations involving young children; Senate Bill 1039 would make failure to comply with a plan grounds for the court to assume jurisdiction of the child and, in extreme cases, grounds for termination of parental rights. Perhaps even more important for some children are provisions that extend the same court authority to children who have in essence been abandoned by their parents to a guardian for at least two years. A parent who neither contacts a child nor provides support for two years may reasonably be assumed to have relinquished parental responsibility to the point where termination of parental rights should be considered; it is reasonable to question whether a parent who abandons a child for two years is capable of adequately caring for the child.

Against:

Under the bill, a parent could lose parental rights for failing to comply with a guardianship placement plan. Together with inroads on parental authority presented by House Bills 6018 and 6019, the bill could discourage the use of limited guardianships, even where such guardianships would be beneficial for the child.

Response: Failure to comply with a guardianship placement plan would be grounds for termination of parental rights only if the parent lacked good cause and the failure resulted in a disruption of the parent-child relationship. In addition, the placement plan in a limited guardianship situation would be one that the parent helped to devise, and one that could be modified as needed, so it seems unlikely that responsible parents would be unable to comply with the terms of a limited guardianship plan. Also, it should be remembered that under House Bill 6018, a limited guardianship would be terminated when requested by a parent who had complied with the placement plan, so that children would not be remaining in limited guardianships contrary to the wishes of their parents.

Against:

The bill, together with House Bills 6018 and 6019, could prove expensive for the probate court and the state, occupying court time and increasing funding needs.

POSITIONS:

There are no positions at present.