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BILL ANALYSIS

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Senate Bill 1039

Sponsor: Senator Jack Welborn

Senate Committee: Criminal Justice and Urban Affairs

House Committee: Judiciary

Date Completed: 1-17-91

PUBLIC ACT 314 of 1990**RATIONALE**

In the past year, a widely publicized case concerning a child named Antwon Dumas highlighted a number of apparent deficiencies in the law concerning guardianship placements for children, particularly limited guardianships. Under the law, the probate court may appoint a limited guardian for a minor if the custodial parents consent to the appointment and to the suspension of their parental rights. In order to terminate the limited guardianship, the parents simply need to petition the court. This was made clear by the Michigan Supreme Court in November 1989, when the Court concluded, "[W]e are persuaded that the Legislature intended limited guardianships to be subject to termination in the sole discretion of the parent or parents whose petition led to the creation of the limited guardianship" (*In Re Rankin*, *In Re Dumas*, 433 Mich 592). Less than a year after that decision, according to news reports, Antwon Dumas was beaten to death by his mother and her boyfriend. (For more information about the decision, see "BACKGROUND".)

Apparently, limited guardianships originally functioned to enable a child to receive schooling or medical care while the parent was absent for a fixed period of time--such as away at school or in the military--or was temporarily unable to care for the child, and the parent wanted someone else, for a time, to assume formal responsibility for the care of the child. It now appears, however, that limited guardianships are being abused by parents who wish to forestall protective services investigations, for example, or wish to abandon unwanted children for extended periods of time.

Thus, in addition to giving the probate court no authority to deny the termination of a limited guardianship for the child's protection, the law evidently offers little to ensure that a limited guardianship is not created or continued inappropriately.

CONTENT

The bill would amend the juvenile code to do the following:

- Give the juvenile division of the probate court jurisdiction over a child in a limited guardianship or guardianship, if the child's parent failed to comply with a limited guardianship placement plan or a court-structured plan, or had failed to support and contact the child for two years or more; and authorize the juvenile court to terminate the parental rights of such a parent.
- Authorize the court to appoint a guardian for a child subject to the juvenile code, pursuant to a petition filed by a person interested in the child's welfare.
- Require the court to hold a hearing to determine whether parental rights should be terminated if a child remained in the custody of a guardian or limited guardian.

The bill is tie-barred to House Bills 6018 and 6019 (Public Acts 313 and 315 of 1990, respectively). House Bill 6018 amended the Revised Probate Code to require the probate

court to approve a limited guardianship placement plan when appointing a limited guardian; authorize the court to review a guardianship as necessary, and require annual judicial review for a child under six; specify procedures for terminating both limited and regular guardianships; and authorize the court to order various investigations and evaluations in guardianship situations. House Bill 6019 amended the Child Custody Act to provide that a guardian or limited guardian of a child has standing to bring a custody action, unless the child's parent or parents have substantially complied with a limited guardianship placement plan.

A more detailed description of Senate Bill 1039 follows.

Jurisdiction

The juvenile division of the probate court would have jurisdiction in proceedings concerning any child under the age of 18 whose parent either:

- Had substantially failed, without good cause, to comply with a limited guardianship placement plan (described in House Bill 6018) regarding the child; or
- Had substantially failed, without good cause, to comply with a court-structured plan regarding the child. (Under House Bill 6018, a court, after reviewing a guardianship, may order the parties to follow such a plan to resolve conditions identified at the review hearing; or, after a hearing on a petition to terminate a guardianship, the court may order the parent(s) to comply for up to one year with a court-structured plan that will enable the child to return to the parental home.)

In the case of the child who had a guardian under the Revised Probate Code, the court would have jurisdiction of the child if the parent met both of the following criteria:

- Having the ability to support or assist in supporting the child, the parent had failed or neglected, without good cause, to provide regular and substantial support for the child, or failed to comply substantially with a support order, for two years or more before the petition was

filed.

- Having the ability to visit, contact, or communicate with the child, the parent had regularly and substantially failed or neglected, without good cause, to do so for two years or more before the petition was filed.

Appointment of Guardian

Currently, the juvenile division of the probate court is authorized to enter various orders of disposition that are appropriate for the welfare of the child and society if the court finds that a child is covered by the juvenile code (e.g., the child has violated a law, is a runaway or truant, or is the victim of parental abuse or neglect). These orders include warning the child or the parents, placing the child on probation, placing the child in a foster home or a private institution, and committing the child to a public institution.

The bill would authorize the court also to appoint a guardian under the Revised Probate Code pursuant to a petition filed with the court by a person interested in the child's welfare. If the court appointed a guardian, it could dismiss the petition.

Termination of Parental Rights

The code provides that if a child remains in foster care in the temporary custody of the court, upon petition of the prosecuting attorney, child, or agency, the court must hold a hearing to determine if the parental rights to the child should be terminated. Under the bill, a guardian or custodian also could petition for a hearing, and the court would be required to hold a hearing if a child remained in the custody of a guardian or limited guardian.

In addition to the current grounds for termination of parental rights, the bill would authorize the court to terminate parental rights if the court found, by clear and convincing evidence, either of the following:

- The child's parent had placed the child in a limited guardianship and had substantially failed, without good cause, to comply with a limited guardianship placement plan to the extent that noncompliance had resulted in a

disruption of the parent-child relationship.

- The parent of a child who had a guardian had substantially failed, without good cause, to comply with a court-structured plan to the extent that noncompliance had disrupted the parent-child relationship.

The court also could terminate parental rights to a child who had a guardian if both of the following occurred:

- The parent, having the ability to support or assist in supporting the minor, had failed or neglected, without good cause, to provide regular and substantial support for the minor, or to comply substantially with a support order, for two years or more before the petition was filed.
- The parent, having the ability to visit, contact, or communicate with the minor, had regularly and substantially failed or neglected, without good cause, to do so for two years or more before the petition was filed.

MCL 712A.2 et al.

BACKGROUND

In Re Rankin involved a girl born in May 1985. Soon after her birth, the girl's parents consented to place her in the custody of an unrelated couple who became her limited guardians several months later. In July 1987, the parents petitioned for termination of the limited guardianship. The probate court conducted a hearing, took testimony, and issued its opinion that it had no authority to do other than grant the parents' petition, although the court did order the parties to "participate to minimize the disruption" that returning the child to her parents would cause to all concerned. Though the circuit court issued a reversal order that reinstated the guardianship, the Court of Appeals reversed the circuit court.

Almost immediately after his birth to a young mother in January 1984, Antwon Dumas was entrusted to the care of his aunt, in accordance with an agreement evidently made before the birth. A few weeks later, the probate court granted the mother's petition that the aunt be appointed a limited guardian for the child, and

the aunt raised him for the first five years of his life. Sometime around Antwon's fifth birthday, his guardian petitioned to adopt him and, a week later, his mother responded with a petition to terminate the guardianship. Before the probate court made a decision, the Court of Appeals had issued its 1989 ruling in Rankin. Relying on the authority of that decision, the probate court terminated the limited guardianship and denied an evidentiary hearing as to the best interests of the child. The guardian's application for leave to appeal in the Court of Appeals was denied.

In its consolidated opinion, the Supreme Court stated, "We hold today that a limited guardianship must be terminated upon petition of the parent or parents at whose request the limited guardianship was created. However, the probate court has the authority to enter appropriate orders to assist the child in the transition from the home of the limited guardian to the home of the parents." The Court reinstated the probate court decision in Rankin, and remanded both cases to the probate court for further proceedings in accordance with its opinion.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact. If it is assumed that termination of parental rights results in unsubsidized adoption, savings would accrue to the State and/or local units by a reduction in foster care costs.

ARGUMENTS

Supporting Argument

The Antwon Dumas case illustrates dramatically the deficiencies of Michigan's limited guardianship law. Because its hands were tied, the probate court was forced to remove the child from a nurturing home where he had lived nearly his entire life, and return him to the mother who had delegated his care and custody even before his birth and who allegedly beat the child to death within a year. By creating new protections for children placed in guardianship situations, Senate Bill 1039, together with House Bills 6018 and 6019, would avert similar tragedies in the future. The bills would put the best interests of the child in the forefront, and would give the probate court the mandates and authority necessary to ensure that the child's

welfare took precedence over reunification of the biological family. Limited guardianships no longer could be either created or terminated upon a parental whim, and parents' failure to comply with a placement plan, or failure to support and contact a child for at least two years, could escalate into a termination of their parental rights.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.