

Act No. 313
Public Acts of 1990
Approved by the Governor
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**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1990**

Introduced by Reps. Gubow, Ciaramitaro, Stabenow, Berman, Kosteva, Trim and Fitzgerald
Rep. Kulchitsky named co-sponsor

ENROLLED HOUSE BILL No. 6018

AN ACT to amend sections 424, 424a, 426, 427, 435, and 437 of Act No. 642 of the Public Acts of 1978, entitled as amended "An act to revise and consolidate the laws relative to the probate of decedents' estates, guardianships, conservatorships, protective proceedings, trusts, and powers of attorney; to prescribe penalties and liabilities; and to repeal certain acts and parts of acts," sections 424, 427, and 435 as amended and section 424a as added by Act No. 396 of the Public Acts of 1980, being sections 700.424, 700.424a, 700.426, 700.427, 700.435, and 700.437 of the Michigan Compiled Laws; and to add sections 424b, 424c, and 424d.

The People of the State of Michigan enact:

Section 1. Sections 424, 424a, 426, 427, 435, and 437 of Act No. 642 of the Public Acts of 1978, sections 424, 427, and 435 as amended and section 424a as added by Act No. 396 of the Public Acts of 1980, being sections 700.424, 700.424a, 700.426, 700.427, 700.435, and 700.437 of the Michigan Compiled Laws, are amended and sections 424b, 424c, and 424d are added to read as follows:

Sec. 424. (1) A person interested in the welfare of a minor, or a minor if 14 years of age or older, may petition for the appointment of a guardian of the minor.

(2) The court may order the department of social services or an employee or agent of the court to conduct an investigation of the proposed guardianship and file a written report of the investigation.

(3) The court may appoint a guardian for an unmarried minor if either of the following circumstances exists:

(a) The parental rights of both parents or of the surviving parent have been terminated or suspended by prior court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance, or by confinement in a place of detention.

(b) The parent or parents have permitted the minor to reside with another person and have not provided the other person with legal authority for the care and maintenance of the minor.

(4) A limited guardian of a minor may petition to be appointed a guardian for that minor, except that the petition shall not be based upon suspension of parental rights by the order which appointed that person the limited guardian of that minor.

(5) A guardian appointed by will as provided in section 422 whose appointment is not prevented or nullified under section 423 has priority over a guardian who may be appointed by the court. The court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

(6) The court may at any time, for the welfare of a minor ward, order reasonable visitation and contact of the minor ward by his or her parents.

Sec. 424a. (1) Beginning on the effective date of the amendatory act that added section 424b, the court may appoint a limited guardian for an unmarried minor under this section upon the petition of the parent or parents if all of the following requirements are met:

(a) The parents with custody of the minor consent or, in the case of only 1 parent having custody of the minor, the sole parent consents to the appointment of a limited guardian.

(b) The parent or parents voluntarily consent to the suspension of their parental rights.

(c) The court approves a limited guardianship placement plan agreed to by both of the following parties:

(i) The parents with custody of the minor or, in the case of only 1 parent having custody of the minor, the sole parent who has custody of the minor.

(ii) The person or persons who the court will appoint as limited guardian of the minor.

(2) The parent or parents of a minor who desire to have the court appoint a limited guardian for that minor and the person or persons who desire to be appointed limited guardian for that minor shall develop a limited guardianship placement plan. The parties shall use a limited guardianship placement plan form prescribed by the state court administrator. A limited guardianship placement plan form shall include a notice that informs a parent who is a party to the plan that substantial failure to comply with the plan without good cause may result in the termination of the parent's parental rights pursuant to chapter XIIA of Act No. 288 of the Public Acts of 1939, being sections 712A.1 to 712A.28 of the Michigan Compiled Laws. The proposed limited guardianship placement plan shall be attached to the petition requesting the court to appoint a limited guardian. The limited guardianship placement plan shall include provisions concerning all of the following:

(a) The reason why the parent or parents are requesting the court to appoint a limited guardian for the minor.

(b) Visitation and contact with the minor by his or her parent or parents sufficient to maintain a parent and child relationship.

(c) The duration of the limited guardianship.

(d) Financial support for the minor.

(e) Any other provisions that the parties agree to include in the plan.

(3) The court shall review a proposed limited guardianship placement plan filed with the court pursuant to this section and shall do 1 of the following:

(a) Approve the proposed plan.

(b) Disapprove the proposed plan.

(c) On its own motion, modify a proposed plan and approve it as modified, if the parties agree to the modification. The modified plan shall be filed with the court.

(4) A limited guardianship placement plan that has been approved by the court may be modified upon agreement of the parties and approval of the court. A modified limited guardianship placement plan shall be filed with the court.

(5) The suspension of parental rights under this section does not prevent the parent or parents from filing a petition to terminate the limited guardianship at any time pursuant to section 424c. Appointment of a limited guardian under this section shall be a continuing appointment.

(6) A limited guardian appointed under this section shall have all of the powers and duties enumerated in section 431, except that a limited guardian may not consent to the adoption of the minor or release of the minor for adoption nor may a limited guardian consent to the marriage of a minor ward.

Sec. 424b. (1) The court may review a guardianship for a minor as it deems necessary and shall review a guardianship annually if the minor is under 6 years of age. In conducting the review, the court shall consider all of the following factors:

(a) The parent's and guardian's compliance with either of the following, as applicable:

(i) A limited guardianship placement plan.

(ii) A court-structured plan under subsection (3)(b)(ii)(B) or section 424c(4)(b)(ii).

(b) Whether the guardian has adequately provided for the welfare of the minor.

(c) The necessity of continuing the guardianship.

(d) The willingness and ability of the guardian to continue to provide for the welfare of the minor.

(e) The effect upon the welfare of the minor if the guardianship is continued.

(f) Any other factor that the court considers relevant to the welfare of the minor.

(2) The court may order the department of social services or an employee or agent of the court to conduct an investigation and file a written report of the investigation regarding factors described in subsection (1)(a) to (f).

(3) Upon completion of a review of a guardianship, the court may do either of the following:

(a) Continue the guardianship.

(b) Schedule and conduct a hearing on the status of the guardianship and do any of the following:

(i) If the guardianship is a limited guardianship, do either of the following:

(A) Continue the limited guardianship.

(B) Order the parties to modify the limited guardianship placement plan as a condition to continuing the limited guardianship.

(ii) If the guardianship was established under section 424, do either of the following:

(A) Continue the guardianship.

(B) Order the parties to follow a court-structured plan designed to resolve the conditions identified at the review hearing.

(iii) Take any of the actions described in section 424c(4) (a), (b), or (c).

Sec. 424c. (1) The parent or parents of a minor may petition the court to terminate a guardianship for the minor, as follows:

(a) If the guardianship is a limited guardianship, the parents or the sole parent with a right to custody of the minor.

(b) If the guardianship was established under section 424, the parent or parents of the minor.

(2) If a petition has been filed to terminate a guardianship pursuant to this section, the court may do 1 or more of the following:

(a) Order the department of social services or an employee or agent of the court to conduct an investigation and file a written report of the investigation regarding the best interests of the minor or give testimony concerning the investigation.

(b) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the best interests of the minor and consider their recommendations for the disposition of the petition.

(c) Appoint a guardian ad litem or attorney to represent the minor.

(d) Take any other action considered necessary in a particular case.

(3) After notice and hearing on a petition to terminate a limited guardianship, the court shall terminate the limited guardianship if it determines that the parent or parents of the minor have substantially complied with the limited guardianship placement plan. The court may enter orders to facilitate the reintegration of the minor into the home of the parent or parents for a period of up to 6 months prior to the termination.

(4) For all petitions to terminate a guardianship in which subsection (3) does not apply, the court, after notice and hearing, may do any of the following:

(a) Terminate the guardianship if the court determines that it is in the best interests of the minor, and may do any of the following:

(i) Enter orders to facilitate the reintegration of the minor into the home of the parent for a period of up to 6 months prior to the termination.

(ii) Order the department of social services to supervise the transition period when the minor is being reintegrated into the home of his or her parent.

(iii) Order the department of social services to provide services to facilitate the reintegration of the minor into the home of his or her parent.

(b) Continue the guardianship for not more than 1 year from the date of the hearing if the court determines that it is in the best interests of the minor, and do any of the following:

(i) If the guardianship is a limited guardianship, order the parent or parents to comply with 1 of the following:

(A) The limited guardianship placement plan.

(B) A court-modified limited guardianship placement plan.

(C) If the limited guardianship was established before the effective date of this section, a court-structured plan that will enable the child to return to the home of his or her parent or parents.

(ii) If the guardianship was ordered pursuant to section 424, order the parent or parents to follow a court-structured plan that will enable the child to return to the home of his or her parent or parents.

(iii) If a guardianship is continued pursuant to subparagraph (i) or (ii), schedule and conduct a hearing to review the guardianship before the expiration of the period of time that the guardianship is continued and do either of the following:

(A) Terminate the guardianship or limited guardianship.

(B) Proceed pursuant to subdivision (c).

(c) Appoint an attorney to represent the minor or refer the matter to the department of social services. The attorney or the department of social services may file a complaint on behalf of the minor requesting the juvenile division of the probate court to take jurisdiction of the minor under section 2(b) of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.2 of the Michigan Compiled Laws.

(5) As used in this section and section 424b, "best interests of the minor" means the sum total of the following factors to be considered, evaluated, and determined by the court:

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and continuation of the educating and raising of the child in its religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.

(j) The willingness and ability of the guardian to facilitate and encourage a close and continuing parent-child relationship between the child and his or her parent or parents.

(k) Any other factor considered by the court to be relevant to a particular dispute regarding termination of a guardianship, removal of a guardian, or visitation.

(6) This section applies to all guardianships established before, on, or after the effective date of this section.

Sec. 424d. Upon receipt of a copy of a judgment or an order of disposition in a child custody action regarding a minor that is sent to the court pursuant to section 6b(4) of the child custody act of 1970, Act No. 91 of the Public Acts of 1970, being section 722.26b of the Michigan Compiled Laws, the court shall terminate the guardianship or limited guardianship for that minor.

Sec. 426. The court may appoint as guardian a person whose appointment would serve the welfare of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the welfare of the minor.

Sec. 427. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor shall be given by the petitioner to each of the following:

(a) The minor, if 14 years of age or older.

(b) The person who had the principal care and custody of the minor during the 60 days preceding the date of the petition.

(c) Each living parent of the minor or, if neither of them is living, the adult nearest of kin to the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 424 or 424a are satisfied, and the welfare of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings or make any other disposition of the matter that will serve the welfare of the minor.

(3) If necessary, the court may appoint a temporary guardian with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not exceed 6 months.

(4) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older.

Sec. 435. (1) The court in the county where the ward resides has concurrent jurisdiction with the court which appointed the guardian or in which acceptance of a testamentary appointment was filed over resignation, removal, accounting, and other proceedings relating to the guardianship.

(2) If the court in the county where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced, in all appropriate cases, shall notify the other court, in this or another state, and after consultation with that court, shall determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever will serve the welfare of the ward. After this determination has been made, the court accepting a resignation or removing a guardian shall direct this fiduciary to prepare and submit a final report to both courts. A copy of an order accepting a resignation or removing a guardian and a copy of the final report shall be sent to the court in which acceptance of appointment is filed. The court entering this order may permit closing of the guardianship in the court in which acceptance of appointment is filed, without notice to interested persons.

Sec. 437. (1) A person interested in the welfare of a ward or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would serve the welfare of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

Section 2. This amendatory act shall not take effect unless all of the following bills of the 85th Legislature are enacted into law:

(a) Senate Bill No. 1039.

(b) House Bill No. 6019.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.