

SENATE BILL No. 466

August 22, 1991, Introduced by Senators GEAKE and DILLINGHAM and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend sections 424, 424b, and 424c of Act No. 642 of the Public Acts of 1978, entitled as amended

"Revised probate code,"

section 424 as amended and sections 424b and 424c as added by Act No. 313 of the Public Acts of 1990, being sections 700.424, 700.424b, and 700.424c of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 424, 424b, and 424c of Act No. 642 of
2 the Public Acts of 1978, section 424 as amended and sections 424b
3 and 424c as added by Act No. 313 of the Public Acts of 1990,
4 being sections 700.424, 700.424b, and 700.424c of the Michigan
5 Compiled Laws, are amended to read as follows:

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

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

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

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

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

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

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

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

4 Sec. 424b. (1) The court may review a guardianship for a
5 minor as it ~~deems~~ CONSIDERS necessary and shall review a guard-
6 ianship annually if the minor is under 6 years of age. In con-
7 ducting the review, the court shall consider all of the following
8 factors:

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

11 (i) A limited guardianship placement plan.

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

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

16 (c) The necessity of continuing the guardianship.

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

19 (e) The effect upon the welfare of the minor if the guard-
20 ianship is continued.

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

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

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

3 (a) Continue the guardianship.

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

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

8 (A) Continue the limited guardianship.

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

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

14 (A) Continue the guardianship.

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

18 (iii) Take any of the actions described in section ~~424e(4)~~
19 ~~(a)~~ 424(C)(4)(A), (b), or (c).

20 Sec. 424c. (1) The parent or parents of a minor may peti-
21 tion the court to terminate a guardianship for the minor, as
22 follows:

23 (a) If the guardianship is a limited guardianship, the par-
24 ents or the sole parent with a right to custody of the minor.

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

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

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

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

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

14 (d) Take any other action considered necessary in a particu-
15 lar case.

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

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

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

1 following: ~~(i) Enter~~ ENTER orders to facilitate the
2 reintegration of the minor into the home of the parent for a
3 period of up to 6 months prior to the termination.

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

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

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

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

15 (A) The limited guardianship placement plan.

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

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

21 (ii) If the guardianship was ordered pursuant to section
22 424, order the parent or parents to follow a court-structured
23 plan that will enable the child to return to the home of his or
24 her parent or parents.

25 (iii) If a guardianship is continued pursuant to subpara-
26 graph (i) or (ii), schedule and conduct a hearing to review the

1 guardianship before the expiration of the period of time that the
2 guardianship is continued and do either of the following:

3 (A) Terminate the guardianship or limited guardianship.

4 (B) Proceed pursuant to subdivision (c).

5 (c) Appoint an attorney to represent the minor or refer the
6 matter to the department of social services. The attorney or the
7 department of social services may file a complaint on behalf of
8 the minor requesting the juvenile division of the probate court
9 to take jurisdiction of the minor under section 2(b) of chapter
10 XIIIA of Act No. 288 of the Public Acts of 1939, being section
11 712A.2 of the Michigan Compiled Laws.

12 (5) As used in this section, ~~and section 424b,~~ "best
13 interests of the minor" means the sum total of the following fac-
14 tors to be considered, evaluated, and determined by the court:

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

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

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

25 (d) The length of time the child has lived in a stable, sat-
26 isfactory environment, and the desirability of maintaining
27 continuity.

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

3 (f) The moral fitness of the parties involved.

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

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

6 (i) The reasonable preference of the child, if the court
7 ~~deems~~ CONSIDERS the child to be of sufficient age to express
8 preference.

9 (j) The willingness and ability of the guardian to facili-
10 tate and encourage a close and continuing parent-child relation-
11 ship between the child and his or her parent or parents.

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

15 (6) This section applies to all guardianships established
16 before, on, or after ~~the effective date of this section~~
17 DECEMBER 20, 1990.