

Act No. 8  
Public Acts of 1996  
Approved by the Governor  
February 7, 1996  
Filed with the Secretary of State  
February 7, 1996

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1996**

**Introduced by Senators Honigman, Geake, Dingell, Hoffman, Gougeon, Shugars, Dunaskiss, Stille,  
Schuette, McManus, Byrum, Peters and Emmons**

# **ENROLLED SENATE BILL No. 611**

AN ACT to amend sections 111, 424, 424a, and 424c 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," section 111 as amended by Act No. 387 of the Public Acts of 1994, sections 424 and 424c as amended by Act No. 159 of the Public Acts of 1994, and section 424a as amended by Act No. 313 of the Public Acts of 1990, being sections 700.111, 700.424, 700.424a, and 700.424c of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 111, 424, 424a, and 424c of Act No. 642 of the Public Acts of 1978, section 111 as amended by Act No. 387 of the Public Acts of 1994, sections 424 and 424c as amended by Act No. 159 of the Public Acts of 1994, and section 424a as amended by Act No. 313 of the Public Acts of 1990, being sections 700.111, 700.424, 700.424a, and 700.424c of the Michigan Compiled Laws, are amended to read as follows:

Sec. 111. (1) For all purposes of intestate succession, a child is the heir of each of his or her natural parents notwithstanding the relationship between the parents except as otherwise provided by section 110.

(2) If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for all purposes of intestate succession. A child conceived following artificial insemination of a married woman with the consent of her husband shall be considered as their child for all purposes of intestate succession. Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence. If a man and a woman participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage is void, the child is considered to be their child for all purposes of intestate succession.

(3) Only the person presumed to be the natural parent of a child under subsection (2) may disprove any presumption that may be relevant to the relationship, and this exclusive right to do so terminates upon the death of the presumed parent.

(4) If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the natural father of that child for all purposes of intestate succession if any of the following occurs:

(a) The man joins with the mother of the child and acknowledges that child as his child by completing and filing an acknowledgment of paternity. The man and mother shall each sign the acknowledgment of paternity in the presence of 2 witnesses, who shall also sign the acknowledgment, and in the presence of a judge, clerk of the court, or notary public appointed in this state. The acknowledgment shall be filed at either the time of birth or another time during the child's lifetime with the probate court in the mother's county of residence or, if the mother is not a resident of this state when

the acknowledgment is executed, in the county of the child's birth. It is not necessary for the mother of the child to join in the acknowledgment if she is disqualified to act by reason of mental incapacity, death, or any other reason satisfactory to the probate judge of the county in which the acknowledgment may be recorded.

(b) The man joins with the mother in a written request for a correction of certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the birth of the child.

(c) The man and the child have borne a mutually acknowledged relationship of parent and child that began before the child became age 18 and continued until terminated by the death of either.

(d) The man has been determined to be the father of the child and an order of filiation establishing that paternity has been entered pursuant to the paternity act, Act No. 205 of the Public Acts of 1956, being sections 722.711 to 722.730 of the Michigan Compiled Laws.

(5) Property of a child born out of wedlock or a child born or conceived during a marriage but not the issue of that marriage passes in accordance with the law of intestate succession except that the father and his kindred shall not be considered as relatives of the child unless the child might have inherited from the father as provided in this section.

(6) If a person is considered or presumed by a provision of this section, not including subsection (7), to be the natural parent of a child born out of wedlock or a child born or conceived during a marriage but not the issue of that marriage, that child shall bear the same relationship to that person as a child born or conceived during a marriage for all other purposes and shall have the identical status, rights, and duties of a child born in lawful wedlock effective from birth.

(7) The biological father of a child who is born out of wedlock, or who is born or conceived during a marriage but is not the issue of that marriage, shall be considered to be the natural father of that child for the purpose of intestate succession from the father to the child only. This subsection does not extinguish a child's right to inherit from another person considered to be the child's natural or legal father under another provision of law. This subsection does not apply to a child who is adopted by another man before the date of death of the child's biological father.

(8) If the department of social services or the prosecuting attorney provides assistance to parties in executing an acknowledgment of paternity, the department or prosecutor, as applicable, shall provide to the mother and man written information on the parents' rights and responsibilities resulting from the acknowledgment. That information shall set forth at least all of the following:

(a) The right to assert a claim for parenting time or custody.

(b) The right to notice and a hearing regarding the adoption of the child.

(c) The responsibility to comply with a child support order if issued after the acknowledgment.

(9) An acknowledgement of paternity executed as provided in this section is presumed to establish paternity for all purposes. The acknowledgement may be set aside by the circuit court in the county where it is filed only if the man is proven not to be the father by clear and convincing evidence.

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. 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.

(2) The court may appoint a guardian for an unmarried minor if any of the following circumstances exist:

(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.

(c) All of the following:

(i) The minor's biological parents have never been married to one another.

(ii) The minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order.

(iii) The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.

(3) 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 that appointed that person the limited guardian of that minor.

(4) 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.

(5) For the welfare of the minor ward, the court may at any time order reasonable support and reasonable parenting time and contact of the minor ward by his or her parents.

Sec. 424a. (1) Beginning December 20, 1990, 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 under chapter XIIA of Act No. 288 of the Public Acts of 1939, being sections 712A.1 to 712A.31 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) Parenting time 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 under 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. 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 under 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 December 20, 1990, a court-structured plan that enables the child to return to the home of his or her parent or parents.

(ii) If the guardianship was ordered under section 424, order the parent or parents to follow a court-structured plan that enables 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 either terminate the guardianship or limited guardianship, or proceed under subdivision (c) or (d).

(c) If the minor has resided with the guardian or limited guardian for not less than 1 year and if the court finds that the parent or parents of the minor have failed to provide the minor with parental care, love, guidance, and attention appropriate to the child's age and individual needs resulting in a substantial disruption of the parent-child relationship, continue the guardianship if it is established by clear and convincing evidence that the continuation would serve the best interests of the minor.

(d) 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, "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 considers 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 parenting time.

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

Section 2. This amendatory act shall not take effect unless Senate Bill No. 624 of the 88th Legislature is enacted into law.

Section 3. This amendatory act shall take effect June 1, 1996.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved -----

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Governor.