



HOUSE BILL No. 4859

June 15, 1993, Introduced by Rep. Gubow and referred to the Committee on Judiciary.

A bill to amend sections 424, 424b, 424c, and 424d of Act No. 642 of the Public Acts of 1978, entitled as amended "Revised probate code," section 424 as amended and sections 424b, 424c, and 424d as added by Act No. 313 of the Public Acts of 1990, being sections 700.424, 700.424b, 700.424c, and 700.424d of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 Sec. 424. (1) A person interested in the welfare of a
2 minor, or a minor if 14 years of age or older, may petition for
3 the appointment of a guardian of the minor. ~~-(2)-~~ The court may
4 order the department of social services or an employee or agent
5 of the court to conduct an investigation of the proposed guard-
6 ianship and file a written report of the investigation.

7 (2) ~~-(3)-~~ The court may appoint a guardian for an unmarried
8 minor if ~~either~~ ANY of the following circumstances ~~exists~~
9 EXIST:

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

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

18 (C) THE PARENT WITH CUSTODY OF THE MINOR DIES OR IS MISSING,
19 THE OTHER PARENT HAS NOT BEEN GRANTED LEGAL CUSTODY BY A COURT
20 ORDER, AND THE PERSON WHOM THE COURT IS APPOINTING AS GUARDIAN IS
21 RELATED TO THE MINOR WITHIN THE FIFTH DEGREE BY MARRIAGE, BLOOD,
22 OR ADOPTION. THIS SUBDIVISION DOES NOT APPLY IF, AT THE TIME OF
23 THE DEATH OR DISAPPEARANCE, THE MINOR'S PARENTS ARE MARRIED,
24 UNLESS AN ACTION FOR DIVORCE OR SEPARATE MAINTENANCE WAS FILED
25 AND A TEMPORARY ORDER FOR CUSTODY WAS ENTERED IN THE ACTION.

26 (3) ~~-(4)-~~ A limited guardian of a minor may petition to be
27 appointed a guardian for that minor, except that the petition

1 shall not be based upon suspension of parental rights by the
2 order ~~which~~ THAT appointed that person the limited guardian of
3 that minor.

4 (4) ~~(5)~~ A guardian appointed by will as provided in sec-
5 tion 422 whose appointment is not prevented or nullified under
6 section 423 has priority over a guardian who may be appointed by
7 the court. The court may proceed with an appointment upon a
8 finding that the testamentary guardian has failed to accept the
9 testamentary appointment within 30 days after notice of the
10 guardianship proceeding.

11 (5) ~~(6)~~ The court may at any time ~~, for the welfare of a~~
12 ~~minor ward,~~ order reasonable visitation and contact of the minor
13 ward by his or her parents. THE COURT SHALL GRANT VISITATION IN
14 ACCORDANCE WITH THE BEST INTERESTS OF THE MINOR. THE COURT SHALL
15 PRESUME THAT THE BEST INTERESTS OF THE MINOR ARE TO HAVE A STRONG
16 RELATIONSHIP WITH BOTH OF HIS OR HER PARENTS. A MINOR HAS A
17 RIGHT TO VISITATION WITH A PARENT IN A FREQUENCY, DURATION, AND
18 TYPE REASONABLY CALCULATED TO PROMOTE A STRONG RELATIONSHIP
19 BETWEEN THE MINOR AND THE PARENT GRANTED VISITATION UNLESS IT IS
20 SHOWN ON THE RECORD BY CLEAR AND CONVINCING EVIDENCE THAT THE
21 VISITATION TERMS ARE NOT IN THE BEST INTERESTS OF THE MINOR.

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

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

3 (i) A limited guardianship placement plan.

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

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

8 (c) The necessity of continuing the guardianship.

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

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

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

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

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

21 (a) Continue the guardianship.

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

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

26 (A) Continue the limited guardianship.

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

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

6 (A) Continue the guardianship.

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

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

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

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

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

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

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

26 (b) Utilize the community resources in behavioral sciences
27 and other professions in the investigation and study of the best

1 interests of the minor and consider their recommendations for the
2 disposition of the petition.

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

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

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

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

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

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

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

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

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

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

9 (A) The limited guardianship placement plan.

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

11 (C) If the limited guardianship was established before ~~the~~
12 ~~effective date of this section~~ DECEMBER 20, 1990, a
13 court-structured plan that ~~will enable~~ ENABLES the child to
14 return to the home of his or her parent or parents.

15 (ii) If the guardianship was ordered pursuant to section
16 424, order the parent or parents to follow a court-structured
17 plan that ~~will enable~~ ENABLES the child to return to the home
18 of his or her parent or parents.

19 (iii) If a guardianship is continued pursuant to subpara-
20 graph (i) or (ii), schedule and conduct a hearing to review the
21 guardianship before the expiration of the period of time that the
22 guardianship is continued and ~~do either of the following: (A)~~

23 ~~Terminate~~ TERMINATE the guardianship or limited guardianship,

24 ~~or (B) Proceed~~ OR PROCEED pursuant to subdivision (c) OR (D).

25 (C) IF THE MINOR HAS RESIDED WITH THE GUARDIAN OR LIMITED
26 GUARDIAN FOR NOT LESS THAN 1 YEAR AND IF THE COURT FINDS THAT THE
27 PARENT OR PARENTS OF THE MINOR HAVE FAILED TO PROVIDE THE MINOR

1 WITH PARENTAL CARE, LOVE, GUIDANCE, AND ATTENTION APPROPRIATE TO
2 THE CHILD'S AGE AND INDIVIDUAL NEEDS RESULTING IN A SUBSTANTIAL
3 DISRUPTION OF THE PARENT-CHILD RELATIONSHIP, CONTINUE THE GUARD-
4 IANSHIP IF IT IS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE
5 THAT THE CONTINUATION WOULD SERVE THE BEST INTERESTS OF THE
6 MINOR.

7 (D) ~~(c)~~ Appoint an attorney to represent the minor or
8 refer the matter to the department of social services. The
9 attorney or the department of social services may file a com-
10 plaint on behalf of the minor requesting the juvenile division of
11 the probate court to take jurisdiction of the minor under
12 section 2(b) of chapter XIIA of Act No. 288 of the Public Acts of
13 1939, being section 712A.2 of the Michigan Compiled Laws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 Section 2. Section 424d of the revised probate code, Act
27 No. 642 of the Public Acts of 1978, being section 700.424d of the

1 Michigan Compiled Laws, as amended by this amendatory act shall
2 not take effect unless House Bill No. 4064 of the 87th
3 Legislature is enacted into law.