

SENATE BILL No. 1215

July 18, 2012, Introduced by Senator CASWELL and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 5204, 5207, 5208, 5209, and 5213 (MCL
700.5204, 700.5207, 700.5208, 700.5209, and 700.5213), section 5204
as amended by 2005 PA 204 and section 5213 as amended by 2000 PA
54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5204. (1) A person interested in the welfare of a minor,
2 or a minor if 14 years of age or older, may petition for the
3 appointment of a guardian for the minor. The court may order the
4 ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES** or a court
5 employee or agent to conduct an investigation of the proposed
6 guardianship and file a written report of the investigation.

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

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

6 (b) The parent or parents permit the minor to reside with
7 another person and do not provide the other person with legal
8 authority for the minor's care and maintenance, and the minor is
9 not residing with his or her parent or parents when the petition is
10 filed.

11 (c) All of the following:

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

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

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

20 (3) A minor's limited guardian may petition to be appointed a
21 guardian for that minor, except that the petition shall not be
22 based upon suspension of parental rights by the order that
23 appointed that person the limited guardian for that minor.

24 (4) A guardian appointed under section 5202 whose appointment
25 is not prevented or nullified under section 5203 has priority over
26 a guardian ~~who may be~~ appointed by the court. The court may proceed
27 with an appointment upon a finding that a guardian appointed in a

1 manner described in section 5202 has failed to accept the
2 appointment within 28 days after the notice of the guardianship
3 proceeding.

4 (5) For the minor ward's welfare, the court may at any time
5 order the minor ward's parents to pay reasonable support and order
6 reasonable parenting time and contact of the minor ward with his or
7 her parents.

8 Sec. 5207. (1) The court may review a guardianship for a minor
9 as it considers necessary and shall review a guardianship annually
10 if the minor is under 6 years of age. In conducting the review, the
11 court shall consider all of the following factors:

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

14 (i) A limited guardianship placement plan.

15 (ii) A court-structured plan under subsection (3) (b) (ii) (B) or
16 section 5209(2) (b) (ii) .

17 (b) Whether the guardian has adequately provided for the
18 minor's welfare.

19 (c) The necessity of continuing the guardianship.

20 (d) The guardian's willingness and ability to continue to
21 provide for the minor's welfare.

22 (e) The effect upon the minor's welfare if the guardianship is
23 continued.

24 (f) Any other factor that the court considers relevant to the
25 minor's welfare.

26 (2) The court may order the ~~family independence agency~~
27 **DEPARTMENT OF HUMAN SERVICES** or a court employee or agent to

1 conduct an investigation and file a written report of the
2 investigation regarding the factors listed in subsection (1).

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

5 (a) Continue the guardianship.

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

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

10 (A) Continue the limited guardianship.

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

14 (ii) If the guardianship was established under section 5204, do
15 either of the following:

16 (A) Continue the guardianship.

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

20 (iii) Take an action described in section 5209(2).

21 Sec. 5208. (1) A minor's parent or parents may petition the
22 court to terminate a guardianship for the minor as follows:

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

25 (b) If the guardianship was established under section 5204,
26 the minor's parent or parents.

27 (2) If a petition is filed to terminate a guardianship under

1 this section, the court may do 1 or more of the following:

2 (a) Order the ~~family independence agency~~ **DEPARTMENT OF HUMAN**
3 **SERVICES** or a court employee or agent to conduct an investigation
4 and file a written report of the investigation regarding the best
5 interests of the minor or give testimony concerning the
6 investigation.

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

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

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

15 (3) This section and section 5209 apply to all guardianships
16 established before, on, or after ~~the effective date of this~~
17 ~~section.~~ **APRIL 1, 2000.**

18 Sec. 5209. (1) After notice and hearing on a petition under
19 section 5208 to terminate a limited guardianship, the court shall
20 terminate the limited guardianship if it determines that the
21 minor's parent or parents have substantially complied with the
22 limited guardianship placement plan. The court may enter orders to
23 facilitate the minor's reintegration into the home of the parent or
24 parents for a period of up to 6 months before the termination.

25 (2) For a petition to terminate a guardianship in which
26 subsection (1) does not apply, after notice and hearing, the court
27 may do any of the following:

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

3 ~~—— (i) Enter **ENTER** orders to facilitate the minor's reintegration~~
 4 ~~into the parent's home for a period of up to 6 months before the~~
 5 ~~termination.~~

6 ~~—— (ii) Order the family independence agency to supervise the~~
 7 ~~transition period when the minor is being reintegrated into his or~~
 8 ~~her parent's home.~~

9 ~~—— (iii) Order the family independence agency to provide services~~
 10 ~~to facilitate the minor's reintegration into his or her parent's~~
 11 ~~home.~~

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

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

17 (A) The limited guardianship placement plan.

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

19 ~~—— (C) If the limited guardianship was established before~~
 20 ~~December 20, 1990, a court structured plan that enables the minor~~
 21 ~~to return to the home of his or her parent or parents.~~

22 (ii) If the guardianship is ordered under section 5204, order
 23 the parent or parents to follow a court-structured plan that
 24 enables the minor to return to the home of his or her parent or
 25 parents.

26 (iii) If a guardianship is continued under subparagraph (i) or
 27 (ii), schedule and conduct a hearing to review the guardianship

1 before the expiration of the period of time that the guardianship
2 is continued and either terminate the guardianship or limited
3 guardianship or proceed under subdivision (c) or (d).

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

12 (d) Appoint an attorney to represent the minor or refer the
13 matter to the ~~family independence agency~~ **DEPARTMENT OF HUMAN**
14 **SERVICES**. The attorney or the ~~family independence agency~~ **DEPARTMENT**
15 **OF HUMAN SERVICES** may file a complaint on behalf of the minor
16 requesting the family division of the circuit court to take
17 jurisdiction of the minor under section 2(b) of chapter XIIIA of **THE**
18 **PROBATE CODE OF 1939**, 1939 PA 288, MCL 712A.2.

19 Sec. 5213. (1) The petitioner shall give notice of the time
20 and place of hearing of a petition for the appointment of a minor's
21 guardian to each of the following:

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

23 (b) The person who had the principal care and custody of the
24 minor during the 63 days preceding the date of the petition.

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

27 (2) Upon hearing, if the court finds that a qualified person

1 seeks appointment, venue is proper, the required notices have been
2 given, the requirements of section 5204 or of sections 5205 and
3 5206 are satisfied, and the minor's welfare will be served by the
4 requested appointment, the court shall make the appointment. In
5 other cases, the court may dismiss the proceeding or make another
6 disposition of the matter that will serve the minor's welfare.

7 (3) If necessary, the court may appoint a temporary guardian
8 with the status of an ordinary guardian of a minor, but the
9 temporary guardian's ~~authority~~-**APPOINTMENT** shall not exceed 6
10 months.

11 (4) If, at any time in the proceeding, the court determines
12 that the minor's interests are or may be inadequately represented,
13 the court may appoint a lawyer-guardian ad litem to represent the
14 minor, giving a consideration to the preference of the minor if the
15 minor is 14 years of age or older.

16 (5) A lawyer-guardian ad litem appointed under this act
17 represents the child and has powers and duties in relation to that
18 representation as set forth in section 17d of chapter XIIIA of the
19 probate code of 1939, 1939 PA 288, MCL 712A.17d. All provisions of
20 section 17d of chapter XIIIA of the probate code of 1939, 1939 PA
21 288, MCL 712A.17d, apply to a lawyer-guardian ad litem appointed
22 under this act. In addition, both of the following apply under this
23 act:

24 (a) In a proceeding in which a lawyer-guardian ad litem
25 represents a child, he or she may file a written report and
26 recommendation. The court may read the report and recommendation.
27 The court shall not, however, admit the report and recommendation

1 into evidence unless all parties stipulate ~~the~~ **TO ITS** admission.
2 The parties may make use of the report and recommendation ~~for~~
3 ~~purposes of~~ **AT** a settlement conference.

4 (b) After a determination of ability to pay, the court may
5 assess all or part of the costs and reasonable fees of a lawyer-
6 guardian ad litem **AND THE COSTS OF A COURT-ORDERED INVESTIGATION**
7 against 1 or more of the parties involved in the proceedings or
8 against the money allocated from marriage license fees for family
9 counseling services under section 3 of 1887 PA 128, MCL 551.103. A
10 lawyer-guardian ad litem shall not be paid a fee unless the court
11 first reviews and approves the fee.

12 (6) To assist the court in determining a child's best
13 interest, the court may appoint a guardian ad litem for a child
14 involved in a proceeding under this section.