

HOUSE BILL No. 6117

September 23, 1992, Introduced by Reps. McNutt, Middaugh, Gnodtke, Oxender, Bender, Dalman, Pitoniak, Yokich, DeLange, Gernaat, Randall, Sparks, O'Connor, Willis Bullard, London, Brown, McBryde, Fitzgerald and Shugars and referred to the Committee on Judiciary.

A bill to amend section 18 of chapter XIIA of Act No. 288 of the Public Acts of 1939, entitled as amended

"An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state, the powers and duties of such court and the judges and other officers thereof, certain aspects of the statutes of descent and distribution of property, and the statutes governing the change of name of adults and children, the adoption of adults and children, and the jurisdiction of the juvenile division of the probate court; to prescribe the powers and duties of the juvenile division of the probate court, and the judges and other officers thereof; to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court; to prescribe pleading, evidence, practice, and procedure in actions and proceedings in the juvenile division of the probate court; to provide for appeals from the juvenile division of the probate court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties for the violation of this act,"

as amended by Act No. 314 of the Public Acts of 1990, being section 712A.18 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 18 of chapter XIIA of Act No. 288 of the
2 Public Acts of 1939, as amended by Act No. 314 of the Public Acts
3 of 1990, being section 712A.18 of the Michigan Compiled Laws, is
4 amended to read as follows:

5 CHAPTER XIIA

6 Sec. 18. (1) If the court finds that a child concerning
7 whom a petition has been filed is not within this chapter, the
8 court shall enter an order dismissing the petition. Except as
9 otherwise provided in subsection (15), if the court finds that a
10 child is within this chapter, the court may enter any of the fol-
11 lowing orders of disposition ~~which~~ THAT is appropriate for the
12 welfare of the child and society in view of the facts proven and
13 ascertained:

14 (a) Warn the child or the child's parents, guardian, or cus-
15 todian and dismiss the petition.

16 (b) Place the child on probation, or under supervision in
17 the child's own home or in the home of an adult who is related to
18 the child. As used in this subdivision, "related" means any of
19 the following relationships — by marriage, blood, or adoption:
20 parent, grandparent, brother, sister, stepparent, stepsister,
21 stepbrother, uncle, or aunt. The probation or supervision shall
22 be ~~upon such~~ UNDER THE terms and conditions, including reason-
23 able rules for the conduct of the parents, guardian, or custodi-
24 an, if any, necessary for the physical, mental, or moral
25 well-being and behavior of the child, as the court determines.

1 (c) If a child is within the court's jurisdiction under
2 section 2(a) of this chapter, place the child in a suitable
3 foster care home subject to the court's supervision. Except as
4 otherwise provided in subsections (17) and (18), if a child is
5 within the court's jurisdiction under section 2(b) of this chap-
6 ter, the court shall not place a child in a foster care home
7 subject to the court's supervision.

8 (d) Place the child in or commit the child to a private
9 institution or agency approved or licensed by the state depart-
10 ment of social services for the care of children of similar age,
11 sex, and characteristics.

12 (e) Commit the child to a public institution, county facili-
13 ty, institution operated as an agency of the court or county, or
14 agency authorized by law to receive children of similar age, sex,
15 and characteristics. In a placement under subdivision (d) or a
16 commitment under this subdivision, except to a state institution,
17 the religious affiliation of the child shall be protected by
18 placement or commitment to a private child-placing or
19 child-caring agency or institution, if available. The court, in
20 every order of commitment under this subdivision to a state
21 institution or agency described in the youth rehabilitation serv-
22 ices act, Act No. 150 of the Public Acts of 1974, as amended,
23 being sections 803.301 to 803.309 of the Michigan Compiled Laws
24 or in Act No. 220 of the Public Acts of 1935, as amended, being
25 sections 400.201 to 400.214 of the Michigan Compiled Laws, shall
26 name the superintendent of the institution to which the child is
27 committed as a special guardian to receive benefits due the child

1 from the government of the United States, and the benefits shall
2 be used to the extent necessary to pay for the portions of the
3 cost of care in the institution ~~which~~ THAT the parent or par-
4 ents are found unable to pay.

5 (f) Provide the child with medical, dental, surgical, or
6 other health care, in a local hospital if available, or else-
7 where, maintaining as much as possible a local physician-patient
8 relationship, and with clothing and other incidental items as the
9 court considers necessary.

10 (g) Order the parents, guardian, custodian, or any other
11 person to refrain from continuing conduct ~~which~~ THAT, in the
12 opinion of the court, has caused or tended to cause the child to
13 come within or to remain under this chapter, or ~~which~~ THAT
14 obstructs placement or commitment of the child pursuant to an
15 order under this section.

16 (h) Appoint a guardian under section 424 of the revised pro-
17 bate code, Act No. 642 of the Public Acts of 1978, being
18 section 700.424 of the Michigan Compiled Laws, pursuant to a
19 petition filed with the court by a person interested in the wel-
20 fare of the child. If the court appoints a guardian pursuant to
21 this subdivision, it may enter an order dismissing the petition
22 under this chapter.

23 (2) An order of disposition placing a child in or committing
24 a child to care outside of the child's own home and under state
25 or court supervision shall contain a provision for the reimburse-
26 ment by the child, parent, guardian, or custodian to the court
27 for the cost of care or service. The order shall be reasonable,

1 taking into account both the income and resources of the child,
2 parent, guardian, or custodian. The amount may be based upon the
3 guidelines and model schedule created under subsection ~~-(6)-~~
4 (7). The reimbursement provision ~~shall apply~~ APPLIES during
5 the entire period the child remains in care outside of the
6 child's own home and under state or court supervision, unless the
7 child is in the permanent custody of the court.

8 (3) The court shall provide for the collection of all
9 amounts ordered to be reimbursed UNDER SUBSECTION (2) OR (4), and
10 the money collected shall be accounted for and reported to the
11 county board of commissioners. Collections to cover delinquent
12 accounts or to pay the balance due on reimbursement orders may be
13 made after a child is released or discharged from care outside
14 the child's own home and under state or court supervision.
15 Twenty-five percent of all amounts collected pursuant to an order
16 entered under this subsection shall be credited to the appropri-
17 ate fund of the county to offset the administrative cost of
18 collections. The balance of all amounts collected pursuant to an
19 order entered under this subsection shall be divided in the same
20 ratio in which the county, state, and federal government partici-
21 pate in the cost of care outside the child's own home and under
22 state or court supervision. The court may also collect benefits
23 paid for the cost of care of a court ward from the government of
24 the United States. Money collected for children placed with or
25 committed to the state department of social services shall be
26 accounted for and reported on an individual child basis. In
27 cases of delinquent accounts, the court may also enter an order

1 to intercept state tax refunds or the federal income tax refund
2 of a child, parent, guardian, or custodian and initiate the nec-
3 essary offset proceedings in order to recover the cost of care or
4 service. The court shall send to the person who is the subject
5 of the intercept order advance written notice of the proposed
6 offset. The notice shall include notice of the opportunity to
7 contest the offset on the grounds that the intercept is not
8 proper because of a mistake of fact concerning the amount of the
9 delinquency or the identity of the person subject to the order.
10 The court shall provide for the prompt reimbursement of an amount
11 withheld in error or an amount found to exceed the delinquent
12 amount.

13 (4) ~~(3)~~ An order of disposition placing a child in the
14 child's own home under subsection (1)(b) may contain a provision
15 for the reimbursement by the child, parent, guardian, or custo-
16 dian to the court for the cost of service. If an order is
17 entered under this subsection, amounts due shall be determined
18 and treated in the same manner provided for an order entered
19 under subsection (2).

20 (5) ~~(4)~~ An order directed to a parent or a person other
21 than the child ~~shall~~ IS not ~~be effectual~~ EFFECTIVE and bind-
22 ing on the parent or other person unless opportunity for hearing
23 has been given pursuant to issuance of summons or notice as pro-
24 vided in sections 12 and 13 of this chapter, and until a copy of
25 the order, bearing the seal of the court, is served on the parent
26 or other person, personally or by first class mail, to the

1 parent's or other person's last known address. ~~, as provided in~~
2 ~~section 13 of this chapter.~~

3 (6) ~~-(5)-~~ If the court appoints an attorney to represent a
4 child, parent, guardian, or custodian, an order entered under
5 this section may require the child, parent, guardian, or custo-
6 dian to reimburse the court for attorney fees.

7 (7) ~~-(6)-~~ The office of the state court administrator, under
8 the supervision and direction of the supreme court and in consul-
9 tation with the state department of social services and the
10 Michigan probate and juvenile court judges association, shall
11 create guidelines and a model schedule ~~which~~ THAT may be used
12 by the court in determining the ability of the child, parent,
13 guardian, or custodian to pay for care and any costs of service
14 ordered under subsection (2) or ~~-(3)-~~ (4). The guidelines and
15 model schedule shall take into account both the income and
16 resources of the child, parent, guardian, or custodian.

17 (8) ~~-(7)-if~~ EXCEPT AS PROVIDED IN SUBSECTION (11), IF the
18 court finds that a child has violated any municipal ordinance or
19 state or federal law, and the court has placed the child on pro-
20 bation, the court may, as a condition of probation, require the
21 child to do either of the following:

22 (a) Both of the following:

23 (i) Pay restitution to the victim.

24 (ii) Engage in community service or with the victim's con-
25 sent perform services for the victim.

1 (b) Seek and maintain paid part-time or full-time employment
2 and pay restitution to the victim from the earnings of that paid
3 part-time or full-time employment.

4 (9) ~~-(8)-~~ If the court imposes restitution as part of a sen-
5 tence of probation, ALL OF the following ~~-shall-~~ apply:

6 (a) The court shall not require a child to pay restitution
7 unless the child is or will be able to pay all or part of the
8 restitution during the term of his or her probation. In deter-
9 mining the amount and method of payment of restitution, the court
10 shall take into account the financial resources of the child and
11 the burden that the payment of restitution ~~-will-~~ WOULD impose,
12 with due regard to any other moral or legal financial obligations
13 that the child may have.

14 (b) The amount of restitution a court orders a child to pay
15 under subsection ~~-(7)-(b)-~~ (8)(B) shall not exceed 30% of the net
16 income per pay period from the child's paid part-time or
17 full-time employment.

18 (c) A child who is required to pay restitution and who is
19 not in intentional default of the payment of restitution may
20 petition the court, or an adult acting on the child's behalf may
21 petition the court, for a modification of the amount of restitu-
22 tion owed or for a cancellation of any unpaid portion of the
23 restitution.

24 (d) The court shall cancel all or part of the amount of res-
25 titution due if it appears to the satisfaction of the court that
26 payment of the amount due will impose a manifest hardship on the
27 child.

1 (e) If the court cancels all or a part of the amount of
2 restitution, the court may modify the terms and conditions of
3 probation to require the child to engage in community service.

4 (10) ~~-(9)-~~ If a child is required to pay restitution as part
5 of the sentence of probation, the court shall provide for payment
6 to be made in specified installments and within a specified
7 period of time. ~~-(10)-~~ If the court finds that the child is in
8 intentional default of the payment of restitution, a court may
9 revoke or alter the terms and conditions of probation for nonpay-
10 ment of restitution.

11 (11) If a child who is ordered to engage in community serv-
12 ice intentionally refuses to perform the required community serv-
13 ice, the court may revoke or alter the terms and conditions of
14 probation.

15 (12) If the child is unable to pay all of the restitution
16 ordered, after notice to the child's custodial parent and an
17 opportunity for the parent to be heard, the court may order the
18 custodial parent to pay all or part of the unpaid portion of the
19 restitution ordered. The amount of restitution the parent is
20 ordered to pay under this subsection shall not exceed \$2,500.00.

21 (13) If the court orders the custodial parent to pay resti-
22 tution under subsection (12), the court shall take into account
23 the financial resources of the parent and the burden that the
24 payment of restitution will impose, with due regard to any other
25 moral or legal financial obligations that the parent may have.
26 If a parent is required to pay restitution under subsection (12),

1 the court shall provide for payment to be made in specified
2 installments and within a specified period of time.

3 (14) A parent who has been ordered to pay restitution under
4 subsection (12) may petition the court for a modification of the
5 amount of restitution owed or for a cancellation of any unpaid
6 portion of the restitution. The court shall cancel all or part
7 of the amount of restitution due, if it appears to the satisfac-
8 tion of the court that payment of the amount due will impose a
9 manifest hardship on the parent.

10 (15) The court shall not enter an order of disposition for a
11 juvenile offense as defined in section 1a of Act No. 289 of the
12 Public Acts of 1925, being section 28.241a of the Michigan
13 Compiled Laws, until the court has examined the court file and
14 has determined that the child's fingerprints have been taken as
15 required by section 3 of Act No. 289 of the Public Acts of 1925,
16 being section 28.243 of the Michigan Compiled Laws. If a child
17 has not had his or her fingerprints taken, the court shall do
18 either of the following:

19 (a) Order the child to submit himself or herself to the
20 police agency that arrested or obtained the warrant for the
21 arrest of the child so the child's fingerprints can be taken.

22 (b) Order the child committed to the custody of the sheriff
23 for the taking of the child's fingerprints.

24 (16) Upon disposition or dismissal of a juvenile offense,
25 the clerk of the court entering the disposition or dismissal
26 shall immediately advise the department of state police of the
27 disposition or dismissal on forms approved by the state court

1 administrator. The report to the department of state police
2 shall include information as to the finding of the judge or jury
3 and a summary of the disposition imposed.

4 (17) Except as otherwise provided in subsection (18), if a
5 court is providing at the time of the enactment of this subsec-
6 tion foster care home services subject to the court's supervision
7 to children within section 2(b) of this chapter, the court may
8 continue to provide those services through December 31, 1989.
9 Beginning January 1, 1990, the court shall discontinue providing
10 those services.

11 (18) If a court located in a county with a population in
12 excess of 650,000 is providing at the time of the enactment of
13 this subsection foster care home services subject to the court's
14 supervision to children within section 2(b) of this chapter, the
15 court may continue to provide those services through
16 December 31, 1991. Beginning January 1, 1992, the court shall
17 discontinue those services.

18 (19) IF A CHILD VIOLATES A CURFEW PROVISION OF A MUNICIPAL
19 ORDINANCE, THE COURT MAY REQUIRE AS THE ONLY CONDITION OF PROBA-
20 TION THAT THE CHILD PERFORM COMMUNITY SERVICE AS PROVIDED BY THE
21 ORDINANCE.

22 Section 2. This amendatory act shall not take effect unless
23 Senate Bill No. 157 of the 86th Legislature is enacted into law.