

SENATE BILL No. 557

October 24, 1991, Introduced by Senator VAN REGENMORTER and referred to the Committee on Family Law, Criminal Law, and Corrections.

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. 112 of the Public Acts of 1989, being section 712A.18 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 18 of chapter XIIIA of Act No. 288 of the
2 Public Acts of 1939, as amended by Act No. 112 of the Public Acts
3 of 1989, being section 712A.18 of the Michigan Compiled Laws, is
4 amended to read as follows:

5 CHAPTER XIIIA

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~~ THOSE terms and conditions, including reasonable
23 rules for the conduct of the parents, guardian, or custodian, if
24 any, designed for the physical, mental, or moral well-being and
25 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,~~
20 ~~in~~ IN every order of commitment under this subdivision to a
21 state institution or agency described in the youth rehabilitation
22 services 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, THE
26 COURT shall name the superintendent of the institution to which
27 the child is committed as a special guardian to receive benefits

1 due the child from the government of the United States, and the
2 benefits shall be used to the extent necessary to pay for the
3 portions of the cost of care in the institution ~~which~~ THAT the
4 parent or parents 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 (2) An order of disposition placing a child in or committing
17 a child to care outside of the child's own home and under state
18 or court supervision shall contain a provision for the reimburse-
19 ment by the child, parent, guardian, or custodian to the court
20 for the cost of care or service. The order shall be reasonable,
21 taking into account both the income and resources of the child,
22 parent, guardian, or custodian. The amount may be based upon the
23 guidelines and model schedule created under subsection (6). The
24 reimbursement provision shall apply during the entire period the
25 child remains in care outside of the child's own home and under
26 state or court supervision, unless the child is in the permanent
27 custody of the court. The court shall provide for the collection

1 of all amounts ordered to be reimbursed, and the money collected
2 shall be accounted for and reported to the county board of
3 commissioners. Collections to cover delinquent accounts or to
4 pay the balance due on reimbursement orders may be made after a
5 child is released or discharged from care outside the child's own
6 home and under state or court supervision. Twenty-five percent
7 of all amounts collected pursuant to an order entered under this
8 subsection shall be credited to the appropriate fund of the
9 county to offset the administrative cost of collections. The
10 balance of all amounts collected pursuant to an order entered
11 under this subsection shall be divided in the same ratio in which
12 the county, state, and federal government participate in the cost
13 of care outside the child's own home and under state or court
14 supervision. The court may also collect benefits paid for the
15 cost of care of a court ward from the government of the United
16 States. Money collected for children placed with or committed to
17 the state department of social services shall be accounted for
18 and reported on an individual child basis. In cases of delin-
19 quent accounts, the court may also enter an order to intercept
20 state tax refunds or the federal income tax refund of a child,
21 parent, guardian, or custodian and initiate the necessary offset
22 proceedings in order to recover the cost of care or service. The
23 court shall send to the person who is the subject of the inter-
24 cept order advance written notice of the proposed offset. The
25 notice shall include notice of the opportunity to contest the
26 offset on the grounds that the intercept is not proper because of
27 a mistake of fact concerning the amount of the delinquency or the

1 identity of the person subject to the order. The court shall
2 provide for the prompt reimbursement of an amount withheld in
3 error or an amount found to exceed the delinquent amount.

4 (3) An order of disposition placing a child in the child's
5 own home under subsection (1)(b) may contain a provision for the
6 reimbursement by the child, parent, guardian, or custodian to the
7 court for the cost of service. If an order is entered under this
8 subsection, amounts due shall be determined and treated in the
9 same manner provided for an order entered under subsection (2).

10 (4) An order directed to a parent or a person other than the
11 child shall not be effectual and binding on the parent or other
12 person unless opportunity for hearing has been given pursuant to
13 issuance of summons or notice as provided in sections 12 and 13
14 of this chapter, and until a copy of the order, bearing the seal
15 of the court, is served on the parent or other person, personally
16 or by first class mail, to the parent's or other person's last
17 known address, as provided in section 13 of this chapter.

18 (5) If the court appoints an attorney to represent a child,
19 parent, guardian, or custodian, an order entered under this sec-
20 tion may require the child, parent, guardian, or custodian to
21 reimburse the court for attorney fees.

22 (6) The office of the state court administrator, under the
23 supervision and direction of the supreme court and in consulta-
24 tion with the state department of social services and the
25 Michigan probate ~~and juvenile court~~ judges association, shall
26 create guidelines and a model schedule ~~which~~ THAT may be used
27 by the court in determining the ability of the child, parent,

1 guardian, or custodian to pay for care and any costs of service
2 ordered under subsection (2) or (3). The guidelines and model
3 schedule shall take into account both the income and resources of
4 the child, parent, guardian, or custodian.

5 (7) If the court finds that a child has violated any munici-
6 pal ordinance or state or federal law, and the court has placed
7 the child on probation, the court may, as a condition of proba-
8 tion, require the child to do either of the following:

9 (a) Both of the following:

10 (i) Pay restitution to the victim.

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

13 (b) Seek and maintain paid part-time or full-time employment
14 and pay restitution to the victim from the earnings of that paid
15 part-time or full-time employment.

16 (8) If the court imposes restitution as part of a sentence
17 of probation, the following shall apply:

18 (a) The court shall not require a child to pay restitution
19 unless the child is or will be able to pay all or part of the
20 restitution during the term of his or her probation. In deter-
21 mining the amount and method of payment of restitution, the court
22 shall take into account the financial resources of the child and
23 the burden that the payment of restitution will impose, with due
24 regard to any other moral or legal financial obligations that the
25 child may have.

26 ~~-(b) The amount of restitution a court orders a child to pay~~
27 ~~under subsection (7)(b) shall not exceed 30% of the net income~~

1 ~~per pay period from the child's paid part-time or full-time~~
2 ~~employment.~~

3 (B) ~~-(e)-~~ A child who is required to pay restitution and who
4 is not in intentional default of the payment of restitution may
5 petition the court, or an adult acting on the child's behalf may
6 petition the court, for a modification of the amount of restitu-
7 tion owed or for a cancellation of any unpaid portion of the
8 restitution.

9 (C) ~~-(d)-~~ The court shall cancel all or part of the amount
10 of restitution due if it appears to the satisfaction of the court
11 that payment of the amount due will impose a manifest hardship on
12 the child.

13 (D) ~~-(e)-~~ If the court cancels all or a part of the amount
14 of restitution, the court may modify the terms and conditions of
15 probation to require the child to engage in community service.

16 (9) If a child is required to pay restitution as part of the
17 sentence of probation, the court shall provide for payment to be
18 made in specified installments and within a specified period of
19 time.

20 (10) If the court finds that the child is in intentional
21 default of the payment of restitution, a court may revoke or
22 alter the terms and conditions of probation for nonpayment of
23 restitution.

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

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

7 (13) If the court orders the custodial parent to pay resti-
8 tution under subsection (12), the court shall take into account
9 the financial resources of the parent and the burden that the
10 payment of restitution will impose, with due regard to any other
11 moral or legal financial obligations that the parent may have.
12 If a parent is required to pay restitution under subsection (12),
13 the court shall provide for payment to be made in specified
14 installments and within a specified period of time.

15 (14) A parent who has been ordered to pay restitution under
16 subsection (12) may petition the court for a modification of the
17 amount of restitution owed or for a cancellation of any unpaid
18 portion of the restitution. The court shall cancel all or part
19 of the amount of restitution due, if it appears to the satisfac-
20 tion of the court that payment of the amount due will impose a
21 manifest hardship on the parent.

22 (15) The court shall not enter an order of disposition for a
23 juvenile offense as defined in section 1a of Act No. 289 of the
24 Public Acts of 1925, being section 28.241a of the Michigan
25 Compiled Laws, until the court has examined the court file and
26 has determined that the child's fingerprints have been taken as
27 required by section 3 of Act No. 289 of the Public Acts of 1925,

1 being section 28.243 of the Michigan Compiled Laws. If a child
2 has not had his or her fingerprints taken, the court shall do
3 either of the following:

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

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

9 (16) Upon disposition or dismissal of a juvenile offense,
10 the clerk of the court entering the disposition or dismissal
11 shall immediately advise the department of state police of the
12 disposition or dismissal on forms approved by the state court
13 administrator. The report to the department of state police
14 shall include information as to the finding of the judge or jury
15 and a summary of the disposition imposed.

16 (17) Except as otherwise provided in subsection (18), if a
17 court is providing, ~~at the time of the enactment of this~~
18 ~~subsection~~ ON APRIL 1, 1989, foster care home services subject
19 to the court's supervision to children within section 2(b) of
20 this chapter, the court may continue to provide those services
21 through December 31, 1989. Beginning January 1, 1990, the court
22 shall discontinue providing those services.

23 (18) If a court located in a county with a population in
24 excess of 650,000 is providing, ~~at the time of the enactment of~~
25 ~~this subsection~~ ON APRIL 1, 1989, foster care home services
26 subject to the court's supervision to children within section
27 2(b) of this chapter, the court may continue to provide those

1 services through December 31, 1991. Beginning January 1, 1992,
2 the court shall discontinue those services.