

Act No. 344  
Public Acts of 1993  
Approved by the Governor  
January 10, 1994  
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January 10, 1994

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

Introduced by Senators Van Regenmorter, Dingell, Cisky, DeGrow, Dunaskiss, Faust and Kelly

# **ENROLLED SENATE BILL No. 469**

AN ACT to amend sections 18 and 18e of chapter XIIIA 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," section 18 as amended by Act No. 314 of the Public Acts of 1990 and section 18e as added by Act No. 72 of the Public Acts of 1988, being sections 712A.18 and 712A.18e of the Michigan Compiled Laws; and to add sections 29, 30, and 31 to chapter XIIIA.

*The People of the State of Michigan enact:*

Section 1. Sections 18 and 18e of chapter XIIIA of Act No. 288 of the Public Acts of 1939, section 18 as amended by Act No. 314 of the Public Acts of 1990 and section 18e as added by Act No. 72 of the Public Acts of 1988, being sections 712A.18 and 712A.18e of the Michigan Compiled Laws, are amended and sections 29, 30, and 31 are added to chapter XIIIA to read as follows:

## **CHAPTER XIIIA**

Sec. 18. (1) If the court finds that a child concerning whom a petition is filed is not within this chapter, the court shall enter an order dismissing the petition. Except as otherwise provided in subsection (10), if the court finds that a child is within this chapter, the court may enter any of the following orders of disposition that are appropriate for the welfare of the child and society in view of the facts proven and ascertained:

(a) Warn the child or the child's parents, guardian, or custodian and, except as provided in subsection (7), dismiss the petition.

(b) Place the child on probation, or under supervision in the child's own home or in the home of an adult who is related to the child. As used in this subdivision, "related" means being a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt by marriage, blood, or adoption. The court shall order the terms and

conditions of probation or supervision, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court determines necessary for the physical, mental, or moral well-being and behavior of the child.

(c) If a child is within the court's jurisdiction under section 2(a) of this chapter, place the child in a suitable foster care home subject to the court's supervision. If a child is within the court's jurisdiction under section 2(b) of this chapter, the court shall not place a child in a foster care home subject to the court's supervision.

(d) Place the child in or commit the child to a private institution or agency approved or licensed by the state department of social services for the care of children of similar age, sex, and characteristics.

(e) Commit the child to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive children of similar age, sex, and characteristics. In a placement under subdivision (d) or a commitment under this subdivision, except to a state institution, the religious affiliation of the child shall be protected by placement or commitment to a private child-placing or child-caring agency or institution, if available. In every order of commitment under this subdivision to a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, as amended, being sections 803.301 to 803.309 of the Michigan Compiled Laws or in Act No. 220 of the Public Acts of 1935, as amended, being sections 400.201 to 400.214 of the Michigan Compiled Laws, the court shall name the superintendent of the institution to which the child is committed as a special guardian to receive benefits due the child from the government of the United States, and the benefits shall be used to the extent necessary to pay for the portions of the cost of care in the institution that the parent or parents are found unable to pay.

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

(g) Order the parents, guardian, custodian, or any other person to refrain from continuing conduct that the court determines has caused or tended to cause the child to come within or to remain under this chapter, or that obstructs placement or commitment of the child pursuant to an order under this section.

(h) Appoint a guardian under section 424 of the revised probate code, Act No. 642 of the Public Acts of 1978, being section 700.424 of the Michigan Compiled Laws, pursuant to a petition filed with the court by a person interested in the welfare of the child. If the court appoints a guardian pursuant to this subdivision, it may enter an order dismissing the petition under this chapter.

(i) Order the child to engage in community service.

(j) If the court finds that a child has violated a municipal ordinance or a state or federal law, order the child to pay a civil fine in the amount of the civil or penal fine provided by the ordinance or law. Money collected from fines levied under this subsection shall be distributed as provided in section 29.

(k) Order the child to pay court costs. Money collected from costs ordered under this subsection shall be distributed as provided in section 29.

(2) An order of disposition placing a child in or committing a child to care outside of the child's own home and under state or court supervision shall contain a provision for reimbursement by the child, parent, guardian, or custodian to the court for the cost of care or service. The order shall be reasonable, taking into account both the income and resources of the child, parent, guardian, or custodian. The amount may be based upon the guidelines and model schedule created under subsection (6). The reimbursement provision applies during the entire period the child remains in care outside of the child's own home and under state or court supervision, unless the child is in the permanent custody of the court. The court shall provide for the collection of all amounts ordered to be reimbursed, and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a child is released or discharged from care outside the child's own home and under state or court supervision. Twenty-five percent of all amounts collected pursuant to an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected pursuant to an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the child's own home and under state or court supervision. The court may also collect benefits paid for the cost of care of a court ward from the government of the United States. Money collected for children placed with or committed to the state department of social services shall be accounted for and reported on an individual child basis. In cases of delinquent accounts, the court may also enter an order to intercept state or federal tax refunds of a child, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service. The court shall send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.

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

(4) An order directed to a parent or a person other than the child is not effective and binding on the parent or other person unless opportunity for hearing is given pursuant to issuance of summons or notice as provided in sections 12 and 13 of this chapter, and until a copy of the order, bearing the seal of the court, is served on the parent or other person as provided in section 13 of this chapter.

(5) If the court appoints an attorney to represent a child, parent, guardian, or custodian, the court may require in an order entered under this section that the child, parent, guardian, or custodian reimburse the court for attorney fees.

(6) The office of the state court administrator, under the supervision and direction of the supreme court and in consultation with the state department of social services and the Michigan probate judges association, shall create guidelines and a model schedule that may be used by the court in determining the ability of the child, parent, guardian, or custodian to pay for care and any costs of service ordered under subsection (2) or (3). The guidelines and model schedule shall take into account both the income and resources of the child, parent, guardian, or custodian.

(7) If the court finds that a child comes under section 30, the court shall order the child or the child's parent to pay restitution as provided in sections 30 and 31 and in sections 44 and 45 of the crime victim's rights act, Act No. 87 of the Public Acts of 1985, being sections 780.794 to 780.795 of the Michigan Compiled Laws.

(8) If the court imposes restitution as a condition of probation, the court shall require the child to do either of the following as an additional condition of probation:

(a) Engage in community service or, with the victim's consent, perform services for the victim.

(b) Seek and maintain paid employment and pay restitution to the victim from the earnings of that employment.

(9) If the court finds that the child is in intentional default of the payment of restitution, a court may, as provided in section 31, revoke or alter the terms and conditions of probation for nonpayment of restitution. If a child who is ordered to engage in community service intentionally refuses to perform the required community service, the court may revoke or alter the terms and conditions of probation.

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

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

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

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

(12) If the court enters an order of disposition based on an act that is a juvenile offense as defined in Act No. 196 of the Public Acts of 1989, being sections 780.901 to 780.911 of the Michigan Compiled Laws, the court shall order the child to pay the assessment provided in that act.

Sec. 18e. (1) Except as provided in subsection (2), a person who has been adjudicated of not more than 1 juvenile offense and who has no felony convictions may file an application with the adjudicating court for the entry of an order setting aside the adjudication. A person may have only 1 adjudication set aside under this section.

(2) A person shall not apply to have set aside, and a judge shall not set aside, an adjudication for an offense that if committed by an adult would be a felony for which the maximum punishment is life imprisonment or an adjudication for a traffic offense under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local ordinance substantially corresponding to that act, which violation involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.

(3) An application under this section shall not be filed until the expiration of 5 years following imposition of the disposition for the adjudication that the applicant seeks to set aside, or 5 years following completion of any term of detention for that adjudication, or when the person becomes 24 years of age, whichever occurs later.

(4) An application under this section is invalid unless it contains the following information and is signed under oath by the person whose adjudication is to be set aside:

(a) The full name and current address of the applicant.

(b) A certified record of the adjudication that is to be set aside.

(c) A statement that the applicant has not been adjudicated of a juvenile offense other than the one that is sought to be set aside as a result of this application.

(d) A statement that the applicant has not been convicted of any felony offense.

(e) A statement as to whether the applicant has previously filed an application to set aside this or any other adjudication and, if so, the disposition of the application.

(f) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.

(g) A consent to the use of the nonpublic record created under subsection (13), to the extent authorized by subsection (13).

(5) The applicant shall submit a copy of the application and 2 complete sets of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under subsection (13), and shall forward a complete set of fingerprints to the federal bureau of investigation for a comparison with the records available to that agency. The department of state police shall report to the court in which the application is filed the information contained in the department's records with respect to any pending charges against the applicant, any record of adjudication or conviction of the applicant, and the setting aside of any adjudication or conviction of the applicant and shall report to the court any similar information obtained from the federal bureau of investigation. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(6) The copy of the application submitted to the department of state police pursuant to subsection (5) shall be accompanied by a fee of \$25.00 payable to the state of Michigan. The department of state police shall use the fee to defray the expenses incurred in processing the application.

(7) A copy of the application shall be served upon the attorney general and, if applicable, upon the office of the prosecuting attorney who prosecuted the offense. The attorney general and the prosecuting attorney shall have an opportunity to contest the application. If the adjudication was for an offense that if committed by an adult would be an assaultive crime or serious misdemeanor, and if the name of the victim is known to the prosecuting attorney, the prosecuting attorney shall give the victim of that offense written notice of the application and forward a copy of the application to the victim pursuant to section 46a of the crime victim's rights act, Act No. 87 of the Public Acts of 1985, being section 780.796a of the Michigan Compiled Laws. The notice shall be sent by first-class mail to the victim's last known address. The victim has the right to appear at any proceeding under this section concerning that adjudication and to make a written or oral statement. As used in this subsection:

(a) "Assaultive crime" means that term as defined in section 9a of chapter X of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 770.9a of the Michigan Compiled Laws.

(b) "Serious misdemeanor" means that term as defined in section 61 of Act No. 87 of the Public Acts of 1985, being section 780.811 of the Michigan Compiled Laws.

(c) "Victim" means that term as defined in section 31 of Act No. 87 of the Public Acts of 1985, being section 780.781 of the Michigan Compiled Laws.

(8) Upon the hearing of the application, the court may require the filing of affidavits and the taking of proofs as it considers proper.

(9) Except as provided in subsection (10), if the court determines that the circumstances and behavior of the applicant from the date of the applicant's adjudication to the filing of the application warrant setting aside the adjudication and that setting aside the adjudication is consistent with the public welfare, the court may enter an order setting aside the adjudication. Except as provided in subsection (10), the setting aside of an adjudication under this section is a privilege and conditional, and is not a right.

(10) Notwithstanding subsection (9), the court shall set aside the adjudication of a person who was adjudicated for an offense that if committed by an adult would be a violation or an attempted violation of section 413 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.413 of the Michigan Compiled Laws, if the person files an application with the court and otherwise meets the requirements of this section.

(11) Upon the entry of an order under this section, the applicant, for purposes of the law, shall be considered not to have been previously adjudicated, except as provided in subsection (13) and as follows:

(a) The applicant is not entitled to the remission of any fine, costs, or other money paid as a consequence of an adjudication that is set aside.

(b) This section does not affect the right of the applicant to rely upon the adjudication to bar subsequent proceedings for the same offense.

(c) This section does not affect the right of a victim of an offense to prosecute or defend a civil action for damages.

(d) This section does not create a right to commence an action for damages for detention under the disposition that the applicant served before the adjudication is set aside pursuant to this section.

(12) Upon the entry of an order under this section, the court shall send a copy of the order to the arresting agency and the department of state police.

(13) The department of state police shall retain a nonpublic record of the order setting aside an adjudication and of the record of the arrest, fingerprints, adjudication, and disposition of the applicant in the case to which the order applies. Except as provided in subsection (14), this nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

(a) Consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) Consideration by a law enforcement agency if a person whose adjudication has been set aside applies for employment with the law enforcement agency.

(c) To show that a person who has filed an application to set aside an adjudication has previously had an adjudication set aside pursuant to this section.

(d) The court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year.

(e) Consideration by the governor, if a person whose adjudication has been set aside applies for a pardon for another offense.

(14) A copy of the nonpublic record created under subsection (13) shall be provided to the person whose adjudication is set aside under this section upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.234 of the Michigan Compiled Laws.

(15) The nonpublic record maintained under subsection (13) is exempt from disclosure under Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(16) Except as provided in subsection (13), a person, other than the applicant, who knows or should have known that an adjudication was set aside under this section, who divulges, uses, or publishes information concerning an adjudication set aside under this section is guilty of a misdemeanor.

*Sec. 29. (1) If a child is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same order of disposition, money collected from that child, or his or her parent or parents, for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in this section.*

(2) Except as otherwise provided in this subsection, if a child is subject to payment of victim payments and any combination of other fines, costs, assessments, or other payments, 50% of the money collected from that child, or his or her parent or parents, shall be applied to payment of victim payments, and the balance shall be applied to payment of fines, costs, and other assessments or payments. If fines, costs, or other assessments or payments remain unpaid after all victim payments have been paid, additional money collected shall be applied to payment of those fines, costs, or other assessments or payments. If victim payments remain unpaid after all fines, costs, or other assessments or payments have been paid, additional money collected shall be applied toward payment of those victim payments.

(3) In cases involving orders of disposition for offenses that would be violations of state law if committed by an adult, money allocated under subsection (2) for payment of fines, costs, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of costs.

(b) Payment of fines.

(c) Payment of assessments and other payments.

(4) In cases involving orders of disposition for offenses that would be violations of local ordinances if committed by an adult, money allocated under subsection (2) for payment of fines, costs, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of fines and costs.

(b) Payment of assessments and other payments.

(5) Money allocated for payment of costs under subsection (3) shall be paid to the county treasurer for deposit in the general fund of the county. Money allocated for payment of fines under subsection (3) shall be paid to the county treasurer to be used for library purposes as provided by law.

(6) One-third of the money allocated for payment of fines and costs under subsection (4) shall be paid to the treasurer of the political subdivision whose ordinance was violated, and 2/3 of that money shall be paid to the county treasurer for deposit in the general fund of the county.

(7) As used in this section, "victim payment" means restitution ordered under sections 30 and 31 and under the crime victim's rights act, Act No. 87 of the Public Acts of 1985, being sections 780.751 to 780.834 of the Michigan Compiled Laws, paid to the victim or the victim's estate, but not to a person who reimbursed the victim for his or her loss, or an assessment ordered under section 5 of Act No. 196 of the Public Acts of 1989, being section 780.905 of the Michigan Compiled Laws.

Sec. 30. (1) For purposes of this section and section 31:

(a) "Offense" means a violation of a penal law of this state or a violation of an ordinance of a local unit of government of this state punishable by imprisonment or by a fine that is not a civil fine.

(b) "Victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of an offense. For purposes of subsections (2), (3), (4), (7), (9), (10), (11), and (15), victim includes a sole proprietorship, partnership, corporation, association, governmental entity, or other legal entity that suffers direct physical or financial harm as a result of the commission of an offense.

(2) Except as provided in this section and section 31, the court, at the dispositional hearing for a juvenile offense, shall order, in addition to or in lieu of any other disposition authorized by law, that the juvenile make full or partial restitution to any victim of the juvenile's course of conduct that gives rise to the disposition, or to the victim's estate.

(3) If the court does not order restitution, or orders only partial restitution under this section, the court shall state on the record the reasons for that action.

(4) If a juvenile offense results in damage to or loss or destruction of property of a victim of the offense, or results in the seizure or impoundment of property of a victim of the offense, the order of restitution may require that the juvenile do 1 or more of the following:

(a) Return the property to the owner of the property or to a person designated by the owner.

(b) If return of the property under subdivision (a) is impossible, impractical, or inadequate, pay an amount equal to the greater of subparagraph (i) or (ii), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:

(i) The value of the property on the date of the damage, loss, or destruction.

(ii) The value of the property on the date of disposition.

(c) Pay the costs of the seizure or impoundment, or both.

(5) If a juvenile offense results in physical or psychological injury to a victim, the order of restitution may require that the juvenile do 1 or more of the following, as applicable:

(a) Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care.

(b) Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation.

(c) Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the offense.

(d) Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family that has been incurred as a result of the offense.

(e) Pay an amount equal to the costs of actual homemaking and child care expenses incurred as a result of the offense.

(6) If a juvenile offense resulting in bodily injury also results in the death of a victim, the order of restitution may require that the juvenile pay an amount equal to the cost of actual funeral and related services.

(7) Instead of restitution under subsections (4) to (6), if the victim or victim's estate consents, the order of restitution may require that the juvenile make restitution in services in lieu of money, or make restitution to a person designated by the victim or victim's estate if that person provided services to the victim as a result of the offense.

(8) If the court orders restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.

(9) Any order of restitution shall be as fair as possible to the victim or victim's estate without unduly complicating or prolonging the disposition process.

(10) Except as otherwise provided in this section and section 31, the court shall order restitution to the crime victims compensation board or to any individuals, partnerships, corporations, associations, governmental entities, or any other legal entities that have compensated the victim or victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. However, an order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person under that order is made. The court shall not order restitution to be paid to a victim or victim's estate if the victim or victim's estate has received or is to receive compensation for that loss.

(11) Any amount paid to a victim or victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim's estate by an award from the crime victims compensation board made after an order of restitution under this section.

(12) If not otherwise provided by the court under this subsection, restitution shall be made immediately. However, the court may require that the juvenile make restitution under this section within a specified period or in specified installments. The end of the period or the last installment shall not be later than the following:

(a) The end of the period of probation, if probation is ordered.

(b) If the juvenile is made a state ward, when the department of social services' jurisdiction over the juvenile expires.

(c) If the juvenile is made a ward of the court, when the court's jurisdiction over the juvenile expires.

(d) Three years after the date of disposition or when the court's jurisdiction over the juvenile expires, whichever is later.

(13) If the juvenile is placed on probation, any restitution ordered under this section shall be a condition of that probation. The court may revoke probation if the juvenile fails to comply with the order and if the juvenile has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the juvenile's employment status, earning ability, and financial resources, the willfulness of the juvenile's failure to pay, and any other special circumstances that may have a bearing on the juvenile's ability to pay.

(14) A juvenile who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the court for a cancellation of any unpaid portion of restitution. If it appears to the satisfaction of the court that payment of the amount due will impose a manifest hardship on the juvenile or his or her immediate family, the court may cancel all or part of the amount due in restitution or modify the method of payment.

(15) An order of restitution may be enforced by the prosecuting attorney or a victim or victim's estate named in the order to receive the restitution in the same manner as a judgment in a civil action.

(16) Notwithstanding any other provision of this section, a juvenile shall not be detained for a violation of probation, or otherwise, for failure to pay restitution as ordered under this section unless the court determines that the juvenile has the resources to pay the ordered restitution and has not made a good faith effort to do so.

(17) If the court determines that the juvenile is or will be unable to pay all of the restitution ordered, after notice to the juvenile's parent and an opportunity for the parent to be heard, the court may order the parent or parents having supervisory responsibility for the juvenile at the time of the acts upon which an order of restitution is based to pay not more than \$5,000.00 of the restitution ordered. As used in this subsection, "parent" does not include a foster parent.

(18) If the court orders a parent to pay restitution under subsection (17), the court shall take into account the financial resources of the parent and the burden that the payment of restitution will impose, with due regard to any other moral or legal financial obligations that the parent may have. If a parent is required to pay restitution under subsection (17), the court shall provide for payment to be made in specified installments and within a specified period of time.

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

(20) In each case in which payment of restitution is ordered as a condition of probation, the juvenile caseworker or probation officer assigned to the case shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. The final review shall be conducted not less than 60 days before the expiration of the probationary period. If the juvenile caseworker or probation officer determines the restitution is not being paid as ordered, the juvenile caseworker or probation officer shall file a written report of the violation with the court on a form prescribed by the state court administrative office. The report shall include a statement of the amount of the arrearage and any reasons for the arrearage that are known by the juvenile caseworker or probation officer. The juvenile caseworker or probation officer shall immediately provide a copy of the report to the prosecuting attorney. If a motion is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance.

(21) A court shall not order a juvenile to pay restitution under this section in an amount that exceeds 30% of the juvenile's net income per pay period from the juvenile's paid employment.

Sec. 31. (1) The court, in determining whether to order restitution under section 30 and the amount of that restitution, shall consider the amount of the loss sustained by any victim as a result of the offense, the financial resources and earning ability of the juvenile and his or her supervisory parent, the financial needs of the juvenile and the juvenile's dependents, and such other factors as the court considers appropriate.

(2) The court may order the person preparing a report for the purpose of disposition to obtain information pertaining to the factors set forth in subsection (1). That person shall include the information collected in the disposition report or in a separate report, as the court directs.

(3) The court shall disclose to the juvenile, the juvenile's supervisory parent, and the prosecuting attorney all portions of the disposition or other report pertaining to the matters described in subsection (1).

(4) Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the earning ability of the juvenile and the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney. The burden of demonstrating the financial resources of the juvenile and his or her supervisory parent shall be on the juvenile and his or her supervisory parent, and the burden of demonstrating the financial needs of the juvenile and the juvenile's dependents shall be on the juvenile. The burden of demonstrating such other matters as the court considers appropriate shall be upon the party designated by the court as justice requires.

Section 2. This amendatory act shall take effect May 1, 1994.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

- (a) Senate Bill No. 137.
- (b) Senate Bill No. 138.
- (c) Senate Bill No. 139.
- (d) Senate Bill No. 470.
- (e) Senate Bill No. 472.
- (f) Senate Bill No. 473.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Co-Clerk of the House of Representatives.

Approved \_\_\_\_\_

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Governor.

