



SENATE BILL No. 401

February 16, 1993, Introduced by Senators POLLACK, DINGELL, DILLINGHAM, KOIVISTO, HART, CONROY, FAUST, STABENOW and referred to the Committee on Judiciary.

A bill to amend section 18 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,"

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:

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) OR (16), if the court finds
10 that a child is within this chapter, the court may enter any of
11 the following orders of disposition ~~which is~~ THAT ARE appropri-
12 ate for the welfare of the child and society in view of the facts
13 proven and ascertained:

14 (a) Warn the child or the child's parents, guardian, or cus-
15 todian and 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 ~~any of the following relationships, by marriage, blood, or adoption:~~ BEING A parent, grandparent, brother, sister, stepparent, step-sister, stepbrother, uncle, or aunt BY MARRIAGE, BLOOD, OR ADOPTION. The probation or supervision shall be upon such terms and conditions, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, necessary for the physical, mental, or moral 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~~ IF a child
5 is within the court's jurisdiction under section 2(b) of this
6 chapter, 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~~
9 the court considers necessary.

10 (g) Order the parents, guardian, custodian, or any other
11 person to refrain from continuing conduct ~~which, in the opinion~~
12 ~~of~~ the court ~~—~~ FINDS has caused or tended to cause the child
13 to come within or to remain under this chapter ~~, or which~~ OR
14 THAT obstructs placement or commitment of the child pursuant to
15 an 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 section
18 700.424 of the Michigan Compiled Laws, pursuant to a petition
19 filed with the court by a person interested in the welfare of the
20 child. If the court appoints a guardian pursuant to this subdi-
21 vision, it may enter an order dismissing the petition under this
22 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). The
4 reimbursement provision shall apply during the entire period the
5 child remains in care outside of the child's own home and under
6 state or court supervision, unless the child is in the permanent
7 custody of the court. The court shall provide for the collection
8 of all amounts ordered to be reimbursed, and the money collected
9 shall be accounted for and reported to the county board of
10 commissioners. Collections to cover delinquent accounts or to
11 pay the balance due on reimbursement orders may be made after a
12 child is released or discharged from care outside the child's own
13 home and under state or court supervision. Twenty-five percent
14 of all amounts collected pursuant to an order entered under this
15 subsection shall be credited to the appropriate fund of the
16 county to offset the administrative cost of collections. The
17 balance of all amounts collected pursuant to an order entered
18 under this subsection shall be divided in the same ratio in which
19 the county, state, and federal government participate in the cost
20 of care outside the child's own home and under state or court
21 supervision. The court may also collect benefits paid for the
22 cost of care of a court ward from the government of the United
23 States. Money collected for children placed with or committed to
24 the state department of social services shall be accounted for
25 and reported on an individual child basis. In cases of delin-
26 quent accounts, the court may also enter an order to intercept
27 state tax refunds or the federal income tax refund of a child,

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

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

17 (4) An order directed to a parent or a person other than the
18 child ~~shall~~ IS not ~~be effectual~~ EFFECTIVE and binding on the
19 parent or other person unless opportunity for hearing has been
20 given pursuant to issuance of summons or notice as provided in
21 sections 12 and 13 of this chapter, and until a copy of the
22 order, bearing the seal of the court, is served on the parent or
23 other person, personally or by first class mail, to the parent's
24 or other person's last known address, as provided in section 13
25 of this chapter.

26 (5) If the court appoints an attorney to represent a child,
27 parent, guardian, or custodian, an order entered under this

1 section may require the child, parent, guardian, or custodian to
2 reimburse the court for attorney fees.

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

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

17 (a) Both of the following:

18 (i) Pay restitution to the victim.

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

21 (b) Seek and maintain paid part-time or full-time employment
22 and pay restitution to the victim from the earnings of that paid
23 part-time or full-time employment.

24 (8) If the court imposes restitution as part of a sentence
25 of probation, the following ~~shall~~ apply:

26 (a) The court shall not require a child to pay restitution
27 unless the child is or will be able to pay all or part of the

1 restitution during the term of his or her probation. In
2 determining the amount and method of payment of restitution, the
3 court shall take into account the financial resources of the
4 child and the burden that the payment of restitution will impose,
5 with due regard to any other moral or legal financial obligations
6 that the child may have.

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

11 (c) A child who is required to pay restitution and who is
12 not in intentional default of the payment of restitution, ~~may~~
13 ~~petition the court,~~ or an adult acting on the child's behalf,
14 may petition the court ~~—~~ for a modification of the amount of
15 restitution owed or for a cancellation of any unpaid portion of
16 the restitution.

17 (d) The court shall cancel all or part of the amount of res-
18 titution due if ~~it appears to the satisfaction of~~ the court
19 DETERMINES that payment of the amount due will impose a manifest
20 hardship on the child.

21 (e) If the court cancels all or a part of the amount of res-
22 titution, the court may modify the terms and conditions of proba-
23 tion to require the child to engage in community service.

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

1 (10) If the court finds that the child is in intentional
2 default of the payment of restitution, a court may revoke or
3 alter the terms and conditions of probation for nonpayment of
4 restitution.

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

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

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

23 (14) A parent who has been ordered to pay restitution under
24 subsection (12) may petition the court for a modification of the
25 amount of restitution owed or for a cancellation of any unpaid
26 portion of the restitution. The court shall cancel all or part
27 of the amount of restitution due, if ~~it appears to the~~

1 ~~satisfaction of~~ the court DETERMINES that payment of the amount
2 due will impose a manifest hardship on the parent.

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

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

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

17 (16) THE COURT SHALL NOT ENTER AN ORDER OF DISPOSITION FOR A
18 LISTED OFFENSE AS DEFINED IN SECTION 2 OF THE SEX OFFENDERS REG-
19 ISTRATION ACT UNTIL THE COURT HAS REGISTERED THE CHILD PURSUANT
20 TO THAT ACT. IF THE COURT HAS ENTERED AN ORDER OF DISPOSITION FOR
21 A LISTED OFFENSE BEFORE THE EFFECTIVE DATE OF THE SEX OFFENDERS
22 REGISTRATION ACT, THE COURT SHALL REGISTER THE CHILD PURSUANT TO
23 THAT ACT.

24 (17) ~~(+6)~~ Upon disposition or dismissal of a juvenile
25 offense, the clerk of the court entering the disposition or dis-
26 missal shall immediately advise the department of state police of
27 the 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 (18) ~~-(17)-~~ Except as otherwise provided in
5 subsection ~~-(18)-~~ (19), if a court is providing at the time of
6 the enactment of this subsection foster care home services
7 subject to the court's supervision to children within section
8 2(b) of this chapter, the court may continue to provide those
9 services through December 31, 1989. Beginning January 1, 1990,
10 the court shall discontinue providing those services.

11 (19) ~~-(18)-~~ If a court located in a county with a population
12 in 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 Section 2. This amendatory act shall not take effect unless
19 Senate Bill No. 397

20 of the 87th Legislature is enacted into law.