



SENATE BILL No. 586

April 28, 1993, Introduced by Senators BOUCHARD, GOUGEON and HART and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend sections 11 and 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,"

section 11 as amended by Act No. 92 of the Public Acts of 1988 and section 18 as amended by Act No. 314 of the Public Acts of

1990, being sections 712A.11 and 712A.18 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 11 and 18 of chapter XIIA of Act
2 No. 288 of the Public Acts of 1939, section 11 as amended by Act
3 No. 92 of the Public Acts of 1988 and section 18 as amended by
4 Act No. 314 of the Public Acts of 1990, being sections 712A.11
5 and 712A.18 of the Michigan Compiled Laws, are amended to read as
6 follows:

7 CHAPTER XIIA

8 Sec. 11. ~~(1) Before June 1, 1988, if a person gives infor-~~
9 ~~mation to the juvenile division of the probate court that a child~~
10 ~~is within the provisions of this chapter, a preliminary inquiry~~
11 ~~may be made to determine whether the interests of the public or~~
12 ~~of the child require that further action be taken. If it appears~~
13 ~~that formal jurisdiction should be acquired, the court shall~~
14 ~~authorize a petition to be filed.~~

15 ~~(2) Beginning June 1, 1988 and except as provided in subsec-~~
16 ~~tion (3), if~~ (1) IF a person gives information to the juvenile
17 division of the probate court that a child is within section
18 2(a)(2) to ~~(6)~~ (4), (b), (c), or (d) of this chapter, a prelim-
19 inary inquiry may be made to determine whether the interests of
20 the public or of the child require that further action be taken.
21 If it appears that formal jurisdiction should be acquired, the
22 court shall authorize a petition to be filed.

23 (2) ~~(3) Beginning June 1, 1988, only the~~ ONLY A
24 prosecuting attorney may file a petition requesting the court to

1 take jurisdiction of a child allegedly within section 2(a)(1) of
2 this chapter. If the prosecuting attorney submits a petition
3 requesting the court to take jurisdiction of a child allegedly
4 within section 2(a)(1) of this chapter and it appears that formal
5 jurisdiction should be acquired, the court shall authorize a
6 petition to be filed.

7 (3) ~~(4) The~~ A petition described in ~~subsections (1), (2),~~
8 ~~and (3),~~ SUBSECTION (1) OR (2) shall be verified and may be upon
9 information and belief. The petition shall set forth plainly the
10 facts that bring the child within this chapter and shall contain
11 all of the following information:

12 (a) The name, birth date, and address of the child.

13 (b) The name and address of the child's parents.

14 (c) The name and address of the child's legal guardian, if
15 there is one.

16 (d) The name and address of each person having custody or
17 control of the child.

18 (e) The name and address of the child's nearest known rela-
19 tive, if no parent or guardian can be found.

20 (4) ~~(5)~~ If any of the facts required by subsection ~~(4)~~
21 (3) are not known to the petitioner, the petition shall so
22 state. If the child attains his or her seventeenth birthday
23 after the filing of the petition, the jurisdiction of the court
24 shall continue beyond the child's seventeenth birthday, and the
25 court ~~shall have authority to~~ MAY hear and dispose of the peti-
26 tion in accordance with this chapter.

1 (5) ~~(6) Beginning June 1, 1988, at~~ AT the time a petition
2 is authorized, the court shall examine the court file to
3 determine if a child has had fingerprints taken as required by
4 section 3 of Act No. 289 of the Public Acts of 1925, being sec-
5 tion 28.243 of the Michigan Compiled Laws. If a child has not
6 had his or her fingerprints taken, the court shall do either of
7 the following:

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

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

13 (6) ~~(7)~~ A petition or other court record may be amended at
14 any stage of the proceedings, as the ends of justice may
15 require.

16 (7) ~~(8)~~ If the juvenile diversion act, ACT NO. 13 OF THE
17 PUBLIC ACTS OF 1988, BEING SECTIONS 722.821 TO 722.831 OF THE
18 MICHIGAN COMPILED LAWS, is complied with and it appears that
19 court services can be used in the prevention of delinquency with-
20 out formal jurisdiction, the court may offer court services to
21 children without a petition being authorized as provided in sec-
22 tion 2(e) of this chapter.

23 (8) IF A CHILD ADMITS RESPONSIBILITY FOR AN ACT THAT IS A
24 VIOLATION OF A MUNICIPAL ORDINANCE OR A STATE OR FEDERAL LAW, THE
25 COURT MAY IMPOSE A FINE AND COURT COSTS IN AN AMOUNT AUTHORIZED
26 BY THE ORDINANCE OR LAW. THE COURT MAY APPLY THIS SUBSECTION

1 REGARDLESS OF WHETHER A PETITION IS AUTHORIZED UNDER THIS SECTION
2 OR THE COURT TAKES FORMAL JURISDICTION.

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

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

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

23 (c) If a child is within the court's jurisdiction under sec-
24 tion 2(a) of this chapter, place the child in a suitable foster
25 care home subject to the court's supervision. Except as other-
26 wise provided in subsections (17) and (18), if a child is within
27 the court's jurisdiction under section 2(b) of this chapter, the

1 court shall not place a child in a foster care home subject to
2 the court's supervision.

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

7 (e) Commit the child to a public institution, county facili-
8 ty, institution operated as an agency of the court or county, or
9 agency authorized by law to receive children of similar age, sex,
10 and characteristics. In a placement under subdivision (d) or a
11 commitment under this subdivision, except to a state institution,
12 the religious affiliation of the child shall be protected by
13 placement or commitment to a private child-placing or
14 child-caring agency or institution, if available. ~~The court,~~
15 ~~in~~ IN every order of commitment under this subdivision to a
16 state institution or agency described in the youth rehabilitation
17 services act, Act No. 150 of the Public Acts of 1974, as amended,
18 being sections 803.301 to 803.309 of the Michigan Compiled Laws
19 or in Act No. 220 of the Public Acts of 1935, as amended, being
20 sections 400.201 to 400.214 of the Michigan Compiled Laws, THE
21 COURT shall name the superintendent of the institution to which
22 the child is committed as a special guardian to receive benefits
23 due the child from the government of the United States, and the
24 benefits shall be used to the extent necessary to pay for the
25 portions of the cost of care in the institution ~~which~~ THAT the
26 parent or parents are found unable to pay.

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

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

12 (h) Appoint a guardian under section 424 of the revised pro-
13 bate code, Act No. 642 of the Public Acts of 1978, being section
14 700.424 of the Michigan Compiled Laws, pursuant to a petition
15 filed with the court by a person interested in the welfare of the
16 child. If the court appoints a guardian pursuant to this subdi-
17 vision, it may enter an order dismissing the petition under this
18 chapter.

19 (I) IF THE COURT FINDS THAT THE CHILD HAS VIOLATED A MUNICI-
20 PAL ORDINANCE OR STATE OR FEDERAL LAW, IMPOSE A FINE AND COURT
21 COSTS IN AN AMOUNT AUTHORIZED BY THE ORDINANCE OR LAW THE CHILD
22 IS FOUND TO HAVE VIOLATED.

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

25 (5) If the court appoints an attorney to represent a child,
26 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~~ A
14 municipal ordinance or state or federal law, and the court has
15 placed the child on probation, the court may, as a condition of
16 probation, 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 may
14 petition the court, for a modification of the amount of restitu-
15 tion owed or for a cancellation of any unpaid portion of the
16 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 that
19 payment of the amount due will impose a manifest hardship on the
20 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 that payment of the amount due will
2 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) Upon disposition or dismissal of a juvenile offense,
18 the clerk of the court entering the disposition or dismissal
19 shall immediately advise the department of state police of the
20 disposition or dismissal on forms approved by the state court
21 administrator. The report to the department of state police
22 shall include information as to the finding of the judge or jury
23 and a summary of the disposition imposed.

24 (17) Except as otherwise provided in subsection (18), if, ON
25 APRIL 1, 1989, a court ~~is~~ WAS providing ~~at the time of the~~
26 ~~enactment of this subsection~~ foster care home services subject
27 to the court's supervision to children within section 2(b) of

1 this chapter, the court may continue to provide those services
2 through December 31, 1989. Beginning January 1, 1990, the court
3 shall discontinue providing those services.

4 (18) If, ON APRIL 1, 1989, a court located in a county with
5 a population in excess of 650,000 ~~is~~ WAS providing ~~at the time~~
6 ~~of 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, 1991. Beginning January 1, 1992,
10 the court shall discontinue those services.