



HOUSE BILL No. 5342

October 31, 1995, Introduced by Rep. Brewer and referred to the Committee on Education.

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. 355 of the Public Acts of 1994, 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. 355 of the Public Acts
3 of 1994, being section 712A.18 of the Michigan Compiled Laws, is
4 amended to read as follows:

5 CHAPTER XIIA

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

13 (a) Warn the child or the child's parents, guardian, or cus-
14 todian and, except as provided in subsection (7), dismiss the
15 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 being a
19 parent, grandparent, brother, sister, stepparent, stepsister,
20 stepbrother, uncle, or aunt by marriage, blood, or adoption. The
21 court shall order the terms and conditions of probation or super-
22 vision, including reasonable rules for the conduct of the par-
23 ents, guardian, or custodian, if any, as the court determines
24 necessary for the physical, mental, or moral well-being and
25 behavior of the child.

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

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

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

1 be used to the extent necessary to pay for the portions of the
2 cost of care in the institution that the parent or parents are
3 found unable to pay.

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

9 (g) Order the parents, guardian, custodian, or any other
10 person to refrain from continuing conduct that the court deter-
11 mines has caused or tended to cause the child to come within or
12 to remain under this chapter, or that obstructs placement or com-
13 mitment of the child pursuant to an order under this section.

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

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

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

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

4 (l) IF A CHILD IS WITHIN THE COURT'S JURISDICTION UNDER
5 SECTION 2 OF THIS CHAPTER, PLACE THE CHILD IN AND ORDER THE CHILD
6 TO COMPLETE SATISFACTORILY AN ALTERNATIVE EDUCATION PROGRAM
7 AUTHORIZED OR ESTABLISHED, OR BOTH, AS PROVIDED IN SECTION 628A
8 OF THE SCHOOL CODE OF 1976, ACT NO. 451 OF THE PUBLIC ACTS OF
9 1976, BEING SECTION 380.628A OF THE MICHIGAN COMPILED LAWS. UPON
10 RECEIVING A REPORT OF SATISFACTORY PERFORMANCE IN THE PROGRAM
11 FROM THE INTERMEDIATE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY,
12 THE COURT SHALL AUTHORIZE THE RELEASE OF THE CHILD FROM THE
13 PROGRAM. TO PLACE A CHILD IN AN ALTERNATIVE EDUCATION PROGRAM,
14 THE COURT SHALL DETERMINE ALL OF THE FOLLOWING:

15 (i) PLACEMENT IN AN EXPULSION ALTERNATIVE PROGRAM WILL BENE-
16 FIT THE CHILD.

17 (ii) THE CHILD IS PHYSICALLY ABLE TO PARTICIPATE IN THE
18 PROGRAM.

19 (iii) THE CHILD DOES NOT APPEAR TO HAVE ANY MENTAL HANDICAP
20 THAT WOULD PREVENT PARTICIPATION IN THE PROGRAM.

21 (iv) THE CHILD WILL NOT BE A DANGER TO OTHER CHILDREN IN THE
22 PROGRAM.

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 reimbursement
26 by the child, parent, guardian, or custodian to the court for the
27 cost of care or service. The order shall be reasonable, taking

1 into account both the income and resources of the child, parent,
2 guardian, or custodian. The amount may be based upon the guide-
3 lines and model schedule created under subsection (6). If the
4 child is receiving an adoption support subsidy pursuant to sec-
5 tion 115j(4) of the social welfare act, Act No. 280 of the Public
6 Acts of 1939, being section 400.115j of the Michigan Compiled
7 Laws, the amount shall not exceed the amount of the support
8 subsidy. The reimbursement provision applies during the entire
9 period the child remains in care outside of the child's own home
10 and under state or court supervision, unless the child is in the
11 permanent custody of the court. The court shall provide for the
12 collection of all amounts ordered to be reimbursed, and the money
13 collected shall be accounted for and reported to the county board
14 of commissioners. Collections to cover delinquent accounts or to
15 pay the balance due on reimbursement orders may be made after a
16 child is released or discharged from care outside the child's own
17 home and under state or court supervision. Twenty-five percent
18 of all amounts collected pursuant to an order entered under this
19 subsection shall be credited to the appropriate fund of the
20 county to offset the administrative cost of collections. The
21 balance of all amounts collected pursuant to an order entered
22 under this subsection shall be divided in the same ratio in which
23 the county, state, and federal government participate in the cost
24 of care outside the child's own home and under state or court
25 supervision. The court may also collect benefits paid for the
26 cost of care of a court ward from the government of the United
27 States. Money collected for children placed with or committed to

1 the state department of social services shall be accounted for
2 and reported on an individual child basis. In cases of delin-
3 quent accounts, the court may also enter an order to intercept
4 state or federal tax refunds of a child, parent, guardian, or
5 custodian and initiate the necessary offset proceedings in order
6 to recover the cost of care or service. The court shall send to
7 the person who is the subject of the intercept order advance
8 written notice of the proposed offset. The notice shall include
9 notice of the opportunity to contest the offset on the grounds
10 that the intercept is not proper because of a mistake of fact
11 concerning the amount of the delinquency or the identity of the
12 person subject to the order. The court shall provide for the
13 prompt reimbursement of an amount withheld in error or an amount
14 found to exceed the delinquent amount.

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

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

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

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

15 (7) If the court finds that a child comes under section 30
16 of this chapter, the court shall order the child or the child's
17 parent to pay restitution as provided in sections 30 and 31 of
18 this chapter and in sections 44 and 45 of the crime victim's
19 rights act, Act No. 87 of the Public Acts of 1985, being sections
20 780.794 and 780.795 of the Michigan Compiled Laws.

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

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

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

1 (9) If the court finds that the child is in intentional
2 default of the payment of restitution, a court may, as provided
3 in section 31 of this chapter, revoke or alter the terms and con-
4 ditions of probation for nonpayment of restitution. If a child
5 who is ordered to engage in community service intentionally
6 refuses to perform the required community service, the court may
7 revoke or alter the terms and conditions of probation.

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

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

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

23 (11) Upon disposition or dismissal of a juvenile offense,
24 the clerk of the court entering the disposition or dismissal
25 shall immediately advise the department of state police of the
26 disposition or dismissal on forms approved by the state court
27 administrator. The report to the department of state police

1 shall include information as to the finding of the judge or jury
2 and a summary of the disposition imposed.

3 (12) If the court enters an order of disposition based on an
4 act that is a juvenile offense as defined in section 1 of Act
5 No. 196 of the Public Acts of 1989, being section 780.901 of the
6 Michigan Compiled Laws, the court shall order the child to pay
7 the assessment provided in that act.

8 (13) If the court has entered an order of disposition for a
9 listed offense as defined in section 2 of the sex offenders reg-
10 istration act, Act No. 295 of the Public Acts of 1994, being sec-
11 tion 28.722 of the Michigan Compiled Laws, the court or the
12 department of social services shall register the child or accept
13 the child's registration as provided in the sex offenders regis-
14 tration act, Act No. 295 of the Public Acts of 1994, being sec-
15 tions 28.721 to 28.732 of the Michigan Compiled Laws.

16 (14) IF THE COURT ENTERS AN ORDER OF DISPOSITION PLACING A
17 CHILD IN AN ALTERNATIVE EDUCATION PROGRAM AND THE COURT RECEIVES
18 FROM THE INTERMEDIATE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY A
19 REPORT OF UNSATISFACTORY PERFORMANCE IN THE PROGRAM OR A REPORT
20 THAT THE CHILD DOES NOT MEET THE PROGRAM'S REQUIREMENTS OR IS
21 MEDICALLY UNABLE TO PARTICIPATE IN THE PROGRAM FOR MORE THAN 25
22 DAYS, THE COURT SHALL RELEASE THE CHILD FROM THE PROGRAM AND
23 ENTER AN ALTERNATIVE ORDER OF DISPOSITION. A CHILD SHALL NOT BE
24 PLACED IN AN ALTERNATIVE EDUCATION PROGRAM MORE THAN ONCE, EXCEPT
25 THAT A CHILD RETURNED TO THE COURT FOR A MEDICAL CONDITION EXIST-
26 ING WHEN PLACED MAY BE PLACED AGAIN IN THE PROGRAM AFTER THE
27 MEDICAL CONDITION IS CORRECTED.

1 Section 2. This amendatory act shall not take effect unless
2 Senate Bill No. _____ or House Bill No. 5341 (request
3 no. 04444'95) of the 88th Legislature is enacted into law.