



HOUSE BILL No. 5782

April 23, 1996, Introduced by Reps. Ryan, McBryde, Goschka, Nye, Weeks and Perricone and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 11 and 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,"

section 11 as amended by Act No. 92 of the Public Acts of 1988 and section 18 as amended by Act No. 355 of the Public Acts of

1994, 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 XIIIA 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. 355 of the Public Acts of 1994, being sections 712A.11
5 and 712A.18 of the Michigan Compiled Laws, are amended to read as
6 follows:

7 CHAPTER XIIIA

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 a person gives information to the juvenile division
17 of the probate court that a child is within section 2(a)(2) to
18 ~~(6)~~ (4), (b), (c), or (d) of this chapter, a preliminary
19 inquiry may be made to determine whether the interests of the
20 public or of the child require that further action be taken. If
21 it appears that formal jurisdiction should be acquired, the court
22 shall authorize a petition to be filed.

23 (3) Beginning June 1, 1988, only the prosecuting attorney
24 may file a petition requesting the court to take jurisdiction of

1 a child allegedly within section 2(a)(1) of this chapter. If the
2 prosecuting attorney submits a petition requesting the court to
3 take jurisdiction of a child allegedly within section 2(a)(1) of
4 this chapter and it appears that formal jurisdiction should be
5 acquired, the court shall authorize a petition to be filed. IF A
6 PETITION IS NOT AUTHORIZED, BUT DURING THE PROCEEDINGS THE CHILD
7 ADMITS COMMITTING THE OFFENSE CHARGED, THE COURT SHALL ORDER THAT
8 THE CHILD'S FINGERPRINTS, ARREST CARD, AND DESCRIPTION SHALL NOT
9 BE RETURNED TO THE CHILD PURSUANT TO SECTION 3 OF ACT NO. 289 OF
10 THE PUBLIC ACTS OF 1925, BEING SECTION 28.243 OF THE MICHIGAN
11 COMPILED LAWS, BUT SHALL BE RETAINED.

12 (4) The petition described in subsections (1), (2), and
13 (3), shall be verified and may be upon information and belief.
14 The petition shall set forth plainly the facts that bring the
15 child within this chapter and shall contain all of the following
16 information:

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

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

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

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

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

25 (5) If any of the facts required by subsection (4) are not
26 known to the petitioner, the petition shall so state. If the
27 child attains his or her seventeenth birthday after the filing of

1 the petition, the jurisdiction of the court shall continue beyond
2 the child's seventeenth birthday, and the court shall have
3 authority to hear and dispose of the petition in accordance with
4 this chapter.

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

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

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

16 (7) A petition or other court record may be amended at any
17 stage of the proceedings, as the ends of justice may require.

18 (8) If the juvenile diversion act is complied with and it
19 appears that court services can be used in the prevention of
20 delinquency without formal jurisdiction, the court may offer
21 court services to children without a petition being authorized as
22 provided in section 2(e) of this chapter.

23 Sec. 18. (1) If the court finds that a child concerning
24 whom a petition is filed is not within this chapter, the court
25 shall enter an order dismissing the petition. Except as other-
26 wise provided in subsection (10), if the court finds that a child
27 is within this chapter, the court may enter any of the following

1 orders of disposition that are appropriate for the welfare of the
2 child and society in view of the facts proven and ascertained:

3 (a) Warn the child or the child's parents, guardian, or cus-
4 todian and, except as provided in subsection (7), dismiss the
5 petition.

6 (b) Place the child on probation, or under supervision in
7 the child's own home or in the home of an adult who is related to
8 the child. As used in this subdivision, "related" means being a
9 parent, grandparent, brother, sister, stepparent, stepsister,
10 stepbrother, uncle, or aunt by marriage, blood, or adoption. The
11 court shall order the terms and conditions of probation or super-
12 vision, including reasonable rules for the conduct of the par-
13 ents, guardian, or custodian, if any, as the court determines
14 necessary for the physical, mental, or moral well-being and
15 behavior of the child.

16 (c) If a child is within the court's jurisdiction under sec-
17 tion 2(a) of this chapter, place the child in a suitable foster
18 care home subject to the court's supervision. If a child is
19 within the court's jurisdiction under section 2(b) of this chap-
20 ter, the court shall not place a child in a foster care home
21 subject to the court's supervision.

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

26 (e) Commit the child to a public institution, county
27 facility, institution operated as an agency of the court or

1 county, or agency authorized by law to receive children of
2 similar age, sex, and characteristics. In a placement under sub-
3 division (d) or a commitment under this subdivision, except to a
4 state institution, the religious affiliation of the child shall
5 be protected by placement or commitment to a private
6 child-placing or child-caring agency or institution, if
7 available. In every order of commitment under this subdivision
8 to a state institution or agency described in the youth rehabili-
9 tation services act, Act No. 150 of the Public Acts of 1974, ~~as~~
10 ~~amended,~~ being sections 803.301 to 803.309 of the Michigan
11 Compiled Laws, or in Act No. 220 of the Public Acts of 1935, ~~as~~
12 ~~amended,~~ being sections 400.201 to 400.214 of the Michigan
13 Compiled Laws, the court shall name the superintendent of the
14 institution to which the child is committed as a special guardian
15 to receive benefits due the child from the government of the
16 United States, and the benefits shall be used to the extent nec-
17 essary to pay for the portions of the cost of care in the insti-
18 tution that the parent or parents are found unable to pay.

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

24 (g) Order the parents, guardian, custodian, or any other
25 person to refrain from continuing conduct that the court deter-
26 mines has caused or tended to cause the child to come within or

1 to remain under this chapter, or that obstructs placement or
2 commitment of the child pursuant to an order under this section.

3 (h) Appoint a guardian under section 424 of the revised pro-
4 bate code, Act No. 642 of the Public Acts of 1978, being section
5 700.424 of the Michigan Compiled Laws, pursuant to a petition
6 filed with the court by a person interested in the welfare of the
7 child. If the court appoints a guardian pursuant to this subdi-
8 vision, it may enter an order dismissing the petition under this
9 chapter.

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

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

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

20 (2) An order of disposition placing a child in or committing
21 a child to care outside of the child's own home and under state
22 or court supervision shall contain a provision for reimbursement
23 by the child, parent, guardian, or custodian to the court for the
24 cost of care or service. The order shall be reasonable, taking
25 into account both the income and resources of the child, parent,
26 guardian, or custodian. The amount may be based upon the
27 guidelines and model schedule created under subsection (6). If

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

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

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

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

26 (5) If the court appoints an attorney to represent a child,
27 parent, guardian, or custodian, the court may require in an order

1 entered under this section that the child, parent, guardian, or
2 custodian 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 judges association, shall create guidelines and
7 a model schedule that may be used by the court in determining the
8 ability of the child, parent, guardian, or custodian to pay for
9 care and any costs of service ordered under subsection (2) or
10 (3). The guidelines and model schedule shall take into account
11 both the income and resources of the child, parent, guardian, or
12 custodian.

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

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

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

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

26 (9) If the court finds that the child is in intentional
27 default of the payment of restitution, a court may, as provided

1 in section 31 of this chapter, revoke or alter the terms and
2 conditions of probation for nonpayment of restitution. If a
3 child who is ordered to engage in community service intentionally
4 refuses to perform the required community service, the court may
5 revoke or alter the terms and conditions of probation.

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

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

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

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

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

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

14 (14) IF THE COURT ENTERS AN ORDER DISMISSING THE PETITION,
15 BUT DURING THE PROCEEDINGS THE CHILD ADMITS COMMITTING THE
16 OFFENSE CHARGED, THE COURT SHALL ORDER THAT THE CHILD'S FINGER-
17 PRINTS, ARREST CARD, AND DESCRIPTION SHALL NOT BE RETURNED TO THE
18 CHILD PURSUANT TO SECTION 3 OF ACT NO. 289 OF THE PUBLIC ACTS OF
19 1925 BUT SHALL BE RETAINED.

20 Section 2. This amendatory act shall not take effect unless
21 Senate Bill No. _____ or House Bill No. 5781 (request
22 no. 01450'95) of the 88th Legislature is enacted into law.