

SENATE BILL No. 1172

April 28, 2004, Introduced by Senators BASHAM and TOY and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending section 18 of chapter XIIA (MCL 712A.18), as amended by 2003 PA 71.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

Sec. 18. (1) If the court finds that a juvenile 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 juvenile is within this chapter, the court may enter any of the following orders of disposition that are appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained:

(a) Warn the juvenile or the juvenile's parents, guardian, or

1 custodian and, except as provided in subsection (7), dismiss the
2 petition.

3 (b) Place the juvenile on probation, or under supervision in
4 the juvenile's own home or in the home of an adult who is related
5 to the juvenile. As used in this subdivision, "related" means
6 being a parent, grandparent, brother, sister, stepparent,
7 stepsister, stepbrother, uncle, or aunt by marriage, blood, or
8 adoption. The court shall order the terms and conditions of
9 probation or supervision, including reasonable rules for the
10 conduct of the parents, guardian, or custodian, if any, as the
11 court determines necessary for the physical, mental, or moral
12 well-being and behavior of the juvenile. The court also shall
13 order, as a condition of probation or supervision, that the
14 juvenile shall pay the minimum state cost prescribed by section
15 18m of this chapter.

16 (c) If a juvenile is within the court's jurisdiction under
17 section 2(a) of this chapter, or under section 2(h) of this
18 chapter for a supplemental petition, place the juvenile in a
19 suitable foster care home subject to the court's supervision. If
20 a juvenile is within the court's jurisdiction under section 2(b)
21 of this chapter, the court shall not place a juvenile in a foster
22 care home subject to the court's supervision.

23 (d) Except as otherwise provided in this subdivision, place
24 the juvenile in or commit the juvenile to a private institution
25 or agency approved or licensed by the department of consumer and
26 industry services for the care of juveniles of similar age, sex,
27 and characteristics. If the juvenile is not a ward of the court,

1 the court shall commit the juvenile to the family independence
2 agency or, if the county is a county juvenile agency, to that
3 county juvenile agency for placement in or commitment to such an
4 institution or agency as the family independence agency or county
5 juvenile agency determines is most appropriate, subject to any
6 initial level of placement the court designates.

7 (e) Except as otherwise provided in this subdivision, commit
8 the juvenile to a public institution, county facility,
9 institution operated as an agency of the court or county, or
10 agency authorized by law to receive juveniles of similar age,
11 sex, and characteristics. If the juvenile is not a ward of the
12 court, the court shall commit the juvenile to the family
13 independence agency or, if the county is a county juvenile
14 agency, to that county juvenile agency for placement in or
15 commitment to such an institution or facility as the family
16 independence agency or county juvenile agency determines is most
17 appropriate, subject to any initial level of placement the court
18 designates. If a child is not less than 17 years of age and is
19 in violation of a personal protection order, the court may commit
20 the child to a county jail within the adult prisoner population.
21 In a placement under subdivision (d) or a commitment under this
22 subdivision, except to a state institution or a county juvenile
23 agency institution, the juvenile's religious affiliation shall be
24 protected by placement or commitment to a private child-placing
25 or child-caring agency or institution, if available. Except for
26 commitment to the family independence agency or a county juvenile
27 agency, an order of commitment under this subdivision to a state

1 institution or agency described in the youth rehabilitation
2 services act, 1974 PA 150, MCL 803.301 to 803.309, or in 1935 PA
3 220, MCL 400.201 to 400.214, the court shall name the
4 superintendent of the institution to which the juvenile is
5 committed as a special guardian to receive benefits due the
6 juvenile from the government of the United States. An order of
7 commitment under this subdivision to the family independence
8 agency or a county juvenile agency shall name that agency as a
9 special guardian to receive those benefits. The benefits
10 received by the special guardian shall be used to the extent
11 necessary to pay for the portions of the cost of care in the
12 institution or facility that the parent or parents are found
13 unable to pay.

14 (f) Provide the juvenile with medical, dental, surgical, or
15 other health care, in a local hospital if available, or
16 elsewhere, maintaining as much as possible a local
17 physician-patient relationship, and with clothing and other
18 incidental items the court determines are necessary.

19 (g) Order the parents, guardian, custodian, or any other
20 person to refrain from continuing conduct that the court
21 determines has caused or tended to cause the juvenile to come
22 within or to remain under this chapter or that obstructs
23 placement or commitment of the juvenile by an order under this
24 section.

25 (h) Appoint a guardian under section 5204 of the estates and
26 protected individuals code, 1998 PA 386, MCL 700.5204, in
27 response to a petition filed with the court by a person

1 interested in the juvenile's welfare. If the court appoints a
2 guardian as authorized by this subdivision, it may dismiss the
3 petition under this chapter.

4 (i) Order the juvenile to engage in community service.

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

11 (k) If a juvenile is within the court's jurisdiction under
12 section 2(a)(1) of this chapter, order the juvenile's parent or
13 guardian to personally participate in treatment reasonably
14 available in the parent's or guardian's location.

15 (l) If a juvenile is within the court's jurisdiction under
16 section 2(a)(1) of this chapter, place the juvenile in and order
17 the juvenile to complete satisfactorily a program of training in
18 a juvenile boot camp established by the family independence
19 agency under the juvenile boot camp act, 1996 PA 263, MCL
20 400.1301 to 400.1309, as provided in that act. If the county is
21 a county juvenile agency, however, the court shall commit the
22 juvenile to that county juvenile agency for placement in the
23 program under that act. Upon receiving a report of satisfactory
24 completion of the program from the family independence agency,
25 the court shall authorize the juvenile's release from placement
26 in the juvenile boot camp. Following satisfactory completion of
27 the juvenile boot camp program, the juvenile shall complete an

1 additional period of not less than 120 days or more than 180 days
2 of intensive supervised community reintegration in the juvenile's
3 local community. To place or commit a juvenile under this
4 subdivision, the court shall determine all of the following:

5 (i) Placement in a juvenile boot camp will benefit the
6 juvenile.

7 (ii) The juvenile is physically able to participate in the
8 program.

9 (iii) The juvenile does not appear to have any mental
10 handicap that would prevent participation in the program.

11 (iv) The juvenile will not be a danger to other juveniles in
12 the boot camp.

13 (v) There is an opening in a juvenile boot camp program.

14 (vi) If the court must commit the juvenile to a county
15 juvenile agency, the county juvenile agency is able to place the
16 juvenile in a juvenile boot camp program.

17 (m) ~~—If—~~ **Except as otherwise provided in subdivision (n), if**
18 the court entered a judgment of conviction under section 2d of
19 this chapter, enter any disposition under this section or, if the
20 court determines that the best interests of the public would be
21 served, impose any sentence upon the juvenile that could be
22 imposed upon an adult convicted of the offense for which the
23 juvenile was convicted. If the juvenile is convicted of a
24 violation or conspiracy to commit a violation of section
25 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL
26 333.7403, the court may impose the alternative sentence permitted
27 under that section if the court determines that the best

1 interests of the public would be served. The court may delay
2 imposing a sentence of imprisonment under this subdivision for a
3 period not longer than the period during which the court has
4 jurisdiction over the juvenile under this chapter by entering an
5 order of disposition delaying imposition of sentence and placing
6 the juvenile on probation upon the terms and conditions it
7 considers appropriate, including any disposition under this
8 section. If the court delays imposing sentence under this
9 section, section 18i of this chapter applies. If the court
10 imposes sentence, it shall enter a judgment of sentence. If the
11 court imposes a sentence of imprisonment, the juvenile shall
12 receive credit against the sentence for time served before
13 sentencing. In determining whether to enter an order of
14 disposition or impose a sentence under this subdivision, the
15 court shall consider all of the following factors, giving greater
16 weight to the seriousness of the offense and the juvenile's prior
17 record:

18 (i) The seriousness of the offense in terms of community
19 protection, including, but not limited to, the existence of any
20 aggravating factors recognized by the sentencing guidelines, the
21 use of a firearm or other dangerous weapon, and the impact on any
22 victim.

23 (ii) The juvenile's culpability in committing the offense,
24 including, but not limited to, the level of the juvenile's
25 participation in planning and carrying out the offense and the
26 existence of any aggravating or mitigating factors recognized by
27 the sentencing guidelines.

1 (iii) The juvenile's prior record of delinquency including,
2 but not limited to, any record of detention, any police record,
3 any school record, or any other evidence indicating prior
4 delinquent behavior.

5 (iv) The juvenile's programming history, including, but not
6 limited to, the juvenile's past willingness to participate
7 meaningfully in available programming.

8 (v) The adequacy of the punishment or programming available
9 in the juvenile justice system.

10 (vi) The dispositional options available for the juvenile.

11 **(n) If the juvenile is convicted of a violation of section**
12 **316 or 317 of the Michigan penal code, 1931 PA 328, MCL 750.316**
13 **and 750.317, the court shall sentence the juvenile in the same**
14 **manner as an adult.**

15 (2) An order of disposition placing a juvenile in or
16 committing a juvenile to care outside of the juvenile's own home
17 and under state, county juvenile agency, or court supervision
18 shall contain a provision for reimbursement by the juvenile,
19 parent, guardian, or custodian to the court for the cost of care
20 or service. The order shall be reasonable, taking into account
21 both the income and resources of the juvenile, parent, guardian,
22 or custodian. The amount may be based upon the guidelines and
23 model schedule created under subsection (6). If the juvenile is
24 receiving an adoption support subsidy under sections 115f to 115m
25 of the social welfare act, 1939 PA 280, MCL 400.115f to 400.115m,
26 the amount shall not exceed the amount of the support subsidy.
27 The reimbursement provision applies during the entire period the

1 juvenile remains in care outside of the juvenile's own home and
2 under state, county juvenile agency, or court supervision, unless
3 the juvenile is in the permanent custody of the court. The court
4 shall provide for the collection of all amounts ordered to be
5 reimbursed and the money collected shall be accounted for and
6 reported to the county board of commissioners. Collections to
7 cover delinquent accounts or to pay the balance due on
8 reimbursement orders may be made after a juvenile is released or
9 discharged from care outside the juvenile's own home and under
10 state, county juvenile agency, or court supervision. Twenty-five
11 percent of all amounts collected under an order entered under
12 this subsection shall be credited to the appropriate fund of the
13 county to offset the administrative cost of collections. The
14 balance of all amounts collected under an order entered under
15 this subsection shall be divided in the same ratio in which the
16 county, state, and federal government participate in the cost of
17 care outside the juvenile's own home and under state, county
18 juvenile agency, or court supervision. The court may also
19 collect from the government of the United States benefits paid
20 for the cost of care of a court ward. Money collected for
21 juveniles placed by the court with or committed to the family
22 independence agency or a county juvenile agency shall be
23 accounted for and reported on an individual juvenile basis. In
24 cases of delinquent accounts, the court may also enter an order
25 to intercept state or federal tax refunds of a juvenile, parent,
26 guardian, or custodian and initiate the necessary offset
27 proceedings in order to recover the cost of care or service. The

1 court shall send to the person who is the subject of the
2 intercept order advance written notice of the proposed offset.
3 The notice shall include notice of the opportunity to contest the
4 offset on the grounds that the intercept is not proper because of
5 a mistake of fact concerning the amount of the delinquency or the
6 identity of the person subject to the order. The court shall
7 provide for the prompt reimbursement of an amount withheld in
8 error or an amount found to exceed the delinquent amount.

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

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

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

27 (6) The office of the state court administrator, under the

1 supervision and direction of the supreme court and in
2 consultation with the family independence agency and the Michigan
3 probate judges association, shall create guidelines and a model
4 schedule the court may use in determining the ability of the
5 juvenile, parent, guardian, or custodian to pay for care and any
6 costs of service ordered under subsection (2) or (3). The
7 guidelines and model schedule shall take into account both the
8 income and resources of the juvenile, parent, guardian, or
9 custodian.

10 (7) If the court finds that a juvenile comes under section 30
11 of this chapter, the court shall order the juvenile or the
12 juvenile's parent to pay restitution as provided in sections 30
13 and 31 of this chapter and in sections 44 and 45 of the crime
14 victim's rights act, 1985 PA 87, MCL 780.794 and 780.795.

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

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

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

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

1 the court may revoke or alter the terms and conditions of
2 probation.

3 (10) The court shall not enter an order of disposition for a
4 juvenile offense as defined in section 1a of 1925 PA 289, MCL
5 28.241a, or a judgment of sentence for a conviction until the
6 court has examined the court file and has determined that the
7 juvenile's fingerprints have been taken and forwarded as required
8 by section 3 of 1925 PA 289, MCL 28.243, and as required by the
9 sex offenders registration act, 1994 PA 295, MCL 28.721 to
10 28.732. If a juvenile has not had his or her fingerprints taken,
11 the court shall do either of the following:

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

16 (b) Order the juvenile committed to the sheriff's custody for
17 taking and forwarding the juvenile's fingerprints.

18 (11) Upon final disposition, conviction, acquittal, or
19 dismissal of an offense within the court's jurisdiction under
20 section 2(a)(1) of this chapter, using forms approved by the
21 state court administrator, the clerk of the court entering the
22 final disposition, conviction, acquittal, or dismissal shall
23 immediately advise the department of state police of that final
24 disposition, conviction, acquittal, or dismissal as required by
25 section 3 of 1925 PA 289, MCL 28.243. The report to the
26 department of state police shall include information as to the
27 finding of the judge or jury and a summary of the disposition or

1 sentence imposed.

2 (12) If the court enters an order of disposition based on an
3 act that is a juvenile offense as defined in section 1 of 1989 PA
4 196, MCL 780.901, the court shall order the juvenile to pay the
5 assessment as provided in that act. If the court enters a
6 judgment of conviction under section 2d of this chapter for an
7 offense that is a felony, serious misdemeanor, or specified
8 misdemeanor as defined in section 1 of 1989 PA 196, MCL 780.901,
9 the court shall order the juvenile to pay the assessment as
10 provided in that act.

11 (13) If the court has entered an order of disposition or a
12 judgment of conviction for a listed offense as defined in section
13 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722,
14 the court, the family independence agency, or the county juvenile
15 agency shall register the juvenile or accept the juvenile's
16 registration as provided in the sex offenders registration act,
17 1994 PA 295, MCL 28.721 to 28.732.

18 (14) If the court enters an order of disposition placing a
19 juvenile in a juvenile boot camp program, or committing a
20 juvenile to a county juvenile agency for placement in a juvenile
21 boot camp program, and the court receives from the family
22 independence agency a report that the juvenile has failed to
23 perform satisfactorily in the program, that the juvenile does not
24 meet the program's requirements or is medically unable to
25 participate in the program for more than 25 days, that there is
26 no opening in a juvenile boot camp program, or that the county
27 juvenile agency is unable to place the juvenile in a juvenile

1 boot camp program, the court shall release the juvenile from
2 placement or commitment and enter an alternative order of
3 disposition. A juvenile shall not be placed in a juvenile boot
4 camp under an order of disposition more than once, except that a
5 juvenile returned to the court for a medical condition, because
6 there was no opening in a juvenile boot camp program, or because
7 the county juvenile agency was unable to place the juvenile in a
8 juvenile boot camp program may be placed again in the juvenile
9 boot camp program after the medical condition is corrected, an
10 opening becomes available, or the county juvenile agency is able
11 to place the juvenile.

12 (15) If the juvenile is within the court's jurisdiction under
13 section 2(a)(1) of this chapter for an offense other than a
14 listed offense as defined in section 2(e)(i) to (ix) and (xi) to
15 (xiii) of the sex offenders registration act, 1994 PA 295, MCL
16 28.722, the court shall determine if the offense is a violation
17 of a law of this state or a local ordinance of a municipality of
18 this state that by its nature constitutes a sexual offense
19 against an individual who is less than 18 years of age. If so,
20 the order of disposition is for a listed offense as defined in
21 section 2(e)(x) of the sex offenders registration act, 1994 PA
22 295, MCL 28.722, and the court shall include the basis for that
23 determination on the record and include the determination in the
24 order of disposition.

25 (16) The court shall not impose a sentence of imprisonment in
26 the county jail under subsection (1)(m) unless the present county
27 jail facility for the juvenile's imprisonment would meet all

1 requirements under federal law and regulations for housing
2 juveniles. The court shall not impose the sentence until it
3 consults with the sheriff to determine when the sentence will
4 begin to ensure that space will be available for the juvenile.

5 (17) In a proceeding under section 2(h) of this chapter, this
6 section only applies to a disposition for a violation of a
7 personal protection order and subsequent proceedings.

8 (18) If a juvenile is within the court's jurisdiction under
9 section 2(a)(1) of this chapter, the court shall order the
10 juvenile to pay costs as provided in section 18m of this
11 chapter.