

Act No. 112
Public Acts of 1989
Approved by the Governor
June 22, 1989
Filed with the Secretary of State
June 23, 1989

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Senator Nichols

ENROLLED SENATE BILL No. 137

AN ACT 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. 224 of the Public Acts of 1988, being section 712A.18 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 18 of chapter XIIA of Act No. 288 of the Public Acts of 1939, as amended by Act No. 224 of the Public Acts of 1988, being section 712A.18 of the Michigan Compiled Laws, is amended to read as follows:

CHAPTER XIIA

Sec. 18. (1) If the court finds that a child concerning whom a petition has been filed is not within this chapter, the court shall enter an order dismissing the petition. Except as otherwise provided in subsection (15), if the court finds that a child is within this chapter, the court may enter any of the following orders of disposition which is appropriate for the welfare of the child and society in view of the facts proven and ascertained:

(a) Warn the child or the child's parents, guardian, or custodian 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: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt. 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, designed for the physical, mental, or moral well-being and behavior of the child, as the court determines.

(c) If a child is within the court's jurisdiction under section 2(a) of this chapter, place the child in a suitable foster care home subject to the court's supervision. Except as otherwise provided in subsections (17) and (18), if a child is within the court's jurisdiction under section 2(b) of this chapter, the court shall not place a child in a foster care home subject to the court's supervision.

(d) Place the child in or commit the child to a private institution or agency approved or licensed by the state department of social services for the care of children of similar age, sex, and characteristics.

(e) Commit the child to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive children of similar age, sex, and characteristics. In a placement under subdivision (d) or a commitment under this subdivision, except to a state institution, the religious affiliation of the child shall be protected by placement or commitment to a private child-placing or child-caring agency or institution, if available. The court, in every order of commitment under this subdivision to a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, as amended, being sections 803.301 to 803.309 of the Michigan Compiled Laws or in Act No. 220 of the Public Acts of 1935, as amended, being sections 400.201 to 400.214 of the Michigan Compiled Laws, shall name the superintendent of the institution to which the child is committed as a special guardian to receive benefits due the child from the government of the United States, and the benefits shall be used to the extent necessary to pay for the portions of the cost of care in the institution which the parent or parents are found unable to pay.

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

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

(2) An order of disposition placing a child in or committing a child to care outside of the child's own home and under state or court supervision shall contain a provision for the reimbursement by the child, parent, guardian, or custodian to the court for the cost of care or service. The order shall be reasonable, taking into account both the income and resources of the child, parent, guardian, or custodian. The amount may be based upon the guidelines and model schedule created under subsection (6). The reimbursement provision shall apply during the entire period the child remains in care outside of the child's own home and under state or court supervision, unless the child is in the permanent custody of the court. The court shall provide for the collection of all amounts ordered to be reimbursed, and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a child is released or discharged from care outside the child's own home and under state or court supervision. Twenty-five percent of all amounts collected pursuant to an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected pursuant to an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the child's own home and under state or court supervision. The court may also collect benefits paid for the cost of care of a court ward from the government of the United States. Money collected for children placed with or committed to the state department of social services shall be accounted for and reported on an individual child basis. In cases of delinquent accounts, the court may also enter an order to intercept state tax refunds or the federal income tax refund of a child, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service. The court shall send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.

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

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

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

(6) The office of the state court administrator, under the supervision and direction of the supreme court and in consultation with the state department of social services and the Michigan probate and juvenile court judges association, shall create guidelines and a model schedule which may be used by the court in determining the ability of the child, parent, guardian, or custodian to pay for care and any costs of service ordered under

subsection (2) or (3). The guidelines and model schedule shall take into account both the income and resources of the child, parent, guardian, or custodian.

(7) If the court finds that a child has violated any municipal ordinance or state or federal law, and the court has placed the child on probation, the court may, as a condition of probation, require the child to do either of the following:

(a) Both of the following:

(i) Pay restitution to the victim.

(ii) Engage in community service or with the victim's consent perform services for the victim.

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

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

(a) The court shall not require a child to pay restitution unless the child is or will be able to pay all or part of the restitution during the term of his or her probation. In determining the amount and method of payment of restitution, the court shall take into account the financial resources of the child and the burden that the payment of restitution will impose, with due regard to any other moral or legal financial obligations that the child may have.

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

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

(d) The court shall cancel all or part of the amount of restitution due if it appears to the satisfaction of the court that payment of the amount due will impose a manifest hardship on the child.

(e) If the court cancels all or a part of the amount of restitution, the court may modify the terms and conditions of probation to require the child to engage in community service.

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

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

(11) If a child who is ordered to engage in community service intentionally refuses to perform the required community service, the court may revoke or alter the terms and conditions of probation.

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

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

(14) A parent who has been ordered to pay restitution under subsection (12) may petition the court for a modification of the amount of restitution owed or for a cancellation of any unpaid portion of the restitution. The court shall cancel all or part of the amount of restitution due, if it appears to the satisfaction of the court that payment of the amount due will impose a manifest hardship on the parent.

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

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

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

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

(17) Except as otherwise provided in subsection (18), if a court is providing at the time of the enactment of this subsection foster care home services subject to the court's supervision to children within section 2(b) of this chapter, the court may continue to provide those services through December 31, 1989. Beginning January 1, 1990, the court shall discontinue providing those services.

(18) If a court located in a county with a population in excess of 650,000 is providing at the time of the enactment of this subsection foster care home services subject to the court's supervision to children within section 2(b) of this chapter, the court may continue to provide those services through December 31, 1991. Beginning January 1, 1992, the court shall discontinue those services.

Section 2. This amendatory act shall not take effect unless Senate Bill No. 138 of the 85th Legislature is enacted into law.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved.....

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Governor.