

HOUSE BILL No. 4112

January 28, 1997, Introduced by Rep. McBryde and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled

"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,"

by amending section 18 of chapter XIIIA (MCL 712A.18), as amended by 1996 PA 244.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIIA

1

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

10 (a) Warn the juvenile or the juvenile's parents, guardian,
11 or custodian and, except as provided in subsection (7), dismiss
12 the petition.

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

23 (c) If a juvenile is within the court's jurisdiction under
24 section 2(a) of this chapter, place the juvenile in a suitable
25 foster care home subject to the court's supervision. If a juve-
26 nile is within the court's jurisdiction under section 2(b) of

1 this chapter, the court shall not place a juvenile in a foster
2 care home subject to the court's supervision.

3 (d) Place the juvenile in or commit the juvenile to a pri-
4 vate institution or agency approved or licensed by the family
5 independence agency for the care of juveniles of similar age,
6 sex, and characteristics.

7 (e) Commit the juvenile to a public institution, county
8 facility, institution operated as an agency of the court or
9 county, or agency authorized by law to receive juveniles of simi-
10 lar age, sex, and characteristics. In a placement under subdivi-
11 sion (d) or a commitment under this subdivision, except to a
12 state institution, the religious affiliation of the juvenile
13 shall be protected by placement or commitment to a private
14 child-placing or child-caring agency or institution, if
15 available. In every order of commitment under this subdivision
16 to a state institution or agency described in the youth rehabili-
17 tation services act, ~~Act No. 150 of the Public Acts of 1974,~~
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, being sections~~
20 ~~400.201 to 400.214 of the Michigan Compiled Laws~~ 1974 PA 150,
21 MCL 803.301 TO 803.309, OR IN 1935 PA 220, MCL 400.201 TO
22 400.214, the court shall name the superintendent of the institu-
23 tion to which the juvenile is committed as a special guardian to
24 receive benefits due the juvenile from the government of the
25 United States, and the benefits shall be used to the extent nec-
26 essary to pay for the portions of the cost of care in the
27 institution that the parent or parents are found unable to pay.

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

6 (g) Order the parents, guardian, custodian, or any other
7 person to refrain from continuing conduct that the court deter-
8 mines has caused or tended to cause the juvenile to come within
9 or to remain under this chapter, or that obstructs placement or
10 commitment of the juvenile pursuant to an order under this
11 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~~ 1978 PA 642, MCL 700.424,
15 pursuant to a petition filed with the court by a person inter-
16 ested in the JUVENILE'S welfare. ~~of the juvenile.~~ If the court
17 appoints a guardian pursuant to this subdivision, it may enter an
18 order dismissing the petition under this chapter.

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

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

1 (k) Order the juvenile 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 juvenile is within the court's jurisdiction under
5 section 2(a)(1) of this chapter, order the juvenile's parent or
6 guardian to personally participate in treatment reasonably avail-
7 able in the parent's or guardian's location.

8 (m) If a juvenile is within the court's jurisdiction under
9 section 2(a)(1) of this chapter, place the juvenile in and order
10 the juvenile to complete satisfactorily a program of training in
11 a juvenile boot camp established by the family independence
12 agency under the juvenile boot camp act, 1996 PA 263,
13 MCL 400.1301 TO 400.1309, as provided in that act. Upon receiv-
14 ing a report of satisfactory completion of the program from the
15 family independence agency, the court shall authorize the
16 juvenile's release from placement in the juvenile boot camp.
17 Following satisfactory completion of the juvenile boot camp pro-
18 gram, the juvenile shall complete an additional period of not
19 less than 120 days or more than 180 days of intensive supervised
20 community reintegration in the juvenile's local community. To
21 place a juvenile in a juvenile boot camp program, the court shall
22 determine all of the following:

23 (i) Placement in a juvenile boot camp will benefit the
24 juvenile.

25 (ii) The juvenile is physically able to participate in the
26 program.

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

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

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

6 (n) If the court entered a judgment of conviction under sec-
7 tion 2d of this chapter, enter any disposition under this section
8 or, if the court determines that the best interests of the public
9 would be served, impose any sentence upon the juvenile that could
10 be imposed upon an adult convicted of the offense for which the
11 juvenile was convicted. If the juvenile is convicted of a viola-
12 tion or conspiracy to commit a violation of section 7401(2)(a)(i)
13 or 7403(2)(a)(i) of the public health code, ~~Act No. 368 of the~~
14 ~~Public Acts of 1978, being sections 333.7401 and 333.7403 of the~~
15 ~~Michigan Compiled Laws~~ 1978 PA 368, MCL 333.7401 AND 333.7403,
16 the court may impose the alternative sentence permitted under
17 those sections if the court determines that the best interests of
18 the public would be served. The court may delay imposing a sen-
19 tence of imprisonment under this subdivision for a period not
20 longer than the period during which the court has jurisdiction
21 over the juvenile under this chapter by entering an order of dis-
22 position delaying imposition of sentence and placing the juvenile
23 on probation upon the terms and conditions it considers appropri-
24 ate, including any disposition under this section. If the court
25 delays imposing sentence under this section, section 18i of this
26 chapter applies. If the court imposes sentence, it shall enter a
27 judgment of sentence. If the court imposes a sentence of

1 imprisonment, the juvenile shall receive credit against the
2 sentence for time served before sentencing. In determining
3 whether to enter an order of disposition or impose a sentence
4 under this subdivision, the court shall consider all of the fol-
5 lowing factors, giving greater weight to the seriousness of the
6 offense and the juvenile's prior record:

7 (i) The seriousness of the offense in terms of community
8 protection, including, but not limited to, the existence of any
9 aggravating factors recognized by the sentencing guidelines, the
10 use of a firearm or other dangerous weapon, and the impact on any
11 victim.

12 (ii) The culpability of the juvenile in committing the
13 offense, including, but not limited to, the level of the
14 juvenile's participation in planning and carrying out the offense
15 and the existence of any aggravating or mitigating factors recog-
16 nized by the sentencing guidelines.

17 (iii) The juvenile's prior record of delinquency including,
18 but not limited to, any record of detention, any police record,
19 any school record, or any other evidence indicating prior delin-
20 quent behavior.

21 (iv) The juvenile's programming history, including, but not
22 limited to, the juvenile's past willingness to participate mean-
23 ingfully in available programming.

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

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

1 (O) IF THE JUVENILE IS 17 YEARS OF AGE OR OLDER AND WITHIN
2 THE COURT'S JURISDICTION UNDER SECTION 2(A)(i) OF THIS CHAPTER,
3 COMMIT THE JUVENILE TO THE COUNTY JAIL FOR NOT MORE THAN 1 YEAR.

4 (2) An order of disposition placing a juvenile in or commit-
5 ting a juvenile to care outside of the juvenile's own home and
6 under state or court supervision shall contain a provision for
7 reimbursement by the juvenile, parent, guardian, or custodian to
8 the court for the cost of care or service. The order shall be
9 reasonable, taking into account both the income and resources of
10 the juvenile, parent, guardian, or custodian. The amount may be
11 based upon the guidelines and model schedule created under sub-
12 section (6). If the juvenile is receiving an adoption support
13 subsidy pursuant to section 115j(4) of the social welfare act,
14 ~~Act No. 280 of the Public Acts of 1939, being section 400.115j~~
15 ~~of the Michigan Compiled Laws~~ 1939 PA 280, MCL 400.115J, the
16 amount shall not exceed the amount of the support subsidy. The
17 reimbursement provision applies during the entire period the
18 juvenile remains in care outside of the juvenile's own home and
19 under state or court supervision, unless the juvenile is in the
20 COURT'S permanent custody. ~~of the court.~~ The court shall pro-
21 vide for the collection of all amounts ordered to be reimbursed,
22 and the money collected shall be accounted for and reported to
23 the county board of commissioners. Collections to cover delin-
24 quent accounts or to pay the balance due on reimbursement orders
25 may be made after a juvenile is released or discharged from care
26 outside the juvenile's own home and under state or court
27 supervision. Twenty-five percent of all amounts collected

1 pursuant to an order entered under this subsection shall be
2 credited to the appropriate fund of the county to offset the
3 administrative cost of collections. The balance of all amounts
4 collected pursuant to an order entered under this subsection
5 shall be divided in the same ratio in which the county, state,
6 and federal government participate in the cost of care outside
7 the juvenile's own home and under state or court supervision.
8 The court may also collect benefits paid for the cost of care of
9 a court ward from the government of the United States. Money
10 collected for juveniles placed with or committed to the family
11 independence agency shall be accounted for and reported on an
12 individual juvenile basis. In cases of delinquent accounts, the
13 court may also enter an order to intercept state or federal tax
14 refunds of a juvenile, parent, guardian, or custodian and initi-
15 ate the necessary offset proceedings in order to recover the cost
16 of care or service. The court shall send to the person who is
17 the subject of the intercept order advance written notice of the
18 proposed offset. The notice shall include notice of the opportu-
19 nity to contest the offset on the grounds that the intercept is
20 not proper because of a mistake of fact concerning the amount of
21 the delinquency or the identity of the person subject to the
22 order. The court shall provide for the prompt reimbursement of
23 an amount withheld in error or an amount found to exceed the
24 delinquent amount.

25 (3) An order of disposition placing a juvenile in the
26 juvenile's own home under subsection (1)(b) may contain a
27 provision for reimbursement by the juvenile, parent, guardian, or

1 custodian to the court for the cost of service. If an order is
2 entered under this subsection, an amount due shall be determined
3 and treated in the same manner provided for an order entered
4 under subsection (2).

5 (4) An order directed to a parent or a person other than the
6 juvenile is not effective and binding on the parent or other
7 person unless opportunity for hearing is given pursuant to issu-
8 ance of summons or notice as provided in sections 12 and 13 of
9 this chapter ~~—~~ and until a copy of the order, bearing the
10 COURT'S seal, ~~of the court,~~ is served on the parent or other
11 person as provided in section 13 of this chapter.

12 (5) If the court appoints an attorney to represent a juve-
13 nile, parent, guardian, or custodian, the court may require in an
14 order entered under this section that the juvenile, parent,
15 guardian, or custodian reimburse the court for attorney fees.

16 (6) The office of the state court administrator, under the
17 supervision and direction of the supreme court and in consulta-
18 tion with the family independence agency and the Michigan probate
19 judges association, shall create guidelines and a model schedule
20 that may be used by the court in determining the ability of the
21 juvenile, parent, guardian, or custodian to pay for care and any
22 costs of service ordered under subsection (2) or (3). The guide-
23 lines and model schedule shall take into account both the income
24 and resources of the juvenile, parent, guardian, or custodian.

25 (7) If the court finds that a juvenile comes under section
26 30 of this chapter, the court shall order the juvenile or the
27 juvenile's parent to pay restitution as provided in sections 30

1 and 31 of this chapter and in sections 44 and 45 of the crime
2 victim's rights act, ~~Act No. 87 of the Public Acts of 1985,~~
3 ~~being sections 780.794 and 780.795 of the Michigan Compiled Laws~~
4 1985 PA 87, MCL 780.794 AND 780.795.

5 (8) If the court imposes restitution as a condition of pro-
6 bation, the court shall require the juvenile to do either of the
7 following as an additional condition of probation:

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

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

12 (9) If the court finds that the juvenile is in intentional
13 default of the payment of restitution, a court may, as provided
14 in section 31 of this chapter, revoke or alter the terms and con-
15 ditions of probation for nonpayment of restitution. If a juve-
16 nile who is ordered to engage in community service intentionally
17 refuses to perform the required community service, the court may
18 revoke or alter the terms and conditions of probation.

19 (10) For the purposes of this subsection and
20 subsection (11), "juvenile offense" means that term as defined in
21 section 1a of ~~Act No. 289 of the Public Acts of 1925, being sec-~~
22 ~~tion 28.241a of the Michigan Compiled Laws~~ 1925 PA 289,
23 MCL 28.241A. The court shall not enter an order of disposition
24 for a juvenile offense OR A JUDGMENT OF SENTENCE until the court
25 has examined the court file and has determined that the
26 juvenile's fingerprints have been taken as required by section 3
27 of ~~Act No. 289 of the Public Acts of 1925, being section 28.243~~

1 ~~of the Michigan Compiled Laws~~ 1925 PA 289, MCL 28.243. If a
2 juvenile has not had his or her fingerprints taken, the court
3 shall do either of the following:

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

8 (b) Order the juvenile committed to the custody of the sher-
9 iff for the taking of the juvenile's fingerprints.

10 (11) Upon disposition or dismissal of a juvenile offense,
11 ACQUITTAL, OR CONVICTION, the clerk of the court entering the
12 disposition, ~~or~~ dismissal, ACQUITTAL, OR CONVICTION shall imme-
13 diately advise the department of state police of the disposition,
14 ~~or~~ dismissal, ACQUITTAL, OR CONVICTION on forms approved by the
15 state court administrator. The report to the department of state
16 police shall include information as to the finding of the judge
17 or jury and a summary of the disposition OR SENTENCE imposed.

18 (12) If the court enters an order of disposition based on an
19 act that is a juvenile offense as defined in section 1 of ~~Act~~
20 ~~No. 196 of the Public Acts of 1989, being section 780.901 of the~~
21 ~~Michigan Compiled Laws~~ 1989 PA 196, MCL 780.901, the court shall
22 order the juvenile to pay the assessment as provided in that
23 act. If the court enters a judgment of conviction under
24 section 2d of this chapter for an offense that is a felony, seri-
25 ous misdemeanor, or specified misdemeanor as defined in section 1
26 of ~~Act No. 196 of the Public Acts of 1989~~ 1989 PA 196,

1 MCL 780.901, the court shall order the juvenile to pay the
2 assessment as provided in that act.

3 (13) If the court has entered an order of disposition OR
4 CONVICTION for a listed offense as defined in section 2 of the
5 sex offenders registration act, ~~Act No. 295 of the Public Acts~~
6 ~~of 1994, being section 28.722 of the Michigan Compiled Laws~~ 1994
7 PA 295, MCL 28.722, the court or the family independence agency
8 shall register the juvenile or accept the juvenile's registration
9 as provided in the sex offenders registration act, ~~Act No. 295~~
10 ~~of the Public Acts of 1994, being sections 28.721 to 28.732 of~~
11 ~~the Michigan Compiled Laws~~ 1994 PA 295, MCL 28.721 TO 28.732.

12 (14) If the court enters an order of disposition placing a
13 juvenile in a juvenile boot camp program and the court receives
14 from the family independence agency a report that the juvenile
15 has failed to perform satisfactorily in the program or a report
16 that the juvenile does not meet the program's requirements or is
17 medically unable to participate in the program for more than 25
18 days or a report that there is not an opening in a juvenile boot
19 camp program, the court shall release the juvenile from placement
20 in the juvenile boot camp and enter an alternative order of
21 disposition. A juvenile shall not be placed in a juvenile boot
22 camp pursuant to an order of disposition more than once, except
23 that a juvenile returned to the court for a medical condition or
24 because there was not an opening in a juvenile boot camp program
25 may be placed again in the juvenile boot camp program after the
26 medical condition is corrected or an opening becomes available in
27 a juvenile boot camp program.

1 (15) The court shall not impose a sentence of imprisonment
2 in the county jail under subsection (1)(n) OR (O) unless the
3 present county jail facility for the imprisonment of the juvenile
4 would meet all requirements under federal law and regulations for
5 housing juveniles, and the court shall not impose the sentence
6 until it consults with the sheriff to determine when the sentence
7 will begin to ensure that space will be available for the
8 juvenile.