

1998 PUBLIC AND LOCAL ACTS

[No. 478]

(SB 1187)

AN ACT to amend 1939 PA 288, entitled "An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties," by amending sections 1, 2, 2d, 8, 16, 18, 18a, 18k, 25, and 28 of chapter XIIA (MCL 712A.1, 712A.2, 712A.2d, 712A.8, 712A.16, 712A.18, 712A.18a, 712A.18k, 712A.25, and 712A.28), sections 1, 2, 8, 16, and 28 as amended by 1996 PA 409, section 2d as added by 1996 PA 244, section 18 as amended by 1997 PA 163, and section 18k as added by 1996 PA 507, and by adding section 2e to chapter XIIA.

The People of the State of Michigan enact:

CHAPTER XIIA

712A.1 Definitions; proceedings not considered criminal proceedings; construction of chapter. [M.S.A. 27.3178(598.1)]

Sec. 1. (1) As used in this chapter:

(a) "Civil infraction" means that term as defined in section 113 of the revised judicature act of 1961, 1961 PA 236, MCL 600.113.

(b) "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act.

(c) "Court" means the family division of circuit court.

(2) Except as otherwise provided, proceedings under this chapter are not criminal proceedings.

(3) This chapter shall be liberally construed so that each juvenile coming within the court's jurisdiction receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile's welfare and the best interest of the state. If a juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents.

712A.2 Authority and jurisdiction of court. [M.S.A. 27.3178(598.2)]

Sec. 2. The court has the following authority and jurisdiction:

(a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of any other court in proceedings concerning a juvenile under 17 years of age who is found within the county if 1 or more of the following applies:

(1) Except as otherwise provided in this sub-subdivision, the juvenile has violated any municipal ordinance or law of the state or of the United States. If the court enters into an agreement under section 2e of this chapter, the court has jurisdiction over a juvenile who

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committed a civil infraction as provided in that section. The court has jurisdiction over a juvenile 14 years of age or older who is charged with a specified juvenile violation only if the prosecuting attorney files a petition in the court instead of authorizing a complaint and warrant. As used in this sub-subdivision, "specified juvenile violation" means any of the following:

(A) A violation of section 72, 83, 86, 89, 91, 316, 317, 349, 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317, 750.349, 750.520b, 750.529, 750.529a, and 750.531.

(B) A violation of section 84 or 110a(2) of the Michigan penal code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is armed with a dangerous weapon. As used in this paragraph, "dangerous weapon" means 1 or more of the following:

(i) A loaded or unloaded firearm, whether operable or inoperable.

(ii) A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.

(iii) An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.

(iv) An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described in subparagraphs (i) to (iii).

(C) A violation of section 186a of the Michigan penal code, 1931 PA 328, MCL 750.186a, regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the individual escaped or attempted to escape was 1 of the following:

(i) A high-security or medium-security facility operated by the family independence agency or a county juvenile agency.

(ii) A high-security facility operated by a private agency under contract with the family independence agency or a county juvenile agency.

(D) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

(E) An attempt to commit a violation described in paragraphs (A) to (D).

(F) Conspiracy to commit a violation described in paragraphs (A) to (D).

(G) Solicitation to commit a violation described in paragraphs (A) to (D).

(H) Any lesser included offense of a violation described in paragraphs (A) to (G) if the individual is charged with a violation described in paragraphs (A) to (G).

(I) Any other violation arising out of the same transaction as a violation described in paragraphs (A) to (G) if the individual is charged with a violation described in paragraphs (A) to (G).

(2) The juvenile has deserted his or her home without sufficient cause and the court finds on the record that the juvenile has been placed or refused alternative placement or the juvenile and the juvenile's parent, guardian, or custodian have exhausted or refused family counseling.

(3) The juvenile is repeatedly disobedient to the reasonable and lawful commands of his or her parents, guardian, or custodian and the court finds on the record by clear and convincing evidence that court-accessed services are necessary.

(4) The juvenile willfully and repeatedly absents himself or herself from school or other learning program intended to meet the juvenile's educational needs, or repeatedly violates rules and regulations of the school or other learning program, and the court finds on the record that the juvenile, the juvenile's parent, guardian, or custodian, and school

officials or learning program personnel have met on the juvenile's educational problems and educational counseling and alternative agency help have been sought. As used in this sub-subdivision only, "learning program" means an organized educational program that is appropriate, given the age, intelligence, ability, and any psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(b) Jurisdiction in proceedings concerning any juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:

(A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and any psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(B) "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, or other custodian, is an unfit place for the juvenile to live in.

(3) Whose parent has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 424a of the revised probate code, 1978 PA 642, MCL 700.424a, regarding the juvenile.

(4) Whose parent has substantially failed, without good cause, to comply with a court-structured plan described in section 424b or 424c of the revised probate code, 1978 PA 642, MCL 700.424b and 700.424c, regarding the juvenile.

(5) If the juvenile has a guardian under the revised probate code, 1978 PA 642, MCL 700.1 to 700.993, and the juvenile's parent meets both of the following criteria:

(A) The parent, having the ability to support or assist in supporting the juvenile, has failed or neglected, without good cause, to provide regular and substantial support for the juvenile for 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for 2 years or more before the filing of the petition.

(B) The parent, having the ability to visit, contact, or communicate with the juvenile, has regularly and substantially failed or neglected, without good cause, to do so for 2 years or more before the filing of the petition.

If a petition is filed in the court alleging that a juvenile is within the provisions of subdivision (b)(1), (2), (3), (4), or (5) and the custody of that juvenile is subject to the prior or continuing order of another court of record of this state, the manner of notice to the other court of record and the authority of the court to proceed is governed by rule of the supreme court.

(c) Jurisdiction over juveniles under 18 years of age, jurisdiction of whom has been waived to the family division of circuit court by a circuit court under a provision in a temporary order for custody of juveniles based upon a complaint for divorce or upon a

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motion pursuant to a complaint for divorce by the prosecuting attorney, in a divorce judgment dissolving a marriage between the parents of the juveniles, or by an amended judgment relative to the custody of the juvenile in a divorce.

(d) If the court finds on the record that voluntary services have been exhausted or refused, concurrent jurisdiction in proceedings concerning any juvenile between the ages of 17 and 18 found within the county who is any of the following:

- (1) Repeatedly addicted to the use of drugs or the intemperate use of alcoholic liquors.
- (2) Repeatedly associating with criminal, dissolute, or disorderly persons.
- (3) Found of his or her own free will and knowledge in a house of prostitution, assignation, or ill-fame.
- (4) Repeatedly associating with thieves, prostitutes, pimps, or procurers.
- (5) Willfully disobedient to the reasonable and lawful commands of his or her parents, guardian, or other custodian and in danger of becoming morally depraved.

If any juvenile is brought before the court in a county other than that in which the juvenile resides, before a hearing and with the consent of the judge of the court in the county of residence, the court may enter an order transferring jurisdiction of the matter to the court of the county of residence. Consent to transfer jurisdiction is not required if the county of residence is a county juvenile agency and satisfactory proof of residence is furnished to the court of the county of residence. The order is not a legal settlement as defined in section 55 of the social welfare act, 1939 PA 280, MCL 400.55. The order and a certified copy of the proceedings in the transferring court shall be delivered to the court of the county of residence. A case designated as a case in which the juvenile shall be tried in the same manner as an adult under section 2d of this chapter may be transferred for venue or for juvenile disposition, but shall not be transferred on grounds of residency. If the case is not transferred, the case shall be tried by the court having jurisdiction of the offense.

(e) Authority to establish or assist in developing a program or programs within the county to prevent delinquency and provide services to act upon reports submitted to the court related to the behavior of juveniles who do not require formal court jurisdiction but otherwise fall within subdivision (a). These services shall be used only if they are voluntarily accepted by the juvenile and his or her parents, guardian, or custodian.

(f) If the court operates a detention home for juveniles within the court's jurisdiction under subdivision (a)(1), authority to place a juvenile within that home pending trial if the juvenile is within the circuit court's jurisdiction under section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606, and if the circuit court orders the family division of circuit court in the same county to place the juvenile in that home. The family division of circuit court shall comply with that order.

(g) Authority to place a juvenile in a county jail under section 27a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.27a, if the court designates the case under section 2d of this chapter as a case in which the juvenile is to be tried in the same manner as an adult and the court determines there is probable cause to believe that the offense was committed and probable cause to believe the juvenile committed that offense.

(h) Beginning March 1, 1999, jurisdiction over a proceeding under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, in which a minor less than 18 years of age is the respondent. Venue for an initial action under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, is proper in the county of residence of either the petitioner or respondent. If

the respondent does not live in this state, venue for the initial action is proper in the petitioner's county of residence.

712A.2d Juvenile to be tried as adult; designation by prosecuting attorney or court; factors; probable cause hearing; setting case for trial; proceedings as criminal proceedings; disposition or imposition of sentence; "specified juvenile violation" defined.

[M.S.A. 27.3178(598.2d)]

Sec. 2d. (1) In a petition or amended petition alleging that a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter for a specified juvenile violation, the prosecuting attorney may designate the case as a case in which the juvenile is to be tried in the same manner as an adult. An amended petition making a designation under this subsection shall be filed only by leave of the court.

(2) In a petition alleging that a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter for an offense other than a specified juvenile violation, the prosecuting attorney may request that the court designate the case as a case in which the juvenile is to be tried in the same manner as an adult. The court may designate the case following a hearing if it determines that the best interests of the juvenile and the public would be served by the juvenile being tried in the same manner as an adult. In determining whether the best interests of the juvenile and the public would be served, the court shall consider all of the following factors, giving greater weight to the seriousness of the alleged offense and the juvenile's prior delinquency record than to the other factors:

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

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

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

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

(e) The adequacy of the punishment or programming available in the juvenile justice system.

(f) The dispositional options available for the juvenile.

(3) If a case is designated under this section, the case shall be set for trial in the same manner as the trial of an adult in a court of general criminal jurisdiction unless a probable cause hearing is required under subsection (4).

(4) If the petition in a case designated under this section alleges an offense that if committed by an adult would be a felony or punishable by imprisonment for more than 1 year, the court shall conduct a probable cause hearing not later than 14 days after the case is designated to determine whether there is probable cause to believe the offense was committed and whether there is probable cause to believe the juvenile committed the offense. This hearing may be combined with the designation hearing under subsection (2) for an offense other than a specified juvenile offense. A probable cause hearing under this section is the equivalent of the preliminary examination in a court of general criminal

jurisdiction and satisfies the requirement for that hearing. A probable cause hearing shall be conducted by a judge other than the judge who will try the case if the juvenile is tried in the same manner as an adult.

(5) If the court determines there is probable cause to believe the offense alleged in the petition was committed and probable cause to believe the juvenile committed the offense, the case shall be set for trial in the same manner as the trial of an adult in a court of general criminal jurisdiction.

(6) If the court determines that an offense did not occur or there is not probable cause to believe the juvenile committed the offense, the court shall dismiss the petition. If the court determines there is probable cause to believe another offense was committed and there is probable cause to believe the juvenile committed that offense, the court may further determine whether the case should be designated as a case in which the juvenile should be tried in the same manner as an adult as provided in subsection (2). If the court designates the case, the case shall be set for trial in the same manner as the trial of an adult in a court of general criminal jurisdiction.

(7) If a case is designated under this section, the proceedings are criminal proceedings and shall afford all procedural protections and guarantees to which the juvenile would be entitled if being tried for the offense in a court of general criminal jurisdiction. A plea of guilty or nolo contendere or a verdict of guilty shall result in entry of a judgment of conviction. The conviction shall have the same effect and liabilities as if it had been obtained in a court of general criminal jurisdiction.

(8) Following a judgment of conviction, the court shall enter a disposition or impose a sentence authorized under section 18(1)(n) of this chapter.

(9) As used in this section, "specified juvenile violation" means any of the following:

(a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349, 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317, 750.349, 750.520b, 750.529, 750.529a, and 750.531.

(b) A violation of section 84 or 110a(2) of the Michigan penal code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is armed with a dangerous weapon. As used in this subdivision, "dangerous weapon" means 1 or more of the following:

(i) A loaded or unloaded firearm, whether operable or inoperable.

(ii) A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.

(iii) An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.

(iv) An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described in subparagraphs (i) to (iii).

(c) A violation of section 186a of the Michigan penal code, 1931 PA 328, MCL 750.186a, regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the juvenile escaped or attempted to escape was 1 of the following:

(i) A high-security or medium-security facility operated by the family independence agency or a county juvenile agency.

(ii) A high-security facility operated by a private agency under contract with the family independence agency or a county juvenile agency.

(d) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

(e) An attempt to commit a violation described in subdivisions (a) to (d).

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(f) Conspiracy to commit a violation described in subdivisions (a) to (d).

(g) Solicitation to commit a violation described in subdivisions (a) to (d).

(h) Any lesser included offense of an offense described in subdivisions (a) to (g) if the juvenile is alleged in the petition to have committed an offense described in subdivisions (a) to (g).

(i) Any other offense arising out of the same transaction as an offense described in subdivisions (a) to (g) if the juvenile is alleged in the petition to have committed an offense described in subdivisions (a) to (g).

712A.2e Waiver of jurisdiction over civil infractions; agreement. [M.S.A. 27.3178(598.2e)]

Sec. 2e. (1) The court may enter into an agreement with any or all district courts or municipal courts within the court's geographic jurisdiction to waive jurisdiction over any or all civil infractions alleged to have been committed by juveniles within the geographic jurisdiction of the district court or municipal court. The agreement shall specify for which civil infractions the court waives jurisdiction.

(2) For a civil infraction waived under subsection (1) committed by a juvenile on or after the effective date of the agreement, the district court or municipal court has jurisdiction over the juvenile in the same manner as if an adult had committed the civil infraction. The court has jurisdiction over juveniles who commit any other civil infraction.

712A.8 County agent; creation of office; duties; assistants. [M.S.A. 27.3178(598.8)]

Sec. 8. The office of county agent is created. The county agent is an officer of the court and under the general supervision of the judges of the court and shall serve at their pleasure. The county agent shall organize, direct and develop the juvenile welfare work of the court as authorized by the judge. When requested by the superintendent or director, the county agent shall supervise juveniles released from public institutions or agencies and may perform other juvenile welfare work as requested and with the approval of the judge, including services to school-age juveniles of the various school districts within the county, after consultation and agreement with the county school commissioner and the superintendents of schools in a county. With the judge's approval, the county agent or his or her assistants shall investigate and report on juveniles or families within the county as requested by the family independence agency, the county juvenile agency, or the superintendent of any state institution regarding the welfare of any juvenile. Assistant county agents shall perform the duties assigned to them by the county agent.

712A.16 Detention and care of juvenile. [M.S.A. 27.3178(598.16)]

Sec. 16. (1) If a juvenile under the age of 17 years is taken into custody or detained, the juvenile shall not be confined in any police station, prison, jail, lock-up, or reformatory or transported with, or compelled or permitted to associate or mingle with, criminal or dissolute persons. However, except as otherwise provided in section 15(3), (4), and (5) of this chapter, the court may order a juvenile 15 years of age or older whose habits or conduct are considered a menace to other juveniles, or who may not otherwise be safely detained, placed in a jail or other place of detention for adults, but in a room or ward separate from adults and for not more than 30 days, unless longer detention is necessary for the service of process.

(2) The county board of commissioners in each county or of counties contracting together may provide for the diagnosis, treatment, care, training, and detention of juveniles in a child care home or facility conducted as an agency of the county if the home or facility

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meets licensing standards established under 1973 PA 116, MCL 722.111 to 722.128. The court or a court-approved agency may arrange for the boarding of juveniles in any of the following:

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

(b) A child caring institution or child placing agency licensed by the department of consumer and industry services to receive for care juveniles within the court's jurisdiction.

(c) If in a room or ward separate and apart from adult criminals, the county jail for juveniles over 17 years of age within the court's jurisdiction.

(3) If a detention home or facility is established as an agency of the county, the judge may appoint a superintendent and other necessary employees for the home or facility who shall receive compensation as provided by the county board of commissioners of the county. This section does not alter or diminish the legal responsibility of the family independence agency or a county juvenile agency to receive juveniles committed by the court.

(4) If the court under subsection (2) arranges for the board of juveniles temporarily detained in private homes or in a child caring institution or child placing agency, a reasonable sum fixed by the court for their board shall be paid by the county treasurer as provided in section 25 of this chapter.

(5) A court shall not provide foster care home services subject to the court's supervision to juveniles within section 2(b) of this chapter.

(6) A juvenile detention home described in subsection (3) shall be operated under the direction of the county board of commissioners or, in a county that has an elected county executive, under the county executive's direction. However, a different method for directing the operation of a detention home may be agreed to in any county by the chief judge of the circuit court in that county and the county board of commissioners or, in a county that has an elected county executive, the county executive.

712A.18 Orders of disposition; reimbursement; hearing; guidelines and model schedule; restitution; condition of probation; community service; fingerprints; report to state police; payment of assessment; registration of juvenile provided in §§28.721 to 28.732; release from placement in juvenile boot camp; alternative order of disposition; imposition of sentence in county jail facility; violation of personal protection order. [M.S.A. 27.3178(598.18)]

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

(b) Place the juvenile on probation, or under supervision in the juvenile's own home or in the home of an adult who is related to the juvenile. As used in this subdivision, "related" means being a parent, grandparent, brother, sister, stepparent, stepsister,

stepbrother, uncle, or aunt by marriage, blood, or adoption. The court shall order the terms and conditions of probation or supervision, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court determines necessary for the physical, mental, or moral well-being and behavior of the juvenile.

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

(d) Except as otherwise provided in this subdivision, place the juvenile in or commit the juvenile to a private institution or agency approved or licensed by the department of consumer and industry services for the care of juveniles of similar age, sex, and characteristics. If the juvenile is not a ward of the court, the court shall commit the juvenile to the family independence agency or, if the county is a county juvenile agency, to that county juvenile agency for placement in or commitment to such an institution or agency as the family independence agency or county juvenile agency determines is most appropriate, subject to any initial level of placement the court designates.

(e) Except as otherwise provided in this subdivision, commit the juvenile to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive juveniles of similar age, sex, and characteristics. If the juvenile is not a ward of the court, the court shall commit the juvenile to the family independence agency or, if the county is a county juvenile agency, to that county juvenile agency for placement in or commitment to such an institution or facility as the family independence agency or county juvenile agency determines is most appropriate, subject to any initial level of placement the court designates. If a child is not less than 17 years of age and is in violation of a personal protection order, the court may commit the child to a county jail within the adult prisoner population. In a placement under subdivision (d) or a commitment under this subdivision, except to a state institution or a county juvenile agency institution, the juvenile's religious affiliation shall be protected by placement or commitment to a private child-placing or child-caring agency or institution, if available. Except for commitment to the family independence agency or a county juvenile agency, an order of commitment under this subdivision to a state institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, or in 1935 PA 220, MCL 400.201 to 400.214, the court shall name the superintendent of the institution to which the juvenile is committed as a special guardian to receive benefits due the juvenile from the government of the United States. An order of commitment under this subdivision to the family independence agency or a county juvenile agency shall name that agency as a special guardian to receive those benefits. The benefits received by the special guardian shall be used to the extent necessary to pay for the portions of the cost of care in the institution or facility that the parent or parents are found unable to pay.

(f) Provide the juvenile 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 the court determines are necessary.

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

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(h) Appoint a guardian under section 424 of the revised probate code, 1978 PA 642, MCL 700.424, pursuant to a petition filed with the court by a person interested in the juvenile's welfare. If the court appoints a guardian pursuant to this subdivision, it may dismiss the petition under this chapter.

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

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

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

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

(m) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, place the juvenile in and order the juvenile to complete satisfactorily a program of training in a juvenile boot camp established by the family independence agency under the juvenile boot camp act, 1996 PA 263, MCL 400.1301 to 400.1309, as provided in that act. If the county is a county juvenile agency, however, the court shall commit the juvenile to that county juvenile agency for placement in the program under that act. Upon receiving a report of satisfactory completion of the program from the family independence agency, the court shall authorize the juvenile's release from placement in the juvenile boot camp. Following satisfactory completion of the juvenile boot camp program, the juvenile shall complete an additional period of not less than 120 days or more than 180 days of intensive supervised community reintegration in the juvenile's local community. To place or commit a juvenile under this subdivision, the court shall determine all of the following:

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

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

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

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

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

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

(n) If the court entered a judgment of conviction under section 2d of this chapter, enter any disposition under this section or, if the court determines that the best interests of the public would be served, impose any sentence upon the juvenile that could be imposed upon an adult convicted of the offense for which the juvenile was convicted. If the juvenile is convicted of a violation or conspiracy to commit a violation of section 7401(2)(a)(i) or 7403(2)(a)(j) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, the court may impose the alternative sentence permitted under those sections if the court determines that the best interests of the public would be served. The court may delay imposing a sentence of imprisonment under this subdivision for a period not longer than the period during which the court has jurisdiction over the juvenile under this chapter by entering an order of disposition delaying imposition of sentence and placing the juvenile on probation upon the terms and conditions it considers appropriate, including any disposition under this section. If the court delays imposing sentence under this section, section 18i of this chapter applies. If the court imposes sentence, it shall enter a judgment

of sentence. If the court imposes a sentence of imprisonment, the juvenile shall receive credit against the sentence for time served before sentencing. In determining whether to enter an order of disposition or impose a sentence under this subdivision, the court shall consider all of the following factors, giving greater weight to the seriousness of the offense and the juvenile's prior record:

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

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

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

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

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

(vi) The dispositional options available for the juvenile.

(2) An order of disposition placing a juvenile in or committing a juvenile to care outside of the juvenile's own home and under state, county juvenile agency, or court supervision shall contain a provision for reimbursement by the juvenile, 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 juvenile, parent, guardian, or custodian. The amount may be based upon the guidelines and model schedule created under subsection (6). If the juvenile is receiving an adoption support subsidy under section 115j(4) of the social welfare act, 1939 PA 280, MCL 400.115j, the amount shall not exceed the amount of the support subsidy. The reimbursement provision applies during the entire period the juvenile remains in care outside of the juvenile's own home and under state, county juvenile agency, or court supervision, unless the juvenile 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 juvenile is released or discharged from care outside the juvenile's own home and under state, county juvenile agency, 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 under 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 juvenile's own home and under state, county juvenile agency, 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 juveniles placed by the court with or committed to the family independence agency or a county juvenile agency shall be accounted for and reported on an individual juvenile basis. In cases of delinquent accounts, the court may also enter an order to intercept state or federal tax refunds of a juvenile, 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

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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 juvenile in the juvenile's own home under subsection (1)(b) may contain a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of service. If an order is entered under this subsection, an amount 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 juvenile is not effective and binding on the parent or other person unless opportunity for hearing is given by 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 as provided in section 13 of this chapter.

(5) If the court appoints an attorney to represent a juvenile, parent, guardian, or custodian, the court may require in an order entered under this section that the juvenile, parent, guardian, or custodian 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 family independence agency and the Michigan probate judges association, shall create guidelines and a model schedule the court may use in determining the ability of the juvenile, 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 juvenile, parent, guardian, or custodian.

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

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

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

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

(9) If the court finds that the juvenile is in intentional default of the payment of restitution, a court may, as provided in section 31 of this chapter, revoke or alter the terms and conditions of probation for nonpayment of restitution. If a juvenile 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.

(10) The court shall not enter an order of disposition for a juvenile offense as defined in section 1a of 1925 PA 289, MCL 28.241a, or a judgment of sentence for a conviction until the court has examined the court file and has determined that the juvenile's fingerprints have been taken as required by section 3 of 1925 PA 289, MCL 28.243. If a juvenile has not had his or her fingerprints taken, the court shall do either of the following:

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

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

(11) Upon final disposition, conviction, acquittal, or dismissal of an offense within the court's jurisdiction under section 2(a)(1) of this chapter, the clerk of the court entering the final disposition, conviction, acquittal, or dismissal shall immediately advise the department of state police of that final disposition, conviction, acquittal, or dismissal on forms approved by the state court administrator, as required by section 3 of 1925 PA 289, MCL 28.243. 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 or sentence imposed.

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

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

(14) If the court enters an order of disposition placing a juvenile in a juvenile boot camp program, or committing a juvenile to a county juvenile agency for placement in a juvenile boot camp program, and the court receives from the family independence agency a report that the juvenile has failed to perform satisfactorily in the program, that the juvenile does not meet the program's requirements or is medically unable to participate in the program for more than 25 days, that there is no opening in a juvenile boot camp program, or that the county juvenile agency is unable to place the juvenile in a juvenile boot camp program, the court shall release the juvenile from placement or commitment and enter an alternative order of disposition. A juvenile shall not be placed in a juvenile boot camp pursuant to an order of disposition more than once, except that a juvenile returned to the court for a medical condition, because there was no opening in a juvenile boot camp program, or because the county juvenile agency was unable to place the juvenile in a juvenile boot camp program may be placed again in the juvenile boot camp program after the medical condition is corrected, an opening becomes available, or the county juvenile agency is able to place the juvenile.

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

(16) In a proceeding under section 2(h) of this chapter, this section shall only apply to a disposition for a violation of a personal protection order and subsequent proceedings.

712A.18a Placement or commitment of ward of the court to out-of-state institutions. [M.S.A. 27.3178(598.18a)]

Sec. 18a. If desirable or necessary, the court may place a ward of the court in or commit a ward of the court to a private institution or agency incorporated under the laws of another state and approved or licensed by that state's department of social welfare, or the equivalent approving or licensing agency, for the care of children of similar age, sex, and characteristics.

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712A.18k DNA identification profiling; providing samples for chemical testing. [M.S.A. 27.3178(598.18k)]

Sec. 18k. (1) An individual convicted of or found responsible for a violation of section 91, 316, or 317 of the Michigan penal code, 1931 PA 328, MCL 750.91, 750.316, and 750.317, or a violation or attempted violation of section 349, 520b, 520c, 520d, 520e, or 520g of that act, MCL 750.349, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, shall provide samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and shall provide samples for chemical testing for a determination of his or her secretor status. However, if at the time the individual is convicted of or found responsible for the violation the investigating law enforcement agency, the department of state police, the family independence agency, or the county juvenile agency already has a sample from the individual that meets the requirements of the rules promulgated under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176, the individual is not required to provide another sample.

(2) The investigating law enforcement agency shall provide for collecting the samples required to be provided under subsection (1) in a medically approved manner by qualified persons using supplies provided by the department of state police and shall forward those samples and any samples described in subsection (1) that were already in the agency's possession to the department of state police. The collecting and forwarding of samples shall be done in the manner required under the rules promulgated under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(3) The family independence agency or a county juvenile agency, investigating law enforcement agency, prosecuting agency, or court that has in its possession a DNA identification profile obtained from a sample of an individual convicted of or found responsible for an offense described in subsection (1) shall forward the DNA identification profile to the department of state police at or before the time the court imposes sentence or enters an order of disposition upon that conviction or finding of responsibility unless the department of state police already has a DNA identification profile of the individual.

(4) As used in this section:

(a) "DNA identification profile" and "DNA identification profiling" mean those terms as defined in section 2 of the DNA identification profiling system act, 1990 PA 250, MCL 28.172.

(b) "Investigating law enforcement agency" means the law enforcement agency responsible for the investigation of the offense for which the individual is convicted or found responsible.

(c) "Sample" means a portion of an individual's blood, saliva, or tissue collected from the individual.

712A.25 Payment of expenses. [M.S.A. 27.3178(598.25)]

Sec. 25. (1) Except as otherwise provided by law, expenses incurred in carrying out this chapter shall be paid upon the court's order by the county treasurer from the county's general fund.

(2) A county that is a county juvenile agency shall pay expenses for county juvenile agency services incurred in carrying out this chapter from the block grant distributed under section 117a of the social welfare act, 1939 PA 280, MCL 400.117a, and other funds made available for that purpose and is not obligated under subsection (1) to pay for juvenile justice services other than county juvenile agency services as required by section 117a of the social welfare act. As used in this subsection, "county juvenile agency services" and "juvenile justice service" mean those terms as defined in section 117a of the social welfare act.

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712A.28 Case records; opening records; order in respect to payments by parent; copy; publicizing action taken against parents or adult; administration of court; reports; form; copies; definitions. [M.S.A. 27.3178(598.28)]

Sec. 28. (1) Before June 1, 1988, the court shall maintain records of all cases brought before it and as provided in the juvenile diversion act. The records shall be open only by court order to persons having a legitimate interest, except that diversion records shall be open only as provided in the juvenile diversion act.

(2) Beginning June 1, 1988, the court shall maintain records of all cases brought before it and as provided in the juvenile diversion act. Except as otherwise provided in this subsection, records of a case brought before the court shall be open to the general public. Diversion records shall be open only as provided in the juvenile diversion act. Except as otherwise provided in section 49 of the crime victim's rights act, 1985 PA 87, MCL 780.799, if the hearing of a case brought before the court is closed under section 17 of this chapter, the records of that hearing shall be open only by court order to persons having a legitimate interest.

(3) If the court issues an order in respect to payments by a parent under section 18(2) of this chapter, a copy shall be mailed to the department of treasury. Action taken against parents or adults shall not be released for publicity unless the parents or adults are found guilty of contempt of court. The court shall furnish the family independence agency and a county juvenile agency with reports of the administration of the court in a form recommended by the Michigan association of probate and juvenile court judges. Copies of these reports shall, upon request, be made available to other state departments by the family independence agency.

(4) As used in this section:

(a) "Juvenile diversion act" means the juvenile diversion act, 1988 PA 13, MCL 722.821 to 722.831.

(b) "Persons having a legitimate interest" includes a member of a local foster care review board established under 1984 PA 422, MCL 722.131 to 722.139a.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 89th Legislature are enacted into law:

- (a) Senate Bill No. 1183.
- (b) Senate Bill No. 1184.
- (c) Senate Bill No. 1185.
- (d) Senate Bill No. 1186.
- (e) Senate Bill No. 1196.
- (f) Senate Bill No. 1197.

This act is ordered to take immediate effect.

Approved December 31, 1998.

Filed with Secretary of State January 4, 1999.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:

Senate Bill No. 1183 was filed with the Secretary of State January 12, 1999, and became P.A. 1998, No. 516, Imd. Eff. Jan. 12, 1999.
Senate Bill No. 1184 was filed with the Secretary of State January 12, 1999, and became P.A. 1998, No. 517, Imd. Eff. Jan. 12, 1999.
Senate Bill No. 1185 was filed with the Secretary of State January 12, 1999, and became P.A. 1998, No. 518, Imd. Eff. Jan. 12, 1999.
Senate Bill No. 1186 was filed with the Secretary of State January 12, 1999, and became P.A. 1998, No. 519, Imd. Eff. Jan. 12, 1999.
Senate Bill No. 1196 was filed with the Secretary of State January 12, 1999, and became P.A. 1998, No. 528, Imd. Eff. Jan. 12, 1999.
Senate Bill No. 1197 was filed with the Secretary of State January 12, 1999, and became P.A. 1998, No. 529, Imd. Eff. Jan. 12, 1999.