Generated by TallPDF.NET Evaluation

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.1 Definitions; proceedings not considered criminal proceedings; construction of chapter.

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) "Competency evaluation" means a court-ordered examination of a juvenile directed to developing information relevant to a determination of his or her competency to proceed at a particular stage of a court proceeding involving a juvenile who is the subject of a delinquency petition.

(c) "Competency hearing" means a hearing to determine whether a juvenile is competent to proceed.

(d) "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622.

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

(f) "Foreign protection order" means that term as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.

(g) "Incompetent to proceed" means that a juvenile, based on age-appropriate norms, lacks a reasonable degree of rational and factual understanding of the proceeding or is unable to do 1 or more of the following:

(*i*) Consult with and assist his or her attorney in preparing his or her defense in a meaningful manner.

(*ii*) Sufficiently understand the charges against him or her.

(h) "Juvenile" means a person who is less than 17 years of age who is the subject of a delinquency petition.

(i) "Least restrictive environment" means a supervised community placement, preferably a placement with the juvenile's parent, guardian, relative, or a facility or conditions of treatment that is a residential or institutional placement only utilized as a last resort based on the best interest of the juvenile or for reasons of public safety.

(j) "Licensed child caring institution" means a child caring institution as defined and licensed under 1973 PA 116, MCL 722.111 to 722.128.

(k) "MCI" means the Michigan children's institute created and established by 1935 PA 220, MCL 400.201 to 400.214.

(*l*) "Mental health code" means the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(m) "Personal protection order" means a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, and includes a valid foreign protection order.

(n) "Qualified juvenile forensic mental health examiner" means 1 of the following who performs forensic mental health examinations for the purposes of sections 1062 to 1074 of the mental health code but does not exceed the scope of his or her practice as authorized by state law:

(*i*) A psychiatrist or psychologist who possesses experience or training in the following:

(A) Forensic evaluation procedures for juveniles.

(B) Evaluation, diagnosis, and treatment of children and adolescents with emotional disturbance, mental illness, or developmental disabilities.

(C) Clinical understanding of child and adolescent development.

(D) Familiarity with competency standards in this state.

(*ii*) Beginning 18 months after the effective date of the amendatory act that added section 1072 of the mental health code, a mental health professional other than a psychiatrist or psychologist who has completed a juvenile competency training program for forensic mental health examiners that is endorsed by the department under section 1072 of the mental health code and who possesses experience or training in all of the following:

(A) Forensic evaluation procedures for juveniles.

(B) Evaluation, diagnosis, and treatment of children and adolescents with emotional disturbance, mental illness, or developmental disabilities.

(C) Clinical understanding of child and adolescent development.

(D) Familiarity with competency standards in this state.

(o) "Qualified restoration provider" means an individual who the court determines, as a result of the opinion provided by the qualified forensic mental health examiner, has the skills and training necessary to provide restoration services. The court shall take measures to avoid any conflict of interest among agencies or individuals who may provide evaluation and restoration.

(p) "Restoration" means the process by which education or treatment of a juvenile results in that juvenile

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

becoming competent to proceed.

(q) "Serious misdemeanor" means that term as defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

(r) "Valid foreign protection order" means a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i.

(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.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.1;—Am. 1988, Act 224, Eff. Apr. 1, 1989;—Am. 1996, Act 250, Eff. Jan. 1, 1997;—Am. 1996, Act 409, Eff. Jan. 1, 1998;—Am. 1998, Act 478, Eff. Jan. 12, 1999;—Am. 2000, Act 46, Imd. Eff. Mar. 27, 2000;—Am. 2001, Act 211, Eff. Apr. 1, 2002;—Am. 2012, Act 541, Eff. Mar. 28, 2013.

Former law: See sections 1 and 7 of Ch. XII of Act 288 of 1939, and CL 1929, § 12835.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.2 Authority and jurisdiction of court.

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

(a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of another 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 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 1 or more 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) A lesser included offense of a violation described in paragraphs (A) to (G) if the individual is charged

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

with a violation described in paragraphs (A) to (G).

(I) Another 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 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 a 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 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, nonparent adult, 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 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the juvenile.

(4) Whose parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code, 1998 PA 386, MCL 700.5207 and 700.5209, regarding the juvenile.

(5) If the juvenile has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, 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 motion related to a complaint for divorce by the prosecuting attorney, in a divorce judgment dissolving a marriage between the juvenile's parents, or by an amended judgment relative to the juvenile's custody in a divorce.

(d) If the court finds on the record that voluntary services have been exhausted or refused, concurrent jurisdiction in proceedings concerning a juvenile between the ages of 17 and 18 found within the county who is 1 or more of the following:

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

(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 a 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 does not constitute a legal settlement in this state that is required for the purpose of 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 court having jurisdiction of the offense shall try the case.

(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 a juvenile who does not require formal court jurisdiction but otherwise falls within subdivision (a). These services shall be used only if the juvenile and his or her parents, guardian, or custodian voluntarily accepts them.

(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) 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, or a proceeding to enforce a valid foreign protection order issued against a respondent who is a minor less than 18 years of age. A personal protection order shall not be issued against a respondent who is a minor less than 10 years of age. 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.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—Am. 1947, Act 68, Imd. Eff. May 2, 1947;—CL 1948, 712A.2;—Am. 1953, Act 193, Eff. Oct. 2, 1953;—Am. 1965, Act 182, Imd. Eff. July 15, 1965;—Am. 1972, Act 175, Imd. Eff. June 16, 1972;—Am. 1984, Act 131, Imd. Eff. June 1, 1984;—Am. 1986, Act 203, Imd. Eff. July 25, 1986;—Am. 1988, Act 53, Eff. Oct. 1, 1988;—Am. 1988, Act 224, Eff. Apr. 1, 1989;—Am. 1990, Act 314, Imd. Eff. Dec. 20, 1990;—Am. 1994, Act 192, Eff. Oct. 1, 1994;—Am. 1996, Act 250, Eff. Jan. 1, 1997;—Am. 1996, Act 409, Eff. Jan. 1, 1998;—Am. 1998, Act 474, Eff. Mar. 1, 1999;—Am. 1998, Act 478, Eff. Jan. 12, 1999;—Am. 1998, Act 530, Eff. July 1, 1999;—Am. 2000, Act 55, Eff. Apr. 1, 2000;—Am. 2001, Act 211, Eff. Apr. 1, 2002.

Compiler's note: Section 3 of Act 53 of 1988 provides: “This amendatory act shall take effect June 1, 1988.” This section was amended by Act 172 of 1988 to read as follows: “This amendatory act shall take effect October 1, 1988.”

Former law: See sections 2, 3, 4 and 5 of Ch. XII of Act 288 of 1939, and CL 1929, § 12834.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.2a Continuing jurisdiction beyond maximum age; voluntary foster care; definitions.

Sec. 2a. (1) Except as otherwise provided in this section, if the court has exercised jurisdiction over a juvenile under section 2(a) or (b) of this chapter, jurisdiction shall continue for a period of 2 years beyond the maximum age of jurisdiction conferred under section 2 of this chapter, unless the juvenile is released sooner

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

by court order.

(2) If the department files a report with the court under section 15 of the young adult voluntary foster care act, the court shall determine whether it is in the youth's best interests to continue in voluntary foster care within 21 days of the filing of the report. A hearing is not required under this subsection, but may be held on the court's own motion or at the request of the youth or the department.

(3) If the court finds that the voluntary foster care agreement is in the youth's best interests, the court shall issue an order containing individualized findings to support its determinations made under subsection (2) and close the case in accordance with section 19 of the young adult voluntary foster care act. The individualized findings shall be based on the department's written report and other materials and information submitted to the court.

(4) If the court has exercised jurisdiction over a juvenile under section 2(a)(1) of this chapter for an offense that, if committed by an adult, would be a violation or attempted violation of section 72, 83, 84, 86, 88, 89, 91, 110a(2), 186a, 316, 317, 349, 520b, 520c, 520d, 520g, 529, 529a, 530, or 531 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.84, 750.86, 750.88, 750.89, 750.91, 750.110a, 750.186a, 750.316, 750.317, 750.349, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, 750.530, and 750.531, or section 7401(2)(a)(*i*) or 7403(2)(a)(*i*) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, jurisdiction may be continued under section 18d of this chapter until the juvenile is 21 years of age.

(5) If the court exercised jurisdiction over a child under section 2(h) of this chapter, jurisdiction of the court continues until the order expires but action regarding the personal protection order after the respondent's eighteenth birthday shall not be subject to this chapter.

(6) This section does not apply if the juvenile is sentenced to the jurisdiction of the department of corrections.

(7) As used in this chapter, "child", "juvenile", "minor", or any other term signifying a person under the age of 18 applies to a person 18 years of age or older concerning whom proceedings are commenced in the court under section 2 of this chapter and over whom the court has continuing jurisdiction under subsections (1) to (5).

History: Add. 1953, Act 193, Eff. Oct. 2, 1953;—Am. 1959, Act 81, Eff. Mar. 19, 1960;—Am. 1962, Act 8, Imd. Eff. Mar. 19, 1962;—Am. 1972, Act 175, Imd. Eff. June 16, 1972;—Am. 1988, Act 54, Eff. Oct. 1, 1988;—Am. 1994, Act 192, Eff. Oct. 1, 1994;—Am. 1996, Act 250, Eff. Jan. 1, 1997;—Am. 1996, Act 409, Eff. Jan. 1, 1998;—Am. 1998, Act 474, Eff. Mar. 1, 1999;—Am. 2011, Act 226, Imd. Eff. Nov. 22, 2011.

Compiler's note: Section 3 of Act 54 of 1988 provides: “This amendatory act shall take effect June 1, 1988.” This section was amended by Act 174 of 1988 to read as follows: “This amendatory act shall take effect October 1, 1988.”

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.2b Violation of vehicle code or corresponding ordinance; procedure.

Sec. 2b. When a juvenile is accused of an act that constitutes a violation of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a provision of an ordinance substantially corresponding to any provision of Act No. 300 of the Public Acts of 1949, the following procedure applies, any other provision of this chapter notwithstanding:

(a) No petition shall be required, but the court may act upon a copy of the written notice to appear given the accused juvenile as required by section 728 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.728 of the Michigan Compiled Laws.

(b) The juvenile's parent or parents, guardian, or custodian may be required to attend a hearing conducted under this section when notified by the court, without additional service of process or delay. However, the court may extend the time for that appearance.

(c) If after hearing the case the court finds the accusation to be true, the court may dispose of the case under section 18 of this chapter.

(d) Within 14 days after entry of a court order of disposition for a juvenile found to be within this chapter, the court shall prepare and forward an abstract of the record of the court for the case in accordance with section 732 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.732 of the Michigan Compiled Laws.

(e) This section does not limit the court's discretion to restrict the driving privileges of a juvenile as a term or condition of probation.

History: Add. 1965, Act 42, Imd. Eff. May 25, 1965;—Am. 1988, Act 124, Eff. July 1, 1988;—Am. 1996, Act 409, Eff. Jan. 1, 1998.

Popular name: Probate Code

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.2c Court order authorizing apprehension of juvenile; contents of order; interference with execution of order; penalty.

Sec. 2c. The court may issue an order authorizing a peace officer or other person designated by the court to apprehend a juvenile who is absent without leave from an institution or facility to which he or she was committed under section 18 of this chapter, has violated probation, has failed to appear for a hearing on a petition charging a violation of section 2 of this chapter, is alleged to have violated a personal protection order issued under section 2(h) of this chapter, or is alleged to have violated a valid foreign protection order. The order shall set forth specifically the identity of the juvenile sought and the house, building, or other location or place where there is probable cause to believe the juvenile is to be found. A person who interferes with the lawful attempt to execute an order issued under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $100.00, or both.

History: Add. 1974, Act 3, Imd. Eff. Jan. 30, 1974;—Am. 1996, Act 409, Eff. Jan. 1, 1998;—Am. 1998, Act 474, Eff. Mar. 1, 1999;—Am. 2001, Act 211, Eff. Apr. 1, 2002.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

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.

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

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

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).

(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).

History: Add. 1996, Act 244, Eff. Aug. 1, 1996;—Am. 1998, Act 478, Eff. Jan. 12, 1999.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.2e Waiver of jurisdiction over civil infractions; agreement.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

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.

History: Add. 1998, Act 478, Eff. Jan. 12, 1999.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.3 Criminal charge against person under age 17; transfer of case to family division of circuit court.

Sec. 3. (1) If during the pendency of a criminal charge against a person in any other court it is ascertained that the person was under the age of 17 at the time of the commission of the offense, the other court shall transfer the case without delay, together with all the papers, documents, and testimony connected with that case, to the family division of the circuit court of the county in which the other court is situated or in which the person resides.

(2) The court making the transfer shall order the child to be taken promptly to the place of detention designated by the family division of the circuit court or to that court itself or release the juvenile in the custody of some suitable person to appear before the court at a time designated. The court shall then hear and dispose of the case in the same manner as if it had been originally instituted in that court.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—Am. 1946, 1st Ex. Sess., Act 22, Imd. Eff. Feb. 26, 1946;—CL 1948, 712A.3;—Am. 1961, Act 54, Eff. Sept. 8, 1961;—Am. 1972, Act 175, Imd. Eff. June 16, 1972;—Am. 1972, Act 235, Imd. Eff. July 27, 1972;—Am. 1996, Act 409, Eff. Jan. 1, 1998.

Former law: See section 26 of Ch. XII of Act 288 of 1939, and CL 1929, § 12839.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.3a Prior order of another court affecting child's welfare; notice, filing, service, disclosure.

Sec. 3a. When any order affecting the welfare of a child is entered under this chapter by the judge of probate in any case where the child is subject to the prior or continuing order of any other court of this state, a notice thereof shall be filed in such other court and a copy of such notice shall be served personally or by registered mail upon the parents, guardian, or persons in loco parentis and upon the prosecuting attorney of the county wherein such other court is located. Such notices shall not disclose any allegations or findings of facts set forth in such petitions or orders, nor the actual person or institution to whom custody is changed. Such facts may be disclosed directly to such prosecuting attorney and shall be disclosed on request of the prosecuting attorney or by order of such other court, but shall be considered as confidential information, the disclosure of which will be subject to the same care as in all juvenile matters.

History: Add. 1953, Act 193, Eff. Oct. 2, 1953.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.4 Waiver of jurisdiction when child of 14 or older accused of felony.

Sec. 4. (1) If a juvenile 14 years of age or older is accused of an act that if committed by an adult would be a felony, the judge of the family division of circuit court in the county in which the offense is alleged to have been committed may waive jurisdiction under this section upon motion of the prosecuting attorney. After waiver, the juvenile may be tried in the court having general criminal jurisdiction of the offense.

(2) Before conducting a hearing on the motion to waive jurisdiction, the court shall give notice of the

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

hearing in the manner provided by supreme court rule to the juvenile and the prosecuting attorney and, if addresses are known, to the juvenile's parents or guardians. The notice shall state clearly that a waiver of jurisdiction to a court of general criminal jurisdiction has been requested and that, if granted, the juvenile can be prosecuted for the alleged offense as though he or she were an adult.

(3) Before the court waives jurisdiction, the court shall determine on the record if there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony and if there is probable cause to believe that the juvenile committed the offense. Before a juvenile may waive a probable cause hearing under this subsection, the court shall inform the juvenile that a waiver of this subsection waives the preliminary examination required by chapter VI of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 766.1 to 766.18 of the Michigan Compiled Laws.

(4) Upon a showing of probable cause under subsection (3), the court shall conduct a hearing to determine if the best interests of the juvenile and the public would be served by granting a waiver of jurisdiction to the court of general criminal jurisdiction. In making its determination, the court shall consider all of the following criteria, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria:

(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 culpability of the juvenile 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.

(5) If the court determines that there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony and that the juvenile committed the offense, the court shall waive jurisdiction of the juvenile if the court finds that the juvenile has previously been subject to the jurisdiction of the circuit court under this section or section 606 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.606 of the Michigan Compiled Laws, or the recorder's court of the city of Detroit under this section or section 10a(1)(c) of Act No. 369 of the Public Acts of 1919, being section 725.10a of the Michigan Compiled Laws.

(6) If legal counsel has not been retained or appointed to represent the juvenile, the court shall advise the juvenile and his or her parents, guardian, custodian, or guardian ad litem of the juvenile's right to representation and appoint legal counsel. If the court appoints legal counsel, the judge may assess the cost of providing legal counsel as costs against the juvenile or those responsible for his or her support, or both, if the persons to be assessed are financially able to comply.

(7) Legal counsel shall have access to records or reports provided and received by the judge as a basis for decision in proceedings for waiver of jurisdiction. A continuance shall be granted at legal counsel's request if any report, information, or recommendation not previously available is introduced or developed at the hearing and the interests of justice require a continuance.

(8) The court shall enter a written order either granting or denying the motion to waive jurisdiction and the court shall state on the record or in a written opinion the court's findings of fact and conclusions of law forming the basis for entering the order. If a juvenile is waived, a transcript of the court's findings or a copy of the written opinion shall be sent to the court of general criminal jurisdiction.

(9) If the court does not waive jurisdiction, a transcript of the court's findings or, if a written opinion is prepared, a copy of the written opinion shall be sent to the prosecuting attorney, juvenile, or juvenile's attorney upon request.

(10) If the court waives jurisdiction, the juvenile shall be arraigned on an information filed by the prosecutor in the court of general criminal jurisdiction. The probable cause finding under subsection (3) satisfies the requirements of, and is the equivalent of, the preliminary examination required by chapter VI of Act No. 175 of the Public Acts of 1927.

(11) As used in this section, “felony” means an offense punishable by imprisonment for more than 1 year or an offense designated by law as a felony.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—Am. 1946, 1st Ex. Sess., Act 22, Imd. Eff. Feb. 26, 1946;—CL

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

1948, 712A.4;—Am. 1969, Act 140, Eff. Mar. 20, 1970;—Am. 1972, Act 265, Imd. Eff. Oct. 3, 1972;—Am. 1988, Act 182, Eff. Oct. 1, 1988;—Am. 1996, Act 262, Eff. Jan. 1, 1997;—Am. 1996, Act 409, Eff. Jan. 1, 1998.

Former law: See section 26 of Ch. XII of Act 288 of 1939, and CL 1929, § 12839.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.5 Jurisdiction over juvenile after 18 years of age.

Sec. 5. The court does not have jurisdiction over a juvenile after he or she attains the age of 18 years, except as provided in section 2a of this chapter. A commitment of a juvenile to a private or public institution or agency is not valid after the juvenile has reached the age beyond which the court does not have continuing jurisdiction under section 2a of this chapter. Commitments to a private or incorporated institution or agency do not divest the court of jurisdiction unless the juvenile is adopted in a manner provided by law.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.5;—Am. 1972, Act 175, Imd. Eff. June 16, 1972 ;—Am. 1996, Act 409, Eff. Jan. 1, 1998.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.6 Jurisdiction; adults.

Sec. 6. The court has jurisdiction over adults as provided in this chapter and as provided in chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082, and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.6;—Am. 1996, Act 409, Eff. Jan. 1, 1998;—Am. 2004, Act 221, Eff. Jan. 1, 2005.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.6a Hearing; attendance by parent or guardian required; exception; failure to attend.

Sec. 6a. The parent or guardian of a juvenile who is within the court's jurisdiction under section 2(a)(1) of this chapter shall attend each hearing held under this chapter unless the court excuses the parent or guardian from attendance for good cause. A parent or guardian who fails to attend the juvenile's hearing without good cause may be held in contempt and subject to fines. Failure of a parent or guardian to attend a hearing, however, is not grounds for an adjournment, continuance, or other delay of the proceeding and does not provide a basis for appellate or other relief.

History: Add. 1996, Act 252, Eff. Jan. 1, 1997.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.6b Order affecting nonparent adult.

Sec. 6b. (1) The court may issue an order that affects a nonparent adult and that does 1 or more of the following:

(a) Requires the nonparent adult to participate in the development of a case service plan.

(b) Requires the nonparent adult to comply with a case service plan.

(c) Permanently removes the nonparent adult from the home of the child as provided in section 13a of this chapter.

(d) Permanently restrains the nonparent adult from coming into contact with or within close proximity of the child.

(2) Except as provided in subsection (3), a nonparent adult who violates an order issued under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

$1,000.00, or both.

(3) A nonparent adult who violates an order issued under this section and who has 1 or more prior convictions for violating an order issued under this section is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

(4) This section does not prohibit a nonparent adult from being charged with, convicted of, or punished for any other violation of law the nonparent adult commits while violating an order issued under this section.

(5) This section does not prohibit the court from exercising its criminal or civil contempt powers for a violation of an order issued under this section.

(6) This section does not in any manner affect the authority or jurisdiction of the court as provided in section 6.

History: Add. 1998, Act 530, Eff. July 1, 1999.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.7 Juvenile division of probate court; register of probate; appointment, duties, salary.

Sec. 7. The judge of probate may appoint the register of probate, a deputy probate register, or clerk of his court as register of the juvenile division of the probate court. Such register of the juvenile division shall prepare all petitions for investigation, summons, writs and other necessary papers, and shall perform such duties as required by the judge of probate, and he shall exercise and be competent to do all acts required of the judge of probate, except judicial acts. Such register so appointed shall receive for his services under this chapter, in addition to his regular salary, such sum as the board of supervisors shall fix: Provided, however, That in counties having a population of 100,000, and not more than 350,000 inhabitants, according to the last federal census, the compensation shall be not less than $500.00 annually.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.7.

Former law: See section 9 of Ch. XII of Act 288 of 1939; section 5 of Act 6 of 1907, Ex. Sess.; Act 310 of 1909; Act 164 of 1911; Act 262 of 1911; Act 363 of 1913; Act 308 of 1915; CL 1915, § 2015; Act 24 of 1921, 1st Ex. Sess.; Act 105 of 1923; Act 127 of 1927; and CL 1929, § 12838.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.8 County agent; creation of office; duties; assistants.

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.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.8;—Am. 1996, Act 409, Eff. Jan. 1, 1998;—Am. 1998, Act 478, Eff. Jan. 12, 1999.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.9 Probation officers; appointment, compensation, duties; notification to social welfare office.

Sec. 9. The judge of probate in each county may appoint 1 or more suitable persons of good character and qualified training or experience, other than the county agent or assistants, to act as probation officer, who shall receive such compensation as the board of supervisors may appropriate for that purpose, and who, at the

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

discretion of the judge, may be authorized and empowered to perform county agent duties.

The judge of probate may also appoint other probation officers who shall receive no compensation from the county treasury for the duties performed under such appointment.

It shall be the duty of the judge of probate to notify the state department of social welfare of the appointment of all paid probation officers made by him under the provisions of this chapter. All probation officers shall hold office during the pleasure of the court and shall report to the said court upon all cases under their care.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.9.

Former law: See section 10 of Ch. XII of Act 288 of 1939; section 5 of Act 6 of 1907, Ex. Sess.; Act 310 of 1909; Act 164 of 1911; Act 262 of 1911; Act 363 of 1913; Act 308 of 1915; CL 1915, § 2015; Act 24 of 1921, 1st Ex. Sess.; Act 105 of 1923; Act 127 of 1927; and CL 1929, § 12838.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.9a Probation.

Sec. 9a. If the court acting under section 18(1)(n) of this chapter imposes a sentence of probation in the same manner as probation could be imposed upon an adult convicted of the same offense for which the juvenile was convicted or enters an order of disposition delaying imposition of sentence and placing the juvenile on probation, the probation supervision and related services shall not be performed by employees of the department of corrections.

History: Add. 1996, Act 244, Eff. Aug. 1, 1996.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.10 Designation of probation officer or county agent as referee; duties of referee.

Sec. 10. (1) Except as otherwise provided in subsection (2) and sections 14, 14a, and 14b of this chapter, the judge may designate a probation officer or county agent to act as referee in taking the testimony of witnesses and hearing the statements of parties upon the hearing of petitions alleging that a child is within the provisions of this chapter, if there is no objection by parties in interest. The probation officer or county agent designated to act as referee shall do all of the following:

(a) Take and subscribe the oath of office provided by the constitution.

(b) Administer oaths and examine witnesses.

(c) If a case requires a hearing and the taking of testimony, make a written signed report to the judge containing a summary of the testimony taken and a recommendation for the court's findings and disposition.

(2) If a child is before the court under section 2(a)(1) of this chapter, a probation officer or county agent who is not licensed to practice law in this state shall not be designated to act as a referee in any hearing for the child, except the preliminary inquiry or preliminary hearing. This subsection does not apply to a probation officer or county agent who has been designated to act as a referee by the judge before January 1, 1988 and who is acting as a referee as of January 1, 1988.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.10;—Am. 1988, Act 92, Eff. June 1, 1988;—Am. 2012, Act 163, Imd. Eff. June 12, 2012.

Former law: See section 11 of Ch. XII of Act 288 of 1939; section 5 of Act 6 of 1907, Ex. Sess.; Act 310 of 1909; Act 164 of 1911; Act 262 of 1911; Act 363 of 1913; Act 308 of 1915; CL 1915, § 2015; Act 24 of 1921, 1st Ex. Sess.; Act 105 of 1923; Act 127 of 1927; and CL 1929, § 12838.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.11 Preliminary inquiry; petition; effect of juvenile attaining seventeenth birthday; fingerprints; amendment of petition or other court record; offer of court services.

Sec. 11. (1) Except as provided in subsection (2), if a person gives information to the court that a juvenile is within section 2(a)(2) to (6), (b), (c), or (d) of this chapter, a preliminary inquiry may be made to determine whether the interests of the public or the juvenile require that further action be taken. If the court determines

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

that formal jurisdiction should be acquired, the court shall authorize a petition to be filed.

(2) Only the prosecuting attorney may file a petition requesting the court to take jurisdiction of a juvenile allegedly within section 2(a)(1) of this chapter. If the prosecuting attorney submits a petition requesting the court to take jurisdiction of a juvenile allegedly within section 2(a)(1) of this chapter and the court determines that formal jurisdiction should be acquired, the court shall authorize a petition to be filed.

(3) The petition described in subsections (1) and (2) shall be verified and may be upon information and belief. The petition shall set forth plainly the facts that bring the juvenile within this chapter and shall contain all of the following information:

(a) The juvenile's name, birth date, and address.

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

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

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

(e) The name and address of the juvenile's nearest known relative, if no parent or guardian can be found.

(4) If any of the facts required under subsection (3) are not known to the petitioner, the petition shall state that the facts are not known. If the juvenile attains his or her seventeenth birthday after the filing of the petition, the court's jurisdiction shall continue beyond the juvenile's seventeenth birthday and the court may hear and dispose of the petition under this chapter.

(5) When a petition is authorized, the court shall examine the court file to determine if a juvenile has had fingerprints taken as required under section 3 of Act No. 289 of the Public Acts of 1925, being section 28.243 of the Michigan Compiled Laws. 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 arrest of the juvenile so the juvenile's fingerprints can be taken.

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

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

(7) If the juvenile diversion act, Act No. 13 of the Public Acts of 1988, being sections 722.821 to 722.831 of the Michigan Compiled Laws, is complied with and the court determines that court services can be used in the prevention of delinquency without formal jurisdiction, the court may offer court services to a juvenile without a petition being authorized as provided in section 2(e) of this chapter.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.11;—Am. 1963, Act 118, Eff. Sept. 6, 1963;—Am. 1965, Act 182, Imd. Eff. July 15, 1965;—Am. 1988, Act 18, Eff. Apr. 1, 1988;—Am. 1988, Act 72, Eff. June 1, 1988;—Am. 1988, Act 92, Eff. Apr. 1, 1988;—Am. 1996, Act 409, Eff. Jan. 1, 1998.

Former law: See section 17 of Ch. XII of Act 288 of 1939; section 5 of Act 6 of 1907, Ex. Sess.; Act 310 of 1909; Act 164 of 1911; Act 262 of 1911; Act 363 of 1913; Act 308 of 1915; CL 1915, § 2015; Act 24 of 1921, 1st Ex. Sess.; Act 105 of 1923; Act 127 of 1927; and CL 1929, § 12838.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.12 Examination of child; hearing; summons.

Sec. 12. After a petition shall have been filed and after such further investigation as the court may direct, in the course of which the court may order the child to be examined by a physician, dentist, psychologist or psychiatrist, the court may dismiss said petition or may issue a summons reciting briefly the substance of the petition, and requiring the person or persons who have the custody or control of the child, or with whom the child may be, to appear personally and bring the child before the court at a time and place stated: Provided, That the court in its discretion may excuse but not restrict children from attending the hearing. If the person so summoned shall be other than the parent or guardian of the child, then the parents or guardian, or both, shall also be notified of the petition and of the time and place appointed for the hearing thereon, by personal service before the hearing, except as hereinafter provided. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary.

Any interested party who shall voluntarily appear in said proceedings, may, by writing, waive service of process or notice of hearing.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.12.

Former law: See section 17 of Ch. XII of Act 288 of 1939; section 5 of Act 6 of 1907, Ex. Sess.; Act 310 of 1909; Act 164 of 1911, Act 262 of 1911; Act 363 of 1913; Act 308 of 1915; CL 1915, § 2015; Act 24 of 1921, 1st Ex. Sess.; Act 105 of 1923; Act 127 of 1927; and CL 1929, § 12838.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.13 Service of summons.

Sec. 13. Service of summons may be made anywhere in the state personally by the delivery of true copies thereof to the persons summoned: Provided, That if the judge is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section, he may order service by registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct. It shall be sufficient to confer jurisdiction if (1) personal service is effected at least 72 hours before the date of hearing; (2) registered mail is mailed at least 5 days before the date of hearing if within the state or 14 days if outside of the state; (3) publication is made once in some newspaper printed and circulated in the county in which said court is located at least 1 week before the time fixed in the summons or notice for the hearing.

Service of summons, notices or orders required by this chapter may be made by any peace officer or by any other suitable person designated by the judge. The judge may, in his discretion, authorize the payment of necessary traveling expenses incurred by any person summoned or otherwise required to appear at the time of hearing of any case coming within the provisions of this chapter, and such expenses and the expenses of making service as above provided, when approved by the judge, shall be paid by the county treasurer from the general fund of the county.

If any person so summoned, as herein provided, shall fail without reasonable cause to appear before said court, he may be proceeded against for contempt of court and punished accordingly.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.13.

Former law: See section 17 of Ch. XII of Act 288 of 1939; section 5 of Act 6 of 1907, Ex. Sess.; Act 310 of 1909; Act 164 of 1911; Act 262 of 1911; Act 363 of 1913; Act 308 of 1915; CL 1915, § 2015; Act 24 of 1921, 1st Ex. Sess.; Act 105 of 1923; Act 127 of 1927; and CL 1929, § 12838.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.13a Definitions; petition; release of juvenile; order removing abusive person from home; placement of child; foster care; conditions; duty of court to inform parties; criminal record check and central registry clearance; family-like setting; parenting time; review and modification of orders and plans; release of information; information included with order; "abuse" defined.

Sec. 13a. (1) As used in this section and sections 2, 6b, 13b, 17c, 17d, 18f, 19, 19a, 19b, and 19c of this chapter:

(a) "Agency" means a public or private organization, institution, or facility that is performing the functions under part D of title IV of the social security act, 42 USC 651 to 669b, or that is responsible under court order or contractual arrangement for a juvenile's care and supervision.

(b) "Agency case file" means the current file from the agency providing direct services to the child, that can include the child protective services file if the child has not been removed from the home or the department of human services or contract agency foster care file as defined under 1973 PA 116, MCL 722.111 to 722.128.

(c) "Attorney" means, if appointed to represent a child in a proceeding under section 2(b) or (c) of this chapter, an attorney serving as the child's legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney defined under this subdivision owes the same duties of undivided loyalty, confidentiality, and zealous representation of the child's expressed wishes as the attorney would to an adult client. For the purpose of a notice required under these sections, attorney includes a child's lawyer-guardian ad litem.

(d) "Case service plan" means the plan developed by an agency and prepared under section 18f of this chapter that includes services to be provided by and responsibilities and obligations of the agency and activities, responsibilities, and obligations of the parent. The case service plan may be referred to using different names than case service plan including, but not limited to, a parent/agency agreement or a parent/agency treatment plan and service agreement.

(e) "Foster care" means care provided to a juvenile in a foster family home, foster family group home, or child caring institution licensed or approved under 1973 PA 116, MCL 722.111 to 722.128, or care provided

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

to a juvenile in a relative's home under a court order.

(f) "Guardian ad litem" means an individual whom the court appoints to assist the court in determining the child's best interests. A guardian ad litem does not need to be an attorney.

(g) "Lawyer-guardian ad litem" means an attorney appointed under section 17c of this chapter. A lawyer-guardian ad litem represents the child, and has the powers and duties, as set forth in section 17d of this chapter. The provisions of section 17d of this chapter also apply to a lawyer-guardian ad litem appointed under each of the following:

(*i*) Section 5213 or 5219 of the estates and protected individuals code, 1998 PA 386, MCL 700.5213 and 700.5219.

(*ii*) Section 4 of the child custody act of 1970, 1970 PA 91, MCL 722.24.

(*iii*) Section 10 of the child protection law, 1975 PA 238, MCL 722.630.

(h) "Nonparent adult" means a person who is 18 years of age or older and who, regardless of the person's domicile, meets all of the following criteria in relation to a child over whom the court takes jurisdiction under this chapter:

(*i*) Has substantial and regular contact with the child.

(*ii*) Has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare.

(*iii*) Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.

(i) "Permanent foster family agreement" means an agreement for a child 14 years old or older to remain with a particular foster family until the child is 18 years old under standards and requirements established by the department of human services, which agreement is among all of the following:

(*i*) The child.

(*ii*) If the child is a temporary ward, the child's family.

(*iii*) The foster family.

(*iv*) The child placing agency responsible for the child's care in foster care.

(j) "Relative" means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not to be construed as a finding of paternity or to confer legal standing on the putative father.

(k) "Sex offenders registration act" means the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736.

(2) If a juvenile is alleged to be within the provisions of section 2(b) of this chapter, the court may authorize a petition to be filed at the conclusion of the preliminary hearing or inquiry. The court may authorize the petition upon a showing of probable cause that 1 or more of the allegations in the petition are true and fall within the provisions of section 2(b) of this chapter. If a petition is before the court because the department of human services is required to submit the petition under section 17 of the child protection law, 1975 PA 238, MCL 722.637, the court shall hold a hearing on the petition within 24 hours or on the next business day after the petition is submitted, at which hearing the court shall consider at least the matters governed by subsections (4) and (5).

(3) Except as provided in subsections (5) and (6), if a petition under subsection (2) is authorized, the court may release the juvenile in the custody of either of the juvenile's parents or the juvenile's guardian or custodian under reasonable terms and conditions necessary for either the juvenile's physical health or mental well-being.

(4) The court may order a parent, guardian, custodian, nonparent adult, or other person residing in a child's home to leave the home and, except as the court orders, not to subsequently return to the home if all of the following take place:

(a) A petition alleging abuse of the child by the parent, guardian, custodian, nonparent adult, or other person is authorized under subsection (2).

(b) The court after a hearing finds probable cause to believe the parent, guardian, custodian, nonparent adult, or other person committed the abuse.

(c) The court finds on the record that the presence in the home of the person alleged to have committed the abuse presents a substantial risk of harm to the child's life, physical health, or mental well-being.

(5) If a petition alleges abuse by a person described in subsection (4), regardless of whether the court

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

orders the alleged abuser to leave the child's home under subsection (4), the court shall not leave the child in or return the child to the child's home or place the child with a person not licensed under 1973 PA 116, MCL 722.111 to 722.128, unless the court finds that the conditions of custody at the placement and with the individual with whom the child is placed are adequate to safeguard the child from the risk of harm to the child's life, physical health, or mental well-being.

(6) If a court finds a parent is required by court order to register under the sex offenders registration act, the department of human services may, but is not required to, make reasonable efforts to reunify the child with the parent. The court may order reasonable efforts to be made by the department of human services.

(7) In determining whether to enter an order under subsection (4), the court may consider whether the parent who is to remain in the juvenile's home is married to the person to be removed or has a legal right to retain possession of the home.

(8) An order entered under subsection (4) may also contain 1 or more of the following terms or conditions:

(a) The court may require the alleged abusive parent to pay appropriate support to maintain a suitable home environment for the juvenile during the duration of the order.

(b) The court may order the alleged abusive person, according to terms the court may set, to surrender to a local law enforcement agency any firearms or other potentially dangerous weapons the alleged abusive person owns, possesses, or uses.

(c) The court may include any reasonable term or condition necessary for the juvenile's physical or mental well-being or necessary to protect the juvenile.

(9) The court may order placement of the child in foster care if the court finds all of the following conditions:

(a) Custody of the child with the parent presents a substantial risk of harm to the child's life, physical health, or mental well-being.

(b) No provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from risk as described in subdivision (a).

(c) Continuing the child's residence in the home is contrary to the child's welfare.

(d) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.

(e) Conditions of child custody away from the parent are adequate to safeguard the child's health and welfare.

(10) If the court orders placement of the juvenile outside the juvenile's home, the court shall inform the parties of the following:

(a) That the agency has the responsibility to prepare an initial services plan within 30 days of the juvenile's placement.

(b) The general elements of an initial services plan as required by the rules promulgated under 1973 PA 116, MCL 722.111 to 722.128.

(c) That participation in the initial services plan is voluntary without a court order.

(11) Before or within 7 days after a child is placed in a relative's home, the department of human services shall perform a criminal record check and central registry clearance. If the child is placed in the home of a relative, the court shall order a home study to be performed and a copy of the home study to be submitted to the court not more than 30 days after the placement.

(12) In determining placement of a juvenile pending trial, the court shall order the juvenile placed in the most family-like setting available consistent with the juvenile's needs.

(13) If a juvenile is removed from his or her home, the court shall permit the juvenile's parent to have frequent parenting time with the juvenile. If parenting time, even if supervised, may be harmful to the juvenile, the court shall order the child to have a psychological evaluation or counseling, or both, to determine the appropriateness and the conditions of parenting time. The court may suspend parenting time while the psychological evaluation or counseling is conducted.

(14) Upon the motion of any party, the court shall review custody and placement orders and initial services plans pending trial and may modify those orders and plans as the court considers under this section are in the juvenile's best interests.

(15) The court shall include in an order placing a child in foster care an order directing the release of information concerning the child in accordance with this subsection. If a child is placed in foster care, within 10 days after receipt of a written request, the agency shall provide the person who is providing the foster care with copies of all initial, updated, and revised case service plans and court orders relating to the child and all of the child's medical, mental health, and education reports, including reports compiled before the child was placed with that person.

(16) In an order placing a child in foster care, the court shall include both of the following:

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

(a) An order that the child's parent, guardian, or custodian provide the supervising agency with the name and address of each of the child's medical providers.

(b) An order that each of the child's medical providers release the child's medical records. The order may specify providers by profession or type of institution.

(17) As used in this section, "abuse" means 1 or more of the following:

(a) Harm or threatened harm by a person to a juvenile's health or welfare that occurs through nonaccidental physical or mental injury.

(b) Engaging in sexual contact or sexual penetration as defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, with a juvenile.

(c) Sexual exploitation of a juvenile, which includes, but is not limited to, allowing, permitting, or encouraging a juvenile to engage in prostitution or allowing, permitting, encouraging, or engaging in photographing, filming, or depicting a juvenile engaged in a listed sexual act as defined in section 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(d) Maltreatment of a juvenile.

History: Add. 1988, Act 224, Eff. Apr. 1, 1989;—Am. 1993, Act 114, Imd. Eff. July 20, 1993;—Am. 1996, Act 16, Eff. June 1, 1996;—Am. 1996, Act 409, Eff. Jan. 1, 1998;—Am. 1997, Act 163, Eff. Mar. 31, 1998;—Am. 1998, Act 480, Eff. Mar. 1, 1999;—Am. 1998, Act 530, Eff. July 1, 1999;—Am. 2000, Act 55, Eff. Apr. 1, 2000;—Am. 2004, Act 475, Imd. Eff. Dec. 28, 2004;—Am. 2012, Act 115, Imd. Eff. May 1, 2012;—Am. 2012, Act 163, Imd. Eff. June 12, 2012.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.13b Change in foster care placement.

Sec. 13b. (1) If a child under the court's jurisdiction under section 2(b) of this chapter, or under MCI jurisdiction, control, or supervision, is placed in foster care, the agency shall not change the child's placement except under 1 of the following circumstances:

(a) The person providing the foster care requests or agrees to the change.

(b) Even though the person providing the foster care objects to a proposed change in placement, 1 of the following applies:

(*i*) The court orders the child returned home.

(*ii*) The change in placement is less than 30 days after the child's initial removal from his or her home.

(*iii*) The change in placement is less than 90 days after the child's initial removal from his or her home, and the new placement is with a relative.

(*iv*) The change in placement is in accordance with other provisions of this section.

(2) Except as provided in subsections (1) and (7), before a change in foster care placement takes effect, the agency shall do all of the following:

(a) Notify the state court administrative office of the proposed change in placement. Notice under this subdivision may be given by ordinary mail or by electronic means as agreed by the department and the state court administrative office.

(b) Notify the foster parents of the intended change in placement and inform them that, if they disagree with the decision, they may appeal within 3 days to a foster care review board. A foster parent may appeal orally, but must submit the appeal in writing immediately following the oral appeal. The agency shall provide the foster parents with the address and telephone number of a foster care review board with jurisdiction over the child.

(c) Maintain the current placement for not less than the time for appeal to the foster care review board and if a foster parent appeals, until the foster care review board determination.

(d) Notify the court with jurisdiction over the child and notify the child's lawyer guardian ad litem of the change in placement. Notice to the court under this subdivision may be given by ordinary mail or by electronic means as agreed by the department and the court that has jurisdiction over the child. The notice provided under this subdivision does not affect the department's placement discretion and shall include all of the following information:

(*i*) The reason for the change in placement.

(*ii*) The number of times the child's placement has been changed.

(*iii*) Whether or not the child will be required to change schools.

(*iv*) Whether or not the change will separate or reunite siblings or affect sibling visitation.

(3) Upon receipt of an appeal from foster parents under subsection (2) or (7), the foster care review board shall investigate the change in foster care placement within 7 days and shall report its findings and

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

recommendations within 3 days after completion of the investigation to the court or, if the child is under MCI jurisdiction, control, or supervision, the MCI superintendent, to the foster care parents, to the parents, and to the agency.

(4) If after investigation the foster care review board determines that the move is in the child's best interests, the agency may move the child.

(5) If after investigation the foster care review board determines that the move is not in the child's best interest, the agency shall maintain the current placement until a finding and order by the court or, if the child is under MCI jurisdiction, control, or supervision, a decision by the MCI superintendent. The agency shall not return a child to a placement from which the child was removed under subsection (7) unless the court orders that placement's restoration under subsection (6) or the MCI superintendent approves that placement's restoration under this subsection. The foster care review board shall notify the court, or if the child is under MCI jurisdiction, control, or supervision, the MCI superintendent, about the board's and agency's disagreement. The court shall set a hearing date and provide notice to the foster parents, each interested party, and the prosecuting attorney if the prosecuting attorney has appeared in the case. The court shall set the hearing no sooner than 7 and no later than 14 days after receipt of the notice from the foster care review board. The rules of evidence do not apply to a hearing required by this subsection. Within 14 days after notification under this subsection, the MCI superintendent shall make a decision regarding the child's placement and shall inform each interested party what the decision is.

(6) After hearing testimony from the agency and any other interested party and considering any other evidence bearing upon the proposed change in placement, the court shall order the continuation or restoration of the placement unless the court finds that the proposed change in placement is in the child's best interests.

(7) If the agency has reasonable cause to believe that the child has suffered sexual abuse or nonaccidental physical injury, or that there is substantial risk of harm to the child's emotional well-being, the agency may change the child's foster care placement without complying with subsection (1) or (2)(b) or (c). The agency shall include in the child's file documentation of its justification for action under this subsection. If a foster parent objects to the removal of a child under this subsection, he or she may appeal to the foster care review board within 3 days after the child's removal. The foster parent may appeal orally, but must submit the appeal in writing immediately following the oral appeal.

(8) At the time of or immediately following a child's removal under subsection (7), the agency shall inform the foster parents about the removal and that, if they disagree with the decision, they may appeal within 3 days to a foster care review board in the manner provided in subsection (7). The agency shall provide the foster parents with the address and telephone number of a foster care review board with jurisdiction over the child.

History: Add. 1997, Act 163, Eff. July 1, 1998;—Am. 2000, Act 46, Imd. Eff. Mar. 27, 2000;—Am. 2004, Act 475, Imd. Eff. Dec. 28, 2004;—Am. 2008, Act 201, Imd. Eff. July 11, 2008.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.14 Officers or county agent authorized to take child into custody; notice; detention facility; release of child; preliminary hearing; order; placement of child; foster care home services.

Sec. 14. (1) Any local police officer, sheriff or deputy sheriff, state police officer, county agent or probation officer of any court of record may, without the order of the court, immediately take into custody any child who is found violating any law or ordinance, or for whom there is reasonable cause to believe is violating or has violated a personal protection order issued under section 2(h) of this chapter by the court under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or for whom there is reasonable cause to believe is violating or has violated a valid foreign protection order. If the officer or county agent takes a child coming within the provisions of this chapter into custody, he or she shall immediately attempt to notify the parent or parents, guardian, or custodian. While awaiting the arrival of the parent or parents, guardian, or custodian, a child under the age of 17 years taken into custody under the provisions of this chapter shall not be held in any detention facility unless the child is completely isolated so as to prevent any verbal, visual, or physical contact with any adult prisoner. Unless the child requires immediate detention as provided for in this act, the officer shall accept the written promise of the parent or parents, guardian, or custodian, to bring the child to the court at a fixed time. The child shall then be released to the custody of the parent or parents, guardian, or custodian.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

(2) If a child is not released under subsection (1), the child and his or her parents, guardian, or custodian, if they can be located, shall immediately be brought before the court for a preliminary hearing on the status of the child, and an order signed by a judge or a referee authorizing the filing of a complaint shall be entered or the child shall be released to his or her parent or parents, guardian, or custodian.

(3) If a complaint is authorized under subsection (2), the order shall state where the child is to be placed, pending investigation and hearing, which placement may be in any of the following:

(a) In the home of the child's parent, guardian, or custodian.

(b) If a child is within the court's jurisdiction under section 2(a) of this chapter, in a suitable foster care home subject to the court's supervision. Except as otherwise provided in subsections (4) and (5), 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.

(c) In a child care institution or child placing agency licensed by the department of human services to receive for care children within the jurisdiction of the court.

(d) In a suitable place of detention.

(4) Except as otherwise provided in subsection (5), 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.

(5) 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.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.14;—Am. 1952, Act 133, Eff. Sept. 18, 1952;—Am. 1961, Act 30, Eff. Sept. 8, 1961;—Am. 1966, Act 43, Eff. Mar. 10, 1967;—Am. 1988, Act 224, Eff. Apr. 1, 1989;—Am. 1998, Act 474, Eff. Mar. 1, 1999;—Am. 2001, Act 211, Eff. Apr. 1, 2002;—Am. 2012, Act 163, Imd. Eff. June 12, 2012.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.15 Detention of child pending hearing; release of child; petition; limitation on custody of child pending hearing; detention in secure facility, cell, or other secure area designed to incarcerate adults; exception.

Sec. 15. (1) In the case of a child concerning whom a complaint has been made or a petition has been filed pursuant to this chapter, the court may order the child, pending the hearing, detained in a facility as the court shall designate. The court may release the child, pending the hearing, in the custody of a parent, guardian, or custodian, to be brought before the court at the time designated. As used in this subsection, “petition” includes all of the following:

(a) Petition.

(b) Supplemental petition.

(c) Petition for revocation of probation.

(d) Supplemental petition alleging a violation of a personal protection order.

(2) Custody, pending hearing, is limited to the following children:

(a) Those whose home conditions make immediate removal necessary.

(b) Those who have a record of unexcused failures to appear at juvenile court proceedings.

(c) Those who have run away from home.

(d) Those who have failed to remain in a detention or nonsecure facility or placement in violation of a court order.

(e) Those whose offenses are so serious that release would endanger public safety.

(f) Those who have allegedly violated a personal protection order and for whom it appears there is a substantial likelihood of retaliation or continued violation.

(3) A child taken into custody pursuant to section 2(a)(2) to (4) of this chapter or subsection (2)(c) shall not be detained in any secure facility designed to physically restrict the movements and activities of alleged or adjudicated juvenile offenders unless the court finds that the child willfully violated a court order and the court finds, after a hearing and on the record, that there is not a less restrictive alternative more appropriate to the needs of the child. This subsection does not apply to a child who is under the jurisdiction of the court pursuant to section 2(a)(1) of this chapter or a child who is not less than 17 years of age and who is under the

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

jurisdiction of the court pursuant to a supplemental petition under section 2(h) of this chapter.

(4) A child taken into custody pursuant to section 2(b) of this chapter or subsection (2)(a) shall not be detained in any secure facility designed to physically restrict the movements and activities of alleged or adjudicated juvenile offenders or in a cell or other secure area of any secure facility designed to incarcerate adults.

(5) A child taken into custody pursuant to section 2(a)(2) to (4) of this chapter or subsection (2)(c) shall not be detained in a cell or other secure area of any secure facility designed to incarcerate adults unless either of the following applies:

(a) A child is under the jurisdiction of the court pursuant to section 2(a)(1) of this chapter for an offense which, if committed by an adult, would be a felony.

(b) A child is not less than 17 years of age and is under the jurisdiction of the court pursuant to a supplemental petition under section 2(h) of this chapter.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.15;—Am. 1972, Act 175, Imd. Eff. June 16, 1972;—Am. 1987, Act 72, Eff. Sept. 1, 1987;—Am. 1998, Act 474, Eff. Mar. 1, 1999.

Compiler's note: Section 2 of Act 72 of 1987 provides: "If this amendatory act requires any increase in the level of any activity or service currently required by this act or requires a new activity or service by a local unit of government, the state shall reimburse the local unit of government for any new or increased costs."

Former law: See section 18 of Ch. XII of Act 288 of 1939; section 5 of Act 6 of 1907, Ex. Sess.; Act 310 of 1909; Act 164 of 1911; Act 262 of 1911; Act 363 of 1913; Act 308 of 1915; CL 1915, § 2015; Act 24 of 1921, 1st Ex. Sess.; Act 105 of 1923; Act 127 of 1927; and CL 1929, § 12838.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.16 Detention and care of juvenile.

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 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

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

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.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.16;—Am. 1963, Act 65, Eff. May 8, 1963;—Am. 1968, Act 150, Eff. Nov. 15, 1968;—Am. 1972, Act 175, Imd. Eff. June 16, 1972;—Am. 1987, Act 72, Eff. Sept. 1, 1987;—Am. 1988, Act 224, Eff. Apr. 1, 1989;—Am. 1996, Act 409, Eff. Jan. 1, 1998;—Am. 1998, Act 478, Eff. Jan. 12, 1999.

Compiler's note: Section 2 of Act 72 of 1987 provides: "If this amendatory act requires any increase in the level of any activity or service currently required by this act or requires a new activity or service by a local unit of government, the state shall reimburse the local unit of government for any new or increased costs."

Former law: See section 27 of Ch. XII of Act 288 of 1939; and CL 1929, § 12841.

Popular name: Probate Code

Popular name: Juvenile Code

Administrative rules: R 400.1 et seq. of the Michigan Administrative Code.

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.16a Repealed. 1963, Act 214, Imd. Eff. May 17, 1963.

Compiler's note: The repealed section provided for joint regional facilities for diagnosis and custody of minors pending criminal proceedings.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.17 Hearing; informality; adjournment; transcript; jury; giving security for appearance of juvenile; appearance by prosecuting attorney; legal consultant or legal representation; admitting foster care review board member to hearing; closing hearing to members of general public; "juvenile witness" defined.

Sec. 17. (1) The court may conduct a hearing other than a criminal hearing in an informal manner. The court shall require stenographic notes or another transcript to be taken of the hearing. The court shall adjourn a hearing or grant a continuance regarding a case under section 2(b) of this chapter only for good cause with factual findings on the record and not solely upon stipulation of counsel or for the convenience of a party. In addition to a factual finding of good cause, the court shall not adjourn the hearing or grant a continuance unless 1 of the following is also true:

(a) The motion for the adjournment or continuance is made in writing not less than 14 days before the hearing.

(b) The court grants the adjournment or continuance upon its own motion after taking into consideration the child's best interests. An adjournment or continuance granted under this subdivision shall not last more than 28 days unless the court states on the record the specific reasons why a longer adjournment or continuance is necessary.

(2) Except as otherwise provided in this subsection, in a hearing other than a criminal trial under this chapter, a person interested in the hearing may demand a jury of 6 individuals, or the court, on its own motion, may order a jury of 6 individuals to try the case. In a proceeding under section 2(h) of this chapter, a jury shall not be demanded or ordered on a supplemental petition alleging a violation of a personal protection order. In a criminal trial, a jury may be demanded as provided by law. The jury shall be summoned and impaneled in accordance with chapter 13 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1300 to 600.1376, and, in the case of a criminal trial, as provided in chapter VIII of the code of criminal procedure, 1927 PA 175, MCL 768.1 to 768.36.

(3) A parent, guardian, or other custodian of a juvenile held under this chapter has the right to give bond or other security for the appearance of the juvenile at the hearing of the case.

(4) The prosecuting attorney shall appear for the people when requested by the court, and in a proceeding under section 2(a)(1) of this chapter, the prosecuting attorney shall appear if the proceeding requires a hearing and the taking of testimony.

(5) In a proceeding under section 2(b) of this chapter, upon request of the family independence agency or an agent of the family independence agency under contract with the family independence agency, the prosecuting attorney shall serve as a legal consultant to the family independence agency or its agent at all stages of the proceeding. If in a proceeding under section 2(b) of this chapter the prosecuting attorney does not appear on behalf of the family independence agency or its agent, the family independence agency may contract with an attorney of its choice for legal representation.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

(6) A member of a local foster care review board established under 1984 PA 422, MCL 722.131 to 722.139a, shall be admitted to a hearing under subsection (1).

(7) Upon motion of a party or a victim, the court may close the hearing of a case brought under this chapter to members of the general public during the testimony of a juvenile witness or the victim if the court finds that closing the hearing is necessary to protect the welfare of the juvenile witness or the victim. In determining whether closing the hearing is necessary to protect the welfare of the juvenile witness or the victim, the court shall consider the following:

(a) The age of the juvenile witness or the victim.

(b) The nature of the proceeding.

(c) The desire of the juvenile witness, of the witness's family or guardian, or of the victim to have the testimony taken in a room closed to the public.

(8) As used in subsection (7), "juvenile witness" does not include a juvenile against whom a proceeding is brought under section 2(a)(1) of this chapter.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.17;—Am. 1980, Act 499, Imd. Eff. Jan. 21, 1981;—Am. 1982, Act 330, Imd. Eff. Dec. 14, 1982;—Am. 1984, Act 420, Imd. Eff. Dec. 28, 1984;—Am. 1986, Act 170, Imd. Eff. July 7, 1986;—Am. 1988, Act 91, Eff. June 1, 1988;—Am. 1988, Act 92, Eff. June 1, 1988;—Am. 1988, Act 224, Eff. Apr. 1, 1989;—Am. 1989, Act 73, Imd. Eff. June 16, 1989;—Am. 1996, Act 258, Eff. Jan. 1, 1997;—Am. 1996, Act 409, Eff. Jan. 1, 1998;—Am. 1997, Act 169, Eff. Mar. 31, 1998;—Am. 1998, Act 325, Imd. Eff. Aug. 3, 1998;—Am. 1998, Act 474, Eff. Mar. 1, 1999.

Former law: See section 12 of Ch. XII of Act 288 of 1939; and CL 1929, §§ 12835 and 12836.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.17a Hearings; record, tape recordings, transcription.

Sec. 17a. In any case in which a record of the hearing is kept by a recording device, no transcription need be made of the hearing in the absence of a request by an interested party. The tape of the hearing shall be stored as a permanent record of the court.

History: Add. 1969, Act 95, Imd. Eff. July 24, 1969.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.17b Definitions; proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; shielding of witness; videorecorded deposition; special arrangements to protect welfare of witness; section additional to other protections or procedures.

Sec. 17b. (1) As used in this section:

(a) "Custodian of the videorecorded statement" means the family independence agency, investigating law enforcement agency, prosecuting attorney, or department of attorney general or another person designated under the county protocols established as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(b) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments, and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(c) "Videorecorded statement" means a witness's statement taken by a custodian of the videorecorded statement as provided in subsection (5). Videorecorded statement does not include a videorecorded deposition taken as provided in subsections (16) and (17).

(d) "Witness" means an alleged victim of an offense listed under subsection (2) who is either of the following:

(*i*) A person under 16 years of age.

(*ii*) A person 16 years of age or older with a developmental disability.

(2) This section only applies to either of the following:

(a) A proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328.

(b) A proceeding brought under section 2(b) of this chapter.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be filed with the court and shall be served upon all parties to the proceeding. The court shall rule on a motion objecting to the use of a named support person before the date at which the witness desires to use the support person.

(5) A custodian of the videorecorded statement may take a witness's videorecorded statement. The videorecorded statement shall be admitted at all proceedings except the adjudication stage instead of the live testimony of the witness. The videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and shall show a time clock that is running during the taking of the statement.

(6) In a videorecorded statement, the questioning of the witness should be full and complete; shall be in accordance with the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628; and, if appropriate for the witness's developmental level, shall include, but need not be limited to, all of the following areas:

(a) The time and date of the alleged offense or offenses.

(b) The location and area of the alleged offense or offenses.

(c) The relationship, if any, between the witness and the respondent.

(d) The details of the offense or offenses.

(e) The names of other persons known to the witness who may have personal knowledge of the offense or offenses.

(7) A custodian of the videorecorded statement may release or consent to the release or use of a videorecorded statement or copies of a videorecorded statement to a law enforcement agency, an agency authorized to prosecute the criminal case to which the videorecorded statement relates, or an entity that is part of county protocols established under section 8 of the child protection law, 1975 PA 238, MCL 722.628. Each respondent and, if represented, his or her attorney has the right to view and hear the videorecorded statement at a reasonable time before it is offered into evidence. In preparation for a court proceeding and under protective conditions, including, but not limited to, a prohibition on the copying, release, display, or circulation of the videorecorded statement, the court may order that a copy of the videorecorded statement be given to the defense.

(8) If authorized by the prosecuting attorney in the county in which the videorecorded statement was taken, a videorecorded statement may be used for purposes of training the custodians of the videorecorded statement in that county on the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(9) Except as provided in this section, an individual, including, but not limited to, a custodian of the videorecorded statement, the witness, or the witness's parent, guardian, guardian ad litem, or attorney, shall not release or consent to release a videorecorded statement or a copy of a videorecorded statement.

(10) A videorecorded statement that becomes part of the court record is subject to a protective order of the court for the purpose of protecting the privacy of the witness.

(11) A videorecorded statement shall not be copied or reproduced in any manner except as provided in this section. A videorecorded statement is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to release under another statute, and is not subject to disclosure under the Michigan court rules governing discovery. This section does not prohibit the production or release of a transcript of a videorecorded statement.

(12) Except as otherwise provided in subsection (15), if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify in the presence of the respondent at a court proceeding or in a videorecorded deposition taken as provided in subsection (13), the court shall order that the witness during his or her testimony be shielded from viewing the respondent in such a manner as to enable the respondent to consult with his or her attorney

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

and to see and hear the testimony of the witness without the witness being able to see the respondent.

(13) In a proceeding brought under section 2(b) of this chapter, if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify at the adjudication stage, the court shall order to be taken a videorecorded deposition of a witness that shall be admitted into evidence at the adjudication stage instead of the live testimony of the witness. The examination and cross-examination of the witness in the videorecorded deposition shall proceed in the same manner as permitted at the adjudication stage.

(14) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328, if, upon the motion of a party made before the adjudication stage, the court finds on the record that the special arrangements specified in subsection (15) are necessary to protect the welfare of the witness, the court shall order 1 or both of those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider both of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

(15) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (14), the court shall order 1 or both of the following:

(a) In order to protect the witness from directly viewing the respondent, the courtroom shall be arranged so that the respondent is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The respondent's position shall be located so as to allow the respondent to hear and see all witnesses and be able to communicate with his or her attorney.

(b) A questioner's stand or podium shall be used for all questioning of all witnesses by all parties, and shall be located in front of the witness stand.

(16) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328, if, upon the motion of a party or in the court's discretion, the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness in subsections (3), (4), and (15), the court shall order that a videorecorded deposition of a witness shall be taken to be admitted at the adjudication stage instead of the witness's live testimony.

(17) For purposes of the videorecorded deposition under subsection (16), the witness's examination and cross-examination shall proceed in the same manner as if the witness testified at the adjudication stage, and the court shall order that the witness, during his or her testimony, shall not be confronted by the respondent but shall permit the respondent to hear the testimony of the witness and to consult with his or her attorney.

(18) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

(19) A person who intentionally releases a videorecorded statement in violation of this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

History: Add. 1987, Act 45, Eff. Jan. 1, 1988;—Am. 1989, Act 254, Eff. Mar. 29, 1990;—Am. 1998, Act 325, Imd. Eff. Aug. 3, 1998;—Am. 2002, Act 625, Eff. Mar. 31, 2003.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.17c Advising child or respondent of right to attorney; appointment of attorney; waiver; appointment of lawyer-guardian ad litem; costs; service until discharged by court; assistance to court.

Sec. 17c. (1) In a proceeding under section 2(a) or (d) of this chapter or a proceeding regarding a supplemental petition alleging a violation of a personal protection order under section 2(h) of this chapter, the court shall advise the child that he or she has a right to an attorney at each stage of the proceeding.

(2) In a proceeding under section 2(a) or (d) of this chapter, the court shall appoint an attorney to represent the child if 1 or more of the following apply:

(a) The child's parent refuses or fails to appear and participate in the proceedings.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

(b) The child's parent is the complainant or victim.

(c) The child and those responsible for his or her support are financially unable to employ an attorney and the child does not waive his or her right to an attorney.

(d) Those responsible for the child's support refuse or neglect to employ an attorney for the child and the child does not waive his or her right to an attorney.

(e) The court determines that the best interests of the child or the public require appointment.

(3) Except as otherwise provided in this subsection, in a proceeding under section 2(a) or (d) of this chapter, the child may waive his or her right to an attorney. The waiver by a child shall be made in open court, on the record, and shall not be made unless the court finds on the record that the waiver was voluntarily and understandingly made. The child may not waive his or her right to an attorney if the child's parent or guardian ad litem objects or if the appointment is made under subsection (2)(e).

(4) In a proceeding under section 2(b) or (c) of this chapter, the court shall advise the respondent at the respondent's first court appearance of all of the following:

(a) The right to an attorney at each stage of the proceeding.

(b) The right to a court-appointed attorney if the respondent is financially unable to employ an attorney.

(c) If the respondent is not represented by an attorney, the right to request and receive a court-appointed attorney at a later proceeding.

(5) If it appears to the court in a proceeding under section 2(b) or (c) of this chapter that the respondent wants an attorney and is financially unable to retain an attorney, the court shall appoint an attorney to represent the respondent.

(6) Except as otherwise provided in this subsection, in a proceeding under section 2(b) or (c) of this chapter, the respondent may waive his or her right to an attorney. A respondent who is a minor may not waive his or her right to an attorney if the respondent's parent or guardian ad litem objects.

(7) In a proceeding under section 2(b) or (c) of this chapter, the court shall appoint a lawyer-guardian ad litem to represent the child. The child shall not waive the assistance of the lawyer-guardian ad litem. In addition to any other powers and duties, a lawyer-guardian ad litem's powers and duties include those prescribed in section 17d.

(8) If an attorney or lawyer-guardian ad litem is appointed for a party under this act, after a determination of ability to pay the court may enter an order assessing attorney costs against the party or the person responsible for that party's support, or against the money allocated from marriage license fees for family counseling services under section 3 of 1887 PA 128, MCL 551.103. An order assessing attorney costs may be enforced through contempt proceedings.

(9) An attorney or lawyer-guardian ad litem appointed by the court under this section shall serve until discharged by the court. If the child's case was petitioned under section 2(b) of this chapter, the court shall not discharge the lawyer-guardian ad litem for the child as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan children's institute or other agency, unless the court discharges the lawyer-guardian ad litem for good cause shown on the record. If the child remains subject to the jurisdiction, control, or supervision of the court, or the Michigan children's institute or other agency, the court shall immediately appoint another lawyer-guardian ad litem to represent the child.

(10) To assist the court in determining a child's best interests, the court may appoint a guardian ad litem for a child involved in a proceeding under this chapter.

History: Add. 1988, Act 92, Eff. June 1, 1988;—Am. 1994, Act 264, Eff. Jan. 1, 1995;—Am. 1997, Act 169, Eff. Mar. 31, 1998;—Am. 1998, Act 474, Eff. Mar. 1, 1999;—Am. 1998, Act 480, Eff. Mar. 1, 1999.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.17d Lawyer-guardian ad litem; powers and duties.

Sec. 17d. (1) A lawyer-guardian ad litem's duty is to the child, and not the court. The lawyer-guardian ad litem's powers and duties include at least all of the following:

(a) The obligations of the attorney-client privilege.

(b) To serve as the independent representative for the child's best interests, and be entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child.

(c) To determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information. The agency case file shall be reviewed before disposition and before the

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

hearing for termination of parental rights. Updated materials shall be reviewed as provided to the court and parties. The supervising agency shall provide documentation of progress relating to all aspects of the last court ordered treatment plan, including copies of evaluations and therapy reports and verification of parenting time not later than 5 business days before the scheduled hearing.

(d) To meet with or observe the child and assess the child's needs and wishes with regard to the representation and the issues in the case in the following instances:

(*i*) Before the pretrial hearing.

(*ii*) Before the initial disposition, if held more than 91 days after the petition has been authorized.

(*iii*) Before a dispositional review hearing.

(*iv*) Before a permanency planning hearing.

(*v*) Before a post-termination review hearing.

(*vi*) At least once during the pendency of a supplemental petition.

(*vii*) At other times as ordered by the court. Adjourned or continued hearings do not require additional visits unless directed by the court.

(e) The court may allow alternative means of contact with the child if good cause is shown on the record.

(f) To explain to the child, taking into account the child's ability to understand the proceedings, the lawyer-guardian ad litem's role.

(g) To file all necessary pleadings and papers and independently call witnesses on the child's behalf.

(h) To attend all hearings and substitute representation for the child only with court approval.

(i) To make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child's wishes and preferences.

(j) To monitor the implementation of case plans and court orders, and determine whether services the court ordered for the child or the child's family are being provided in a timely manner and are accomplishing their purpose. The lawyer-guardian ad litem shall inform the court if the services are not being provided in a timely manner, if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose.

(k) Consistent with the rules of professional responsibility, to identify common interests among the parties and, to the extent possible, promote a cooperative resolution of the matter through consultation with the child's parent, foster care provider, guardian, and caseworker.

(*l*) To request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment.

(m) To participate in training in early childhood, child, and adolescent development.

(2) If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child's interests as identified by the child are inconsistent with the lawyer-guardian ad litem's determination of the child's best interests, the lawyer-guardian ad litem shall communicate the child's position to the court. If the court considers the appointment appropriate considering the child's age and maturity and the nature of the inconsistency between the child's and the lawyer-guardian ad litem's identification of the child's interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child's lawyer-guardian ad litem.

(3) The court or another party to the case shall not call a lawyer-guardian ad litem as a witness to testify regarding matters related to the case. The lawyer-guardian ad litem's file of the case is not discoverable.

History: Add. 1998, Act 480, Eff. Mar. 1, 1999;—Am. 2004, Act 475, Imd. Eff. Dec. 28, 2004;—Am. 2012, Act 115, Imd. Eff. May 1, 2012.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

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 MCL 28.721 to 28.736; release from placement in juvenile boot camp; alternative order of disposition; imposition of

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

sentence in county jail facility; violation of personal protection order; costs; remission.

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 an individual who is not less than 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. This placement of the child with the parent of a man whom the court has found probable cause to believe is the putative father is for the purposes of placement only and is not to be construed as a finding of paternity or to confer legal standing. 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. The court may order that the juvenile participate in a juvenile drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1084. The court also shall order, as a condition of probation or supervision, that the juvenile shall pay the minimum state cost prescribed by section 18m of this chapter.

(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 department of human services 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 department of human services 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 department of human services 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 department of human services 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 department of human services 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.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

(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 by an order under this section.

(h) Appoint a guardian under section 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204, in response to a petition filed with the court by a person interested in the juvenile's welfare. If the court appoints a guardian as authorized by 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) 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.

(*l*) 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 department of human services 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 department of human services, 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.

(m) 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 7403(2)(a)(*i*) of the public health code, 1978 PA 368, MCL 333.7403, the court may impose the alternative sentence permitted under that section 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.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

(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 sections 115f to 115m of the social welfare act, 1939 PA 280, MCL 400.115f to 400.115m, 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 under 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 from the government of the United States benefits paid for the cost of care of a court ward. Money collected for juveniles placed by the court with or committed to the department of human services 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 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, shall create guidelines that 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 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 and forwarded as required by section 3 of

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

1925 PA 289, MCL 28.243, and as required by the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736. 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 and forwarded.

(b) Order the juvenile committed to the sheriff's custody for taking and forwarding 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, using forms approved by the state court administrator, 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 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, misdemeanor, or ordinance violation, 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, department of human services, 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 28.736.

(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 department of human services 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 under 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) If the juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter for an offense other than a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court shall determine if the offense is a violation of a law of this state or a local ordinance of a municipality of this state that by its nature constitutes a sexual offense against an individual who is less than 18 years of age. If so, the order of disposition is for a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, and the court shall include the basis for that determination on the record and include the determination in the order of disposition.

(16) The court shall not impose a sentence of imprisonment in the county jail under subsection (1)(m) 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.

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

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

(19) A juvenile who has been ordered to pay the minimum state cost as provided in section 18m of this chapter as a condition of probation or supervision and who is not in willful default of the payment of the minimum state cost may petition the court at any time for a remission of the payment of any unpaid portion of the minimum state cost. If the court determines that payment of the amount due will impose a manifest hardship on the juvenile or his or her immediate family, the court may remit all or part of the amount of the minimum state cost due or modify the method of payment.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.18;—Am. 1953, Act 139, Eff. Oct. 2, 1953;—

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

Am. 1963, Act 65, Imd. Eff. May 8, 1963;—Am. 1972, Act 175, Imd. Eff. June 16, 1972;—Am. 1982, Act 398, Imd. Eff. Dec. 28, 1982;—Am. 1988, Act 71, Eff. June 1, 1988;—Am. 1988, Act 72, Eff. June 1, 1988;—Am. 1988, Act 224, Eff. Apr. 1, 1989;—Am. 1989, Act 112, Imd. Eff. June 23, 1989;—Am. 1990, Act 314, Imd. Eff. Dec. 20, 1990;—Am. 1993, Act 344, Eff. May 1, 1994;—Am. 1994, Act 264, Eff. Jan. 1, 1995;—Am. 1994, Act 355, Eff. Oct. 1, 1995;—Am. 1996, Act 243, Eff. Aug. 1, 1996;—Am. 1996, Act 244, Eff. Aug. 1, 1996;—Am. 1997, Act 163, Eff. Mar. 31, 1998;—Am. 1998, Act 474, Eff. Mar. 1, 1999;—Am. 1998, Act 478, Eff. Jan. 12, 1999;—Am. 1999, Act 86, Eff. Sept. 1, 1999;—Am. 2000, Act 55, Eff. Apr. 1, 2000;—Am. 2003, Act 71, Eff. Oct. 1, 2003;—Am. 2004, Act 102, Imd. Eff. May 13, 2004;—Am. 2004, Act 221, Eff. Jan. 1, 2005;—Am. 2004, Act 475, Imd. Eff. Dec. 28, 2004;—Am. 2011, Act 295, Eff. Apr. 1, 2012.

Former law: See sections 18, 20, 21, and 22 of Ch. XII of Act 288 of 1939; CL 1929, §§ 12838 and 12840; Act 30 of 1931; and Act 260 of 1937.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.18a Placement or commitment of ward of the court to out-of-state institutions.

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.

History: Add. 1964, Act 83, Eff. Aug. 28, 1964;—Am. 1998, Act 478, Eff. Jan. 12, 1999.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.18b Reimbursement order; failure to comply, contempt of court; assignment of wages.

Sec. 18b. Whenever the court under section 18 of this act enters a reimbursement order and the parent or other adult legally responsible for the care of the child fails or refuses to obey and perform the order, and has been found guilty of contempt of court for such failure or refusal, the court making the order may order an assignment to the county or state of the salary, wages or other income of the person responsible for the care of the child, which assignment shall continue until the support is paid in full. The order of assignment shall be effective 1 week after service upon the employer of a true copy of the order by personal service or by registered or certified mail. Thereafter the employer shall withhold from the earnings due the employee the amount specified in the order of assignment for transmittal to the county or state until notified by the court that the support arrearage is paid in full. An employer shall not use the assignment as a basis, in whole or in part, for the discharge of an employee or for any other disciplinary action against an employee. Compliance by an employer with the order of assignment operates as a discharge of the employer's liability to the employee as to that portion of the employee's earnings so affected.

History: Add. 1965, Act 172, Imd. Eff. July 15, 1965.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.18c Retention of jurisdiction of child committed under MCL 712A.18(1)(e); effective date of subsection (2); annual review; release of child.

Sec. 18c. (1) If a child is committed under section 18(1)(e) of this chapter for an offense which, if committed by an adult, would be punishable by imprisonment for more than 1 year or an offense expressly designated by law to be a felony, the court shall retain jurisdiction over the child.

(2) If a child is committed under section 18(1)(e) of this chapter and the child was adjudicated as being in the court's jurisdiction under section 2(a) of this chapter, the court shall retain jurisdiction over the child. This subsection shall take effect June 1, 1991.

(3) If the court has retained jurisdiction over a child under this section, the court shall conduct an annual review of the services being provided to the child, the child's placement, and the child's progress in that placement. In conducting this review, the court shall examine the child's annual report prepared pursuant to section 3 of the juvenile facilities act. The court may order changes in the child's placement or treatment plan based on the review.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

(4) If the court has retained jurisdiction over a child under this section, the child may be released only with the approval of the court. Except as otherwise provided in section 18d, the child shall be automatically released upon reaching 19 years of age.

History: Add. 1988, Act 54, Eff. Oct. 1, 1988.

Compiler's note: Section 3 of Act 54 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 174 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.18d Juvenile committed under MCL 712A.18(1)(e); review hearing; burden of proof; determination; notice; legal counsel; costs; commitment reports; section nonapplicable to juvenile convicted of crime under chapter.

Sec. 18d. (1) If a juvenile is committed under section 18(1)(e) of this chapter for an offense that, if committed by an adult, would be a violation or attempted violation of section 72, 83, 84, 86, 88, 89, 91, 110a(2), 186a, 316, 317, 349, 520b, 520c, 520d, 520g, 529, 529a, 530, or 531 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.72, 750.83, 750.84, 750.86, 750.88, 750.89, 750.91, 750.110a, 750.186a, 750.316, 750.317, 750.349, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, 750.530, and 750.531 of the Michigan Compiled Laws, or section 7401(2)(a)(*i*) or 7403(2)(a)(*i*) of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7401 and 333.7403 of the Michigan Compiled Laws, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. If the court determines that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued. In making this determination, the court shall consider all of the following:

(a) The extent and nature of the juvenile's participation in education, counseling, or work programs.

(b) The juvenile's willingness to accept responsibility for prior behavior.

(c) The juvenile's behavior in his or her current placement.

(d) The juvenile's prior record and character and his or her physical and mental maturity.

(e) The juvenile's potential for violent conduct as demonstrated by prior behavior.

(f) The recommendations of the institution, agency, or facility charged with the child's care for the juvenile's release or continued custody.

(g) Other information the prosecuting attorney or juvenile may submit.

(2) The juvenile has the burden of proving by a preponderance of the evidence that he or she has been rehabilitated and does not present a serious risk to public safety.

(3) Unless adjourned for good cause, a review hearing shall be scheduled and held as near as possible to, but before, the juvenile's nineteenth birthday. If the institution, agency, or facility to which the juvenile was committed believes the juvenile has been rehabilitated and does not present a serious risk to public safety, the institution, agency, or facility may petition the court to conduct a review hearing any time before the juvenile becomes 19 years of age or, if the court has continued jurisdiction under subsection (1), any time before the juvenile becomes 21 years of age.

(4) Not less than 14 days before a review hearing is to be conducted, the prosecuting attorney, the juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may extend jurisdiction over the juvenile and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(5) The institution, agency, or facility charged with the care of the juvenile shall prepare commitment reports as provided in section 5 of the juvenile facilities act, Act No. 73 of the Public Acts of 1988, being section 803.225 of the Michigan Compiled Laws, for use by the court at a review hearing held under this section.

(6) This section does not apply to a juvenile convicted under this chapter for committing a crime.

History: Add. 1988, Act 54, Eff. Oct. 1, 1988;—Am. 1994, Act 192, Eff. Oct. 1, 1994;—Am. 1996, Act 257, Eff. Jan. 1, 1997.

Compiler's note: Section 3 of Act 54 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 174 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.18e Application for entry of order setting aside adjudication; filing; contents; submitting copy of application and fingerprints; report; fee; serving copy of application on attorney general and prosecuting attorney; contesting application; notice to victim; definitions; hearing; affidavits; proofs; entry of order; setting aside adjudication as privilege and conditional; violation of MCL 750.413; effect of entering order; sending copy of order to arresting agency and department of state police; nonpublic record of order and record; availability of nonpublic record; fee; exemption from disclosure; divulging, using, or publishing information as misdemeanor.

Sec. 18e. (1) Except as provided in subsection (2), a person who has been adjudicated of not more than 1 juvenile offense that would be a felony if committed by an adult and not more than 3 juvenile offenses, of which not more than 1 may be a juvenile offense that would be a felony if committed by an adult and who has no felony convictions may file an application with the adjudicating court or adjudicating courts for the entry of an order setting aside the adjudications. A person may have only 1 adjudication for an offense that would be a felony if committed by an adult and not more than 2 adjudications for an offense that would be a misdemeanor if committed by an adult or if there is no adjudication for a felony if committed by an adult, not more than 3 adjudications for an offense that would be a misdemeanor if committed by an adult set aside under this section. Multiple adjudications arising out of a series of acts that were in a continuous time sequence of 12 hours or less and that displayed a single intent and goal constitute 1 offense provided that none of the adjudications constitute any of the following:

(a) An assaultive crime as that term is defined in subsection (7).

(b) An offense involving the use or possession of a weapon.

(c) An offense with a maximum penalty of 10 or more years imprisonment.

(2) A person shall not apply under this section to have set aside, and a judge shall not under this section set aside, any of the following:

(a) An adjudication for an offense that if committed by an adult would be a felony for which the maximum punishment is life imprisonment.

(b) An adjudication for a traffic offense under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a local ordinance substantially corresponding to that act, that involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.

(c) A conviction under section 2d of this chapter. This subdivision does not prevent a person convicted under section 2d of this chapter from having that conviction set aside as otherwise provided by law.

(3) An application under this section shall not be filed until the expiration of 1 year following imposition of the disposition for the adjudication that the applicant seeks to set aside, or 1 year following completion of any term of detention for that adjudication, or when the person becomes 18 years of age, whichever occurs later.

(4) An application under this section is invalid unless it contains the following information and is signed under oath by the person whose adjudication is to be set aside:

(a) The full name and current address of the applicant.

(b) A certified record of the adjudication that is to be set aside.

(c) A statement that the applicant has not been adjudicated of a juvenile offense other than the juvenile offenses sought to be set aside as a result of this application.

(d) A statement that the applicant has not been convicted of any felony offense.

(e) A statement as to whether the applicant has previously filed an application to set aside this or any other adjudication and, if so, the disposition of the application.

(f) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.

(g) A consent to the use of the nonpublic record created under subsection (13), to the extent authorized by subsection (13).

(5) The applicant shall submit a copy of the application and 2 complete sets of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under subsection (13), and shall forward a complete set of fingerprints to the federal bureau of investigation for a comparison with the records available to that agency. The department of state police shall report to the court in which the application is filed the

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

information contained in the department's records with respect to any pending charges against the applicant, any record of adjudication or conviction of the applicant, and the setting aside of any adjudication or conviction of the applicant and shall report to the court any similar information obtained from the federal bureau of investigation. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(6) The copy of the application submitted to the department of state police under subsection (5) shall be accompanied by a fee of $25.00 payable to the state of Michigan. The department of state police shall use the fee to defray the expenses incurred in processing the application.

(7) A copy of the application shall be served upon the attorney general and, if applicable, upon the office of the prosecuting attorney who prosecuted the offense. The attorney general and the prosecuting attorney shall have an opportunity to contest the application. If the adjudication was for an offense that if committed by an adult would be an assaultive crime or serious misdemeanor, and if the name of the victim is known to the prosecuting attorney, the prosecuting attorney shall give the victim of that offense written notice of the application and forward a copy of the application to the victim under section 46a of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.796a. The notice shall be sent by first-class mail to the victim's last known address. The victim has the right to appear at any proceeding under this section concerning that adjudication and to make a written or oral statement. As used in this subsection:

(a) "Assaultive crime" means that term as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(b) "Serious misdemeanor" means that term as defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.781.

(c) "Victim" means that term as defined in section 31 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.781.

(8) Upon the hearing of the application, the court may require the filing of affidavits and the taking of proofs as it considers proper.

(9) Except as provided in subsection (10), if the court determines that the circumstances and behavior of the applicant from the date of the applicant's adjudication to the filing of the application warrant setting aside the 1 adjudication for a juvenile offense that would be a felony if committed by an adult and not more than 2 adjudications for a juvenile offense that would be a misdemeanor if committed by an adult or if there is no adjudication for a felony if committed by an adult, not more than 3 adjudications for an offense that would be a misdemeanor if committed by an adult and that setting aside the adjudication or adjudications is consistent with the public welfare, the court may enter an order setting aside the adjudication. Except as provided in subsection (10), the setting aside of an adjudication under this section is a privilege and conditional, and is not a right.

(10) Notwithstanding subsection (9), the court shall set aside the adjudication of a person who was adjudicated for an offense that if committed by an adult would be a violation or an attempted violation of section 413 of the Michigan penal code, 1931 PA 328, MCL 750.413, if the person files an application with the court and otherwise meets the requirements of this section.

(11) Upon the entry of an order under this section, the applicant is considered not to have been previously adjudicated, except as provided in subsection (13) and as follows:

(a) The applicant is not entitled to the remission of any fine, costs, or other money paid as a consequence of an adjudication that is set aside.

(b) This section does not affect the right of the applicant to rely upon the adjudication to bar subsequent proceedings for the same offense.

(c) This section does not affect the right of a victim of an offense to prosecute or defend a civil action for damages.

(d) This section does not create a right to commence an action for damages for detention under the disposition that the applicant served before the adjudication is set aside under this section.

(12) Upon the entry of an order under this section, the court shall send a copy of the order to the arresting agency and the department of state police.

(13) The department of state police shall retain a nonpublic record of the order setting aside an adjudication for a juvenile offense that would be a felony if committed by an adult and not more than 2 juvenile offenses that would be misdemeanors if committed by an adult or if there is no adjudication for a felony if committed by an adult, not more than 3 adjudications for an offense that would be a misdemeanor if committed by an adult and of the record of the arrest, fingerprints, adjudication, and disposition of the applicant in the case to which the order applies. Except as provided in subsection (14), this nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

request and only for the following purposes:

(a) Consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) Consideration by a law enforcement agency if a person whose adjudication has been set aside applies for employment with the law enforcement agency.

(c) To show that a person who has filed an application to set aside an adjudication has previously had an adjudication set aside under this section.

(d) The court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year.

(e) Consideration by the governor, if a person whose adjudication has been set aside applies for a pardon for another offense.

(14) A copy of the nonpublic record created under subsection (13) shall be provided to the person whose adjudication is set aside under this section upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act, 1976 PA 442, MCL 15.234.

(15) The nonpublic record maintained under subsection (13) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(16) Except as provided in subsection (13), a person, other than the applicant, who knows or should have known that an adjudication was set aside under this section, who divulges, uses, or publishes information concerning an adjudication set aside under this section is guilty of a misdemeanor.

History: Add. 1988, Act 72, Eff. June 1, 1988;—Am. 1993, Act 344, Eff. May 1, 1994;—Am. 1996, Act 257, Eff. Jan. 1, 1997;—Am. 2012, Act 527, Imd. Eff. Dec. 28, 2012.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.18f Report; preparation and contents of case service plan; order of disposition; updating and revising case service plan; rules; review by child's physician in case of abuse and neglect.

Sec. 18f. (1) If, in a proceeding under section 2(b) of this chapter, an agency advises the court against placing a child in the custody of the child's parent, guardian, or custodian, the agency shall report in writing to the court what efforts were made to prevent the child's removal from his or her home or the efforts made to rectify the conditions that caused the child's removal from his or her home. The report shall include all of the following:

(a) If services were provided to the child and his or her parent, guardian, or custodian, the services, including in-home services, that were provided.

(b) If services were not provided to the child and his or her parent, guardian, or custodian, the reasons why services were not provided.

(c) Likely harm to the child if the child were to be separated from his or her parent, guardian, or custodian.

(d) Likely harm to the child if the child were to be returned to his or her parent, guardian, or custodian.

(2) Before the court enters an order of disposition in a proceeding under section 2(b) of this chapter, the agency shall prepare a case service plan that shall be available to the court and all the parties to the proceeding.

(3) The case service plan shall provide for placing the child in the most family-like setting available and in as close proximity to the child's parents' home as is consistent with the child's best interests and special needs. The case service plan shall include, but is not limited to, the following:

(a) The type of home or institution in which the child is to be placed and the reasons for the selected placement.

(b) Efforts to be made by the child's parent to enable the child to return to his or her home.

(c) Efforts to be made by the agency to return the child to his or her home.

(d) Schedule of services to be provided to the parent, child, and if the child is to be placed in foster care, the foster parent, to facilitate the child's return to his or her home or to facilitate the child's permanent placement.

(e) Except as otherwise provided in this subdivision, unless parenting time, even if supervised, would be harmful to the child as determined by the court under section 13a of this chapter or otherwise, a schedule for regular and frequent parenting time between the child and his or her parent, which shall not be less than once

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

every 7 days.

(f) Conditions that would limit or preclude placement or parenting time with a parent who is required by court order to register under the sex offenders registration act.

(4) Before the court enters an order of disposition, the court shall consider the case service plan; any written or oral information offered concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, lawyer-guardian ad litem, attorney, or guardian ad litem; and any other evidence offered, including the appropriateness of parenting time, which information or evidence bears on the disposition. The order of disposition shall state whether reasonable efforts have been made to prevent the child's removal from his or her home or to rectify the conditions that caused the child's removal from his or her home. The court may order compliance with all or any part of the case service plan as the court considers necessary.

(5) If a child continues in placement outside of the child's home, the case service plan shall be updated and revised at 90-day intervals as required by the rules promulgated under 1973 PA 116, MCL 722.111 to 722.128. The agency shall consult with the foster parents when it updates and revises the case service plan, and shall attach a statement summarizing the information received from the foster parents to the updated and revised case service plan. Updated and revised case service plans shall be available to the court and all the parties to the proceeding. Within 10 days after receipt of a written request, the agency shall provide the person who is providing the foster care with the information itemized in section 13a(14) of this chapter.

(6) To ensure that the case service plan addresses the child's medical needs in relation to abuse and neglect, the department of human services shall review a child's case with the child's attending physician of record during a hospitalization or with the child's primary care physician, but only if a physician has diagnosed the child's abuse or neglect as involving 1 or more of the following:

(a) Failure to thrive.

(b) Munchausen syndrome by proxy.

(c) Shaken baby syndrome.

(d) A bone fracture that is diagnosed as being the result of abuse or neglect.

(e) Drug exposure.

(7) If a child is placed outside of his or her home and the department of human services is required to review the child's case with a physician under subsection (6), then in a judicial proceeding to determine if the child is to be returned to his or her home, the court must allow the child's attending physician of record during a hospitalization or the child's primary care physician to testify regarding the case service plan. The court shall notify each physician of the hearing's time and place.

History: Add. 1988, Act 224, Eff. Apr. 1, 1989;—Am. 1994, Act 264, Eff. Jan. 1, 1995;—Am. 1996, Act 16, Eff. June 1, 1996;—Am. 1997, Act 163, Eff. Mar. 31, 1998;—Am. 1998, Act 479, Eff. Mar. 1, 1999;—Am. 1998, Act 480, Eff. Mar. 1, 1999;—Am. 1999, Act 25, Imd. Eff. May 18, 1999;—Am. 2012, Act 115, Imd. Eff. May 1, 2012.

Popular name: Probate Code

Popular name: Juvenile Code

Administrative rules: R 400.6101 et seq. of the Michigan Administrative Code.

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.18g Commitment under MCL 712A.18(1)(e).

Sec. 18g. (1) In addition to any other disposition under this act, a juvenile other than a juvenile sentenced in the same manner as an adult under section 18(1)(n) of this chapter shall be committed under section 18(1)(e) of this chapter to a detention facility for a specified period of time if all of the following circumstances exist:

(a) The juvenile is under the jurisdiction of the juvenile division of the probate court under section 2(a)(1) of this chapter.

(b) The juvenile is adjudicated as or convicted of violating a criminal municipal ordinance or law of this state or the United States.

(c) The juvenile is found to have used a firearm during the criminal violation.

(2) The period of time specified under subsection (1) shall not exceed the length of the sentence that could have been imposed if the juvenile had been sentenced as an adult.

(3) “Firearm” means that term as defined in section 3t of chapter 1 of the Revised Statutes of 1846, being section 8.3t of the Michigan Compiled Laws.

History: Add. 1996, Act 258, Eff. Jan. 1, 1997.

Popular name: Probate Code

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.18h Commitment to department of corrections prohibited; exception.

Sec. 18h. A juvenile sentenced to imprisonment under section 18(1)(n) of this chapter shall not be committed to the jurisdiction of the department of corrections. This section does not apply if the juvenile was convicted of a specified juvenile violation as defined in section 2d of this chapter.

History: Add. 1996, Act 244, Eff. Aug. 1, 1996.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.18i Delay in sentencing.

Sec. 18i. (1) A delay in sentencing does not deprive the court of jurisdiction to sentence the juvenile under section 18(1)(n) of this chapter any time during the delay.

(2) If the court has entered an order of disposition under section 18(1)(n) of this chapter delaying imposition of sentence, the court shall conduct an annual review of the probation, including but not limited to the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in that placement. In conducting this review, the court shall examine any annual report prepared under section 3 of the juvenile facilities act, Act No. 73 of the Public Acts of 1988, being section 803.223 of the Michigan Compiled Laws, and any report prepared upon the court's order by the officer or agency supervising probation. The court may order changes in the juvenile's probation based on the review including but not limited to imposition of sentence.

(3) If the court entered an order of disposition under section 18(1)(n) of this chapter delaying imposition of sentence, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. If the court determines that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued or the court may impose sentence. In making this determination, the court shall consider the following:

(a) The extent and nature of the juvenile's participation in education, counseling, or work programs.

(b) The juvenile's willingness to accept responsibility for prior behavior.

(c) The juvenile's behavior in his or her current placement.

(d) The prior record and character of the juvenile and his or her physical and mental maturity.

(e) The juvenile's potential for violent conduct as demonstrated by prior behavior.

(f) The recommendations of any institution or agency charged with the juvenile's care for the juvenile's release or continued custody.

(g) Other information the prosecuting attorney or juvenile may submit.

(4) A review hearing shall be scheduled and held unless adjourned for good cause as near as possible to, but before, the juvenile's nineteenth birthday. If an institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and that the juvenile does not present a serious risk to public safety, the institution or agency may petition the court to conduct a review hearing any time before the juvenile becomes 19 years of age or, if the court has continued jurisdiction, any time before the juvenile becomes 21 years of age.

(5) Not less than 14 days before a review hearing is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may extend jurisdiction over the juvenile or impose sentence and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(6) A commitment report prepared as provided in section 5 of the juvenile facilities act, Act No. 73 of the Public Acts of 1988, being section 803.225 of the Michigan Compiled Laws, and any report prepared upon the court's order by the officer or agency supervising probation may be used by the court at a review hearing held under this section.

(7) The court shall conduct a final review of the juvenile's probation not less than 3 months before the end of the probation period. If the court determines at this review that the best interests of the public would be

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

served by imposing any other sentence provided by law for an adult offender, the court may impose the sentence. In making its determination, the court shall consider the criteria specified in subsection (3) and all of the following criteria:

(a) The effect of treatment on the juvenile's rehabilitation.

(b) Whether the juvenile is likely to be dangerous to the public if released.

(c) The best interests of the public welfare and the protection of public security.

(8) Not less than 14 days before a final review hearing under subsection (7) is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may impose a sentence upon the juvenile and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(9) If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation by being convicted of a felony or a misdemeanor punishable by imprisonment for more than 1 year, or adjudicated as responsible for an offense that if committed by an adult would be a felony or a misdemeanor punishable by imprisonment for more than 1 year, the court shall revoke probation and sentence the juvenile to imprisonment for a term that does not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation.

(10) If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation other than as provided in subsection (9), the court may impose sentence or may order any of the following for the juvenile:

(a) A change of placement.

(b) Community service.

(c) Substance abuse counseling.

(d) Mental health counseling.

(e) Participation in a vocational-technical education program.

(f) Incarceration in a county jail for not more than 30 days as provided in this chapter. If a juvenile is under 17 years of age, the juvenile shall be placed in a room or ward out of sight and sound from adult prisoners.

(g) Other participation or performance as the court considers necessary.

(11) If a sentence of imprisonment is imposed under this section, the juvenile shall receive credit for the period of time served on probation.

History: Add. 1996, Act 244, Eff. Aug. 1, 1996.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.18j Escape by juvenile from facility or residence; notification; “escape” defined.

Sec. 18j. (1) If a juvenile escapes from a facility or residence in which he or she has been placed for a violation described in section 2(a)(1) of this chapter, other than his or her own home or the home of his or her parent or guardian, the individual at that facility or residence who has responsibility for maintaining custody of the juvenile at the time of the escape shall immediately notify 1 of the following of the escape or cause 1 of the following to be immediately notified of the escape:

(a) If the escape occurs in a city, village, or township that has a police department, the police department of that city, village, or township.

(b) Except as provided in subdivision (a), 1 of the following:

(*i*) The sheriff department of the county in which the escape occurs.

(*ii*) The department of state police post having jurisdiction over the area in which the escape occurs.

(2) A police agency that receives notification of an escape under subsection (1) shall enter that notification into the law enforcement information network without undue delay.

(3) As used in this section, “escape” means to leave without lawful authority or to fail to return to custody when required.

History: Add. 1996, Act 482, Eff. Jan. 1, 1997.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

712A.18k DNA identification profiling; providing samples for chemical testing; disclosure; definitions.

Sec. 18k. (1) An individual 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 if any of the following apply:

(a) The individual is found responsible for a violation of section 83, 91, 316, 317, or 321 of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.91, 750.316, 750.317, and 750.321, or a violation or attempted violation of section 349, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.349, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or a violation of section 167(1)(c) or (f) or 335a of the Michigan penal code, 1931 PA 328, MCL 750.167 and 750.335a, or a local ordinance substantially corresponding to section 167(1)(c) or (f) or 335a of the Michigan penal code, 1931 PA 328, MCL 750.167 and 750.335a.

(b) The individual is convicted of a felony or attempted felony, or any of the following misdemeanors, or local ordinances that are substantially corresponding to the following misdemeanors:

(*i*) A violation of section 145a of the Michigan penal code, 1931 PA 328, MCL 750.145a, enticing a child for immoral purposes.

(*ii*) A violation of section 167(1)(c), (f), or (i) of the Michigan penal code, 1931 PA 328, MCL 750.167, disorderly person by window peeping, engaging in indecent or obscene conduct in public, or loitering in a house of ill fame or prostitution.

(*iii*) A violation of section 335a of the Michigan penal code, 1931 PA 328, MCL 750.335a, indecent exposure.

(*iv*) A violation of section 451 of the Michigan penal code, 1931 PA 328, MCL 750.451, first and second prostitution violations.

(*v*) A violation of section 454 of the Michigan penal code, 1931 PA 328, MCL 750.454, leasing a house for purposes of prostitution.

(*vi*) A violation of section 462 of the Michigan penal code, 1931 PA 328, MCL 750.462, female under the age of 17 in a house of prostitution.

(2) Notwithstanding subsection (1), if at the time the individual is convicted of or found responsible for the violation the investigating law enforcement agency or the department of state police already has a sample from the individual that meets the requirements of the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176, the individual is not required to provide another sample or pay the fee required under subsection (4).

(3) The samples required to be collected under this section shall be collected by the investigating law enforcement agency and transmitted by the investigating law enforcement agency to the department of state police in the manner prescribed under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(4) Until October 1, 2003, the court shall order each individual found responsible for or convicted of 1 or more crimes listed in subsection (1) to pay an assessment of $60.00. The assessment required under this subsection is in addition to any fine, costs, or other assessments imposed by the court.

(5) An assessment required under subsection (4) shall be ordered upon the record, and shall be listed separately in the adjudication order, judgment of sentence, or order of probation.

(6) After reviewing a verified petition by an individual against whom an assessment is imposed under subsection (4), the court may suspend payment of all or part of the assessment if it determines the individual is unable to pay the assessment.

(7) The court that imposes the assessment prescribed under subsection (4) may retain 10% of all assessments or portions of assessments collected for costs incurred under this section and shall transmit that money to its funding unit. On the last day of each month, the clerk of the court shall transmit the assessments or portions of assessments collected under this section as follows:

(a) Twenty-five percent to the county sheriff or other investigating law enforcement agency that collected the DNA sample as designated by the court to defray the costs of collecting DNA samples.

(b) Until October 1, 2003, 65% to the department of treasury for the department of state police forensic science division to defray the costs associated with the requirements of DNA profiling and DNA retention prescribed under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(c) Beginning October 1, 2003, 65% to the state treasurer for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

(8) Beginning December 31, 2002, the director of the department of state police shall report by December

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

31 of each year concerning the rate of DNA sample collection, DNA identification profiling, retention and compilation of DNA identification profiles, and the collection of assessments required under subsection (4) to all of the following:

(a) The standing committees of the senate and house of representatives concerned with DNA sample collection and retention.

(b) The house of representatives appropriations subcommittee on state police and military affairs.

(c) The senate appropriations subcommittee on state police.

(9) 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.

(10) The DNA profiles of DNA samples received under this section shall only be disclosed as follows:

(a) To a criminal justice agency for law enforcement identification purposes.

(b) In a judicial proceeding as authorized or required by a court.

(c) To a defendant in a criminal case if the DNA profile is used in conjunction with a charge against the defendant.

(d) For an academic, research, statistical analysis, or protocol developmental purpose only if personal identifications are removed.

(11) 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) “Felony” means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(c) “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. Investigating law enforcement agency does not include a probation officer employed by the department of corrections.

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

History: Add. 1996, Act 507, Imd. Eff. Jan. 9, 1997;—Am. 1998, Act 478, Eff. Jan. 12, 1999;—Am. 2001, Act 91, Eff. Jan. 1, 2002;—Am. 2003, Act 77, Eff. Oct. 1, 2003.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.18*l* Evaluation of juvenile for psychiatric or psychological treatment; court order.

Sec. 18*l*. If a juvenile is found to be within the court's jurisdiction under section 2(a)(1) of this chapter for an offense that, if committed by an adult, would be a violation of section 50b of the Michigan penal code, 1931 PA 328, MCL 750.50b, having to do with cruelty to animals, or would be a violation of sections 71 to 80 of the Michigan penal code, 1931 PA 328, MCL 750.71 to 750.80, having to do with arson, the court shall order that the juvenile be evaluated to determine the need for psychiatric or psychological treatment. If the court determines that psychiatric or psychological treatment is appropriate for that juvenile, the court may order that treatment. This section does not preclude the court from entering any other order of disposition allowed under this chapter.

History: Add. 2000, Act 175, Eff. Oct. 1, 2000.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.18m Payment of costs; minimum amounts; disposition; definitions.

Sec. 18m. (1) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, and is ordered to pay any combination of fines, costs, restitution, assessments, or payments arising out of the same juvenile proceeding, the court shall order the juvenile to pay costs of not less than the following amount, as applicable:

(a) $68.00, if the juvenile is found to be within the court's jurisdiction for a felony.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

(b) $50.00, if the juvenile is found to be within the court's jurisdiction for a misdemeanor or ordinance violation.

(2) Of the costs ordered to be paid, the clerk of the court shall pay to the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181, the applicable amount specified as a minimum cost in subsection (1).

(3) If a juvenile who is ordered to pay a minimum state cost under this section is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same juvenile proceeding, money collected from that person for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in section 29 of this chapter. A fine imposed for a felony, misdemeanor, or ordinance violation shall not be waived unless costs, other than the minimum state cost, are waived.

(4) On the last day of each month, the clerk of the court shall transmit the minimum state cost or portions of minimum state cost collected under this section to the department of treasury for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

(5) As used in this section:

(a) "Felony" means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(b) "Minimum state cost" means the applicable minimum cost to be ordered under subsection (1).

(c) "Ordinance violation" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

History: Add. 2003, Act 71, Eff. Oct. 1, 2003;—Am. 2004, Act 102, Imd. Eff. May 13, 2004;—Am. 2008, Act 543, Eff. Apr. 1, 2009 ;—Am. 2011, Act 295, Eff. Apr. 1, 2012.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.19 Termination of cause; supplemental order of disposition; review hearing; notice of review hearing; factors to be reviewed; modification of plan; determination as to placement; order; determination as to review; issuance of order without hearing; access to agency report; agency report and other information as evidence; concurrent efforts to reunify child with family.

Sec. 19. (1) Subject to section 20 of this chapter, if a child remains under the court's jurisdiction, a cause may be terminated or an order may be amended or supplemented, within the authority granted to the court in section 18 of this chapter, at any time as the court considers necessary and proper. An amended or supplemented order shall be referred to as a "supplemental order of disposition". If the agency becomes aware of additional abuse or neglect of a child who is under the court's jurisdiction and if that abuse or neglect is substantiated as provided in the child protection law, 1975 PA 238, MCL 722.621 to 722.638, the agency shall file a supplemental petition with the court.

(2) Except as provided in subsections (3) and (4), if a child subject to the court's jurisdiction remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the court's jurisdiction. After the first year that the child is subject to the court's jurisdiction, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case service plan prepared according to section 18f of this chapter.

(3) Except as otherwise provided in subsection (4), if, in a proceeding under section 2(b) of this chapter, a child is subject to the court's jurisdiction and removed from his or her home, a review hearing shall be held not more than 182 days after the child's removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the court's jurisdiction. After the first year that the child has been removed from his or her home and is subject to the court's jurisdiction, a review hearing shall be held not more than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case service plan prepared according to section 18f of this chapter.

(4) If a child is under the care and supervision of the agency and is either placed with a relative and the placement is intended to be permanent or is in a permanent foster family agreement, the court shall hold a review hearing not more than 182 days after the child has been removed from his or her home and no later than every 182 days after that so long as the child is subject to the jurisdiction of the court, the Michigan children's institute, or other agency. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon the motion of any party or at the court's discretion, a review hearing may be accelerated to review any element of the case service plan.

(5) Written notice of a review hearing under subsection (2), (3), or (4) shall be served upon all of the following:

(a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.

(b) The child's foster parent or custodian.

(c) If the parental rights to the child have not been terminated, the child's parents.

(d) If the child has a guardian, the guardian for the child.

(e) If the child has a guardian ad litem, the guardian ad litem for the child.

(f) A nonparent adult if the nonparent adult is required to comply with the case service plan.

(g) If tribal affiliation has been determined, the elected leader of the Indian tribe.

(h) The attorney for the child, the attorneys for each party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

(i) If the child is 11 years of age or older, the child.

(j) Other persons as the court may direct.

(6) At a review hearing under subsection (2), (3), or (4), the court shall review on the record all of the following:

(a) Compliance with the case service plan with respect to services provided or offered to the child and the child's parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan and whether the parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan has complied with and benefited from those services.

(b) Compliance with the case service plan with respect to parenting time with the child. If parenting time did not occur or was infrequent, the court shall determine why parenting time did not occur or was infrequent.

(c) The extent to which the parent complied with each provision of the case service plan, prior court orders, and an agreement between the parent and the agency.

(d) Likely harm to the child if the child continues to be separated from the child's parent, guardian, or custodian.

(e) Likely harm to the child if the child is returned to the child's parent, guardian, or custodian.

(7) After review of the case service plan, the court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to be placed in foster care or that caused the child to remain in foster care. The court may modify any part of the case service plan including, but not limited to, the following:

(a) Prescribing additional services that are necessary to rectify the conditions that caused the child to be placed in foster care or to remain in foster care.

(b) Prescribing additional actions to be taken by the parent, guardian, nonparent adult, or custodian, to rectify the conditions that caused the child to be placed in foster care or to remain in foster care.

(8) At a review hearing under subsection (2), (3), or (4), the court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order, or enter a new dispositional order.

(9) If in a proceeding under section 2(b) of this chapter a child is placed in foster care, the court shall determine at the dispositional hearing and each review hearing whether the cause should be reviewed before the next review hearing required by subsection (2), (3), or (4). In making this determination, the court shall consider at least all of the following:

(a) The parent's ability and motivation to make necessary changes to provide a suitable environment for the child.

(b) Whether there is a reasonable likelihood that the child may be returned to his or her home prior to the next review hearing required by subsection (2), (3), or (4).

(10) Unless waived, if not less than 7 days' notice is given to all parties prior to the return of a child to the child's home, and no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child to the child's home.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

(11) An agency report filed with the court shall be accessible to all parties to the action and shall be offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom a child is placed, attorney, lawyer-guardian ad litem, or guardian ad litem, in addition to any other evidence, including the appropriateness of parenting time, offered at the hearing.

(12) Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child with the family.

(13) Reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-state or out-of-state options, may be made concurrently with reasonable efforts to reunify the child and family.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.19;—Am. 1951, Act 98, Eff. Sept. 28, 1951;—Am. 1966, Act 181, Imd. Eff. July 1, 1966;—Am. 1988, Act 224, Eff. Apr. 1, 1989;—Am. 1994, Act 264, Eff. Jan. 1, 1995;—Am. 1996, Act 16, Eff. June 1, 1996;—Am. 1997, Act 163, Eff. Mar. 31, 1998;—Am. 1998, Act 480, Eff. Mar. 1, 1999;—Am. 1998, Act 530, Eff. July 1, 1999;—Am. 2004, Act 477, Eff. Imd. Eff. Dec. 28, 2004;—Am. 2008, Act 202, Imd. Eff. July 11, 2008.

Former law: See section 18 of Ch. XII of Act 288 of 1939; and CL 1929, § 12838.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.19a Permanency planning hearing; conditions; time limitation; reunion of child and family not required; purpose; obtaining child's views regarding permanency plan; consideration of out-of-state placement; notice; statement; return of child to parent; noncompliance with case service plan; other conditions as evidence; termination of parental rights to child; exceptions; alternative placement plans; powers and appointment of guardian; information considered as evidence; revocation or termination of guardianship.

Sec. 19a. (1) Subject to subsection (2), if a child remains in foster care and parental rights to the child have not been terminated, the court shall conduct a permanency planning hearing within 12 months after the child was removed from his or her home. Subsequent permanency planning hearings shall be held no later than every 12 months after each preceding permanency planning hearing during the continuation of foster care. If proper notice for a permanency planning hearing is provided, a permanency planning hearing may be combined with a review hearing held under section 19(2) to (4) of this chapter, but no later than 12 months from the removal of the child from his or her home, from the preceding permanency planning hearing, or from the number of days required under subsection (2). A permanency planning hearing shall not be canceled or delayed beyond the number of months required by this subsection or days as required under subsection (2), regardless of whether there is a petition for termination of parental rights pending.

(2) The court shall conduct a permanency planning hearing within 30 days after there is a judicial determination that reasonable efforts to reunite the child and family are not required. Reasonable efforts to reunify the child and family must be made in all cases except if any of the following apply:

(a) There is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638.

(b) The parent has been convicted of 1 or more of the following:

(*i*) Murder of another child of the parent.

(*ii*) Voluntary manslaughter of another child of the parent.

(*iii*) Aiding or abetting in the murder of another child of the parent or voluntary manslaughter of another child of the parent, the attempted murder of the child or another child of the parent, or the conspiracy or solicitation to commit the murder of the child or another child of the parent.

(*iv*) A felony assault that results in serious bodily injury to the child or another child of the parent.

(c) The parent has had rights to the child's siblings involuntarily terminated.

(d) The parent is required by court order to register under the sex offenders registration act.

(3) A permanency planning hearing shall be conducted to review the status of the child and the progress being made toward the child's return home or to show why the child should not be placed in the permanent custody of the court. The court shall obtain the child's views regarding the permanency plan in a manner that is appropriate to the child's age. In the case of a child who will not be returned home, the court shall consider in-state and out-of-state placement options. In the case of a child placed out-of-state, the court shall determine whether the out-of-state placement continues to be appropriate and in the child's best interests. The court shall

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

ensure that the agency is providing appropriate services to assist a child who will transition from foster care to independent living.

(4) Not less than 14 days before a permanency planning hearing, written notice of the hearing and a statement of the purposes of the hearing, including a notice that the hearing may result in further proceedings to terminate parental rights, shall be served upon all of the following:

(a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.

(b) The foster parent or custodian of the child.

(c) If the parental rights to the child have not been terminated, the child's parents.

(d) If the child has a guardian, the guardian for the child.

(e) If the child has a guardian ad litem, the guardian ad litem for the child.

(f) If tribal affiliation has been determined, the elected leader of the Indian tribe.

(g) The attorney for the child, the attorneys for each party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

(h) If the child is 11 years of age or older, the child.

(i) Other persons as the court may direct.

(5) If parental rights to the child have not been terminated and the court determines at a permanency planning hearing that the return of the child to his or her parent would not cause a substantial risk of harm to the child's life, physical health, or mental well-being, the court shall order the child returned to his or her parent. In determining whether the return of the child would cause a substantial risk of harm to the child, the court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan prepared under section 18f of this chapter as evidence that return of the child to his or her parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being. In addition to considering conduct of the parent as evidence of substantial risk of harm, the court shall consider any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

(6) If the court determines at a permanency planning hearing that a child should not be returned to his or her parent, the court may order the agency to initiate proceedings to terminate parental rights. Except as otherwise provided in this subsection, if the child has been in foster care under the responsibility of the state for 15 of the most recent 22 months, the court shall order the agency to initiate proceedings to terminate parental rights. The court is not required to order the agency to initiate proceedings to terminate parental rights if 1 or more of the following apply:

(a) The child is being cared for by relatives.

(b) The case service plan documents a compelling reason for determining that filing a petition to terminate parental rights would not be in the best interest of the child. Compelling reasons for not filing a petition to terminate parental rights include, but are not limited to, all of the following:

(*i*) Adoption is not the appropriate permanency goal for the child.

(*ii*) No grounds to file a petition to terminate parental rights exist.

(*iii*) The child is an unaccompanied refugee minor as defined in 45 CFR 400.11.

(*iv*) There are international legal obligations or compelling foreign policy reasons that preclude terminating parental rights.

(c) The state has not provided the child's family, consistent with the time period in the case service plan, with the services the state considers necessary for the child's safe return to his or her home, if reasonable efforts are required.

(7) If the agency demonstrates under subsection (6) that initiating the termination of parental rights to the child is clearly not in the child's best interests, or the court does not order the agency to initiate termination of parental rights to the child under subsection (6), then the court shall order 1 or more of the following alternative placement plans:

(a) If the court determines that other permanent placement is not possible, the child's placement in foster care shall continue for a limited period to be stated by the court.

(b) If the court determines that it is in the child's best interests based upon compelling reasons, the child's placement in foster care may continue on a long-term basis.

(c) Subject to subsection (9), if the court determines that it is in the child's best interests, appoint a guardian for the child, which guardianship may continue until the child is emancipated.

(8) A guardian appointed under subsection (7)(c) has all of the powers and duties set forth under section 15 of the estates and protected individuals code, 1998 PA 386, MCL 700.5215.

(9) If a child is placed in a guardian's or a proposed guardian's home under subsection (7)(c), the court shall order the department of human services to perform an investigation and file a written report of the investigation for a review under subsection (10) and the court shall order the department of human services to

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

do all of the following:

(a) Perform a criminal record check within 7 days.

(b) Perform a central registry clearance within 7 days.

(c) Perform a home study and file a copy of the home study with the court within 30 days unless a home study has been performed within the immediately preceding 365 days, under section 13a(10) of this chapter. If a home study has been performed within the immediately preceding 365 days, a copy of that home study shall be submitted to the court.

(10) The court's jurisdiction over a juvenile under section 2(b) of this chapter shall be terminated after the court appoints a guardian under this section and conducts a review hearing under section 19 of this chapter, unless the juvenile is released sooner by the court.

(11) The court's jurisdiction over a guardianship created under this section shall continue until released by court order. The court shall review a guardianship created under this section annually and may conduct additional reviews as the court considers necessary. The court may order the department of human services or a court employee to conduct an investigation and file a written report of the investigation.

(12) In making the determinations under this section, the court shall consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, or guardian ad litem in addition to any other evidence, including the appropriateness of parenting time, offered at the hearing.

(13) The court may, on its own motion or upon petition from the department of human services or the child's lawyer guardian ad litem, hold a hearing to determine whether a guardianship appointed under this section shall be revoked.

(14) A guardian may petition the court for permission to terminate the guardianship. A petition may include a request for appointment of a successor guardian.

(15) After notice and hearing on a petition for revocation or permission to terminate the guardianship, if the court finds by a preponderance of evidence that continuation of the guardianship is not in the child's best interests, the court shall revoke or terminate the guardianship and appoint a successor guardian or restore temporary legal custody to the department of human services.

History: Add. 1972, Act 59, Imd. Eff. Feb. 21, 1972;—Am. 1988, Act 224, Eff. Apr. 1, 1989;—Am. 1994, Act 264, Eff. Jan. 1, 1995 ;—Am. 1997, Act 163, Eff. Mar. 31, 1998;—Am. 2000, Act 46, Imd. Eff. Mar. 27, 2000;—Am. 2004, Act 473, Imd. Eff. Dec. 28, 2004; —Am. 2008, Act 200, Imd. Eff. July 11, 2008;—Am. 2012, Act 115, Imd. Eff. May 1, 2012.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.19b Termination of parental rights to child; petition; hearing; record; findings; opinion or order; notice of hearing; suspension of parenting time; grounds for termination; "concerned person" defined.

Sec. 19b. (1) Except as provided in subsection (4), if a child remains in foster care in the temporary custody of the court following a review hearing under section 19(3) of this chapter or a permanency planning hearing under section 19a of this chapter or if a child remains in the custody of a guardian or limited guardian, upon petition of the prosecuting attorney, whether or not the prosecuting attorney is representing or acting as legal consultant to the agency or any other party, or petition of the child, guardian, custodian, concerned person, agency, or children's ombudsman as authorized in section 7 of the children's ombudsman act, 1994 PA 204, MCL 722.927, the court shall hold a hearing to determine if the parental rights to a child should be terminated and, if all parental rights to the child are terminated, the child placed in permanent custody of the court. The court shall state on the record or in writing its findings of fact and conclusions of law with respect to whether or not parental rights should be terminated. The court shall issue an opinion or order regarding a petition for termination of parental rights within 70 days after the commencement of the initial hearing on the petition. The court's failure to issue an opinion within 70 days does not dismiss the petition.

(2) Not less than 14 days before a hearing to determine if the parental rights to a child should be terminated, written notice of the hearing shall be served upon all of the following:

(a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.

(b) The child's foster parent or custodian.

(c) The child's parents.

(d) If the child has a guardian, the child's guardian.

(e) If the child has a guardian ad litem, the child's guardian ad litem.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

(f) If tribal affiliation has been determined, the Indian tribe's elected leader.

(g) The child's attorney and each party's attorney.

(h) If the child is 11 years of age or older, the child.

(i) The prosecutor.

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(a) The child has been deserted under either of the following circumstances:

(*i*) The child's parent is unidentifiable, has deserted the child for 28 or more days, and has not sought custody of the child during that period. For the purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent.

(*ii*) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(*i*) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(*ii*) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

(*iii*) A nonparent adult's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home.

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(d) The child's parent has placed the child in a limited guardianship under section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, and has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

(e) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, and the parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code, 1998 PA 386, MCL 700.5207 and 700.5209, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

(f) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, and both of the following have occurred:

(*i*) The parent, having the ability to support or assist in supporting the minor, has failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of 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 a period of 2 years or more before the filing of the petition.

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

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

(h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

(*i*) Abandonment of a young child.

(*ii*) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

(*iii*) Battering, torture, or other severe physical abuse.

(*iv*) Loss or serious impairment of an organ or limb.

(*v*) Life-threatening injury.

(*vi*) Murder or attempted murder.

(*vii*) Voluntary manslaughter.

(*viii*) Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.

(*ix*) Sexual abuse as that term is defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622.

(*l*) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

(m) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state and the proceeding involved abuse that included 1 or more of the following:

(*i*) Abandonment of a young child.

(*ii*) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

(*iii*) Battering, torture, or other severe physical abuse.

(*iv*) Loss or serious impairment of an organ or limb.

(*v*) Life-threatening injury.

(*vi*) Murder or attempted murder.

(*vii*) Voluntary manslaughter.

(*viii*) Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.

(*ix*) Sexual abuse as that term is defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622.

(n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child:

(*i*) A violation of section 316, 317, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

(*ii*) A violation of a criminal statute that includes as an element the use of force or the threat of force and that subjects the parent to sentencing under section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

(*iii*) A federal law or law of another state with provisions substantially similar to a crime or procedure listed or described in subparagraph (*i*) or (*ii*).

(4) If a petition to terminate the parental rights to a child is filed, the court may enter an order terminating parental rights under subsection (3) at the initial dispositional hearing. If a petition to terminate parental rights to a child is filed, the court may suspend parenting time for a parent who is a subject of the petition.

(5) If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.

(6) As used in this section, "concerned person" means a foster parent with whom the child is living or has lived who has specific knowledge of behavior by the parent constituting grounds for termination under subsection (3)(b) or (g) and who has contacted the department, the prosecuting attorney, the child's attorney, and the child's guardian ad litem, if any, and is satisfied that none of these persons intend to file a petition under this section.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

History: Add. 1988, Act 224, Eff. Apr. 1, 1989;—Am. 1990, Act 314, Imd. Eff. Dec. 20, 1990;—Am. 1994, Act 264, Eff. Jan. 1, 1995;—Am. 1997, Act 169, Eff. Mar. 31, 1998;—Am. 1998, Act 479, Eff. Mar. 1, 1999;—Am. 1998, Act 530, Eff. July 1, 1999;—Am. 2000, Act 46, Imd. Eff. Mar. 27, 2000;—Am. 2000, Act 232, Eff. Jan. 1, 2001;—Am. 2008, Act 199, Imd. Eff. July 11, 2008;—Am. 2010, Act 7, Eff. Sept. 4, 2010;—Am. 2012, Act 115, Imd. Eff. May 1, 2012;—Am. 2012, Act 386, Imd. Eff. Dec. 19, 2012.

Compiler's note: Enacting section 1 of Act 232 of 2000 provides:

"Enacting section 1. Section 19b of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, as amended by this amendatory act, and chapter XII of the probate code of 1939, 1939 PA 288, as added by this amendatory act, do not apply to a proceeding that arises before the effective date of this amendatory act."

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.19c Review hearing of child's placement after termination of parental rights; appointment of guardian; applicability of section.

Sec. 19c. (1) Except as provided in section 19(4) of this chapter and subject to subsection (14), if a child remains in placement following the termination of parental rights to the child, the court shall conduct a review hearing not more than 91 days after the termination of parental rights and no later than every 91 days after that hearing for the first year following termination of parental rights to the child. If a child remains in a placement for more than 1 year following termination of parental rights to the child, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether any other matters are pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case. The court shall conduct the first permanency planning hearing within 12 months from the date that the child was originally removed from the home. Subsequent permanency planning hearings shall be held within 12 months of the preceding permanency planning hearing. If proper notice for a permanency planning hearing is provided, a permanency planning hearing may be combined with a review hearing held under section 19(2) to (4) of this chapter. A permanency planning hearing under this section shall not be canceled or delayed beyond the number of months required in this subsection, regardless of whether any other matters are pending. At a hearing under this section, the court shall review all of the following:

(a) The appropriateness of the permanency planning goal for the child.

(b) The appropriateness of the child's placement.

(c) The reasonable efforts being made to place the child for adoption or in other permanent placement in a timely manner.

(2) Subject to subsection (3), if the court determines that it is in the child's best interests, the court may appoint a guardian for the child.

(3) The court shall not appoint a guardian for the child without the written consent of the MCI superintendent or his or her designee. The MCI superintendent or his or her designee shall consult with the child's lawyer guardian ad litem when considering whether to grant written consent.

(4) If a person believes that the decision to withhold the consent required in subsection (3) is arbitrary or capricious, the person may file a motion with the court. A motion under this subsection shall contain information regarding both of the following:

(a) The specific steps taken by the person to obtain the consent required and the results, if any.

(b) The specific reasons why the person believes that the decision to withhold consent was arbitrary or capricious.

(5) If a motion is filed under subsection (4), the court shall set a hearing date and provide notice to the MCI superintendent, the foster parents, the prospective guardian, the child, and the child's lawyer guardian ad litem.

(6) Subject to subsection (8), if a hearing is held under subsection (5) and the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary or capricious, the court may approve the guardianship without the consent of the MCI superintendent.

(7) A guardian appointed under this section has all of the powers and duties set forth under section 15 of the estates and protected individuals code, 1998 PA 386, MCL 700.5215.

(8) If a child is placed in a guardian's or a proposed guardian's home under subsection (2) or (6), the court shall order the department of human services to perform an investigation and file a written report of the investigation for a review under subsection (10) and the court shall order the department of human services to

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

do all of the following:

(a) Perform a criminal record check within 7 days.

(b) Perform a central registry clearance within 7 days.

(c) Perform a home study and file a copy of the home study with the court within 30 days unless a home study has been performed within the immediately preceding 365 days, under section 13a(10) of this chapter. If a home study has been performed within the immediately preceding 365 days, a copy of that home study shall be submitted to the court.

(9) The court's jurisdiction over a juvenile under section 2(b) of this chapter and the jurisdiction of the Michigan children's institute under section 3 of 1935 PA 220, MCL 400.203, shall be terminated after the court appoints a guardian under this section and conducts a review hearing under section 19 of this chapter, unless the juvenile is released sooner by the court.

(10) The court's jurisdiction over a guardianship created under this section shall continue until released by court order. The court shall review a guardianship created under this section annually and may conduct additional reviews as the court considers necessary. The court may order the department of human services or a court employee to conduct an investigation and file a written report of the investigation.

(11) The court may, on its own motion or upon petition from the department of human services or the child's lawyer guardian ad litem, hold a hearing to determine whether a guardianship appointed under this section shall be revoked.

(12) A guardian may petition the court for permission to terminate the guardianship. A petition may include a request for appointment of a successor guardian.

(13) After notice and hearing on a petition for revocation or permission to terminate the guardianship, if the court finds by a preponderance of evidence that continuation of the guardianship is not in the child's best interests, the court shall revoke or terminate the guardianship and appoint a successor guardian or commit the child to the Michigan children's institute under section 3 of 1935 PA 220, MCL 400.203.

(14) This section applies only to a child's case in which parental rights to the child were either terminated as the result of a proceeding under section 2(b) of this chapter or a similar law of another state or terminated voluntarily following the initiation of a proceeding under section 2(b) of this chapter or a similar law of another state. This section applies as long as the child is subject to the jurisdiction, control, or supervision of the court or of the Michigan children's institute or other agency.

History: Add. 1988, Act 224, Eff. Apr. 1, 1989;—Am. 1998, Act 479, Eff. Mar. 1, 1999;—Am. 2000, Act 46, Imd. Eff. Mar. 27, 2000;—Am. 2004, Act 476, Imd. Eff. Dec. 28, 2004;—Am. 2008, Act 203, Imd. Eff. July 11, 2008;—Am. 2011, Act 31, Imd. Eff. May 24, 2011;—Am. 2012, Act 115, Imd. Eff. May 1, 2012.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.20 Temporary or permanent custody.

Sec. 20. The court in all cases involving custody shall state in the order for disposition or any supplemental order of disposition whether the child is placed in the temporary or permanent custody of the court. If the child is placed in the temporary custody of the court, no supplemental order of disposition providing permanent custody, or containing any other order of disposition shall be made except at a hearing pursuant to issuance of summons or notice as provided in sections 12 and 13 of this chapter or at a rehearing provided by section 19 of this chapter. If the child is placed in the permanent custody of the court, all parental rights are terminated, though such rights may be reinstated by a supplemental order of disposition after rehearing pursuant to section 21.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.20;—Am. 1966, Act 181, Imd. Eff. July 1, 1966.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.21 Petition for rehearing; affirming, modifying, or setting aside order; conduct of rehearing; order for supplemental disposition; applicability of section to criminal proceeding; “interested person” construed.

Sec. 21. (1) At any time while the juvenile is under the jurisdiction of the court, an interested person may file a petition in writing and under oath for a rehearing upon all matters coming within the provisions of this

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

chapter. Upon the rehearing, the court may affirm, modify, or set aside any order reviewed under this section. If parental rights have been terminated by an order entered in the proceedings and custody of the juvenile has been removed from the parents, guardian, or other person, the petition for rehearing shall be filed not later than 20 days after the date of entry of the order terminating parental rights. The petition shall set forth in detail the place, manner, and all other information requested by the court in reference to the proposed future custody of the juvenile. The rehearing shall be conducted in accordance with the provisions of this chapter relating to the conduct of original hearings. The court may enter an order for supplemental disposition while the juvenile remains under the court's jurisdiction.

(2) This section does not apply to a criminal proceeding under this chapter.

(3) As used in subsection (1), “interested person” includes a member of a local foster care review board established under Act No. 422 of the Public Acts of 1984, being sections 722.131 to 722.140 of the Michigan Compiled Laws, to which that juvenile's case has been assigned.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.21;—Am. 1958, Act 129, Eff. Sept. 13, 1958;—Am. 1965, Act 202, Imd. Eff. July 16, 1965;—Am. 1980, Act 499, Imd. Eff. Jan. 21, 1981;—Am. 1982, Act 330, Imd. Eff. Dec. 14, 1982;—Am. 1983, Act 105, Eff. Sept. 1, 1983;—Am. 1984, Act 420, Imd. Eff. Dec. 28, 1984;—Am. 1986, Act 170, Imd. Eff. July 7, 1986;—Am. 1989, Act 73, Imd. Eff. June 16, 1989;—Am. 1996, Act 262, Eff. Jan. 1, 1997.

Former law: See section 8 of Ch. XII of Act 288 of 1939; and CL 1929, § 12846.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.22 Annual report.

Sec. 22. The state court administrative office shall publish an annual report evaluating the court regarding its duty under this act to engage in obtaining permanency for children. The report shall include at least information and statistics detailing the court's adherence to each time period prescribed by this act or court rule for the management and disposition of children's cases that are petitioned under section 2(b) of this chapter and, if the court fails to adhere to a time period, the specific reasons for that failure.

History: Add. 1997, Act 169, Eff. Mar. 31, 1998.

Compiler's note: Former MCL 712A.22, which pertained to appeals to circuit court, was repealed by Act 543 of 1978, Eff. July 1, 1979.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.23 Use of evidence against juvenile.

Sec. 23. Evidence regarding the disposition of a juvenile under this chapter and evidence obtained in a dispositional proceeding under this chapter shall not be used against that juvenile for any purpose in any judicial proceeding except in a subsequent case against that juvenile under this chapter. This section does not apply to a criminal conviction under this chapter.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.23;—Am. 1996, Act 258, Eff. Jan. 1, 1997.

Former law: See sections 13 and 14 of Ch. XII of Act 288 of 1939; and CL 1929, §§ 12834 and 12836.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.24 Placement in institutions; summary of information; conveyance of child; progress report.

Sec. 24. Whenever the court shall place a child in any public or private institution or agency, it shall transmit with the order of disposition or supplemental order of disposition a summary of its information concerning such child, and such child may be placed in the care of a county agent, probation officer, juvenile matron or some other reliable person designated by the court to be conveyed to the institution, and the same compensation shall be paid by the state for the transportation of said child as is paid to county agents in like cases.

Whenever the court shall place a child in a private or incorporated institution or agency, it shall require a

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

progress report concerning said child which shall be made at least once every 6 months from the date of the order.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—Am. 1947, Act 284, Eff. Oct. 11, 1947;—CL 1948, 712A.24.

Former law: See section 20 of Ch. XII of Act 288 of 1939; and CL 1929, § 12838.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.25 Payment of expenses.

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.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.25;—Am. 1951, Act 98, Eff. Sept. 28, 1951;—Am. 1955, Act 112, Eff. Oct. 14, 1955;—Am. 1976, Act 383, Imd. Eff. Dec. 28, 1976;—Am. 1998, Act 478, Eff. Jan. 12, 1999.

Former law: See sections 7, 21, 22, 24, and 25 of Ch. XII of Act 288 of 1939; CL 1929, § 12840; Act 30 of 1931; Act 260 of 1937; and CL 1929, § 12844.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.26 Contempt of court; punishment.

Sec. 26. The court shall have the power to punish for contempt of court under chapter 17 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1701 to 600.1745, any person who willfully violates, neglects, or refuses to obey and perform any order or process the court has made or issued to enforce this chapter.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.26;—Am. 1998, Act 474, Eff. Mar. 1, 1999.

Compiler's note: Act 314 of 1915, referred to in this section, was repealed by Act 236 of 1961. See now MCL 600.101 et seq.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.27 Quarters, equipment and supplies for use of juvenile division.

Sec. 27. Suitable quarters, equipment, and supplies shall be provided by the board of supervisors of each county for the use of the juvenile division of the probate court in said county.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.27.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

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.

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

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

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.

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944;—CL 1948, 712A.28;—Am. 1959, Act 184, Eff. Mar. 19, 1960;—Am. 1980, Act 499, Imd. Eff. Jan. 21, 1981;—Am. 1982, Act 330, Imd. Eff. Dec. 14, 1982;—Am. 1984, Act 420, Imd. Eff. Dec. 28, 1984;—Am. 1986, Act 170, Imd. Eff. July 7, 1986;—Am. 1988, Act 18, Eff. Apr. 1, 1988;—Am. 1988, Act 91, Eff. Apr. 1, 1988;—Am. 1989, Act 73, Imd. Eff. June 16, 1989;—Am. 1996, Act 409, Eff. Jan. 1, 1998;—Am. 1998, Act 478, Eff. Jan. 12, 1999.

Former law: See section 13 of Ch. XII of Act 288 of 1939; and CL 1929, § 12836.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.29 Allocation and application of money collected; "victim payment" defined.

Sec. 29. (1) If a child is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same order of disposition, money collected from that child, or his or her parent or parents, for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in this section.

(2) Except as otherwise provided in this subsection, if a child is subject to payment of victim payments and any combination of other fines, costs, assessments, or other payments, 50% of the money collected from that child, or his or her parent or parents, shall be applied to payment of victim payments, and the balance shall be applied to payment of fines, costs, and other assessments or payments. If fines, costs, or other assessments or payments remain unpaid after all victim payments have been paid, additional money collected shall be applied to payment of those fines, costs, or other assessments or payments. If victim payments remain unpaid after all fines, costs, or other assessments or payments have been paid, additional money collected shall be applied toward payment of those victim payments.

(3) In cases involving orders of disposition for offenses that would be violations of state law if committed by an adult, money allocated under subsection (2) for payment of fines, costs, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of the minimum state cost prescribed in section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j.

(b) Payment of other costs.

(c) Payment of fines.

(d) Payment of assessments and other payments.

(4) In cases involving orders of disposition for offenses that would be violations of local ordinances if committed by an adult, money allocated under subsection (2) for payment of fines, costs, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of the minimum state cost prescribed in section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j.

(b) Payment of fines and other costs.

(c) Payment of assessments and other payments.

(5) Money allocated for payment of costs under subsection (3) shall be paid to the county treasurer for deposit in the general fund of the county. Money allocated for payment of fines under subsection (3) shall be paid to the county treasurer to be used for library purposes as provided by law.

(6) One-third of the money allocated for payment of fines and costs under subsection (4) shall be paid to the treasurer of the political subdivision whose ordinance was violated, and 2/3 of that money shall be paid to the county treasurer for deposit in the general fund of the county.

(7) As used in this section, "victim payment" means restitution ordered under sections 30 and 31 and under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, paid to the victim or the victim's estate,

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

but not to a person who reimbursed the victim for his or her loss, or an assessment ordered under section 5 of 1989 PA 196, MCL 780.905.

History: Add. 1993, Act 344, Eff. May 1, 1994;—Am. 2003, Act 74, Eff. Oct. 1, 2003.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.30 "Offense" and "victim" defined; order of restitution.

Sec. 30. (1) For purposes of this section and section 31:

(a) "Juvenile offense" means a violation by a juvenile of a penal law of this state or a violation by a juvenile of an ordinance of a local unit of government of this state punishable by imprisonment or by a fine that is not a civil fine.

(b) "Victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a juvenile offense. For purposes of subsections (2), (3), (6), (8), (9), and (13), victim includes a sole proprietorship, partnership, corporation, association, governmental entity, or other legal entity that suffers direct physical or financial harm as a result of the commission of a juvenile offense.

(2) Except as provided in subsection (8), at the dispositional hearing for a juvenile offense, the court shall order, in addition to or in lieu of any other disposition authorized by law, that the juvenile make full restitution to any victim of the juvenile's course of conduct that gives rise to the disposition or to the victim's estate.

(3) If a juvenile offense results in damage to or loss or destruction of property of a victim of the juvenile offense, or results in the seizure or impoundment of property of a victim of the juvenile offense, the order of restitution may require that the juvenile do 1 or more of the following, as applicable:

(a) Return the property to the owner of the property or to a person designated by the owner.

(b) If return of the property under subdivision (a) is impossible, impractical, or inadequate, pay an amount equal to the greater of subparagraph (*i*) or (*ii*), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:

(*i*) The value of the property on the date of the damage, loss, or destruction.

(*ii*) The value of the property on the date of disposition.

(c) Pay the costs of the seizure or impoundment, or both.

(4) If a juvenile offense results in physical or psychological injury to a victim, the order of restitution may require that the juvenile do 1 or more of the following, as applicable:

(a) Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care.

(b) Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation.

(c) Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the juvenile offense.

(d) Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family that has been incurred as a result of the juvenile offense.

(e) Pay an amount equal to the costs of actual homemaking and child care expenses incurred as a result of the juvenile offense.

(5) If a juvenile offense resulting in bodily injury also results in the death of a victim, the order of restitution may require that the juvenile pay an amount equal to the cost of actual funeral and related services.

(6) If the victim or victim's estate consents, the order of restitution may require that the juvenile make restitution in services in lieu of money.

(7) If the victim is deceased, the court shall order that the restitution be made to the victim's estate.

(8) The court shall order restitution to the crime victims compensation board or to any individuals, partnerships, corporations, associations, governmental entities, or any other legal entities that have compensated the victim or victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. The court shall also order restitution, for the costs of services provided, to persons or entities that have provided services to the victim as a result of the juvenile offense. Services that are subject to restitution under this subsection include, but are not limited to, shelter, food, clothing, and transportation. However, an order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person or entity under that order is made. The court shall not order restitution to be paid to a victim or victim's estate if the victim or victim's estate has received or is to receive compensation for that loss, and the court shall state on the record with specificity the reasons for its actions. If

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

an entity entitled to restitution under this subsection for compensating the victim or the victim's estate cannot or refuses to be reimbursed for that compensation, the restitution paid for that entity shall be deposited by the state treasurer in the crime victim's rights fund created under section 4 of Act No. 196 of the Public Acts of 1989, being section 780.904 of the Michigan Compiled Laws, or its successor fund.

(9) Any amount paid to a victim or victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim's estate by an award from the crime victims compensation board made after an order of restitution under this section.

(10) If not otherwise provided by the court under this subsection, restitution shall be made immediately. However, the court may require that the juvenile make restitution under this section within a specified period or in specified installments.

(11) If the juvenile is placed on probation, any restitution ordered under this section shall be a condition of that probation. The court may revoke probation if the juvenile fails to comply with the order and if the juvenile has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the juvenile's employment status, earning ability, and financial resources, the willfulness of the juvenile's failure to pay, and any other special circumstances that may have a bearing on the juvenile's ability to pay.

(12) A juvenile who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the juvenile or his or her immediate family, the court may modify the method of payment.

(13) An order of restitution entered under this section remains effective until it is satisfied in full. An order of restitution is a judgment and lien against all property of the individual ordered to pay restitution for the amount specified in the order of restitution. The lien may be recorded as provided by law. An order of restitution may be enforced by the prosecuting attorney, a victim, a victim's estate, or any other person or entity named in the order to receive the restitution in the same manner as a judgment in a civil action or a lien.

(14) Notwithstanding any other provision of this section, a juvenile shall not be detained for a violation of probation, or otherwise, for failure to pay restitution as ordered under this section unless the court determines that the juvenile has the resources to pay the ordered restitution and has not made a good faith effort to do so.

(15) If the court determines that the juvenile is or will be unable to pay all of the restitution ordered, after notice to the juvenile's parent and an opportunity for the parent to be heard, the court may order the parent or parents having supervisory responsibility for the juvenile at the time of the acts upon which an order of restitution is based to pay any portion of the restitution ordered that is outstanding. An order under this subsection does not relieve the juvenile of his or her obligation to pay restitution, but the amount owed by the juvenile shall be offset by any amount paid by his or her parent. As used in this subsection, “parent” does not include a foster parent.

(16) If the court orders a parent to pay restitution under subsection (15), 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 (15), the court shall provide for payment to be made in specified installments and within a specified period of time.

(17) A parent who has been ordered to pay restitution under subsection (15) may petition the court for a modification of the amount of restitution owed by the parent or for a cancellation of any unpaid portion of the parent's obligation. The court shall cancel all or part of the parent's obligation due if the court determines that payment of the amount due will impose a manifest hardship on the parent.

(18) In each case in which payment of restitution is ordered as a condition of probation, the juvenile caseworker or probation officer assigned to the case shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. The final review shall be conducted not less than 60 days before the expiration of the probationary period. If the juvenile caseworker or probation officer determines the restitution is not being paid as ordered, the juvenile caseworker or probation officer shall file a written report of the violation with the court on a form prescribed by the state court administrative office. The report shall include a statement of the amount of the arrearage and any reasons for the arrearage that are known by the juvenile caseworker or probation officer. The juvenile caseworker or probation officer shall immediately provide a copy of the report to the prosecuting attorney. If a motion is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance.

(19) If the court determines that an individual who is ordered to pay restitution under this section is remanded to the jurisdiction of the department of corrections, the court shall provide a copy of the order of

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET

Generated by TallPDF.NET Evaluation

restitution to the department of corrections when the court determines that the individual is remanded to the department's jurisdiction.

History: Add. 1993, Act 344, Eff. May 1, 1994;—Am. 1996, Act 123, Eff. May 1, 1996;—Am. 1996, Act 561, Eff. June 1, 1997.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.31 Determining amount of restitution; factors in disposition report; disclosure of matters described in subsection (1); burden of demonstrating amount or type of restitution.

Sec. 31. (1) In determining the amount of restitution to order under section 30 of this chapter, the court shall consider the amount of the loss sustained by any victim as a result of the juvenile offense. In determining whether to order the juvenile's supervisory parent to pay restitution under section 30(15) of this chapter, the court shall consider the financial resources of the juvenile's supervisory parent and the other factors specified in section 30(16) of this chapter.

(2) The court may order the person preparing a report for the purpose of disposition to obtain information pertaining to the factors set forth in subsection (1). That person shall include the information collected in the disposition report or in a separate report, as the court directs.

(3) The court shall disclose to the juvenile, the juvenile's supervisory parent, and the prosecuting attorney all portions of the disposition or other report pertaining to the matters described in subsection (1).

(4) Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the juvenile offense shall be on the prosecuting attorney. The burden of demonstrating the financial resources of the juvenile's supervisory parent and the other factors specified in section 30(16) of this chapter shall be on the supervisory parent.

History: Add. 1993, Act 344, Eff. May 1, 1994;—Am. 1996, Act 561, Eff. June 1, 1997.

Popular name: Probate Code

Popular name: Juvenile Code

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.32 Order to appear for identification; notice of right to attorney; appointment of attorney.

Sec. 32. (1) If a complaint or petition is filed with the court against a juvenile for violating a criminal law of this state or of a local unit of government of this state, the court may, at the request of the person or entity submitting the complaint or petition, order the juvenile to appear at a place and time designated by the court for identification by another person. Identification under this section may include identification in a corporeal lineup.

(2) If the court orders identification proceedings under this section, the court shall notify the juvenile and the juvenile's parent, guardian, or custodian that he or she has the right to consult an attorney and to have an attorney present during the identification proceedings. If the juvenile and the juvenile's parent, guardian, or custodian cannot afford an attorney but request an attorney, the court shall appoint an attorney to represent the juvenile.

History: Add. 1996, Act 251, Eff. Jan. 1, 1997.

Popular name: Probate Code

Popular name: Juvenile Code

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Click here to unlock TallPDF.NET