

HOUSE BILL No. 5648

March 16, 2004, Introduced by Rep. Howell and referred to the Committee on Judiciary.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XIIA

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

1 (a) Warn the juvenile or the juvenile's parents, guardian, or
2 custodian and, except as provided in subsection (7), dismiss the
3 petition.

4 (b) Place the juvenile on probation, or under supervision in
5 the juvenile's own home or in the home of an adult who is related
6 to the juvenile. As used in this subdivision, "related" means
7 being a parent, grandparent, brother, sister, stepparent,
8 stepsister, stepbrother, uncle, or aunt by marriage, blood, or
9 adoption. The court shall order the terms and conditions of
10 probation or supervision, including reasonable rules for the
11 conduct of the parents, guardian, or custodian, if any, as the
12 court determines necessary for the physical, mental, or moral
13 well-being and behavior of the juvenile. The court also shall
14 order, as a condition of probation or supervision, that the
15 juvenile shall pay the minimum state cost prescribed by section
16 18m of this chapter.

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

24 (d) Except as otherwise provided in this subdivision, place
25 the juvenile in or commit the juvenile to a private institution
26 or agency approved or licensed by the department of consumer and
27 industry services for the care of juveniles of similar age, sex,

1 and characteristics. If the juvenile is not a ward of the court,
2 the court shall commit the juvenile to the family independence
3 agency or, if the county is a county juvenile agency, to that
4 county juvenile agency for placement in or commitment to such an
5 institution or agency as the family independence agency or county
6 juvenile agency determines is most appropriate, subject to any
7 initial level of placement the court designates.

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

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

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

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

26 (h) Appoint a guardian under section 5204 of the estates and
27 protected individuals code, 1998 PA 386, MCL 700.5204, in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 reimbursed and the money collected shall be accounted for and
2 reported to the county board of commissioners. Collections to
3 cover delinquent accounts or to pay the balance due on
4 reimbursement orders may be made after a juvenile is released or
5 discharged from care outside the juvenile's own home and under
6 state, county juvenile agency, or court supervision. Twenty-five
7 percent of all amounts collected under an order entered under
8 this subsection shall be credited to the appropriate fund of the
9 county to offset the administrative cost of collections. The
10 balance of all amounts collected under an order entered under
11 this subsection shall be divided in the same ratio in which the
12 county, state, and federal government participate in the cost of
13 care outside the juvenile's own home and under state, county
14 juvenile agency, or court supervision. The court may also
15 collect from the government of the United States benefits paid
16 for the cost of care of a court ward. Money collected for
17 juveniles placed by the court with or committed to the family
18 independence agency or a county juvenile agency shall be
19 accounted for and reported on an individual juvenile basis. In
20 cases of delinquent accounts, the court may also enter an order
21 to intercept state or federal tax refunds of a juvenile, parent,
22 guardian, or custodian and initiate the necessary offset
23 proceedings in order to recover the cost of care or service. The
24 court shall send to the person who is the subject of the
25 intercept order advance written notice of the proposed offset.
26 The notice shall include notice of the opportunity to contest the
27 offset on the grounds that the intercept is not proper because of

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1 a mistake of fact concerning the amount of the delinquency or the
2 identity of the person subject to the order. The court shall
3 provide for the prompt reimbursement of an amount withheld in
4 error or an amount found to exceed the delinquent amount.

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

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

19 (5) If the court appoints an attorney to represent a
20 juvenile, parent, guardian, or custodian, the court may require
21 in an order entered under this section that the juvenile, parent,
22 guardian, or custodian reimburse the court for attorney fees.

23 (6) The office of the state court administrator, under the
24 supervision and direction of the supreme court ~~[and in~~
25 ~~consultation with the family independence agency and the Michigan~~
26 ~~probate judges association]~~, shall create guidelines ~~[and a model~~
27 ~~schedule that]~~ the court may use in determining the ability of the

1 juvenile, parent, guardian, or custodian to pay for care and any
2 costs of service ordered under subsection (2) or (3). The
3 guidelines [~~and model schedule~~] shall take into account both the
4 income and resources of the juvenile, parent, guardian, or
5 custodian.

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

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

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

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

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

26 (10) The court shall not enter an order of disposition for a
27 juvenile offense as defined in section 1a of 1925 PA 289, MCL

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

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

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

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

25 (12) If the court enters an order of disposition based on an
26 act that is a juvenile offense as defined in section 1 of 1989 PA
27 196, MCL 780.901, the court shall order the juvenile to pay the

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

7 (13) If the court has entered an order of disposition or a
8 judgment of conviction for a listed offense as defined in section
9 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722,
10 the court, the family independence agency, or the county juvenile
11 agency shall register the juvenile or accept the juvenile's
12 registration as provided in the sex offenders registration act,
13 1994 PA 295, MCL 28.721 to 28.732.

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

1 juvenile returned to the court for a medical condition, because
2 there was no opening in a juvenile boot camp program, or because
3 the county juvenile agency was unable to place the juvenile in a
4 juvenile boot camp program may be placed again in the juvenile
5 boot camp program after the medical condition is corrected, an
6 opening becomes available, or the county juvenile agency is able
7 to place the juvenile.

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

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

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

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

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

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

24 (a) \$60.00, if the juvenile is found to be within the court's
25 jurisdiction for a felony.

26 (b) \$45.00, if the juvenile is found to be within the court's
27 jurisdiction for a serious misdemeanor or a specified

1 misdemeanor.

2 (c) \$40.00, if the juvenile is found to be within the court's
3 jurisdiction for a misdemeanor not described in subdivision (b)
4 or of an ordinance violation.

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

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

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

24 (5) As used in this section:

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

1 felony.

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

4 (c) "Ordinance violation" means that term as defined in
5 section 1 of chapter I of the code of criminal procedure, 1927 PA
6 175, MCL 761.1.

7 (d) "Serious misdemeanor" means that term as defined in
8 section 61 of the crime victim's rights act, 1985 PA 87, MCL
9 780.811.

10 (e) "Specified misdemeanor" means that term as defined in
11 section 1 of 1989 PA 196, MCL 780.901.