

SENATE BILL No. 1216

July 18, 2012, Introduced by Senator CASWELL and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 18 and 18g of chapter XIIA (MCL 712A.18 and
712A.18g), section 18 as amended by 2011 PA 295 and section 18g as
added by 1996 PA 258.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

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

1 juvenile and society in view of the facts proven and ascertained:

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

5 (b) Place the juvenile on probation, or under supervision in
6 the juvenile's own home or in the home of an adult who is related
7 to the juvenile. As used in this subdivision, "related" means an
8 individual who is not less than 18 years of age and related to the
9 child by blood, marriage, or adoption, as grandparent, great-
10 grandparent, great-great-grandparent, aunt or uncle, great-aunt or
11 great-uncle, great-great-aunt or great-great-uncle, sibling,
12 stepsibling, nephew or niece, first cousin or first cousin once
13 removed, and the spouse of any of the above, even after the
14 marriage has ended by death or divorce. A child may be placed with
15 the parent of a man whom the court has found probable cause to
16 believe is the putative father if there is no man with legally
17 established rights to the child. This placement of the child with
18 the parent of a man whom the court has found probable cause to
19 believe is the putative father is for the purposes of placement
20 only and is not to be construed as a finding of paternity or to
21 confer legal standing. The court shall order the terms and
22 conditions of probation or supervision, including reasonable rules
23 for the conduct of the parents, guardian, or custodian, if any, as
24 the court determines necessary for the physical, mental, or moral
25 well-being and behavior of the juvenile. The court may order that
26 the juvenile participate in a juvenile drug treatment court under
27 chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL

1 600.1060 to 600.1084. The court also shall order, as a condition of
2 probation or supervision, that the juvenile shall pay the minimum
3 state cost prescribed by section 18m of this chapter.

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

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

22 (e) Except as otherwise provided in this subdivision, commit
23 the juvenile to a public institution, county facility, institution
24 operated as an agency of the court or county, or agency authorized
25 by law to receive juveniles of similar age, sex, and
26 characteristics. If the juvenile is not a ward of the court, the
27 court shall commit the juvenile to the department of human services

1 or, if the county is a county juvenile agency, to that county
2 juvenile agency for placement in or commitment to such an
3 institution or facility as the department of human services or
4 county juvenile agency determines is most appropriate, subject to
5 any initial level of placement the court designates. If a child is
6 not less than 17 years of age and is in violation of a personal
7 protection order, the court may commit the child to a county jail
8 within the adult prisoner population. In a placement under
9 subdivision (d) or a commitment under this subdivision, except to a
10 state institution or a county juvenile agency institution, the
11 juvenile's religious affiliation shall be protected by placement or
12 commitment to a private child-placing or child-caring agency or
13 institution, if available. Except for commitment to the department
14 of human services or a county juvenile agency, an order of
15 commitment under this subdivision to a state institution or agency
16 described in the youth rehabilitation services act, 1974 PA 150,
17 MCL 803.301 to 803.309, or in 1935 PA 220, MCL 400.201 to 400.214,
18 the court shall name the superintendent of the institution to which
19 the juvenile is committed as a special guardian to receive benefits
20 due the juvenile from the government of the United States. An order
21 of commitment under this subdivision to the department of human
22 services or a county juvenile agency shall name that agency as a
23 special guardian to receive those benefits. The benefits received
24 by the special guardian shall be used to the extent necessary to
25 pay for the portions of the cost of care in the institution or
26 facility that the parent or parents are found unable to pay.

27 (f) Provide the juvenile with medical, dental, surgical, or

1 other health care, in a local hospital if available, or elsewhere,
2 maintaining as much as possible a local physician-patient
3 relationship, and with clothing and other incidental items the
4 court determines are necessary.

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

10 ~~—— (h) Appoint a guardian under section 5204 of the estates and~~
11 ~~protected individuals code, 1998 PA 386, MCL 700.5204, in response~~
12 ~~to a petition filed with the court by a person interested in the~~
13 ~~juvenile's welfare. If the court appoints a guardian as authorized~~
14 ~~by this subdivision, it may dismiss the petition under this~~
15 ~~chapter.~~

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

17 (I) ~~(j)~~ If the court finds that a juvenile has violated a
18 municipal ordinance or a state or federal law, order the juvenile
19 to pay a civil fine in the amount of the civil or penal fine
20 provided by the ordinance or law. Money collected from fines levied
21 under this subsection shall be distributed as provided in section
22 29 of this chapter.

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

27 (K) ~~(l)~~ If a juvenile is within the court's jurisdiction under

1 section 2(a)(1) of this chapter, place the juvenile in and order
2 the juvenile to complete satisfactorily a program of training in a
3 juvenile boot camp established by the department of human services
4 under the juvenile boot camp act, 1996 PA 263, MCL 400.1301 to
5 400.1309, as provided in that act. If the county is a county
6 juvenile agency, ~~however,~~ the court shall commit the juvenile to
7 that county juvenile agency for placement in the program under that
8 act. Upon receiving a report of satisfactory completion of the
9 program from the department of human services, the court shall
10 authorize the juvenile's release from placement in the juvenile
11 boot camp. Following satisfactory completion of the juvenile boot
12 camp program, the juvenile shall complete an additional period of
13 not less than 120 days or more than 180 days of intensive
14 supervised community reintegration in the juvenile's local
15 community. To place or commit a juvenile under this subdivision,
16 the court shall determine all of the following:

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

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

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

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

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

26 (vi) If the court must commit the juvenile to a county juvenile
27 agency, the county juvenile agency is able to place the juvenile in

1 a juvenile boot camp program.

2 (I) ~~(m)~~—If the court entered a judgment of conviction under
3 section 2d of this chapter, enter any disposition under this
4 section or, if the court determines that the best interests of the
5 public would be served, impose any sentence upon the juvenile that
6 could be imposed upon an adult convicted of the offense for which
7 the juvenile was convicted. If the juvenile is convicted of a
8 violation or conspiracy to commit a violation of section
9 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7403,
10 the court may impose the alternative sentence permitted under that
11 section if the court determines that the best interests of the
12 public would be served. The court may delay imposing a sentence of
13 imprisonment under this subdivision for a period not longer than
14 the period during which the court has jurisdiction over the
15 juvenile under this chapter by entering an order of disposition
16 delaying imposition of sentence and placing the juvenile on
17 probation upon the terms and conditions it considers appropriate,
18 including any disposition under this section. If the court delays
19 imposing sentence under this section, section 18i of this chapter
20 applies. If the court imposes sentence, it shall enter a judgment
21 of sentence. If the court imposes a sentence of imprisonment, the
22 juvenile shall receive credit against the sentence for time served
23 before sentencing. In determining whether to enter an order of
24 disposition or impose a sentence under this subdivision, the court
25 shall consider all of the following factors, giving greater weight
26 to the seriousness of the offense and the juvenile's prior record:

27 (i) The seriousness of the offense in terms of community

1 protection, including, but not limited to, the existence of any
2 aggravating factors recognized by the sentencing guidelines, the
3 use of a firearm or other dangerous weapon, and the impact on any
4 victim.

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

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

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

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

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

20 (2) An order of disposition placing a juvenile in or
21 committing a juvenile to care outside of the juvenile's own home
22 and under state, county juvenile agency, or court supervision shall
23 contain a provision for reimbursement by the juvenile, parent,
24 guardian, or custodian to the court for the cost of care or
25 service. The order shall be reasonable, taking into account both
26 the income and resources of the juvenile, parent, guardian, or
27 custodian. The amount may be based upon the guidelines and model

1 schedule created under subsection (6). If the juvenile is receiving
2 an adoption support subsidy under sections 115f to 115m of the
3 social welfare act, 1939 PA 280, MCL 400.115f to 400.115m, the
4 amount shall not exceed the amount of the support subsidy. The
5 reimbursement provision applies during the entire period the
6 juvenile remains in care outside of the juvenile's own home and
7 under state, county juvenile agency, or court supervision, unless
8 the juvenile is in the permanent custody of the court. The court
9 shall provide for the collection of all amounts ordered to be
10 reimbursed and the money collected shall be accounted for and
11 reported to the county board of commissioners. Collections to cover
12 delinquent accounts or to pay the balance due on reimbursement
13 orders may be made after a juvenile is released or discharged from
14 care outside the juvenile's own home and under state, county
15 juvenile agency, or court supervision. Twenty-five percent of all
16 amounts collected under an order entered under this subsection
17 shall be credited to the appropriate fund of the county to offset
18 the administrative cost of collections. The balance of all amounts
19 collected under an order entered under this subsection shall be
20 divided in the same ratio in which the county, state, and federal
21 government participate in the cost of care outside the juvenile's
22 own home and under state, county juvenile agency, or court
23 supervision. The court may also collect from the government of the
24 United States benefits paid for the cost of care of a court ward.
25 Money collected for juveniles placed by the court with or committed
26 to the department of human services or a county juvenile agency
27 shall be accounted for and reported on an individual juvenile

1 basis. In cases of delinquent accounts, the court may also enter an
2 order to intercept state or federal tax refunds of a juvenile,
3 parent, guardian, or custodian and initiate the necessary offset
4 proceedings in order to recover the cost of care or service. The
5 court shall send to the person who is the subject of the intercept
6 order advance written notice of the proposed offset. The notice
7 shall include notice of the opportunity to contest the offset on
8 the grounds that the intercept is not proper because of a mistake
9 of fact concerning the amount of the delinquency or the identity of
10 the person subject to the order. The court shall provide for the
11 prompt reimbursement of an amount withheld in error or an amount
12 found to exceed the delinquent amount.

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

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

26 (5) If the court appoints an attorney to represent a juvenile,
27 parent, guardian, or custodian, the court may require in an order

1 entered under this section that the juvenile, parent, guardian, or
2 custodian reimburse the court for attorney fees.

3 (6) The office of the state court administrator, under the
4 supervision and direction of the supreme court, shall create
5 guidelines that the court may use in determining the ability of the
6 juvenile, parent, guardian, or custodian to pay for care and any
7 costs of service ordered under subsection (2) or (3). The
8 guidelines shall take into account both the income and resources of
9 the juvenile, parent, guardian, or custodian.

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

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

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

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

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

1 the court may revoke or alter the terms and conditions of
2 probation.

3 (10) The court shall not enter an order of disposition for a
4 juvenile offense as defined in section 1a of 1925 PA 289, MCL
5 28.241a, or a judgment of sentence for a conviction until the court
6 has examined the court file and has determined that the juvenile's
7 fingerprints have been taken and forwarded as required by section 3
8 of 1925 PA 289, MCL 28.243, and as required by the sex offenders
9 registration act, 1994 PA 295, MCL 28.721 to 28.736. If a juvenile
10 has not had his or her fingerprints taken, the court shall do
11 either of the following:

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

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

18 (11) Upon final disposition, conviction, acquittal, or
19 dismissal of an offense within the court's jurisdiction under
20 section 2(a)(1) of this chapter, using forms approved by the state
21 court administrator, the clerk of the court entering the final
22 disposition, conviction, acquittal, or dismissal shall immediately
23 advise the department of state police of that final disposition,
24 conviction, acquittal, or dismissal as required by section 3 of
25 1925 PA 289, MCL 28.243. The report to the department of state
26 police shall include information as to the finding of the judge or
27 jury and a summary of the disposition or sentence imposed.

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

8 (13) If the court has entered an order of disposition or a
9 judgment of conviction for a listed offense as defined in section 2
10 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the
11 court, **THE** department of human services, or the county juvenile
12 agency shall register the juvenile or accept the juvenile's
13 registration as provided in the sex offenders registration act,
14 1994 PA 295, MCL 28.721 to 28.736.

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

1 than once, except that a juvenile returned to the court for a
2 medical condition, because there was no opening in a juvenile boot
3 camp program, or because the county juvenile agency was unable to
4 place the juvenile in a juvenile boot camp program may be placed
5 again in the juvenile boot camp program after the medical condition
6 is corrected, an opening becomes available, or the county juvenile
7 agency is able 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 listed
10 offense as defined in section 2 of the sex offenders registration
11 act, 1994 PA 295, MCL 28.722, the court shall determine if the
12 offense is a violation of a law of this state or a local ordinance
13 of a municipality of this state that by its nature constitutes a
14 sexual offense against an individual who is less than 18 years of
15 age. If so, the order of disposition is for a listed offense as
16 defined in section 2 of the sex offenders registration act, 1994 PA
17 295, MCL 28.722, and the court shall include the basis for that
18 determination on the record and include the determination in the
19 order of disposition.

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

27 (17) In a proceeding under section 2(h) of this chapter, this

1 section only applies to a disposition for a violation of a personal
2 protection order and subsequent proceedings.

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

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

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

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

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

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

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

6 (3) "Firearm" means that term as defined in section 3t of
7 ~~chapter 1 of the Revised Statutes of 1846, being section 8.3t of~~
8 ~~the Michigan Compiled Laws.1846 RS 1, MCL 8.3T.~~