

# SENATE BILL No. 536

October 9, 1991, Introduced by Senators VAN REGENMORTER, KELLY, O'BRIEN and MILLER and referred to the Committee on Judiciary.

A bill to amend sections 2, 2a, and 18d of chapter XIIA of Act No. 288 of the Public Acts of 1939, entitled as amended

"An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state, the powers and duties of such court and the judges and other officers thereof, certain aspects of the statutes of descent and distribution of property, and the statutes governing the change of name of adults and children, the adoption of adults and children, and the jurisdiction of the juvenile division of the probate court; to prescribe the powers and duties of the juvenile division of the probate court, and the judges and other officers thereof; to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court; to prescribe pleading, evidence, practice, and procedure in actions and proceedings in the juvenile division of the probate court; to provide for appeals from the juvenile division of the probate court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties for the violation of this act,"

section 2 as amended by Act No. 314 of the Public Acts of 1990 and section 2a as amended and section 18d as added by Act No. 54

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Section 1.   Sections 2, 2a, and 18d of chapter XIIIA of Act  
2 No. 288 of the Public Acts of 1939, section 2 as amended by Act  
3 No. 314 of the Public Acts of 1990 and section 2a as amended and  
4 section 18d as added by Act No. 54 of the Public Acts of 1988,  
5 being sections 712A.2, 712A.2a, and 712A.18d of the Michigan  
6 Compiled Laws, are amended to read as follows:

**7** **CHAPTER XIIA**

8        Sec. 2. The juvenile division of the probate court ~~shall~~  
9 ~~have~~ HAS the following authority and jurisdiction:

10 (a) Exclusive original jurisdiction superior to and regard-  
11 less of the jurisdiction of any other court in proceedings con-  
12 cerning a child under 17 years of age who is found within the  
13 county if 1 or more of the following applies:

(1) Except as otherwise provided in this subparagraph, the child has violated any municipal ordinance or law of the state or of the United States. The juvenile division of the probate court shall have jurisdiction over a child 15 years of age or older who is charged with a violation of section 83, 89, 91, 316, 317, 520b, ~~or~~ 529, OR 529A of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.83, 750.89, 750.91, 750.316, 750.317, 750.520b, ~~and~~ 750.529, AND 750.529A 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

1 Michigan Compiled Laws, if the prosecuting attorney files a  
2 petition in juvenile court instead of authorizing a complaint and  
3 warrant.

4       (2) The child has deserted his or her home without suffi-  
5 cient cause and the court finds on the record that the child has  
6 been placed or refused alternative placement or the child and the  
7 child's parent, guardian, or custodian have exhausted or refused  
8 family counseling.

9       (3) The child is repeatedly disobedient to the reasonable  
10 and lawful commands of his or her parents, guardian, or custodian  
11 and the court finds on the record by clear and convincing evi-  
12 dence that court-accessed services are necessary.

13       (4) The child willfully and repeatedly absents himself or  
14 herself from school or other learning program intended to meet  
15 the child's educational needs, or repeatedly violates rules and  
16 regulations of the school or other learning program, and the  
17 court finds on the record that the child, the child's parent,  
18 guardian, or custodian, and school officials or learning program  
19 personnel have met on the child's educational problems, and edu-  
20 cational counseling and alternative agency help have been  
21 sought. As used in this subparagraph only, "learning program"  
22 means an organized educational program that is appropriate, given  
23 the age, intelligence, ability, and any psychological limitations  
24 of a child, in the subject areas of reading, spelling, mathemat-  
25 ics, science, history, civics, writing, and English grammar.

26       (b) Jurisdiction in proceedings concerning any child under  
27 18 years of age found within the county:

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

9 (A) "Education" means learning based on an organized educa-  
10 tional program that is appropriate, given the age, intelligence,  
11 ability, and any psychological limitations of a child, in the  
12 subject areas of reading, spelling, mathematics, science, histo-  
13 ry, civics, writing, and English grammar.

14 (B) "Without proper custody or guardianship" does not  
15 include the situation where a parent has placed the child with  
16 another person who is legally responsible for the care and main-  
17 tenance of the child and who is able to and does provide the  
18 child with proper care and maintenance.

19 (2) Whose home or environment, by reason of neglect, cruel-  
20 ty, drunkenness, criminality, or depravity on the part of a  
21 parent, guardian, or other custodian, is an unfit place for the  
22 child to live in.

23 (3) Whose parent has substantially failed, without good  
24 cause, to comply with a limited guardianship placement plan  
25 described in section 424a of the revised probate code, Act  
26 No. 642 of the Public Acts of 1978, being section 700.424a of the  
27 Michigan Compiled Laws, regarding the child.

1 (4) Whose parent has substantially failed, without good  
2 cause, to comply with a court-structured plan described in  
3 section 424b or 424c of ~~the revised probate code,~~ Act No. 642  
4 of the Public Acts of 1978, being sections 700.424b and 700.424c  
5 of the Michigan Compiled Laws, regarding the child.

6 (5) If the child has a guardian under ~~the revised probate~~  
7 ~~code,~~ Act No. 642 of the Public Acts of 1978, being sections  
8 700.1 to 700.993 of the Michigan Compiled Laws, ~~whose~~ AND THE  
9 CHILD'S parent meets both of the following criteria:

10 (A) ~~(a)~~ The parent, having the ability to support or  
11 assist in supporting the child, has failed or neglected, without  
12 good cause, to provide regular and substantial support for the  
13 child for a period of 2 years or more before the filing of the  
14 petition or, if a support order has been entered, has failed to  
15 substantially comply with the order for a period of 2 years or  
16 more before the filing of the petition.

17 (B) ~~(b)~~ The parent, having the ability to visit, contact,  
18 or communicate with the child, has regularly and substantially  
19 failed or neglected, without good cause, to do so for a period of  
20 2 years or more before the filing of the petition.

21 If a petition is filed in any probate court alleging that a  
22 child is within the provisions of subdivision (b)(1), (2), (3),  
23 (4), or (5), and the custody of that child is subject to the  
24 prior or continuing order of another court of record of this  
25 state, the manner of notice to the other court and the authority  
26 of the probate court to proceed shall be governed by rule of the  
27 supreme court.

1 (c) Jurisdiction over children under 18 years of age,  
2 jurisdiction of whom has been waived to the juvenile division of  
3 the probate court by a circuit court pursuant to a provision in a  
4 temporary order for custody of children based upon a complaint  
5 for divorce or upon a motion pursuant to a complaint for divorce  
6 by the prosecuting attorney, in a ~~decree~~ JUDGMENT of divorce  
7 dissolving a marriage between the parents of the minor children,  
8 or by an amended ~~decree~~ JUDGMENT relative to the custody of the  
9 child in a divorce.

10 (d) If the court finds on the record that voluntary services  
11 have been exhausted or refused, concurrent jurisdiction in pro-  
12 ceedings concerning any child between the ages of 17 and 18 found  
13 within the county:

14 (1) Who is repeatedly addicted to the use of drugs or the  
15 intemperate use of alcoholic liquors.

16 (2) Who repeatedly associates with criminal, dissolute, or  
17 disorderly persons.

18 (3) Who is found of his or her own free will and knowledge  
19 in a house of prostitution, assignation, or ill-fame.

20 (4) Who repeatedly associates with thieves, prostitutes,  
21 pimps, or procurers.

22 (5) Who is willfully disobedient to the reasonable and  
23 lawful commands of his or her parents, guardian, or other custo-  
24 dian and is in danger of becoming morally depraved.

25 If any child is brought before the juvenile division of the  
26 probate court in a county other than that in which the child  
27 resides, the court may enter an order prior to hearing

1 transferring the jurisdiction of the matter to the court of the  
2 county of residence, which shall not be construed as a legal set-  
3 tlement as defined in section 55 of the social welfare act, Act  
4 No. 280 of the Public Acts of 1939, as amended, being section  
5 400.55 of the Michigan Compiled Laws, with the consent of the  
6 judge of probate of the county of residence, which order,  
7 together with a certified copy of the proceedings in the court of  
8 the county other than the county of residence, shall be delivered  
9 to the court of the county of residence.

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

18 (f) If the court operates a detention home for children  
19 within the court's jurisdiction under subdivision (a)(1), author-  
20 ity to place a child within that home pending trial if the child  
21 is within the circuit court's jurisdiction under section 606 of  
22 the revised judicature act of 1961, Act No. 236 of the Public  
23 Acts of 1961, being section 600.606 of the Michigan Compiled  
24 Laws, or within the recorder's court of the city of Detroit's  
25 jurisdiction under section 10a(1)(c) of Act No. 369 of the Public  
26 Acts of 1919, being section 725.10a of the Michigan Compiled  
27 Laws, and the child is ordered so placed by the circuit court or

1 the recorder's court of the city of Detroit. If the circuit  
2 court or the recorder's court of the city of Detroit issues an  
3 order to the juvenile division of the probate court in the county  
4 in which the circuit court or the recorder's court is located and  
5 orders a child placed in a detention home operated as an agency  
6 of the court pending trial, the juvenile division of the probate  
7 court shall comply with that order.

8       Sec. 2a. (1) Except as otherwise provided in  
9 subsection (2), if the juvenile division of the probate court has  
10 exercised jurisdiction over a child under section 2 (a) or (b) of  
11 this chapter, jurisdiction shall continue for a period of 2 years  
12 beyond the maximum age of jurisdiction conferred under the appli-  
13 cable subdivisions of section 2 OF THIS CHAPTER, unless released  
14 sooner by order of the court.

15       (2) If the juvenile division of the probate court has exer-  
16 cised jurisdiction over a child under section 2(a)(1) of this  
17 chapter for an offense which, if committed by an adult, would be  
18 a violation or attempted violation of section 72, 83, 84, 88, 89,  
19 91, 316, 317, 349, 520b, 520c, 520d, 520g, 529, 529A, or 530 of  
20 the Michigan penal code, Act No. 328 of the Public Acts of 1931,  
21 being sections 750.72, 750.83, 750.84, 750.88, 750.89, 750.91,  
22 750.316, 750.317, 750.349, 750.520b, 750.520c, 750.520d,  
23 750.520g, 750.529, 750.529A, and 750.530 of the Michigan Compiled  
24 Laws, or section 7401(2)(a)(i) or 7403(2)(a)(i) of the public  
25 health code, Act No. 368 of the Public Acts of 1978, being sec-  
26 tions 333.7401 and 333.7403 of the Michigan Compiled Laws,



1 jurisdiction may be continued until the child is 21 years of age  
2 under section 18d of this chapter.

3 (3) As used in this chapter, "child", "minor" or any other  
4 term signifying a person under the age of 18 shall be construed  
5 to apply to a person 18 years of age or older concerning whom  
6 proceedings are commenced in the juvenile division of the probate  
7 court pursuant to section 2 of this chapter and over whom the  
8 juvenile division has continuing jurisdiction pursuant to subsec-  
9 tion (1).

10 Sec. 18d. (1) If a child is committed under  
11 section 18(1)(e) of this chapter for an offense ~~which~~ THAT, if  
12 committed by an adult, would be a violation or attempted viola-  
13 tion of section 72, 83, 84, 88, 89, 91, 316, 317, 349, 520b,  
14 520c, 520d, 520g, 529, 529A, or 530 of the Michigan penal code,  
15 Act No. 328 of the Public Acts of 1931, being sections 750.72,  
16 750.83, 750.84, 750.88, 750.89, 750.91, 750.316, 750.317,  
17 750.349, 750.520b, 750.520c, 750.520d, 750.520g, 750.529,  
18 750.529A, and 750.530 of the Michigan Compiled Laws, or section  
19 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, Act  
20 No. 368 of the Public Acts of 1978, being sections 333.7401 and  
21 333.7403 of the Michigan Compiled Laws, the court shall conduct a  
22 review hearing to determine whether the child has been rehabili-  
23 tated and whether the child presents a serious risk to public  
24 safety. If the court determines that the child has not been  
25 rehabilitated or that the child presents a serious risk to public  
26 safety, jurisdiction over the child shall be continued. In

1 making this determination, the court shall consider the  
2 following:

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

5 (b) The child's willingness to accept responsibility for  
6 prior behavior.

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

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

10 (e) The child's potential for violent conduct as demon-  
11 strated by prior behavior.

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

15 (g) Other information the prosecuting attorney or child may  
16 submit.

17 (2) A review hearing shall be scheduled and held, unless  
18 adjourned for good cause, as near as possible to, but before, the  
19 child's nineteenth birthday. If the institution, agency, or  
20 facility to which the child was committed believes that the child  
21 has been rehabilitated and that the child does not present a  
22 serious risk to public safety, the institution, agency, or facil-  
23 ity may petition the court to conduct a review hearing at any  
24 time before the child becomes 19 years of age or, if the court  
25 has continued jurisdiction under subsection (1), at any time  
26 before the child becomes 21 years of age.

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

12       (4) The institution, agency, or facility charged with the  
13 care of the child shall prepare commitment reports as provided in  
14 section 5 of the juvenile facilities act, ACT NO. 73 OF THE  
15 PUBLIC ACTS OF 1988, BEING SECTION 803.225 OF THE MICHIGAN  
16 COMPILED LAWS, for use by the court at a review hearing held  
17 under this section.

18       Section 2. This amendatory act shall not take effect unless  
19 Senate Bill No. 507 of the 86th Legislature is enacted into law.