



SENATE BILL No. 279

January 28, 1993, Introduced by Senator BOUCHARD and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend sections 2 and 4 of chapter XIIIA 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 4 as amended by Act No. 182 of the Public Acts of

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1988, being sections 712A.2 and 712A.4 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 4 of chapter XIIIA of Act No. 288
2 of the Public Acts of 1939, section 2 as amended by Act No. 314
3 of the Public Acts of 1990 and section 4 as amended by Act
4 No. 182 of the Public Acts of 1988, being sections 712A.2 and
5 712A.4 of the Michigan Compiled Laws, are amended to read as
6 follows:

7 CHAPTER XIIIA

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:

14 (1) Except as otherwise provided in this subparagraph, the
15 child has violated ~~any~~ A municipal ordinance or law of the
16 state or of the United States. The juvenile division of the pro-
17 bate court ~~shall have~~ HAS jurisdiction over a child ~~15~~ 14
18 years of age or older who is charged with a violation of section
19 83, 89, 91, 316, 317, 520b, or 529 of the Michigan penal code,
20 Act No. 328 of the Public Acts of 1931, being sections 750.83,
21 750.89, 750.91, 750.316, 750.317, 750.520b, and 750.529 of the
22 Michigan Compiled Laws; ~~or~~ section 7401(2)(a)(i) or
23 7403(2)(a)(i) of the public health code, Act No. 368 of the
24 Public Acts of 1978, being sections 333.7401 and 333.7403 of the

1 Michigan Compiled Laws; ~~—~~ OR ANOTHER LAW OF THIS STATE, THE
2 VIOLATION OF WHICH MAY BE PUNISHED BY LIFE IMPRISONMENT, ONLY if
3 the prosecuting attorney files a petition in juvenile court
4 instead of authorizing a complaint and warrant.

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

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

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

1 (b) Jurisdiction in proceedings concerning any child under
2 18 years of age found within the county:

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

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

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

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

25 (3) Whose parent has substantially failed, without good
26 cause, to comply with a limited guardianship placement plan
27 described in section 424a of the revised probate code, Act

1 No. 642 of the Public Acts of 1978, being section 700.424a of the
2 Michigan Compiled Laws, regarding the child.

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

8 (5) If the child has a guardian under the revised probate
9 code, Act No. 642 of the Public Acts of 1978, being sections
10 700.1 to 700.993 of the Michigan Compiled Laws, whose parent
11 meets both of the following criteria:

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

19 (B) ~~(b)~~ The parent, having the ability to visit, contact,
20 or communicate with the child, has regularly and substantially
21 failed or neglected, without good cause, to do so for a period of
22 2 years or more before the filing of the petition.

23 If a petition is filed in ~~any~~ A probate court alleging
24 that a child is within the provisions of subdivision ~~(b)(1),~~
25 ~~(2), (3), (4), or (5)~~ (B), and the custody of that child is
26 subject to the prior or continuing order of another court of
27 record of this state, the manner of notice to the other court and

1 the authority of the probate court to proceed ~~shall be~~ IS
2 governed by rule of the supreme court.

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

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

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

18 (2) Who repeatedly associates with criminal, dissolute, or
19 disorderly persons.

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

22 (4) Who repeatedly associates with thieves, prostitutes,
23 pimps, or procurers.

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

1 If any child is brought before the juvenile division of the
2 probate court in a county other than that in which the child
3 resides, the court may enter an order prior to hearing transfer-
4 ring the jurisdiction of the matter to the court of the county of
5 residence, which shall not be construed as a legal settlement as
6 defined in section 55 of the social welfare act, Act No. 280 of
7 the Public Acts of 1939, as amended, being section 400.55 of the
8 Michigan Compiled Laws, with the consent of the judge of probate
9 of the county of residence, which order, together with a certi-
10 fied copy of the proceedings in the court of the county other
11 than the county of residence, shall be delivered to the court of
12 the county of residence.

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

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

1 jurisdiction under section 10a(1)(c) of Act No. 369 of the Public
2 Acts of 1919, being section 725.10a of the Michigan Compiled
3 Laws, and the child is ordered so placed by the circuit court or
4 the recorder's court of the city of Detroit. If the circuit
5 court or the recorder's court of the city of Detroit issues an
6 order to the juvenile division of the probate court in the county
7 in which the circuit court or the recorder's court is located and
8 orders a child placed in a detention home operated as an agency
9 of the court pending trial, the juvenile division of the probate
10 court shall comply with that order.

11 Sec. 4. (1) If a child who has attained the age of ~~15~~ 14
12 years is accused of an act ~~which~~ THAT, if committed by an
13 adult, would be a felony, the judge of probate of the county
14 where the offense is alleged to have been committed may waive
15 jurisdiction pursuant to this section upon motion of the prose-
16 cuting attorney. After waiver, it ~~shall be~~ IS lawful to try
17 the child in the court having general criminal jurisdiction of
18 the offense.

19 (2) Before conducting a hearing on the motion to waive
20 jurisdiction, the court shall give notice of the hearing in the
21 manner provided by supreme court rule to the child and the prose-
22 cuting attorney and, if addresses are known, to the child's par-
23 ents or guardians. The notice shall state clearly that a waiver
24 of jurisdiction to a court of general criminal jurisdiction has
25 been requested and that, if granted, the child can be prosecuted
26 for the alleged offense as though he or she were an adult.

1 (3) Before the court waives jurisdiction, the court shall
2 determine on the record if there is probable cause to believe
3 that an offense has been committed ~~which~~ THAT if committed by
4 an adult would be a felony and if there is probable cause to
5 believe that the child committed the offense. Before a child may
6 waive a probable cause hearing under this subsection, the court
7 shall inform the child that a waiver of this subsection waives
8 the preliminary examination required by chapter VI of the code of
9 criminal procedure, Act No. 175 of the Public Acts of 1927, being
10 sections 766.1 to 766.22 of the Michigan Compiled Laws.

11 (4) Upon a showing of probable cause pursuant to subsection
12 (3), the court shall conduct a hearing to determine if the best
13 interests of ~~the child and~~ the public would be served by grant-
14 ing a waiver of jurisdiction to the court of general criminal
15 jurisdiction. ~~In~~ EXCEPT AS PROVIDED IN SUBSECTION (5), IN
16 making the determination, the court shall consider the following
17 criteria giving each weight as appropriate to the circumstances:

18 (a) The prior record and character of the child, his or her
19 physical and mental maturity, and his or her pattern of living.

20 (b) The seriousness of the offense.

21 (c) Whether the offense is part of a repetitive pattern of
22 offenses which would lead to 1 of the following determinations:

23 (i) The child is not amenable to treatment.

24 (ii) That despite the child's potential for treatment, the
25 nature of the child's delinquent behavior is likely to disrupt
26 the rehabilitation of other children in the treatment program.

1 (d) Whether, despite the child's potential for treatment,
2 the nature of the child's delinquent behavior is likely to render
3 the child dangerous to the public if released at the age of 19 or
4 21.

5 (e) Whether the child is more likely to be rehabilitated by
6 the services and facilities available in adult programs and pro-
7 cedures than in juvenile programs and procedures.

8 (f) Whether it is in the best interests of the public wel-
9 fare and the protection of the public security that the child
10 stand trial as an adult offender.

11 (5) IF THE COURT DETERMINES THAT THERE IS PROBABLE CAUSE TO
12 BELIEVE THAT THE CHILD HAS COMMITTED THE OFFENSE AND CONVICTION
13 FOR THE OFFENSE MAY BE PUNISHED BY LIFE IMPRISONMENT, THE COURT
14 SHALL PRESUME THAT IT IS IN THE BEST INTERESTS OF THE PUBLIC TO
15 WAIVE JURISDICTION TO THE COURT OF GENERAL CRIMINAL JURISDICTION.

16 (6) ~~-(5)-~~ If legal counsel has not been retained or
17 appointed to represent the child, the court shall advise the
18 child and his or her parents, guardian, custodian, or guardian ad
19 litem of the child's right to representation and appoint legal
20 counsel. If the court appoints legal counsel, the judge may
21 assess the cost of providing legal counsel as costs against the
22 child or those responsible for his or her support, or both, if
23 the persons to be assessed are financially able to comply.

24 (7) ~~-(6)-~~ Legal counsel shall have access to records or
25 reports provided and received by the judge as a basis for deci-
26 sion in proceedings for waiver of jurisdiction. A continuance
27 shall be granted at legal counsel's request if any report,

1 information, or recommendation, not previously available, is
2 introduced or developed at the hearing and the interests of jus-
3 tice require a continuance.

4 (8) ~~-(7)-~~ The court shall enter a written order either
5 granting or denying the motion to waive jurisdiction, and the
6 court shall state on the record or in a written opinion the
7 court's findings of fact and conclusions of law forming the basis
8 for entry of the order. If a child is waived, a transcript of
9 the court's findings or a copy of the written opinion shall be
10 sent to the court of general criminal jurisdiction. ~~-(8)-~~ If the
11 court does not waive jurisdiction, a transcript of the court's
12 findings or, if a written opinion is prepared, a copy of the
13 written opinion shall be sent to the prosecutor, child, or
14 child's attorney upon request.

15 (9) If the court waives jurisdiction, the child shall be
16 arraigned on an information filed by the prosecutor in the court
17 of general criminal jurisdiction. The probable cause finding
18 under subsection (3) shall satisfy the requirements of and be
19 considered the equivalent of the preliminary examination required
20 by chapter VI of Act No. 175 of the Public Acts of 1927.