



SENATE BILL No. 774

July 21, 1993, Introduced by Senators KELLY, MILLER, KOIVISTO, HART, FAUST, BOUCHARD and GEAKE and referred to the Committee on Judiciary.

A bill to amend sections 2, 2a, and 18d 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 2a as amended and section 18d as added by Act No. 54

of the Public Acts of 1988, being sections 712A.2, 712A.2a, and 712A.18d of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2, 2a, and 18d of chapter XIIA 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:

14 (1) Except as otherwise provided in this subparagraph, the
15 child has violated any municipal ordinance or law of the state or
16 of the United States. The juvenile division of the probate court
17 ~~shall have~~ HAS jurisdiction over a child 15 years of age or
18 older who is charged with a violation of section 83, 89, 91, 316,
19 317, 520b, ~~or~~ 529, OR 529A of the Michigan penal code, Act
20 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, AND
22 750.529A of the Michigan Compiled Laws, or section 7401(2)(a)(i)
23 or 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, ONLY 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 of
4 the Public Acts of 1978, being sections 700.424b and 700.424c of
5 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~~ IS governed by rule of
27 the 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 of~~ divorce JUDGMENT
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~~ BEFORE A 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 PROBATE judge ~~of probate~~ of the county of residence. ~~which~~
7 THE order, together with a certified copy of the proceedings in
8 the TRANSFERRING court, ~~of the county other than the county of~~
9 ~~residence,~~ shall be delivered to the court of the county of
10 residence.

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

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

1 Laws, and ~~the child is ordered so placed by the circuit court or~~
 2 ~~the recorder's court of the city of Detroit. If~~ IF the circuit
 3 court or the recorder's court of the city of Detroit ~~issues an~~
 4 ~~order to~~ ORDERS the juvenile division of the probate court in
 5 the SAME county ~~in which the circuit court or the recorder's~~
 6 ~~court is located and orders a child placed in a detention home~~
 7 ~~operated as an agency of the court pending trial, the~~ TO PLACE
 8 THE CHILD IN THAT HOME. THE juvenile division ~~of the probate~~
 9 ~~court~~ shall comply with that order.

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

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

1 sections 333.7401 and 333.7403 of the Michigan Compiled Laws,
2 jurisdiction may be continued until the child is 21 years of age
3 under section 18d of this chapter.

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

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

1 making this determination, the court shall consider ALL OF 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 CHILD'S prior record and character ~~of the child~~
9 and his or 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~~ UNLESS ADJOURNED FOR GOOD CAUSE, A review hearing
18 shall be scheduled and held ~~, unless adjourned for good cause,~~
19 as near as possible to, but before, the child's nineteenth
20 birthday. If the institution, agency, or facility to which the
21 child was committed believes ~~that~~ the child has been rehabili-
22 tated and ~~that the child~~ does not present a serious risk to
23 public safety, the institution, agency, or facility may petition
24 the court to conduct a review hearing ~~at~~ any time before the
25 child becomes 19 years of age or, if the court has continued
26 jurisdiction under subsection (1), ~~at~~ any time before the child
27 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. 773
20 of the 87th Legislature is enacted into law.