

# HOUSE BILL No. 6220

November 5, 1998, Introduced by Rep. Basham and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled

"An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties,"

by amending sections 2, 6a, and 11 of chapter XIIIA (MCL 712A.2, 712A.6a, and 712A.11), sections 2 and 11 as amended by 1996 PA 409 and section 6a as added by 1996 PA 252, and by adding section 17d to chapter XIIIA.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

## 1 CHAPTER XIIIA

2 Sec. 2. The court has the following authority and  
3 jurisdiction:

4 (a) Exclusive original jurisdiction superior to and regard-  
5 less of the jurisdiction of any other court in proceedings con-  
6 cerning a juvenile under 17 years of age who is found within the  
7 county if 1 or more of the following applies:

8 (1) Except as otherwise provided in this sub-subdivision,  
9 the juvenile has violated any municipal ordinance or law of the  
10 state or of the United States. The court has jurisdiction over a  
11 juvenile 14 years of age or older who is charged with a specified  
12 juvenile violation only if the prosecuting attorney files a peti-  
13 tion in the court instead of authorizing a complaint and  
14 warrant. As used in this sub-subdivision, "specified juvenile  
15 violation" means any of the following:

16 (A) A violation of section 72, 83, 86, 89, 91, 316, 317,  
17 349, 520b, 529, 529a, or 531 of the Michigan penal code, ~~Act~~  
18 ~~No. 328 of the Public Acts of 1931, being sections~~ 1931 PA 328,  
19 MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317,  
20 750.349, 750.520b, 750.529, 750.529a, and 750.531. ~~of the~~  
21 ~~Michigan Compiled Laws.~~

22 (B) A violation of section 84 or 110a(2) of ~~Act No. 328 of~~  
23 ~~the Public Acts of 1931, being sections 750.84 and 750.110a of~~  
24 ~~the Michigan Compiled Laws~~ THE MICHIGAN PENAL CODE, 1931 PA 328,  
25 MCL 750.84 AND 750.110A, if the juvenile is armed with a

1 dangerous weapon. As used in this paragraph, "dangerous weapon"  
2 means 1 or more of the following:

3 (i) A loaded or unloaded firearm, whether operable or  
4 inoperable.

5 (ii) A knife, stabbing instrument, brass knuckles, black-  
6 jack, club, or other object specifically designed or customarily  
7 carried or possessed for use as a weapon.

8 (iii) An object that is likely to cause death or bodily  
9 injury when used as a weapon and that is used as a weapon or car-  
10 ried or possessed for use as a weapon.

11 (iv) An object or device that is used or fashioned in a  
12 manner to lead a person to believe the object or device is an  
13 object or device described in subparagraphs (i) to (iii).

14 (C) A violation of section 186a of ~~Act No. 328 of the~~  
15 ~~Public Acts of 1931, being section 750.186a of the Michigan~~  
16 ~~Compiled Laws~~ THE MICHIGAN PENAL CODE, 1931 PA 328, MCL  
17 750.186A, regarding escape or attempted escape from a juvenile  
18 facility, but only if the juvenile facility from which the indi-  
19 vidual escaped or attempted to escape was 1 of the following:

20 (i) A high-security or medium-security facility operated by  
21 the family independence agency.

22 (ii) A high-security facility operated by a private agency  
23 under contract with the family independence agency.

24 (D) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of  
25 the public health code, ~~Act No. 368 of the Public Acts of 1978,~~  
26 ~~being sections 333.7401 and 333.7403 of the Michigan Compiled~~  
27 ~~Laws~~ 1978 PA 368, MCL 333.7401 AND 333.7403.

1 (E) An attempt to commit a violation described in paragraphs  
2 (A) to (D).

3 (F) Conspiracy to commit a violation described in paragraphs  
4 (A) to (D).

5 (G) Solicitation to commit a violation described in para-  
6 graphs (A) to (D).

7 (H) Any lesser included offense of a violation described in  
8 paragraphs (A) to (G) if the individual is charged with a viola-  
9 tion described in paragraphs (A) to (G).

10 (I) Any other violation arising out of the same transaction  
11 as a violation described in paragraphs (A) to (G) if the individ-  
12 ual is charged with a violation described in paragraphs (A) to  
13 (G).

14 (2) The juvenile has deserted his or her home without suffi-  
15 cient cause and the court finds on the record that the juvenile  
16 has been placed or refused alternative placement or the juvenile  
17 and the juvenile's parent, guardian, or custodian have exhausted  
18 or refused family counseling.

19 (3) The juvenile is repeatedly disobedient to the reasonable  
20 and lawful commands of his or her parents, guardian, or custodian  
21 and the court finds on the record by clear and convincing evi-  
22 dence that court-accessed services are necessary.

23 (4) The juvenile willfully and repeatedly absents himself or  
24 herself from school or other learning program intended to meet  
25 the juvenile's educational needs, or repeatedly violates rules  
26 and regulations of the school or other learning program, and the  
27 court finds on the record that the juvenile, the juvenile's

1 parent, guardian, or custodian, and school officials or learning  
2 program personnel have met on the juvenile's educational problems  
3 — and educational counseling and alternative agency help have  
4 been sought. As used in this sub-subdivision only, "learning  
5 program" means an organized educational program that is appropri-  
6 ate, given the age, intelligence, ability, and any psychological  
7 limitations of a juvenile, in the subject areas of reading,  
8 spelling, mathematics, science, history, civics, writing, and  
9 English grammar.

10 (5) THE JUVENILE IS ABSENT FROM SCHOOL WITHOUT VALID EXCUSE  
11 FOR MORE THAN 5 DAYS IN A SEMESTER IN VIOLATION OF SECTION 1580  
12 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1580.

13 (b) Jurisdiction in proceedings concerning any juvenile  
14 under 18 years of age found within the county:

15 (1) Whose parent or other person legally responsible for the  
16 care and maintenance of the juvenile, when able to do so,  
17 neglects or refuses to provide proper or necessary support, edu-  
18 cation, medical, surgical, or other care necessary for his or her  
19 health or morals, who is subject to a substantial risk of harm to  
20 his or her mental well-being, who is abandoned by his or her par-  
21 ents, guardian, or other custodian, or who is without proper cus-  
22 tody or guardianship. As used in this sub-subdivision:

23 (A) "Education" means learning based on an organized educa-  
24 tional program that is appropriate, given the age, intelligence,  
25 ability, and any psychological limitations of a juvenile, in the  
26 subject areas of reading, spelling, mathematics, science,  
27 history, civics, writing, and English grammar.

1 (B) "Without proper custody or guardianship" does not mean a  
2 parent has placed the juvenile with another person who is legally  
3 responsible for the care and maintenance of the juvenile and who  
4 is able to and does provide the juvenile with proper care and  
5 maintenance.

6 (2) Whose home or environment, by reason of neglect, cruel-  
7 ty, drunkenness, criminality, or depravity on the part of a  
8 parent, guardian, or other custodian, is an unfit place for the  
9 juvenile to live in.

10 (3) Whose parent has substantially failed, without good  
11 cause, to comply with a limited guardianship placement plan  
12 described in section 424a of the revised probate code, ~~Act~~  
13 ~~No. 642 of the Public Acts of 1978, being section 700.424a of the~~  
14 ~~Michigan Compiled Laws~~ 1978 PA 642, MCL 700.424A, regarding the  
15 juvenile.

16 (4) Whose parent has substantially failed, without good  
17 cause, to comply with a court-structured plan described in  
18 section 424b or 424c of the revised probate code, ~~Act No. 642 of~~  
19 ~~the Public Acts of 1978, being sections 700.424b and 700.424c of~~  
20 ~~the Michigan Compiled Laws~~ 1978 PA 642, MCL 700.424B AND  
21 700.424C, regarding the juvenile.

22 (5) If the juvenile has a guardian under the revised probate  
23 code, ~~Act No. 642 of the Public Acts of 1978, being sections~~  
24 ~~700.1 to 700.993 of the Michigan Compiled Laws~~ 1978 PA 642, MCL  
25 700.1 TO 700.993, and the juvenile's parent meets both of the  
26 following criteria:

1 (A) The parent, having the ability to support or assist in  
2 supporting the juvenile, has failed or neglected, without good  
3 cause, to provide regular and substantial support for the juve-  
4 nile for ~~a period of~~ 2 years or more before the filing of the  
5 petition or, if a support order has been entered, has failed to  
6 substantially comply with the order for ~~a period of~~ 2 years or  
7 more before the filing of the petition.

8 (B) The parent, having the ability to visit, contact, or  
9 communicate with the juvenile, has regularly and substantially  
10 failed or neglected, without good cause, to do so for ~~a period~~  
11 ~~of~~ 2 years or more before the filing of the petition.

12 If a petition is filed in the court alleging that a juvenile  
13 is within the provisions of subdivision (b)(1), (2), (3), (4), or  
14 (5) —, and the custody of that juvenile is subject to the prior  
15 or continuing order of another court of record of this state, the  
16 manner of notice to the other court of record and the authority  
17 of the court to proceed is governed by rule of the supreme  
18 court.

19 (c) Jurisdiction over juveniles under 18 years of age,  
20 jurisdiction of whom has been waived to the family division of  
21 circuit court by a circuit court ~~pursuant to~~ UNDER a provision  
22 in a temporary order for custody of juveniles based upon a com-  
23 plaint for divorce or upon a motion pursuant to a complaint for  
24 divorce by the prosecuting attorney, in a divorce judgment dis-  
25 solving a marriage between the parents of the juveniles, or by an  
26 amended judgment relative to the custody of the juvenile in a  
27 divorce.

1 (d) If the court finds on the record that voluntary services  
2 have been exhausted or refused, concurrent jurisdiction in pro-  
3 ceedings concerning any juvenile between the ages of 17 and 18  
4 found within the county WHO IS ANY OF THE FOLLOWING:

5 (1) ~~Who is repeatedly~~ REPEATEDLY addicted to the use of  
6 drugs or the intemperate use of alcoholic liquors.

7 (2) ~~Who repeatedly associates~~ REPEATEDLY ASSOCIATING with  
8 criminal, dissolute, or disorderly persons.

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

11 (4) ~~Who repeatedly associates~~ REPEATEDLY ASSOCIATING with  
12 thieves, prostitutes, pimps, or procurers.

13 (5) ~~Who is willfully~~ WILLFULLY disobedient to the reason-  
14 able and lawful commands of his or her parents, guardian, or  
15 other custodian and ~~is~~ in danger of becoming morally depraved.

16 If any juvenile is brought before the ~~family division of~~  
17 ~~circuit~~ court in a county other than that in which the juvenile  
18 resides, ~~the court may,~~ before a hearing and with the consent  
19 of the judge of the ~~family division of circuit~~ court in the  
20 county of residence, THE COURT MAY enter an order transferring  
21 ~~the~~ jurisdiction of the matter to the court of the county of  
22 residence. The order is not a legal settlement as defined in  
23 section 55 of the social welfare act, ~~Act No. 280 of the Public~~  
24 ~~Acts of 1939, being section 400.55 of the Michigan Compiled Laws~~  
25 1939 PA 280, MCL 400.55. The order ~~, together with~~ AND a cer-  
26 tified copy of the proceedings in the transferring court ~~,~~  
27 shall be delivered to the court of the county ~~or circuit~~ of

1 residence. A case designated as a case in which the juvenile  
2 shall be tried in the same manner as an adult under section 2d of  
3 this chapter may be transferred for venue or for juvenile dispo-  
4 sition, but shall not be transferred on grounds of residency. If  
5 the case is not transferred, the case shall be tried by the ~~the~~  
6 ~~family division of circuit~~ court having jurisdiction of the  
7 offense.

8 (e) Authority to establish or assist in developing a program  
9 or programs within the county to prevent delinquency and provide  
10 services to act upon reports submitted to the court related to  
11 the behavior of juveniles who do not require formal court juris-  
12 diction but otherwise fall within subdivision (a). These serv-  
13 ices shall be used only if they are voluntarily accepted by the  
14 juvenile and his or her parents, guardian, or custodian.

15 (f) If the court operates a detention home for juveniles  
16 within the court's jurisdiction under subdivision (a)(1), author-  
17 ity to place a juvenile within that home pending trial if the  
18 juvenile is within the circuit court's jurisdiction under section  
19 606 of the revised judicature act of 1961, ~~Act No. 236 of the~~  
20 ~~Public Acts of 1961, being section 600.606 of the Michigan~~  
21 ~~Compiled Laws, or within the recorder's court of the city of~~  
22 ~~Detroit's jurisdiction under section 10a(1)(c) of Act No. 369 of~~  
23 ~~the Public Acts of 1919, being section 725.10a of the Michigan~~  
24 ~~Compiled Laws~~ 1961 PA 236, MCL 600.606, and if the circuit court  
25 ~~or the recorder's court of the city of Detroit~~ orders the  
26 family division of circuit court in the same county to place the

1 juvenile in that home. The family division of circuit court  
2 shall comply with that order.

3 (g) Authority to place a juvenile in a county jail under  
4 section 27a of chapter IV of the code of criminal procedure, ~~Act~~  
5 ~~No. 175 of the Public Acts of 1927, being section 764.27a of the~~  
6 ~~Michigan Compiled Laws~~ 1927 PA 175, MCL 764.27A, if the COURT  
7 DESIGNATES THE case ~~is designated by the court~~ under section 2d  
8 of this chapter as a case in which the juvenile is to be tried in  
9 the same manner as an adult ~~,~~ and the court ~~has determined~~  
10 ~~that~~ DETERMINES there is probable cause to believe that the  
11 offense was committed and ~~that there is~~ probable cause to  
12 believe the juvenile committed that offense.

13 Sec. 6a. The parent or guardian of a juvenile who is within  
14 the court's jurisdiction under section 2(a)(1), (4), OR (5) of  
15 this chapter shall attend each hearing held under this chapter  
16 unless the court excuses the parent or guardian from attendance  
17 for good cause. A parent or guardian who fails to attend the  
18 juvenile's hearing without good cause may be held in contempt and  
19 subject to fines. Failure of a parent or guardian to attend a  
20 hearing, however, is not grounds for an adjournment, continuance,  
21 or other delay of the proceeding and does not provide a basis for  
22 appellate or other relief.

23 Sec. 11. (1) ~~Except as provided in subsection (2), if~~ IF  
24 a person gives information to the court that a juvenile is within  
25 section 2(a)(2) to ~~(6)~~ (4), (b), (c), or (d) of this chapter, a  
26 preliminary inquiry may be made to determine whether the  
27 interests of the public or the juvenile require that further

1 action be taken. If the court determines that formal  
2 jurisdiction should be acquired, the court shall authorize a  
3 petition to be filed.

4 (2) Only the prosecuting attorney may file a petition  
5 requesting the court to take jurisdiction of a juvenile allegedly  
6 within section 2(a)(1) of this chapter. If the prosecuting  
7 attorney submits a petition requesting the court to take juris-  
8 diction of a juvenile allegedly within section 2(a)(1) of this  
9 chapter and the court determines that formal jurisdiction should  
10 be acquired, the court shall authorize a petition to be filed.

11 (3) IF A PETITION IS FILED REQUESTING THE COURT TO TAKE  
12 JURISDICTION OF A JUVENILE ALLEGEDLY WITHIN SECTION 2(A)(5) OF  
13 THIS CHAPTER, THE COURT SHALL HOLD A HEARING WITHIN 10 DAYS. IF  
14 THE COURT DETERMINES THAT THE ALLEGATIONS IN THE PETITION ARE  
15 SUPPORTED, THE COURT SHALL AUTHORIZE A PETITION TO BE FILED AND  
16 OBTAIN FORMAL JURISDICTION. THE COURT SHALL NOTIFY THE PROSECUT-  
17 ING ATTORNEY UNLESS HE OR SHE FILED THE PETITION.

18 (4) ~~(3)~~ The petition described in subsections (1), ~~and~~  
19 (2), AND (3) shall be verified and may be upon information and  
20 belief. The petition shall set forth plainly the facts that  
21 bring the juvenile within this chapter and shall contain all of  
22 the following information:

23 (a) The juvenile's name, birth date, and address.

24 (b) The name and address of the juvenile's parents.

25 (c) The name and address of the juvenile's legal guardian,  
26 if there is one.

1 (d) The name and address of each person having custody or  
2 control of the juvenile.

3 (e) The name and address of the juvenile's nearest known  
4 relative, if no parent or guardian can be found.

5 (5) ~~(4)~~ If any of the facts required under subsection  
6 ~~(3)~~ (4) are not known to the petitioner, the petition shall  
7 state that the facts are not known. If the juvenile attains his  
8 or her seventeenth birthday after the filing of the petition, the  
9 court's jurisdiction shall continue beyond the juvenile's seven-  
10 teenth birthday and the court may hear and dispose of the peti-  
11 tion under this chapter.

12 (6) ~~(5)~~ When a petition is authorized, the court shall  
13 examine the court file to determine if a juvenile has had finger-  
14 prints taken as required under section 3 of ~~Act No. 289 of the~~  
15 ~~Public Acts of 1925, being section 28.243 of the Michigan~~  
16 ~~Compiled Laws~~ 1925 PA 289, MCL 28.243. If a juvenile has not  
17 had his or her fingerprints taken, the court shall do either of  
18 the following:

19 (a) Order the juvenile to submit himself or herself to the  
20 police agency that arrested or obtained the warrant for the  
21 JUVENILE'S arrest ~~of the juvenile~~ so the juvenile's finger-  
22 prints can be taken.

23 (b) Order the juvenile committed to the SHERIFF'S custody  
24 ~~of the sheriff~~ for ~~the~~ taking ~~of~~ the juvenile's  
25 fingerprints.

26 (7) ~~(6)~~ A petition or other court record may be amended at  
27 any stage of the proceedings as the ends of justice require.

1       (8) ~~-(7)-~~ If the juvenile diversion act, ~~Act No. 13 of the~~  
2 ~~Public Acts of 1988, being sections 722.821 to 722.831 of the~~  
3 ~~Michigan Compiled Laws~~ 1988 PA 13, MCL 722.821 TO 722.831, is  
4 complied with and the court determines that court services can be  
5 used in the prevention of delinquency without formal jurisdic-  
6 tion, the court may offer court services to a juvenile without a  
7 petition being authorized as provided in section 2(e) of this  
8 chapter.

9       SEC. 17D. (1) WITHIN 10 DAYS AFTER ACQUIRING JURISDICTION  
10 OVER A JUVENILE UNDER SECTION 2(A)(5) OF THIS CHAPTER, THE COURT  
11 SHALL HOLD A HEARING.

12       (2) THE COURT SHALL ENTER AN ORDER OF DISPOSITION WITHIN 5  
13 DAYS AFTER THE HEARING. THE ORDER OF DISPOSITION SHALL DO ALL OF  
14 THE FOLLOWING:

15       (A) ORDER THE JUVENILE TO ATTEND SCHOOL AS PROVIDED BY LAW.

16       (B) ORDER THE JUVENILE TO PERFORM AT LEAST 4 HOURS OF COMMU-  
17 NITY SERVICE OR TO SERVE AT LEAST 4 HOURS OF DETENTION AT SCHOOL  
18 WITH HIS OR HER PARENT OR LEGAL GUARDIAN.

19       (3) IN ADDITION, THE ORDER OF DISPOSITION MAY CONTAIN ANY  
20 PROVISION AUTHORIZED UNDER SECTION 18 OF THIS CHAPTER.

21       Enacting section 1. This amendatory act does not take  
22 effect unless Senate Bill No. \_\_\_\_\_ or House Bill  
23 No. \_\_\_\_\_ (request no. 06568'98) of the 89th Legislature is  
24 enacted into law.