

# HOUSE BILL No. 6405

September 5, 2006, Introduced by Reps. Baxter, Schuitmaker, Casperson, Emmons, Moore, Shaffer, Elsenheimer and Farhat and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled  
"Probate code of 1939,"  
by amending sections 1, 2, and 14 of chapter XIIA (MCL 712A.1,  
712A.2, and 712A.14), as amended by 2001 PA 211.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

### CHAPTER XIIA

Sec. 1. (1) As used in this chapter:

(a) "Civil infraction" means that term as defined in section  
113 of the revised judicature act of 1961, 1961 PA 236, MCL  
600.113.

(b) "County juvenile agency" means that term as defined in  
section 2 of the county juvenile agency act, 1998 PA 518, MCL  
45.622.

(c) "Court" means the family division of circuit court.

1 (d) "Foreign protection order" means that term as defined in  
2 section 2950h of the revised judicature act of 1961, 1961 PA 236,  
3 MCL 600.2950h.

4 (e) "MCI" means the Michigan children's institute created and  
5 established by 1935 PA 220, MCL 400.201 to 400.214.

6 (f) "Personal protection order" means a personal protection  
7 order issued under section 2950, ~~or~~ 2950a, **OR 2976** of the revised  
8 judicature act of 1961, 1961 PA 236, MCL 600.2950, ~~and~~ 600.2950a,  
9 and ~~includes~~ **600.2976, OR** a valid foreign protection order.

10 (g) "Valid foreign protection order" means a foreign  
11 protection order that satisfies the conditions for validity  
12 provided in section 2950i of the revised judicature act of 1961,  
13 1961 PA 236, MCL 600.2950i.

14 (2) Except as otherwise provided, proceedings under this  
15 chapter are not criminal proceedings.

16 (3) This chapter shall be liberally construed so that each  
17 juvenile coming within the court's jurisdiction receives the care,  
18 guidance, and control, preferably in his or her own home, conducive  
19 to the juvenile's welfare and the best interest of the state. If a  
20 juvenile is removed from the control of his or her parents, the  
21 juvenile shall be placed in care as nearly as possible equivalent  
22 to the care that should have been given to the juvenile by his or  
23 her parents.

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

26 (a) Exclusive original jurisdiction superior to and regardless  
27 of the jurisdiction of another court in proceedings concerning a

1 juvenile under 17 years of age who is found within the county if 1  
2 or more of the following applies:

3 (1) Except as otherwise provided in this sub-subdivision, the  
4 juvenile has violated any municipal ordinance or law of the state  
5 or of the United States. If the court enters into an agreement  
6 under section 2e of this chapter, the court has jurisdiction over a  
7 juvenile who committed a civil infraction as provided in that  
8 section. The court has jurisdiction over a juvenile 14 years of age  
9 or older who is charged with a specified juvenile violation only if  
10 the prosecuting attorney files a petition in the court instead of  
11 authorizing a complaint and warrant. As used in this sub-  
12 subdivision, "specified juvenile violation" means 1 or more of the  
13 following:

14 (A) A violation of section 72, 83, 86, 89, 91, 316, 317, 349,  
15 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328,  
16 MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317,  
17 750.349, 750.520b, 750.529, 750.529a, and 750.531.

18 (B) A violation of section 84 or 110a(2) of the Michigan penal  
19 code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is  
20 armed with a dangerous weapon. As used in this paragraph,  
21 "dangerous weapon" means 1 or more of the following:

22 (i) A loaded or unloaded firearm, whether operable or  
23 inoperable.

24 (ii) A knife, stabbing instrument, brass knuckles, blackjack,  
25 club, or other object specifically designed or customarily carried  
26 or possessed for use as a weapon.

27 (iii) An object that is likely to cause death or bodily injury

1 when used as a weapon and that is used as a weapon or carried or  
2 possessed for use as a weapon.

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

6 (C) A violation of section 186a of the Michigan penal code,  
7 1931 PA 328, MCL 750.186a, regarding escape or attempted escape  
8 from a juvenile facility, but only if the juvenile facility from  
9 which the individual escaped or attempted to escape was 1 of the  
10 following:

11 (i) A high-security or medium-security facility operated by the  
12 family independence agency or a county juvenile agency.

13 (ii) A high-security facility operated by a private agency  
14 under contract with the family independence agency or a county  
15 juvenile agency.

16 (D) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of  
17 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

18 (E) An attempt to commit a violation described in paragraphs  
19 (A) to (D).

20 (F) Conspiracy to commit a violation described in paragraphs  
21 (A) to (D).

22 (G) Solicitation to commit a violation described in paragraphs  
23 (A) to (D).

24 (H) A lesser included offense of a violation described in  
25 paragraphs (A) to (G) if the individual is charged with a violation  
26 described in paragraphs (A) to (G).

27 (I) Another violation arising out of the same transaction as a

1 violation described in paragraphs (A) to (G) if the individual is  
2 charged with a violation described in paragraphs (A) to (G).

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

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

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

25 (b) Jurisdiction in proceedings concerning a juvenile under 18  
26 years of age found within the county:

27 (1) Whose parent or other person legally responsible for the

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

8 (A) "Education" means learning based on an organized  
9 educational program that is appropriate, given the age,  
10 intelligence, ability, and psychological limitations of a juvenile,  
11 in the subject areas of reading, spelling, mathematics, science,  
12 history, civics, writing, and English grammar.

13 (B) "Without proper custody or guardianship" does not mean a  
14 parent has placed the juvenile with another person who is legally  
15 responsible for the care and maintenance of the juvenile and who is  
16 able to and does provide the juvenile with proper care and  
17 maintenance.

18 (2) Whose home or environment, by reason of neglect, cruelty,  
19 drunkenness, criminality, or depravity on the part of a parent,  
20 guardian, nonparent adult, or other custodian, is an unfit place  
21 for the juvenile to live in.

22 (3) Whose parent has substantially failed, without good cause,  
23 to comply with a limited guardianship placement plan described in  
24 section 5205 of the estates and protected individuals code, 1998 PA  
25 386, MCL 700.5205, regarding the juvenile.

26 (4) Whose parent has substantially failed, without good cause,  
27 to comply with a court-structured plan described in section 5207 or

1 5209 of the estates and protected individuals code, 1998 PA 386,  
2 MCL 700.5207 and 700.5209, regarding the juvenile.

3 (5) If the juvenile has a guardian under the estates and  
4 protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102,  
5 and the juvenile's parent meets both of the following criteria:

6 (A) The parent, having the ability to support or assist in  
7 supporting the juvenile, has failed or neglected, without good  
8 cause, to provide regular and substantial support for the juvenile  
9 for 2 years or more before the filing of the petition or, if a  
10 support order has been entered, has failed to substantially comply  
11 with the order for 2 years or more before the filing of the  
12 petition.

13 (B) The parent, having the ability to visit, contact, or  
14 communicate with the juvenile, has regularly and substantially  
15 failed or neglected, without good cause, to do so for 2 years or  
16 more before the filing of the petition.

17 If a petition is filed in the court alleging that a juvenile  
18 is within the ~~provisions of~~ **JURISDICTION OF THE COURT UNDER**  
19 subdivision ~~(b)(1), (2), (3), (4), or (5)~~ **(B)** and the custody of  
20 that juvenile is subject to the prior or continuing order of  
21 another court of record of this state, the manner of notice to the  
22 other court of record and the authority of the court to proceed is  
23 governed by rule of the supreme court.

24 (c) Jurisdiction over juveniles under 18 years of age,  
25 jurisdiction of whom has been waived to the family division of  
26 circuit court by a circuit court under a provision in a temporary  
27 order for custody of juveniles based upon a complaint for divorce

1 or upon a motion related to a complaint for divorce by the  
2 prosecuting attorney, in a divorce judgment dissolving a marriage  
3 between the juvenile's parents, or by an amended judgment relative  
4 to the juvenile's custody in a divorce.

5 (d) If the court finds on the record that voluntary services  
6 have been exhausted or refused, concurrent jurisdiction in  
7 proceedings concerning a juvenile between the ages of 17 and 18  
8 found within the county who is 1 or more of the following:

9 (1) Repeatedly addicted to the use of drugs or the intemperate  
10 use of alcoholic liquors.

11 (2) Repeatedly associating with criminal, dissolute, or  
12 disorderly persons.

13 (3) Found of his or her own free will and knowledge in a house  
14 of prostitution, assignation, or ill-fame.

15 (4) Repeatedly associating with thieves, prostitutes, pimps,  
16 or procurers.

17 (5) Willfully disobedient to the reasonable and lawful  
18 commands of his or her parents, guardian, or other custodian and in  
19 danger of becoming morally depraved.

20 If a juvenile is brought before the court in a county other  
21 than that in which the juvenile resides, before a hearing and with  
22 the consent of the judge of the court in the county of residence,  
23 the court may enter an order transferring jurisdiction of the  
24 matter to the court of the county of residence. Consent to transfer  
25 jurisdiction is not required if the county of residence is a county  
26 juvenile agency and satisfactory proof of residence is furnished to  
27 the court of the county of residence. The order does not constitute



1 a legal settlement in this state that is required for the purpose  
2 of section 55 of the social welfare act, 1939 PA 280, MCL 400.55.  
3 The order and a certified copy of the proceedings in the  
4 transferring court shall be delivered to the court of the county of  
5 residence. A case designated as a case in which the juvenile shall  
6 be tried in the same manner as an adult under section 2d of this  
7 chapter may be transferred for venue or for juvenile disposition,  
8 but shall not be transferred on grounds of residency. If the case  
9 is not transferred, the court having jurisdiction of the offense  
10 shall try the case.

11 (e) Authority to establish or assist in developing a program  
12 or programs within the county to prevent delinquency and provide  
13 services to act upon reports submitted to the court related to the  
14 behavior of a juvenile who does not require formal court  
15 jurisdiction but otherwise falls within subdivision (a). These  
16 services shall be used only if the juvenile and his or her parents,  
17 guardian, or custodian voluntarily accepts them.

18 (f) If the court operates a detention home for juveniles  
19 within the court's jurisdiction under subdivision (a)(1), authority  
20 to place a juvenile within that home pending trial if the juvenile  
21 is within the circuit court's jurisdiction under section 606 of the  
22 revised judicature act of 1961, 1961 PA 236, MCL 600.606, and if  
23 the circuit court orders the family division of circuit court in  
24 the same county to place the juvenile in that home. The family  
25 division of circuit court shall comply with that order.

26 (g) Authority to place a juvenile in a county jail under  
27 section 27a of chapter IV of the code of criminal procedure, 1927

1 PA 175, MCL 764.27a, if the court designates the case under section  
2 2d of this chapter as a case in which the juvenile is to be tried  
3 in the same manner as an adult and the court determines there is  
4 probable cause to believe that the offense was committed and  
5 probable cause to believe the juvenile committed that offense.

6 (h) Jurisdiction over a proceeding under section 2950, ~~or~~  
7 2950a, **OR 2976** of the revised judicature act of 1961, 1961 PA 236,  
8 MCL 600.2950, ~~and~~ 600.2950a, **AND 600.2976**, in which a minor less  
9 than 18 years of age is the respondent, or a proceeding to enforce  
10 a valid foreign protection order issued against a respondent who is  
11 a minor less than 18 years of age. A personal protection order  
12 shall not be issued against a respondent who is a minor less than  
13 10 years of age. Venue for an initial action under section 2950 or  
14 2950a of the revised judicature act of 1961, 1961 PA 236, MCL  
15 600.2950 and 600.2950a, is proper in the county of residence of  
16 either the petitioner or respondent. If the respondent does not  
17 live in this state, venue for the initial action is proper in the  
18 petitioner's county of residence.

19 Sec. 14. (1) Any local police officer, sheriff or deputy  
20 sheriff, state police officer, county agent, or probation officer  
21 of any court of record may, without the order of the court,  
22 immediately take into custody any child who is found violating any  
23 law or ordinance, ~~or~~ whose surroundings are such as to endanger  
24 his or her health, morals, or welfare, ~~or for~~ **AS TO** whom there is  
25 reasonable cause to believe **THAT HE OR SHE** is violating or has  
26 violated a personal protection order issued pursuant to section  
27 2(h) by the court under section 2950, ~~or~~ 2950a, **OR 2976** of the

1 revised judicature act of 1961, 1961 PA 236, MCL 600.2950, ~~and~~  
2 600.2950a, ~~or for~~ **AND 600.2976, OR AS TO** whom there is reasonable  
3 cause to believe **THAT HE OR SHE** is violating or has violated a  
4 valid foreign protection order. If such an officer or county agent  
5 takes a child coming within the provisions of this chapter into  
6 custody, he or she shall immediately attempt to notify the parent  
7 or parents, guardian, or custodian. While awaiting the arrival of  
8 the parent or parents, guardian, or custodian, a child under the  
9 age of 17 years taken into custody under the provisions of this  
10 chapter shall not be held in any detention facility unless the  
11 child is completely isolated so as to prevent any verbal, visual,  
12 or physical contact with any adult prisoner. Unless the child  
13 requires immediate detention as provided for in this act, the  
14 officer shall accept the written promise of the parent or parents,  
15 guardian, or custodian, to bring the child to the court at a time  
16 ~~fixed therein~~ **STATED IN THE WRITTEN PROMISE**. The child shall then  
17 be released to the custody of the parent or parents, guardian, or  
18 custodian.

19 (2) If a child is not released under subsection (1), the child  
20 and his or her parents, guardian, or custodian, if they can be  
21 located, shall immediately be brought before the court for a  
22 preliminary hearing on the status of the child, and an order signed  
23 by a judge of probate or a referee authorizing the filing of a  
24 complaint shall be entered or the child shall be released to his or  
25 her parent or parents, guardian, or custodian.

26 (3) If a complaint is authorized under subsection (2), the  
27 order shall state where the child is to be placed, pending

1 investigation and hearing, which placement may be in any of the  
2 following:

3 (a) ~~In the~~ **THE** home of the child's parent, guardian, or  
4 custodian.

5 (b) If ~~a~~ **THE** child is within the court's jurisdiction under  
6 section 2(a) of this chapter, ~~in~~ a suitable foster care home  
7 subject to the court's supervision. ~~Except as otherwise provided~~  
8 ~~in subsections (4) and (5), if~~ **IF** a child is within the court's  
9 jurisdiction under section 2(b) of this chapter, the court shall  
10 not place a child in a foster care home subject to the court's  
11 supervision.

12 (c) ~~In a~~ **A** child care institution or child placing agency  
13 licensed by the state department of social services to receive for  
14 care children within the jurisdiction of the court.

15 (d) ~~In a~~ **A** suitable place of detention.

16 ~~—— (4) Except as otherwise provided in subsection (5), if a court~~  
17 ~~is providing at the time of the enactment of this subsection foster~~  
18 ~~care home services subject to the court's supervision to children~~  
19 ~~within section 2(b) of this chapter, the court may continue to~~  
20 ~~provide those services through December 31, 1989. Beginning January~~  
21 ~~1, 1990, the court shall discontinue providing those services.~~

22 ~~—— (5) If a court located in a county with a population in excess~~  
23 ~~of 650,000 is providing at the time of the enactment of this~~  
24 ~~subsection foster care home services subject to the court's~~  
25 ~~supervision to children within section 2(b) of this chapter, the~~  
26 ~~court may continue to provide those services through December 31,~~  
27 ~~1991. Beginning January 1, 1992, the court shall discontinue those~~

1 ~~services.~~

2       Enacting section 1. This amendatory act does not take effect  
3 unless Senate Bill No.\_\_\_\_ or House Bill No. 6403(request no.  
4 06887'06) of the 93rd Legislature is enacted into law.