

HOUSE BILL No. 5483

September 29, 2009, Introduced by Reps. Kowall, Schuitmaker, Liss, Bauer, Segal, Lipton, Byrnes, Haase, Crawford and Meadows and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending section 1 of chapter XIIIA (MCL 712A.1), as amended by 2001 PA 211, and by adding section 18s.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIIA

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.

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

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

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

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

11 (G) "QUALIFIED RESTORATION PROVIDER" MEANS A MENTAL HEALTH
12 PROFESSIONAL AS DEFINED IN SECTION 100B OF THE MENTAL HEALTH CODE,
13 1978 PA 258, MCL 330.1100B, WHO THE COURT DETERMINES HAS THE SKILLS
14 AND TRAINING NECESSARY TO PROVIDE RESTORATION SERVICES. THE COURT
15 SHALL TAKE MEASURES TO AVOID ANY CONFLICT OF INTEREST AMONG
16 AGENCIES OR INDIVIDUALS WHO MAY PROVIDE EVALUATION AND RESTORATION.
17 THE SKILLS NECESSARY TO CONDUCT RESTORATION SHALL INCLUDE, BUT ARE
18 NOT LIMITED TO, KNOWLEDGE, SKILL, TRAINING, AND EXPERIENCE IN ALL
19 OF THE FOLLOWING:

20 (i) THE EDUCATION OR TREATMENT OF CHILDREN AND ADOLESCENTS WITH
21 SERIOUS EMOTIONAL DISTURBANCE, MENTAL ILLNESS, OR DEVELOPMENTAL
22 DISABILITIES.

23 (ii) CLINICAL UNDERSTANDING OF CHILD DEVELOPMENT AND ADOLESCENT
24 DEVELOPMENT.

25 (iii) FORENSIC EVALUATION PROCEDURES FOR JUVENILES THROUGH
26 FORMAL INSTRUCTION, PROFESSIONAL SUPERVISION, OR BOTH.

27 (iv) FAMILIARITY WITH COMPETENCY STANDARDS AND RESTORATION

1 PROCEDURES IN THIS STATE.

2 (H) "RESTORATION" MEANS THE PROCESS BY WHICH EDUCATION OR
3 TREATMENT OF A JUVENILE RESULTS IN THAT JUVENILE BECOMING COMPETENT
4 TO PROCEED.

5 (I) ~~(g)~~ "Valid foreign protection order" means a foreign
6 protection order that satisfies the conditions for validity
7 provided in section 2950i of the revised judicature act of 1961,
8 1961 PA 236, MCL 600.2950i.

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

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

19 SEC. 18S. (1) IF THE JUVENILE IS INCOMPETENT TO PROCEED BUT
20 THE COURT FINDS THAT THE JUVENILE MAY BE RESTORED TO COMPETENCY IN
21 THE FORESEEABLE FUTURE, THEN 1 OF THE FOLLOW APPLIES:

22 (A) IF THE OFFENSE IS A MISDEMEANOR OTHER THAN A SERIOUS
23 MISDEMEANOR OR A JUVENILE TRAFFIC OFFENSE, THE MATTER SHALL BE
24 DISMISSED.

25 (B) IF THE OFFENSE IS A SERIOUS MISDEMEANOR, THE COURT MAY
26 DISMISS THE MATTER OR SUSPEND THE PROCEEDINGS AGAINST THE JUVENILE.

27 (C) IF THE OFFENSE IS A FELONY, THE PROCEEDINGS AGAINST THE

1 JUVENILE SHALL BE FURTHER SUSPENDED.

2 (2) IF PROCEEDINGS ARE SUSPENDED BECAUSE THE JUVENILE IS
3 INCOMPETENT TO PROCEED BUT THE COURT FINDS THAT THE JUVENILE MAY BE
4 RESTORED TO COMPETENCY IN THE FORESEEABLE FUTURE, THEN 1 OF THE
5 FOLLOWING APPLIES:

6 (A) THE COURT MAY ISSUE A RESTORATION ORDER THAT IS VALID FOR
7 180 DAYS FROM THE DATE OF THE INITIAL FINDING OF INCOMPETENCY OR
8 UNTIL 1 OF THE FOLLOWING OCCURS, WHICHEVER OCCURS FIRST:

9 (i) THE RESTORATION PROGRAM SUBMITS A REPORT THAT THE JUVENILE
10 HAS REGAINED COMPETENCY OR THAT THERE IS NO SUBSTANTIAL PROBABILITY
11 THAT THE JUVENILE WILL REGAIN COMPETENCY WITHIN THE PERIOD OF THE
12 ORDER.

13 (ii) THE CHARGES ARE DISMISSED.

14 (iii) THE JUVENILE REACHES 18 YEARS OF AGE.

15 (B) BEFORE ISSUING A RESTORATION ORDER, THE COURT SHALL HOLD A
16 HEARING TO DETERMINE THE LEAST RESTRICTIVE ALTERNATIVE SETTING FOR
17 COMPLETION OF THE RESTORATION.

18 (C) FOLLOWING ISSUANCE OF THE RESTORATION ORDER, THE QUALIFIED
19 RESTORATION PROVIDER SHALL SUBMIT A REPORT TO THE COURT THAT
20 INCLUDES THE INFORMATION REQUIRED UNDER SECTION 18P OF THIS
21 CHAPTER. THE REPORT SHALL BE SUBMITTED TO THE COURT EVERY 90 DAYS,
22 OR SOONER IF AND AT THE TIME EITHER OF THE FOLLOWING OCCURS:

23 (i) THE QUALIFIED RESTORATION PROVIDER DETERMINES THAT THE
24 JUVENILE IS NO LONGER INCOMPETENT TO PROCEED.

25 (ii) THE QUALIFIED RESTORATION PROVIDER DETERMINES THAT THERE
26 IS NO SUBSTANTIAL PROBABILITY THAT THE JUVENILE WILL NOT BE
27 INCOMPETENT TO PROCEED WITHIN THE PERIOD OF THE ORDER.

1 (3) NOT LATER THAN 20 DAYS BEFORE THE EXPIRATION OF THE
2 INITIAL 180-DAY ORDER, THE QUALIFIED RESTORATION PROVIDER MAY
3 RECOMMEND TO THE COURT THAT THE RESTORATION ORDER BE RENEWED BY THE
4 COURT FOR ANOTHER 90 DAYS, IF THERE IS A SUBSTANTIAL PROBABILITY
5 THAT THE JUVENILE WILL NOT BE INCOMPETENT TO PROCEED WITHIN THE
6 PERIOD OF THAT RENEWED RESTORATION ORDER. THE COURT MAY RENEW THE
7 RESTORATION ORDER FOR NOT MORE THAN AN ADDITIONAL 90 DAYS.

8 (4) UPON RECEIPT OF A REPORT THAT THERE IS A SUBSTANTIAL
9 PROBABILITY THAT THE JUVENILE WILL REMAIN INCOMPETENT TO PROCEED
10 FOR THE FORESEEABLE FUTURE OR WITHIN THE PERIOD OF THE RESTORATION
11 ORDER, THE COURT SHALL DO BOTH OF THE FOLLOWING:

12 (A) DISMISS THE CHARGES AGAINST THE JUVENILE.

13 (B) DETERMINE CUSTODY OF THE JUVENILE AS FOLLOWS:

14 (i) THE COURT MAY DIRECT CIVIL COMMITMENT PROCEEDINGS BE
15 INITIATED, AS ALLOWED UNDER SECTION 498D OF THE MENTAL HEALTH CODE,
16 1974 PA 258, MCL 330.1498D.

17 (ii) IF THE COURT DETERMINES THAT COMMITMENT PROCEEDINGS ARE
18 INAPPROPRIATE, THE JUVENILE SHALL BE RELEASED TO THE JUVENILE'S
19 PARENT, LEGAL GUARDIAN, OR LEGAL CUSTODIAN UNDER CONDITIONS
20 CONSIDERED APPROPRIATE TO THE COURT.