

HOUSE BILL No. 5745

September 9, 2014, Introduced by Reps. Jenkins and Kurtz and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 1 and 2a of chapter XIIIA (MCL 712A.1 and 712A.2a), section 1 as amended by 2012 PA 541 and section 2a as amended by 2011 PA 226.

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) "Competency evaluation" means a court-ordered examination of a juvenile directed to developing information relevant to a

1 determination of his or her competency to proceed at a particular
2 stage of a court proceeding involving a juvenile who is the subject
3 of a delinquency petition.

4 (c) "Competency hearing" means a hearing to determine whether
5 a juvenile is competent to proceed.

6 (d) "County juvenile agency" means that term as defined in
7 section 2 of the county juvenile agency act, 1998 PA 518, MCL
8 45.622.

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

10 **(F) "DEPARTMENT" MEANS THE DEPARTMENT OF HUMAN SERVICES. A**
11 **REFERENCE IN THIS CHAPTER TO THE "DEPARTMENT OF SOCIAL WELFARE" OR**
12 **THE "FAMILY INDEPENDENCE AGENCY" MEANS THE DEPARTMENT OF HUMAN**
13 **SERVICES.**

14 **(G) ~~(f)~~**"Foreign protection order" means that term as defined
15 in section 2950h of the revised judicature act of 1961, 1961 PA
16 236, MCL 600.2950h.

17 **(H) ~~(g)~~**"Incompetent to proceed" means that a juvenile, based
18 on age-appropriate norms, lacks a reasonable degree of rational and
19 factual understanding of the proceeding or is unable to do 1 or
20 more of the following:

21 (i) Consult with and assist his or her attorney in preparing
22 his or her defense in a meaningful manner.

23 (ii) Sufficiently understand the charges against him or her.

24 **(I) ~~(h)~~**"Juvenile" means a person who is less than 17 years of
25 age who is the subject of a delinquency petition.

26 **(J) ~~(i)~~**"Least restrictive environment" means a supervised
27 community placement, preferably a placement with the juvenile's

1 parent, guardian, relative, or a facility or conditions of
2 treatment that is a residential or institutional placement only
3 utilized as a last resort based on the best interest of the
4 juvenile or for reasons of public safety.

5 (K) ~~(j)~~—"Licensed child caring institution" means a child
6 caring institution as defined and licensed under 1973 PA 116, MCL
7 722.111 to 722.128.

8 (I) ~~(k)~~—"MCI" means the Michigan children's institute created
9 and established by 1935 PA 220, MCL 400.201 to 400.214.

10 (M) ~~(l)~~—"Mental health code" means the mental health code, 1974
11 PA 258, MCL 330.1001 to 330.2106.

12 (N) ~~(m)~~—"Personal protection order" means a personal
13 protection order issued under section 2950 or 2950a of the revised
14 judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a,
15 and includes a valid foreign protection order.

16 (O) ~~(n)~~—"Qualified juvenile forensic mental health examiner"
17 means 1 of the following who performs forensic mental health
18 examinations for the purposes of sections 1062 to 1074 of the
19 mental health code but does not exceed the scope of his or her
20 practice as authorized by state law:

21 (i) A psychiatrist or psychologist who possesses experience or
22 training in the following:

23 (A) Forensic evaluation procedures for juveniles.

24 (B) Evaluation, diagnosis, and treatment of children and
25 adolescents with emotional disturbance, mental illness, or
26 developmental disabilities.

27 (C) Clinical understanding of child and adolescent

1 development.

2 (D) Familiarity with competency standards in this state.

3 (ii) Beginning ~~18 months after the effective date of the~~
4 ~~amendatory act that added section 1072 of the mental health code,~~
5 **SEPTEMBER 28, 2014**, a mental health professional other than a
6 psychiatrist or psychologist who has completed a juvenile
7 competency training program for forensic mental health examiners
8 that is endorsed by the department under section 1072 of the mental
9 health code and who possesses experience or training in all of the
10 following:

11 (A) Forensic evaluation procedures for juveniles.

12 (B) Evaluation, diagnosis, and treatment of children and
13 adolescents with emotional disturbance, mental illness, or
14 developmental disabilities.

15 (C) Clinical understanding of child and adolescent
16 development.

17 (D) Familiarity with competency standards in this state.

18 (P) ~~(e)~~ "Qualified restoration provider" means an individual
19 who the court determines, as a result of the opinion provided by
20 the qualified forensic mental health examiner, has the skills and
21 training necessary to provide restoration services. The court shall
22 take measures to avoid any conflict of interest among agencies or
23 individuals who may provide evaluation and restoration.

24 (Q) ~~(p)~~ "Restoration" means the process by which education or
25 treatment of a juvenile results in that juvenile becoming competent
26 to proceed.

27 (R) ~~(q)~~ "Serious misdemeanor" means that term as defined in

1 section 61 of the William Van Regenmorter crime victim's rights
2 act, 1985 PA 87, MCL 780.811.

3 (S) ~~(r)~~—"Valid foreign protection order" means a foreign
4 protection order that satisfies the conditions for validity
5 provided in section 2950i of the revised judicature act of 1961,
6 1961 PA 236, MCL 600.2950i.

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

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

17 Sec. 2a. (1) Except as otherwise provided in this section, if
18 the court has exercised jurisdiction over a juvenile under section
19 2(a) or (b) of this chapter, jurisdiction shall continue for a
20 period of 2 years beyond the maximum age of jurisdiction conferred
21 under section 2 of this chapter, unless the juvenile is released
22 sooner by court order.

23 (2) If the department files a report with the court under
24 section 15 of the young adult voluntary foster care act, **2011 PA**
25 **225, MCL 400.655**, the court shall determine whether it is in the
26 youth's best interests to continue in voluntary foster care within
27 21 days of the filing of the report. A hearing is not required

1 under this subsection, but may be held on the court's own motion or
2 at the request of the youth or the department.

3 (3) If the court finds that the voluntary foster care
4 agreement is in the youth's best interests, the court shall issue
5 an order containing individualized findings to support its
6 determinations made under subsection (2) and close the case in
7 accordance with section 19 of the young adult voluntary foster care
8 act, 2011 PA 225, MCL 400.659. The individualized findings shall be
9 based on the department's written report and other materials and
10 information submitted to the court.

11 (4) IF THE COURT HAS APPOINTED A GUARDIAN UNDER SECTION 19A OR
12 19C OF THIS CHAPTER FOR A YOUTH AGE 16 OR OLDER, THE COURT SHALL
13 RETAIN JURISDICTION OF THE YOUTH UNTIL THE DEPARTMENT DETERMINES
14 THE YOUTH'S ELIGIBILITY TO RECEIVE EXTENDED GUARDIANSHIP ASSISTANCE
15 UNDER THE YOUNG ADULT VOLUNTARY FOSTER CARE ACT, 2011 PA 225, MCL
16 400.641 TO 400.671, THAT SHALL BE COMPLETED WITHIN 120 DAYS OF THE
17 YOUTH'S EIGHTEENTH BIRTHDAY. IF THE DEPARTMENT DETERMINES THE YOUTH
18 WILL RECEIVE EXTENDED GUARDIANSHIP ASSISTANCE, THE COURT SHALL
19 RETAIN JURISDICTION OF THE YOUTH UNTIL THAT YOUTH NO LONGER
20 RECEIVES GUARDIANSHIP ASSISTANCE.

21 (5) ~~(4)~~—If the court has exercised jurisdiction over a
22 juvenile under section 2(a)(1) of this chapter for an offense that,
23 if committed by an adult, would be a violation or attempted
24 violation of section 72, 83, 84, 86, 88, 89, 91, 110a(2), 186a,
25 316, 317, 349, 520b, 520c, 520d, 520g, 529, 529a, 530, or 531 of
26 the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.84,
27 750.86, 750.88, 750.89, 750.91, 750.110a, 750.186a, 750.316,

1 750.317, 750.349, 750.520b, 750.520c, 750.520d, 750.520g, 750.529,
2 750.529a, 750.530, and 750.531, or section 7401(2)(a)(i) or
3 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401
4 and 333.7403, jurisdiction may be continued under section 18d of
5 this chapter until the juvenile is 21 years of age.

6 (6) ~~(5)~~—If the court exercised jurisdiction over a child under
7 section 2(h) of this chapter, jurisdiction of the court continues
8 until the order expires but action regarding the personal
9 protection order after the respondent's eighteenth birthday ~~shall~~
10 **IS** not ~~be~~ subject to this chapter.

11 (7) ~~(6)~~—This section does not apply if the juvenile is
12 sentenced to the jurisdiction of the department of corrections.

13 (8) ~~(7)~~ **As EXCEPT AS PROVIDED IN SUBSECTION (9), AS** used in
14 this chapter, "child", "~~juvenile~~", "minor", "**YOUTH**", or any other
15 term signifying a person under the age of 18 applies to a person 18
16 years of age or older concerning whom proceedings are commenced in
17 the court under section 2 of this chapter and over whom the court
18 has continuing jurisdiction under subsections (1) to ~~(5)~~ **(6)**.

19 **(9) FOR THE PURPOSE OF THIS SECTION ONLY, "JUVENILE" APPLIES**
20 **TO A PERSON 18 YEARS OF AGE OR OLDER CONCERNING WHOM PROCEEDINGS**
21 **ARE COMMENCED IN THE COURT UNDER SECTION 2 OF THIS CHAPTER AND OVER**
22 **WHOM THE COURT HAS CONTINUING JURISDICTION UNDER SUBSECTIONS (1) TO**
23 **(6)**.