

# HOUSE BILL No. 4962

October 7, 2015, Introduced by Reps. Kosowski, Santana, Garrett, Lucido, Love, Chang, Webber, Byrd, Robinson, Geiss, Banks, Gay-Dagnogo, Greig, Yanez, Darany, Forlini, Howrylak, LaVoy, Durhal, Rutledge, Irwin, Neeley, Hovey-Wright, Plawecki, Moss, Callton and Zemke and referred to the Committee on Criminal Justice.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 2 and 2d of chapter XIIA (MCL 712A.2 and 712A.2d), section 2 as amended by 2014 PA 519 and section 2d as amended by 1998 PA 478.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

CHAPTER XIIA

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

(a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of another court in proceedings concerning a juvenile under ~~17~~-18 years of age who is found within the county if 1 or more of the following ~~applies~~**APPLY:**

(1) Except as otherwise provided in this sub-subdivision, the juvenile has violated any municipal ordinance or law of the state

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

10 (A) A violation of section 72, 83, 86, 89, 91, 316, 317, 349,  
11 520b, 529, **OR** 529a ~~, or 531~~ of the Michigan penal code, 1931 PA  
12 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317,  
13 750.349, 750.520b, 750.529, **AND** 750.529a. ~~and 750.531.~~

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

18 (i) A loaded or unloaded firearm, whether operable or  
19 inoperable.

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

23 (iii) An object that is likely to cause death or bodily injury  
24 when used as a weapon and that is used as a weapon or carried or  
25 possessed for use as a weapon.

26 (iv) An object or device that is used or fashioned in a manner  
27 to lead a person to believe the object or device is an object or

1 device described in subparagraphs (i) to (iii).

2 ~~—— (C) A violation of section 186a of the Michigan penal code,~~  
 3 ~~1931 PA 328, MCL 750.186a, regarding escape or attempted escape~~  
 4 ~~from a juvenile facility, but only if the juvenile facility from~~  
 5 ~~which the individual escaped or attempted to escape was 1 of the~~  
 6 ~~following:~~

7 ~~—— (i) A high security or medium security facility operated by~~  
 8 ~~the department of human services or a county juvenile agency.~~

9 ~~—— (ii) A high security facility operated by a private agency~~  
 10 ~~under contract with the department of human services or a county~~  
 11 ~~juvenile agency.~~

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

14 (C) ~~(E)~~—An attempt to commit a violation described in  
 15 paragraphs ~~PARAGRAPH (A) to (D)~~. **OR (B)**.

16 (D) ~~(F)~~—Conspiracy to commit a violation described in  
 17 paragraphs ~~PARAGRAPH (A) to (D)~~. **OR (B)**.

18 (E) ~~(G)~~—Solicitation to commit a violation described in  
 19 paragraphs ~~PARAGRAPH (A) to (D)~~. **OR (B)**.

20 (F) ~~(H)~~—A lesser included offense of a violation described in  
 21 paragraphs (A) to ~~(G)~~—**(E)** if the individual is charged with a  
 22 violation described in paragraphs (A) to ~~(G)~~. **(E)**.

23 (G) ~~(I)~~—Another violation arising out of the same transaction  
 24 as a violation described in paragraphs (A) to ~~(G)~~—**(E)** if the  
 25 individual is charged with a violation described in paragraphs (A)  
 26 to ~~(G)~~. **(E)**.

27 (2) The juvenile has deserted his or her home without

1 sufficient cause, and the court finds on the record that the  
2 juvenile has been placed or refused alternative placement or the  
3 juvenile and the juvenile's parent, guardian, or custodian have  
4 exhausted or refused family counseling.

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

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

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

24 (1) Whose parent or other person legally responsible for the  
25 care and maintenance of the juvenile, when able to do so, neglects  
26 or refuses to provide proper or necessary support, education,  
27 medical, surgical, or other care necessary for his or her health or

1 morals, who is subject to a substantial risk of harm to his or her  
2 mental well-being, who is abandoned by his or her parents,  
3 guardian, or other custodian, or who is without proper custody or  
4 guardianship. As used in this sub-subdivision:

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

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

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

19 (3) If the juvenile is dependent and is in danger of  
20 substantial physical or psychological harm. The juvenile may be  
21 found to be dependent when any of the following occurs:

22 (A) The juvenile is homeless or not domiciled with a parent or  
23 other legally responsible person.

24 (B) The juvenile has repeatedly run away from home and is  
25 beyond the control of a parent or other legally responsible person.

26 (C) The juvenile is alleged to have committed a commercial  
27 sexual activity as that term is defined in section 462a of the

1 Michigan penal code, 1931 PA 328, MCL 750.462a, or a delinquent act  
2 that is the result of force, fraud, coercion, or manipulation  
3 exercised by a parent or other adult.

4 (D) The juvenile's custodial parent or legally responsible  
5 person has died or has become permanently incapacitated and no  
6 appropriate parent or legally responsible person is willing and  
7 able to provide care for the juvenile.

8 (4) Whose parent has substantially failed, without good cause,  
9 to comply with a limited guardianship placement plan described in  
10 section 5205 of the estates and protected individuals code, 1998 PA  
11 386, MCL 700.5205, regarding the juvenile.

12 (5) Whose parent has substantially failed, without good cause,  
13 to comply with a court-structured plan described in section 5207 or  
14 5209 of the estates and protected individuals code, 1998 PA 386,  
15 MCL 700.5207 and 700.5209, regarding the juvenile.

16 (6) If the juvenile has a guardian under the estates and  
17 protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206,  
18 and the juvenile's parent meets both of the following criteria:

19 (A) The parent, having the ability to support or assist in  
20 supporting the juvenile, has failed or neglected, without good  
21 cause, to provide regular and substantial support for the juvenile  
22 for 2 years or more before the filing of the petition or, if a  
23 support order has been entered, has failed to substantially comply  
24 with the order for 2 years or more before the filing of the  
25 petition.

26 (B) The parent, having the ability to visit, contact, or  
27 communicate with the juvenile, has regularly and substantially

1 failed or neglected, without good cause, to do so for 2 years or  
2 more before the filing of the petition.

3 If a petition is filed in the court alleging that a juvenile  
4 is within the provisions of **THIS** subdivision ~~(b) (1), (2), (3), (4),~~  
5 ~~(5), or (6)~~ and the custody of that juvenile is subject to the  
6 prior or continuing order of another court of record of this state,  
7 the manner of notice to the other court of record and the authority  
8 of the court to proceed is governed by rule of the supreme court.

9 (c) Jurisdiction over juveniles under 18 years of age,  
10 jurisdiction of whom has been waived to the family division of  
11 circuit court by a circuit court under a provision in a temporary  
12 order for custody of juveniles based upon a complaint for divorce  
13 or upon a motion related to a complaint for divorce by the  
14 prosecuting attorney, in a divorce judgment dissolving a marriage  
15 between the juvenile's parents, or by an amended judgment relative  
16 to the juvenile's custody in a divorce.

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

21 (1) Repeatedly addicted to the use of drugs or the intemperate  
22 use of alcoholic liquors.

23 (2) Repeatedly associating with criminal, dissolute, or  
24 disorderly persons.

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

27 (4) Repeatedly associating with thieves, prostitutes, pimps,

1 or procurers.

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

5 If a juvenile is brought before the court in a county other  
6 than that in which the juvenile resides, before a hearing and with  
7 the consent of the judge of the court in the county of residence,  
8 the court may enter an order transferring jurisdiction of the  
9 matter to the court of the county of residence. Consent to transfer  
10 jurisdiction is not required if the county of residence is a county  
11 juvenile agency and satisfactory proof of residence is furnished to  
12 the court of the county of residence. The order does not constitute  
13 a legal settlement in this state that is required for the purpose  
14 of section 55 of the social welfare act, 1939 PA 280, MCL 400.55.  
15 The order and a certified copy of the proceedings in the  
16 transferring court shall be delivered to the court of the county of  
17 residence. A case designated as a case in which the juvenile shall  
18 be tried in the same manner as an adult under section 2d of this  
19 chapter may be transferred for venue or for juvenile disposition,  
20 but shall not be transferred on grounds of residency. If the case  
21 is not transferred, the court having jurisdiction of the offense  
22 shall try the case.

23 (e) Authority to establish or assist in developing a program  
24 or programs within the county to prevent delinquency and provide  
25 services to act upon reports submitted to the court related to the  
26 behavior of a juvenile who does not require formal court  
27 jurisdiction but otherwise falls within subdivision (a). These

1 services shall be used only if the juvenile and his or her parents,  
2 guardian, or custodian voluntarily accepts them.

3 (f) If the court operates a detention home for juveniles  
4 within the court's jurisdiction under subdivision (a)(1), authority  
5 to place a juvenile within that home pending trial if the juvenile  
6 is within the circuit court's jurisdiction under section 606 of the  
7 revised judicature act of 1961, 1961 PA 236, MCL 600.606, and if  
8 the circuit court orders the family division of circuit court in  
9 the same county to place the juvenile in that home. The family  
10 division of circuit court shall comply with that order.

11 (g) Authority to place a juvenile in a county jail under  
12 section 27a of chapter IV of the code of criminal procedure, 1927  
13 PA 175, MCL 764.27a, if the court designates the case under section  
14 2d of this chapter as a case in which the juvenile is to be tried  
15 in the same manner as an adult and the court determines there is  
16 probable cause to believe that the offense was committed and  
17 probable cause to believe the juvenile committed that offense.

18 (h) Jurisdiction over a proceeding under section 2950 or 2950a  
19 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950  
20 and 600.2950a, in which a minor less than 18 years of age is the  
21 respondent, or a proceeding to enforce a valid foreign protection  
22 order issued against a respondent who is a minor less than 18 years  
23 of age. A personal protection order shall not be issued against a  
24 respondent who is a minor less than 10 years of age. Venue for an  
25 initial action under section 2950 or 2950a of the revised  
26 judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, is  
27 proper in the county of residence of either the petitioner or

1 respondent. If the respondent does not live in this state, venue  
2 for the initial action is proper in the petitioner's county of  
3 residence.

4 (i) In a proceeding under this chapter concerning a juvenile's  
5 care and supervision, the court may issue orders affecting a party  
6 as necessary. This subdivision does not apply after May 1, 2018. As  
7 used in this subdivision, "party" means 1 of the following:

8 (1) ~~(i)~~—In a delinquency proceeding, the petitioner and  
9 juvenile.

10 (2) ~~(ii)~~—In a child protective proceeding, the petitioner,  
11 department of **HEALTH AND** human services, child, respondent, parent,  
12 guardian, or legal custodian, and any licensed child caring  
13 institution or child placing agency under contract with the  
14 department of **HEALTH AND** human services to provide for a juvenile's  
15 care and supervision.

16 Sec. 2d. (1) In a petition or amended petition alleging that a  
17 juvenile is within the court's jurisdiction under section 2(a)(1)  
18 of this chapter for a specified juvenile violation, the prosecuting  
19 attorney may designate the case as a case in which the juvenile is  
20 to be tried in the same manner as an adult. An amended petition  
21 making a designation under this subsection shall be filed only by  
22 leave of the court.

23 (2) In a petition alleging that a juvenile is within the  
24 court's jurisdiction under section 2(a)(1) of this chapter for an  
25 offense other than a specified juvenile violation, the prosecuting  
26 attorney may request that the court designate the case as a case in  
27 which the juvenile is to be tried in the same manner as an adult.

1 The court may designate the case following a hearing if it  
2 determines that the best interests of the juvenile and the public  
3 would be served by the juvenile being tried in the same manner as  
4 an adult. In determining whether the best interests of the juvenile  
5 and the public would be served, the court shall consider all of the  
6 following factors, giving greater weight to the seriousness of the  
7 alleged offense and the juvenile's prior delinquency record than to  
8 the other factors:

9 (a) The seriousness of the alleged offense in terms of  
10 community protection, including, but not limited to, the existence  
11 of any aggravating factors recognized by the sentencing guidelines,  
12 the use of a firearm or other dangerous weapon, and the impact on  
13 any victim.

14 (b) The juvenile's culpability in committing the alleged  
15 offense, including, but not limited to, the level of the juvenile's  
16 participation in planning and carrying out the offense and the  
17 existence of any aggravating or mitigating factors recognized by  
18 the sentencing guidelines.

19 (c) The juvenile's prior record of delinquency including, but  
20 not limited to, any record of detention, any police record, any  
21 school record, or any other evidence indicating prior delinquent  
22 behavior.

23 (d) The juvenile's programming history, including, but not  
24 limited to, the juvenile's past willingness to participate  
25 meaningfully in available programming.

26 (e) The adequacy of the punishment or programming available in  
27 the juvenile justice system.

1 (f) The dispositional options available for the juvenile.

2 (3) If a case is designated under this section, the case shall  
3 be set for trial in the same manner as the trial of an adult in a  
4 court of general criminal jurisdiction unless a probable cause  
5 hearing is required under subsection (4).

6 (4) If the petition in a case designated under this section  
7 alleges an offense that if committed by an adult would be a felony  
8 or punishable by imprisonment for more than 1 year, the court shall  
9 conduct a probable cause hearing not later than 14 days after the  
10 case is designated to determine whether there is probable cause to  
11 believe the offense was committed and whether there is probable  
12 cause to believe the juvenile committed the offense. This hearing  
13 may be combined with the designation hearing under subsection (2)  
14 for an offense other than a specified juvenile offense. A probable  
15 cause hearing under this section is the equivalent of the  
16 preliminary examination in a court of general criminal jurisdiction  
17 and satisfies the requirement for that hearing. A probable cause  
18 hearing shall be conducted by a judge other than the judge who will  
19 try the case if the juvenile is tried in the same manner as an  
20 adult.

21 (5) If the court determines there is probable cause to believe  
22 the offense alleged in the petition was committed and probable  
23 cause to believe the juvenile committed the offense, the case shall  
24 be set for trial in the same manner as the trial of an adult in a  
25 court of general criminal jurisdiction.

26 (6) If the court determines that an offense did not occur or  
27 there is not probable cause to believe the juvenile committed the

1 offense, the court shall dismiss the petition. If the court  
2 determines there is probable cause to believe another offense was  
3 committed and there is probable cause to believe the juvenile  
4 committed that offense, the court may further determine whether the  
5 case should be designated as a case in which the juvenile should be  
6 tried in the same manner as an adult as provided in subsection (2).  
7 If the court designates the case, the case shall be set for trial  
8 in the same manner as the trial of an adult in a court of general  
9 criminal jurisdiction.

10 (7) If a case is designated under this section, the  
11 proceedings are criminal proceedings and shall afford all  
12 procedural protections and guarantees to which the juvenile would  
13 be entitled if being tried for the offense in a court of general  
14 criminal jurisdiction. A plea of guilty or nolo contendere or a  
15 verdict of guilty shall result in entry of a judgment of  
16 conviction. The conviction shall have the same effect and  
17 liabilities as if it had been obtained in a court of general  
18 criminal jurisdiction.

19 (8) Following a judgment of conviction, the court shall enter  
20 a disposition or impose a sentence authorized under section  
21 ~~18(1)(n)~~**18(1)(M)** of this chapter.

22 (9) As used in this section, "specified juvenile violation"  
23 means any of the following:

24 (a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349,  
25 520b, 529, **OR** 529a ~~, or 531~~ of the Michigan penal code, 1931 PA  
26 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317,  
27 750.349, 750.520b, 750.529, **AND** 750.529a. ~~and 750.531.~~

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

5 (i) A loaded or unloaded firearm, whether operable or  
6 inoperable.

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

10 (iii) An object that is likely to cause death or bodily injury  
11 when used as a weapon and that is used as a weapon or carried or  
12 possessed for use as a weapon.

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

16 ~~—— (c) A violation of section 186a of the Michigan penal code,~~  
17 ~~1931 PA 328, MCL 750.186a, regarding escape or attempted escape~~  
18 ~~from a juvenile facility, but only if the juvenile facility from~~  
19 ~~which the juvenile escaped or attempted to escape was 1 of the~~  
20 ~~following:~~

21 ~~—— (i) A high security or medium security facility operated by~~  
22 ~~the family independence agency or a county juvenile agency.~~

23 ~~—— (ii) A high security facility operated by a private agency~~  
24 ~~under contract with the family independence agency or a county~~  
25 ~~juvenile agency.~~

26 ~~—— (d) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of~~  
27 ~~the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.~~

1           (C) ~~(e)~~—An attempt to commit a violation described in  
2 ~~subdivisions~~ **SUBDIVISION** (a) ~~to (d)~~. **OR (B)**.

3           (D) ~~(f)~~—Conspiracy to commit a violation described in  
4 ~~subdivisions~~ **SUBDIVISION** (a) ~~to (d)~~. **OR (B)**.

5           (E) ~~(g)~~—Solicitation to commit a violation described in  
6 ~~subdivisions~~ **SUBDIVISION** (a) ~~to (d)~~. **OR (B)**.

7           (F) ~~(h)~~—Any lesser included offense of an offense described in  
8 subdivisions (a) to ~~(g)~~ **(E)** if the juvenile is alleged in the  
9 petition to have committed an offense described in subdivisions (a)  
10 to ~~(g)~~ **(E)**.

11           (G) ~~(i)~~—Any other offense arising out of the same transaction  
12 as an offense described in subdivisions (a) to ~~(g)~~ **(E)** if the  
13 juvenile is alleged in the petition to have committed an offense  
14 described in subdivisions (a) to ~~(g)~~ **(E)**.

15           Enacting section 1. This amendatory act takes effect 90 days  
16 after the date it is enacted into law.

17           Enacting section 2. This amendatory act does not take effect  
18 unless all of the following bills of the 98th Legislature are  
19 enacted into law:

20           (a) Senate Bill No. \_\_\_\_ or House Bill No. 4960 (request no.  
21 02529'15).

22           (b) Senate Bill No. \_\_\_\_ or House Bill No. 4961 (request no.  
23 02529'15 a).