

HOUSE BILL No. 4753

June 13, 2017, Introduced by Reps. Runestad and Kosowski and referred to the Committee on Law and 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

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

11 (A) A violation of section 72, 83, 86, 89, 91, 316, 317, 349,
12 520b, 529, **OR** 529a ~~, or 531~~ of the Michigan penal code, 1931 PA
13 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317,
14 750.349, 750.520b, 750.529, **AND** 750.529a. ~~, and 750.531.~~

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

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

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

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

27 (iv) An object or device that is used or fashioned in a manner

to lead a person to believe the object or device is an object or device described in subparagraphs (i) to (iii).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (C) The juvenile is alleged to have committed a commercial

1 sexual activity as that term is defined in section 462a of the
2 Michigan penal code, 1931 PA 328, MCL 750.462a, or a delinquent act
3 that is the result of force, fraud, coercion, or manipulation
4 exercised by a parent or other adult.

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

9 (4) Whose parent has substantially failed, without good cause,
10 to comply with a limited guardianship placement plan described in
11 section 5205 of the estates and protected individuals code, 1998 PA
12 386, MCL 700.5205, regarding the juvenile.

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

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

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

27 (B) The parent, having the ability to visit, contact, or

1 communicate with the juvenile, has regularly and substantially
2 failed or neglected, without good cause, to do so for 2 years or
3 more before the filing of the petition.

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

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

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

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

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

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

1 (4) Repeatedly associating with thieves, prostitutes, pimps,
2 or procurers.

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

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

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

1 jurisdiction but otherwise falls within subdivision (a). These
2 services shall be used only if the juvenile and his or her parents,
3 guardian, or custodian voluntarily accepts them.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (e) The adequacy of the punishment or programming available in

1 the juvenile justice system.

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

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

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

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

27 (6) If the court determines that an offense did not occur or

1 there is not probable cause to believe the juvenile committed the
2 offense, the court shall dismiss the petition. If the court
3 determines there is probable cause to believe another offense was
4 committed and there is probable cause to believe the juvenile
5 committed that offense, the court may further determine whether the
6 case should be designated as a case in which the juvenile should be
7 tried in the same manner as an adult as provided in subsection (2).
8 If the court designates the case, the case shall be set for trial
9 in the same manner as the trial of an adult in a court of general
10 criminal jurisdiction.

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

20 (8) Following a judgment of conviction, the court shall enter
21 a disposition or impose a sentence authorized under section
22 ~~18(1)(n)~~ **18(1)(M)** of this chapter.

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

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

1 750.349, 750.520b, 750.529, **AND** 750.529a. ~~and 750.531.~~

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

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

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

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

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

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

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

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

27 ~~—— (d) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of~~

~~the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.~~

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

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

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

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

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

Enacting section 1. This amendatory act takes effect October 1, 2018.