

HOUSE BILL NO. 4133

February 06, 2019, Introduced by Reps. Hauck, LaGrand, Neeley, Rendon, Filler, Wozniak, Calley, Guerra, Elder, Love and Brann and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 1, 3, and 11 of chapter XIIIA (MCL 712A.1,
712A.3, and 712A.11), section 1 as amended by 2016 PA 496, section
3 as amended by 1996 PA 409, and section 11 as amended by 2016 PA
185.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XIIIA
2 Sec. 1. (1) As used in this chapter:
3 (a) "Civil infraction" means that term as defined in section

1 113 of the revised judicature act of 1961, 1961 PA 236, MCL
2 600.113.

3 (b) "Competency evaluation" means a court-ordered examination
4 of a juvenile directed to developing information relevant to a
5 determination of his or her competency to proceed at a particular
6 stage of a court proceeding involving a juvenile who is the subject
7 of a delinquency petition.

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

10 (d) "County juvenile agency" means that term as defined in
11 section 2 of the county juvenile agency act, 1998 PA 518, MCL
12 45.622.

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

14 (f) "Department" means the department of health and human
15 services. A reference in this chapter to the "department of social
16 welfare" or the "family independence agency" means the department
17 of health and human services.

18 (g) "Foreign protection order" means that term as defined in
19 section 2950h of the revised judicature act of 1961, 1961 PA 236,
20 MCL 600.2950h.

21 (h) "Incompetent to proceed" means that a juvenile, based on
22 age-appropriate norms, lacks a reasonable degree of rational and
23 factual understanding of the proceeding or is unable to do 1 or
24 more of the following:

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

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

28 (i) "Juvenile" means a person who is less than ~~17~~18 years of
29 age who is the subject of a delinquency petition.

(j) "Least restrictive environment" means a supervised community placement, preferably a placement with the juvenile's parent, guardian, relative, or a facility or conditions of treatment that is a residential or institutional placement only utilized as a last resort based on the best interest of the juvenile or for reasons of public safety.

(k) "Licensed child caring institution" means a child caring institution as defined and licensed under 1973 PA 116, MCL 722.111 to 722.128.

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

(m) "Mental health code" means the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

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

(o) "Qualified juvenile forensic mental health examiner" means 1 of the following who performs forensic mental health examinations for the purposes of sections 1062 to 1074 of the mental health code, **MCL 330.2062 to 330.2074**, but does not exceed the scope of his or her practice as authorized by state law:

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

(A) Forensic evaluation procedures for juveniles.

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

(C) Clinical understanding of child and adolescent

1 development.

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

3 (ii) A mental health professional other than a psychiatrist or
4 psychologist who has completed a juvenile competency training
5 program for forensic mental health examiners that is endorsed by
6 the department under section 1072 of the mental health code, **MCL**
7 **330.2072**, and who possesses experience or training in all of the
8 following:

9 (A) Forensic evaluation procedures for juveniles.

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

13 (C) Clinical understanding of child and adolescent
14 development.

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

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

22 (q) "Reasonable and prudent parenting standard" means
23 decisions characterized by careful and sensible parental decisions
24 that maintain a child's health, safety, and best interest while
25 encouraging the emotional and developmental growth of the child
26 when determining whether to allow a child in foster care to
27 participate in extracurricular, enrichment, cultural, and social
28 activities.

29 (r) "Restoration" means the process by which education or

1 treatment of a juvenile results in that juvenile becoming competent
2 to proceed.

3 (s) "Serious misdemeanor" means that term as defined in
4 section 61 of the William Van Regenmorter crime victim's rights
5 act, 1985 PA 87, MCL 780.811.

6 (t) "Valid foreign protection order" means a foreign
7 protection order that satisfies the conditions for validity
8 provided in section 2950i of the revised judicature act of 1961,
9 1961 PA 236, MCL 600.2950i.

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

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

20 Sec. 3. (1) If during the pendency of a criminal charge
21 against a person in any other court it is ascertained that the
22 person was under the age of ~~17~~**18** at the time of the commission of
23 the offense, the other court shall transfer the case without delay,
24 together with all the papers, documents, and testimony connected
25 with that case, to the family division of the circuit court of the
26 county in which the other court is situated or in which the person
27 resides.

28 (2) The court making the transfer shall order the child to be
29 taken promptly to the place of detention designated by the family

1 division of the circuit court or to that court itself or release
2 the juvenile in the custody of some suitable person to appear
3 before the court at a time designated. The court shall then hear
4 and dispose of the case in the same manner as if it had been
5 originally instituted in that court.

6 Sec. 11. (1) Except as provided in subsection (2), if a person
7 gives information to the court that a juvenile is within section
8 2(a)(2) to (4), (b), (c), or (d) of this chapter, a preliminary
9 inquiry may be made to determine whether the interests of the
10 public or the juvenile require that further action be taken. If the
11 court determines that formal jurisdiction should be acquired, the
12 court shall authorize a petition to be filed. ~~However, the~~ **The**
13 court may proceed on the consent calendar under section 2f of this
14 chapter if at any time before disposition the court determines that
15 a case should not proceed on the formal calendar but that the
16 protective and supportive action by the court will serve the best
17 interests of the juvenile and the public.

18 (2) Only the prosecuting attorney may file a petition
19 requesting the court to take jurisdiction of a juvenile allegedly
20 within section 2(a)(1) of this chapter. If the prosecuting attorney
21 submits a petition requesting the court to take jurisdiction of a
22 juvenile allegedly within section 2(a)(1) of this chapter and the
23 court determines that formal jurisdiction should be acquired, the
24 court shall authorize a petition to be filed.

25 (3) The petition described in subsections (1) and (2) shall be
26 verified and may be upon information and belief. The petition shall
27 set forth plainly the facts that bring the juvenile within this
28 chapter and shall contain all of the following information:

29 (a) The juvenile's name, birth date, and address.

1 (b) The name and address of the juvenile's parents.

2 (c) The name and address of the juvenile's legal guardian, if
3 there is ~~one~~ **a legal guardian**.

4 (d) The name and address of each person having custody or
5 control of the juvenile.

6 (e) The name and address of the juvenile's nearest known
7 relative, if no parent or **legal** guardian can be found.

8 (4) If any of the facts required under subsection (3) are not
9 known to the petitioner, the petition shall state that the facts
10 are not known. If the juvenile attains his or her ~~seventeenth~~
11 **eighteenth** birthday after the filing of the petition, the court's
12 jurisdiction shall continue beyond the juvenile's ~~seventeenth~~
13 **eighteenth** birthday and the court may hear and dispose of the
14 petition under this chapter.

15 (5) When a petition is authorized, the court shall examine the
16 court file to determine if a juvenile has had ~~fingerprints taken as~~
17 ~~required under section 3 of 1925 PA 289, MCL 28.243. If a juvenile~~
18 ~~has not had his or her fingerprints taken,~~ **his or her biometric**
19 **data collected as required under section 3 of 1925 PA 289, MCL**
20 **28.243. If a juvenile's biometric data has not been collected,** the
21 court shall do either of the following:

22 (a) Order the juvenile to submit himself or herself to the
23 police agency that arrested or obtained the warrant for the arrest
24 of the juvenile so the juvenile's ~~fingerprints can be~~
25 ~~taken.~~ **biometric data can be collected.**

26 (b) Order the juvenile committed to the custody of the sheriff
27 for the ~~taking of the juvenile's fingerprints.~~ **collection of the**
28 **juvenile's biometric data.**

29 (6) A petition or other court record may be amended at any

1 stage of the proceedings as the ends of justice require.

2 (7) If the juvenile diversion act, 1988 PA 13, MCL 722.821 to
3 722.831, is complied with and the court determines that court
4 services can be used in the prevention of delinquency without
5 formal jurisdiction, the court may offer court services to a
6 juvenile without a petition being authorized as provided in section
7 2(e) of this chapter.

8 Enacting section 1. This amendatory act takes effect January
9 1, 2021.