

HOUSE BILL NO. 4141

February 06, 2019, Introduced by Reps. Neeley, LaGrand, Rendon, Filler, Wozniak, Guerra, Elder, Hauck, 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 2 and 2d of chapter XIIA (MCL 712A.2 and
712A.2d), section 2 as amended by 2018 PA 58 and section 2d as
amended by 1998 PA 478.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 CHAPTER XIIA
- 2 Sec. 2. The court has the following authority and
- 3 jurisdiction:
- 4 (a) Exclusive original jurisdiction superior to and regardless

1 of the jurisdiction of another court in proceedings concerning a
2 juvenile under ~~17-18~~ years of age who is found within the county if
3 1 or more of the following apply:

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

15 (A) A violation of section 72, 83, 86, 89, 91, 316, 317, 349,
16 520b, 529, **or** 529a, ~~or 531~~ of the Michigan penal code, 1931 PA
17 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317,
18 750.349, 750.520b, 750.529, **and** 750.529a. ~~and 750.531.~~

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

23 (i) A loaded or unloaded firearm, whether operable or
24 inoperable.

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

28 (iii) An object that is likely to cause death or bodily injury
29 when used as a weapon and that is used as a weapon or carried or

1 possessed for use as a weapon.

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

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

10 ~~(i) A high security or medium security facility operated by the~~
11 ~~department or a county juvenile agency.~~

12 ~~(ii) A high security facility operated by a private agency~~
13 ~~under contract with the department or a county juvenile agency.~~

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

16 (C) ~~(E)~~ An attempt to commit a violation described in
17 ~~paragraphs~~ **paragraph** (A) ~~to (D).~~ **or (B).**

18 (D) ~~(F)~~ Conspiracy to commit a violation described in
19 ~~paragraphs~~ **paragraph** (A) ~~to (D).~~ **or (B).**

20 (E) ~~(G)~~ Solicitation to commit a violation described in
21 ~~paragraphs~~ **paragraph** (A) ~~to (D).~~ **or (B).**

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

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

29 (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
28 morals, who is subject to a substantial risk of harm to his or her
29 mental well-being, who is abandoned by his or her parents,

1 guardian, or other custodian, or who is without proper custody or
2 guardianship. As used in this sub-subdivision:

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

8 (B) "Neglect" means that term as defined in section 2 of the
9 child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

10 (C) "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. As used in this sub-subdivision,
19 "neglect" means that term as defined in section 2 of the child
20 abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

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

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

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

28 (C) The juvenile is alleged to have committed a commercial
29 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. As used in this sub-subdivision, "neglect" means that
26 term as defined in section 2 of the child abuse and neglect
27 prevention act, 1982 PA 250, MCL 722.602.

28 (B) The parent, having the ability to visit, contact, or
29 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. As used in this sub-
3 subdivision, "neglect" means that term as defined in section 2 of
4 the child abuse and neglect prevention act, 1982 PA 250, MCL
5 722.602.

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

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

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

24 (1) Repeatedly addicted to the use of drugs or the intemperate
25 use of alcoholic liquors.

26 (2) Repeatedly associating with criminal, dissolute, or
27 disorderly persons.

28 (3) Found of his or her own free will and knowledge in a house
29 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-must~~ be delivered to the court of the
18 county of residence. A case designated as a case in which the
19 juvenile shall be tried in the same manner as an adult under
20 section 2d of this chapter may be transferred for venue or for
21 juvenile disposition, but ~~shall-must~~ not be transferred on grounds
22 of residency. If the case is not transferred, the court having
23 jurisdiction of the offense 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
28 jurisdiction but otherwise falls within subdivision (a). These
29 services ~~shall-must~~ be used only if the juvenile and his or her

1 parents, guardian, or custodian voluntarily accepts them.

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

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

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

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

5 (i) In a delinquency proceeding, the petitioner and juvenile.

6 (ii) In a child protective proceeding, the petitioner,
7 department, child, respondent, parent, guardian, or legal
8 custodian, and any licensed child caring institution or child
9 placing agency under contract with the department to provide for a
10 juvenile's care and supervision.

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

18 (2) In a petition alleging that a juvenile is within the
19 court's jurisdiction under section 2(a)(1) of this chapter for an
20 offense other than a specified juvenile violation, the prosecuting
21 attorney may request that the court designate the case as a case in
22 which the juvenile is to be tried in the same manner as an adult.
23 The court may designate the case following a hearing if it
24 determines that the best interests of the juvenile and the public
25 would be served by the juvenile being tried in the same manner as
26 an adult. In determining whether the best interests of the juvenile
27 and the public would be served, the court shall consider all of the
28 following factors, giving greater weight to the seriousness of the
29 alleged offense and the juvenile's prior delinquency record than to

1 the other factors:

2 (a) The seriousness of the alleged offense in terms of
3 community protection, including, but not limited to, the existence
4 of any aggravating factors recognized by the sentencing guidelines,
5 the use of a firearm or other dangerous weapon, and the impact on
6 any victim.

7 (b) The juvenile's culpability in committing the alleged
8 offense, including, but not limited to, the level of the juvenile's
9 participation in planning and carrying out the offense and the
10 existence of any aggravating or mitigating factors recognized by
11 the sentencing guidelines.

12 (c) The juvenile's prior record of delinquency including, but
13 not limited to, any record of detention, any police record, any
14 school record, or any other evidence indicating prior delinquent
15 behavior.

16 (d) The juvenile's programming history, including, but not
17 limited to, the juvenile's past willingness to participate
18 meaningfully in available programming.

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

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

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

26 (4) If the petition in a case designated under this section
27 alleges an offense that if committed by an adult would be a felony
28 or punishable by imprisonment for more than 1 year, the court shall
29 conduct a probable cause hearing not later than 14 days after the

1 case is designated to determine whether there is probable cause to
2 believe the offense was committed and whether there is probable
3 cause to believe the juvenile committed the offense. This hearing
4 may be combined with the designation hearing under subsection (2)
5 for an offense other than a specified juvenile offense. A probable
6 cause hearing under this section is the equivalent of the
7 preliminary examination in a court of general criminal jurisdiction
8 and satisfies the requirement for that hearing. A probable cause
9 hearing ~~shall~~**must** be conducted by a judge other than the judge who
10 will try the case if the juvenile is tried in the same manner as an
11 adult.

12 (5) If the court determines there is probable cause to believe
13 the offense alleged in the petition was committed and probable
14 cause to believe the juvenile committed the offense, the case ~~shall~~
15 **must** be set for trial in the same manner as the trial of an adult
16 in a court of general criminal jurisdiction.

17 (6) If the court determines that an offense did not occur or
18 there is not probable cause to believe the juvenile committed the
19 offense, the court shall dismiss the petition. If the court
20 determines there is probable cause to believe another offense was
21 committed and there is probable cause to believe the juvenile
22 committed that offense, the court may further determine whether the
23 case should be designated as a case in which the juvenile should be
24 tried in the same manner as an adult as provided in subsection (2).
25 If the court designates the case, the case ~~shall~~**must** be set for
26 trial in the same manner as the trial of an adult in a court of
27 general criminal jurisdiction.

28 (7) If a case is designated under this section, the
29 proceedings are criminal proceedings and ~~shall~~**must** afford all

1 procedural protections and guarantees to which the juvenile would
2 be entitled if being tried for the offense in a court of general
3 criminal jurisdiction. A plea of guilty or nolo contendere or a
4 verdict of guilty ~~shall~~**must** result in entry of a judgment of
5 conviction. The conviction ~~shall~~**must** have the same effect and
6 liabilities as if it had been obtained in a court of general
7 criminal jurisdiction.

8 (8) Following a judgment of conviction, the court shall enter
9 a disposition or impose a sentence authorized under section
10 ~~18(1)(n)~~**18(1)(m)** of this chapter.

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

13 (a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349,
14 520b, 529, **or** 529a, ~~or 531~~ of the Michigan penal code, 1931 PA
15 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317,
16 750.349, 750.520b, 750.529, **and** 750.529a. ~~and 750.531.~~

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

21 (i) A loaded or unloaded firearm, whether operable or
22 inoperable.

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

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

29 (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 juvenile escaped or attempted to escape was 1 of the following:~~

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

~~(ii) A high-security facility operated by a private agency under contract with the family independence agency 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 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 January

1 1, 2021.

2 Enacting section 2. This amendatory act does not take effect
 3 unless all of the following bills of the 100th Legislature are
 4 enacted into law:

5 (a) Senate Bill No.____ or House Bill No.____ (request no.
 6 00306'19).

7 (b) Senate Bill No.____ or House Bill No.____ (request no.
 8 00306'19 a).