

Act No. 192  
Public Acts of 1994  
Approved by the Governor  
June 19, 1994  
Filed with the Secretary of State  
June 21, 1994

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1994**

Introduced by Senators Kelly, Miller Koivisto Hart Faust Bouchard and Geake

# **ENROLLED SENATE BILL No. 774**

AN ACT to amend sections 2 2a and 18d of chapter XIIA of Act No 288 of the Public Acts of 1939 entitled as amended An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state the powers and duties of such court and the judges and other officers thereof certain aspects of the statutes of descent and distribution of property and the statutes governing the change of name of adults and children the adoption of adults and children and the jurisdiction of the juvenile division of the probate court to prescribe the powers and duties of the juvenile division of the probate court and the judges and other officers thereof to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court to prescribe pleading evidence practice and procedure in actions and proceedings in the juvenile division of the probate court to provide for appeals from the juvenile division of the probate court to prescribe the powers and duties of certain state departments agencies and officers and to provide remedies and penalties for the violation of this act section 2 as amended by Act No 314 of the Public Acts of 1990 and section 2a as amended and section 18d as added by Act No 54 of the Public Acts of 1988 being sections 712A 2 712A 2a and 712A 18d of the Michigan Compiled Laws

*The People of the State of Michigan enact*

Section 1 Sections 2 2a and 18d of chapter XIIA of Act No 288 of the Public Acts of 1939 section 2 as amended by Act No 314 of the Public Acts of 1990 and section 2a as amended and section 18d as added by Act No 54 of the Public Acts of 1988 being sections 712A 2 712A 2a and 712A 18d of the Michigan Compiled Laws are amended to read as follows

## **CHAPTER XIIA**

Sec 2 The juvenile division of the probate court has the following authority and jurisdiction

(a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of any other court in proceedings concerning a child under 17 years of age who is found within the county if 1 or more of the following applies

(1) Except as otherwise provided in this subparagraph the child has violated any municipal ordinance or law of the state or of the United States The juvenile division of the probate court has jurisdiction over a child 15 years of age or older who is charged with a violation of section 83 89 91 316 317 520b 529 or 529a of the Michigan penal code Act No 328 of the Public Acts of 1931 being sections 750 83 750 89 750 91 750 316 750 317 750 520b 750 529 and 750 529a of the Michigan Compiled Laws or section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code Act No 368 of the Public Acts of 1978 being sections 333 7401 and 333 7403 of the Michigan Compiled Laws only if the prosecuting attorney files a petition in juvenile court instead of authorizing a complaint and warrant

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

(3) The child is repeatedly disobedient to the reasonable and lawful commands of his or her parents guardian or custodian and the court finds on the record by clear and convincing evidence that court accessed services are necessary

(4) The child willfully and repeatedly absents himself or herself from school or other learning program intended to meet the child's educational needs or repeatedly violates rules and regulations of the school or other learning program and the court finds on the record that the child the child's parent guardian or custodian and school officials or learning program personnel have met on the child's educational problems and educational counseling and alternative agency help have been sought As used in this subparagraph only learning program means an organized educational program that is appropriate given the age intelligence ability and any psychological limitations of a child in the subject areas of reading spelling mathematics science history civics writing and English grammar

(b) Jurisdiction in proceedings concerning any child under 18 years of age found within the county

(1) Whose parent or other person legally responsible for the care and maintenance of the child when able to do so neglects or refuses to provide proper or necessary support education medical surgical or other care necessary for his or her health or morals who is subject to a substantial risk of harm to his or her mental well being who is abandoned by his or her parents guardian or other custodian or who is without proper custody or guardianship As used in this subparagraph

(A) Education means learning based on an organized educational program that is appropriate given the age intelligence ability and any psychological limitations of a child in the subject areas of reading spelling mathematics science history civics writing and English grammar

(B) Without proper custody or guardianship does not include the situation where a parent has placed the child with another person who is legally responsible for the care and maintenance of the child and who is able to and does provide the child with proper care and maintenance

(2) Whose home or environment by reason of neglect cruelty drunkenness criminality or depravity on the part of a parent guardian or other custodian is an unfit place for the child to live in

(3) Whose parent has substantially failed without good cause to comply with a limited guardianship placement plan described in section 424a of the revised probate code Act No 642 of the Public Acts of 1978 being section 700 424a of the Michigan Compiled Laws regarding the child

(4) Whose parent has substantially failed without good cause to comply with a court structured plan described in section 424b or 424c of the revised probate code Act No 642 of the Public Acts of 1978 being sections 700 424b and 700 424c of the Michigan Compiled Laws regarding the child

(5) If the child has a guardian under the revised probate code Act No 642 of the Public Acts of 1978 being sections 700 1 to 700 993 of the Michigan Compiled Laws and the child's parent meets both of the following criteria

(A) The parent having the ability to support or assist in supporting the child has failed or neglected without good cause to provide regular and substantial support for the child for a period of 2 years or more before the filing of the petition or if a support order has been entered has failed to substantially comply with the order for a period of 2 years or more before the filing of the petition

(B) The parent having the ability to visit contact or communicate with the child has regularly and substantially failed or neglected without good cause to do so for a period of 2 years or more before the filing of the petition

If a petition is filed in any probate court alleging that a child is within the provisions of subdivision (b)(1) (2) (3) (4) or (5) and the custody of that child is subject to the prior or continuing order of another court of record of this state the manner of notice to the other court and the authority of the probate court to proceed is governed by rule of the supreme court

(c) Jurisdiction over children under 18 years of age jurisdiction of whom has been waived to the juvenile division of the probate court by a circuit court pursuant to a provision in a temporary order for custody of children based upon a complaint for divorce or upon a motion pursuant to a complaint for divorce by the prosecuting attorney in a divorce judgment dissolving a marriage between the parents of the minor children or by an amended judgment relative to the custody of the child in a divorce

(d) If the court finds on the record that voluntary services have been exhausted or refused concurrent jurisdiction in proceedings concerning any child between the ages of 17 and 18 found within the county

(1) Who is repeatedly addicted to the use of drugs or the intemperate use of alcoholic liquors

(2) Who repeatedly associates with criminal dissolute or disorderly persons

(3) Who is found of his or her own free will and knowledge in a house of prostitution assignation or ill fame

(4) Who repeatedly associates with thieves prostitutes pimps or procurers

(5) Who is willfully disobedient to the reasonable and lawful commands of his or her parents guardian or other custodian and is in danger of becoming morally depraved

If any child is brought before the juvenile division of the probate court in a county other than that in which the child resides the court may enter an order before a hearing transferring the jurisdiction of the matter to the court of the county of residence which shall not be construed as a legal settlement as defined in section 55 of the social welfare act Act No 280 of the Public Acts of 1939 as amended being section 400 55 of the Michigan Compiled Laws with the consent of the probate judge of the county of residence The order together with a certified copy of the proceedings in the transferring court shall be delivered to the court of the county of residence

(e) Authority to establish or assist in developing a program or programs within the county to prevent delinquency and provide services to act upon reports submitted to the court related to the behavior of children who do not require formal court jurisdiction but otherwise fall within subdivision (a) These services shall be used only if they are voluntarily accepted by the child and his or her parents guardian or custodian

(f) If the court operates a detention home for children within the court's jurisdiction under subdivision (a)(1) authority to place a child within that home pending trial if the child is within the circuit court's jurisdiction under section 606 of the revised judicature act of 1961 Act No 236 of the Public Acts of 1961 being section 600 606 of the Michigan Compiled Laws or within the recorder's court of the city of Detroit's jurisdiction under section 10a(1)(c) of Act No 369 of the Public Acts of 1919 being section 725 10a of the Michigan Compiled Laws and if the circuit court or the recorder's court of the city of Detroit orders the juvenile division of the probate court in the same county to place the child in that home The juvenile division shall comply with that order

Sec 2a (1) Except as otherwise provided in subsection (2) if the juvenile division of the probate court has exercised jurisdiction over a child under section 2(a) or (b) of this chapter jurisdiction shall continue for a period of 2 years beyond the maximum age of jurisdiction conferred under section 2 of this chapter unless the child is released sooner by order of the court

(2) If the juvenile division of the probate court has exercised jurisdiction over a child under section 2(a)(1) of this chapter for an offense that if committed by an adult would be a violation or attempted violation of section 72 83 84 88 89 91 316 317 349 520b 520c 520d 520g 529 529a or 530 of the Michigan penal code Act No 328 of the Public Acts of 1931 being sections 750 72 750 83 750 84 750 88 750 89 750 91 750 316 750 317 750 349 750 520b 750 520c 750 520d 750 520g 750 529 750 529a and 750 530 of the Michigan Compiled Laws or section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code Act No 368 of the Public Acts of 1978 being sections 333 7401 and 333 7403 of the Michigan Compiled Laws jurisdiction may be continued until the child is 21 years of age under section 18d of this chapter

(3) As used in this chapter child minor or any other term signifying a person under the age of 18 applies to a person 18 years of age or older concerning whom proceedings are commenced in the juvenile division of the probate court pursuant to section 2 of this chapter and over whom the juvenile division has continuing jurisdiction pursuant to subsection (1)

Sec 18d (1) If a child is committed under section 18(1)(e) of this chapter for an offense that if committed by an adult would be a violation or attempted violation of section 72 83 84 88 89 91 316 317 349 520b 520c 520d 520g 529 529a or 530 of the Michigan penal code Act No 328 of the Public Acts of 1931 being sections 750 72 750 83 750 84 750 88 750 89 750 91 750 316 750 317 750 349 750 520b 750 520c 750 520d 750 520g 750 529 750 529a and 750 530 of the Michigan Compiled Laws or section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code Act No 368 of the Public Acts of 1978 being sections 333 7401 and 333 7403 of the Michigan Compiled Laws the court shall conduct a review hearing to determine whether the child has been rehabilitated and whether the child presents a serious risk to public safety If the court determines that the child has not been rehabilitated or that the child presents a serious risk to public safety jurisdiction over the child shall be continued In making this determination the court shall consider all of the following

- (a) The extent and nature of the child's participation in education counseling or work programs
- (b) The child's willingness to accept responsibility for prior behavior
- (c) The child's behavior in his or her current placement
- (d) The child's prior record and character and his or her physical and mental maturity
- (e) The child's potential for violent conduct as demonstrated by prior behavior
- (f) The recommendations of the institution agency or facility charged with the child's care for the child's release or continued custody
- (g) Other information the prosecuting attorney or child may submit

(2) Unless adjourned for good cause a review hearing shall be scheduled and held as near as possible to but before the child's nineteenth birthday If the institution agency or facility to which the child was committed believes the child has been rehabilitated and does not present a serious risk to public safety the institution agency or facility may petition the court to conduct a review hearing any time before the child becomes 19 years of age or if the court has continued jurisdiction under subsection (1) any time before the child becomes 21 years of age

(3) Not less than 14 days before a review hearing is to be conducted the prosecuting attorney child and if addresses are known the child's parent or guardian shall be notified. The notice shall state that the court may extend jurisdiction over the child and shall advise the child and the child's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the child the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the child or those responsible for the child's support or both if the persons to be assessed are financially able to comply.

(4) The institution, agency, or facility charged with the care of the child shall prepare commitment reports as provided in section 5 of the juvenile facilities act, Act No. 73 of the Public Acts of 1988, being section 803.225 of the Michigan Compiled Laws, for use by the court at a review hearing held under this section.

Section 2 This amendatory act shall take effect October 1, 1994.

Section 3 This amendatory act shall not take effect unless Senate Bill No. 773 of the 87th Legislature is enacted into law.

This act is ordered to take immediate effect.

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor