



HOUSE BILL No. 4039

January 11, 1995, Introduced by Reps. Hammerstrom, Llewellyn, Dalman, Crissman, Rhead, Ryan, Walberg, Fitzgerald, McNutt, Bullard, Bush, Lowe and Hill and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 2, 2a, and 18d of chapter XIIIA 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,"

as amended by Act No. 192 of the Public Acts of 1994, being sections 712A.2, 712A.2a, and 712A.18d of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2, 2a, and 18d of chapter XIIA of Act
2 No. 288 of the Public Acts of 1939, as amended by Act No. 192 of
3 the Public Acts of 1994, being sections 712A.2, 712A.2a, and
4 712A.18d of the Michigan Compiled Laws, are amended to read as
5 follows:

6 CHAPTER XIIA

7 Sec. 2. The juvenile division of the probate court has the
8 following authority and jurisdiction:

9 (a) Exclusive original jurisdiction superior to and regard-
10 less of the jurisdiction of any other court in proceedings con-
11 cerning a child under 17 years of age who is found within the
12 county if 1 or more of the following applies:

13 (1) Except as otherwise provided in this subparagraph, the
14 child has violated any municipal ordinance or law of the state or
15 of the United States. The juvenile division of the probate court
16 has jurisdiction over a child 15 years of age or older who is
17 charged with a violation of ~~section~~ ANY OF THE FOLLOWING ONLY
18 IF THE PROSECUTING ATTORNEY FILES A PETITION IN JUVENILE COURT
19 INSTEAD OF AUTHORIZING A COMPLAINT AND WARRANT:

20 (A) SECTION 83, 89, 91, 316, 317, 520b, 529, or 529a of the
21 Michigan penal code, Act No. 328 of the Public Acts of 1931,
22 being sections 750.83, 750.89, 750.91, 750.316, 750.317,
23 750.520b, 750.529, and 750.529a of the Michigan Compiled Laws. ~~or~~
24 ~~or section~~

25 (B) SECTION 7401(2)(a)(i) or 7403(2)(a)(i) of the public
26 health code, Act No. 368 of the Public Acts of 1978, being

1 sections 333.7401 and 333.7403 of the Michigan Compiled Laws. —
2 ~~only if the prosecuting attorney files a petition in juvenile~~
3 ~~court instead of authorizing a complaint and warrant.~~

4 (C) SECTION 84, 110A(2), OR 349 OF ACT NO. 328 OF THE PUBLIC
5 ACTS OF 1931, BEING SECTIONS 750.84, 750.110A, AND 750.349 OF THE
6 MICHIGAN COMPILED LAWS, IF THE CHILD IS ARMED WITH A DANGEROUS
7 WEAPON. AS USED IN THIS SECTION, "DANGEROUS WEAPON" MEANS 1 OR
8 MORE OF THE FOLLOWING:

9 (i) A LOADED OR UNLOADED FIREARM, WHETHER OPERABLE OR
10 INOPERABLE.

11 (ii) A KNIFE, STABBING INSTRUMENT, BRASS KNUCKLES, BLACK-
12 JACK, CLUB, OR OTHER OBJECT SPECIFICALLY DESIGNED OR CUSTOMARILY
13 CARRIED OR POSSESSED FOR USE AS A WEAPON.

14 (iii) AN OBJECT THAT IS LIKELY TO CAUSE DEATH OR BODILY
15 INJURY WHEN USED AS A WEAPON AND THAT IS USED AS A WEAPON OR CAR-
16 RIED OR POSSESSED FOR USE AS A WEAPON.

17 (iv) AN OBJECT OR DEVICE THAT IS USED OR FASHIONED IN A
18 MANNER TO LEAD A PERSON TO BELIEVE THE OBJECT OR DEVICE IS AN
19 OBJECT OR DEVICE DESCRIBED IN SUBPARAGRAPHS (i) TO (iii).

20 (2) The child has deserted his or her home without suffi-
21 cient cause and the court finds on the record that the child has
22 been placed or refused alternative placement or the child and the
23 child's parent, guardian, or custodian have exhausted or refused
24 family counseling.

25 (3) The child is repeatedly disobedient to the reasonable
26 and lawful commands of his or her parents, guardian, or custodian

1 and the court finds on the record by clear and convincing
2 evidence that court-accessed services are necessary.

3 (4) The child willfully and repeatedly absents himself or
4 herself from school or other learning program intended to meet
5 the child's educational needs, or repeatedly violates rules and
6 regulations of the school or other learning program, and the
7 court finds on the record that the child, the child's parent,
8 guardian, or custodian, and school officials or learning program
9 personnel have met on the child's educational problems, and edu-
10 cational counseling and alternative agency help have been
11 sought. As used in this subparagraph only, "learning program"
12 means an organized educational program that is appropriate, given
13 the age, intelligence, ability, and any psychological limitations
14 of a child, in the subject areas of reading, spelling, mathemat-
15 ics, science, history, civics, writing, and English grammar.

16 (b) Jurisdiction in proceedings concerning any child under
17 18 years of age found within the county:

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

26 (A) "Education" means learning based on an organized
27 educational program that is appropriate, given the age,

1 intelligence, ability, and any psychological limitations of a
2 child, in the subject areas of reading, spelling, mathematics,
3 science, history, civics, writing, and English grammar.

4 (B) "Without proper custody or guardianship" does not
5 include the situation where a parent has placed the child with
6 another person who is legally responsible for the care and main-
7 tenance of the child and who is able to and does provide the
8 child with proper care and maintenance.

9 (2) Whose home or environment, by reason of neglect, cruel-
10 ty, drunkenness, criminality, or depravity on the part of a
11 parent, guardian, or other custodian, is an unfit place for the
12 child to live in.

13 (3) Whose parent has substantially failed, without good
14 cause, to comply with a limited guardianship placement plan
15 described in section 424a of the revised probate code, Act
16 No. 642 of the Public Acts of 1978, being section 700.424a of the
17 Michigan Compiled Laws, regarding the child.

18 (4) Whose parent has substantially failed, without good
19 cause, to comply with a court-structured plan described in
20 section 424b or 424c of the revised probate code, Act No. 642 of
21 the Public Acts of 1978, being sections 700.424b and 700.424c of
22 the Michigan Compiled Laws, regarding the child.

23 (5) If the child has a guardian under the revised probate
24 code, Act No. 642 of the Public Acts of 1978, being sections
25 700.1 to 700.993 of the Michigan Compiled Laws, and the child's
26 parent meets both of the following criteria:

1 (A) The parent, having the ability to support or assist in
2 supporting the child, has failed or neglected, without good
3 cause, to provide regular and substantial support for the child
4 for a period of 2 years or more before the filing of the petition
5 or, if a support order has been entered, has failed to substan-
6 tially comply with the order for a period of 2 years or more
7 before the filing of the petition.

8 (B) The parent, having the ability to visit, contact, or
9 communicate with the child, has regularly and substantially
10 failed or neglected, without good cause, to do so for a period of
11 2 years or more before the filing of the petition.

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

19 (c) Jurisdiction over children under 18 years of age, juris-
20 diction of whom has been waived to the juvenile division of the
21 probate court by a circuit court pursuant to a provision in a
22 temporary order for custody of children based upon a complaint
23 for divorce or upon a motion pursuant to a complaint for divorce
24 by the prosecuting attorney, in a divorce judgment dissolving a
25 marriage between the parents of the minor children, or by an
26 amended judgment relative to the custody of the child in a
27 divorce.

1 (d) If the court finds on the record that voluntary services
2 have been exhausted or refused, concurrent jurisdiction in pro-
3 ceedings concerning any child between the ages of 17 and 18 found
4 within the county:

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

7 (2) Who repeatedly associates with criminal, dissolute, or
8 disorderly persons.

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

11 (4) Who repeatedly associates with thieves, prostitutes,
12 pimps, or procurers.

13 (5) Who is willfully disobedient to the reasonable and
14 lawful commands of his or her parents, guardian, or other custo-
15 dian and is in danger of becoming morally depraved.

16 If any child is brought before the juvenile division of the
17 probate court in a county other than that in which the child
18 resides, the court may enter an order before a hearing transfer-
19 ring the jurisdiction of the matter to the court of the county of
20 residence, which shall not be construed as a legal settlement as
21 defined in section 55 of the social welfare act, Act No. 280 of
22 the Public Acts of 1939, as amended, being section 400.55 of the
23 Michigan Compiled Laws, with the consent of the probate judge of
24 the county of residence. The order, together with a certified
25 copy of the proceedings in the transferring court, shall be
26 delivered to the court of the county of residence.

1 (e) Authority to establish or assist in developing a program
2 or programs within the county to prevent delinquency and provide
3 services to act upon reports submitted to the court related to
4 the behavior of children who do not require formal court juris-
5 diction but otherwise fall within subdivision (a). These serv-
6 ices shall be used only if they are voluntarily accepted by the
7 child and his or her parents, guardian, or custodian.

8 (f) If the court operates a detention home for children
9 within the court's jurisdiction under subdivision (a)(1), author-
10 ity to place a child within that home pending trial if the child
11 is within the circuit court's jurisdiction under section 606 of
12 the revised judicature act of 1961, Act No. 236 of the Public
13 Acts of 1961, being section 600.606 of the Michigan Compiled
14 Laws, or within the recorder's court of the city of Detroit's
15 jurisdiction under section 10a(1)(c) of Act No. 369 of the Public
16 Acts of 1919, being section 725.10a of the Michigan Compiled
17 Laws, and if the circuit court or the recorder's court of the
18 city of Detroit orders the juvenile division of the probate court
19 in the same county to place the child in that home. The juvenile
20 division shall comply with that order.

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

1 (2) If the juvenile division of the probate court has
2 exercised jurisdiction over a child under section 2(a)(1) of this
3 chapter for an offense that, if committed by an adult, would be a
4 violation or attempted violation of section 72, 83, 84, 88, 89,
5 91, 110A(2), 316, 317, 349, 520b, 520c, 520d, 520g, 529, 529a, or
6 530 of the Michigan penal code, Act No. 328 of the Public Acts of
7 1931, being sections 750.72, 750.83, 750.84, 750.88, 750.89,
8 750.91, 750.110A, 750.316, 750.317, 750.349, 750.520b, 750.520c,
9 750.520d, 750.520g, 750.529, 750.529a, and 750.530 of the
10 Michigan Compiled Laws, or section 7401(2)(a)(i) or 7403(2)(a)(i)
11 of the public health code, Act No. 368 of the Public Acts of
12 1978, being sections 333.7401 and 333.7403 of the Michigan
13 Compiled Laws, jurisdiction may be continued until the child is
14 21 years of age under section 18d of this chapter.

15 (3) As used in this chapter, "child", "minor" or any other
16 term signifying a person under the age of 18 applies to a person
17 18 years of age or older concerning whom proceedings are com-
18 menced in the juvenile division of the probate court pursuant to
19 section 2 of this chapter and over whom the juvenile division has
20 continuing jurisdiction pursuant to subsection (1).

21 Sec. 18d. (1) If a child is committed under
22 section 18(1)(e) of this chapter for an offense that, if commit-
23 ted by an adult, would be a violation or attempted violation of
24 section 72, 83, 84, 88, 89, 91, 110A(2), 316, 317, 349, 520b,
25 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code,
26 Act No. 328 of the Public Acts of 1931, being sections 750.72,
27 750.83, 750.84, 750.88, 750.89, 750.91, 750.110A, 750.316,

1 750.317, 750.349, 750.520b, 750.520c, 750.520d, 750.520g,
2 750.529, 750.529a, and 750.530 of the Michigan Compiled Laws, or
3 section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code,
4 Act No. 368 of the Public Acts of 1978, being sections 333.7401
5 and 333.7403 of the Michigan Compiled Laws, the court shall con-
6 duct a review hearing to determine whether the child has been
7 rehabilitated and whether the child presents a serious risk to
8 public safety. If the court determines that the child has not
9 been rehabilitated or that the child presents a serious risk to
10 public safety, jurisdiction over the child shall be continued.
11 In making this determination, the court shall consider all of the
12 following:

13 (a) The extent and nature of the child's participation in
14 education, counseling, or work programs.

15 (b) The child's willingness to accept responsibility for
16 prior behavior.

17 (c) The child's behavior in his or her current placement.

18 (d) The child's prior record and character and his or her
19 physical and mental maturity.

20 (e) The child's potential for violent conduct as demon-
21 strated by prior behavior.

22 (f) The recommendations of the institution, agency, or
23 facility charged with the child's care for the child's release or
24 continued custody.

25 (g) Other information the prosecuting attorney or child may
26 submit.

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

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

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

1 Section 2. This amendatory act shall not take effect unless
2 all of the following bills of the 88th Legislature are enacted
3 into law:

4 (a) Senate Bill No. _____ or House Bill No. 4040

5 (request no. 01934'95 a).

6 (b) Senate Bill No. _____ or House Bill No. 4041

7 (request no. 01934'95 b).

8 (c) Senate Bill No. _____ or House Bill No. 4042

9 (request no. 01934'95 c).

10 (d) Senate Bill No. _____ or House Bill No. 4043

11 (request no. 01934'95 d).

12 (e) Senate Bill No. _____ or House Bill No. 4044

13 (request no. 01934'95 e).