



SENATE BILL No. 21

January 17, 1995, Introduced by Senator BOUCHARD and referred to the Committee on Judiciary.

A bill to amend sections 2 and 4 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,"

section 2 as amended by Act No. 192 of the Public Acts of 1994 and section 4 as amended by Act No. 182 of the Public Acts of

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 4 of chapter XIIIA of Act No. 288
2 of the Public Acts of 1939, section 2 as amended by Act No. 192
3 of the Public Acts of 1994 and section 4 as amended by Act
4 No. 182 of the Public Acts of 1988, being sections 712A.2 and
5 712A.4 of the Michigan Compiled Laws, are amended to read as
6 follows:

7 CHAPTER XIIA

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

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

(1) Except as otherwise provided in this subparagraph, the child has violated ~~any~~ A 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~~ 14 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

1 Compiled Laws, OR ANOTHER LAW OF THIS STATE THAT IS PUNISHABLE BY
2 LIFE IMPRISONMENT only if the prosecuting attorney files a peti-
3 tion in juvenile court instead of authorizing a complaint and
4 warrant.

5 (2) The child has deserted his or her home without suffi-
6 cient cause and the court finds on the record that the child has
7 been placed or refused alternative placement or the child and the
8 child's parent, guardian, or custodian have exhausted or refused
9 family counseling.

10 (3) The child is repeatedly disobedient to the reasonable
11 and lawful commands of his or her parents, guardian, or custodian
12 and the court finds on the record by clear and convincing evi-
13 dence that court-accessed services are necessary.

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

1 (b) Jurisdiction in proceedings concerning ~~any~~ A child
2 under 18 years of age found within the county:

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

11 (A) "Education" means learning based on an organized educa-
12 tional program that is appropriate, given the age, intelligence,
13 ability, and any psychological limitations of a child, in the
14 subject areas of reading, spelling, mathematics, science, histo-
15 ry, civics, writing, and English grammar.

16 (B) "Without proper custody or guardianship" does not
17 include the situation where a parent has placed the child with
18 another person who is legally responsible for the care and main-
19 tenance of the child and who is able to and does provide the
20 child with proper care and maintenance.

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

25 (3) Whose parent has substantially failed, without good
26 cause, to comply with a limited guardianship placement plan
27 described in section 424a of the revised probate code, Act

1 No. 642 of the Public Acts of 1978, being section 700.424a of the
2 Michigan Compiled Laws, regarding the child.

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

8 (5) If the child has a guardian under the revised probate
9 code, Act No. 642 of the Public Acts of 1978, being sections
10 700.1 to 700.993 of the Michigan Compiled Laws, and the child's
11 parent meets both of the following criteria:

12 (A) The parent, having the ability to support or assist in
13 supporting the child, has failed or neglected, without good
14 cause, to provide regular and substantial support for the child
15 for a period of 2 years or more before the filing of the petition
16 or, if a support order has been entered, has failed to substan-
17 tially comply with the order for a period of 2 years or more
18 before the filing of the petition.

19 (B) The parent, having the ability to visit, contact, or
20 communicate with the child, has regularly and substantially
21 failed or neglected, without good cause, to do so for a period of
22 2 years or more before the filing of the petition.

23 If a petition is filed in ~~any~~ A probate court alleging
24 that a child is within the provisions of subdivision (b)(1), (2),
25 (3), (4), or (5), and the custody of that child is subject to the
26 prior or continuing order of another court of record of this
27 state, the manner of notice to the other court and the authority

1 of the probate court to proceed is governed by rule of the
2 supreme court.

3 (c) Jurisdiction over children under 18 years of age, juris-
4 diction of whom has been waived to the juvenile division of the
5 probate court by a circuit court pursuant to a provision in a
6 temporary order for custody of children based upon a complaint
7 for divorce or upon a motion pursuant to a complaint for divorce
8 by the prosecuting attorney, in a divorce judgment dissolving a
9 marriage between the parents of the minor children, or by an
10 amended judgment relative to the custody of the child in a
11 divorce.

12 (d) If the court finds on the record that voluntary services
13 have been exhausted or refused, concurrent jurisdiction in pro-
14 ceedings concerning ~~any~~ A child between the ages of 17 and 18
15 found within the county:

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

18 (2) Who repeatedly associates with criminal, dissolute, or
19 disorderly persons.

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

22 (4) Who repeatedly associates with thieves, prostitutes,
23 pimps, or procurers.

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

1 If ~~any~~ A child is brought before the juvenile division of
2 the probate court in a county other than that in which the child
3 resides, the court may enter an order before a hearing transfer-
4 ring the jurisdiction of the matter to the court of the county of
5 residence, which shall not be construed as a legal settlement as
6 ~~defined~~ DESCRIBED in section 55 of the social welfare act, Act
7 No. 280 of the Public Acts of 1939, as amended, being section
8 400.55 of the Michigan Compiled Laws, with the consent of the
9 probate judge of the county of residence. The order, together
10 with a certified copy of the proceedings in the transferring
11 court, shall be delivered to the court of the county of
12 residence.

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

20 (f) If the court operates a detention home for children
21 within the court's jurisdiction under subdivision (a)(1), author-
22 ity to place a child within that home pending trial if the child
23 is within the circuit court's jurisdiction under section 606 of
24 the revised judicature act of 1961, Act No. 236 of the Public
25 Acts of 1961, being section 600.606 of the Michigan Compiled
26 Laws, or within the recorder's court of the city of Detroit's
27 jurisdiction under section 10a(1)(c) of Act No. 369 of the Public

1 Acts of 1919, being section 725.10a of the Michigan Compiled
2 Laws, and if the circuit court or the recorder's court of the
3 city of Detroit orders the juvenile division of the probate court
4 in the same county to place the child in that home. The juvenile
5 division shall comply with that order.

6 Sec. 4. (1) If a child ~~who has attained the age of 15~~ 14
7 years OF AGE OR OLDER is accused of an act ~~which~~ THAT, if com-
8 mitted by an adult ~~,~~ would be a felony, the judge of probate of
9 the county where the offense is alleged to have been committed
10 may waive jurisdiction pursuant to this section upon motion of
11 the prosecuting attorney. After waiver, ~~it shall be lawful to~~
12 ~~try~~ the child MAY BE TRIED in the court having general criminal
13 jurisdiction of the offense.

14 (2) Before conducting a hearing on the motion to waive
15 jurisdiction, the court shall give notice of the hearing in the
16 manner provided by supreme court rule to the child and the prose-
17 cuting attorney and, if addresses are known, to the child's par-
18 ents or guardians. The notice shall state clearly that a waiver
19 of jurisdiction to a court of general criminal jurisdiction has
20 been requested and that, if granted, the child can be prosecuted
21 for the alleged offense as though he or she were an adult.

22 (3) Before the court waives jurisdiction, the court shall
23 determine on the record if there is probable cause to believe
24 that an offense has been committed ~~which~~ THAT if committed by
25 an adult would be a felony and if there is probable cause to
26 believe that the child committed the offense. Before a child may
27 waive a probable cause hearing under this subsection, the court

1 shall inform the child that a waiver of this subsection waives
2 the preliminary examination required by chapter VI of the code of
3 criminal procedure, Act No. 175 of the Public Acts of 1927, being
4 sections 766.1 to ~~766.22~~ 766.18 of the Michigan Compiled Laws.

5 (4) Upon a showing of probable cause pursuant to subsection
6 (3), the court shall conduct a hearing to determine if the best
7 interests of ~~the child and~~ the public would be served by grant-
8 ing a waiver of jurisdiction to the court of general criminal
9 jurisdiction. ~~In~~ EXCEPT AS PROVIDED IN SUBSECTION (5), IN
10 making the determination, the court shall consider the following
11 criteria giving each weight as appropriate to the circumstances:

12 (a) The prior record and character of the child, his or her
13 physical and mental maturity, and his or her pattern of living.

14 (b) The seriousness of the offense.

15 (c) Whether the offense is part of a repetitive pattern of
16 offenses ~~which~~ THAT would lead to 1 of the following
17 determinations:

18 (i) The child is not amenable to treatment.

19 (ii) That despite the child's potential for treatment, the
20 nature of the child's delinquent behavior is likely to disrupt
21 the rehabilitation of other children in the treatment program.

22 (d) Whether, despite the child's potential for treatment,
23 the nature of the child's delinquent behavior is likely to render
24 the child dangerous to the public if released at the age of 19 or
25 21.

1 (e) Whether the child is more likely to be rehabilitated by
2 the services and facilities available in adult programs and
3 procedures than in juvenile programs and procedures.

4 (f) Whether it is in the best interests of the public wel-
5 fare and the protection of the public security that the child
6 stand trial as an adult offender.

7 (5) IF THE COURT DETERMINES THAT THERE IS PROBABLE CAUSE TO
8 BELIEVE THAT THE CHILD HAS COMMITTED THE OFFENSE AND CONVICTION
9 FOR THE OFFENSE MAY BE PUNISHED BY LIFE IMPRISONMENT, THE COURT
10 SHALL PRESUME THAT IT IS IN THE BEST INTERESTS OF THE PUBLIC TO
11 WAIVE JURISDICTION TO THE COURT OF GENERAL CRIMINAL JURISDICTION.

12 (6) ~~-(5)-~~ If legal counsel has not been retained or
13 appointed to represent the child, the court shall advise the
14 child and his or her parents, guardian, custodian, or guardian ad
15 litem of the child's right to representation and appoint legal
16 counsel. If the court appoints legal counsel, the judge may
17 assess the cost of providing legal counsel as costs against the
18 child or those responsible for his or her support, or both, if
19 the persons to be assessed are financially able to comply.

20 (7) ~~-(6)-~~ Legal counsel shall have access to records or
21 reports provided and received by the judge as a basis for deci-
22 sion in proceedings for waiver of jurisdiction. A continuance
23 shall be granted at legal counsel's request if any report,
24 information, or recommendation, not previously available, is
25 introduced or developed at the hearing and the interests of jus-
26 tice require a continuance.

1 (8) ~~(7)~~ The court shall enter a written order either
2 granting or denying the motion to waive jurisdiction, and the
3 court shall state on the record or in a written opinion the
4 court's findings of fact and conclusions of law forming the basis
5 for entry of the order. If a child is waived, a transcript of
6 the court's findings or a copy of the written opinion shall be
7 sent to the court of general criminal jurisdiction.

8 (9) ~~(8)~~ If the court does not waive jurisdiction, a tran-
9 script of the court's findings or, if a written opinion is pre-
10 pared, a copy of the written opinion shall be sent to the prose-
11 cutor, child, or child's attorney upon request.

12 (10) ~~(9)~~ If the court waives jurisdiction, the child shall
13 be arraigned on an information filed by the prosecutor in the
14 court of general criminal jurisdiction. The probable cause find-
15 ing under subsection (3) shall satisfy the requirements of and be
16 considered the equivalent of the preliminary examination required
17 by chapter VI of Act No. 175 of the Public Acts of 1927.

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

21 (a) Senate Bill No. 22.

22

23 (b) Senate Bill No. 23.

24

25 (c) Senate Bill No. 24.

26