

HOUSE BILL NO. 4436

April 19, 2023, Introduced by Reps. Wegela, Neeley, Tsernoglou, Morse, Brixie, Dievendorf, Byrnes, Wilson, Hoskins, Grant, Brenda Carter, Young, Edwards, McKinney, Paiz, Price, MacDonell, Rheingans and Aiyash and referred to the Committee on Criminal Justice.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 1 of chapter XIIIA (MCL 712A.1), as amended by
2020 PA 389, and by adding section 17e to chapter XIIIA.

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
4 113 of the revised judicature act of 1961, 1961 PA 236, MCL

1 600.113.

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

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

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

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

13 (f) **"Custodial detention" means that term as defined in**
14 **section 7 of chapter III of the code of criminal procedure, 1927 PA**
15 **175, MCL 763.7.**

16 (g) **"Deception" means the knowing communication of a false**
17 **fact about evidence or an unauthorized statement regarding leniency**
18 **by a law enforcement officer to a juvenile in custodial detention.**

19 (h) ~~(f)~~—"Department" means the department of health and human
20 services. A reference in this chapter to the "department of social
21 welfare" or the "family independence agency" means the department
22 of health and human services.

23 (i) ~~(g)~~—"Foreign protection order" means that term as defined
24 in section 2950h of the revised judicature act of 1961, 1961 PA
25 236, MCL 600.2950h.

26 (j) ~~(h)~~—"Incompetent to proceed" means that a juvenile, based
27 on age-appropriate norms, lacks a reasonable degree of rational and
28 factual understanding of the proceeding or is unable to do 1 or
29 more of the following:

1 (i) Consult with and assist ~~his or her~~ **the juvenile's** attorney
2 in preparing ~~his or her~~ **the juvenile's** defense in a meaningful
3 manner.

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

5 (k) **"Interrogation" means that term as defined in section 7 of**
6 **chapter III of the code of criminal procedure, 1927 PA 175, MCL**
7 **763.7.**

8 (l) ~~(i)~~ Until September 30, 2021, "juvenile" means a person who
9 is less than 17 years of age who is the subject of a delinquency
10 petition. Beginning October 1, 2021, "juvenile" means a person who
11 is less than 18 years of age who is the subject of a delinquency
12 petition.

13 (m) **"Law enforcement officer" means law enforcement official**
14 **as defined in section 7 of chapter III of the code of criminal**
15 **procedure, 1927 PA 175, MCL 763.7.**

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

22 (o) ~~(k)~~ "Licensed child caring institution" means a child
23 caring institution as defined and licensed under 1973 PA 116, MCL
24 722.111 to 722.128.

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

27 (q) ~~(m)~~ "Mental health code" means the mental health code,
28 1974 PA 258, MCL 330.1001 to 330.2106.

29 (r) ~~(n)~~ "Personal protection order" means a personal

1 protection order issued under section 2950 or 2950a of the revised
2 judiciary act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a,
3 and includes a valid foreign protection order.

4 (s) ~~(e)~~—"Public agency" means the department, a local unit of
5 government, the family division of the circuit court, the juvenile
6 division of the probate court, or a county juvenile agency.

7 (t) ~~(p)~~—"Qualified juvenile forensic mental health examiner"
8 means 1 of the following who performs forensic mental health
9 examinations for the purposes of sections 1062 to 1074 of the
10 mental health code, MCL 330.2062 to 330.2074, but does not exceed
11 the scope of ~~his or her~~ **the qualified juvenile forensic mental**
12 **health examiner's** practice as authorized by state law:

13 (i) A psychiatrist or psychologist who possesses experience or
14 training in **all of** the following:

15 (A) Forensic evaluation procedures for juveniles.

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

19 (C) Clinical understanding of child and adolescent
20 development.

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

22 (ii) A mental health professional other than a psychiatrist or
23 psychologist who has completed a juvenile competency training
24 program for forensic mental health examiners that is endorsed by
25 the department under section 1072 of the mental health code, MCL
26 330.2072, and who possesses experience or training in all of the
27 following:

28 (A) Forensic evaluation procedures for juveniles.

29 (B) Evaluation, diagnosis, and treatment of children and

1 adolescents with emotional disturbance, mental illness, or
2 developmental disabilities.

3 (C) Clinical understanding of child and adolescent
4 development.

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

6 (u) ~~(q)~~ "Qualified restoration provider" means an individual
7 who the court determines, as a result of the opinion provided by
8 the qualified **juvenile** forensic mental health examiner, has the
9 skills and training necessary to provide restoration services. The
10 court shall take measures to avoid any conflict of interest among
11 agencies or individuals who may provide evaluation and restoration.

12 (v) ~~(r)~~ "Reasonable and prudent parenting standard" means
13 decisions characterized by careful and sensible parental decisions
14 that maintain a child's health, safety, and best interest while
15 encouraging the emotional and developmental growth of the child
16 when determining whether to allow a child in foster care to
17 participate in extracurricular, enrichment, cultural, and social
18 activities.

19 (w) ~~(s)~~ "Restoration" means the process by which education or
20 treatment of a juvenile results in that juvenile becoming competent
21 to proceed.

22 (x) ~~(t)~~ "Secure facility" means any public or private licensed
23 child caring institution identified by the department as designed
24 to physically restrict the movements and activities of the alleged
25 or adjudicated juvenile offender that has the primary purpose of
26 serving juveniles who have been alleged or adjudicated delinquent,
27 other than a juvenile alleged or adjudicated under section 2(a)(2)
28 to (4) of this chapter.

29 (y) ~~(u)~~ "Serious misdemeanor" means that term as defined in

1 section 61 of the William Van Regenmorter crime victim's rights
2 act, 1985 PA 87, MCL 780.811.

3 (z) ~~(v)~~—"Valid foreign protection order" means a foreign
4 protection order that satisfies the conditions for validity
5 provided in section 2950i of the revised judicature act of 1961,
6 1961 PA 236, MCL 600.2950i.

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

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

17 **Sec. 17e. (1) A self-incriminating response of a juvenile is**
18 **presumed inadmissible as evidence against a juvenile who is within**
19 **the court's jurisdiction under section 2(a)(1) of this chapter if**
20 **both of the following apply:**

21 (a) **The self-incriminating response was obtained while the**
22 **juvenile was in custodial detention.**

23 (b) **During the interrogation, a law enforcement officer**
24 **knowingly engaged in deception.**

25 (2) **The presumption of inadmissibility of a juvenile's self-**
26 **incriminating response under subsection (1) may be overcome by a**
27 **preponderance of the evidence that the deception did not cause the**
28 **self-incriminating response to be involuntarily given, based on the**
29 **totality of the circumstances.**

1 (3) The burden under subsection (2) is on the state.

2 (4) This section applies to self-incriminating responses of a
3 juvenile made on or after January 1, 2025.

4 Enacting section 1. This amendatory act takes effect January
5 1, 2025.