



HOUSE BILL No. 4490

February 28, 1995, Introduced by Reps. London, Willard, McBryde, Brewer, Law, Kaza, Wetters, Bush, Hill, Dalman, Hanley, Goschka, Palamara, Kukuk, Bodem, Rocca, Jellema, Dobb, Galloway, Brackenridge and Jamian and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 2 and 4 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. 192 of the Public Acts of 1994 and section 4 as amended by Act No. 182 of the Public Acts of

1988, being sections 712A.2 and 712A.4 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 4 of chapter XIIA 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:

14 (1) Except as otherwise provided in this subparagraph, the
15 child has violated ~~any~~ A municipal ordinance or law of the
16 state or of the United States. The juvenile division of the pro-
17 bate court has jurisdiction over a child ~~+5-~~ 14 years of age or
18 older who is charged with a violation of section 83, 89, 91, 316,
19 317, 520b, 529, or 529a of the Michigan penal code, Act No. 328
20 of the Public Acts of 1931, being sections 750.83, 750.89,
21 750.91, 750.316, 750.317, 750.520b, 750.529, and 750.529a of the
22 Michigan Compiled Laws, or section 7401(2)(a)(i) or 7403(2)(a)(i)
23 of the public health code, Act No. 368 of the Public Acts of
24 1978, being sections 333.7401 and 333.7403 of the Michigan

1 Compiled Laws, only if the prosecuting attorney files a petition
2 in juvenile court instead of authorizing a complaint and
3 warrant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (2) Who repeatedly associates with criminal, dissolute, or
17 disorderly persons.

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

20 (4) Who repeatedly associates with thieves, prostitutes,
21 pimps, or procurers.

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

25 If ~~any~~ A child is brought before the juvenile division of
26 the probate court in a county other than that in which the child
27 resides, the court may enter an order before a hearing

1 transferring the jurisdiction of the matter to the court of the
2 county of residence, which shall not be construed as a legal set-
3 tlement as ~~defined~~ DESCRIBED in section 55 of the social wel-
4 fare act, Act No. 280 of the Public Acts of 1939, as amended,
5 being section 400.55 of the Michigan Compiled Laws, with the con-
6 sent of the probate judge of the county of residence. The order,
7 together with a certified copy of the proceedings in the trans-
8 ferring court, shall be delivered to the court of the county of
9 residence.

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

17 (f) If the court operates a detention home for children
18 within the court's jurisdiction under subdivision (a)(1), author-
19 ity to place a child within that home pending trial if the child
20 is within the circuit court's jurisdiction under section 606 of
21 the revised judicature act of 1961, Act No. 236 of the Public
22 Acts of 1961, being section 600.606 of the Michigan Compiled
23 Laws, or within the recorder's court of the city of Detroit's
24 jurisdiction under section 10a(1)(c) of Act No. 369 of the Public
25 Acts of 1919, being section 725.10a of the Michigan Compiled
26 Laws, and if the circuit court or the recorder's court of the
27 city of Detroit orders the juvenile division of the probate court

1 in the same county to place the child in that home. The juvenile
2 division shall comply with that order.

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

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

19 (3) Before the court waives jurisdiction, the court shall
20 determine on the record if there is probable cause to believe
21 that an offense has been committed ~~which~~ THAT if committed by
22 an adult would be a felony and if there is probable cause to
23 believe that the child committed the offense. Before a child may
24 waive a probable cause hearing under this subsection, the court
25 shall inform the child that a waiver of this subsection waives
26 the preliminary examination required by chapter VI of the code of

1 criminal procedure, Act No. 175 of the Public Acts of 1927, being
2 sections 766.1 to ~~766.22~~ 766.18 of the Michigan Compiled Laws.

3 (4) Upon a showing of probable cause pursuant to subsection
4 (3), the court shall conduct a hearing to determine if the best
5 interests of the child and the public would be served by granting
6 a waiver of jurisdiction to the court of general criminal
7 jurisdiction. In making the determination, the court shall con-
8 sider the following criteria giving each weight as appropriate to
9 the circumstances:

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

12 (b) The seriousness of the offense.

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

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

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

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

24 (e) Whether the child is more likely to be rehabilitated by
25 the services and facilities available in adult programs and pro-
26 cedures than in juvenile programs and procedures.

1 (f) Whether it is in the best interests of the public
2 welfare and the protection of the public security that the child
3 stand trial as an adult offender.

4 (5) If legal counsel has not been retained or appointed to
5 represent the child, the court shall advise the child and his or
6 her parents, guardian, custodian, or guardian ad litem of the
7 child's right to representation and appoint legal counsel. If
8 the court appoints legal counsel, the judge may assess the cost
9 of providing legal counsel as costs against the child or those
10 responsible for his or her support, or both, if the persons to be
11 assessed are financially able to comply.

12 (6) Legal counsel shall have access to records or reports
13 provided and received by the judge as a basis for decision in
14 proceedings for waiver of jurisdiction. A continuance shall be
15 granted at legal counsel's request if any report, information, or
16 recommendation, not previously available, is introduced or devel-
17 oped at the hearing and the interests of justice require a
18 continuance.

19 (7) The court shall enter a written order either granting or
20 denying the motion to waive jurisdiction, and the court shall
21 state on the record or in a written opinion the court's findings
22 of fact and conclusions of law forming the basis for entry of the
23 order. If a child is waived, a transcript of the court's find-
24 ings or a copy of the written opinion shall be sent to the court
25 of general criminal jurisdiction.

26 (8) If the court does not waive jurisdiction, a transcript
27 of the court's findings or, if a written opinion is prepared, a

1 copy of the written opinion shall be sent to the prosecutor,
2 child, or child's attorney upon request.

3 (9) If the court waives jurisdiction, the child shall be
4 arraigned on an information filed by the prosecutor in the court
5 of general criminal jurisdiction. The probable cause finding
6 under subsection (3) shall satisfy the requirements of and be
7 considered the equivalent of the preliminary examination required
8 by chapter VI of Act No. 175 of the Public Acts of 1927.

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

12 (a) Senate Bill No. _____ or House Bill No. 4489
13 (request no. 03189'95 a).

14 (b) Senate Bill No. _____ or House Bill No. 4486
15 (request no. 03189'95 b).

16 (c) Senate Bill No. _____ or House Bill No. 4487
17 (request no. 03189'95 c).