

HOUSE BILL No. 5305

October 18, 2001, Introduced by Rep. Howell and referred to the Committee on Criminal Justice.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 1, 2, 2c, and 14 of chapter XIIIA (MCL 712A.1, 712A.2, 712A.2c, and 712A.14), section 1 as amended by 2000 PA 46, section 2 as amended by 2000 PA 55, and sections 2c and 14 as amended by 1998 PA 474.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIIA

Sec. 1. (1) As used in this chapter:

(a) "Civil infraction" means that term as defined in section 113 of the revised judicature act of 1961, 1961 PA 236, MCL 600.113.

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

1 (c) "Court" means the family division of circuit court.

2 (D) "FOREIGN PROTECTION ORDER" MEANS THAT TERM AS DEFINED IN
3 SECTION 2950D OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,
4 MCL 600.2950D.

5 (E) ~~(d)~~ "MCI" means the Michigan children's institute cre-
6 ated and established by 1935 PA 220, MCL 400.201 to 400.214.

7 (F) "PERSONAL PROTECTION ORDER" MEANS A PERSONAL PROTECTION
8 ORDER ISSUED UNDER SECTION 2950 OR 2950A OF THE REVISED JUDICA-
9 TURE ACT OF 1961, 1961 PA 236, MCL 600.2950 AND 600.2950A, AND
10 INCLUDES A VALID FOREIGN PROTECTION ORDER.

11 (G) "VALID FOREIGN PROTECTION ORDER" MEANS A FOREIGN PROTEC-
12 TION ORDER THAT SATISFIES THE CONDITIONS FOR VALIDITY PROVIDED IN
13 SECTION 2950D OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,
14 MCL 600.2950D.

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

17 (3) This chapter shall be liberally construed so that each
18 juvenile coming within the court's jurisdiction receives the
19 care, guidance, and control, preferably in his or her own home,
20 conducive to the juvenile's welfare and the best interest of the
21 state. If a juvenile is removed from the control of his or her
22 parents, the juvenile shall be placed in care as nearly as possi-
23 ble equivalent to the care that should have been given to the
24 juvenile by his or her parents.

25 Sec. 2. The court has the following authority and
26 jurisdiction:

1 (a) Exclusive original jurisdiction superior to and
2 regardless of the jurisdiction of another court in proceedings
3 concerning a juvenile under 17 years of age who is found within
4 the county if 1 or more of the following applies:

5 (1) Except as otherwise provided in this sub-subdivision,
6 the juvenile has violated any municipal ordinance or law of the
7 state or of the United States. If the court enters into an
8 agreement under section 2e of this chapter, the court has juris-
9 diction over a juvenile who committed a civil infraction as pro-
10 vided in that section. The court has jurisdiction over a juve-
11 nile 14 years of age or older who is charged with a specified
12 juvenile violation only if the prosecuting attorney files a peti-
13 tion in the court instead of authorizing a complaint and
14 warrant. As used in this sub-subdivision, "specified juvenile
15 violation" means 1 or more of the following:

16 (A) A violation of section 72, 83, 86, 89, 91, 316, 317,
17 349, 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA
18 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316,
19 750.317, 750.349, 750.520b, 750.529, 750.529a, and 750.531.

20 (B) A violation of section 84 or 110a(2) of the Michigan
21 penal code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile
22 is armed with a dangerous weapon. As used in this paragraph,
23 "dangerous weapon" means 1 or more of the following:

24 (i) A loaded or unloaded firearm, whether operable or
25 inoperable.

1 (ii) A knife, stabbing instrument, brass knuckles,
2 blackjack, club, or other object specifically designed or
3 customarily carried or possessed for use as a weapon.

4 (iii) An object that is likely to cause death or bodily
5 injury when used as a weapon and that is used as a weapon or car-
6 ried or possessed for use as a weapon.

7 (iv) An object or device that is used or fashioned in a
8 manner to lead a person to believe the object or device is an
9 object or device described in subparagraphs (i) to (iii).

10 (C) A violation of section 186a of the Michigan penal code,
11 1931 PA 328, MCL 750.186a, regarding escape or attempted escape
12 from a juvenile facility, but only if the juvenile facility from
13 which the individual escaped or attempted to escape was 1 of the
14 following:

15 (i) A high-security or medium-security facility operated by
16 the family independence agency or a county juvenile agency.

17 (ii) A high-security facility operated by a private agency
18 under contract with the family independence agency or a county
19 juvenile agency.

20 (D) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of
21 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

22 (E) An attempt to commit a violation described in paragraphs
23 (A) to (D).

24 (F) Conspiracy to commit a violation described in paragraphs
25 (A) to (D).

26 (G) Solicitation to commit a violation described in
27 paragraphs (A) to (D).

1 (H) A lesser included offense of a violation described in
2 paragraphs (A) to (G) if the individual is charged with a viola-
3 tion described in paragraphs (A) to (G).

4 (I) Another violation arising out of the same transaction as
5 a violation described in paragraphs (A) to (G) if the individual
6 is charged with a violation described in paragraphs (A) to (G).

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

12 (3) The juvenile is repeatedly disobedient to the reasonable
13 and lawful commands of his or her parents, guardian, or custodi-
14 an, and the court finds on the record by clear and convincing
15 evidence that court-accessed services are necessary.

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

1 mathematics, science, history, civics, writing, and English
2 grammar.

3 (b) Jurisdiction in proceedings concerning a juvenile under
4 18 years of age found within the county:

5 (1) Whose parent or other person legally responsible for the
6 care and maintenance of the juvenile, when able to do so,
7 neglects or refuses to provide proper or necessary support, edu-
8 cation, medical, surgical, or other care necessary for his or her
9 health or morals, who is subject to a substantial risk of harm to
10 his or her mental well-being, who is abandoned by his or her par-
11 ents, guardian, or other custodian, or who is without proper cus-
12 tody or guardianship. As used in this sub-subdivision:

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

18 (B) "Without proper custody or guardianship" does not mean a
19 parent has placed the juvenile with another person who is legally
20 responsible for the care and maintenance of the juvenile and who
21 is able to and does provide the juvenile with proper care and
22 maintenance.

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

1 (3) Whose parent has substantially failed, without good
2 cause, to comply with a limited guardianship placement plan
3 described in section 5205 of the estates and protected individu-
4 als code, 1998 PA 386, MCL 700.5205, regarding the juvenile.

5 (4) Whose parent has substantially failed, without good
6 cause, to comply with a court-structured plan described in sec-
7 tion 5207 or 5209 of the estates and protected individuals code,
8 1998 PA 386, MCL 700.5207 and 700.5209, regarding the juvenile.

9 (5) If the juvenile has a guardian under the estates and
10 protected individuals code, 1998 PA 386, MCL 700.1101 to
11 700.8102, and the juvenile's parent meets both of the following
12 criteria:

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

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

24 If a petition is filed in the court alleging that a juvenile
25 is within the provisions of subdivision (b)(1), (2), (3), (4), or
26 (5) and the custody of that juvenile is subject to the prior or
27 continuing order of another court of record of this state, the

1 manner of notice to the other court of record and the authority
2 of the court to proceed is governed by rule of the supreme
3 court.

4 (c) Jurisdiction over juveniles under 18 years of age,
5 jurisdiction of whom has been waived to the family division of
6 circuit court by a circuit court under a provision in a temporary
7 order for custody of juveniles based upon a complaint for divorce
8 or upon a motion related to a complaint for divorce by the prose-
9 cuting attorney, in a divorce judgment dissolving a marriage
10 between the juvenile's parents, or by an amended judgment rela-
11 tive to the juvenile's custody in a 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 a juvenile between the ages of 17 and 18
15 found within the county who is 1 or more of the following:

16 (1) Repeatedly addicted to the use of drugs or the intemper-
17 ate use of alcoholic liquors.

18 (2) Repeatedly associating with criminal, dissolute, or dis-
19 orderly persons.

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

22 (4) Repeatedly associating with thieves, prostitutes, pimps,
23 or procurers.

24 (5) Willfully disobedient to the reasonable and lawful com-
25 mands of his or her parents, guardian, or other custodian and in
26 danger of becoming morally depraved.

1 If a juvenile is brought before the court in a county other
2 than that in which the juvenile resides, before a hearing and
3 with the consent of the judge of the court in the county of resi-
4 dence, the court may enter an order transferring jurisdiction of
5 the matter to the court of the county of residence. Consent to
6 transfer jurisdiction is not required if the county of residence
7 is a county juvenile agency and satisfactory proof of residence
8 is furnished to the court of the county of residence. The order
9 does not constitute a legal settlement in this state that is
10 required for the purpose of section 55 of the social welfare act,
11 1939 PA 280, MCL 400.55. The order and a certified copy of the
12 proceedings in the transferring court shall be delivered to the
13 court of the county of residence. A case designated as a case in
14 which the juvenile shall be tried in the same manner as an adult
15 under section 2d of this chapter may be transferred for venue or
16 for juvenile disposition, but shall not be transferred on grounds
17 of residency. If the case is not transferred, the court having
18 jurisdiction of the offense shall try the case.

19 (e) Authority to establish or assist in developing a program
20 or programs within the county to prevent delinquency and provide
21 services to act upon reports submitted to the court related to
22 the behavior of a juvenile who does not require formal court
23 jurisdiction but otherwise falls within subdivision (a). These
24 services shall be used only if the juvenile and his or her par-
25 ents, guardian, or custodian voluntarily accepts them.

26 (f) If the court operates a detention home for juveniles
27 within the court's jurisdiction under subdivision (a)(1),

1 authority to place a juvenile within that home pending trial if
2 the juvenile is within the circuit court's jurisdiction under
3 section 606 of the revised judicature act of 1961, 1961 PA 236,
4 MCL 600.606, and if the circuit court orders the family division
5 of circuit court in the same county to place the juvenile in that
6 home. The family division of circuit court shall comply with
7 that order.

8 (g) Authority to place a juvenile in a county jail under
9 section 27a of chapter IV of the code of criminal procedure, 1927
10 PA 175, MCL 764.27a, if the court designates the case under sec-
11 tion 2d of this chapter as a case in which the juvenile is to be
12 tried in the same manner as an adult and the court determines
13 there is probable cause to believe that the offense was committed
14 and probable cause to believe the juvenile committed that
15 offense.

16 (h) Jurisdiction over a proceeding under section 2950 or
17 2950a of the revised judicature act of 1961, 1961 PA 236,
18 MCL 600.2950 and 600.2950a, in which a minor less than 18 years
19 of age is the respondent, OR A PROCEEDING TO ENFORCE A VALID FOR-
20 EIGN PROTECTION ORDER ISSUED AGAINST A RESPONDENT WHO IS A MINOR
21 LESS THAN 18 YEARS OF AGE. Venue for an initial action under
22 section 2950 or 2950a of the revised judicature act of 1961, 1961
23 PA 236, MCL 600.2950 and 600.2950a, is proper in the county of
24 residence of either the petitioner or respondent. If the respon-
25 dent does not live in this state, venue for the initial action is
26 proper in the petitioner's county of residence.

1 Sec. 2c. The court may issue an order authorizing a peace
2 officer or other person designated by the court to apprehend a
3 juvenile who is absent without leave from an institution or
4 facility to which he or she was committed under section 18 of
5 this chapter, has violated probation, has failed to appear for a
6 hearing on a petition charging a violation of section 2 of this
7 chapter, ~~or~~ is alleged to have violated a personal protection
8 order issued under section 2(h) of this chapter, OR IS ALLEGED TO
9 HAVE VIOLATED A VALID FOREIGN PROTECTION ORDER. The order shall
10 set forth specifically the identity of the juvenile sought and
11 the house, building, or other location or place where there is
12 probable cause to believe the juvenile is to be found. A person
13 who interferes with the lawful attempt to execute an order issued
14 under this section is guilty of a misdemeanor punishable by
15 imprisonment for not more than 90 days or a fine of not more than
16 \$100.00, or both.

17 Sec. 14. (1) Any local police officer, sheriff or deputy
18 sheriff, state police officer, county agent or probation officer
19 of any court of record may, without the order of the court, imme-
20 diately take into custody any child who is found violating any
21 law or ordinance, or whose surroundings are such as to endanger
22 his or her health, morals, or welfare, or ~~who~~ FOR WHOM THERE IS
23 REASONABLE CAUSE TO BELIEVE is violating or has violated a per-
24 sonal protection order issued pursuant to section 2(h) by the
25 court under section 2950 or 2950a of the revised judicature act
26 of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, OR FOR WHOM
27 THERE IS REASONABLE CAUSE TO BELIEVE IS VIOLATING OR HAS VIOLATED

1 A VALID FOREIGN PROTECTION ORDER. If such an officer or county
2 agent takes a child coming within the provisions of this chapter
3 into custody, he or she shall immediately attempt to notify the
4 parent or parents, guardian, or custodian. While awaiting the
5 arrival of the parent or parents, guardian, or custodian, a child
6 under the age of 17 years taken into custody under the provisions
7 of this chapter shall not be held in any detention facility
8 unless the child is completely isolated so as to prevent any
9 verbal, visual, or physical contact with any adult prisoner.
10 Unless the child requires immediate detention as provided for in
11 this act, the officer shall accept the written promise of the
12 parent or parents, guardian, or custodian, to bring the child to
13 the court at a time fixed therein. The child shall then be
14 released to the custody of the parent or parents, guardian, or
15 custodian.

16 (2) If a child is not released under subsection (1), the
17 child and his or her parents, guardian, or custodian, if they can
18 be located, shall immediately be brought before the court for a
19 preliminary hearing on the status of the child, and an order
20 signed by a judge of probate or a referee authorizing the filing
21 of a complaint shall be entered or the child shall be released to
22 his or her parent or parents, guardian, or custodian.

23 (3) If a complaint is authorized under subsection (2), the
24 order shall state where the child is to be placed, pending inves-
25 tigation and hearing, which placement may be in any of the
26 following:

1 (a) In the home of the child's parent, guardian, or
2 custodian.

3 (b) If a child is within the court's jurisdiction under sec-
4 tion 2(a) of this chapter, in a suitable foster care home subject
5 to the court's supervision. Except as otherwise provided in sub-
6 sections (4) and (5), if a child is within the court's jurisdic-
7 tion under section 2(b) of this chapter, the court shall not
8 place a child in a foster care home subject to the court's
9 supervision.

10 (c) In a child care institution or child placing agency
11 licensed by the state department of social services to receive
12 for care children within the jurisdiction of the court.

13 (d) In a suitable place of detention.

14 (4) Except as otherwise provided in subsection (5), if a
15 court is providing at the time of the enactment of this subsec-
16 tion foster care home services subject to the court's supervision
17 to children within section 2(b) of this chapter, the court may
18 continue to provide those services through December 31, 1989.
19 Beginning January 1, 1990, the court shall discontinue providing
20 those services.

21 (5) If a court located in a county with a population in
22 excess of 650,000 is providing at the time of the enactment of
23 this subsection foster care home services subject to the court's
24 supervision to children within section 2(b) of this chapter, the
25 court may continue to provide those services through
26 December 31, 1991. Beginning January 1, 1992, the court shall
27 discontinue those services.

1 Enacting section 1. This amendatory act does not take
2 effect unless all of the following bills of the 91st Legislature
3 are enacted into law:

4 (a) Senate Bill No. _____ or House Bill No. 5299 (request
5 no. 05225'01 a).

6 (b) Senate Bill No. _____ or House Bill No. 5300 (request
7 no. 05225'01 b).

8 (c) Senate Bill No. _____ or House Bill No. 5301 (request
9 no. 05225'01 c).

10 (d) Senate Bill No. _____ or House Bill No. 5302 (request
11 no. 05225'01 d).

12 (e) Senate Bill No. _____ or House Bill No. 5303 (request
13 no. 05225'01 e).

14 (f) Senate Bill No. _____ or House Bill No. 5304 (request
15 no. 05225'01 f).

16 (g) Senate Bill No. _____ or House Bill No. 5306 (request
17 no. 05225'01 h).