

HOUSE BILL No. 4133

February 6, 2019, Introduced by Reps. Hauck, LaGrand, Neeley, Rendon, Filler, Wozniak, Calley, Guerra, Elder, Love and Brann and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 1, 3, and 11 of chapter XIIIA (MCL 712A.1, 712A.3, and 712A.11), section 1 as amended by 2016 PA 496, section 3 as amended by 1996 PA 409, and section 11 as amended by 2016 PA 185.

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) "Competency evaluation" means a court-ordered examination

1 of a juvenile directed to developing information relevant to a
2 determination of his or her competency to proceed at a particular
3 stage of a court proceeding involving a juvenile who is the subject
4 of a delinquency petition.

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

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

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

11 (f) "Department" means the department of health and human
12 services. A reference in this chapter to the "department of social
13 welfare" or the "family independence agency" means the department
14 of health and human services.

15 (g) "Foreign protection order" means that term as defined in
16 section 2950h of the revised judicature act of 1961, 1961 PA 236,
17 MCL 600.2950h.

18 (h) "Incompetent to proceed" means that a juvenile, based on
19 age-appropriate norms, lacks a reasonable degree of rational and
20 factual understanding of the proceeding or is unable to do 1 or
21 more of the following:

22 (i) Consult with and assist his or her attorney in preparing
23 his or her defense in a meaningful manner.

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

25 (i) "Juvenile" means a person who is less than ~~17~~**18** years of
26 age who is the subject of a delinquency petition.

27 (j) "Least restrictive environment" means a supervised

1 community placement, preferably a placement with the juvenile's
2 parent, guardian, relative, or a facility or conditions of
3 treatment that is a residential or institutional placement only
4 utilized as a last resort based on the best interest of the
5 juvenile or for reasons of public safety.

6 (k) "Licensed child caring institution" means a child caring
7 institution as defined and licensed under 1973 PA 116, MCL 722.111
8 to 722.128.

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

11 (m) "Mental health code" means the mental health code, 1974 PA
12 258, MCL 330.1001 to 330.2106.

13 (n) "Personal protection order" means a personal protection
14 order issued under section 2950 or 2950a of the revised judicature
15 act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, and includes
16 a valid foreign protection order.

17 (o) "Qualified juvenile forensic mental health examiner" means
18 1 of the following who performs forensic mental health examinations
19 for the purposes of sections 1062 to 1074 of the mental health
20 code, **MCL 330.2062 TO 330.2074**, but does not exceed the scope of
21 his or her practice as authorized by state law:

22 (i) A psychiatrist or psychologist who possesses experience or
23 training in the following:

24 (A) Forensic evaluation procedures for juveniles.

25 (B) Evaluation, diagnosis, and treatment of children and
26 adolescents with emotional disturbance, mental illness, or
27 developmental disabilities.

1 (C) Clinical understanding of child and adolescent
2 development.

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

4 (ii) A mental health professional other than a psychiatrist or
5 psychologist who has completed a juvenile competency training
6 program for forensic mental health examiners that is endorsed by
7 the department under section 1072 of the mental health code, **MCL**
8 **330.2072**, and who possesses experience or training in all of the
9 following:

10 (A) Forensic evaluation procedures for juveniles.

11 (B) Evaluation, diagnosis, and treatment of children and
12 adolescents with emotional disturbance, mental illness, or
13 developmental disabilities.

14 (C) Clinical understanding of child and adolescent
15 development.

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

17 (p) "Qualified restoration provider" means an individual who
18 the court determines, as a result of the opinion provided by the
19 qualified forensic mental health examiner, has the skills and
20 training necessary to provide restoration services. The court shall
21 take measures to avoid any conflict of interest among agencies or
22 individuals who may provide evaluation and restoration.

23 (q) "Reasonable and prudent parenting standard" means
24 decisions characterized by careful and sensible parental decisions
25 that maintain a child's health, safety, and best interest while
26 encouraging the emotional and developmental growth of the child
27 when determining whether to allow a child in foster care to

1 participate in extracurricular, enrichment, cultural, and social
2 activities.

3 (r) "Restoration" means the process by which education or
4 treatment of a juvenile results in that juvenile becoming competent
5 to proceed.

6 (s) "Serious misdemeanor" means that term as defined in
7 section 61 of the William Van Regenmorter crime victim's rights
8 act, 1985 PA 87, MCL 780.811.

9 (t) "Valid foreign protection order" means a foreign
10 protection order that satisfies the conditions for validity
11 provided in section 2950i of the revised judicature act of 1961,
12 1961 PA 236, MCL 600.2950i.

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

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

23 Sec. 3. (1) If during the pendency of a criminal charge
24 against a person in any other court it is ascertained that the
25 person was under the age of ~~17~~**18** at the time of the commission of
26 the offense, the other court shall transfer the case without delay,
27 together with all the papers, documents, and testimony connected

1 with that case, to the family division of the circuit court of the
2 county in which the other court is situated or in which the person
3 resides.

4 (2) The court making the transfer shall order the child to be
5 taken promptly to the place of detention designated by the family
6 division of the circuit court or to that court itself or release
7 the juvenile in the custody of some suitable person to appear
8 before the court at a time designated. The court shall then hear
9 and dispose of the case in the same manner as if it had been
10 originally instituted in that court.

11 Sec. 11. (1) Except as provided in subsection (2), if a person
12 gives information to the court that a juvenile is within section
13 2(a)(2) to (4), (b), (c), or (d) of this chapter, a preliminary
14 inquiry may be made to determine whether the interests of the
15 public or the juvenile require that further action be taken. If the
16 court determines that formal jurisdiction should be acquired, the
17 court shall authorize a petition to be filed. ~~However, the~~ **THE**
18 court may proceed on the consent calendar under section 2f of this
19 chapter if at any time before disposition the court determines that
20 a case should not proceed on the formal calendar but that the
21 protective and supportive action by the court will serve the best
22 interests of the juvenile and the public.

23 (2) Only the prosecuting attorney may file a petition
24 requesting the court to take jurisdiction of a juvenile allegedly
25 within section 2(a)(1) of this chapter. If the prosecuting attorney
26 submits a petition requesting the court to take jurisdiction of a
27 juvenile allegedly within section 2(a)(1) of this chapter and the

1 court determines that formal jurisdiction should be acquired, the
2 court shall authorize a petition to be filed.

3 (3) The petition described in subsections (1) and (2) shall be
4 verified and may be upon information and belief. The petition shall
5 set forth plainly the facts that bring the juvenile within this
6 chapter and shall contain all of the following information:

7 (a) The juvenile's name, birth date, and address.

8 (b) The name and address of the juvenile's parents.

9 (c) The name and address of the juvenile's legal guardian, if
10 there is ~~one~~. **A LEGAL GUARDIAN.**

11 (d) The name and address of each person having custody or
12 control of the juvenile.

13 (e) The name and address of the juvenile's nearest known
14 relative, if no parent or **LEGAL** guardian can be found.

15 (4) If any of the facts required under subsection (3) are not
16 known to the petitioner, the petition shall state that the facts
17 are not known. If the juvenile attains his or her ~~seventeenth~~
18 **EIGHTEENTH** birthday after the filing of the petition, the court's
19 jurisdiction shall continue beyond the juvenile's ~~seventeenth~~
20 **EIGHTEENTH** birthday and the court may hear and dispose of the
21 petition under this chapter.

22 (5) When a petition is authorized, the court shall examine the
23 court file to determine if a juvenile has had ~~fingerprints taken as~~
24 ~~required under section 3 of 1925 PA 289, MCL 28.243.~~ If a juvenile
25 ~~has not had his or her fingerprints taken,~~ **HIS OR HER BIOMETRIC**
26 **DATA COLLECTED AS REQUIRED UNDER SECTION 3 OF 1925 PA 289, MCL**
27 **28.243. IF A JUVENILE'S BIOMETRIC DATA HAS NOT BEEN COLLECTED,** the

1 court shall do either of the following:

2 (a) Order the juvenile to submit himself or herself to the
3 police agency that arrested or obtained the warrant for the arrest
4 of the juvenile so the juvenile's ~~fingerprints can be~~
5 ~~taken.~~ **BIOMETRIC DATA CAN BE COLLECTED.**

6 (b) Order the juvenile committed to the custody of the sheriff
7 for the ~~taking of the juvenile's fingerprints.~~ **COLLECTION OF THE**
8 **JUVENILE'S BIOMETRIC DATA.**

9 (6) A petition or other court record may be amended at any
10 stage of the proceedings as the ends of justice require.

11 (7) If the juvenile diversion act, 1988 PA 13, MCL 722.821 to
12 722.831, is complied with and the court determines that court
13 services can be used in the prevention of delinquency without
14 formal jurisdiction, the court may offer court services to a
15 juvenile without a petition being authorized as provided in section
16 2(e) of this chapter.

17 Enacting section 1. This amendatory act takes effect January
18 1, 2021.