

HOUSE BILL No. 4947

October 7, 2015, Introduced by Reps. Lucido, Kesto, Santana, Kosowski, Garrett, Love, Chang, Webber, Byrd, Robinson, Geiss, Gay-Dagnogo, Greig, Yanez, Darany, Forlini, Howrylak, LaVoy, Durhal, Rutledge, Irwin, Neeley, Hovey-Wright, Plawecki, Moss, Callton and Zemke and referred to the Committee on Criminal Justice.

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 2014 PA 533 and sections 3 and 11 as amended by 1996 PA 409.

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 of a juvenile directed to developing information relevant to a determination of his or her competency to proceed at a particular stage of a court proceeding involving a juvenile who is the subject

1 of a delinquency petition.

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

4 (d) "County juvenile agency" means that term as defined in
5 section 2 of the county juvenile agency act, 1998 PA 518, MCL
6 45.622.

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

8 (f) "Department" means the department of **HEALTH AND** human
9 services. A reference in this chapter to the "department of social
10 welfare" or the "family independence agency" means the department
11 of **HEALTH AND** human services.

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

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

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

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

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

24 (j) "Least restrictive environment" means a supervised
25 community placement, preferably a placement with the juvenile's
26 parent, guardian, relative, or a facility or conditions of
27 treatment that is a residential or institutional placement only

1 utilized as a last resort based on the best interest of the
2 juvenile or for reasons of public safety.

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

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

8 (m) "Mental health code" means the mental health code, 1974 PA
9 258, MCL 330.1001 to 330.2106.

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

14 (o) "Qualified juvenile forensic mental health examiner" means
15 1 of the following who performs forensic mental health examinations
16 for the purposes of sections 1062 to 1074 of the mental health code
17 but does not exceed the scope of his or her practice as authorized
18 by state law:

19 (i) A psychiatrist or psychologist who possesses experience or
20 training in the following:

21 (A) Forensic evaluation procedures for juveniles.

22 (B) Evaluation, diagnosis, and treatment of children and
23 adolescents with emotional disturbance, mental illness, or
24 developmental disabilities.

25 (C) Clinical understanding of child and adolescent
26 development.

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

1 (ii) ~~Beginning September 28, 2014, a~~ **A** mental health
2 professional other than a psychiatrist or psychologist who has
3 completed a juvenile competency training program for forensic
4 mental health examiners that is endorsed by the department under
5 section 1072 of the mental health code and who possesses experience
6 or training in all of the following:

7 (A) Forensic evaluation procedures for juveniles.

8 (B) Evaluation, diagnosis, and treatment of children and
9 adolescents with emotional disturbance, mental illness, or
10 developmental disabilities.

11 (C) Clinical understanding of child and adolescent
12 development.

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

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

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

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

26 (s) "Valid foreign protection order" means a foreign
27 protection order that satisfies the conditions for validity

1 provided in section 2950i of the revised judicature act of 1961,
2 1961 PA 236, MCL 600.2950i.

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

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

13 Sec. 3. (1) If during the pendency of a criminal charge
14 against a person in any other court it is ascertained that the
15 person was under the age of ~~17~~—18 at the time of the commission of
16 the offense, the other court shall transfer the case without delay,
17 together with all the papers, documents, and testimony connected
18 with that case, to the family division of the circuit court of the
19 county in which the other court is situated or in which the person
20 resides.

21 (2) The court making the transfer shall order the child to be
22 taken promptly to the place of detention designated by the family
23 division of the circuit court or to that court itself or release
24 the juvenile in the custody of some suitable person to appear
25 before the court at a time designated. The court shall then hear
26 and dispose of the case in the same manner as if it had been
27 originally instituted in that court.

1 Sec. 11. (1) Except as provided in subsection (2), if a person
2 gives information to the court that a juvenile is within section
3 2(a)(2) to (6), (b), (c), or (d) of this chapter, a preliminary
4 inquiry may be made to determine whether the interests of the
5 public or the juvenile require that further action be taken. If the
6 court determines that formal jurisdiction should be acquired, the
7 court shall authorize a petition to be filed.

8 (2) Only the prosecuting attorney may file a petition
9 requesting the court to take jurisdiction of a juvenile allegedly
10 within section 2(a)(1) of this chapter. If the prosecuting attorney
11 submits a petition requesting the court to take jurisdiction of a
12 juvenile allegedly within section 2(a)(1) of this chapter and the
13 court determines that formal jurisdiction should be acquired, the
14 court shall authorize a petition to be filed.

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

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

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

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

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

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

27 (4) If any of the facts required under subsection (3) are not

1 known to the petitioner, the petition shall state that the facts
2 are not known. If the juvenile attains his or her ~~seventeenth~~
3 **EIGHTEENTH** birthday after the filing of the petition, the court's
4 jurisdiction shall continue beyond the juvenile's ~~seventeenth~~
5 **EIGHTEENTH** birthday and the court may hear and dispose of the
6 petition under this chapter.

7 (5) When a petition is authorized, the court shall examine the
8 court file to determine if a juvenile has had ~~fingerprints taken as~~
9 ~~required under section 3 of Act No. 289 of the Public Acts of 1925,~~
10 ~~being section 28.243 of the Michigan Compiled Laws. If a juvenile~~
11 ~~has not had his or her fingerprints taken,~~ **HIS OR HER BIOMETRIC**
12 **DATA COLLECTED AS REQUIRED UNDER SECTION 3 OF 1925 PA 289, MCL**
13 **28.243. IF A JUVENILE'S BIOMETRIC DATA HAS NOT BEEN COLLECTED,** the
14 court shall do either of the following:

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

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

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

24 (7) If the juvenile diversion act, ~~Act No. 13 of the Public~~
25 ~~Acts of 1988, being sections 722.821 to 722.831 of the Michigan~~
26 ~~Compiled Laws,~~ **1988 PA 13, MCL 722.821 TO 722.831,** is complied with
27 and the court determines that court services can be used in the

1 prevention of delinquency without formal jurisdiction, the court
2 may offer court services to a juvenile without a petition being
3 authorized as provided in section 2(e) of this chapter.

4 Enacting section 1. This amendatory act takes effect 90 days
5 after the date it is enacted into law.

6 Enacting section 2. This amendatory act does not take effect
7 unless all of the following bills of the 98th Legislature are
8 enacted into law:

9 (a) Senate Bill No. ____ or House Bill No. 4948 (request no.
10 02551'15).

11 (b) Senate Bill No. ____ or House Bill No. 4950 (request no.
12 02679'15).

13 (c) Senate Bill No. ____ or House Bill No. 4949 (request no.
14 02680'15).

15 (d) Senate Bill No. ____ or House Bill No. 4953 (request no.
16 02681'15).

17 (e) Senate Bill No. ____ or House Bill No. 4951 (request no.
18 02682'15).

19 (f) Senate Bill No. ____ or House Bill No. ____ (request no.
20 03152'15).

21 (g) Senate Bill No. ____ or House Bill No. 4954 (request no.
22 03363'15).

23 (h) Senate Bill No. ____ or House Bill No. 4952 (request no.
24 03366'15).