

# HOUSE BILL NO. 6226

December 04, 2024, Introduced by Reps. Pohutsky, Tsernoglou, McFall 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 XIIA (MCL 712A.1), as amended by  
2020 PA 389, and by adding section 17e to chapter XIIA.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1 CHAPTER XIIA
- 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) ~~(f)~~—"Department" means the department of health and human  
17 services. A reference in this chapter to the "department of social  
18 welfare" or the "family independence agency" means the department  
19 of health and human services.

20 (h) ~~(g)~~—"Foreign protection order" means that term as defined  
21 in section 2950h of the revised judicature act of 1961, 1961 PA  
22 236, MCL 600.2950h.

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

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

(ii) Sufficiently understand the charges against ~~him or her~~.**the juvenile.**

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

(k) ~~(i)~~—Until September 30, 2021, "juvenile" means a person who is less than 17 years of age who is the subject of a delinquency petition. Beginning October 1, 2021, "juvenile" means a person who is less than 18 years of age who is the subject of a delinquency petition.

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

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

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

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

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

(q) ~~(o)~~—"Public agency" means the department, a local unit of government, the family division of the circuit court, the juvenile

1 division of the probate court, or a county juvenile agency.

2       **(r) ~~(p)~~** "Qualified juvenile forensic mental health examiner"  
3 means 1 of the following who performs forensic mental health  
4 examinations for the purposes of sections 1062 to 1074 of the  
5 mental health code, MCL 330.2062 to 330.2074, but does not exceed  
6 the scope of ~~his or her~~ **the qualified juvenile forensic mental**  
7 **health examiner's** practice as authorized by state law:

8       (i) A psychiatrist or psychologist who possesses experience or  
9 training in **all of** the 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       (ii) A mental health professional other than a psychiatrist or  
18 psychologist who has completed a juvenile competency training  
19 program for forensic mental health examiners that is endorsed by  
20 the department under section 1072 of the mental health code, MCL  
21 330.2072, and who possesses experience or training in all of the  
22 following:

23       (A) Forensic evaluation procedures for juveniles.

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

27       (C) Clinical understanding of child and adolescent  
28 development.

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

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

7        **(t)** ~~(r)~~ "Reasonable and prudent parenting standard" means  
8 decisions characterized by careful and sensible parental decisions  
9 that maintain a child's health, safety, and best interest while  
10 encouraging the emotional and developmental growth of the child  
11 when determining whether to allow a child in foster care to  
12 participate in extracurricular, enrichment, cultural, and social  
13 activities.

14        **(u)** ~~(s)~~ "Restoration" means the process by which education or  
15 treatment of a juvenile results in that juvenile becoming competent  
16 to proceed.

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

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

27        **(x)** ~~(v)~~ "Valid foreign protection order" means a foreign  
28 protection order that satisfies the conditions for validity  
29 provided in section 2950i of the revised judicature act of 1961,

1 1961 PA 236, MCL 600.2950i.

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

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

13 **Sec. 17e. (1) A juvenile who is within the court's**  
14 **jurisdiction under section 2(a)(1) must have an attorney present**  
15 **for the juvenile's representation during an interrogation in**  
16 **custodial detention. A juvenile cannot waive the right to an**  
17 **attorney under this section.**

18 (2) A self-incriminating response of a juvenile during an  
19 interrogation in custodial detention is inadmissible as evidence  
20 against a juvenile in any proceeding if the juvenile was not  
21 represented by an attorney.

22 (3) A self-incriminating response that a juvenile made as a  
23 result of an interrogation in custodial detention is presumed to be  
24 inadmissible as evidence against the juvenile in any proceeding,  
25 for an act that would be a misdemeanor or felony offense if  
26 committed by an adult unless both of the following apply:

27 (a) An electronic recording is made of the interrogation.

28 (b) The recording under subdivision (a) is substantially  
29 accurate and not intentionally altered.

1           (4) If, during an electronically recorded interrogation of a  
2 juvenile conducted under subsection (3), the juvenile makes a  
3 statement that creates a reasonable suspicion to believe the  
4 juvenile has committed another act that, if committed by an adult,  
5 would be an offense other than the original offense required to be  
6 recorded under subsection (3), the interrogators may, without the  
7 juvenile's consent, continue to record the interrogation as it  
8 relates to the other offense.

9           (5) An electronic recording made under subsection (3) must be  
10 preserved until the juvenile's adjudication for any offense  
11 relating to the statement is final and all direct and habeas corpus  
12 appeals are exhausted, or the prosecution of such offenses is  
13 barred by law.

14           (6) If the court finds, by a preponderance of the evidence,  
15 that the juvenile was subjected to an interrogation in custodial  
16 detention in violation of subsection (3), then any statement made  
17 by the juvenile during or after that nonrecorded interrogation in  
18 custodial detention, even if otherwise in compliance with this  
19 section, is presumed to be inadmissible in any proceeding against  
20 the juvenile except for the purpose of impeachment.

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