



# HOUSE BILL No. 5973

November 30 1994 Introduced by Rep Willard and referred to the Committee on Judiciary

A bill to amend section 4 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,

as amended by Act No 182 of the Public Acts of 1988, being section 712A 4 of the Michigan Compiled Laws

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1       Section 1     Section 4 of Act No 288 of the Public Acts of  
2 1939, as amended by Act No 182 of the Public Acts of 1988, being  
3 section 712A 4 of the Michigan Compiled Laws, is amended to read  
4 as follows

5       Sec 4     (1) If a child who has attained the age of 15 years  
6 is accused of an act which, if committed by an adult, would be a  
7 felony, the judge of probate of the county where the offense is  
8 alleged to have been committed may waive jurisdiction pursuant to  
9 this section upon motion of the prosecuting attorney     After  
10 waiver, it ~~shall be~~ IS lawful to try the child in the court  
11 having general criminal jurisdiction of the offense

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

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

1 shall inform the child that a waiver of this subsection waives  
 2 the preliminary examination required by chapter VI of the code of  
 3 criminal procedure, Act No 175 of the Public Acts of 1927, being  
 4 sections 766 1 to ~~766-22~~ 766 18 of the Michigan Compiled Laws

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

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

14 (b) The seriousness of the offense

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

18 (1) The child is not amenable to treatment

19 (2) That despite the child s potential for treatment the  
 20 nature of the child s delinquent behavior is likely to disrupt  
 21 the rehabilitation of other children in the treatment program

22 (d) Whether, despite the child's potential for treatment  
 23 the nature of the child s delinquent behavior is likely to render  
 24 the child dangerous to the public if released at the age of 19 or  
 25 21

1 (e) Whether the child is more likely to be rehabilitated by  
2 the services and facilities available in adult programs and  
3 procedures than in juvenile programs and procedures

4 (f) Whether it is in the best interests of the public wel-  
5 fare and the protection of the public security that the child  
6 stand trial as an adult offender

7 (5) THE NOTICE TO A VICTIM REQUIRED BY SUBSECTION (2) SHALL  
8 INCLUDE A STATEMENT THAT THE VICTIM HAS THE RIGHT TO BE HEARD  
9 CONCERNING THE WAIVER DETERMINATION IF THE VICTIM OF THE  
10 OFFENSE REQUESTS TO BE HEARD CONCERNING THE WAIVER DETERMINATION,  
11 THE COURT SHALL PERMIT THE VICTIM THE CHOICE OF MAKING A STATE-  
12 MENT ORALLY OR IN WRITING, OR BOTH, RELEVANT TO THE CRITERIA SET  
13 FORTH IN SUBSECTION (4) AS USED IN THIS SUBSECTION, VICTIM  
14 MEANS THAT TERM AS DEFINED IN SECTION 30 OF THIS CHAPTER

15 (6) ~~-(5)-~~ If legal counsel has not been retained or  
16 appointed to represent the child, the court shall advise the  
17 child and his or her parents, guardian custodian, or guardian ad  
18 litem of the child s right to representation and appoint legal  
19 counsel If the court appoints legal counsel the judge may  
20 assess the cost of providing legal counsel as costs against the  
21 child or those responsible for his or her support, or both if  
22 the persons to be assessed are financially able to comply

23 (7) ~~-(6)-~~ Legal counsel shall have access to records or  
24 reports provided and received by the judge as a basis for deci-  
25 sion in proceedings for waiver of jurisdiction A continuance  
26 shall be granted at legal counsel s request if any report  
27 information or recommendation not previously available is

1 introduced or developed at the hearing and the interests of  
2 justice require a continuance

3       (8) ~~-(7)-~~ The court shall enter a written order either  
4 granting or denying the motion to waive jurisdiction, and the  
5 court shall state on the record or in a written opinion the  
6 court's findings of fact and conclusions of law forming the basis  
7 for entry of the order. If a child is waived, a transcript of  
8 the court's findings or a copy of the written opinion shall be  
9 sent to the court of general criminal jurisdiction. ~~-(8)-~~ If the  
10 court does not waive jurisdiction, a transcript of the court's  
11 findings or, if a written opinion is prepared, a copy of the  
12 written opinion shall be sent to the prosecutor, child, or  
13 child's attorney upon request.

14       (9) If the court waives jurisdiction, the child shall be  
15 arraigned on an information filed by the prosecutor in the court  
16 of general criminal jurisdiction. The probable cause finding  
17 under subsection (3) ~~shall satisfy~~ SATISFIES the requirements  
18 of and SHALL be considered the equivalent of the preliminary  
19 examination required by chapter VI of Act No. 175 of the Public  
20 Acts of 1927.