

HOUSE BILL No. 4851

May 29, 1997, Introduced by Reps. Willard, DeHart, McBryde, Wetters, Goschka, Kaza, Dalman, Brackenridge, Mans and Jaye and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled

"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,"

by amending section 4 of chapter XIIIA (MCL 712A.4[1]), as amended by 1996 PA 409.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIIA

1

2 Sec. 4. (1) If a juvenile 14 years of age or older is
3 accused of an act that if committed by an adult would be a
4 felony, the ~~judge of the family division of circuit~~ court in
5 the county in which the offense is alleged to have been committed
6 may waive jurisdiction under this section upon motion of the
7 prosecuting attorney. After waiver, the juvenile may be tried in
8 the court having general criminal jurisdiction of the offense.

9

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

18

(3) Before the court waives jurisdiction, the court shall
19 determine on the record if there is probable cause to believe
20 that an offense has been committed that if committed by an adult
21 would be a felony and if there is probable cause to believe
22 ~~that~~ the juvenile committed the offense. Before a juvenile may
23 waive a probable cause hearing under this subsection, the court
24 shall inform the juvenile that a waiver of this subsection waives
25 the preliminary examination required by chapter VI of the code of
26 criminal procedure, ~~Act No. 175 of the Public Acts of 1927,~~

1 ~~being sections 766.1 to 766.18 of the Michigan Compiled Laws~~
2 1927 PA 175, MCL 766.1 TO 766.18.

3 (4) Upon a showing of probable cause under subsection (3),
4 the court shall conduct a hearing to determine if the best inter-
5 ests of the juvenile and the public would be served by granting a
6 waiver of jurisdiction to the court of general criminal
7 jurisdiction. In making its determination, the court shall con-
8 sider all of the following criteria, giving greater weight to the
9 seriousness of the alleged offense and the juvenile's prior
10 record of delinquency than to the other criteria:

11 (a) The seriousness of the alleged offense in terms of com-
12 munity protection, including, but not limited to, the existence
13 of any aggravating factors recognized by the sentencing guide-
14 lines, the use of a firearm or other dangerous weapon, and the
15 impact on any victim.

16 (b) The culpability of the juvenile in committing the
17 alleged offense, including, but not limited to, the level of the
18 juvenile's participation in planning and carrying out the offense
19 and the existence of any aggravating or mitigating factors recog-
20 nized by the sentencing guidelines.

21 (c) The juvenile's prior record of delinquency, including,
22 but not limited to, any record of detention, any police record,
23 any school record, or any other evidence indicating prior delin-
24 quent behavior.

25 (d) The juvenile's programming history, including, but not
26 limited to, the juvenile's past willingness to participate
27 meaningfully in available programming.

1 (e) The adequacy of the punishment or programming available
2 in the juvenile justice system.

3 (f) The dispositional options available for the juvenile.

4 (5) THE VICTIM OF AN OFFENSE FOR WHICH WAIVER IS SOUGHT HAS
5 THE RIGHT TO APPEAR AND MAKE AN ORAL IMPACT STATEMENT AT THE
6 HEARING ON THE MOTION TO WAIVE JURISDICTION. AS USED IN THIS
7 SUBSECTION, "OFFENSE" AND "VICTIM" MEAN THOSE TERMS AS DEFINED IN
8 SECTION 31 OF THE CRIME VICTIM'S RIGHTS ACT, 1985 PA 87,
9 MCL 780.781.

10 (6) ~~(5)~~ If the court determines that there is probable
11 cause to believe that an offense has been committed that if com-
12 mitted by an adult would be a felony and that the juvenile com-
13 mitted the offense, the court shall waive jurisdiction of the
14 juvenile if the court finds that the juvenile has previously been
15 subject to the jurisdiction of the circuit court under this sec-
16 tion or section 606 of the revised judicature act of 1961, ~~Act~~
17 ~~No. 236 of the Public Acts of 1961, being section 600.606 of the~~
18 ~~Michigan Compiled Laws~~ 1961 PA 236, MCL 600.606, or the
19 recorder's court of the city of Detroit under this section or
20 section 10a(1)(c) of ~~Act No. 369 of the Public Acts of 1919,~~
21 ~~being section 725.10a of the Michigan Compiled Laws~~ 1919 PA 369,
22 MCL 725.10A.

23 (7) ~~(6)~~ If legal counsel has not been retained or
24 appointed to represent the juvenile, the court shall advise the
25 juvenile and his or her parents, guardian, custodian, or guardian
26 ad litem of the juvenile's right to representation and ~~appoint~~
27 APPOINTED legal counsel. If the court appoints legal counsel,

1 the judge may assess the cost of providing legal counsel as costs
2 against the juvenile or those responsible for his or her support,
3 or both, if the persons to be assessed are financially able to
4 comply.

5 (8) ~~-(7)-~~ Legal counsel shall have access to records or
6 reports provided and received by the judge as a basis for deci-
7 sion in proceedings for waiver of jurisdiction. A continuance
8 shall be granted at legal counsel's request if any report, infor-
9 mation, or recommendation not previously available is introduced
10 or developed at the hearing and the interests of justice require
11 a continuance.

12 (9) ~~-(8)-~~ The court shall enter a written order either
13 granting or denying the motion to waive jurisdiction and the
14 court shall state on the record or in a written opinion the
15 court's findings of fact and conclusions of law forming the basis
16 for entering the order. If a juvenile is waived, a transcript of
17 the court's findings or a copy of the written opinion shall be
18 sent to the court of general criminal jurisdiction.

19 (10) ~~-(9)-~~ If the court does not waive jurisdiction, a tran-
20 script of the court's findings or, if a written opinion is pre-
21 pared, a copy of the written opinion shall be sent to the prose-
22 cuting attorney, juvenile, or juvenile's attorney upon request.

23 (11) ~~-(10)-~~ If the court waives jurisdiction, the juvenile
24 shall be arraigned on an information filed by the prosecutor in
25 the court of general criminal jurisdiction. The probable cause
26 finding under subsection (3) satisfies the requirements of, and
27 is the equivalent of, the preliminary examination required by

1 chapter VI of ~~Act No. 175 of the Public Acts of 1927~~ THE CODE
2 OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 766.1 TO 766.18.

3 (12) ~~(11)~~ As used in this section, "felony" means an
4 offense punishable by imprisonment for more than 1 year or an
5 offense designated by law as a felony.

6 Enacting section 1. This amendatory act does not take
7 effect unless Senate Bill No. _____ or House Bill No. _____
8 (request no. 00983'97 a) of the 89th Legislature is enacted into
9 law.