

HOUSE BILL NO. 4633

May 23, 2023, Introduced by Reps. Breen, Hope, Wilson, Tsernoglou, Paiz, Rogers, Morse, Miller, Byrnes, Young, Pohutsky, Rheingans, Wegela, Dievendorf, Hood, Grant, O'Neal, Price, Tyrone Carter, Brixie, Hoskins, Morgan, MacDonell, Brenda Carter, Edwards, Brabec, Arbit, Glanville, McKinney, Scott, Conlin, Skaggs and Aiyash and referred to the Committee on Criminal Justice.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 2d, 2f, and 4 of chapter XIIA (MCL 712A.2d, 712A.2f, and 712A.4), section 2d as amended by 2020 PA 389, section 2f as added by 2016 PA 185, and section 4 as amended by 1996 PA 409.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XIIA
2 Sec. 2d. (1) In a petition or amended petition alleging that a

1 juvenile is within the court's jurisdiction under section 2(a)(1)
2 of this chapter for a specified juvenile violation, the prosecuting
3 attorney may designate the case as a case in which the juvenile is
4 to be tried in the same manner as an adult. An amended petition
5 making a designation under this subsection must be filed only by
6 leave of the court.

7 (2) In a petition alleging that a juvenile is within the
8 court's jurisdiction under section 2(a)(1) of this chapter for an
9 offense other than a specified juvenile violation, the prosecuting
10 attorney may request that the court designate the case as a case in
11 which the juvenile is to be tried in the same manner as an adult.
12 The court may designate the case following a hearing if it
13 determines that the best interests of the juvenile and the public
14 would be served by the juvenile being tried in the same manner as
15 an adult. In determining whether the best interests of the juvenile
16 and the public would be served, the court shall consider all of the
17 following factors, giving greater weight to the seriousness of the
18 alleged offense and the juvenile's prior delinquency record than to
19 the other factors:

20 (a) The seriousness of the alleged offense in terms of
21 community protection, including, but not limited to, the existence
22 of any aggravating factors recognized by the sentencing guidelines,
23 **and** the use of a firearm or other dangerous weapon. ~~and the~~
24 ~~impact on any victim.~~

25 (b) The juvenile's culpability in committing the alleged
26 offense, including, but not limited to, the level of the juvenile's
27 participation in planning and carrying out the offense and the
28 existence of any aggravating or mitigating factors recognized by
29 the sentencing guidelines.

1 (c) The juvenile's prior record of delinquency ~~including, but~~
2 ~~not limited to, any record of detention, any police record, any~~
3 ~~school record, or any other evidence indicating prior delinquent~~
4 ~~behavior.~~ **that would be a crime if committed by an adult.**

5 (d) The juvenile's programming history, including, but not
6 limited to, **any out-of-home placement or treatment and** the
7 juvenile's past willingness to participate meaningfully in
8 available programming.

9 (e) The adequacy of the ~~punishment or programming~~ available to
10 **rehabilitate and hold accountable the juvenile** in the juvenile
11 justice system **and the juvenile's amenability to treatment.**

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

13 (g) **The juvenile's developmental maturity, emotional health,**
14 **and mental health.**

15 (h) **If the juvenile is a member of a federally recognized**
16 **Indian tribe, culturally honoring traditional values of the**
17 **juvenile's tribe.**

18 (i) **The impact on any victim.**

19 (3) If a case is designated under this section, the case must
20 be set for trial in the same manner as the trial of an adult in a
21 court of general criminal jurisdiction unless a probable cause
22 hearing is required under subsection (4).

23 (4) If the petition in a case designated under this section
24 alleges an offense that if committed by an adult would be a felony
25 or punishable by imprisonment for more than 1 year, the court shall
26 conduct a probable cause hearing not later than 14 days after the
27 case is designated to determine whether there is probable cause to
28 believe the offense was committed and whether there is probable
29 cause to believe the juvenile committed the offense. This hearing

1 may be combined with the designation hearing under subsection (2)
2 for an offense other than a specified juvenile offense. A probable
3 cause hearing under this section is the equivalent of the
4 preliminary examination in a court of general criminal jurisdiction
5 and satisfies the requirement for that hearing. A probable cause
6 hearing must be conducted by a judge other than the judge who will
7 try the case if the juvenile is tried in the same manner as an
8 adult.

9 (5) If the court determines there is probable cause to believe
10 the offense alleged in the petition was committed and probable
11 cause to believe the juvenile committed the offense, the case must
12 be set for trial in the same manner as the trial of an adult in a
13 court of general criminal jurisdiction.

14 (6) If the court determines that an offense did not occur or
15 there is not probable cause to believe the juvenile committed the
16 offense, the court shall dismiss the petition. If the court
17 determines there is probable cause to believe another offense was
18 committed and there is probable cause to believe the juvenile
19 committed that offense, the court may further determine whether the
20 case should be designated as a case in which the juvenile should be
21 tried in the same manner as an adult as provided in subsection (2).
22 If the court designates the case, the case must be set for trial in
23 the same manner as the trial of an adult in a court of general
24 criminal jurisdiction.

25 (7) If a case is designated under this section, the
26 proceedings are criminal proceedings and must afford all procedural
27 protections and guarantees to which the juvenile would be entitled
28 if being tried for the offense in a court of general criminal
29 jurisdiction. A plea of guilty or nolo contendere or a verdict of

1 guilty must result in entry of a judgment of conviction. The
2 conviction must have the same effect and liabilities as if it had
3 been obtained in a court of general criminal jurisdiction.

4 (8) Following a judgment of conviction, the court shall enter
5 a disposition or impose a sentence authorized under section
6 ~~18(1)(p)~~ **18(1)(o)** of this chapter.

7 (9) As used in this section, "specified juvenile violation"
8 means any of the following:

9 (a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349,
10 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328,
11 MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317,
12 750.349, 750.520b, 750.529, 750.529a, and 750.531.

13 (b) A violation of section 84 or 110a(2) of the Michigan penal
14 code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is
15 armed with a dangerous weapon. As used in this subdivision,
16 "dangerous weapon" means 1 or more of the following:

17 (i) A loaded or unloaded firearm, whether operable or
18 inoperable.

19 (ii) A knife, stabbing instrument, brass knuckles, blackjack,
20 club, or other object specifically designed or customarily carried
21 or possessed for use as a weapon.

22 (iii) An object that is likely to cause death or bodily injury
23 when used as a weapon and that is used as a weapon or carried or
24 possessed for use as a weapon.

25 (iv) An object or device that is used or fashioned in a manner
26 to lead a person to believe the object or device is an object or
27 device described in subparagraphs (i) to (iii).

28 (c) A violation of section 186a of the Michigan penal code,
29 1931 PA 328, MCL 750.186a, regarding escape or attempted escape

1 from a juvenile facility, but only if the juvenile facility from
2 which the juvenile escaped or attempted to escape was 1 of the
3 following:

4 (i) A high-security or medium-security facility operated by the
5 ~~family independence agency~~ **department** or a county juvenile agency.

6 (ii) A high-security facility operated by a private agency
7 under contract with the ~~family independence agency~~ **department** or a
8 county juvenile agency.

9 (d) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of
10 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

11 (e) An attempt to commit a violation described in subdivisions
12 (a) to (d).

13 (f) Conspiracy to commit a violation described in subdivisions
14 (a) to (d).

15 (g) Solicitation to commit a violation described in
16 subdivisions (a) to (d).

17 (h) Any lesser included offense of an offense described in
18 subdivisions (a) to (g) if the juvenile is alleged in the petition
19 to have committed an offense described in subdivisions (a) to (g).

20 (i) Any other offense arising out of the same transaction as
21 an offense described in subdivisions (a) to (g) if the juvenile is
22 alleged in the petition to have committed an offense described in
23 subdivisions (a) to (g).

24 Sec. 2f. (1) If the court determines that formal jurisdiction
25 should not be acquired over a juvenile, the court may proceed in an
26 informal manner referred to as a consent calendar.

27 (2) A case ~~shall~~ **must** not be placed on the consent calendar
28 unless the juvenile and the parent, guardian, or legal custodian
29 and the prosecutor agree to have the case placed on the consent

1 calendar.

2 (3) The court may transfer a case from the formal calendar to
3 the consent calendar at any time before disposition. A case
4 involving the alleged commission of an offense as that term is
5 defined in section 31 of the William Van Regenmorter crime victim's
6 rights act, 1985 PA 87, MCL 780.781, ~~shall~~**must** only be placed on
7 the consent calendar upon compliance with the procedures set forth
8 in section 36b of the William Van Regenmorter crime victim's rights
9 act, 1985 PA 87, MCL 780.786b.

10 (4) After a case is placed on the consent calendar, the
11 prosecutor shall provide the victim with notice as required by
12 article 2 of the William Van Regenmorter crime victim's rights act,
13 1985 PA 87, MCL 780.781 to 780.802.

14 (5) Consent calendar cases must be maintained in the following
15 nonpublic manner:

16 (a) Access to consent calendar case records ~~shall~~**must** be
17 provided to the juvenile, the juvenile's parents, guardian, or
18 legal custodian, the guardian ad litem, counsel for the juvenile,
19 the department of health and human services if related to an
20 investigation of neglect and abuse, law enforcement personnel,
21 prosecutor, and other courts. However, consent calendar case
22 records ~~shall~~**must** not be disclosed to federal agencies or military
23 recruiters. ~~For purposes of this subsection,~~ **As used in this**
24 **subdivision**, "case records" includes the pleadings, motions,
25 authorized petitions, notices, memoranda, briefs, exhibits,
26 available transcripts, findings of the court, register of actions,
27 consent calendar case plan, and court orders related to the case
28 placed on the consent calendar.

29 (b) The contents of the confidential file ~~, as defined in MCR~~

1 ~~3.903, shall must~~ continue to be maintained confidentially. **As used**
2 **in this subdivision, "confidential file" means that term as defined**
3 **in MCR 3.903.**

4 (6) The court shall conduct a consent calendar conference with
5 the juvenile, the juvenile's attorney, if any, and the juvenile's
6 parent, guardian, or legal custodian to discuss the allegations.
7 The prosecuting attorney and victim may be, but are not required to
8 be, present.

9 (7) If it appears to the court that the juvenile has engaged
10 in conduct that would subject the juvenile to the jurisdiction of
11 the court, the court shall issue a written consent calendar case
12 plan. All of the following apply to a consent calendar case plan:

13 (a) The plan may include a provision requiring the juvenile,
14 parent, guardian, or legal custodian to reimburse the court for the
15 cost of the consent calendar services for the juvenile. The
16 reimbursement amount ~~shall must~~ be reasonable, taking into account
17 the juvenile's income and resources. The plan ~~shall must~~ also
18 include a requirement that the juvenile pay restitution under the
19 William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL
20 780.751 to 780.834.

21 (b) A consent calendar case plan ~~shall must~~ not contain a
22 provision removing the juvenile from the custody of the juvenile's
23 parent, guardian, or legal custodian.

24 (c) **The period for a juvenile to complete the terms of a**
25 **consent calendar case plan must not exceed 6 months, unless the**
26 **court determines that a longer period is needed for the juvenile to**
27 **complete a specific treatment program and includes this**
28 **determination as part of the consent calendar case record.**

29 (d) ~~(e)~~ The consent calendar case plan is not an order of the

1 court, but ~~shall~~**must** be included as a part of the case record.

2 (e) ~~(d)~~ Violation of the terms of the consent calendar case
3 plan may result in the court's returning the case to the formal
4 calendar for further proceedings consistent with subsection (10).

5 (8) The court shall not enter an order of disposition in a
6 case while it is on the consent calendar.

7 (9) Upon successful completion by the juvenile of the consent
8 calendar case plan, the court shall close the case and shall
9 destroy all records of the proceeding in accordance with the
10 records management policies and procedures of the state court
11 administrative office, established in accordance with supreme court
12 rules.

13 (10) If it appears to the court at any time that proceeding on
14 the consent calendar is not in the best interest of either the
15 juvenile or the public, the court shall proceed as follows:

16 (a) If the court did not authorize the original petition, the
17 court may, without hearing, transfer the case from the consent
18 calendar to the formal calendar on the charges contained in the
19 original petition to determine whether the petition should be
20 authorized.

21 (b) If the court authorized the original petition, the court
22 may transfer the case from the consent calendar to the formal
23 calendar on the charges contained in the original petition only
24 after a hearing. After transfer to the formal calendar, the court
25 shall proceed with the case from where it left off before being
26 placed on the consent calendar.

27 (11) Statements made by the juvenile during the proceeding on
28 the consent calendar ~~shall~~**must** not be used against the juvenile at
29 a trial on the formal calendar on the same charge.

1 (12) Upon a judicial determination that the juvenile has
2 completed the terms of the consent calendar case plan, the court
3 shall report the successful completion of the consent calendar to
4 the juvenile and the department of state police. The department of
5 state police shall maintain a nonpublic record of the case. This
6 record ~~shall~~**must** be open to the courts of this state, another
7 state, or the United States, the department of corrections, law
8 enforcement personnel, and prosecutors ~~only~~ for use **only** in the
9 performance of their duties or to determine whether an employee of
10 the court, department, law enforcement agency, or prosecutor's
11 office has violated ~~his or her~~ conditions of employment or whether
12 an applicant meets criteria for employment with the court,
13 department, law enforcement agency, or prosecutor's office.

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

21 (2) Before conducting a hearing on the motion to waive
22 jurisdiction, the court shall give notice of the hearing in the
23 manner provided by supreme court rule to the juvenile and the
24 prosecuting attorney and, if addresses are known, to the juvenile's
25 parents or guardians. The notice ~~shall~~**must** state clearly that a
26 waiver of jurisdiction to a court of general criminal jurisdiction
27 has been requested and that, if granted, the juvenile can be
28 prosecuted for the alleged offense as though ~~he or she~~**the juvenile**
29 were an adult.

1 (3) Before the court waives jurisdiction, the court shall
2 determine on the record if there is probable cause to believe that
3 an offense has been committed that if committed by an adult would
4 be a felony and if there is probable cause to believe that the
5 juvenile committed the offense. Before a juvenile may waive a
6 probable cause hearing under this subsection, the court shall
7 inform the juvenile that a waiver of this subsection waives the
8 preliminary examination required ~~by **under**~~ chapter VI of the code of
9 criminal procedure, ~~Act No. 175 of the Public Acts of 1927, being~~
10 ~~sections 766.1 to 766.18 of the Michigan Compiled Laws. **1927 PA 175,**~~
11 **MCL 766.1 to 766.18.**

12 (4) Upon a showing of probable cause under subsection (3), the
13 court shall conduct a hearing to determine if the best interests of
14 the juvenile and the public would be served by granting a waiver of
15 jurisdiction to the court of general criminal jurisdiction. In
16 making its determination, the court shall consider all of the
17 following criteria, giving greater weight to the seriousness of the
18 alleged offense and the juvenile's prior record of delinquency than
19 to the other criteria:

20 (a) The seriousness of the alleged offense in terms of
21 community protection, including, but not limited to, the existence
22 of any aggravating factors recognized by the sentencing guidelines,
23 **and** the use of a firearm or other dangerous weapon. ~~and the~~
24 ~~impact on any victim.~~

25 (b) The culpability of the juvenile in committing the alleged
26 offense, including, but not limited to, the level of the juvenile's
27 participation in planning and carrying out the offense and the
28 existence of any aggravating or mitigating factors recognized by
29 the sentencing guidelines.

1 (c) The juvenile's prior record of delinquency ~~including, but~~
2 ~~not limited to, any record of detention, any police record, any~~
3 ~~school record, or any other evidence indicating prior delinquent~~
4 ~~behavior.~~ **that would be a crime if committed by an adult.**

5 (d) The juvenile's programming history, including, but not
6 limited to, **any out-of-home placement or treatment and** the
7 juvenile's past willingness to participate meaningfully in
8 available programming.

9 (e) The adequacy of the ~~punishment or programming~~ available to
10 **rehabilitate and hold accountable the juvenile** in the juvenile
11 justice system **and the juvenile's amenability to treatment.**

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

13 (g) **The juvenile's developmental maturity, emotional health,**
14 **and mental health.**

15 (h) **If the juvenile is a member of a federally recognized**
16 **Indian tribe, culturally honoring traditional values of the**
17 **juvenile's tribe.**

18 (i) **The impact on any victim.**

19 (5) If the court determines that there is probable cause to
20 believe that an offense has been committed that if committed by an
21 adult would be a felony and that the juvenile committed the
22 offense, the court shall waive jurisdiction of the juvenile if the
23 court finds that the juvenile has previously been subject to the
24 jurisdiction of the circuit court under this section, ~~or section~~
25 ~~606 of the revised judicature act of 1961, Act No. 236 of the~~
26 ~~Public Acts of 1961, being section 600.606 of the Michigan Compiled~~
27 ~~Laws, or the recorder's court of the city of Detroit under this~~
28 ~~section or section 10a(1)(c) of Act No. 369 of the Public Acts of~~
29 ~~1919, being section 725.10a of the Michigan Compiled Laws.~~ **1961 PA**

1 236, MCL 600.606.

2 (6) If legal counsel has not been retained or appointed to
3 represent the juvenile, the court shall advise the juvenile and ~~his~~
4 ~~or her~~ **the juvenile's** parents, guardian, custodian, or guardian ad
5 litem of the juvenile's right to representation and appoint legal
6 counsel. If the court appoints legal counsel, the judge may assess
7 the cost of providing legal counsel as costs against the juvenile
8 or those responsible for ~~his or her~~ **the juvenile's** support, or
9 both, if the persons to be assessed are financially able to comply.

10 (7) Legal counsel shall have access to records or reports
11 provided and received by the judge as a basis for decision in
12 proceedings for waiver of jurisdiction. A continuance ~~shall~~ **must** be
13 granted at legal counsel's request if any report, information, or
14 recommendation not previously available is introduced or developed
15 at the hearing and the interests of justice require a continuance.

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

23 (9) If the court does not waive jurisdiction, a transcript of
24 the court's findings or, if a written opinion is prepared, a copy
25 of the written opinion ~~shall~~ **must** be sent to the prosecuting
26 attorney, juvenile, or juvenile's attorney upon request.

27 (10) If the court waives jurisdiction, the juvenile shall be
28 arraigned on an information filed by the prosecutor in the court of
29 general criminal jurisdiction. The probable cause finding under

1 subsection (3) satisfies the requirements of, and is the equivalent
2 of, the preliminary examination required ~~by~~**under** chapter VI of ~~Act~~
3 ~~No. 175 of the Public Acts of 1927.~~**the code of criminal procedure,**
4 **1927 PA 175, MCL 766.1 to 766.18.**

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