

Act No. 291
Public Acts of 2023
Approved by the Governor
December 12, 2023
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**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 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

ENROLLED HOUSE BILL No. 4633

AN ACT to amend 1939 PA 288, entitled “An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties,” 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:

CHAPTER XIIA

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

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

(a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines and the use of a firearm or other dangerous weapon.

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

(c) The juvenile's prior record of delinquency that would be a crime if committed by an adult.

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

(e) The adequacy of the programming available to rehabilitate and hold accountable the juvenile in the juvenile justice system and the juvenile's amenability to treatment.

(f) The dispositional options available for the juvenile.

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

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

(i) The impact on any victim.

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

(4) If the petition in a case designated under this section alleges an offense that if committed by an adult would be a felony or punishable by imprisonment for more than 1 year, the court shall conduct a probable cause hearing not later than 14 days after the case is designated to determine whether there is probable cause to believe the offense was committed and whether there is probable cause to believe the juvenile committed the offense. This hearing may be combined with the designation hearing under subsection (2) for an offense other than a specified juvenile offense. A probable cause hearing under this section is the equivalent of the preliminary examination in a court of general criminal jurisdiction and satisfies the requirement for that hearing. A probable cause hearing must be conducted by a judge other than the judge who will try the case if the juvenile is tried in the same manner as an adult.

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

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

(7) If a case is designated under this section, the proceedings are criminal proceedings and must afford all procedural protections and guarantees to which the juvenile would be entitled if being tried for the offense in a court of general criminal jurisdiction. A plea of guilty or nolo contendere or a verdict of guilty must result in entry of a judgment of conviction. The conviction must have the same effect and liabilities as if it had been obtained in a court of general criminal jurisdiction.

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

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

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

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

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

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

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

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

(c) A violation of section 186a of the Michigan penal code, 1931 PA 328, MCL 750.186a, regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the juvenile escaped or attempted to escape was 1 of the following:

(i) A high-security or medium-security facility operated by the department or a county juvenile agency.

(ii) A high-security facility operated by a private agency under contract with the department or a county juvenile agency.

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

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

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

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

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

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

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

(2) A case must not be placed on the consent calendar unless the juvenile and the parent, guardian, or legal custodian and the prosecutor agree to have the case placed on the consent calendar.

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

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

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

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

(b) The contents of the confidential file must continue to be maintained confidentially. As used in this subdivision, "confidential file" means that term as defined in MCR 3.903.

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

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

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

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

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

(d) The consent calendar case plan is not an order of the court, but must be included as a part of the case record.

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

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

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

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

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

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

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

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

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

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

(3) Before the court waives jurisdiction, the court shall determine on the record if there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony and if there is probable cause to believe that the juvenile committed the offense. Before a juvenile may waive a probable cause hearing under this subsection, the court shall inform the juvenile that a waiver of this subsection waives the preliminary examination required under chapter VI of the code of criminal procedure, 1927 PA 175, MCL 766.1 to 766.18.

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

(a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines and the use of a firearm or other dangerous weapon.

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

(c) The juvenile's prior record of delinquency that would be a crime if committed by an adult.

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

(e) The adequacy of the programming available to rehabilitate and hold accountable the juvenile in the juvenile justice system and the juvenile's amenability to treatment.

(f) The dispositional options available for the juvenile.

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

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

(i) The impact on any victim.

(5) If the court determines that there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony and that the juvenile committed the offense, the court shall waive jurisdiction of the juvenile if the court finds that the juvenile has previously been subject to the jurisdiction of the circuit court under this section, section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606.

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

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

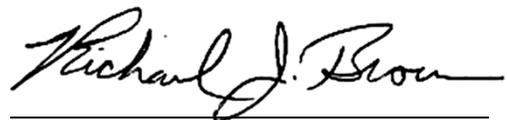
(8) The court shall enter a written order either granting or denying the motion to waive jurisdiction and the court shall state on the record or in a written opinion the court's findings of fact and conclusions of law forming the basis for entering the order. If a juvenile is waived, a transcript of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

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

(10) If the court waives jurisdiction, the juvenile shall be arraigned on an information filed by the prosecutor in the court of general criminal jurisdiction. The probable cause finding under subsection (3) satisfies the requirements of, and is the equivalent of, the preliminary examination required under chapter VI of the code of criminal procedure, 1927 PA 175, MCL 766.1 to 766.18.

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

Enacting section 1. This amendatory act takes effect October 1, 2024.


Clerk of the House of Representatives


Secretary of the Senate

Approved _____

Governor