

HOUSE BILL No. 4629

May 13, 1987, Introduced by Reps. Rocca, Middaugh, Dobronski, DeMars, Dutko, Weeks and Clack and referred to the Committee on Judiciary.

A bill to amend sections 2a and 4 of chapter XIIA 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,"

being sections 712A.2a and 712A.4 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2a and 4 of chapter XIIA of Act No. 288
2 of the Public Acts of 1939, being sections 712A.2a and 712A.4 of
3 the Michigan Compiled Laws, are amended to read as follows:

4 CHAPTER XIIA

5 Sec. 2a. (1) Where the juvenile division of the probate
6 court has exercised jurisdiction over a child under ~~subdivisions~~
7 ~~(a) or (b) of section 2~~ SECTION 2(A)(2) TO (6) OR SECTION 2(B)
8 OF THIS CHAPTER, jurisdiction shall continue for a period of 2
9 years beyond the maximum age of jurisdiction conferred under ~~the~~
10 ~~applicable subdivisions of section 2~~ SECTION 2(A)(2) TO (6) OR
11 SECTION 2(B).

12 (2) WHERE THE JUVENILE DIVISION OF THE PROBATE COURT HAS
13 EXERCISED JURISDICTION OVER A JUVENILE UNDER SECTION 2(A)(1),
14 JURISDICTION SHALL CONTINUE FOR A PERIOD OF 4 YEARS BEYOND THE
15 MAXIMUM AGE OF JURISDICTION CONFERRED UNDER SECTION 2(A)(1) other
16 than in criminal complaints occurring subsequent to the child's
17 seventeenth birthday, unless released sooner by order of the
18 court. JURISDICTION IN THE PROBATE COURT MAY THEREAFTER UPON
19 ORDER OF THE COURT BE CONTINUED UNTIL THE CHILD IS 23 YEARS OF
20 AGE IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

21 (A) A HEARING IS HELD UPON MOTION OF THE PROSECUTING ATTOR-
22 NEY OR THE DEPARTMENT OR INSTITUTION TO WHICH THE CHILD WAS
23 COMMITTED.

24 (B) REASONABLE NOTICE OF THE HEARING AND AN OPPORTUNITY TO
25 BE HEARD IS GIVEN TO THE CHILD AND HIS OR HER PARENTS, GUARDIAN,
26 CUSTODIAN, OR GUARDIAN AD LITEM.

1 (C) THE COURT FINDS ON THE RECORD OR IN A WRITTEN STATEMENT
2 THAT THE CONTINUANCE OF JURISDICTION IS NECESSARY FOR THE
3 TREATMENT OR REHABILITATION OF THE CHILD.

4 (3) IF A COURT HAS ENTERED AN ORDER CONTINUING JURISDICTION
5 OVER A CHILD UNDER SUBSECTION (2), THE COURT MAY ORDER AN EXTEN-
6 SION OF THE CONTINUANCE OF JURISDICTION OVER THE CHILD UNTIL THE
7 CHILD IS 25 YEARS OF AGE SO LONG AS THE CONDITIONS IN SUBSECTION
8 (2)(A), (B), AND (C) ARE MET.

9 (4) IF A CHILD WITHIN THE COURT'S JURISDICTION PURSUANT TO
10 SECTION 2(A)(1) OF THIS CHAPTER IS AT LEAST 21 YEARS OF AGE, UPON
11 MOTION OF A PARTY OR IN THE COURT'S DISCRETION, THE COURT MAY
12 TERMINATE AN ORDER OF CONTINUANCE OF JURISDICTION BEFORE THE
13 EXPIRATION OF THE ORDER IF IT APPEARS TO THE COURT THAT THE PUR-
14 POSES GIVEN IN THE ORDER OF CONTINUING JURISDICTION UNDER SUBSEC-
15 TION (2) OR (3) HAVE BEEN ACCOMPLISHED. A COURT MAY NOT TERMI-
16 NATE AN ORDER OF CONTINUANCE OF JURISDICTION UNDER THIS SUBSEC-
17 TION UNLESS REASONABLE NOTICE AND AN OPPORTUNITY TO BE HEARD HAS
18 BEEN GIVEN TO THE PROSECUTING ATTORNEY AND THE DEPARTMENT OR
19 INSTITUTION TO WHICH THE CHILD WAS COMMITTED.

20 (5) ~~-(2)-~~ As used in this chapter, "child", "minor", or any
21 other term signifying a person under ~~the age of~~ 18 YEARS OF AGE
22 shall be construed to apply to a person 18 YEARS of age ~~+18-~~ or
23 older ~~concerning whom~~ IF proceedings are commenced in the juve-
24 nile division of the probate court pursuant to section 2 and
25 ~~over whom~~ the juvenile division has continuing jurisdiction
26 pursuant to ~~subsection (1)-~~ THIS SECTION.

1 Sec. 4. (1) ~~Where~~ EXCEPT AS PROVIDED IN SUBSECTION (8),
2 IF a child who has attained the age of 15 years is accused of any
3 act the nature of which constitutes a felony, the judge of pro-
4 bate of the county ~~wherein~~ WHERE the offense is alleged to have
5 been committed may waive jurisdiction pursuant to this section
6 upon motion of the prosecuting attorney. ~~, whereupon~~ AFTER
7 WAIVER, it shall be lawful to try ~~such~~ THE child in the court
8 having general criminal jurisdiction of ~~such~~ 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 child and the prose-
12 cuting attorney and, if addresses are known, to the child's par-
13 ents or guardians. The notice shall state clearly that a waiver
14 of jurisdiction to a ~~criminal~~ court OF GENERAL CRIMINAL
15 JURISDICTION has been requested and that, if granted, the child
16 can be prosecuted for the alleged offense as though he OR SHE
17 were an adult.

18 (3) Before the court waives jurisdiction, it shall determine
19 if there is probable cause to believe that the child committed an
20 offense which if committed by an adult would be a felony.

21 (4) ~~Upon~~ EXCEPT AS PROVIDED IN SUBSECTION (8), UPON a
22 showing of probable cause, the court shall conduct a hearing to
23 determine whether ~~or not~~ the interests of the child and the
24 public would be served best by granting a waiver of jurisdiction
25 to the ~~criminal~~ court OF GENERAL CRIMINAL JURISDICTION. In
26 making the determination, the court shall consider the following
27 criteria:

1 (a) The prior record and character of the child ~~—~~ AND his
2 OR HER physical and mental maturity and ~~his~~ pattern of living.

3 (b) The seriousness of the offense. . .

4 (c) Whether the offense, even if less serious, is part of a
5 repetitive pattern of offenses which would lead to a determina-
6 tion that the child may be beyond rehabilitation under existing
7 juvenile programs and statutory procedures.

8 (d) The relative suitability of programs and facilities
9 available to the juvenile COURT and ~~criminal~~ courts OF GENERAL
10 CRIMINAL JURISDICTION for the child.

11 (e) Whether it is in the best interests of the public wel-
12 fare and the protection of the public security that the child
13 stand trial as an adult offender. . . .

14 (5) If LEGAL counsel has not been retained or appointed to
15 represent the child, the court shall advise the child and his OR
16 HER parents, guardian, custodian, or guardian ad litem of the
17 child's right to representation and appoint LEGAL counsel.

18 ~~Where~~ IF the court appoints LEGAL counsel, the judge may assess
19 the cost of providing ~~such~~ counsel as costs against the child
20 or those responsible for his OR HER support, or both, if the per-
21 sons to be assessed are financially able to comply.

22 (6) ~~Counsel~~ LEGAL COUNSEL shall have access to records or
23 reports provided and received by the judge as a basis for deci-
24 sion in proceedings for waiver of jurisdiction. A continuance
25 shall be granted at LEGAL counsel's request if any report,
26 information, or recommendation, not ~~theretofore~~ PREVIOUSLY

1 available, is introduced or developed at the hearing and the
2 interests of justice require a continuance.

3 (7) ~~if~~ EXCEPT AS PROVIDED IN SUBSECTION (8), IF the court
4 waives jurisdiction, the order shall include a written statement
5 of the court setting forth findings forming the basis for entry
6 of the order.

7 (8) THE COURT SHALL WAIVE JURISDICTION OVER A CHILD TO THE
8 COURT OF GENERAL CRIMINAL JURISDICTION IF ALL OF THE FOLLOWING
9 APPLY:

10 (A) THE CHILD IS 15 YEARS OF AGE OR OLDER.

11 (B) THE CHILD IS ACCUSED OF AN OFFENSE WHICH IF COMMITTED BY
12 AN ADULT WOULD CONSTITUTE A FELONY THE MAXIMUM PENALTY FOR WHICH
13 IS LIFE IMPRISONMENT.

14 (C) THE COURT FINDS THAT THERE IS PROBABLE CAUSE TO BELIEVE
15 THAT THE CHILD COMMITTED THE OFFENSE.

16 Section 2. This amendatory act shall not take effect unless
17 Senate Bill No. _____ or House Bill No. 4630 (request
18 no. 01619'87 a) of the 84th Legislature is enacted into law.