



HOUSE BILL No. 5880

November 10, 1994, Introduced by Reps Willard, Gire and Cropsey and referred to the Committee on Judiciary

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

5 CHAPTER XIIA

6 Sec 4 (1) If a child who has attained the age of 15 years
7 is accused of an act ~~which,~~ THAT if committed by an adult —
8 would be a felony the judge of probate of the county where the
9 offense is alleged to have been committed may waive jurisdiction
10 pursuant to this section upon motion of the prosecuting

11 attorney After waiver it shall be lawful to try the child in
12 the court having general criminal jurisdiction of the offense

13 (2) Before conducting a hearing on the motion to waive
14 jurisdiction the court shall give notice of the hearing in the
15 manner provided by supreme court rule to the child and the prose-
16 cuting attorney and if addresses are known to the child s par-
17 ents or guardians The notice shall state clearly that a waiver
18 of jurisdiction to a court of general criminal jurisdiction has
19 been requested and that if granted the child can be prosecuted
20 for the alleged offense as though he or 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 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 would lead to 1 of the following determinations

17 (i) The child is not amenable to treatment

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

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

25 (e) Whether the child is more likely to be rehabilitated by
26 the services and facilities available in adult programs and
27 procedures than in juvenile programs and procedures

1 (f) Whether it is in the best interests of the public
2 welfare and the protection of the public security that the child
3 stand trial as an adult offender

4 (5) THE VICTIM OF AN OFFENSE HAS THE RIGHT TO APPEAR AND
5 MAKE AN ORAL IMPACT STATEMENT AT THE HEARING ON THE MOTION TO
6 WAIVE JURISDICTION AS USED IN THIS SUBSECTION OFFENSE AND
7 VICTIM MEAN THOSE TERMS AS DEFINED IN SECTION 31 OF THE CRIME
8 VICTIM S RIGHTS ACT, ACT NO 87 OF THE PUBLIC ACTS OF 1985, BEING
9 SECTION 780 781 OF THE MICHIGAN COMPILED LAWS

10 (6) ~~-(5)-~~ If legal counsel has not been retained or
11 appointed to represent the child the court shall advise the
12 child and his or her parents guardian custodian or guardian ad
13 litem of the child s right to representation and appoint legal
14 counsel If the court appoints legal counsel the judge may
15 assess the cost of providing legal counsel as costs against the
16 child or those responsible for his or her support or both if
17 the persons to be assessed are financially able to comply

18 (7) ~~-(6)-~~ Legal counsel shall have access to records or
19 reports provided and received by the judge as a basis for deci-
20 sion in proceedings for waiver of jurisdiction A continuance
21 shall be granted at legal counsel s request if any report infor-
22 mation or recommendation not previously available is introduced
23 or developed at the hearing and the interests of justice require
24 a continuance

25 (8) ~~-(7)-~~ The court shall enter a written order either
26 granting or denying the motion to waive jurisdiction and the
27 court shall state on the record or in a written opinion the

1 court s findings of fact and conclusions of law forming the basis
2 for entry of the order If a child is waived a transcript of
3 the court s findings or a copy of the written opinion shall be
4 sent to the court of general criminal jurisdiction

5 (9) ~~-(8)-~~ If the court does not waive jurisdiction a tran-
6 script of the court s findings or if a written opinion is pre-
7 pared a copy of the written opinion shall be sent to the prose-
8 cutor child or child s attorney upon request

9 (10) ~~-(9)-~~ If the court waives jurisdiction the child shall
10 be arraigned on an information filed by the prosecutor in the
11 court of general criminal jurisdiction The probable cause find-
12 ing under subsection (3) shall satisfy the requirements of and be
13 considered the equivalent of the preliminary examination required
14 by chapter VI of Act No 175 of the Public Acts of 1927

15 Section 2 This amendatory act shall not take effect unless
16 Senate Bill No _____ or House Bill No 5879 (request
17 no 06565 94) of the 87th Legislature is enacted into law