

HOUSE BILL No. 4956

October 7, 2015, Introduced by Reps. Guerra, Chang, Kosowski, Webber, Byrd, Robinson, Geiss, Banks, Gay-Dagnogo, Greig, Yanez, Darany, Forlini, Lucido, Howrylak, LaVoy, Durhal, Rutledge, Irwin, Neeley, Hovey-Wright, Plawecki, Moss, Love, Callton, Santana and Zemke and referred to the Committee on Criminal Justice.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 4 of chapter XIIA (MCL 712A.4), as amended by
1996 PA 409.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

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.

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

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

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

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

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

11 (c) The juvenile's prior record of delinquency including, but
12 not limited to, any record of detention, any police record, any
13 school record, or any other evidence indicating prior delinquent
14 behavior.

15 (d) The juvenile's programming history, including, but not
16 limited to, the juvenile's past willingness to participate
17 meaningfully in available programming.

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

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

21 (5) If the court determines that there is probable cause to
22 believe that an offense has been committed that if committed by an
23 adult would be a felony and that the juvenile committed the
24 offense, the court shall waive jurisdiction of the juvenile if the
25 court finds that the juvenile has previously been subject to the
26 jurisdiction of the circuit court under this section or section 606
27 of the revised judicature act of 1961, ~~Act No. 236 of the Public~~

~~Acts of 1961, being section 600.606 of the Michigan Compiled Laws, or the recorder's court of the city of Detroit under this section or section 10a(1)(c) of Act No. 369 of the Public Acts of 1919, being section 725.10a of the Michigan Compiled Laws.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 his or her 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 his or her 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 shall 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 shall be sent to the court of general criminal jurisdiction.

(9) If the court does not waive jurisdiction, a transcript of

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1 the court's findings or, if a written opinion is prepared, a copy
2 of the written opinion shall be sent to the prosecuting attorney,
3 juvenile, or juvenile's attorney upon request.

4 (10) If the court waives jurisdiction, the juvenile shall be
5 arraigned on an information filed by the prosecutor in the court of
6 general criminal jurisdiction. The probable cause finding under
7 subsection (3) satisfies the requirements of, and is the equivalent
8 of, the preliminary examination required by chapter VI of ~~Act No.~~
9 ~~175 of the Public Acts of 1927.~~ **THE CODE OF CRIMINAL PROCEDURE, 1927**
10 **PA 175, MCL 766.1 TO 766.18.**

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

14 Enacting section 1. This amendatory act takes effect [October 1,
15 2018.]

16 Enacting section 2. This amendatory act does not take effect
17 unless Senate Bill No. ____ or House Bill No. 4955 (request no.
18 03365'15) of the 98th Legislature is enacted into law.