

# HOUSE BILL No. 4584

April 10, 1989, Introduced by Reps. Terrell, DeMars, Hunter, Stallworth, Honigman, Harrison, Leland, Joe Young, Sr., Power, Sikkema, Martin, Bandstra and Clack and referred to the Committee on Judiciary.

A bill to amend section 27 of chapter IV, section 14 of chapter VI, and section 1 of chapter IX of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

section 27 of chapter IV and section 14 of chapter VI as amended by Act No. 67 of the Public Acts of 1988 and section 1 of chapter IX as amended by Act No. 78 of the Public Acts of 1988, being sections 764.27, 766.14, and 769.1 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Section 27 of chapter IV, section 14 of chapter  
2 VI, and section 1 of chapter IX of Act No. 175 of the Public Acts  
3 of 1927, section 27 of chapter IV and section 14 of chapter VI as  
4 amended by Act No. 67 of the Public Acts of 1988 and section 1 of  
5 chapter IX as amended by Act No. 78 of the Public Acts of 1988,

1 being sections 764.27, 766.14, and 769.1 of the Michigan Compiled  
2 Laws, are amended to read as follows:

3 CHAPTER IV

4 Sec. 27. Except as otherwise provided in section 606 of the  
5 revised judicature act of 1961, Act No. 236 of the Public Acts of  
6 1961, being section 600.606 of the Michigan Compiled Laws, or  
7 section 10a(1)(c) of Act No. 369 of the Public Acts of 1919,  
8 being section 725.10a of the Michigan Compiled Laws, if a child  
9 under 17 years of age is arrested, with or without a warrant, the  
10 child shall be taken immediately before the ~~juvenile division of~~  
11 ~~the probate court of~~ DOMESTIC RELATIONS COURT FOR the county  
12 where the offense is alleged to have been committed, and the  
13 officer making the arrest shall immediately make and file, or  
14 cause to be made and filed, a petition against the child as pro-  
15 vided in ~~chapter XIIA of Act No. 288 of the Public Acts of~~  
16 ~~1939, as amended, being sections 712A.1 to 712A.28~~ CHAPTER 96 OF  
17 THE REVISED JUDICATURE ACT OF 1961, ACT NO. 236 OF THE PUBLIC  
18 ACTS OF 1961, BEING SECTIONS 600.9601 TO 600.9647 of the Michigan  
19 Compiled Laws. Except as otherwise provided in section 606 of  
20 Act No. 236 of the Public Acts of 1961, being section 600.606 of  
21 the Michigan Compiled Laws, or section 10a(1)(c) of Act No. 369  
22 of the Public Acts of 1919, being section 725.10a of the Michigan  
23 Compiled Laws, if during the pendency of a criminal case against  
24 a child in a court in this state it is ascertained that the child  
25 is under 17 years of age, the court shall immediately transfer  
26 the case, together with all papers connected with the case, to  
27 the ~~juvenile division of the probate~~ DOMESTIC RELATIONS court

1 of the county where the offense is alleged to have been  
 2 committed. If a child 15 years of age or older is charged with a  
 3 felony, the judge of ~~probate~~ DOMESTIC RELATIONS COURT, after  
 4 investigation and examination and upon motion of the prosecuting  
 5 attorney, may waive jurisdiction under section ~~4 of chapter XIII~~  
 6 ~~of Act No. 288 of the Public Acts of 1939, being section 712A.4~~  
 7 9608 OF THE REVISED JUDICATURE ACT OF 1961, ACT NO. 236 OF THE  
 8 PUBLIC ACTS OF 1961, BEING SECTION 600.9608 of the Michigan  
 9 Compiled Laws. If jurisdiction is waived, it shall be lawful to  
 10 try the child in the court having general criminal jurisdiction  
 11 of the offense. If during the pendency of a criminal case  
 12 against a child in a court of record other than ~~a probate~~ THE  
 13 DOMESTIC RELATIONS court it is determined that the child is 17  
 14 years of age, ~~then the court~~ AND if the court finds that any of  
 15 the conditions exist as outlined in section ~~2(d) of chapter XIII~~  
 16 ~~of Act No. 288 of the Public Acts of 1939, as amended, being~~  
 17 ~~section 712A.2~~ 9602 OF ACT NO. 236 OF THE PUBLIC ACTS OF 1961,  
 18 BEING SECTION 600.9602 of the Michigan Compiled Laws, upon motion  
 19 of the prosecuting attorney, the child, or his or her representa-  
 20 tive, THE COURT may transfer the case together with all papers  
 21 connected with the case to the ~~juvenile division of the probate~~  
 22 ~~court of~~ DOMESTIC RELATIONS COURT FOR the county where the  
 23 offense is alleged to have been committed.

#### 24 CHAPTER VI

25 Sec. 14. (1) If at the conclusion of the preliminary exami-  
 26 nation of a person charged with a felony it appears that the  
 27 offense charged is not a felony or that an included offense which

1 is not a felony has been committed, the accused shall not be  
2 dismissed but the magistrate shall proceed in the same manner as  
3 if the accused had initially been charged with an offense which  
4 is not a felony.

5 (2) If at the conclusion of the preliminary examination of a  
6 juvenile the magistrate finds that a violation of section 83, 89,  
7 91, 316, 317, 520b, or 529 of the Michigan penal code, Act  
8 No. 328 of the Public Acts of 1931, being sections 750.83,  
9 750.89, 750.91, 750.316, 750.317, 750.520b, and 750.529 of the  
10 Michigan Compiled Laws, or section 7401(2)(a)(i) or 7403(2)(a)(i)  
11 of the public health code, Act No. 368 of the Public Acts of  
12 1978, being sections 333.7401 and 333.7403 of the Michigan  
13 Compiled Laws, did not occur or that there is not probable cause  
14 to believe that the juvenile committed the violation, but that  
15 there is probable cause to believe that some other offense  
16 occurred and that the juvenile committed that other offense, the  
17 magistrate shall transfer the case to the ~~juvenile division of~~  
18 ~~the probate court of~~ DOMESTIC RELATIONS COURT FOR the county  
19 where the offense is alleged to have been committed. A transfer  
20 under this subsection shall not prevent the ~~juvenile division of~~  
21 ~~the probate~~ DOMESTIC RELATIONS court from waiving jurisdiction  
22 over the juvenile under section ~~4 of chapter XIII of Act No. 288~~  
23 ~~of the Public Acts of 1939, being section 712A.4~~ 9608 OF THE  
24 REVISED JUDICATURE ACT OF 1961, ACT NO. 236 OF THE PUBLIC ACTS OF  
25 1961, BEING SECTION 600.9608 of the Michigan Compiled Laws.

## CHAPTER IX

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Sec. 1. (1) A judge of a court having jurisdiction is authorized and empowered to pronounce judgment against and pass sentence upon a person convicted of an offense in that court. The sentence shall not be in excess of the sentence prescribed by law.

(2) The sentencing of a person convicted of a felony or a misdemeanor punishable by imprisonment for more than 92 days shall not occur until the court has examined the court file and has determined that the fingerprints of the person have been taken.

(3) A judge of a court having jurisdiction over a juvenile shall conduct a hearing at the juvenile's sentencing to determine if the best interests of the juvenile and the public would be served by placing the juvenile on probation and committing the juvenile to a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, being sections 803.301 to 803.309 of the Michigan Compiled Laws, or by imposing any other sentence provided by law for an adult offender. The rules of evidence do not apply to a hearing under this subsection. In making this determination, the judge shall consider the following criteria giving each weight as appropriate to the circumstances:

(a) The prior record and character of the juvenile, his or her physical and mental maturity, and his or her pattern of living.

1 (b) The seriousness and the circumstances of the offense.

2 (c) Whether the offense is part of a repetitive pattern of  
3 offenses which would lead to 1 of the following determinations:

4 (i) The juvenile is not amenable to treatment.

5 (ii) That despite the juvenile's potential for treatment,  
6 the nature of the juvenile's delinquent behavior is likely to  
7 disrupt the rehabilitation of other juveniles in the treatment  
8 program.

9 (d) Whether, despite the juvenile's potential for treatment,  
10 the nature of the juvenile's delinquent behavior is likely to  
11 render the juvenile dangerous to the public if released at the  
12 age of 21.

13 (e) Whether the juvenile is more likely to be rehabilitated  
14 by the services and facilities available in adult programs and  
15 procedures than in juvenile programs and procedures.

16 (f) What is in the best interests of the public welfare and  
17 the protection of the public security.

18 (4) With the consent of the prosecutor and the defendant,  
19 the court may waive the hearing required under subsection (3).  
20 If the court waives the hearing required under subsection (3),  
21 the court may place the juvenile on probation and commit the  
22 juvenile to a state institution or agency described in Act  
23 No. 150 of the Public Acts of 1974, but may not impose any other  
24 sentence provided by law for an adult offender.

25 (5) The court shall state on the record the court's findings  
26 of fact and conclusions of law for the probation and commitment  
27 decision or sentencing decision made under subsection (3). If a

1 juvenile is committed under subsection (3) to a state institution  
2 or agency described in Act No. 150 of the Public acts of 1974, a  
3 transcript of the court's findings shall be sent to the depart-  
4 ment of social services.

5 (6) If a juvenile is committed under subsection (3) or (4)  
6 to a state institution or agency described in Act No. 150 of the  
7 Public Acts of 1974, the written order of commitment shall con-  
8 tain a provision for the reimbursement to the court by the juve-  
9 nile or those responsible for the juvenile's support, or both,  
10 for the cost of care or service. The amount of reimbursement  
11 ordered shall be reasonable, taking into account both the income  
12 and resources of the juvenile and those responsible for the  
13 juvenile's support. The amount may be based upon the guidelines  
14 and model schedule prepared under section ~~18(6) of chapter XIII A~~  
15 ~~of Act No. 288 of the Public Acts of 1939, being section 712A.18~~  
16 9629(6) OF THE REVISED JUDICATURE ACT OF 1961, ACT NO. 236 OF THE  
17 PUBLIC ACTS OF 1961, BEING SECTION 600.9629 of the Michigan  
18 Compiled Laws. The reimbursement provision shall apply during  
19 the entire period the juvenile remains in care outside the  
20 juvenile's own home and under court supervision. The court shall  
21 provide for the collection of all amounts ordered to be reim-  
22 bursed, and the money collected shall be accounted for and  
23 reported to the county board of commissioners. Collections to  
24 cover delinquent accounts or to pay the balance due on reimburse-  
25 ment orders may be made after a juvenile is released or dis-  
26 charged from care outside the juvenile's own home and under court  
27 supervision. Twenty-five percent of all amounts collected

1 pursuant to an order entered under this subsection shall be  
2 credited to the appropriate fund of the county to offset the  
3 administrative cost of collections. The balance of all amounts  
4 collected pursuant to an order entered under this subsection  
5 shall be divided in the same ratio in which the county, state,  
6 and federal government participate in the cost of care outside  
7 the juvenile's own home and under state or court supervision.  
8 The court may also collect benefits paid by the government of the  
9 United States for the cost of care of the juvenile. Money col-  
10 lected for juveniles placed with or committed to the state  
11 department of social services shall be accounted for and reported  
12 on an individual basis.

13 (7) If the court appoints an attorney to represent a juve-  
14 nile, an order entered under this section may require the juve-  
15 nile or person responsible for the juvenile's support, or both,  
16 to reimburse the court for attorney fees.

17 (8) An order directed to a person responsible for the  
18 juvenile's support under this section shall not be effectual and  
19 binding on the person unless an opportunity for a hearing has  
20 been given and until a copy of the order is served on the person,  
21 personally or by first class mail to the person's last known  
22 address.

23 (9) If a juvenile is placed on probation and committed under  
24 subsection (3) or (4) to a state institution or agency described  
25 in Act No. 150 of the Public Acts of 1974, the court shall retain  
26 jurisdiction over the juvenile while the juvenile is on probation  
27 and committed to that state institution or agency.



1       (10) If the court has retained jurisdiction over a juvenile  
2 under subsection (9), the court shall conduct an annual review of  
3 the services being provided to the juvenile, the juvenile's  
4 placement, and the juvenile's progress in that placement. In  
5 conducting this review, the court shall examine the juvenile's  
6 annual report prepared pursuant to section 3 of the juvenile  
7 facilities act. The court may order changes in the juvenile's  
8 placement or treatment plan based on the review.

9       Section 2. This amendatory act shall take effect January 1,  
10 1990.

11       Section 3. This amendatory act shall not take effect unless  
12 Senate Bill No. \_\_\_\_\_ or House Bill No. 4567 (request  
13 no. 01659'89) of the 85th Legislature is enacted into law.