



SENATE BILL No. 694

September 27, 1995, Introduced by Senators BOUCHARD, ROGERS, STILLE, GOUGEON, BENNETT, STEIL, CARL, DE GROW, SCHUETTE and MC MANUS and referred to the Committee on Judiciary.

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

5 Sec. 4. (1) If a child ~~who has attained the age of~~ 15
6 years OF AGE OR OLDER is accused of an act ~~which~~ THAT, if com-
7 mitted by an adult, would be a felony, the PROBATE judge ~~of~~
8 ~~probate~~ of the county ~~where~~ IN WHICH the offense is alleged to
9 have been committed may waive jurisdiction ~~pursuant to~~ UNDER
10 this section upon motion of the prosecuting attorney. After
11 waiver, it shall be lawful to try the child in the court having
12 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~~ UNDER
6 subsection (3), the court shall conduct a hearing to determine if
7 the best interests of the child and the public would be served by
8 granting a waiver of jurisdiction to the court of general crimi-
9 nal jurisdiction. In making the determination, the court shall
10 consider the following criteria giving each weight as appropriate
11 to 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 (A) THE SERIOUSNESS OF THE ALLEGED OFFENSE IN TERMS OF COM-
5 MUNITY PROTECTION, INCLUDING THE EXISTENCE OF ANY AGGRAVATING
6 FACTORS RECOGNIZED BY THE SENTENCING GUIDELINES, THE USE OF A
7 FIREARM, AND THE IMPACT ON ANY VICTIM.

8 (B) THE CULPABILITY OF THE CHILD IN COMMITTING THE ALLEGED
9 OFFENSE, INCLUDING THE LEVEL OF THE CHILD'S PARTICIPATION IN
10 PLANNING AND CARRYING OUT THE OFFENSE AND THE EXISTENCE OF ANY
11 MITIGATING FACTORS RECOGNIZED BY THE SENTENCING GUIDELINES.

12 (C) THE CHILD'S PRIOR RECORD OF DELINQUENCY INCLUDING, BUT
13 NOT LIMITED TO, ANY RECORD OF DETENTION, ANY POLICE RECORD, ANY
14 SCHOOL RECORD, OR ANY OTHER EVIDENCE INDICATING PRIOR DELINQUENT
15 BEHAVIOR.

16 (D) THE CHILD'S PROGRAMMING HISTORY, INCLUDING THE CHILD'S
17 PAST WILLINGNESS TO PARTICIPATE MEANINGFULLY IN AVAILABLE
18 PROGRAMMING.

19 (E) THE ADEQUACY OF THE PUNISHMENT OR PROGRAMMING AVAILABLE
20 IN THE JUVENILE JUSTICE SYSTEM.

21 (F) THE DISPOSITIONAL OPTIONS AVAILABLE FOR THE CHILD.

22 (G) WHETHER THE CHILD HAS PREVIOUSLY BEEN WAIVED UNDER THIS
23 SECTION.

24 (5) IN CONSIDERING THE FACTORS LISTED IN SUBDIVISIONS (A)
25 THROUGH (G), THE COURT SHALL GIVE GREATER WEIGHT TO THE SERIOUS-
26 NESS OF THE ALLEGED OFFENSE AND THE CHILD'S PRIOR RECORD OF
27 DELINQUENCY THAN TO THE OTHER FACTORS.

1 (6) ~~(5)~~ If legal counsel has not been retained or
2 appointed to represent the child, the court shall advise the
3 child and his or her parents, guardian, custodian, or guardian ad
4 litem of the child's right to representation and appoint legal
5 counsel. If the court appoints legal counsel, the judge may
6 assess the cost of providing legal counsel as costs against the
7 child or those responsible for his or her support, or both, if
8 the persons to be assessed are financially able to comply.

9 (7) ~~(6)~~ Legal counsel shall have access to records or
10 reports provided and received by the judge as a basis for deci-
11 sion in proceedings for waiver of jurisdiction. A continuance
12 shall be granted at legal counsel's request if any report, infor-
13 mation or recommendation, not previously available, is introduced
14 or developed at the hearing and the interests of justice require
15 a continuance.

16 (8) ~~(7)~~ The court shall enter a written order either
17 granting or denying the motion to waive jurisdiction, and the
18 court shall state on the record or in a written opinion the
19 court's findings of fact and conclusions of law forming the basis
20 for ~~entry of~~ ENTERING the order. If a child is waived, a tran-
21 script of the court's findings or a copy of the written opinion
22 shall be sent to the court of general criminal jurisdiction.

23 (9) ~~(8)~~ If the court does not waive jurisdiction, a tran-
24 script of the court's findings or, if a written opinion is pre-
25 pared, a copy of the written opinion shall be sent to the prose-
26 cutor, child, or child's attorney upon request.

1 (10) ~~(9)~~ If the court waives jurisdiction, the child shall
2 be arraigned on an information filed by the prosecutor in the
3 court of general criminal jurisdiction. The probable cause find-
4 ing under subsection (3) ~~shall satisfy~~ SATISFIES the require-
5 ments of, and ~~be considered~~ IS the equivalent of, the prelimi-
6 nary examination required by chapter VI of Act No. 175 of the
7 Public Acts of 1927.