

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.4 Waiver of jurisdiction when child of 14 or older accused of felony.

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.

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

(3) Before the court waives jurisdiction, the court shall determine on the record if there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony and if there is probable cause to believe that the juvenile committed the offense. Before a juvenile may waive a probable cause hearing under this subsection, the court shall inform the juvenile that a waiver of this subsection waives the preliminary examination required under chapter VI of the code of criminal procedure, 1927 PA 175, MCL 766.1 to 766.18.

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

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

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

(c) The juvenile's prior record of delinquency that would be a crime if committed by an adult.

(d) The juvenile's programming history, including, but not limited to, any out-of-home placement or treatment and the juvenile's past willingness to participate meaningfully in available programming.

(e) The adequacy of the programming available to rehabilitate and hold accountable the juvenile in the juvenile justice system and the juvenile's amenability to treatment.

(f) The dispositional options available for the juvenile.

(g) The juvenile's developmental maturity, emotional health, and mental health.

(h) If the juvenile is a member of a federally recognized Indian tribe, culturally honoring traditional values of the juvenile's tribe.

(i) The impact on any victim.

(5) If the court determines that there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony and that the juvenile committed the offense, the court shall waive jurisdiction of the juvenile if the court finds that the juvenile has previously been subject to the jurisdiction of the circuit court under this section, section 606 of the revised judicature act of 1961, 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 the juvenile's 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 the juvenile's 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 must 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 must be sent to the court of general criminal jurisdiction.

(9) If the court does not waive jurisdiction, a transcript of the court's findings or, if a written opinion is prepared,

a copy of the written opinion must be sent to the prosecuting attorney, juvenile, or juvenile's attorney upon request.

(10) If the court waives jurisdiction, the juvenile shall be arraigned on an information filed by the prosecutor in the court of general criminal jurisdiction. The probable cause finding under subsection (3) satisfies the requirements of, and is the equivalent of, the preliminary examination required under chapter VI of the code of criminal procedure, 1927 PA 175, MCL 766.1 to 766.18.

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

History: Add. 1944, 1st Ex. Sess., Act 54, Imd. Eff. Mar. 6, 1944 ;-- Am. 1946, 1st Ex. Sess., Act 22, Imd. Eff. Feb. 26, 1946 ;-- CL 1948, 712A.4 ;-- Am. 1969, Act 140, Eff. Mar. 20, 1970 ;-- Am. 1972, Act 265, Imd. Eff. Oct. 3, 1972 ;-- Am. 1988, Act 182, Eff. Oct. 1, 1988 ;-- Am. 1996, Act 262, Eff. Jan. 1, 1997 ;-- Am. 1996, Act 409, Eff. Jan. 1, 1998 ;-- Am. 2023, Act 291, Eff. Oct. 1, 2024

Former Law: See section 26 of Ch. XII of Act 288 of 1939, and CL 1929, § 12839.

Popular Name: Probate Code

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