



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Prosecution of Juveniles in Adult Criminal Court

The juvenile court generally has exclusive jurisdiction over a juvenile who is over 10 years of age and is alleged to have committed a delinquent act. However, there are circumstances under which a juvenile's case may be transferred to the adult criminal court. This memorandum discusses the prosecution of juveniles in adult courts.

The Juvenile Justice Code (ch. 938, Stats.), provides that the juvenile court generally has exclusive jurisdiction over a juvenile who is 10 years of age or older and who is alleged to be delinquent--in other words, who is alleged to have violated a criminal law. "Juvenile" does not include a person who has attained the age of 17 years for purposes of criminal prosecution. The court of criminal jurisdiction (hereinafter, "adult court") has jurisdiction over a 17-year old who is alleged to have committed a crime.

For certain offenses, a juvenile court may waive its jurisdiction over a juvenile's case. If this occurs, a juvenile is waived, or transferred, from the juvenile court to the adult court. In addition, the adult court has original jurisdiction over juveniles who are alleged to have committed certain offenses, meaning the case begins in the adult court.

WAIVER OF JUVENILES TO ADULT COURT [s. 938.18, Stats.]

WHO MAY BE WAIVED INTO ADULT COURT

A juvenile who meets any of the following conditions may be waived into adult court:

- The juvenile is alleged to have violated one of the following offenses on or after the juvenile's 14th birthday:
 - Felony murder.
 - Second-degree reckless homicide.
 - First- or second-degree sexual assault.
 - Taking hostages.

- Kidnapping.
- Armed burglary.
- Armed robbery.
- Robbery of a financial institution (requires use of force or threat to use imminent force).
- Manufacture, distribution, or delivery of a controlled substance.
- The juvenile is alleged to have committed a felony violation on or after the juvenile's 14th birthday at the request of or for the benefit of a criminal gang.
- The juvenile is alleged to have violated **any** criminal law on or after the juvenile's 15th birthday.

A proceeding to waive a juvenile into adult court is initiated by a petition. The petition for waiver may be filed in juvenile court by the district attorney or the juvenile or may be initiated by the juvenile court itself. The petition must contain a brief statement of the facts supporting the request for waiver. If the juvenile court judge initiates the waiver, the judge must disqualify himself or herself from any future proceedings on the case.

CRITERIA FOR WAIVER

In order for a juvenile court to consider a petition for waiver, the court must first determine that the matter has prosecutive merit. If prosecutive merit is found, the juvenile court must base its decision whether to waive jurisdiction on the following criteria:

- The personality of the juvenile, including all of the following:
 - Whether the juvenile has a mental illness or developmental disability.
 - The juvenile's physical and mental maturity.
 - The juvenile's pattern of living, prior treatment history, and apparent potential for responding to future treatment.
- The prior record of the juvenile, including all of the following:
 - Whether the juvenile court has previously waived its jurisdiction over the juvenile.
 - Whether the juvenile has been previously convicted following a waiver of the court's jurisdiction or has been previously found to be delinquent.

- Whether the juvenile's previous conviction or delinquency involved the infliction of serious bodily injury.
- The juvenile's motives and attitudes.
- The juvenile's prior offenses.
- The type and seriousness of the offense, including all of the following:
 - Whether it was against persons or property.
 - The extent to which it was committed in a violent, aggressive, premeditated, or willful manner.
- The adequacy and suitability of facilities, services, and procedures that are available for treatment of the juvenile and protection of the public within the juvenile justice system, and, where applicable, the mental health system. Also, the suitability of the juvenile for placement in programs for serious offenders in the juvenile and adult correctional systems.
- The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with another person who will be charged with the same crime in the adult court.

To assist the juvenile court in its decision regarding waiver, it may obtain a report that analyzes the above criteria by designating the Department of Children and Families, a county department of human or social services, or a licensed child welfare agency to submit such a report. The juvenile court may rely on the facts stated in the report in making its findings with respect to the criteria.

WAIVER PROCEEDING

If a petition for waiver is contested, the district attorney must present relevant testimony and the juvenile court, after taking that testimony and considering other relevant evidence, must base its decision whether to waive to jurisdiction on the statutory criteria for waiver as described in the previous section.

If the juvenile does not contest the petition for waiver, the court must inquire into the capacity of the juvenile to knowingly, intelligently, and voluntarily decide not to contest the waiver of jurisdiction. If the court is satisfied that the juvenile's decision not to contest the waiver is knowingly, intelligently, and voluntarily made, no testimony needs to be taken. The court, after considering the petition for waiver and other relevant evidence in the record, must base its decision whether to waive jurisdiction on the statutory criteria for waiver.

RIGHTS OF THE JUVENILE AT A WAIVER HEARING

A juvenile has a right to counsel at a waiver hearing. In addition, the juvenile has a right to present testimony on his or her behalf, including expert testimony, and has the right to cross-examine witnesses. The juvenile does not have the right to a jury for such a hearing.

DECISION ON WAIVER

After considering the criteria for waiver, the juvenile court must state its findings with respect to the criteria on the record, and, if the court determines that there is clear and convincing evidence that it is contrary to the best interests of the juvenile and of the public for the juvenile court to hear the case, the court must enter an order waiving its jurisdiction and referring the matter to the district attorney for appropriate proceedings in the adult court. After the order, the adult court has exclusive jurisdiction.

If a juvenile is held in secure custody when waiver is granted, he or she must be transferred to an appropriate officer or adult facility and is eligible for bail.

ORIGINAL ADULT COURT JURISDICTION [s. 938.183, Stats.]

JUVENILES OVER WHOM THE ADULT COURT HAS ORIGINAL JURISDICTION

An adult court has original jurisdiction over all of the following:

- A juvenile who is alleged to have attempted or committed first-degree intentional homicide or to have committed first- or second-degree reckless homicide on or after the juvenile's 10th birthday.
- A juvenile who has been previously adjudicated delinquent and who is alleged to have committed either battery or assault while placed in a secure juvenile facility or battery to a probation and parole agent.
- A juvenile specified above in one of the first two items, who is alleged to have attempted or committed a violation of any criminal law in addition to the homicide or battery or assault violation if the violation of another criminal law may be joined with (charged along with) the homicide or battery or assault violation.
- A juvenile who is alleged to have violated any criminal law if the juvenile has been convicted of a previous criminal violation following waiver of jurisdiction by the juvenile court or if the juvenile court has waived its jurisdiction over the juvenile for a previous violation and criminal proceedings on that violation are still pending.
- A juvenile who is alleged to have violated any criminal law if either the juvenile has been convicted of a previous violation over which the adult court had original jurisdiction or proceedings on a previous violation over which the adult court has original jurisdiction are still pending.

ADULT PENALTIES AND PROCEDURES

Preliminary Examination

A preliminary examination is a hearing held before an adult court for the purpose of determining if there is probable cause to believe that a felony has been committed by the defendant. [s. 970.03 (1), Stats.] If a preliminary examination is held regarding a juvenile who is subject to the original jurisdiction of the adult court, the court must first determine whether there is probable cause to believe that the juvenile has committed the violation of which he or she is accused under the circumstances required for the adult court to have original jurisdiction. If the court does not make that finding, the court must order that the juvenile be discharged from criminal prosecution in adult court, in which case proceedings may be brought in juvenile court.

If the adult court finds probable cause, the court must determine whether to retain jurisdiction or to transfer jurisdiction to the juvenile court. The adult court must retain jurisdiction unless the juvenile proves by a preponderance of the evidence all of the following:

- That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system.
- That transferring jurisdiction to the juvenile court would not depreciate the seriousness of the offense.
- That retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the violation of which the juvenile is accused.

[s. 970.032, Stats.]

Juvenile Subject to Adult Procedures and Penalties

A juvenile who is subject to the original jurisdiction of the adult court is subject to the same procedures and the criminal penalties that an adult would be for the crime that the juvenile is alleged to have committed, except that, if the juvenile is under 15 years of age, the juvenile may be held in secure custody only in a juvenile detention facility or in the juvenile portion of a county jail.

In addition, a juvenile who is convicted of a lesser offense may be adjudicated delinquent and a juvenile disposition may be imposed instead of a criminal sentence. Specifically, the adult court must, in lieu of convicting the juvenile, adjudge the juvenile to be delinquent and impose a juvenile disposition if the juvenile is found to have committed a lesser offense than the offense alleged, or is found to have committed only an offense that was joined with a homicide or battery or assault allegation but not homicide or battery or assault, and any of the following conditions are met:

- The adult court finds that the juvenile has committed a lesser offense or a joined offense that is not an offense for which the adult court has original jurisdiction and that is not an offense for which the juvenile court may waive its jurisdiction.
- The adult court finds that the juvenile has committed a lesser offense or a joined offense that is an offense for which the adult court has original jurisdiction or that is an offense for which the juvenile court may waive its jurisdiction and the adult court, after considering the criteria for waiver to adult court, determines that the juvenile has proven by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to adjudge the juvenile to be delinquent and impose a juvenile disposition.
- For a juvenile who is alleged to have attempted or committed a violation of first-degree intentional homicide or committed first- or second-degree reckless homicide on or after the juvenile's 15th birthday, the adult court: (1) finds that the juvenile has not attempted or committed first-degree intentional homicide or committed first- or second-degree reckless homicide; and (2) after considering the criteria for waiver to adult court, determines that the juvenile has proven by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to adjudge the juvenile to be delinquent and impose a juvenile disposition.

PLACEMENT IN PRISON

When a juvenile who is subject to an adult criminal penalty under the above provisions attains the age of 17 years, the Department of Corrections may place the juvenile in an adult state prison, except that a person under 18 years of age may not be placed in the maximum security correctional institution.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Anne Sappenfield, Senior Staff Attorney, on September 25, 2013.