ADULT CRIMINAL COURT JURISDICTION OVER JUVENILES

Information Memorandum 98-2

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INTRODUCTION

This memorandum describes current law, as affected by 1997 Wisconsin Act 205, relating to the jurisdiction of the court of criminal jurisdiction (i.e., adult court) over juveniles (i.e., persons under 17 years of age). It should be noted that a person who is 17 years old or older is defined as an adult for purposes of investigation and prosecution of a violation of any state criminal law.

Under current law, a juvenile may be under the original jurisdiction of the adult court or may be waived by the court having jurisdiction under chs. 48 and 938, Stats. (i.e., juvenile court), to the adult court. If the adult court has original jurisdiction over a juvenile, the juvenile's case ***begins*** in the adult court.

The Appendix to this memorandum contains a table which sets forth the offenses over which the adult court has jurisdiction, either original or following a waiver, and the minimum age a juvenile must have attained in order to be subject to adult court jurisdiction.

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

1. Juveniles Over Whom the Adult Court Has Original Jurisdiction

Under current law, the adult court has original jurisdiction over the following juveniles:

a. A juvenile who has been previously adjudicated delinquent and who is alleged to have committed battery or assault while placed in a secured correctional facility, a secure detention facility or a secured child caring institution or to have committed battery to a probation and parole agent or to an aftercare agent.

b. A juvenile who is alleged to have attempted or committed first-degree intentional homicide or to have committed first-degree reckless homicide or second-degree intentional homicide on or after the juvenile's 10th birthday.

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* This Information Memorandum was prepared by Anne Sappenfield, Staff Attorney, Legislative Council Staff.

c. A juvenile who is alleged to have violated any state criminal law under one of the following circumstances:

(1) The juvenile has been convicted of a previous violation in adult court following a waiver of juvenile court jurisdiction.

(2) The juvenile court has waived its jurisdiction over a juvenile for a previous violation and the criminal proceedings for that violation are still pending.

(3) The juvenile has been convicted of a previous violation over which the adult court had original jurisdiction.

(4) Proceedings for a violation over which the adult court has original jurisdiction are still pending.

Under current law, the adult court also has original jurisdiction over any violation of a state criminal law which may be charged in the same complaint, or "joined," with a violation over which the adult court has original jurisdiction. Under s. 971.12 (1), Stats., two or more crimes may be charged in the same complaint if the crimes charged are: (a) of the same or similar character; (b) based on the same act or transaction; or (c) based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

2. Reverse Waiver

Under current law, if certain conditions are met, a juvenile over whom the adult court has original jurisdiction may be "reverse waived" to the juvenile court.

If a juvenile is under the original jurisdiction of the adult court for committing a felony and a preliminary examination is held, the court must first determine whether there is probable cause to believe that the juvenile 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, but proceedings may still be brought under the Juvenile Justice Code.

If the court finds probable cause that the juvenile committed the offense under the circumstances required, the court must determine whether to retain jurisdiction or to transfer jurisdiction to the juvenile court ***unless*** the juvenile is alleged to have committed one of the specified homicide offenses on or after his or her 15th birthday. The court must retain jurisdiction unless the juvenile proves by a preponderance of the evidence all of the following:

a. That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system.

b. That transferring jurisdiction to the juvenile court would not depreciate the seriousness of the offense.

c. That retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the violation of which the child is accused under the circumstances required for the adult court to have original jurisdiction.

A juvenile who is under the original jurisdiction of the adult court for allegedly committing a misdemeanor may motion the court to transfer its jurisdiction to the juvenile court. Unless the juvenile proves by a preponderance of the evidence that the criteria in items a. to c., above, are met, the adult court must retain its jurisdiction.

3. Penalties

Under current law, a juvenile over whom the adult court has original jurisdiction is subject to adult criminal procedures and the criminal penalties provided for the crime committed, with certain exceptions. Specifically, for a juvenile who is alleged to have committed battery or assault while placed in a specified facility, battery to a probation and parole agent or to an aftercare agent or homicide on or after his or her 10th birthday but before his or her 15th birthday, the adult court ***must***, in lieu of convicting the juvenile, adjudge the juvenile to be delinquent and impose a juvenile disposition if any of the following conditions apply:

a. The adult court finds that the juvenile has committed a lesser offense than the one alleged or has committed only an offense that was joined in the complaint and the offense the juvenile is found to have committed is ***not*** one of the following offenses:

(1) Battery or assault while placed in a secured correctional facility, a secure detention facility or a secured child caring institution or battery to a probation and parole agent or to an aftercare agent.

(2) Attempted first-degree intentional homicide.

(3) First-degree reckless homicide or second-degree intentional homicide.

(4) An offense for which the juvenile court may waive its jurisdiction.

b. The adult court finds that the juvenile has committed a lesser or joined offense, as described above, that ***is*** a violation described in items (1) to (4), above, and the adult court, after considering the criteria for waiver to adult court (see below), determines that the juvenile has proved by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to adjudge the juvenile delinquent and impose a juvenile disposition.

If a juvenile who is alleged to have committed homicide, as described above, on or after the juvenile's 15th birthday, or homicide and any crimes joined in the complaint, is found to have committed a lesser offense than the offense alleged or to have committed only a joined offense, the adult court ***must***, in lieu of convicting the juvenile, adjudge the juvenile to be delinquent and impose a juvenile disposition if, after considering the criteria for waiver to adult court, the court determines that the juvenile has proved by clear and convincing evidence that it

would be in the best interests of the juvenile and of the public to adjudge the juvenile delinquent and impose a juvenile disposition.

4. Secure Placement

Under current law, a juvenile who is under 15 years of age who is under the original jurisdiction of the adult court may be held in secure custody only in a secure detention facility or in the juvenile portion of a county jail.

When a juvenile who is subject to a criminal penalty, as described above, attains the age of 17, the Department of Corrections (DOC) may place the juvenile in a state prison.

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

1. Who May Initiate; Offenses for Which a Juvenile May Be Waived

Under current law, a juvenile who is alleged to be delinquent or a district attorney (DA) may apply to the juvenile court to waive its jurisdiction under the Juvenile Justice Code for any of the following:

a. A juvenile who is alleged to have committed any 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; a drug manufacture or delivery violation; or a violation at the request of or for the benefit of a criminal gang that would constitute a felony under the Criminal Code [chs. 939 to 948, Stats.] or the Uniform Controlled Substances Act [ch. 961, Stats.] if committed by an adult.

b. A juvenile who is alleged to have violated ***any*** state criminal law ***on or after the juvenile's 15th birthday***.

The juvenile court judge may also initiate a petition for waiver under any of the above situations if the judge disqualifies himself or herself from any future proceedings on the case.

2. Petition for Waiver

The waiver hearing is initiated by filing a petition alleging delinquency and a petition for waiver of jurisdiction which contains a brief statement of the facts supporting the request for waiver. The petition for waiver of jurisdiction must be filed prior to the juvenile's plea hearing, except that if the juvenile denies the facts of the petition and becomes 17 years of age before an adjudication, the petition for waiver of jurisdiction may be filed at any time prior to the adjudication.

3. Reports Required

The juvenile court may designate the DOC, a county department or a licensed child welfare agency to submit a report analyzing the criteria upon which the decision to waive jurisdiction must be based, described below. The DOC, county department or licensed child welfare agency must file the report with the juvenile court and the court must distribute copies of the report to the juvenile, any parent, guardian or legal custodian of the juvenile and counsel at least three days before the hearing. The court may rely on facts stated in the report in making its findings with respect to the criteria upon which the decision to waive jurisdiction must be based.

4. Waiver Hearing

A juvenile must be represented by counsel at a waiver hearing. Written notice of the time, place and purpose of the hearing must be given to the juvenile, any parent, guardian or legal custodian, and counsel at least three days prior to the hearing.

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

The juvenile court must determine whether the matter has prosecutive merit before proceeding to determine if it should waive jurisdiction. If prosecutive merit is found and the petition for waiver is ***contested***, the juvenile court, after taking relevant testimony presented by the DA and considering other relevant evidence, must base its decision on the following criteria:

a. The personality and prior record of the juvenile, including all of the following:

(1) Whether the juvenile is mentally ill or developmentally disabled.

(2) Whether the court has previously waived its jurisdiction over the juvenile.

(3) Whether the juvenile has been previously convicted following a waiver of the court's jurisdiction or has been previously found delinquent.

(4) Whether such conviction or delinquency involved the infliction of serious bodily injury.

(5) The juvenile's motives and attitudes.

(6) The juvenile's physical and mental maturity.

(7) The juvenile's pattern of living, prior offenses, prior treatment history and apparent potential for responding to future treatment.

b. The type and seriousness of the offense, including all of the following:

(1) Whether it was against persons or property.

(2) The extent to which it was committed in a violent, aggressive, premeditated or wilful manner.

(3) Its prosecutive merit.

c. The adequacy and suitability of facilities, services and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system and, where applicable, the mental health system and the suitability of the juvenile for placement in the Serious Juvenile Offender Program or the Adult Intensive Sanctions Program.

d. The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in the adult court.

If the petition for waiver is ***uncontested***, the juvenile 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 decision not to contest the waiver of jurisdiction is knowingly, intelligently and voluntarily made, no testimony need be taken and the court, after considering the petition for waiver of jurisdiction and other relevant evidence in the record before the court, must base its decision whether to waive jurisdiction on the criteria set forth in items a. to d., above.

After considering the criteria upon which the court must base its decision whether to waive jurisdiction, the juvenile court must state its finding with respect to the criteria on the record, and, if the court determines on the record that it is established by clear and convincing evidence that it would be contrary to the best interests of the juvenile or the public for the case to remain in the juvenile court, the court must enter an order waiving jurisdiction and referring the matter to the DA for appropriate proceedings in the adult court. The adult court thereafter has exclusive jurisdiction.

If the juvenile absconds and does not appear at the waiver hearing, the juvenile court may proceed with the waiver hearing in the juvenile's absence. If the waiver is granted, the juvenile may contest that waiver when the juvenile is apprehended by showing the adult court good cause for his or her failure to appear. If the adult court finds good cause for the juvenile's failure to appear, that court must transfer its jurisdiction to the juvenile court for the purpose of holding another waiver hearing.

When waiver is granted, the juvenile, if held in secure custody, must be transferred to an appropriate officer or adult facility and is eligible for bail in accordance with criminal procedure under chs. 968 and 969, Stats. Also, if waiver is granted, the charge on which the waiver was

based does not restrict the authority of the DA to charge the offense he or she deems is appropriate and does not restrict the authority of any court or jury to convict the juvenile in respect to any offense.

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Offenses for Which the Adult Court Has Jurisdiction Over Juveniles

Offense	*Original Jurisdiction or Waiver Required*	*Minimum Age Juvenile Must Have Attained*
Attempted first-degree intentional homicide; first- or second-degree intentional homicide; first-degree reckless homicide.[1]	Original[2]	10 years.
Battery or assault while placed in a secured correctional facility, a secure detention facility or a secured child caring institution or battery to a probation and parole agent or to an aftercare agent ***if*** the juvenile has been adjudicated delinquent previously.[1]	Original[3]	No age specified. However, a juvenile must be at least 10 years old to have been adjudicated delinquent previously.
Any offense if a juvenile has been convicted of a crime or has a case pending in the adult court.	Original[3]	No age specified. However, a juvenile must be at least 10 years old to have a conviction or pending case in the adult court.
Felony murder; second-degree reckless homicide; first- or second-degree sexual assault; taking hostages; kidnapping; armed burglary; armed robbery; manufacturing a controlled substance; or a violation at the request of or for the benefit of a criminal gang that would constitute a felony if committed by an adult.	Waiver	14 years.
Any criminal offense.	Waiver	15 years.

1. The adult court also has jurisdiction over any offenses joined with the offense for which the court has jurisdiction.

2. Reverse waiver available if the alleged offense was committed before the juvenile's 15th birthday.

3. Reverse waiver available.