

REPRESENTING JUVENILES
TRIED AS ADULTS IN
MICHIGAN COURTS
-AN OVERVIEW-

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CAPS Program Juveniles Tried As Adults

Traditional Juvenile Court Jurisdiction

The Local Juvenile Court has the following authority and jurisdiction:

(a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of another court in proceedings concerning a juvenile under 17 years of age who is found within the county if 1 or more of the following applies:

(1) Except as otherwise provided in this sub-subdivision, the juvenile has violated any municipal ordinance or law of the state or of the United States. If the court enters into an agreement under section 2e of this chapter, the court has jurisdiction over a juvenile who committed a civil infraction as provided in that section. The court has jurisdiction over a juvenile 14 years of age or older who is charged with a specified juvenile violation only if the prosecuting attorney files a petition in the court instead of authorizing a complaint and warrant. As used in this sub-subdivision, “specified juvenile violation,” means one or more of the following:

MCL 712A.2(a)(1)

Methods of Charging Juveniles as Adults

- 1) Automatic Waiver
- 2) Designated Cases
Prosecutor Designation
Designation by Leave of the Court
- 3) Traditional Waiver

Automatic Waiver

Who May be Waived

- Any child 14 years of age who is alleged to have committed a “Specified Juvenile Violation”
- Prosecutor need only file a complaint and warrant in the criminal court for jurisdiction to vest as though child were an adult
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“Specified Juvenile Violations”

- 1) Arson of a dwelling house * - MCL 750.72
- 2) Assault with intent to murder * - MCL 750.83
- 3) Assault with intent to maim * – MCL750.86
- 4) Assault with intent to commit armed robbery – MCL 750.89
- 5) Attempted murder * – MCL 750.91
- 6) First degree murder * – MCL 750.316
- 7) Second degree murder * – MCL750.317
- 8) Kidnapping * – MCL 750.349
- 9) First degree criminal sexual conduct * – MCL 750.520b
- 10) Armed robbery * – MCL 750.529
- 11) Carjacking * – MCL 750.529a
- 12) Bank, safe or vault robbery – MCL 750.531
- 13) Manufacture, sale, possession or delivery of 650 grams or more of a schedule 1 or 2 narcotic or cocaine – MCL 333.7401, 7403
- 14) First degree home invasion – MCL 750.110A
- 15) Assault with intent to do great bodily harm if armed with a dangerous weapon – MCL 750.84
- 16) Escape of attempted escape from a medium or high security juvenile facility – MCL 750.186a
- 17) Any attempt of conspiracy to commit any of the above crimes
- 18) Any lesser included offenses arising out of the same transaction as any one of the above offenses

- 19) Any other violation arising out of the same transaction if the juvenile is charged with one of the above offenses

MCL 712A.2(a)(1), MCL 600.606(2) and MCL 764.1f(2).

Note: Only the offenses with an asterisk require adult sentencing upon conviction. Other, non-specified violations however do require adult sentencing. See MCL 769.1

The circuit court has jurisdiction over a juvenile, fourteen years of age or older charged with any of the above named “specified juvenile violations”, *only* if the prosecuting attorney files a petition in the juvenile court, instead of authorizing a complaint and warrant in the criminal court. MCL 712A.2(a)(1).

Once a juvenile has been “automatically-waived” jurisdiction vests with the circuit court and the youth is treated as though he or she is an adult. The juvenile is entitled to all procedural safeguards applicable to adult criminal defendants.

Sentencing of Automatically Waived Juveniles

While automatically, waived juveniles are treated as adults and entitled to all the same procedural safeguards as adults it is not required, in all circumstances that they be sentenced as adults.

Any “automatically waived” juvenile convicted of the following offenses must be sentenced as an adult:

- (1) arson of a dwelling (MCL 750.72)
- (2) assault with intent to commit murder (MCL 750.83)
- (3) assault with intent to maim (MCL 750.86)
- (4) attempted murder (MCL 750.91)
- (5) conspiracy to commit murder (MCL 750.157a)

- (6) solicitation to commit murder (MCL 750.157b)
 - (7) first degree murder (MCL 750.316)
 - (8) second degree murder (MCL 750.317)
 - (9) kidnapping (MCL 750.349)
 - (10) first degree criminal sexual conduct (MCL 750.520b)
 - (11) armed robbery (MCL 750.529)
 - (12) carjacking (MCL 750.529a)
- MCL 769.1(1).

Note that the list of violations which require adult sentencing upon conviction includes solicitation to commit murder and conspiracy to commit murder which are not “specified juvenile violations” under MCL 712A.2. Also, a number of the “specified juvenile violations” do not require a mandatory adult sentence upon conviction.

If the juvenile is not convicted of one of the offenses listed in MCL 769.1 the presiding judge *must* hold a hearing to determine whether “**the best interests of the public**” would be served by sentencing the juvenile as an adult to the Department of Corrections, or by committing the child to a juvenile institution or agency. MCL 769.1(3).

In order to make this determination, the sentencing judge must consider all of the same criteria used by the family court in the second phase of traditional waiver proceedings.

That decision is to be based on the following criteria:

1. The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors

- recognize by the sentencing guidelines, the use of a firearm or any other dangerous weapon, and the effect on any victim;
2. 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;
 3. the juvenile's prior record of delinquency, including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;
 4. the juvenile's programming history, including but not limited to, the juvenile's past willingness to participate meaningfully in available programming;
 5. the adequacy of punishment or programming available in the juvenile justice system; and
 6. the dispositional options available for the juvenile.

MCL 769.1(3)(a)-(f).

“Traditional” Waiver of Juvenile Court Jurisdiction

Before 1988, a juvenile could only be tried as an adult if the juvenile court agreed to “waive” its exclusive jurisdiction over the child to the circuit court. This procedure, while seldom used, does still exist. In current “traditional” waiver proceedings the prosecutor files a motion in the family court which asks the presiding judge to “waive” jurisdiction over a minor, who is at least fourteen years of age to the circuit court for trial as an adult. While this procedure is similar to the traditional waiver proceeding long used by the juvenile court, some of the criteria have changed.

During the “first” phase of the proceeding, the judge determines whether there is probable cause that the juvenile committed the offense which, if committed by an adult, would be a felony. MCR 3.950(B)(C) and MCL 712A(3). If the judge either finds the requisite probable cause or the child waives the “probable cause” phase of the waiver, the judge then must determine whether the interests of the juvenile and the public would best be served by granting the motion for waiver of jurisdiction. MCR 30950 (D)(2).

That decision is to be based on the following criteria:

1. 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, the use of a firearm or any other dangerous weapon, and the effect on any victim;
2. 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;
3. the juvenile’s prior record of delinquency, including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;
4. the juvenile’s programming history, including but not limited to, the juvenile’s past willingness to participate meaningfully in available programming;
5. the adequacy of punishment or programming available in the juvenile justice system; and the dispositional options available for the juvenile.

Before 1996, greater emphasis was placed on the juvenile's rehabilitative potential, and no single factor was to given more weight than any other. Under the current state of the law the court must now give greater weight to the seriousness of the offense and the juvenile's prior delinquency record. MCR 3.950(2)(d)(i)-(vi), MCL 712A.4(4)(a)-(f)

If jurisdiction is waived through the "traditional" waiver proceeding, the juvenile is tried and sentenced as an adult in circuit court. MCL 712A.4(1). The juvenile is bound over to the circuit court for arraignment on the information. The probable cause phase of the waiver hearing being deemed to be the equivalent of a preliminary examination. MCL 712A.4(10).

Following a "traditional" waiver the circuit court has no discretion to sentence the youth to a juvenile facility, but rather, *must* sentence the juvenile as an adult to the Department of Corrections.

PRACTICE NOTES

While "traditional" waivers are seldom used in Wayne County you may encounter them in other counties.

An attorney handling a "traditional" waiver hearing or any juvenile sentencing hearing in which the above criteria are used, must ensure that the client is intellectually and psychologically tested. If the child is mentally and physically immature, the attorney should stress this point in arguing that the child should be treated in the juvenile system.

Many vocational programs formerly offered in the Department of Corrections are drastically curtailed or simply eliminated in most prisons. Juvenile facilities continue to offer such programming. Consequently, it should be stressed that there is a greater potential for actual rehabilitation in the juvenile system.

Defense attorneys should obtain school records and records from the juvenile detention center. The attorney should obtain releases from the client's parent which authorize release of records from the school and juvenile detention center. The releases should be sent to the school and detention center with a request for all educational and disciplinary records.

If the client's school and institutional records are positive, this supports an argument that the client can be rehabilitated. If the records reflect that the client exhibited good behavior in school and the detention facility these circumstances can be used to argue that the child is amenable to juvenile treatment.

Attorneys should become familiar with the treatment modalities used in the juvenile facilities. Attorneys should also become familiar with the counseling program offered in the Department of Corrections. Unlike the juvenile system, in which the residents receive counseling frequently, the adult system does not provide counseling until the inmate nears the end of his or her incarceration.

Residents of juvenile facilities attend school daily and receive opportunities to take vocational programs. Following treatment at a juvenile facility, "supervised independent living" programs can allow a youth to be re-integrated into society as an adult if there is not a stable home environment to which he or she may return. These programs allow the youth to learn valuable life skills, such as how to handle a checking account and maintain employment. This is an especially attractive alternative as it promotes rehabilitation both during and after incarceration.

DESIGNATED JUVENILE CASES

In Michigan designation proceedings a juvenile of any age can be tried in the same manner as an adult in the family court. MCL 712A.2d(3). A designated case is

considered a criminal proceeding and the juvenile receives all the legal and procedural protections provided in adult criminal trials, including the right to a 12 person jury, MCL 712A.2d(7) and the right to a probable cause hearing which is the equivalent of a preliminary examination, MCL 712A(4).

A juvenile judge presides over the trial, but the procedures themselves are identical to those used in the adult criminal courts. The conviction has the same effect as one obtained in a criminal court. MCL 712A.2d(7).

There are two types of “designation” cases: the prosecutor-designated case and the court-designated case. MCR 3.903(D)(3).

Prosecutor Designated Case

“Prosecutor-designated case’ means a case in which the prosecuting attorney has endorsed a petition charging a juvenile with a specified juvenile violation with the designation that the juvenile is to be tried in the same manner as an adult in the family division of the circuit court.” MCR 3.903(D)(6)

The prosecutor can only designate a case in which the juvenile is accused of a “specified juvenile violation”. With respect to any non-specified violation, the prosecutor is required to ask the juvenile judge to designate the case. MCR 3.903(D).

Court Designated Case

“Court-designated case’ means a case in which the court, pursuant to a request by the prosecuting attorney, has decided according to the factors set forth in MCR 3.952©(3) that the juvenile is to be tried in the family division of circuit court in the same manner as an adult for an offense other than a specified juvenile violation.” MCR 3.903(2).

This usually occurs when other, non specified, offenses are alleged to have been committed in the same transaction as a specified offense. It can however occur anytime the prosecution wishes to charge a juvenile who is alleged to have committed non specified offense as an adult.

When the prosecutor asks the court to designate a case involving a non-specified violation, the court must hold a hearing to determine whether to try the juvenile as an adult in family court. The Court may designate the case if it determines the **best interests of the juvenile and the public** would be served by trying the juvenile in the same manner as an adult. In making this determination, the court must consider the same criteria used in traditional waiver proceedings. MCL 712A.2d(a)-(f)

Sentencing/Disposition of designated Cases

Following a conviction in a designation case, the court can enter an order of juvenile disposition, impose an adult sentence, or may delay imposition of a prison sentence and place the juvenile on probation in a juvenile facility. MCL 712A.2(D)(8); MCL 712A.18(1)(m); MCR 3.903(D)(7).

Delaying the imposition of an adult sentence and placing the child as a juvenile does not deprive the court of jurisdiction to sentence the juvenile as an adult at any time during the delay. MCL 172.A18i(1); MCR 3.955(D).

In determining whether to impose juvenile probation or an adult sentence, the court considers the same criteria used to determine whether to waive jurisdiction over the juvenile in traditional waiver proceedings. MCL 712A.18(1)(m)(i)-(vi); MCR 3.955(A)(1)-(6). At this stage however the court **must** give greater weight to the seriousness of the offense and the juvenile's prior record. MCL 712A.18(1)(m).

The Prosecuting attorney bears the burden of establishing by a preponderance of the evidence that the best interests of the public require adult sentencing. MCR 3.955(B).

A juvenile in a designated proceeding may not be committed to the Department of Corrections if convicted of a “non-specified violation”. MCL 712A18h.

Commitment Review Hearings

If a juvenile is placed on probation and committed to a state institution or agency, the sentencing court retains jurisdiction. MCL 769.1(10). The court must conduct semi-annual reviews of the juvenile’s progress and during such a review may order changes in the juvenile’s placement or treatment plan. MCL 769.1(11), MCR 6.935(B).

As near as possible but before the juvenile’s nineteenth birthday the court must conduct a hearing to determine whether the child has been rehabilitated and determine whether he or she presents a serious risk to public safety. MCL 7691b(2), MCR 6.903(A), MCR 6.937(A). If the court determines that the juvenile has not been rehabilitated or that he or she presents a serious risk to public safety jurisdiction must be continued or the judge may commit the juvenile to the Department of Corrections. MCL 7691b(1).

In determining whether the juvenile has been rehabilitated or still presents a serious risk to public safety the court must consider.

- (a) The extent and nature of the juvenile's participation in education, counseling, or work programs.
- (b) The juvenile's willingness to accept responsibility for prior behavior.
- (c) The juvenile's behavior in his or her current placement.
- (d) The juvenile's prior record and character and his or her physical and mental maturity.
- (e) The juvenile's potential for violent conduct as demonstrated by prior behavior.

(f) The recommendations of the institution or agency charged with the juvenile's care for the juvenile's release or continued custody.

(g) Other information the prosecuting attorney or juvenile may submit.

MCL 769.1b(1)(a)-(g), MCR 6.937(A)(4)(a)-(g).

The prosecuting attorney has the burden of proof at a commitment review hearing. MCR 6.937(A)(4). The prosecutor must demonstrate by a preponderance of the evidence that the juvenile has not been rehabilitated or presents a serious risk to public safety. The rules of evidence do not apply at a required commitment review hearing.

Not less than three months before the end of the juvenile's probationary period the sentencing court must conduct a final review of the juvenile's probation and commitment. MCL 769.1b(5). If the court determines at this review that the best interests of the public would be served by imposing an adult sentence, the court may do so. MCL 769.1b(5). The factors which the court considers at the Final Review hearing include all of those considered at the Required Commitment Review Hearing, as well as:

(a) The effect of treatment on the juvenile's rehabilitation.

(b) Whether the juvenile is likely to be dangerous to the public if released.

(c) The best interests of the public welfare and the protection of public security.

MCL 769.1 (5)(a)-(c), MCR 6.938(D)(1)-(10).

If a sentence is imposed at this time the juvenile must be given credit for the time served on juvenile probation and committed to a state agency or institution.

MCL 769.1b(7), MCR 6.938(E).

Probation Revocation

When a juvenile who has been placed on juvenile probation and committed to an institution as a state ward is alleged to have violated probation the court shall conduct a probation violation hearing as provided in MCR 6.445. If the juvenile is found guilty or

pleads guilty to the violation the court may continue the probation, modify the conditions of the probation, extend the probation period or revoke the probation and impose a period of incarceration. MCR 6.445(G).

However, if the juvenile has violated the probation by being convicted of a felony or a misdemeanor punishable by more than one year's imprisonment **the court must revoke the probation and order the juvenile be committed to the Department of Corrections for a term of years** not to exceed the penalty that could have been imposed for the offense that led to the juvenile probation. MCL 771.7(1), MCR 6.933(B)(1)(a).

If the court finds that a juvenile placed on probation and committed violated probation other than as provided in subsection MCL 771.7(1), the court may order the juvenile committed to the department of corrections or may order any of the following for the juvenile:

- (a) A change of placement.
- (b) Community service.
- (c) Substance abuse counseling.
- (d) Mental health counseling.
- (e) Participation in a vocational-technical education program.
- (f) Incarceration in a county jail for not more than 30 days. If a juvenile is under 17 years of age, the juvenile shall be placed in a room or ward out of sight and sound from adult prisoners.
- (g) Other participation or performance as the court considers necessary.

MCL 771.7(2)(a)-(g), MCR 6.933(B)(2)(a)-(h).

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