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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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### JUVENILES IN ADULT CRIMINAL COURT

Juvenile courts generally have jurisdiction over juveniles 10 years of age or older who violate criminal laws in Wisconsin. However, adult criminal courts have jurisdiction over juveniles who commit certain crimes or who are “waived” into adult court. This information memorandum discusses the prosecution and sentencing of juveniles in adult court.

#### MEANING OF “JUVENILE” FOR CRIMINAL PROSECUTION

The public generally understands the term “juvenile” to mean a person 17 years old or younger, and the term “adult” to mean a person 18 years old or older. The terms do not have these meanings, however, for the purposes of criminal prosecution in Wisconsin. Criminal law treats all 17-year-olds as adults and adult criminal courts prosecute and sentence these individuals.<sup>1</sup>

Wisconsin is one of three states that treat 17-year-olds as adults for purposes of criminal prosecution.

The juvenile justice system generally adjudicates individuals who are 16 years old or younger, but an adult court may prosecute these juveniles under certain circumstances. The age of a juvenile at the time of charging, not the age of the juvenile when he or she committed the offense, determines whether a 17-year-old is prosecuted in adult criminal court or adjudicated in juvenile court.<sup>2</sup>

#### ADULT COURT JURISDICTION OVER JUVENILES

A juvenile who is 16 years old or younger may be prosecuted in adult criminal court under two scenarios. A juvenile’s case may begin in adult court when the court has “original jurisdiction” over the juvenile. Alternatively, a case may begin in juvenile court and be transferred to adult court because the juvenile court waived its jurisdiction to hear the case. When this happens, the juvenile is “waived” into adult court.

##### Original Jurisdiction – Juveniles Whose Cases Begin in Adult Court

A juvenile case begins in adult court when the juvenile meets certain criteria relating to offense or prior record. The following types of juveniles have their cases addressed in adult court based on the court’s original jurisdiction:

- **Juveniles with a prior adjudication who commit a corrections-related battery.** A juvenile who was previously adjudicated delinquent and is either: (1) alleged to have

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<sup>1</sup> The Juvenile Justice Code defines “juvenile,” when used without further qualification, to mean “a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, ‘juvenile’ does not include a person who has attained 17 years of age.” [s. 938.02 (10m), Stats.]

<sup>2</sup> *State v. Sanders*, 2018 WI 51, ¶ 38; *State v. Annala*, 168 Wis.2d 453, 462-63 (1992).

committed battery or assault while placed in a secured correctional facility, secured detention facility, or secured residential care center for children and youth; or (2) alleged to have committed battery to a probation and parole agent or aftercare agent.<sup>3</sup>

- **Juveniles aged 10 or older who commit homicide.** A juvenile who is alleged to have done one of the following on or after the juvenile's 10<sup>th</sup> birthday: (1) attempted or committed first-degree intentional homicide; (2) committed first-degree reckless homicide; or (3) committed second-degree intentional homicide.<sup>4</sup>
- **Juveniles with a prior adult court case.** A juvenile who is alleged to have committed a crime and who was previously convicted in adult court or has a case pending in adult court.<sup>5</sup>

## Reverse Waiver – Juveniles Who Begin in Adult Court but are Transferred to Juvenile Court

A juvenile whose case begins in adult court may have his or her case “reverse waived” to the juvenile court. This happens when the adult court waives its original jurisdiction to hear the case and transfers the case to juvenile court. Although it is not unusual for juvenile defendants to file reverse waiver motions, these motions are rarely successful.

Before a court may reverse waive a juvenile's case, the juvenile must prove the following by a preponderance of the evidence: (1) that the juvenile could not receive adequate treatment in the criminal justice system; (2) that transferring the juvenile would not depreciate the seriousness of the offense; and (3) that it is not necessary to keep the case in adult court in order to deter juveniles from committing a similar violation.<sup>6</sup>

“Reverse waivers” from adult court to juvenile court are rare.

## Waiver of Juveniles to Adult Court – Juveniles Whose Cases Begin in Juvenile Court

A juvenile case may begin in juvenile court and then be waived into adult court if the juvenile meets certain conditions. The prosecutor, the juvenile, or the court itself may initiate a petition

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<sup>3</sup> An adult court has original jurisdiction over a juvenile who has been adjudicated delinquent and who is alleged to have violated s. 940.20 (1), Stats., *Battery by Prisoners*, or s. 946.43, Stats., *Assaults by Prisoners*, while placed in a juvenile correctional facility, a juvenile detention facility, or a secured residential care center for children and youth. Additionally, a court has original jurisdiction over a juvenile who has been adjudicated delinquent and is alleged to have committed a violation of s. 940.20 (2m), Stats., *Battery to Probation, Extended Supervision and Parole Agents, Community Supervision Agents, and Aftercare Agents*. [s. 938.183 (1) (a), Stats.]

<sup>4</sup> s. 938.183 (1) (am), Stats.

<sup>5</sup> An adult court has original jurisdiction over a juvenile previously “waived” from juvenile court into adult court, as well as a juvenile over whom an adult court previously had original jurisdiction. [s. 938.183 (1) (b) and (c), Stats.]

<sup>6</sup> s. 970.032 (2), Stats. A juvenile may also make a motion before trial to transfer jurisdiction to the juvenile court if the following apply: (1) the juvenile is currently facing a misdemeanor action; and (2) the juvenile is in adult court because of a previous adult court conviction or pending adult court case (rather than because of the immediate offense). A juvenile who makes this motion before trial must prove that he or she does not qualify for adult court jurisdiction, or that he or she meets the three criteria for reverse waiver. [s. 971.31 (13), Stats.]

for waiver to adult court.<sup>7</sup> The following are circumstances under which a court may waive a juvenile case to adult court:

- **Commission of any crime after age 15.** The juvenile is alleged to have violated any state criminal law on or after the juvenile's 15<sup>th</sup> birthday.<sup>8</sup>
- **Commission of particular serious crimes after age 14.** The juvenile is alleged to have committed one of the following on or after the juvenile's 14<sup>th</sup> birthday:<sup>9</sup>
  - Felony murder.
  - Second-degree reckless homicide.
  - First-degree sexual assault.
  - Second-degree sexual assault.
  - Taking hostages.
  - Kidnapping.
  - Armed burglary.
  - Armed robbery.
  - Robbery of a financial institution.
  - Manufacture, delivery, or distribution of a controlled substance.
- **Commission of a gang-related felony after age 14.** The juvenile is alleged to have committed a felony under the Criminal Code or the Uniform Controlled Substances Act, for a criminal gang, on or after the juvenile's 14<sup>th</sup> birthday.<sup>10</sup>

A 15- or 16-year-old may be waived into adult court for committing any crime.

A 14-year-old may be waived only for committing particular felonies.

A juvenile between ages 10 and 13 cannot be waived into adult court.

However, any juvenile age 10 or older may be subject to adult court original jurisdiction based on offense or prior record.

Waiver of juvenile court jurisdiction is a two-step process. First, the court must determine whether the matter has prosecutive merit, meaning the record establishes to a reasonable probability that the alleged violation was committed and that the juvenile committed it.<sup>11</sup>

Second, the juvenile court must decide whether to waive its jurisdiction. A court determines whether to waive a juvenile into adult court based on the following statutory criteria:<sup>12</sup>

- **Personality of the juvenile.** This includes whether the juvenile has a mental illness or developmental disability, the juvenile's physical and mental maturity, and the juvenile's pattern of living, prior treatment history, and apparent potential for responding to future treatment.
- **Prior record of the juvenile.** This includes whether the juvenile was previously waived into adult court, previously convicted following a waiver of the court's jurisdiction, or

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<sup>7</sup> s. 938.18(2), Stats. If the court initiates a waiver petition, the judge must disqualify himself or herself from further proceedings on the case.

<sup>8</sup> s. 938.18(1)(c), Stats.

<sup>9</sup> A court may waive a juvenile for allegedly violating s. 940.03, 940.06, 940.225(1) or (2), 940.305, 940.31, 943.10(2), 943.32(2), 943.87, or 961.41, Stats., on or after the juvenile's 14<sup>th</sup> birthday. [s. 938.18(1)(a), Stats.]

<sup>10</sup> A court may waive a juvenile for allegedly committing a violation at the request of or for the benefit of a criminal gang, as defined in s. 939.22(9), Stats., that would constitute a felony under chs. 939 to 948 (Criminal Code) or 961 (Uniform Controlled Substances Act) if committed by an adult. [s. 938.18(1)(b), Stats.]

<sup>11</sup> s. 938.18(4), Stats. *In the Interest of T.R.B.*, 109 Wis. 2d 179, 192 (1982).

<sup>12</sup> s. 938.18(4) and (5), Stats. The court must consider the specified criteria regardless of whether the juvenile is contesting waiver into adult court.

previously found delinquent, whether such conviction or delinquency involved infliction of serious bodily injury, the juvenile's motives and attitudes, and the juvenile's prior offenses.

- **Type and seriousness of offense.** This includes whether the offense was against persons or property or committed in a violent, aggressive, premeditated, or willful manner.
- **Availability of treatment and services.** This includes the adequacy and suitability of facilities, services, and procedures within the juvenile justice system or mental health system for treatment of the juvenile and protection of the public, and suitability of the juvenile for placement in the serious juvenile offender program or the adult intensive sanctions program.
- **Efficiency of handling all offenders in one court.** 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 in adult criminal court.

The court must state its findings regarding the criteria on the record. The court must also determine that there is clear and convincing evidence that hearing the case in juvenile court is contrary to the best interests of the juvenile or the public. If it does so, the court enters an order waiving jurisdiction and referring the case to the district attorney for proceedings in the adult criminal court.<sup>13</sup>

## CONSEQUENCES FOR A JUVENILE

A juvenile who remains under juvenile court jurisdiction is adjudicated delinquent and receives a disposition. A disposition differs from an adult sentence in the variety of potential consequences that a juvenile court may impose. Among other options, potential dispositions include correctional placement in a secured residential care center for children and youth, supervision by a suitable adult, electronic monitoring, placement in a relative's home, restrictions on driving privileges, counseling, and vocational training.<sup>14</sup>

A juvenile prosecuted in adult criminal court is convicted of a crime and receives a sentence, similar to any other adult offender. State law establishes a statutory framework for sentencing that applies to all offenders convicted in adult court, regardless of age. The Department of Corrections (DOC) typically places a juvenile sentenced to confinement by an adult criminal court in a juvenile correctional facility, rather than in an adult prison.<sup>15</sup>

This information memorandum was prepared by Katie Bender-Olson, Principal Attorney, on June 28, 2023.

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<sup>13</sup> s. 938.18(6), Stats.

<sup>14</sup> The full list of available juvenile dispositions is set forth under s. 938.34, Stats.

<sup>15</sup> State law allows DOC to place certain individuals under age 18 in an adult prison, but federal law generally prevents such placement. The Juvenile Justice Code, ch. 938, Stats., allows DOC to place a 17 year-old convicted under an adult court's original jurisdiction in a state prison, other than the Wisconsin Secure Program Facility (formerly, the "Supermax Correctional Institution"). [s. 938.183 (3), Stats.] A separate sentencing provision states that DOC may place a person under age 18 in a state prison if the person meets specified criteria, but must otherwise place juveniles in a juvenile correctional facility or secured residential care center for children and youth. [s. 973.013 (3m), Stats.; see also s. 302.18 (7), Stats.] The federal Prison Rape Elimination Act (PREA) and Juvenile Justice and Delinquency Protection Act (JJJPA) generally prohibit juveniles from having contact with adult inmates as a condition of receiving federal funds, which effectively prevents placement of juveniles in adult institutions in most cases. [34 U.S.C. §§ 30305 and 30307 (e); 28 C.F.R. § 115.14; 34 U.S.C. § 11133 (a) (11) (B).]