

OVERVIEW

Upon request from the juvenile court, the assigned juvenile justice specialist (JJS) must assist the court in determining if a juvenile must be tried in the same manner as an adult.

Upon request from the circuit court, the assigned JJS must complete a pre-sentence investigation, also known as a social report, for a youth that has been convicted of a specified juvenile violation through a designated or automatic waiver proceeding that does not require an adult sentence to be imposed.

To determine whether it is in the best interests of the public and for the protection of the public security the juvenile be required to stand trial as an adult offender.

To review the facts of the case and make a recommendation to the court for sentencing the juvenile as a result of automatic or designated waiver procedures.

WAIVER PROCEEDINGS

The prosecutor has two waiver options within the Family Division of Circuit Court, which may result in a youth being tried in the same manner as an adult. A third option is also available for the prosecutor to initiate automatic waiver proceedings.

Traditional Waiver

The prosecutor may file a motion in the Family Division of Circuit Court to waive delinquency jurisdiction to the criminal jurisdiction of circuit court for a youth who is 14 years of age or older and accused of committing a felony under MCL 712A.4(1). There are two phases to the traditional waiver proceedings:

- Whether there is probable cause the juvenile committed a felony. MCL 712A.4(3).
- Whether it is in the best interests of the juvenile and the public to grant a waiver of jurisdiction. MCL 712A.4(4).

The court may request a waiver recommendation report from the Michigan Department of Health & Human Services (MDHHS), see *Waiver Recommendation Report* for requirements.

Traditional Waiver Sentencing

If a youth is waived and convicted, the youth must be sentenced as an adult.

Designated Waiver

The prosecutor may:

- Designate a case for trial in the Family Division of Circuit Court in the same manner as an adult if a petition alleges the youth committed a specified juvenile violation. MCL 712A.2d(1). A specified juvenile violation includes:
 - First Degree Arson, MCL 750.72.
 - Assault with intent to commit murder, MCL 750.83.
 - Assault with intent to maim, MCL 750.86.
 - Assault with intent to rob while armed, MCL 750.89.
 - Attempted murder, MCL 750.91.
 - First-degree murder, MCL 750.316.
 - Second-degree murder, MCL 750.317.
 - Kidnapping, MCL 750.349.
 - First-degree criminal sexual conduct, MCL 750.520b.
 - Armed robbery, MCL 750.529.
 - Carjacking, MCL 750.529a.
 - Robbery of a bank, safe, or vault, MCL 750.531.
 - Assault with intent to do great bodily harm, MCL 750.84, if armed with a dangerous weapon, MCL 712A.2(a)(1)(B), MCL 600.606(2)(b), MCL 764.1f(2)(b).
 - First-degree home invasion, MCL 750.110a(2), if armed with a dangerous weapon.
 - Escape or attempted escape from a medium- or high-security facility operated by MDHHS or a county juvenile agency, or from a high-security facility

operated by a private agency under contract with MDHHS or a county juvenile agency, MCL 750.186a.

- Possession of 1,000 grams or more of a Schedule 1 or 2 narcotic or cocaine, MCL 333.7403(2)(a)(i).
 - Manufacture, creation, or delivery of, or possession with intent to manufacture, create or deliver, 1,000 grams or more of a Schedule 1 or 2 narcotic or cocaine, MCL 333.7401(2)(a)(i).
 - An attempt, (MCL 750.92), conspiracy (MCL 750.157a), or solicitation (MCL 750.157b), to commit any of the above crimes.
 - Any lesser-included offense of a specified juvenile violation or any other offense arising out of the same transaction as a specified juvenile violation, if the juvenile is charged with a specified juvenile violation.
- Request the Family Division of Circuit Court conduct a hearing to determine if the best interests of the youth and the public would be served by trying the youth in the Family Division of Circuit Court as an adult if the petition alleges the youth committed an offense that is **NOT** a specified juvenile violation. MCL 712A.2d(2). See *Waiver Recommendation Report*.

Designated Waiver Sentencing

If a youth is convicted through a designated proceeding the court may enter a juvenile disposition, an adult sentence determined by the court to serve the best interests of the public, or a blended sentence that delays an adult sentence and affords the youth an opportunity to rehabilitate. MCL 712A.18(1)(o).

Pre-Sentence Investigation Report

Prior to the sentencing hearing, the assigned JJS must complete a DHS-201, Pre-Sentence Investigation Report as outlined in *Pre-Sentence Investigation*. MCL 771.14a.

Automatic Waiver

A prosecutor may file a complaint and warrant in the Criminal Division of Circuit Court to initiate automatic waiver proceedings when a juvenile who is 14 years of age or older but less than 18

years of age alleged to have committed a specified juvenile violation. MCL 764.1f(1).

Automatic Waiver Sentencing

If a youth is convicted for any of the following specified juvenile violations, the youth must be sentenced as an adult. MCL 769.1(1):

- First Degree Arson, MCL 750.72.
- Assault with intent to commit murder, MCL 750.83.
- Assault with intent to maim, MCL 750.86.
- Attempted murder (MCL 750.91) or conspiracy (MCL 750.157a) or solicitation to commit murder (MCL 750.157b).
- First-degree murder, MCL 750.316.
- Second-degree murder, MCL 750.317.
- Kidnapping, MCL 750.349.
- First-degree criminal sexual conduct, MCL 750.520b.
- Armed robbery, MCL 750.529.
- Carjacking, MCL 750.529a.

Exception: A youth convicted of first-degree murder, conspiracy to commit murder, felony murder, aiding and abetting first-degree murder or certain repeat non-homicide cases subject to mandatory life imprisonment without parole, cannot have the adult sentence of mandatory life imprisonment without the possibility of parole imposed if the youth was under the age of 18 at the time of the offense.

If the youth is convicted of any other specified juvenile violation, the court must either hold a juvenile sentencing hearing to sentence the youth as an adult or place the youth on probation and commit the youth to MDHHS.

Exception: If the youth, the youth's attorney, and the prosecuting attorney agree that it is not in the best interest of the public to sentence the youth as an adult, the court may waive the juvenile sentencing hearing, place the youth on probation, and commit the youth to MDHHS.

Pre-Sentence Investigation Report

Prior to the juvenile sentencing hearing, the assigned JJS must complete a DHS-201, Pre-Sentence Investigation Report, as outlined in *Pre-Sentence Investigations*.

**WAIVER
RECOMMENDATION
REPORT**

The juvenile court may request a waiver recommendation report from MDHHS prior to determining if the youth will be waived to criminal court under traditional waiver proceedings or designated waiver proceedings when the petition alleges the youth committed an offense that is not a specified juvenile violation. To prepare a fact-based analysis of the issues under consideration and develop an appropriate waiver recommendation, the following must occur:

- Obtain an information release ([DHS-1555-CS, Authorization to Release Confidential Information](#)) and review the youth's:
 - Delinquency, children's protective services, foster care, and/or adoption records.
 - Arrest report(s).
 - School records including any report cards, special education reports, disciplinary action, or academic evaluations.
 - Mental health evaluations and records.
 - Medical evaluations and records.
- Interview the youth's parent(s) or legal guardian(s) regarding the chronology of events before, during and after the arrest, developmental milestones, educational history, emotional disturbances, and mental health issues. Determine if the youth's parent(s) or legal guardian(s) want to pursue a competency evaluation.
- Interview the youth regarding the chronology of events before, during and after the arrest. Determine if the youth wants to pursue a competency evaluation.

- Contact the youth's attorney to determine if the youth's attorney plans to request a competency evaluation or has concerns regarding the youth's competency.
- Review the information collected and consider the following criteria. MCL 712A.4(4)(a)-(j):
 - 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.
 - 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.
 - The juvenile's prior record of delinquency that would be a crime if committed by an adult.
 - 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.
 - 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.
 - The dispositional options available for the juvenile.
 - The juvenile's developmental maturity, emotional health, and mental health.
 - If the juvenile is a member of a federally recognized Indian tribe, culturally honoring traditional values of the juvenile's tribe.
 - The impact on any victim.

JUVENILE COMPETENCY

The Mental Health Code, MCL 330.1001, was amended in 2012 to include specific provisions for the determination of juvenile

competency to stand trial, effective on March 28, 2013. Competency is not the same as criminal responsibility; it is the youth's ability to understand the charges and proceedings and the ability to assist the youth's attorney with their own defense in a meaningful way. Competence to stand trial in juvenile court may differ from the youth's competence to stand trial in criminal court. The issue of a youth's competency to stand trial may be raised by the court or by motion of a party at any time during the proceeding. If the issue of competency is raised, proceedings must cease until competency has been determined.

The following criteria must be evaluated by the assigned JJS to determine if the waiver recommendation report should recommend the court order a competency evaluation for the youth:

- Chronological age - A youth 10 years of age or older is presumed competent to proceed unless the issue of competence is raised by a party. The younger the youth, the more likely it is the youth will need a competency evaluation to determine their ability to stand trial. A juvenile less than 10 years of age is presumed incompetent to proceed. MCL 330.2062.
- Developmental age - Developmental disabilities or deficits can affect a youth's comprehension and functional abilities, increasing the likelihood the youth needs a competency evaluation to determine their ability to stand trial.
- Intellectual functioning - A low IQ score, cognitive impairment, and/or diagnosed learning disability can affect a youth's ability to process information. This increases the likelihood the youth needs a competency evaluation.
- Mental illness and medication - A youth diagnosed with one or more mental illnesses, who is taking psychotropic medication and/or meets the criteria for serious emotional disturbance, MCL 330.1208, may have impaired decision-making abilities. This also increases the likelihood the youth will need a competency evaluation.
- Severity of the charge and consequences - The more severe the charge, the more complex the choices and implications for consequences become for the youth to understand. This factor increases the likelihood the youth will need a competency evaluation to determine their ability to stand trial.

**PRE-SENTENCE
INVESTIGATION**

When a youth 14 through 17 years of age is committed to a juvenile facility pending trial and is convicted in the circuit court or the Family Division of Circuit Court, the court may request MDHHS prepare a pre-sentence investigation report. Staff from the Michigan Department of Corrections will also prepare a pre-sentence investigation report for these youth.

Pre-sentence investigations (PSI's) must be conducted by the assigned JJS upon request of the court of jurisdiction when the youth will be tried as an adult based on automatic waiver procedures or convicted through a designated proceeding. The PSI must be completed by the assigned JJS within the time frame established by the court. To prepare a PSI report, the assigned JJS is responsible for the following activities:

- Requesting and obtaining information on the charge from the prosecutor's office.
- Requesting and obtaining Law Enforcement Information Network results.
- Requesting and obtaining a copy of the arresting police officer's and any subsequent law enforcement reports.
- Interviewing the youth, the family, appropriate law enforcement personnel, the victim, the employer, school personnel, or other significant individuals that are identified during the investigation.
- Completion of the Michigan Juvenile Justice Assessment System (MJJAS) Dispositional assessment.

A PSI report shall contain all the following, MCL 803.224(2)(a)-(c):

- An evaluation of and a prognosis for the juvenile's adjustment in the community based on factual information contained in the report.
- A recommendation as to whether the juvenile is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures.

- A recommendation as to what disposition is in the best interests of the public welfare and the protection of the public security.

Opening a Pre-Sentence Investigation case

On the date the PSI referral is received; the pre-sentence investigation case must be opened. If the youth has not been committed to MDHHS at the time of the pre-sentence investigation, use legal status **50 - non-ward with a delinquency petition filed**. If the youth is subsequently referred or committed to the department, change the legal status appropriately.

If the youth is not referred or committed to the department at sentencing, the pre-sentence investigation case must be closed when the disposition/sentencing order is received.

PSI Report Format

The local office must develop local procedures with the presiding court judge and the adult probation department in that county to establish a PSI request process. The assigned JJS must use the DHS-201, Pre-Sentence Investigation Report, for completion of the PSI report. The PSI report must be provided to the judge prior to the sentencing hearing. Also, the judge may require a pre-sentence conference, which the assigned JJS or supervisor must attend.

MJJAS Dispositional Assessment

In addition to the requirement to complete the PSI report, the Michigan Juvenile Justice Assessment System (MJJAS) Dispositional Assessment must be completed and submitted to the court as part of recommendations for placement. The local office must use the conviction date in lieu of the adjudication date when entering a court order.

Victim's Rights

If ordered by the court to do so while preparing the PSI report, the assigned JJS must give the following notice to the victim, MCL 780.763(1)(c-d):

- The victim's right to make a written or oral impact statement for use in preparation of the report.
- The address and telephone number of the person who is to prepare the report.

The PSI report and any statement of the victim included in the report must be made available to the youth unless exempted from disclosure by the court. MCL 780.763(1)(e).

The assigned JJS may be required to determine the following for recommendation of treatment and rehabilitation:

- The amount of financial loss sustained by any victim as a result of the offense.
- The financial resources and earning ability of the youth.
- Other factors the court considers appropriate, and
- The financial needs of the youth and the youth's dependents who are reliant on care and support by the youth and whether that would be disrupted by removing the youth from the community.

Record Retention

Individual pre-sentence investigation case records must be retained as part of the youth's juvenile justice case record if the youth is subsequently referred or committed to MDHHS.

If the youth is not referred or committed to the department at sentencing, the pre-sentence investigation case record must be retained solely as a pre-sentence investigation record.

LEGAL

State

The Mental Health Code, 1974 PA 258, as amended.

MCL 330.2062.

A juvenile 10 years of age or older is presumed competent to proceed unless the issue of competency is raised by a party. A juvenile less than 10 years of age is presumed incompetent to proceed.

MCL 330.2066(5).

Includes specific provisions for the determination of juvenile competency to stand trial.

MCL 330.1208.

Services provided by a community mental health services program shall be directed to individuals who have a serious mental illness, serious emotional disturbance, or developmental disability.

The Probate Code, 1939 PA 288, as amended.**MCL 712A.4(1).**

(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.

MCL 712A.4(3).

(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 by chapter VI of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 766.1 to 766.18 of the Michigan Compiled Laws.

MCL 712A.4(4).

(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.

MCL 712A.4(4)(a)-(f).

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 certain criteria, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria.

MCL 712A.2d(1).

(1) In a petition or amended petition alleging that a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter for a specified juvenile violation, the prosecuting attorney may designate the case as a case in which the juvenile is to be tried in the same manner as an adult. An amended petition making a designation under this subsection must be filed only by leave of the court.

(2) In a petition alleging that a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter for an offense other than a specified juvenile violation, the prosecuting attorney may request that the court designate the case as a case in which the juvenile is to be tried in the same manner as an adult. The court may designate the case following a hearing if it determines that the best interests of the juvenile and the public would be served by the juvenile being tried in the same manner as an adult.

MCL 712A.18(1)(o).

(1) If the court finds that a juvenile concerning whom a petition is filed is not within this chapter, the court shall enter an order dismissing the petition. Except as otherwise provided in subsection (10), if the court finds that a juvenile is within this chapter, the court shall order the juvenile returned to their parent if the return of the juvenile to their parent would not cause a substantial risk of harm to the juvenile or society. The court may also enter any of the following orders of disposition that are appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained:

(o) If the court entered a judgment of conviction under section 2d of this chapter, enter any disposition under this section or, if the court determines that the best interests of the public would be served, impose any sentence upon the juvenile that could

be imposed upon an adult convicted of the offense for which the juvenile was convicted. If the juvenile is convicted of a violation or conspiracy to commit a violation of section 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7403, the court may impose the alternative sentence permitted under that section if the court determines that the best interests of the public would be served. The court may delay imposing a sentence of imprisonment under this subdivision for a period not longer than the period during which the court has jurisdiction over the juvenile under this chapter by entering an order of disposition delaying imposition of sentence and placing the juvenile on probation upon the terms and conditions it considers appropriate, including any disposition under this section. If the court delays imposing sentence under this section, section 18i of this chapter applies. If the court imposes sentence, it shall enter a judgment of sentence. If the court imposes a sentence of imprisonment, the juvenile shall receive credit against the sentence for time served before sentencing.

The Code of Criminal Procedure, 1927 PA 175, as amended.

MCL 771.14a(1).

(1) Before the court sentences a juvenile under section 1(3) or (4) of chapter IX, the family independence agency or county juvenile agency, as applicable, shall inquire into the juvenile's antecedents, character, and circumstances and shall report in writing to the court as provided in section 4 of the juvenile facilities act, 1988 PA 73, MCL 803.224.

MCL 764.1f(1).

(1) If the prosecuting attorney has reason to believe that a juvenile 14 years of age or older but less than 18 years of age has committed a specified juvenile violation, the prosecuting attorney may authorize the filing of a complaint and warrant on the charge with a magistrate concerning the juvenile.

MCL 769.1(1).

(1) A judge of a court having jurisdiction may pronounce judgment against and pass sentence upon a person convicted of an offense in that court. The sentence shall not exceed the sentence prescribed by law. The court shall sentence a

juvenile convicted of any of the following crimes in the same manner as an adult:

(a) Arson of a dwelling in violation of section 72 of the Michigan penal code, 1931 PA 328, MCL 750.72.

(b) Assault with intent to commit murder in violation of section 83 of the Michigan penal code, 1931 PA 328, MCL 750.83.

(c) Assault with intent to maim in violation of section 86 of the Michigan penal code, 1931 PA 328, MCL 750.86.

(d) Attempted murder in violation of section 91 of the Michigan penal code, 1931 PA 328, MCL 750.91.

(e) Conspiracy to commit murder in violation of section 157a of the Michigan penal code, 1931 PA 328, MCL 750.157a.

(f) Solicitation to commit murder in violation of section 157b of the Michigan penal code, 1931 PA 328, MCL 750.157b.

(g) First degree murder in violation of section 316 of the Michigan penal code, 1931 PA 328, MCL 750.316.

(h) Second degree murder in violation of section 317 of the Michigan penal code, 1931 PA 328, MCL 750.317.

(i) Kidnapping in violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349.

(j) First degree criminal sexual conduct in violation of section 520b of the Michigan penal code, 1931 PA 328, MCL 750.520b.

(k) Armed robbery in violation of section 529 of the Michigan penal code, 1931 PA 328, MCL 750.529.

(l) Carjacking in violation of section 529a of the Michigan penal code, 1931 PA 328, MCL 750.529a.

The Juvenile Facilities Act, 1988 PA 73, MCL 803.224(2)(a)-(c).

(2) A report prepared under subsection (1) shall include all of the following:

(a) An evaluation of and a prognosis for the juvenile's adjustment in the community based on factual information contained in the report.

(b) A recommendation as to whether the juvenile is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures.

(c) A recommendation as to what disposition is in the best interests of the public welfare and the protection of the public security.

William Van Regenmorter Crime Victim's Rights Act, 1985 PA 87, MCL 780.763(1)(c-d).

(1) The prosecuting attorney, upon and in accordance with the request of the victim, shall give to the victim notice of the following:

(c) The victim's right to make a written or oral impact statement for use in the preparation of a presentence investigation report concerning the defendant.

(d) The address and telephone number of the probation office which is to prepare the presentence investigation report.

William Van Regenmorter Crime Victim's Rights Act, 1985 PA 87, MCL 780.763(1)(e).

(e) A presentence investigation report and any statement of the victim included in the report will be made available to the defendant unless exempted from disclosure by the court.