

JJ2 210: Waiver Proceedings and Pre-Sentence Investigation

Soleil Campbell
517-373-1570
campbells6@michigan.gov
Effective May 1, 2014.

Policy

- ▶ The prosecuting attorney determines if the juvenile will be tried as an adult.
- ▶ A presentence investigation must be completed when requested to support a designated or automatic waiver if the youth is convicted of a specified juvenile violation.

Waiver Proceedings

- ▶ Three options exist:
 - Traditional Waiver.
 - Designated Waiver.
 - Automatic Waiver.

Traditional Waiver

- ▶ If the youth is 14-16 years-old and has committed a felony, jurisdiction may be waived to criminal jurisdiction.
- ▶ Two criteria to move forward with the proceedings:
 - Probable cause that a felony was committed.
 - If it is in the best interest of both the juvenile and the public to grant the waiver.
- ▶ The youth is sentenced as an adult if they are waived and convicted.

Designated Waiver

- ▶ A youth may be tried as an adult if he or she committed a specified juvenile violation (See policy).
- ▶ The caseworker must complete a DHS-201, Pre-Sentence Investigation Report.
- ▶ If the juvenile is convicted, the court may order an adult sentence or a blended sentence, which delays the adult sentence to allow the youth time to rehabilitate.

Automatic Waiver

- ▶ May be initiated when a 14-16 year-old juvenile has committed a specified juvenile violation (See policy).
- ▶ The caseworker must complete a DHS-201, Pre-Sentence Investigation Report.
- ▶ The youth may be placed on probation and committed to DHS if it is not in the best interest of the public to sentence the youth as an adult.

Waiver Recommendation Report

- ▶ May be requested by court when the youth has not committed a specified juvenile violation.
- ▶ Developing a waiver recommendation:
 - Interview the youth and youth's parents.
 - Contact the youth's attorney.
 - Obtain an information release (DHS-1555-CS) and review the youth's arrest reports, school records, mental health and medical evaluations and records, and CPS, foster care, and adoption records.

Juvenile Competency

- ▶ This is the youth's ability to understand the charges and proceedings and to assist his or her attorney with the defense.
- ▶ Youth's competency may differ from juvenile court to criminal court.

Juvenile Competency Continued

- ▶ Determines if a waiver recommendation report must include competency evaluation. The criteria reviewed must include:
 - Chronological age.
 - Developmental age.
 - Intellectual functioning.
 - Mental illness and/or medication.
 - Severity of charge and potential consequences.

Pre-Sentence Investigation (PSI)

- ▶ Conducted by caseworker within the assigned timeframe established by the court if the youth is being tried as an adult through automatic waiver.
- ▶ Caseworker must:
 - Request and obtain information on the charge from the prosecutor's office, Law Enforcement Information Network results, and the arresting police officer's reports (Safeguard LEIN information (JJ2 280)).
 - Interview the youth, the family, the victim, and other individuals that are significant to the investigation.

Presentence Investigation (PSI) Continued

- ▶ The caseworker must use the DHS-201, Pre-Sentence Investigation Report, to complete the PSI report, which must be given to the judge before the sentencing hearing.
- ▶ The caseworker must attend the pre-sentence conference, if applicable.

Victim's Rights

- ▶ The caseworker must notify the victim of his or her right to make a statement for the PSI, as well as the address and telephone number of the individual preparing the report.
- ▶ The juvenile may view the report unless exempted from disclosure by the court.
- ▶ The assigned caseworker must determine the following:
 - The victim's financial loss due to the offense.
 - The financial resources and earning ability of the youth.
 - The youth's financial needs.
 - Other appropriate factors.

Opening a Pre-Sentence Investigation

- ▶ PSI must be opened on SWSS FAJ until MiSACWIS is live.
- ▶ Use legal status 50 - non-ward with a delinquency petition filed if the youth has yet to be committed to DHS, and once committed, change legal status appropriately.
- ▶ PSI case must be closed when sentencing order is received if the youth is not committed to the department at sentencing.

Establishing PSI Record

- ▶ If the youth is referred or committed to DHS, then the PSI must be filed in his or her juvenile justice case record.
- ▶ If the youth is not referred or committed to DHS, then a separate PSI record must be created.
- ▶ If the youth is not referred or committed to DHS, retain the PSI per the county record retention schedule.