

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 5: JUVENILE JUSTICE

§ 5124. Waiver of Jurisdiction and Transfer to Other Court.

(a) After the filing of a petition and after full investigation and hearing, the court may waive jurisdiction over the juvenile pursuant to this chapter, and order that the juvenile be held for adult criminal proceedings when:

(1) A juvenile is alleged to have committed any of the crimes enumerated in 6 CMC § 5131; or

(2) A juvenile is alleged to have committed an act other than those enumerated in 6 CMC § 5131, after the child became sixteen years of age which would be a felony if committed by an adult subject to the provisions of this section; or

(3) An adult at the time of the filing of the petition is alleged to have committed an act prior to his or her having become eighteen years of age which would be a felony if committed by an adult, and the court finds that the adult is fit for transfer to adult court pursuant to the provisions of 6 CMC § 5124(h); or

(4) An adult already under the jurisdiction of the court as a juvenile is alleged to have committed a crime while an adult.

(b) A motion to waive jurisdiction under this chapter and prosecute a juvenile under the criminal law may be made by the prosecuting attorney or the juvenile. The motion shall be in writing and contain the grounds and reasons in support thereof.

(c) Upon the filing of a motion to waive jurisdiction under this chapter, the court shall enter an order setting the motion for hearing at a reasonable time and date certain. The court shall inform the juvenile and the parents, guardian or custodian of the juvenile's right to court-appointed counsel and shall appoint such counsel as appropriate. The court may also order a full and complete investigation of the circumstances of the alleged offense to be conducted by juvenile probation, and/or such other agency or investigation officer designated by the court. The investigative report shall be provided to the parties for review within a reasonable time before the date of the hearing.

(d) Upon setting the time for the hearing upon the motion to waive jurisdiction, the court shall give written notice of said hearing to the juvenile; to the juvenile's attorney; to the parents, guardian or custodian of the juvenile; and to the prosecuting attorney, at least thirty days before the date of the hearing, or any lesser period stipulated by the parties. Service of the notice shall be made in the manner prescribed for service of a summons under 6 CMC § 5133.

(e) The hearing upon the motion to waive jurisdiction shall be held in the same manner as an evidentiary hearing upon the original petition and shall be made part of the record.

(f) If as a result of the hearing on the motion to waive jurisdiction the court shall determine that jurisdiction should not be waived, the petition shall be processed in the customary manner as a proceeding under this chapter. The court shall enter findings of fact and conclusions of law upon which it bases its

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decision whether to waive jurisdiction, together with any order waiving jurisdiction under this chapter and binding the juvenile over to the authorities for prosecution under the criminal laws of the Commonwealth.

(g) This section does not authorize an adjudication or determination of facts beyond the existence of probable cause to believe a particular crime was committed and that a particular juvenile committed it; such determination can be based on hearsay evidence.

(h) In considering whether or not to waive juvenile court jurisdiction over the juvenile, the juvenile court shall consider the following factors:

(1) The seriousness of the offense and whether the protection of the community or the juvenile requires isolation of the juvenile beyond that afforded by juvenile facilities;

(2) Whether the victim has suffered injury as defined in 6 CMC § 103(o) and 103(p);

(3) Whether the alleged offense was committed in a violent manner;

(4) Whether the alleged offense was premeditated and, if so, its level of sophistication, including motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident;

(5) Whether the alleged offense was against persons;

(6) The emotional and mental maturity of the juvenile as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living;

(7) The juvenile's record and previous history of contacts with the juvenile justice system, including prior adjudications that would be either felonies or violent misdemeanors if committed by an adult;

(8) The likelihood that the juvenile will develop sufficient life skills to become a contributing member of the community; and

(9) Whether the juvenile is a dangerous individual; that there exists a real possibility he or she will not be rehabilitated before reaching the age of 21; and that protection of the community requires the waiver. All of the factors listed in this subsection shall be considered by the court. The amount of weight to be given to each of the factors is discretionary with the court, and a determination that the juvenile is not a fit and proper subject to be dealt with under this chapter may be based on any one or a combination of the factors set forth above. The court's consideration of each factor shall be recited in the order of waiver or non-waiver of juvenile court jurisdiction. Nothing in this section shall preclude the participation of the victim during these proceedings.

(10) Upon conviction of a juvenile held for adult criminal proceedings under this section, the judge shall, if a finding is made that adult disposition measures would be inappropriate:

(i) Order disposition of the juvenile in accordance with the juvenile disposition options set forth in this chapter; or

(ii) Remand the convicted juvenile to the custody of the Department of Corrections but suspend any ordered term of detention or withhold judg-

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ment and commit the juvenile to the custody of DYS for an indeterminate period of time in accordance with 1 CMC § 2374. The court, in its discretion, may order that the suspended disposition or withheld judgment be conditioned upon the convicted juvenile's full compliance with all reasonable program requirements of DYS, whether in the custody of juvenile detention or juvenile probation. Such a disposition may also set additional terms of probation, which may be served under the supervision of juvenile probation. However, in no event may the total of the actual time spent by the convicted juvenile in the custody of DYS plus any adult sentence imposed by the court exceed the maximum period of imprisonment that could be imposed on an adult convicted of the same crime.

(iii) If the convicted juvenile is given a suspended term of detention or withheld judgment conditioned upon the convicted juvenile's compliance with all reasonable program requirements of DYS pursuant to paragraph (ii) of this subsection, and if DYS reasonably believes that the convicted juvenile is failing to comply with all reasonable program requirements or that continued commitment to juvenile detention or juvenile probation is no longer appropriate, DYS may request the Attorney General's office to move the court to revoke the commitment to DYS and transfer the juvenile to the custody of the DOC or adult probation for the remainder of any term of detention. The court shall then determine whether commitment of the juvenile to DYS, or to the Department of Corrections or adult probation, is most appropriate, using the factors set forth in subsection (h), above.

Source: PL 16-47, § 8, modified.

Commission Comment: The Commission changed public law section references to the corresponding codified section numbers; changed references to “this act” and “Juvenile Justice Act” to “this chapter;” and removed figures that repeated written words pursuant to 1 CMC § 3806(c), (d) and (e).