

FORM SUMMARY

Name of Form: **Order Waiving Juvenile Court Jurisdiction**

Form Number: **JD-1723**

Statutory Reference: §§938.18, Wisconsin Statutes

Benchbook Reference: JV 5

Purpose of Form: Formal decision on the request to waive the juvenile from juvenile court into adult court.

Who Completes It: Circuit Court Judge.

Who Signs It: **BY THE COURT:** Circuit Court Judge.

Distribution of Form: Court; copies for juvenile, juvenile's attorney, district attorney, parent/guardian/legal custodian, and other interested parties.

Accompanying Forms: Generally none.

New Form/Modification: Modification; 7/05.

Modifications: Added line stating "the waiver hearing was held on (date) which is the effective date of this order".

Restated the criteria for waiver to conform with 2005 WI Act 344.

Comments: If the juvenile does not appear for the waiver hearing, the court may proceed in the juvenile's absence. A checkbox has been added to indicate this occurred. If the juvenile is waived, the juvenile has the ability to request the adult court to return the matter to juvenile court. The juvenile would have to prove to the satisfaction of the adult court that he or she had good cause for failing to appear.

Under old ch. 48, testimony was required at all waiver hearings, even if the matter was not being contested. Ch. 938 allows the juvenile to "not contest" the waiver if the judge finds that the decision was "knowingly, intelligently, and voluntarily" made. New paragraphs 3a and 3b have been included for indicating if the issue was or was not contested. Presumably if the juvenile does not want to contest the matter but the court is not satisfied that it is a "knowing, intelligent, and voluntary" waiver, the court will treat it as a "contested" matter and check box 3a.

Even though testimony need not be given in an uncontested waiver,

the court must still make a decision on waiver based on the same factors in §938.18(5)(a). The basis for making such a decision must still be somewhere in the record. RMC questions whether the parties can merely "stipulate" to such a decision without some factual basis related to the §938.18(5)(a) factors. Therefore, the order still contains the language that "the court has stated on the record the relevancy of these factors to the decision on waiver." This may not be a significant issue because the waiver petition must contain at least a "brief statement of the facts supporting the request for waiver." Also, practice in some counties is to include with the waiver petition or at the time of hearing a "court report" or "statement of facts justifying waiver" which the court can incorporate as part of its findings. Regardless, it is the duty of the court to ensure there is still a factual basis related to the factors in §938.18(5)(a) justifying a waiver decision.

The waiver factors are still listed in the petition for reference by the court at the time of the decision. Some have been combined from the ch. 48 version to conserve space.

About this Form:

This form is the product of the Wisconsin Records Management Committee, a committee of the Director of State Court's Office and a mandate of the Wisconsin Judicial Conference.

If you have additional information that does not change the meaning of the form, attach it on a separate page. The form itself shall not be altered.