

REVERSE WAIVERS

SUBJECT MATTER JURISDICTION

1. Juvenile Court Jurisdiction

- a. 232.8(1)(a)—Juvenile Court has exclusive original jurisdiction in proceedings concerning a child who is alleged to have committed a delinquent act, unless otherwise provide by law, and ...an adult who is alleged to have committed a delinquent act prior to having become an adult, and who has been transferred to the jurisdiction of the juvenile court pursuant to an order under section 803.5.
- b. The Juvenile Court has no jurisdiction over a child who has committed certain simple misdemeanors and curfew or traffic ordinances.
- c. 232.8(1)(c)—Violations by a child, aged 16 or older, of the following provisions are excluded from the jurisdiction of the juvenile court:
 - i. §124.401(1)(e)—Violation of 124.401 while possessing a firearm.
 - ii. §124.401(1)(f)—Violation of 124.401 while possessing an offensive weapon.
 - iii. §723A.2—Violation of this section, which involves street gangs while in violation of chapter 724 (carrying weapons, reckless use of weapons, fraudulent purchase of weapons, etc.).
 - iv. A violation of 724 which constitutes a felony.
 - v. Violation of any forcible felony under 702.11 (Examples include: Robbery, Kidnapping, Murder, any felonious assault, etc.)
- d. The Juvenile Court has exclusive jurisdiction over an offense of animal torture alleged to have been committed when the child was under the age of 17.
 - i. 717B.3A(3)(b)—Says juvenile court cannot waive jurisdiction if violation was by a child under 17.
- e. The Juvenile Court shall have jurisdiction over a child 17 years of age or younger who has a domestic abuse relief action filed against them in district court.

- f. The Juvenile Court shall have exclusive jurisdiction over an action concerning a child under the age of 18 alleged to have committed the offense of harassment by sharing nude photos or videos.
- g. §232.8(2)—If a case starts in adult court in violation of 232.8(1), then the court shall immediately enter an order transferring the matter to juvenile court.
- h. §232.8(3)(a)—Gives the Juvenile Court the authority to waive jurisdiction of a child alleged to have committed a public offense to be prosecuted as an adult or youthful offender, but only after a hearing in accordance with §232.45.
- i. Must appeal waiver, because it transfers jurisdiction and authority to try the case. Therefore, pleading guilty in adult court waives appellate rights to the waiver decision. (State v. Yodprasit, 564 N.W.2d 383 (Iowa 1997))
- j. §232.45(1)—The county attorney or the child may file a motion requesting the court to waive its jurisdiction over the child for the purpose of prosecution of the child as an adult or youthful offender.
- k. §232.45(2)—The court shall hold a waiver hearing on all such motions.
- l. Iowa Ct. R. 8.9—A motion under §232.45 must be filed within ten days of the filing of a petition.

2. Criminal Court Jurisdiction

- a. 803.1(4)—The jurisdiction of the criminal court includes the prosecution of any individual arrested who is 18 years of age or older and who is charged with committing a criminal offense.
 - i. If the offense was committed prior to age 18 the individual or the county attorney may petition the criminal court to transfer the matter to juvenile court pursuant to §803.5.
 - ii. §803.5(1)—An adult who is alleged to have committed a criminal offense prior to having reached age 18 may be transferred to juvenile court provided that the statute of limitations has not run and the juvenile court has not previously waived its jurisdiction over the person or the alleged offense.
 - iii. §803.5(2)—The defendant or county attorney may file a motion any time within 10 days of the initial appearance.

- iv. §803.5(3)—Requires the court to hold a hearing on all such motions.
- b. 803.6(1)—For a juvenile who is 16 years or older who is alleged to have committed a criminal offense listed in §232.8(1)(c) (example: forcible felony), the court may direct a juvenile court officer to provide a report regarding whether the child should be transferred to juvenile court.
- c. §803.6(2)—*If the court believes* transfer is appropriate, the court shall hold a hearing on whether the child should be transferred.

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3. §232.45—Waiver hearing

- a. A juvenile probation officer or other person or agency designated by the court shall conduct an investigation and must submit the report to the court.
 - i. The report shall include any recommendations made concerning waiver.
 - ii. All reports and materials to be considered by the court must be provided to both parties.
- b. §232.45(6)—The court *may* waive its jurisdiction over the child if all the following apply:
 - i. The child is 14 years of age or older.
 - ii. The court determines there is probable cause to believe the child committed a delinquent act.
 - iii. The court determines the state has established there are not reasonable prospects for rehabilitating the child if it retains jurisdiction over the child and waiver would be in the best interest of the child and the community.
- c. §232.45(8)—In making its determination required by §232.45(6)(c) (prospects for rehabilitation) the factors the court shall consider include but are not limited to the following:
 - i. The nature of the alleged delinquent act and the circumstances under which it was committed.

- ii. The nature and extent of the child’s prior contacts with juvenile authorities, which includes past efforts to rehabilitate and the response to such efforts.
 - iii. The services available to court for rehabilitation and treatment of the child versus the services available to the court if the child is waived to adult court.
- d. Burden is on the state.
 - i. “All relevant and material evidence shall be admitted.”
- e. If the court waives jurisdiction the statements made by the child after being taken into custody and prior to intake are admissible in the criminal proceeding provided the statements were made with the advice of counsel or after waiver of the child’s right to counsel and the court finds a voluntary waiver of child’s right to remain silent.
 - i. State cannot admit statements made by juvenile during the intake procedure or made at the waiver hearing.
- f. If the court waives its jurisdiction, the judge who made the waiver decision shall not preside at any subsequent proceeding in connection the prosecution if the child objects.

4. §803.5(5) and §803.6(3)—Reverse Waiver

- a. §803.5 pertains to adults, while §803.6 pertains to children 16 years of age or older.
- b. The same investigation and reporting requirements apply as outlined above.
- c. In determining whether to waive jurisdiction over an individual and transfer to the juvenile court the district court considers the same criteria as required for a waiver hearing pursuant to §232.45.
- d. The burden is on the defendant to show good cause for reverse waiver of district court’s jurisdiction. State v. Terry, 569 N.W.2d 364 (Iowa 1997).
- e. §803.6—A defendant transferred to the jurisdiction of the juvenile court shall be placed in detention under §232.22.

5. §232.8(1)(c)—Automatic Waiver.

- a. State v. Duncan, 841 N.W.2d 604 (Ct. App. 2013): Duncan was an adult when he was charged, but was between age 12 and 15 when the alleged crimes occurred. The court held §232.8(1)(c) did not apply to

his situation because he allegedly committed the acts charged as forcible felonies when he was younger than sixteen.

- b. The court found Duncan was entitled to a transfer hearing pursuant to 803.5. Therefore, the court remanded those counts alleged to have occurred after Duncan turned 14 to allow the district court to resolve the question of transfer after considering the appropriate factors.
- c. With respect to the counts alleged to have occurred when Duncan was under 14 years of age, the court found those offenses cannot be tried in criminal court, no matter Duncan's current age.

6. Deferred Judgments and suspended sentences

- a. 232.8(3)(a)—If child is guilty of a public offense, other than a class “A” felony, the court can grant a deferred judgment, deferred sentence and suspend the sentence without regard to restrictions placed upon deferred judgments or sentences for adults. See also, State v. Greiman, 344 N.W.2d 249, 253 (Iowa 1984).
 - i. Child must be on probation for a period of not less than 1 year.
- b. 901.5(14)—If a defendant, other than a child being prosecuted as a youthful offender, is guilty of a public offense other than a class “A” felony, and was under the age of 18 at the time the offense was committed, the court may suspend the sentence, or defer judgment or sentence, and place the defendant on probation.

7. Length of services and juvenile jurisdiction

- a. §232.8(5)(a)—Juvenile court services may provide follow-up services for a child adjudicated to have committed a delinquent act upon the child reaching 18 years of age until the child is 21, if the child and juvenile court services determine the child should remain under the guidance of a juvenile court officer.
 - i. Seems one could argue the child can agree to this while in adult court, which would continue jurisdiction over the child until 21 regardless of whether she later changes her mind.

8. Definitions:

- a. A child is defined as a person under eighteen years of age. Iowa Code § 232.2(5).
- b. The word juvenile is synonymous with child. Iowa Code § 232.2(29).