

1 **AN ACT** *to repeal* 938.18 (4) (a), 938.18 (5) (d), 938.18 (9), 938.29 (2) and 970.035;
 2 *to renumber* 938.18 (5) (a) and 938.18 (5) (b) and (c); *to renumber and amend*
 3 938.18 (2m), 938.18 (3), 938.18 (4) (b) and (c), 938.18 (5) (intro.), 938.18 (5) (am),
 4 938.18 (6), 938.18 (8) and 938.31 (2); *to amend* 301.03 (10) (g), 757.69 (1) (g) 5.,
 5 757.69 (1m) (f), 938.02 (3m), 938.12 (1), 938.18 (title), 938.18 (1) (intro.), 938.18
 6 (2), 938.183 (1) (b), 938.183 (1m) (c) 1., 938.183 (1m) (c) 2., 938.183 (1m) (c) 3.,
 7 938.185 (1) (intro.), 938.209 (3), 938.31 (2) (title), 938.35 (1m), 938.39, 948.60 (2)
 8 (d), 948.61 (4) and 978.05 (6) (a); and *to create* 938.31 (2) (b) and 938.333 (2) (title)
 9 of the statutes; **relating to:** imposition of adult sentence for certain juveniles.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council’s Special Committee on High–Risk Juvenile Offenders.

Under current law, a juvenile who is alleged to be delinquent or a district attorney may apply to the juvenile court to waive its jurisdiction under the juvenile justice code for any of the following:

1. A juvenile who is alleged to have committed any of the following offenses on or after the juvenile’s 14th birthday: felony murder, second–degree reckless homicide, first– or second–degree sexual assault, taking hostages, kidnapping, armed burglary, armed robbery, robbery of a financial institution, a drug manufacture violation, or a violation at the request of or for the benefit of a criminal gang that would constitute a felony under the criminal code [chs. 939 to 948, stats.], or the uniform controlled substances act [ch. 961, stats.], if committed by an adult.

2. A juvenile who is alleged to have violated any state criminal law on or after the juvenile’s 15th birthday.

The petition for waiver of jurisdiction may be filed by the district attorney or the juvenile. Waiver may also be initiated by the court. The

petition must contain a brief statement of the facts supporting the request for waiver. The petition for waiver of jurisdiction shall be accompanied by or filed after the filing of a petition alleging delinquency and must be filed prior to the juvenile's plea hearing, except when the juvenile denies the facts of the petition and becomes 17 years of age before an adjudication. In this case, the petition for waiver of jurisdiction may be filed at any time prior to the adjudication.

The juvenile court must determine whether the matter has prosecutive merit before proceeding to determine if it should waive jurisdiction. If prosecutive merit is found and the petition for waiver is contested, the juvenile court, after taking relevant testimony presented by the district attorney and considering other relevant evidence, must base its waiver decision on criteria set forth in current law.

After considering the criteria, the juvenile court must state its finding with respect to the criteria on the record. If the court determines on the record that there is clear and convincing evidence that it would be contrary to the best interests of the juvenile or the public for the case to remain in the juvenile court, the court must enter an order waiving jurisdiction and refer the matter to the district attorney for appropriate proceedings in the adult court. The adult court then has exclusive jurisdiction.

The draft replaces the waiver procedure with a procedure permitting a juvenile court to impose an adult sentence on a juvenile. The criteria for imposing an adult sentence are the same as for waiver of juvenile court jurisdiction.

Under the draft, the petition for imposition of an adult court sentence may be filed with the delinquency petition or at any time before the plea hearing. Under the draft, the hearing to determine whether to impose an adult sentence or a juvenile delinquency disposition is made following a plea or a fact-finding hearing.

- 1 **SECTION 1.** 301.03 (10) (g) of the statutes is amended to read:
- 2 301.03 (10) (g) Keep statistics, by race, age and gender, of the number of juveniles over
- 3 whom the court assigned to exercise jurisdiction under chs. 48 and 938 waives its jurisdiction
- 4 under s. 938.18, 2007, stats., or imposes an adult sentence under s. 938.333 as well as the
- 5 nature of the waiver or adult sentence that was ordered and annually report those statistics to
- 6 the governor, and to the appropriate standing committees under s. 13.172 (3).

NOTE: Modifies a requirement that the department of corrections report statistics relating to juvenile waived to adult court to include reporting statistics on juveniles for whom an adult sentence is imposed.

1 **SECTION 2.** 757.69 (1) (g) 5. of the statutes is amended to read:

2 757.69 (1) (g) 5. Conduct uncontested proceedings under s. 48.13, 48.133, 938.12,
3 938.13, or ~~938.18~~ 938.333.

NOTE: Modifies the statute relating to powers of circuit court commissioners.

4 **SECTION 3.** 757.69 (1m) (f) of the statutes is amended to read:

5 757.69 (**1m**) (f) Conduct ~~waiver~~ hearings to impose an adult sentence under s. ~~938.18~~,
6 938.355 except as provided in sub. (1) (g) 5.

NOTE: Modifies current law to provide a circuit court commissioner may not conduct hearings to impose an adult sentence on a juvenile except in uncontested cases, as provided in SECTION 2.

7 **SECTION 4.** 938.02 (3m) of the statutes is amended to read:

8 938.02 (**3m**) “Delinquent” means a juvenile who is 10 years of age or older who has
9 violated any state or federal criminal law, except as provided in ss. 938.17, ~~938.18~~ and
10 938.183, or who has committed a contempt of court, as defined in s. 785.01 (1), as specified
11 in s. 938.355 (6g).

NOTE: Removes reference to juveniles waived into adult court as not being included in the definition of “delinquent”.

12 **SECTION 5.** 938.12 (1) of the statutes is amended to read:

13 938.12 (**1**) IN GENERAL. The court has exclusive jurisdiction, except as provided in ss.
14 ~~938.17, 938.18,~~ and 938.183, over any juvenile 10 years of age or older who is alleged to be
15 delinquent.

NOTE: Provides that the juvenile court has exclusive jurisdiction over a juvenile for whom a petition to impose an adult sentence has been filed under s. 938.18, as amended in this draft.

1 **SECTION 6.** 938.18 (title) of the statutes is amended to read:

2 **938.18 (title) ~~Jurisdiction for criminal proceedings~~ Petition for imposition of adult**
3 **sentence for juveniles 14 or older; waiver hearing.**

4 **SECTION 7.** 938.18 (1) (intro.) of the statutes is amended to read:

5 938.18 (1) ~~WAIVER OF JUVENILE COURT JURISDICTION~~ IMPOSITION OF ADULT SENTENCE;
6 CONDITIONS FOR. Subject to s. 938.183, a petition requesting the court to ~~waive its jurisdiction~~
7 ~~under this chapter~~ impose an adult sentence may be filed if the juvenile meets any of the
8 following conditions:

9 **SECTION 8.** 938.18 (2) of the statutes is amended to read:

10 938.18 (2) PETITION. The petition for ~~waiver of jurisdiction~~ imposition of an adult
11 sentence may be filed by the district attorney or the juvenile or may be initiated by the court
12 and shall contain a brief statement of the facts supporting the request for ~~waiver~~ imposition
13 of an adult sentence. The petition for ~~waiver of jurisdiction~~ imposition of an adult sentence
14 shall be accompanied by or filed after the filing of a petition alleging delinquency and shall
15 be filed prior to the plea hearing, except that if the juvenile denies the facts of the petition and
16 becomes 17 years of age before an adjudication, the petition for ~~waiver of jurisdiction~~
17 imposition of an adult sentence may be filed at any time prior to the adjudication. If the court
18 initiates the petition for ~~waiver of jurisdiction~~ imposition of an adult sentence, the judge shall
19 disqualify himself or herself from any future proceedings on the case.

NOTE: These SECTIONS modify the language in current s. 938.18 (1) and
 (2), stats., relating to waiver of juvenile court jurisdiction to provide
 instead that the juvenile court may impose an adult sentence.

20 **SECTION 9.** 938.18 (2m) of the statutes is renumbered 938.33 (2m) and amended to read:

21 938.33 (2m) ~~AGENCY REPORT~~ IMPOSITION OF ADULT SENTENCE REPORT. ~~The court may~~
22 ~~designate an agency, as defined in s. 938.38 (1) (a), to submit a report analyzing~~ If the juvenile

1 has been adjudicated delinquent for committing a violation of which the court may impose an
2 adult sentence and a petition under s. 938.18 (2) has been filed, the report shall be in writing
3 and in addition to the information specified in sub. (1), shall include an analysis of the criteria
4 specified in sub. (5). The agency shall file the report with the court and the court shall cause
5 copies of the report to be given to the juvenile, any parent, guardian or legal custodian of the
6 juvenile and counsel at least 3 days before the hearing. The court may rely on facts stated in
7 the report in making its findings with respect to the criteria under sub. (5) s. 938.31 (5).

NOTE: Modifies current law under which the juvenile court may designate an agency to submit a report analyzing the criteria for waiver to instead require the agency to analyze the criteria for imposition of an adult sentence. Under the draft, the report must be submitted to the court as one of the reports to the court relating to the juvenile's disposition.

COMMENT: Should this report also include the information required in a report that must be filed recommending a correctional placement or placement in the serious juvenile offender program?

8 **SECTION 10.** 938.18 (3) of the statutes is renumbered 938.333 (2) and amended to read:

9 938.333 (2) RIGHTS OF JUVENILE. All of the following apply at a waiver hearing to
10 impose an adult sentence under this section:

11 (a) The juvenile shall be represented by counsel. Written notice of the time, place, and
12 purpose of the hearing shall be given to the juvenile, any parent, guardian, or legal custodian,
13 and counsel at least 3 days prior to the hearing. ~~The notice shall contain a statement of the~~
14 ~~requirements of s. 938.29 (2) with regard to substitution of the judge. If parents entitled to~~
15 ~~notice have the same address, notice to one constitutes notice to the other. Counsel for the~~
16 ~~juvenile shall have access to the social records and other reports under s. 938.293.~~

NOTE: Sets forth the rights of a juvenile in a hearing to impose an adult sentence.

17 **SECTION 11.** 938.18 (4) (a) of the statutes is repealed.

NOTE: Repeals the provision of the waiver statute under which the court must determine whether the matter has prosecutive merit before proceeding to determine if it should waive jurisdiction.

1 **SECTION 12.** 938.18 (4) (b) and (c) of the statutes are renumbered 938.333 (3) (a) and
2 (b) and amended to read:

3 938.333 (3) (a) If a petition for ~~waiver of jurisdiction~~ imposition of an adult sentence
4 is contested, the district attorney shall present relevant testimony and the court, after taking
5 that testimony and considering other relevant evidence, shall base its decision whether to
6 waive jurisdiction on the criteria specified in sub. (5).

7 (b) If a petition for ~~waiver of jurisdiction~~ imposition of an adult sentence is uncontested,
8 the court shall inquire into the capacity of the juvenile to knowingly, intelligently and
9 voluntarily decide not to contest the ~~waiver of jurisdiction~~ imposition of an adult sentence.
10 If the court is satisfied that the decision not to contest the ~~waiver of jurisdiction~~ imposition of
11 an adult sentence is knowingly, intelligently and voluntarily made, no testimony need be taken
12 and the court, after considering the petition for ~~waiver of jurisdiction~~ imposition of an adult
13 sentence and other relevant evidence in the record before the court, shall base its decision
14 whether to waive jurisdiction on the criteria specified in sub. (5).

NOTE: Modifies the current provisions relating to how the juvenile court must proceed based upon whether a petition for waiver of juvenile court jurisdiction is contested or uncontested to apply the provisions to a motion to impose an adult sentence.

15 **SECTION 13.** 938.18 (5) (intro.) of the statutes is renumbered 938.333 (5) (intro.) and
16 amended to read:

17 938.333 (5) CRITERIA FOR WAIVER IMPOSITION OF ADULT SENTENCE. (intro.) ~~If prosecutive~~
18 ~~merit is found, the~~ The court shall base its decision whether to ~~waive jurisdiction~~ impose an
19 adult sentence on the following criteria:

1 **SECTION 14.** 938.18 (5) (a) of the statutes is renumbered 938.333 (5) (a).

2 **SECTION 15.** 938.18 (5) (am) of the statutes is renumbered 938.333 (5) (am) and
3 amended to read:

4 938.333 (5) (am) The prior record of the juvenile, including whether the court has
5 previously imposed an adult sentence on the juvenile, whether the court has previously waived
6 its jurisdiction over the juvenile under s. 938.18, 2007 stats., whether the juvenile has been
7 previously convicted following a waiver of the court's jurisdiction under s. 938.18, 2007 stats.,
8 or has been previously found delinquent, whether such conviction or delinquency involved
9 the infliction of serious bodily injury, the juvenile's motives and attitudes, and the juvenile's
10 prior offenses.

11 **SECTION 16.** 938.18 (5) (b) and (c) of the statutes are renumbered 938.333 (5) (b) and
12 (c).

NOTE: SECTIONS 13 to 16 provide that the criteria for waiver of juvenile
 court jurisdiction are the criteria for imposition of an adult sentence.

13 **SECTION 17.** 938.18 (5) (d) of the statutes is repealed.

NOTE: Repeals the criteria for waiver of jurisdiction under which the
 court must consider the desirability of trial and disposition of the entire
 offense in one court if the juvenile was allegedly associated in the
 offense with persons who will be charged with a crime in the court of
 criminal jurisdiction.

14 **SECTION 18.** 938.18 (6) of the statutes is renumbered 938.333 (6) and amended to read:

15 938.333 (6) DECISION ON WAIVER IMPOSITION OF ADULT SENTENCE. After considering the
16 criteria under sub. (5), the court shall state its finding with respect to the criteria on the record,
17 and, if the court determines on the record that there is clear and convincing evidence that it
18 is contrary to the best interests of the juvenile or of the public to hear the case impose a juvenile
19 disposition, the court shall ~~enter an order waiving jurisdiction and referring the matter to the~~

1 ~~district attorney for appropriate proceedings in the court of criminal jurisdiction. After the~~
2 ~~order, the court of criminal jurisdiction has exclusive jurisdiction~~ impose an adult sentence
3 under s. 973.01. If the court determines that there is clear and convincing evidence that it is
4 not contrary to the best interests of the juvenile or of the public to impose a juvenile
5 disposition, the court shall enter an order deciding one or more of the dispositions under s.
6 938.34.

NOTE: Permits the juvenile court to impose an adult sentence on a juvenile if the court determines on the record that there is clear and convincing evidence that it is contrary to the best interests of the juvenile or of the public to impose a juvenile disposition. If the court determines that there is clear and convincing evidence that it is not contrary to the best interests of the juvenile or of the public to impose a juvenile disposition, the court must enter an order for a juvenile disposition.

7 **SECTION 19.** 938.18 (8) of the statutes is renumbered 938.333 (8) and amended to read:

8 938.333 (8) ~~TRANSFER TO ADULT FACILITY; BAIL.~~ When ~~waiver is granted~~ an adult
9 sentence is imposed, the juvenile, if held in secure custody, shall be transferred to an
10 appropriate officer or adult facility ~~and shall be eligible for bail in accordance with chs. 968~~
11 ~~and 969.~~

12 **SECTION 20.** 938.18 (9) of the statutes is repealed.

NOTE: Repeals the provision of the waiver statute which provides that, if a waiver request is granted, the district attorney may charge the offense and that any court or jury may convict the juvenile in regard to any offense.

13 **SECTION 21.** 938.183 (1) (b) of the statutes is amended to read:

14 938.183 (1) (b) A juvenile who is alleged to have violated any state criminal law if the
15 juvenile has been convicted of a previous violation following waiver of jurisdiction under s.
16 48.18, 1993 stats., or s. 938.18, 2007 stats., by the court assigned to exercise jurisdiction under
17 this chapter and ch. 48 or if the court assigned to exercise jurisdiction under this chapter and

1 ch. 48 ~~has waived its jurisdiction over the juvenile for a previous violation and criminal~~
2 ~~proceedings on that previous violation are still pending~~ has imposed an adult sentence under
3 s. 938.333.

4 **SECTION 22.** 938.183 (1m) (c) 1. of the statutes is amended to read:

5 938.183 **(1m)** (c) 1. Except as provided in subd. 3., the court of criminal jurisdiction
6 finds that the juvenile has committed a lesser offense or a joined offense that is not a violation
7 of s. 940.20 (1) or (2m) or 946.43 under the circumstances described in sub. (1) (a), that is not
8 an attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that is not
9 a violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am), and that
10 is not an offense for which the court assigned to exercise jurisdiction under this chapter and
11 ch. 48 may ~~wave its jurisdiction over the juvenile under s. 938.18~~ impose an adult sentence
12 under s. 938.333.

13 **SECTION 23.** 938.183 (1m) (c) 2. of the statutes is amended to read:

14 938.183 **(1m)** (c) 2. Except as provided in subd. 3., the court of criminal jurisdiction
15 finds that the juvenile has committed a lesser offense or a joined offense that is a violation of
16 s. 940.20 (1) or (2m) or 946.43 under the circumstances described in sub. (1) (a), that is an
17 attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that is a
18 violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am), or that is
19 an offense for which the court assigned to exercise jurisdiction under this chapter and ch. 48
20 may ~~wave its jurisdiction over the juvenile~~ impose an adult sentence under s. 938.18 938.333
21 and the court of criminal jurisdiction, after considering the criteria specified in s. 938.18
22 938.333 (5), determines that the juvenile has proved by clear and convincing evidence that it
23 would be in the best interests of the juvenile and of the public to adjudge the juvenile to be
24 delinquent and impose a disposition specified in s. 938.34.

1 **SECTION 24.** 938.183 (1m) (c) 3. of the statutes is amended to read:

2 938.183 **(1m)** (c) 3. For a juvenile who is alleged to have attempted or committed a
3 violation of s. 940.01 or to have committed a violation of s. 940.02 or 940.05 on or after the
4 juvenile's 15th birthday, the court of criminal jurisdiction finds that the juvenile has not
5 attempted to commit a violation of s. 940.01 or committed a violation of s. 940.01, 940.02,
6 or 940.05, and the court of criminal jurisdiction, after considering the criteria under s. ~~938.18~~
7 938.333 (5), determines that the juvenile has proved by clear and convincing evidence that it
8 would be in the best interests of the juvenile and of the public to adjudge the juvenile to be
9 delinquent and impose a disposition under s. 938.34.

10 **SECTION 25.** 938.185 (1) (intro.) of the statutes is amended to read:

11 938.185 **(1)** PROCEEDINGS GENERALLY. (intro.) Subject to subs. (3) and (4), venue for
12 any proceeding under ss. 938.12, 938.125, 938.13, and 938.135, ~~and 938.18~~ may be in any of
13 the following:

NOTE: These SECTIONS modify provisions relating to original adult court
jurisdiction.

14 **SECTION 26.** 938.209 (3) of the statutes is amended to read:

15 938.209 **(3)** JUVENILES UNDER ADULT COURT JURISDICTION. The restrictions of this section
16 do not apply to the use of jail for a juvenile ~~who has been waived to adult court under s. 938.18~~
17 ~~or~~ who is under the jurisdiction of an adult court under s. 938.183, unless the juvenile is under
18 the jurisdiction of an adult court under s. 938.183 (1) and is under 15 years of age.

19 **SECTION 27.** 938.29 (2) of the statutes is repealed.

NOTE: Repeals current law relating to substitution of a judge for a
waiver hearing.

20 **SECTION 28.** 938.31 (2) (title) of the statutes is amended to read:

21 938.31 **(2)** (title) ~~HEARING TO THE COURT; PROCEDURES~~ PROCEDURES.

1 **SECTION 29.** 938.31 (2) of the statutes is renumbered 938.31 (2) (a) and amended to
2 read:

3 938.31 (2) (a) HEARING TO THE COURT; PROCEDURES. ~~The~~ Except as provided in par. (b),
4 the hearing shall be to the court.

5 (c) If the hearing involves a child victim, as defined in s. 938.02 (20m) (a) 1., or a child
6 witness, as defined in s. 950.02 (5), the court may order that a deposition be taken by
7 audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to (10) and,
8 with the district attorney, shall comply with s. 971.105.

9 (d) At the conclusion of the hearing, the court shall make a determination of the facts.
10 If the court finds that the juvenile is not within the jurisdiction of the court or the court finds
11 that the facts alleged in the petition or citation have not been proved, the court shall dismiss
12 the petition or citation with prejudice.

13 **SECTION 30.** 938.31 (2) (b) of the statutes is created to read:

14 938.31 (2) (b) *Hearing to impose adult sentence.* If a petition for imposition of an adult
15 sentence under s. 938.18 was timely filed, the juvenile shall have a right to a trial by jury.

NOTE: Provides that a juvenile has a right to a jury trial in a fact-finding
 hearing on a delinquency petition if a petition for imposition of an adult
 sentence was filed.

16 **SECTION 31.** 938.333 (2) (title) of the statutes is created to read:

17 938.333 (2) (title) CONTESTED OR UNCONTESTED PETITION.

18 **SECTION 32.** 938.35 (1m) of the statutes is amended to read:

19 938.35 (1m) FUTURE CRIMINAL PROCEEDINGS BARRED. Disposition by the court assigned
20 to exercise jurisdiction under this chapter and ch. 48 of any allegation under s. 938.12 or
21 938.13 (12) shall bar any future proceeding on the same matter in criminal court when the

1 juvenile attains 17 years of age. ~~This paragraph does not affect proceedings in criminal court~~
2 ~~that have been transferred under s. 938.18.~~

NOTE: Repeals language providing that future criminal proceedings following a juvenile court disposition are not barred in proceedings that have been transferred to the adult court following a waiver of juvenile court jurisdiction.

3 **SECTION 33.** 938.39 of the statutes is amended to read:

4 **938.39 Disposition by court bars criminal proceeding.** Disposition by the court of
5 any violation of state law within its jurisdiction under s. 938.12 bars any future criminal
6 proceeding on the same matter in circuit court when the juvenile reaches the age of 17. ~~This~~
7 ~~section does not affect criminal proceedings in circuit court that were transferred under s.~~
8 ~~938.18.~~

NOTE: Repeals language providing that future criminal proceedings following a juvenile court disposition are not barred in proceedings that have been transferred to the adult court following a waiver of juvenile court jurisdiction.

9 **SECTION 34.** 948.60 (2) (d) of the statutes is amended to read:

10 948.60 (2) (d) A person under 17 years of age who has violated this subsection is subject
11 to the provisions of ch. 938 unless ~~jurisdiction is waived under s. 938.18~~ or the person is
12 subject to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

NOTE: Modifies the current offense of possession of a dangerous weapon by a person under 18 to remove the reference to juveniles over whom juvenile court jurisdiction has been waived.

13 **SECTION 35.** 948.61 (4) of the statutes is amended to read:

14 948.61 (4) A person under 17 years of age who has violated this section is subject to
15 the provisions of ch. 938, unless ~~jurisdiction is waived under s. 938.18~~ or the person is subject
16 to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

