

# LC Staff Brief

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## High-Risk Juvenile Offenders



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# CONTENTS

<b>INTRODUCTION .....</b>	<b>1</b>
<b>PART I Juvenile Delinquency Proceedings and Correctional Placements.....</b>	<b>3</b>
<i>Delinquency Proceedings Background.....</i>	3
<i>Commitment to DOC .....</i>	4
Placement in a Juvenile Correctional Facility .....	4
Serious Juvenile Offender Program.....	5
Corrective Sanctions.....	6
Aftercare Supervision.....	7
Characteristics of Juveniles Committed to DOC .....	8
<b>PART II Adult Criminal Court Jurisdiction Over Juveniles .....</b>	<b>9</b>
<i>Original Adult Court Jurisdiction.....</i>	9
Juveniles Over Whom the Adult Court Has Original Jurisdiction.....	9
Reverse Waiver .....	10
Penalties for Juveniles Convicted in Adult Court .....	10
Secure Placement .....	11
<i>Waiver of Juveniles Into Adult Court .....</i>	11
Who May Initiate; Offenses for Which a Juvenile May Be Waived.....	11
Petition for Waiver .....	12
Reports Required.....	12
Waiver Hearing .....	12
<b>PART III Funding Juvenile Delinquency-Related Services .....</b>	<b>15</b>
<i>Background.....</i>	15
<i>Youth Aids Funding .....</i>	15
<i>County Payment for Correctional Placements.....</i>	17
<i>Percentage of Costs Youth Aids Provides to Counties.....</i>	19
<i>Appendix 1 – Commitments of Juveniles to DOC, 2007.....</i>	21
<i>Appendix 2 – Offenses for Which the Adult Court Has Jurisdiction Over Juveniles.....</i>	23
<i>Appendix 3 – Youth Aids Formula – Initial Calendar Year 2007 Allocations         (GPR Funds Except as Indicated) .....</i>	25



# High-Risk Juvenile Offenders

## INTRODUCTION

This Staff Brief provides information on current law relating to options for more serious juvenile offenders.

- **Part I** provides a brief overview of juvenile delinquency proceedings and describes current law relating to placement of juveniles in juvenile correctional facilities or otherwise under the supervision of the Department of Corrections (DOC).
- **Part II** describes current law relating to adult court jurisdiction over certain juvenile offenders.
- **Part III** describes state funding of juvenile delinquency-related costs.

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# PART I

## JUVENILE DELIQUENCY PROCEEDINGS AND CORRECTIONAL PLACEMENTS

1995 Wisconsin Act 77 created the Juvenile Justice Code. [ch. 938, Stats.] This chapter governs delinquent juveniles and juveniles in need of protection or services (e.g., truants and runaways). Prior to 1995, these juveniles were subject to the provisions of the Children's Code. [ch. 48, Stats.]

### Delinquency Proceedings Background

A delinquent juvenile is a juvenile who is between 10 and 17 years of age and who has violated any state or federal criminal law. [See s. 938.02 (3m) and (10m), Stats.]

A juvenile who is adjudicated, or found by the juvenile court<sup>1</sup> to be, delinquent is subject to a variety of consequences. These consequences are called dispositions under the code. Dispositions for a juvenile who is found delinquent include the following:

- Placement in the Serious Juvenile Offender Program if the juvenile has been found to have committed a serious felony.
- Placement in a juvenile correctional facility if the juvenile is found to be delinquent for the commission of an act which, if committed by an adult, would be punishable by a sentence of six months or more and is found to be a danger to the public and in need of restrictive custodial treatment.
- Transfer of the juvenile's legal custody to a relative, a county department of health or social services, or a licensed child welfare agency.
- Payment of restitution or forfeiture.
- Community service.
- Alcohol or drug treatment or education.
- Restriction on driving privileges.
- Victim-offender mediation.
- Special treatment or care, including medical, psychological or psychiatric treatment, or alcohol or other drug abuse treatment.

[s. 938.34, Stats.]

When a court orders a disposition for a juvenile who is found to be delinquent, the order is called a dispositional order. A dispositional order that continues placement of the juvenile in his or her home remains in effect for one year and may be extended up to an additional year. In general, an order placing a juvenile in a juvenile correctional facility may apply for up to two years or until the juvenile's 18<sup>th</sup> birthday, whichever is earlier. Dispositional orders otherwise placing a juvenile outside of his or her home typically terminate when the juvenile becomes 18 or after one year, whichever is later. For a juvenile who is placed in the Serious Juvenile Offender Program, however, the dispositional order remains in effect for five years, if the juvenile committed a Class B felony, or until the juvenile reaches 25 years of age, if the juvenile committed a Class A felony. [s. 938.355 (4), Stats.]

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<sup>1</sup> The juvenile court is the court authorized to exercise jurisdiction under chs. 48 and 938, Stats.

A juvenile may be under the original jurisdiction of adult court or may be waived by the juvenile court to adult court. [s. 938.183, Stats.] If the adult court has original jurisdiction over a juvenile, the juvenile's case **begins** in adult court. [s. 938.18, Stats.] These provisions are described in Part II.

## Commitment to DOC

The juvenile court may order that a juvenile who has been adjudicated delinquent be placed in a juvenile correctional facility or in the Serious Juvenile Offender Program. DOC may place these juveniles in the Corrective Sanctions Program or on aftercare supervision. [See ss. 938.359 (4m) and 938.533 (2), Stats.]

**Appendix 1** lists each county and the number of juveniles committed to DOC from each county in 2007.

### Placement in a Juvenile Correctional Facility

A juvenile who is adjudicated delinquent may be placed in a juvenile correctional facility or a secured residential care center for children and youth<sup>2</sup> under the supervision of DOC if all of the following apply:

1. The juvenile has been found to be delinquent for the commission of an act that would be punishable by a sentence of six months or more if committed by an adult (in general, a Class A misdemeanor or a felony).
2. The juvenile has been found to be a danger to the public and to be in need of restrictive custodial placement. If the court determines that any of the following conditions apply, but that placement in the Serious Juvenile Offender Program as described below is not appropriate, this determination is *prima facie* (sufficient) evidence that the juvenile meets this criterion:
  - The juvenile has committed a delinquent act that would be one of the following felonies, if committed by an adult: first- or second-degree intentional homicide; first-degree reckless homicide; felony murder; felony battery; mayhem; first-degree sexual assault; kidnapping; endangering safety by intentionally discharging a firearm from a vehicle or in a parking lot at or toward another or at or toward a building; arson or damage of property by explosives; carjacking; armed robbery; felony harassment; first- or second-degree sexual assault of a child; engaging in repeated acts of sexual assault of the same child; physical abuse of a child; or sexual contact or intercourse with a child who is placed in certain facilities if the actor works or volunteers at the facility or is directly or indirectly responsible for managing it.
  - The juvenile has possessed, used, or threatened to use a handgun, short-barreled rifle, or short-barreled shotgun while committing a delinquent act that would be a felony under ch. 940, Stats. (Crimes Against Life and Bodily Security), if committed by an adult.
  - The juvenile has possessed or gone armed with a short-barreled rifle or short-barreled shotgun, which is a Class H felony, or has possessed or gone armed with a handgun which, for a minor, is a Class A misdemeanor.

[s. 938.34 (4m), Stats.]

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<sup>2</sup> Currently, there are no secure residential care centers for children and youth.



In the statutes, juvenile correctional facilities are referred to as “Type I juvenile correctional facilities.” Currently, there are three main Type I juvenile correctional facilities: Ethan Allen School in Wales; Lincoln Hills School in Irma; and Southern Oaks Girls School in Union Grove. The operating capacity and population for each of the facilities, as of June 20, 2008, is as follows:

<b>Juvenile Correctional Facility</b>	<b>Operating Capacity</b>	<b>Total Population (June 20, 2008)</b>
Ethan Allen School	342	256
Lincoln Hills School	298	236
Southern Oaks Girls School	57	66

Source: Wisconsin DOC, *Offenders Under Control on June 20, 2008*.

DOC may also transfer male juveniles with mental health needs from Ethan Allen School or Lincoln Hills School to the Mendota Juvenile Treatment Center, which is also a Type I juvenile correctional facility. The center has an operating capacity of 43. According to DOC, as of June 20, 2008, the population at the center was 29.

### Serious Juvenile Offender Program

A juvenile who is adjudicated delinquent may be placed in the Serious Juvenile Offender Program only if all of the following conditions apply:

1. The juvenile is 14 years of age or over and has been adjudicated delinquent for committing or conspiring to commit one of the following violations: attempting to commit a Class B felony; felony murder; second-degree reckless homicide; mayhem; first-degree sexual assault; taking hostages; kidnapping; tampering with household products and causing death; arson or damage of property by explosives; armed burglary, burglary and battery to a person present, or burglary of a dwelling while the occupant is present; carjacking; armed robbery; first-degree sexual assault of a child; engaging in repeated acts of first-degree sexual assault of a child; child abduction by use or threat of force; or attempted armed robbery **or** the juvenile is 10 years of age or over and has been adjudicated delinquent for attempting or committing first-degree intentional homicide or for committing first-degree reckless homicide or second-degree intentional homicide.
2. The court finds that the only other disposition appropriate for the juvenile is placement in a juvenile correctional facility, as described above.

[s. 938.34 (4h), Stats.]

Current statutes provide that DOC must design the Serious Juvenile Offender Program to provide all of the following:

1. Component phases that are intensive and highly structured.
2. A series of component phases for each participant that is based on public safety considerations and the participant’s need for supervision, care, and rehabilitation.

DOC is required to provide each participant with one or more of the following sanctions:

1. Placement in a juvenile correctional facility or a secured residential care center for children and youth for a period of not more than three years **except that** if the participant has been adjudicated delinquent for committing an act that would be a Class A felony if committed by an adult, placement in such a facility until the participant reaches 25 years of age, unless the participant is released sooner, subject to a mandatory minimum period of confinement of not less than one year.

2. Alternate care, including placement in a foster home, treatment foster home, group home, residential care center for children and youth, or secured residential care center for children and youth.<sup>3</sup>
3. Intensive or other field supervision, including corrective sanctions supervision or aftercare supervision, described below.
4. Electronic monitoring.
5. Alcohol or other drug abuse outpatient treatment and services.
6. Mental health treatment and services.
7. Community service.
8. Transitional services for education and employment.
9. Other programs as prescribed by DOC.

DOC may provide the above sanctions in any order, may provide more than one sanction at a time, and may return to a sanction that was used previously for a participant.

While a juvenile is in the Serious Juvenile Offender Program, he or she is under the supervision and control of DOC, subject to the rules and discipline of DOC, and considered to be in custody. If a Serious Juvenile Offender Program participant violates a condition of his or her participation in the program while he or she is not placed in a juvenile correctional facility, DOC may, without a hearing, take the participant into custody and return him or her to placement in a juvenile correctional facility. This custody status is referred to in the statutes as placement in a “Type 2 juvenile correctional facility.”

The DOC Office of Juvenile Offender Review<sup>4</sup> may release a participant to aftercare supervision at any time after the participant has completed two years of participation in the Serious Juvenile Offender Program. Aftercare supervision must be provided by DOC. DOC may discharge a participant from participation in the Serious Juvenile Offender Program and from departmental supervision and control at any time after he or she has completed three years in the Serious Juvenile Offender Program. [s. 938.538, Stats.]

The following table sets forth the numbers of juveniles placed in the Serious Juvenile Offender Program from 2002 to 2006 based upon whether adjudicated delinquent for a Class A or Class B felony:

**Serious Juvenile Offender Participants, 2002-2006**

	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
For a Class A Felony	0	0	1	0	0
For a Class B Felony	5	42	58	64	45

Source: Wisconsin DOC, Juvenile Corrections, *Characteristics of Juvenile Commitments (2007)*.

**Corrective Sanctions**

Under current law, the DOC Office of Juvenile Offender Review is required to evaluate and select juveniles who have been placed in a juvenile correctional facility or in the Serious Juvenile Offender Program to participate in the Corrective Sanctions Program. DOC must place a corrective

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<sup>3</sup> These facilities or homes are licensed by the Department of Children and Families. Prior to July 1, 2008, the facilities were licensed by the Department of Health and Family Services.

<sup>4</sup> The Office of Juvenile Offender Review or OJOR has the authority to make decisions relating to juveniles placed in Type I correctional facilities, including decisions relating to release from a facility or from DOC supervision and administrative transfer of juveniles.

sanctions participant in the community, provide intensive surveillance of that participant, and provide an average of not more than \$3,000 per year per slot to purchase community-based treatment services for each participant. DOC is required to make intensive surveillance available 24 hours per day, seven days per week, and must provide electronic monitoring of participants.

DOC must provide a report center in Milwaukee County to provide on-site programming after school and in the evening for juveniles from Milwaukee County who are placed in the Corrective Sanctions Program. A contact worker providing services under the program must have a case load of approximately 10 juveniles and during the initial phase of placement in the community under the program of a juvenile who is assigned to that contact worker, must have at least one face-to-face contact per day with that juvenile. Case management services under the program must be provided by a corrective sanctions agent who must have a case load of approximately 15 juveniles.

As for the Serious Juvenile Offender Program, while a juvenile is in the Corrective Sanctions Program, he or she is under the supervision and control of DOC, is subject to the rules and discipline of DOC, and is considered to be in custody. If a Corrective Sanctions Program participant violates a condition of his or her participation in the program, DOC may, without a hearing, place the juvenile in a juvenile detention facility or return the juvenile to placement in a juvenile correctional facility. [s. 938.533, Stats.]

As of June 20, 2008, there were 136 participants in the Corrective Sanctions Program—125 males and 12 females. [Wisconsin DOC, *Offenders Under Control on June 20, 2008*.]

### Aftercare Supervision

For a juvenile who is placed in a juvenile correctional facility, the juvenile court must designate DOC or the county department of human or social services (hereinafter, “county department”) in the county of the court that placed the juvenile in the correctional facility or the juvenile’s county of legal residence to provide aftercare supervision of the juvenile once he or she is released from the juvenile correctional facility. This designation is subject to any agreement between DOC and a county department regarding the provision of aftercare supervision. [s. 938.34 (4n), Stats.] According to DOC, 24 counties contract with DOC to provide aftercare supervision; 48 counties directly provide aftercare supervision. [Wisconsin DOC, Juvenile Corrections, *Community Supervision Programs*.]

Whoever is designated by the juvenile court to provide aftercare supervision of the juvenile must prepare an aftercare plan. This plan must include all of the following:

- A minimum number of supervisory contacts per week.
- The conditions, if any, under which the juvenile’s aftercare status may be revoked.
- Services or programming to be provided to the juvenile while on aftercare.
- The estimated length of time that aftercare supervision and services must be provided to the juvenile.

[s. 938.357 (4g), Stats.]

DOC must try to release a juvenile to aftercare supervision within 30 days after the date DOC determines that the juvenile is eligible for this release. [s. 938.357 (4m), Stats.]

DOC or the county department providing aftercare supervision of the juvenile may revoke the aftercare status of that juvenile. The juvenile may be taken into temporary custody. The juvenile is entitled to representation by counsel at all stages of the revocation proceeding. A hearing on the revocation must be conducted by the Division of Hearings and Appeals in the Department of Administration within 30 days after the juvenile is taken into custody for an alleged violation of a condition of the juvenile’s aftercare supervision. This time limit may be waived only when there is agreement of the aftercare provider, the juvenile, and the juvenile’s counsel.

If the hearing examiner finds that the juvenile has violated a condition of his or her aftercare supervision, the hearing examiner must determine whether confinement in a juvenile correctional facility is necessary to protect the public, to provide for the juvenile's rehabilitation, or to not depreciate the seriousness of the violation. Review of the decision is by *certiorari* to the court that placed the juvenile in the juvenile correctional facility. [s. 938.357 (5), Stats.]

### Characteristics of Juveniles Committed to DOC

The following three tables set forth the numbers of juveniles committed to DOC each year from 2003 to 2007 based upon gender, racial affiliation, and age.

#### *Commitments to DOC by Gender, 2003-2007*

<b>Sex</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Male	541	566	468	479	470
Female	67	66	75	61	69
<b>Total</b>	<b>608</b>	<b>632</b>	<b>543</b>	<b>540</b>	<b>539</b>

Source: Wisconsin DOC, Juvenile Corrections, *Characteristics of Division of Juvenile Corrections Commitments (2007)*.

#### *Commitments to DOC by Racial Affiliation, 2003-2007*

<b>Race</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Asian/Pacific Islander	13	11	18	7	7
Black	297	316	243	275	319
North American Indian	32	23	29	16	23
White	251	281	252	240	183
Unknown	15	1	1	2	7
<b>Total</b>	<b>608</b>	<b>632</b>	<b>543</b>	<b>540</b>	<b>539</b>

Source: *Id.*

#### *Commitments to DOC by Age, 2003-2007*

<b>Age at Admission</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
12	3	3	2	1	2
13	35	28	9	23	18
14	109	106	78	71	77
15	187	199	168	156	141
16	219	240	225	221	222
17	54	56	61	67	78
18	1	0	0	1	1
<b>Total</b>	<b>608</b>	<b>632</b>	<b>543</b>	<b>540</b>	<b>539</b>

## PART II

# ADULT CRIMINAL COURT JURISDICTION OVER JUVENILES

Under current law, a juvenile may be under the original jurisdiction of the adult court or may be waived by the juvenile court to the adult court. If the adult court has original jurisdiction over a juvenile, the juvenile's case begins in the adult court.

**Appendix 2** contains a table setting forth the offenses over which the adult court has jurisdiction, either original or following a waiver, and the minimum age a juvenile must have attained in order to be subject to adult court jurisdiction.

## Original Adult Court Jurisdiction

### Juveniles Over Whom the Adult Court Has Original Jurisdiction

Under current law, the adult court has original jurisdiction over the following juveniles:

1. A juvenile who has been previously adjudicated delinquent and who is alleged to have committed battery or assault while placed in a juvenile correctional facility, detention facility, or secured residential care center for children and youth or to have committed battery to a probation and parole agent or to an aftercare agent.
2. A juvenile who is alleged to have attempted or committed first-degree intentional homicide or to have committed first-degree reckless homicide or second-degree intentional homicide on or after the juvenile's 10th birthday.
3. A juvenile who is alleged to have violated any state criminal law under one of the following circumstances:
  - a. The juvenile has been convicted of a previous violation in adult court following a waiver of juvenile court jurisdiction.
  - b. The juvenile court has waived its jurisdiction over a juvenile for a previous violation and the criminal proceedings for that violation are still pending.
  - c. The juvenile has been convicted of a previous violation over which the adult court had original jurisdiction.
  - d. Proceedings for a violation over which the adult court has original jurisdiction are still pending.<sup>5</sup>

Under current law, the adult court also has original jurisdiction over any violation of the Wisconsin Criminal Code that may be charged in the same complaint, or "joined," with a violation over which the adult court already has original jurisdiction, as described above. [s. 938.183 (1), Stats.] Under s. 971.12 (1), Stats., two or more crimes may be charged in the same complaint if the crimes charged are: (1) of the same or similar character; (2) based on the same act or transaction; or (3) based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

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<sup>5</sup> This ground for original adult court jurisdiction is commonly referred to as "once waived, always waived."

## Reverse Waiver

Under current law, if certain conditions are met, a juvenile over whom the adult court has original jurisdiction may be “reverse waived” to the juvenile court.

If a juvenile is under the original jurisdiction of the adult court for committing a felony and a preliminary examination is held, the court must first determine whether there is probable cause to believe that the juvenile committed the violation of which he or she is accused under the circumstances required for the adult court to have original jurisdiction. If the court does not make that finding, the court must order that the juvenile be discharged when this happens, but proceedings may still be brought under the Juvenile Justice Code.

If the court finds probable cause that the juvenile committed the offense under the required circumstances, the court must determine whether to retain jurisdiction or to transfer jurisdiction to the juvenile court. The court must retain jurisdiction unless the juvenile proves by a preponderance of the evidence all of the following:

1. That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system.
2. That transferring jurisdiction to the juvenile court would not depreciate the seriousness of the offense.
3. That retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the violation of which the child is accused under the circumstances required for the adult court to have original jurisdiction.

[s. 970.032, Stats.]

If the adult court transfers jurisdiction to the juvenile court, the juvenile is then subject to the procedures and dispositions in the Juvenile Justice Code. [s. 938.183 (1m) (b), Stats.]

A juvenile who is under the original jurisdiction of the adult court for allegedly committing a misdemeanor may petition the court to transfer its jurisdiction to the juvenile court. Unless the juvenile proves by a preponderance of the evidence that the criteria in items 1. to 3., above, are met, the adult court must retain its jurisdiction. [s. 971.31 (13), Stats.]

## Penalties for Juveniles Convicted in Adult Court

Under current law, a juvenile under an adult court’s original jurisdiction is subject to adult criminal procedures and the criminal penalties provided for the crime committed, with certain exceptions. Specifically, if a juvenile is alleged to have committed battery or assault while placed in a specified facility, battery to a probation and parole agent or to an aftercare agent, or homicide on or after his or her 10th birthday but before his or her 15th birthday, the adult court must, in lieu of convicting the juvenile, adjudicate the juvenile delinquent and impose a juvenile disposition if any of the following conditions apply:

1. The adult court finds that the juvenile has committed a lesser offense than the one alleged or has committed only an offense that was joined in the complaint to an offense over which the adult court has jurisdiction and the offense the juvenile is found to have committed is **not** one of the following offenses:
  - a. Battery or assault while placed in a secured correctional facility, a secure detention facility or a secured child caring institution or battery to a probation and parole agent or to an aftercare agent.
  - b. Attempted first-degree intentional homicide.
  - c. First-degree reckless homicide or second-degree intentional homicide.

- d. An offense for which the juvenile court may waive its jurisdiction, as described below.
2. The adult court finds that the juvenile has committed a lesser or a joined offense, as described above, that *is* a violation described in items a. to d., above, and the adult court, after considering the criteria for waiver to adult court (see below), determines that the juvenile has proved by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to adjudge the juvenile delinquent and impose a juvenile disposition.

If a juvenile who is alleged to have committed homicide, as described above, on or after the juvenile's 15th birthday, or homicide and any crimes joined in the complaint, is found to have committed a lesser offense than the offense alleged by the state or to have committed only a joined offense, the adult court must, in lieu of convicting the juvenile, adjudicate the juvenile delinquent and impose a juvenile disposition if, after considering the criteria for waiver to adult court, the court determines that the juvenile has proved by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to adjudicate the juvenile delinquent and impose a juvenile disposition. [s. 938.183 (1m) (c), Stats.]

### Secure Placement

Under current law, a juvenile who is under 15 years of age who is under the original jurisdiction of the adult court may be held in secure custody only in a secure detention facility or in the juvenile portion of a county jail. [s. 938.183 (1m) (b), Stats.]

DOC must generally place a juvenile who is sentenced to prison and who is under 16 years of age in a juvenile correctional facility, unless DOC determines that placement in an adult prison is appropriate based on the juvenile's prior record of adjustment in a correctional setting, if any; the juvenile's present and potential vocational and educational needs, interests, and abilities; the adequacy and suitability of available facilities; the services and procedures available for treatment of the person within the various institutions. [s. 302.18 (7) or 973.013 (3m), Stats.] DOC must also consider the following factors regarding a transfer to an adult prison:

1. The extent to which the juvenile's conduct in an institution is violent and disruptive.
2. The security needs of the institution.
3. The extent to which the juvenile is refusing to participate in the treatment programs provided for the juvenile in the institution.
4. The maturity of the juvenile, the extent to which the program needs of the juvenile can be met in an adult institution, and the extent to which the juvenile may be vulnerable in an older population in an adult institution.

[s. DOC 371.11 (3), Wis. Adm. Code.]

## Waiver of Juveniles Into Adult Court

### Who May Initiate; Offenses for Which a Juvenile May Be Waived

Under current law, a juvenile who is alleged to be delinquent or a district attorney (DA) 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 juvenile court judge may also initiate a petition for waiver under any of the above situations if the judge disqualifies himself or herself from any future proceedings in the case. [s. 938.18 (1), Stats.]

### Petition for Waiver

The petition for waiver of jurisdiction may be filed by the DA 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. [s. 938.18 (2), Stats.]

### Reports Required

The juvenile court may designate DOC, a county department, or a licensed child welfare agency to submit a report analyzing the criteria, described below, upon which the decision to waive jurisdiction must be based. DOC, the county department, or the licensed child welfare agency must file the report with the juvenile court and the court must distribute copies of the report to the juvenile, any parent, guardian, or legal custodian of the juvenile and counsel at least three days before the hearing. The court may rely on facts stated in the report in making its findings with respect to the criteria upon which the decision to waive jurisdiction must be based. [s. 938.18 (2m), Stats.]

### Waiver Hearing

A juvenile subject to a waiver proceeding must be represented by counsel. Written notice of the time, place, and purpose of the hearing must be given to the juvenile, any parent, guardian, or legal custodian, and counsel at least three days prior to the hearing.

The juvenile has the right to present testimony on his or her own behalf, including expert testimony and has the right to cross-examine witnesses. Juveniles do not have the right to a jury. [s. 938.18 (3), Stats.]

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 DA and considering other relevant evidence, must base its decision on the following criteria:

1. The personality, including all of the following:
  - a. Whether the juvenile is mentally ill or developmentally disabled.
  - b. The juvenile's physical and mental maturity.
  - c. The juvenile's pattern of living, prior offenses, prior treatment history, and apparent potential for responding to future treatment.
2. The prior record of the juvenile, including all of the following:
  - a. Whether the court has previously waived its jurisdiction over the juvenile.
  - b. Whether the juvenile has been previously convicted following a waiver of the court's jurisdiction or has been previously found delinquent.



- c. Whether any prior conviction or delinquency involved the infliction of serious bodily injury.
  - d. The juvenile's motives and attitudes.
  - e. The juvenile's prior offenses.
3. The type and seriousness of the offense, including both of the following:
    - a. Whether it was against persons or property.
    - b. The extent to which it was committed in a violent, aggressive, premeditated, or willful manner.
  4. The adequacy and suitability of facilities, services, and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system and, where applicable, the mental health system and the suitability of the juvenile for placement in the Serious Juvenile Offender Program or the Adult Intensive Sanctions Program.<sup>6</sup>
  5. 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 adult court.

[s. 938.18 (4) (a) and (b) and (5), Stats.]

If the petition for waiver is uncontested, the juvenile court must inquire into the capacity of the juvenile to knowingly, intelligently, and voluntarily decide not to contest the waiver of jurisdiction. If the court is satisfied that the decision to not contest the waiver of jurisdiction is knowingly, intelligently, and voluntarily made, no testimony need be taken. The court, after considering the petition for waiver of jurisdiction and other relevant evidence in the record presented to it, must base its decision whether to waive jurisdiction on the criteria set forth in items 1. to 5., above. [s. 938.18 (4) (c), Stats.]

After considering the criteria upon which the court must base its decision whether to waive jurisdiction, 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 DA for appropriate proceedings in the adult court. The adult court thereafter has exclusive jurisdiction. [s. 938.18 (6), Stats.]

If the juvenile does not appear at the waiver hearing, the juvenile court may proceed with the waiver hearing in the juvenile's absence. If the waiver is granted, the juvenile may contest that waiver when the juvenile is apprehended by showing the adult court good cause for his or her failure to appear. If the adult court finds good cause for the juvenile's failure to appear, that court must transfer its jurisdiction to the juvenile court for the purpose of holding another waiver hearing. [s. 938.18 (7), Stats.]

When waiver is granted, juveniles held in secure custody must be transferred to an appropriate officer or adult facility and is eligible for bail in accordance with criminal procedure under chs. 968 and 969, Stats. Also, if waiver is granted, the charge upon which the waiver was based does not restrict the authority of the DA to charge the offense he or she deems is appropriate, nor does it restrict the authority of any court or jury to convict the juvenile in respect to any offense. [s. 938.18 (8) and (9), Stats.]

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<sup>6</sup> This program provides intensive supervision of felons and focuses on felons convicted of nonviolent offenses who would ordinarily have been incarcerated in a state prison. [See s. 301.048, Stats., and Wisconsin DOC, Community Corrections, *Overview*.]



## PART III

### FUNDING JUVENILE DELINQUENCY-RELATED SERVICES

This part provides an overview of how juvenile delinquency-related services are funded in Wisconsin. A county or the state may be responsible for the costs of a juvenile's correctional placement based upon a juvenile's status as an adult or juvenile offender and the juvenile's court-ordered placement. This differs from adult corrections, for which the majority of correctional services and incarceration costs are funded by the state.

#### Background

Before 1979, all juvenile correctional services were funded by the state. Counties funded delinquency-related services provided in the community. These community-based services generally related to child welfare, mental illness, and disability services. Counties used the Community Aids block grant from the Department of Health Services (DHS – known as the Department of Health and Family Services prior to July 1, 2008) to fund these services.<sup>7</sup> Concerns were raised that this funding arrangement gave counties an incentive to place more delinquents in state correctional facilities because the state paid for these juvenile correctional services. During that period, state correctional facilities became overcrowded and it was thought that more juveniles could be maintained safely in the community. [Wisconsin DOC, *Cost-Effectiveness of Juvenile Correctional Institutions: Analysis and Options*, p. 5 (March 2007) (DOC Paper).]

In 1979, the Wisconsin Legislature enacted legislation requiring that counties pay for a share of juvenile correctional services. This approach was piloted in 1980 in 10 counties and implemented statewide in 1981. Currently, counties are financially responsible for the majority of delinquency-related services provided, even if they are provided for by the state in a juvenile correctional facility. The state is directly financially responsible for funding correctional services for the following juveniles:

- Juveniles adjudicated as a serious juvenile offender.
- Juveniles under the original jurisdiction of or waived into adult court and sentenced to state prison, but placed by DOC at a juvenile facility.
- Correctional or aftercare services for juveniles adjudicated as violent offenders for certain offenses committed prior to July 1, 1996.<sup>8</sup>
- Juveniles under extended jurisdiction orders prior to July 1, 1996.<sup>8</sup>

[Legislative Fiscal Bureau (LFB), Informational Paper No. 58, *Juvenile Justice and Youth Aids Programs*, p. 27 (January 2007) (LFB Paper).]

#### Youth Aids Funding

In 1979, the state created the Community Youth and Family Aids Program (Youth Aids), which provides an annual allocation of state and federal funds to each county for the provision of delinquency-

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<sup>7</sup> Community Aids are state and federal funds that are distributed to counties for the provision of a range of human services. [s. 20.435 (7), Stats.]

<sup>8</sup> These juveniles were adjudicated delinquent prior to the enactment of the Serious Juvenile Offender Program.

related services. [s. 20.410 (3) (cd), Stats.] The goals of the Youth Aids program is to give counties: (1) a fiscal incentive to treat juveniles adjudicated delinquent in the community; (2) more flexibility in options to provide community-based treatment options for juveniles adjudicated delinquent; and (3) resources to place juveniles who are adjudicated delinquent into a juvenile correctional facility when the juvenile court deems it appropriate. [DOC Paper, p. 5.]

Youth Aids funding is codified under s. 301.26 (7) (a), Stats. The amount awarded to each county is based upon by a formula specified in s. 301.26 (7) (b) to (h) and (8), Stats. There are several different categories used to determine how much Youth Aids moneys are given to each county. These categories are explained in **Appendix 3**.

The following table lists the total amount of Youth Aids allocated to counties over the last decade. It is important to note that the appropriations listed are by **calendar year**, not **fiscal year**.<sup>9</sup>

In the 2007-09 Biennial Budget Act, the Legislature increased the total amount of Youth Aids for the 2007-09 biennium by \$23,000,000. Specifically, Youth Aids funding increased by \$10,500,000 for the 2007-08 fiscal year and was increased by \$12,500,000 for the 2008-09 fiscal year.

Thus, this table reflects a \$5,250,000 increase from the 2006. However, the remainder of the increase will be paid in the 2007 calendar year<sup>10</sup> [Budget Paper, p. 146.]

**Total Amount of Youth Aids Paid Statewide**

<b>Calendar Year</b>	<b>Total Youth Aids Appropriations</b>
1997	\$ 78,997,300
1998	\$ 82,741,700
1999	\$ 83,183,700
2000	\$ 85,183,700
2001	\$ 86,707,100
2002	\$ 87,760,300
2003	\$ 88,290,200
2004	\$ 88,290,200
2005	\$ 88, 290,200
2006	\$ 88, 290,200
2007	\$ 93,540,200
2008	\$ 99,790,200

Sources: s. 301.26 (7) (a), Stats.; DOC Paper, p. 7; and Budget Paper, p. 146.

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<sup>9</sup> Fiscal years start on July 1 and end on June 30 of the following calendar year.

<sup>10</sup> The Legislature also increased Youth Aids funding for the first half of the 2009 calendar year (January 1, 2009 through June 30, 2009) by \$6,250,000. The statewide award totaled \$50,395,000 for that six-month period.

## County Payment for Correctional Placements

Each biennium, as part of the biennial budget act, the Legislature determines the daily rate for each type of correctional care it provides through DOC. This is the rate paid by counties to DOC for juveniles who are adjudicated delinquent and placed in a juvenile correctional facility or otherwise receiving correctional services. These daily rates are codified in s. 301.26 (4) (d) 2. and 3., Stats. The figure below outlines this equation used to calculate the rate.

### ***Daily Rate Equation***

Budgeted Cost for Specific Type of Service		
÷		
Projected Total Number Needing Type of Service	=	Daily Rate for Type of Service
÷		
365		

The Legislature sets the daily rates for each type of care and DOC may not charge a different amount. If the cost is less than the daily rate charged to counties, then DOC may provide a refund to the committing county. [DOC Paper, p. 9] Over the last five years, DOC has issued refunds five out of the six calendar years. The table below lists the amount refunded to counties.

### ***Total Statewide Youth Aids Refund Paid Statewide Over the Last Six Years***

Calendar Year	Total Refund Amount Paid Back to Counties Statewide
2001	\$220,452
2002	\$0
2003	\$447,731
2004	\$ 72,278
2005	\$293,241
2006	\$121,553

Source: DOC Paper, p. 9.

The current biennial budget's daily rates are listed in the next table. Using the daily 2008 fiscal year rate, the charge for a one-year placement at a juvenile correctional facility is \$94,535. DOC estimates that it will serve an average daily population (ADP) of 804 kids for all types of juvenile correctional services during the fiscal years 2008 and 2009, including 583 in juvenile correctional facilities. [LFB, *Wisconsin State Budget Summary*, p. 145 (Budget Summary).]

### **Statutory Daily Rates for Juvenile Corrections, Fiscal Years 2008 and 2009**

Type of Correctional Services	2008	2009
Juvenile Correctional Facilities:	\$259	\$268
<ul style="list-style-type: none"> <li>• Ethan Allen School</li> <li>• Lincoln Hills School</li> <li>• Southern Oaks Girls School</li> <li>• SPRITE</li> <li>• Mendota Juvenile Treatment Center</li> </ul>		
Residential Care Centers	\$277	\$296

<b>Type of Correctional Services</b>	<b>2008</b>	<b>2009</b>
Group Homes	\$165	\$172
Treatment Foster Homes	\$132	\$145
Corrective Sanctions	\$ 99	\$101
Regular Foster Homes	\$ 67	\$ 74
Aftercare Supervision	\$ 35	\$ 37
Projected ADP in Juvenile Correctional Facilities	583	583

\*The ADP is based on the fiscal budget year and are therefore projections not actual numbers. [s. 301.26 (4) (d) 2. and 3., Stats.]

Source: DOC Paper 7, and Budget Summary, pp. 144 and 146.

The following table lists daily rates for the prior fiscal years 2004 to 2007. It also includes ADPs of juveniles in correctional facilities for those fiscal years. It should be noted that these ADPs are actual numbers for those years unlike the estimated ADPs in the previous table, which are projections used to establish the daily rate in the 2007-09 biennial budget act.

**Prior Budget Statutory Daily Rates and ADPs  
(Fiscal Years 2004-07)**

<b>Type of Correctional Services</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Juvenile Correctional Facilities:	\$183	\$187	\$203	\$209
<ul style="list-style-type: none"> <li>• Ethan Allen School</li> <li>• Lincoln Hills School</li> <li>• Southern Oaks Girls School</li> <li>• SPRITE</li> <li>• Mendota Juvenile Treatment Center</li> </ul>				
Residential Care Centers	\$225	\$239	\$234	\$244
Group Homes	\$142	\$149	\$157	\$163
Treatment Foster Homes	\$ 88	\$ 92	\$ 83	\$ 87
Corrective Sanctions	\$ 86	\$ 87	\$ 81	\$ 82
Regular Foster Homes	\$ 47	\$ 49	\$ 47	\$ 50
Aftercare Supervision	\$ 25	\$ 26	\$ 32	\$ 33
Actual ADP in Juvenile Correctional Facilities**	796	689	654	594

\*\*ADPs are actual numbers, not estimated projections like those listed in the above table.

Source: DOC Paper, pp. 8 and 65.

## Percentage of Costs Youth Aids Provides to Counties

Counties are financially responsible for other delinquency-related services. Counties directly provide some services and contract with DOC or private agencies for the provision of other services as well. Historically, Youth Aids has typically covered less than half of the total costs for counties' delinquency-related services. According to information gathered by DOC, between 1995 and 2005, Youth Aids covered more than 50% of statewide county expenditures twice; the average coverage was 45%. [DOC Paper, p. 91.] The remaining costs are funded primarily through Community Aids, along with county tax services and special grant funds.





## Commitments of Juveniles to DOC, 2007

County	2007 Commitments
Adams	1
Ashland	0
Barron	1
Bayfield	0
Brown	10
Buffalo	0
Burnett	0
Calumet	1
Chippewa	3
Clark	2
Columbia	2
Crawford	2
Dane	37
Dodge	2
Door	0
Douglas	0
Dunn	0
Eau Claire	2
Florence	0
Fond Du Lac	12
Forest	1
Grant	0
Green	0
Green Lake	1
Iowa	0
Iron	0
Jackson	0
Jefferson	1
Juneau	2
Kenosha	37
Kewaunee	0
La Crosse	2
Lafayette	0
Langlade	1
Lincoln	0
Manitowoc	1
Marathon	9
Marinette	1
Marquette	0
Menominee	2
Milwaukee	276
Monroe	1

<b>County</b>	<b>2007 Commitments</b>
Oconto	1
Oneida	2
Other	4
Outagamie	10
Ozaukee	3
Pepin	0
Pierce	1
Polk	2
Portage	4
Price	0
Racine	38
Richland	1
Rock	17
Rusk	2
Sauk	8
Sawyer	2
Shawano	0
Sheboygan	3
St. Croix	3
Taylor	1
Trempealeau	1
Vernon	0
Vilas	8
Walworth	5
Washburn	2
Washington	5
Waukesha	7
Waupaca	2
Waushara	2
Winnebago	14
Wood	0
<b>Total</b>	<b>558</b>

Source: Wisconsin DOC.

**Offenses for Which the Adult Court  
Has Jurisdiction Over Juveniles**

<i>Offense</i>	<i>Original Jurisdiction or Waiver Required</i>	<i>Minimum Age Juvenile Must Have Attained</i>
Attempted first-degree intentional homicide; first- or second-degree intentional homicide; first-degree reckless homicide. <sup>1</sup>	Original <sup>2</sup>	10 years.
Battery or assault while placed in a secured correctional facility, a secure detention facility or a secured residential care center for children and youth or battery to a probation and parole agent or to an aftercare agent <i>if</i> the juvenile has been adjudicated delinquent previously. <sup>1</sup>	Original <sup>2</sup>	No age specified. However, a juvenile must be at least 10 years old to have been adjudicated delinquent previously.
Any offense if a juvenile has been convicted of a crime or has a case pending in the adult court.	Original <sup>2</sup>	No age specified. However, a juvenile must be at least 10 years old to have a conviction or pending case in the adult court.
Felony murder; second-degree reckless homicide; first- or second-degree sexual assault; taking hostages; kidnapping; armed burglary; armed robbery; robbery of a financial institution; manufacturing a controlled substance; or a violation at the request of or for the benefit of a criminal gang that would constitute a felony if committed by an adult.	Waiver	14 years.
Any criminal offense.	Waiver	15 years.

1. The adult court also has jurisdiction over any offenses joined with the offense for which the court has jurisdiction.

2. Reverse waiver available.



**Youth Aids Formula – Initial Calendar Year 2007 Allocations  
(GPR Funds Except as Indicated)**

Base Allocation	\$78,275,500 (Including: \$2,449,200 PR)	<ol style="list-style-type: none"> <li>Original allocation, based on three factors with override: <ul style="list-style-type: none"> <li>County juvenile population (0-17/1980 census).</li> <li>Average # county juvenile correctional placements (1975-78).</li> <li>Overrides: counties would receive no less than 93% nor more than 115% of amount if correctional placements were only factor; also, counties would receive no less than 65% of amount provided by using the three-factor formula.</li> </ul> </li> <li>One-time adjustments to base allocation.</li> <li>Adjustment to correctional rates prior years.</li> <li>Inflation increase for community programs in prior years.</li> </ol> <p>The county allocations of this base amount are not subject to change under current law.</p>
AODA Base Allocation	\$1,333,400	<ul style="list-style-type: none"> <li>Earmarked for AODA treatment.</li> <li>County Youth Aids balance available for community expenditures, CY 1999 thru 2001 ÷ statewide community programs balance = County %.</li> <li>County % x \$1,333,400 = County allocation.</li> <li>While considered a base allocation, the amount distributed to each county varies annually and is not incorporated as a fixed amount into a county's overall base allocation.</li> </ul>
Budget Increase (1999 Wisconsin Act 9)	\$4,000,000	<ul style="list-style-type: none"> <li>Under 1999 Wisconsin Act 9, \$4,000,000 was appropriated in 2000-01 as ongoing funding and will continue unless modified in subsequent legislation. The amount is allocated on the basis of the following factors, each factor weighted equally: (1) each county's proportion of the total statewide juvenile population for the most recent year for which that information is available; (2) each county's proportion of the total Part I juvenile arrests reported statewide under the uniform crime reporting system of the Office of Justice Assistance during the most recent three-year period for which that information is available; and (3) each county's proportion of the number of juveniles statewide who are placed in a juvenile correctional facility, a secured care center for children and youth, or a secured group home during the most recent three-year period for which that information is available.</li> </ul>
Budget Increase (2001 Wisconsin Act 16)	\$2,106,500	<ul style="list-style-type: none"> <li>Under 2001 Wisconsin Act 16, \$2,106,500 was appropriated in 2002-03 as ongoing funding and will continue unless modified in subsequent legislation. The amount is allocated on the basis of the three factors described above, but with an override provision that no county receives less than 93% nor more than 115% of the amount it would have received if juvenile correctional placements (the third factor) were the sole factor used to determine county allocations.</li> </ul>
Arrest Supplement for Small Counties	\$200,000	<ul style="list-style-type: none"> <li>Statutory provisions governing the payment of supplemental funds repealed under 1995 Wisconsin Act 27, but funding left in Youth Aids appropriation.</li> <li>Only counties with population of less than 50,000 eligible for supplemental funds.</li> <li>Funds prorated on basis of each county's share of Part I juvenile arrests for all counties under 50,000 population for the most recent two years for which data is available.</li> </ul>
Initial Allocations	\$85,915,400	<ol style="list-style-type: none"> <li>Initial allocations do not include other funds allocated late in, or after the end of, the calendar year. See below.</li> </ol>

**Other Funds:**

1. Corrective Sanctions – 2,124,800 annually: 136 slots available; a county arranges with the state to receive services and is allocated funding based on the number of approved slots actually used (at an estimated \$74 per day of service). Funding allocated following close of calendar year.
2. Emergency Funds – \$250,000 annually: Only a county with population under 45,000 is eligible. Eligible counties must demonstrate unplanned but appropriate juvenile correctional facility or CCI placements. Funding allocated late in calendar year.
3. County Carryover – If unexpected Youth Aids at year end, county may carry over balance up to 5% of Youth Aids allocation or its unexpected balance, whichever is lower.
4. State Carryover – Up to \$500,000 of Youth Aids or 10% of the total dollars unexpended by counties after county carryover is allocated, whichever is greater. DOC may allocate these funds to counties with persistently high rates of juvenile arrests for serious offenses, or for community-based juvenile delinquency-related services. The allocation of these moneys separate from Youth Aids allocation and does not affect a county's base allocation.

Note: Initial allocations (\$85,915,400), corrective sanctions funds (\$2,124,800) and emergency funds (\$250,000) total \$88,200 in currently projected allocations in 2007. Amounts shown are funded with GPR, unless otherwise indicated.

Source: LFB Paper, p. 45.