



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

Memo No. 6

TO: MEMBERS OF THE SPECIAL COMMITTEE ON HIGH-RISK JUVENILE OFFENDERS

FROM: Anne Sappenfield, Senior Staff Attorney

RE: Options for Legislation

DATE: September 9, 2008

This Memo sets forth options for legislation that have been proposed to the Special Committee on High-Risk Juvenile Offenders.

WAIVER TO ADULT COURT AND ORIGINAL ADULT COURT JURISDICTION

1. Criteria for Waiver Into Adult Court

Background

Under current law, the juvenile court must base its decision whether to waive a juvenile into adult court on the following criteria:

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

- (3) Whether any prior conviction or delinquency involved the infliction of serious bodily injury.
 - (4) The juvenile's motives and attitudes.
 - (5) The juvenile's prior offenses.
- c. The type and seriousness of the offense, including both of the following:
- (1) Whether it was against persons or property.
 - (2) The extent to which it was committed in a violent, aggressive, premeditated, or willful manner.
- d. 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.¹
- e. 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.]

Options

- Review the criteria for waiver to adult court to determine whether they give clear guidance to the court and whether they should be modified.

2. Who May Petition for Waiver

Background

Under current law, the petition for waiver of juvenile court jurisdiction may be filed by the district attorney or the juvenile. [s. 938.18 (2), Stats.]

Options

- Repeal current law permitting a juvenile to petition to have his or her case waived to adult court.

¹ 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 Department of Corrections (DOC), Community Corrections, *Overview*.]

3. Criteria for Waiving a Juvenile Under Adult Court Original Jurisdiction to the Juvenile Court (Reverse Waiver)

Background

Under current law, if the court finds probable cause that the juvenile committed the offense under the circumstances required for adult court jurisdiction, the court must determine whether to retain jurisdiction or to transfer jurisdiction to the juvenile court. The court must retain jurisdiction unless the juvenile provides by a preponderance of the evidence all of the following:

- a. That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system.
- b. That transferring jurisdiction to the juvenile court would not depreciate the seriousness of the offense.
- c. 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.]

Options

- Review the criteria for reverse waiver to determine whether they should be modified.

DECREASING COSTS OF JUVENILE CORRECTIONAL PLACEMENTS

Background

Under current law, counties are financially responsible for the costs of juvenile delinquency-related services except for certain juveniles, such as those placed in the Serious Juvenile Offender Program and juveniles who are convicted as adults in the adult system. The Community Youth and Family Aids Program (“youth aids”) provides each county with an annual allocation of state and federal funds from which the county may pay for juvenile delinquency-related services, including out-of-home placements and non-residential, community-based services for juveniles.

For juveniles placed in a juvenile correctional facility, the state bills each county based upon a statutory daily rate. The current daily rate for a juvenile placed in a juvenile correctional facility is \$259. For 2009, the daily rate will be \$268.

Please note that in the DOC paper entitled, *Cost Effectiveness of Juvenile Correctional Institutions: Analysis and Options* (March 2007), various options for decreasing the daily rate are discussed on pages 79 to 88. This paper was distributed at the July 7, 2008, meeting of the Special Committee and is also available on the Special Committee’s website. According to this paper, for every \$1,000,000 in annual costs taken out of the daily rate, the rate is reduced by \$4.15 per day.

Options

- Decrease the daily rate by funding education programs for juveniles placed in a juvenile correctional facility through the school aid formula. School aid could be provided directly by the state to DOC or the juvenile's residential school district could be permitted to continue to count the juvenile as a pupil and pay school aid to DOC. There are examples of both approaches in current law.
- Decrease the daily rate by funding certain fixed costs of the juvenile correctional institutions using general purpose revenue (GPR). According to DOC, the cost for fuel and utilities is estimated to be \$2,302,100 for state fiscal year (FY) 2009. If the staffing costs for the power plant operations, building and grounds, and wastewater treatment were included in the fixed costs, as well, the estimate is \$4,259,000 for FY 2009.
- Increase each county's youth aids allocation based upon increases in the daily rate. Under prior law, if the daily rate was increased, the state was required to increase the total youth aids funding for counties proportionately. This requirement was eliminated effective July 1, 1996, under 1995 Wisconsin Act 27.

MISCELLANEOUS

1. Minimum Age at Which a Juvenile May Be Adjudicated Delinquent

Background

A juvenile who is 10 years of age or older who has violated any state or federal criminal law is subject to delinquency proceedings under the Juvenile Justice Code (ch. 938, Stats.). [s. 938.02 (3m), Stats.] A juvenile who is less than 10 years of age and has violated any state or federal criminal law is considered to be a juvenile in need of protections or services (JIPS). [s. 938.13 (12), Stats.]

Options

- Raise the minimum age at which a juvenile may be adjudged delinquent.
- Eliminate the minimum age at which a juvenile may be adjudicated delinquent, but specify the minimum age for other purposes, such as placement in a juvenile correctional facility.

2. Measure for Recidivism Rates

Background

Currently, DOC uses different measures to determine recidivism rates for offenders in the adult system and for offenders in the juvenile system.

According to DOC, for offenders in the **adult system**, recidivism is measured for a period of time beginning when an offender is admitted to probation for the first time, admitted to community

supervision, or released from prison. Under the definition, an offender recidivates if he or she commits an offense subsequent to a prior court disposition that results in a new Wisconsin criminal court disposition of custody or supervision by DOC. Recidivism is generally measured for the three calendar years following the person's admission to probation or community supervision or the person's release from incarceration.

Offenders in the *juvenile system* who are released from a juvenile correctional facility are tracked to measure recidivism rates. For offenders in the juvenile system, recidivism is defined as:

- Placement in a Wisconsin juvenile correctional institution as a consequence for a new delinquency adjudication, after being released from a juvenile correctional institution.
- Placement in a Wisconsin prison for either a new criminal offense or an adult probation rule violation after being released from a juvenile correctional institution.
- Conviction on an adult charge while still placed in a juvenile correctional institution.

Recidivism is measured for two- and four-year periods.

Options

- Require DOC to collect and report recidivism data using the same period of time (e.g., two or three years from release from incarceration or supervision) and using comparable descriptions of when a person recidivates.

3. Secured Residential Care Centers for Children and Youth

Background

Current statutes provide that a juvenile who meets certain criteria may be placed in a juvenile correctional institution or a secured residential care center for children and youth. [s. 938.34 (4m), Stats.] However, to date, no secured residential care center for children and youth has been established.

Options

- Repeal statutory references to secured residential care center for children and youth.

AS:ksm