

1 **AN ACT** *to amend* 938.18 (5) (intro.) of the statutes; **relating to:** primary
2 consideration in determination to waive juvenile court jurisdiction.

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, the juvenile court may waive its jurisdiction over a juvenile who is alleged to have violated one of several serious offenses on or after the juvenile’s 14th birthday and may waive its jurisdiction over a juvenile who is alleged to have violated any criminal law on or after the juvenile’s 15th birthday.

The juvenile court, after taking relevant testimony presented by the district attorney and considering other relevant evidence, must base its decision whether to waive jurisdiction on the following criteria:

1. The personality, including all of the following:
 - a. Whether the juvenile is mentally 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.

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.

The draft provides that in a determination of whether to waive juvenile court jurisdiction, protection of the public must be the primary consideration.

1 **SECTION 1.** 938.18 (5) (intro.) of the statutes is amended to read:

2 938.18 (5) CRITERIA FOR WAIVER. If prosecutive merit is found, the court shall ~~base its~~
3 ~~decision~~ determine whether to waive jurisdiction. In determining whether to waive
4 jurisdiction, protection of the public shall be the primary consideration. The court shall
5 determine whether to waive jurisdiction based on the following criteria:

NOTE: Provides that in a determination whether to waive juvenile court jurisdiction, protection of the public must be the primary consideration.

COMMENT: Should the best interest of the juvenile also be included as a primary consideration when determining whether to waive juvenile court jurisdiction?

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(END)