

1 **AN ACT** *to amend* 938.02 (3m), 938.12 (1), 938.13 (12), 938.20 (3), 938.245 (2g) and
 2 938.32 (1x) of the statutes; **relating to:** the minimum age of delinquency.

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 of High–Risk Juvenile Offenders.

Under current s. 938.02 (3m), a delinquent is defined as any juvenile 10 years of age or older who violates any state or federal criminal law. Juveniles not considered delinquent are those who have been waived into adult court, committed a crime under original jurisdiction of adult courts, committed civil law or municipal ordinance violations, and juveniles 16 years of age or older who committed a traffic, boating, snowmobile, or all–terrain vehicle violation. [ss. 938.17, 938.18, and 938.183, stats.] Current law provides that adult courts have original jurisdiction over juveniles 10 years of age or older if they attempted or committed first–degree intentional homicide, or committed first–degree reckless homicide or second–degree intentional homicide. [s. 938.183 (1) (am), stats.]

The draft increases the minimum age of delinquency from 10 to 12 for most criminal law violations. It retains the current statutory provision under which the adult court has original jurisdiction over juveniles 10 years of age who attempted or committed first–degree intentional homicide, or committed first–degree reckless homicide or second–degree intentional homicide. [s. 938.183 (1) (am), stats.]

3 **SECTION 1.** 938.02 (3m) of the statutes is amended to read:
 4 938.02 (3m) “Delinquent” means, except as provided in ss. 938.17, 938.18, and
 5 938.183, a juvenile who is 10 years of age or older who has attempted or committed a violation
 6 of s. 940.01 or committed a violation of s. 940.02 or 940.05, or a juvenile who is 12 years of
 7 age or older who has violated any state or federal criminal law, ~~except as provided in ss.~~

1 938.17, 938.18 and 938.183, or who has committed a contempt of court, as defined in s.
2 785.01 (1), as specified in s. 938.355 (6g).

NOTE: Modifies the definition of “delinquent.” Under the draft, “delinquent” is defined as a juvenile 12 years of age or older who violated any state or federal criminal law or a juvenile who is 10 or 11 years of age and attempted or committed first-degree intentional homicide, or committed first-degree reckless homicide or second-degree intentional homicide. There are 3 statutory provisions for when a juvenile is not considered delinquent retained from current law. A juvenile, otherwise old enough to be adjudicated as delinquent, are not delinquent for: (1) traffic, boating, snowmobile, and all-terrain vehicle violations; (2) civil law and ordinance violations; (3) offenses qualifying for waiver into adult court; and (4) offenses qualifying for original jurisdiction in adult court.

COMMENT: Under this draft, juveniles 10 or 11 years of age who have attempted or committed first-degree intentional homicide, or committed first-degree reckless homicide or second-degree intentional homicide are under the adult court’s original jurisdiction, as provided under current law. They would be subject to delinquency proceedings if they were reverse waived. After reverse waiver, these juveniles would be eligible for the serious juvenile offender program or placement in a juvenile correctional facility. Is this the committee’s intent?

3 **SECTION 2.** 938.12 (1) of the statutes is amended to read:

4 938.12 (1) IN GENERAL. The court has exclusive jurisdiction, except as provided in ss.
5 938.17, 938.18, and 938.183, over any juvenile ~~40 years of age or older~~ who is alleged to be
6 delinquent as defined in s. 938.02 (3m).

NOTE: Modifies the provision describing the juvenile court’s jurisdiction over juveniles alleged to be delinquent by removing reference to the minimum age and replacing it with a reference to the definition of “delinquent”. Under current law, the juvenile courts have original jurisdiction over any juvenile 10 years of age or older who are alleged to be delinquent.

7 **SECTION 3.** 938.13 (12) of the statutes is amended to read:

8 938.13 (12) DELINQUENT ACT ~~BEFORE AGE 10~~ ACTS. The juvenile is under 40 12 years of
9 age and ~~has committed a delinquent act~~ has violated any state or federal criminal law, or the

1 juvenile is 10 or 11 years of age and has violated any state or federal criminal law other than
2 attempting or committing a violation of s. 940.01 or committing a violation of s. 940.02 or
3 940.05.

NOTE: Modifies juvenile court jurisdiction over juveniles alleged to be in need of protection or services (JIPS) so that a juvenile who is under 12 years of age and has violated a criminal law may be found to be JIPS unless the juvenile is alleged to have attempted or committed first-degree intentional homicide or committed first-degree reckless homicide or second-degree intentional homicide at the age of 10 or 11 years.

4 **SECTION 4.** 938.20 (3) of the statutes is amended to read:

5 938.20 (3) NOTIFICATION TO PARENT, GUARDIAN, LEGAL CUSTODIAN OF RELEASE. If the
6 juvenile is released under sub. (2) (b) to (d) or (g), the person who took the juvenile into
7 custody shall immediately notify the juvenile's parent, guardian, and legal custodian of the
8 time and circumstances of the release and the person, if any, to whom the juvenile was
9 released. If the juvenile is not released under sub. (2), the person who took the juvenile into
10 custody shall arrange in a manner determined by the court and law enforcement agencies for
11 the juvenile to be interviewed by the intake worker under s. 938.067 (2). The person who took
12 the juvenile into custody shall make a statement in writing with supporting facts of the reasons
13 why the juvenile was taken into physical custody and shall give a copy of the statement to the
14 intake worker and to any juvenile ~~10~~ 12 years of age or older or any juvenile 10 or 11 years
15 of age who is taken into custody based on a reasonable belief that the juvenile has attempted
16 or committed a violation of s. 940.01 or committed a violation of s. 940.02 or 940.05. If the
17 intake interview is not done in person, the report may be read to the intake worker.

NOTE: Under current statutes, a person who takes a juvenile into physical custody must write a statement with supporting facts explaining why this was done. This statement must be provided to the intake worker and any juvenile 10 years of age or older. This SECTION amends the minimum age when a juvenile must be provided with the written

statement so that it is consistent with the minimum age of delinquency in the draft.

1 **SECTION 5.** 938.245 (2g) of the statutes is amended to read:

2 938.245 **(2g)** GRAFFITI VIOLATION. If the deferred prosecution agreement is based on an
3 allegation that the juvenile violated s. 943.017 and the juvenile has attained ~~10~~ 12 years of age,
4 the agreement may require that the juvenile participate for not less than 10 hours nor more than
5 100 hours in a supervised work program under s. 938.34 (5g) or perform not less than 10 hours
6 nor more than 100 hours of other community service work, except that if the juvenile has not
7 attained 14 years of age the maximum number of hours is 40.

8 **SECTION 6.** 938.32 (1x) of the statutes is amended to read:

9 938.32 **(1x)** SUPERVISED WORK PROGRAM. If the petition alleges that the juvenile violated
10 s. 943.017 and the juvenile has attained ~~10~~ 12 years of age, the court may require, as a condition
11 of the consent decree, that the juvenile participate for not less than 10 hours nor more than 100
12 hours in a supervised work program under s. 938.34 (5g) or perform not less than 10 hours nor
13 more than 100 hours of other community service work, except that if the juvenile has not
14 attained 14 years of age the maximum number of hours is a total of 40 under the consent
15 decree.

NOTE: Under current law, a juvenile 10 years of age or older may be required to participate in a supervised work program or perform community service under a deferred prosecution agreement or consent decree relating to a graffiti violation. SECTIONS 5 and 6 increase the minimum age when juveniles may be eligible for either a supervised work program or community service for graffiti violations to 12 years of age.

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(END)