

1 **AN ACT** *to renumber and amend* 938.18 (5) (a), 938.18 (5) (am), 938.18 (5) (b),
 2 938.18 (5) (c) and 938.18 (5) (d); *to amend* 938.18 (5) (intro.); and *to create* 938.18
 3 (5) (ar) (intro.) and 938.18 (5) (bm) (intro.) of the statutes; **relating to:** waiver
 4 criteria.

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.

This draft requires the court to consider certain factors as weighing in favor of retaining juvenile court jurisdiction and certain factors as weighing in favor of waiving juvenile court jurisdiction.

Under the draft, the juvenile court must consider the following factors as factors that favor retaining juvenile court jurisdiction over the juvenile:

- The juvenile has a mental illness or developmental disability that could be treated more effectively in the juvenile system than in the adult system.
- The juvenile's physical or mental maturity make it more likely that the juvenile will be harmed by placement in an adult facility or placement on probation.
- The juvenile's pattern of living indicates that the juvenile will take responsibility for his or her actions and maintain positive relationships.
- The juvenile's prior treatment history indicates that the juvenile will respond to future treatment.
- The 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 are adequate and suitable for the juvenile or placement in the serious juvenile offender program is suitable for the juvenile.

The draft provides that the juvenile court must consider the following factors as factors that favor waiving juvenile court jurisdiction over the juvenile:

- The juvenile court has previously waived its jurisdiction over the juvenile or the juvenile has been previously convicted following a waiver of the juvenile court's jurisdiction or has been previously found delinquent.
- A prior conviction or delinquency involved the infliction of serious bodily injury.
- The juvenile's motives and attitudes demonstrate a lack of responsibility and remorse for the juvenile's actions.
- The juvenile's prior offenses are serious offenses or have become progressively more serious.
- The offense was against a person and was committed in a violent, aggressive, premeditated, or willful manner.
- The juvenile was allegedly associated in the offense with persons who will be charged with a crime in the court of criminal jurisdiction, and it is desirable to have the trial and disposition of the entire offense in one court.

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 whether to waive jurisdiction on the following criteria: in this subsection.

4 **SECTION 2.** 938.18 (5) (a) of the statutes is renumbered 938.18 (5) (ar) 1. and amended
5 to read:

6 938.18 (5) (ar) 1. The personality of the juvenile, including whether the juvenile has
7 a mental illness or developmental disability, ~~the~~ that could be treated more effectively in the
8 juvenile system than in the adult system.

9 2. The juvenile's physical and or mental maturity, and the make it more likely that the
10 juvenile will be harmed by placement in an adult facility or placement on probation.

11 3. The juvenile's pattern of living, indicates that the juvenile will take responsibility for
12 his or her actions and establish or maintain positive relationships.

1 4. The juvenile's prior treatment history, and apparent potential for responding indicates
2 that the juvenile will respond to future treatment.

NOTE: Provides that the juvenile court must consider the following factors as favoring retaining juvenile court jurisdiction:

- The juvenile has a mental illness or developmental disability that could be treated more effectively in the juvenile system than in the adult system.
- The juvenile's physical or mental maturity make it more likely that the juvenile will be harmed by placement in an adult facility or placement on probation.
- The juvenile's pattern of living indicates that the juvenile will take responsibility for his or her actions and maintain positive relationships.
- The juvenile's prior treatment history indicates that the juvenile will respond to future treatment.

3 **SECTION 3.** 938.18 (5) (am) of the statutes is renumbered 938.18 (5) (bm) 1. and
4 amended to read:

5 938.18 (5) (bm) 1. ~~The prior record of the juvenile, including whether the court has~~
6 ~~previously waived its jurisdiction over the juvenile, whether or the juvenile has been~~
7 ~~previously convicted following a waiver of the court's jurisdiction or has been previously~~
8 ~~found delinquent, whether such.~~

9 2. A prior conviction or delinquency involved the infliction of serious bodily injury, the

10 3. The juvenile's motives and attitudes demonstrate a lack of responsibility and remorse
11 for the juvenile's actions, and the

12 4. The juvenile's prior offenses are serious offenses or have become progressively more
13 serious.

NOTE: Provides that the juvenile court must consider the following factors as favoring waiving juvenile court jurisdiction:

- The juvenile court has previously waived its jurisdiction over the juvenile or the juvenile has been previously convicted following a

waiver of the juvenile court's jurisdiction or has been previously found delinquent.

- A prior conviction or delinquency involved the infliction of serious bodily injury.
- The juvenile's motives and attitudes demonstrate a lack of responsibility and remorse for the juvenile's actions.
- The juvenile's prior offenses are serious offenses or have become progressively more serious.

1 **SECTION 4.** 938.18 (5) (ar) (intro.) of the statutes is created to read:

2 938.18 (5) (ar) The court shall consider the following criteria as factors that favor
3 retaining juvenile court jurisdiction over the juvenile:

4 **SECTION 5.** 938.18 (5) (b) of the statutes is renumbered 938.18 (5) (bm) 5. and amended
5 to read:

6 938.18 (5) (bm) 5. The ~~type and seriousness of the offense, including whether it was~~
7 ~~against persons or property~~ a person and ~~the extent to which it was committed in a violent,~~
8 aggressive, premeditated or willful manner.

NOTE: Provides that the juvenile court must consider that the offense was against a person and was committed in a violent, aggressive, premeditated, or willful manner as a factor favoring waiving juvenile court jurisdiction.

9 **SECTION 6.** 938.18 (5) (bm) (intro.) of the statutes is created to read:

10 938.18 (5) (bm) The court shall consider following criteria as factors that favor waiving
11 juvenile court jurisdiction over the juvenile:

12 **SECTION 7.** 938.18 (5) (c) of the statutes is renumbered 938.18 (5) (ar) 5. and amended
13 to read:

14 938.18 (5) (ar) 5. The ~~adequacy and suitability of facilities, services and procedures~~
15 available for treatment of the juvenile and protection of the public within the juvenile justice
16 system, and, where applicable, the mental health system are adequate and suitable for the

1 ~~juvenile or and the suitability of the juvenile~~ for placement in the serious juvenile offender
2 program under s. 938.538 ~~or the adult intensive sanctions program under s. 301.048~~ is suitable
3 for the juvenile.

NOTE: Provides that the 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 are adequate and suitable for the juvenile or placement in the serious juvenile offender program is suitable for the juvenile are factors that the juvenile court must consider as favoring retaining juvenile court jurisdiction.

4 **SECTION 8.** 938.18 (5) (d) of the statutes is renumbered 938.18 (5) (bm) 6. and amended
5 to read:

6 938.18 (5) (bm) 6. ~~The desirability of trial and disposition of the entire offense in one~~
7 ~~court if the juvenile was allegedly associated in the offense with persons who will be charged~~
8 ~~with a crime in the court of criminal jurisdiction, and it is desirable to have the trial and~~
9 disposition of the entire offense in one court.

NOTE: Provides that the juvenile court must consider that the juvenile was allegedly associated in the offense with persons who will be charged with a crime in the court of criminal jurisdiction, and it is desirable to have the trial and disposition of the entire offense in one court as a factor favoring waiving juvenile court jurisdiction.

COMMENT: Is the juvenile's age a factor that should be considered? For example, if a juvenile commits an offense when he or she has almost reached the minimum age of adult court jurisdiction, does that fact weigh in favor of waiving juvenile court jurisdiction?