

1       **AN ACT** *to repeal* 938.18 (4) (title) and (a), 938.18 (5) (d), 938.18 (9), 938.29 (2) and  
2       970.035; *to renumber* 938.18 (3) (b) and (c), 938.18 (5) (a) and 938.18 (5) (b) and  
3       (c); *to renumber and amend* 938.18 (2m), 938.18 (3) (intro.) and (a), 938.18 (4) (b)  
4       and (c), 938.18 (5) (intro.), 938.18 (5) (am), 938.18 (6), 938.18 (8) and 938.31 (2); *to*  
5       *amend* 301.03 (10) (g), 757.69 (1) (g) 5., 757.69 (1m) (f), 938.02 (3m), 938.12 (1),  
6       938.18 (title), 938.18 (1) (intro.), 938.18 (2), 938.183 (1) (b), 938.183 (1m) (c) 1.,  
7       938.183 (1m) (c) 2., 938.183 (1m) (c) 3., 938.185 (1) (intro.), 938.209 (3), 938.21  
8       (2) (c), 938.243 (1) (b), 938.243 (1) (c), 938.299 (4) (b), 938.30 (2), 938.30 (6) (a),  
9       938.31 (2) (title), 938.31 (4), 938.31 (7) (a), 938.35 (1m), 938.39, 948.60 (2) (d),  
10       948.61 (4) and 978.05 (6) (a); and *to create* 938.243 (1) (g), 938.31 (2) (b), 938.333  
11       (4) (title) and 938.34 (16) of the statutes; **relating to:** imposition of adult sentence  
12       for certain juveniles.

*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, a juvenile who is alleged to be delinquent or a district attorney 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 petition for waiver of jurisdiction may be filed by the district attorney 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.

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 district attorney and considering other relevant evidence, must base its waiver decision on criteria set forth in current law.

After considering the criteria, 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 district attorney for appropriate proceedings in the adult court. The adult court then has exclusive jurisdiction.

The draft replaces the waiver procedure with a procedure permitting a juvenile court to impose an adult sentence on a juvenile. The criteria for imposing an adult sentence are the same as for waiver of juvenile court jurisdiction.

Under the draft, the petition for imposition of an adult court sentence may be filed with the delinquency petition or at any time before the plea hearing. Under the draft, the hearing to determine whether to impose an adult sentence or a juvenile delinquency disposition is made following a plea or a fact-finding hearing. After the fact-finding hearing or after the plea is entered, the court must set a date for the hearing to decide whether to impose an adult sentence. At the conclusion of that hearing, the court may enter an order of conviction if the court determines that it is contrary to the best interests of the juvenile and the public to impose a juvenile disposition. Otherwise, the court must adjudge the juvenile delinquent. The court must then set a date for a juvenile dispositional

hearing at which an adult sentence must be imposed if a judgment of conviction was entered.

1           **SECTION 1.** 301.03 (10) (g) of the statutes is amended to read:

2           301.03 **(10)** (g) Keep statistics, by race, age, and gender, of the number of juveniles over  
3 whom the court assigned to exercise jurisdiction under chs. 48 and 938 waives its jurisdiction  
4 under s. 938.18, 2007, stats., or imposes an adult sentence under s. 938.333 as well as the  
5 nature of the waiver or adult sentence that was ordered and annually report those statistics to  
6 the governor, and to the appropriate standing committees under s. 13.172 (3).

**NOTE:** Modifies a requirement that the Department of Corrections report statistics relating to juveniles waived to adult court to include reporting statistics on juveniles for whom an adult sentence is imposed.

7           **SECTION 2.** 757.69 (1) (g) 5. of the statutes is amended to read:

8           757.69 **(1)** (g) 5. Conduct uncontested proceedings under s. 48.13, 48.133, 938.12,  
9 938.13, or ~~938.18~~ 938.333.

**NOTE:** Modifies the statute relating to powers of circuit court commissioners.

10          **SECTION 3.** 757.69 (1m) (f) of the statutes is amended to read:

11          757.69 **(1m)** (f) Conduct ~~waiver~~ hearings to impose an adult sentence under s. ~~938.18,~~  
12 938.355 except as provided in sub. (1) (g) 5.

**NOTE:** Modifies current law to provide a circuit court commissioner may not conduct hearings to impose an adult sentence on a juvenile except in uncontested cases, as provided in SECTION 2.

13          **SECTION 4.** 938.02 (3m) of the statutes is amended to read:

14          938.02 **(3m)** "Delinquent" means a juvenile who is 10 years of age or older who has  
15 violated any state or federal criminal law, except as provided in ss. 938.17, ~~938.18 and~~  
16 938.183, and 938.333 or who has committed a contempt of court, as defined in s. 785.01 (1),  
17 as specified in s. 938.355 (6g).

**NOTE:** Removes reference to juveniles waived into adult court as not being included in the definition of “delinquent” and provides that a juvenile who receives an adult sentence is not included in the definition of “delinquent”.

1           **SECTION 5.** 938.12 (1) of the statutes is amended to read:

2           938.12 (1) **IN GENERAL.** The court has exclusive jurisdiction, except as provided in ss.  
3           938.17, ~~938.18,~~ and 938.183, over any juvenile 10 years of age or older who is alleged to be  
4           delinquent.

**NOTE:** Provides that the juvenile court has exclusive jurisdiction over a juvenile for whom a petition to impose an adult sentence has been filed under s. 938.18, as amended in this draft.

5           **SECTION 6.** 938.18 (title) of the statutes is amended to read:

6           **938.18 (title) ~~Jurisdiction for criminal proceedings~~ Petition for imposition of adult**  
7           **sentence for juveniles 14 or older; waiver hearing.**

8           **SECTION 7.** 938.18 (1) (intro.) of the statutes is amended to read:

9           938.18 (1) ~~WAIVER OF JUVENILE COURT JURISDICTION~~ IMPOSITION OF ADULT SENTENCE;  
10          CONDITIONS FOR. Subject to s. 938.183, a petition requesting the court to ~~waive its jurisdiction~~  
11          ~~under this chapter~~ impose an adult sentence may be filed if the juvenile meets any of the  
12          following conditions:

13          **SECTION 8.** 938.18 (2) of the statutes is amended to read:

14          938.18 (2) **PETITION.** The petition for ~~waiver of jurisdiction~~ imposition of an adult  
15          sentence may be filed by the district attorney or the juvenile or may be initiated by the court  
16          and shall contain a brief statement of the facts supporting the request for ~~waiver~~ imposition  
17          of an adult sentence. The petition for ~~waiver of jurisdiction~~ imposition of an adult sentence  
18          shall be accompanied by or filed after the filing of a petition alleging delinquency and shall  
19          be filed prior to the plea hearing, except that if the juvenile denies the facts of the petition and

1 becomes 17 years of age before an adjudication, the petition for ~~waiver of jurisdiction~~  
2 imposition of an adult sentence may be filed at any time prior to the adjudication. If the court  
3 initiates the petition for ~~waiver of jurisdiction~~ imposition of an adult sentence, the judge shall  
4 disqualify himself or herself from any future proceedings on the case.

**NOTE:** These SECTIONS modify the language in current s. 938.18 (1) and  
(2), stats., relating to waiver of juvenile court jurisdiction to provide  
instead that the juvenile court may impose an adult sentence.

5 **SECTION 9.** 938.18 (2m) of the statutes is renumbered 938.33 (2m) and amended to read:

6 938.33 (2m) ~~AGENCY REPORT~~ IMPOSITION OF ADULT SENTENCE REPORT. ~~The court may~~  
7 ~~designate an agency, as defined in s. 938.38 (1) (a), to submit a report analyzing~~ If the juvenile  
8 has been adjudicated delinquent for committing a violation of which the court may impose an  
9 adult sentence and a petition under s. 938.18 (2) has been filed, the report shall be in writing  
10 and in addition to the information specified in sub. (1), shall include an analysis of the criteria  
11 specified in sub. (5). ~~The agency shall file the report with the court and the court shall cause~~  
12 ~~copies of the report to be given to the juvenile, any parent, guardian or legal custodian of the~~  
13 ~~juvenile and counsel at least 3 days before the hearing. The court may rely on facts stated in~~  
14 ~~the report in making its findings with respect to the criteria under sub. (5) s. 938.31 (5).~~

**NOTE:** Modifies current law under which the juvenile court may  
designate an agency to submit a report analyzing the criteria for waiver  
to instead require the agency to analyze the criteria for imposition of an  
adult sentence. Under the draft, the report must be submitted to the court  
as one of the reports to the court relating to the juvenile's disposition.

**COMMENT:** Should this report also include the information required in a  
report that must be filed recommending a correctional placement or  
placement in the serious juvenile offender program?

15 **SECTION 10.** 938.18 (3) (intro.) and (a) of the statutes are renumbered 938.333 (2)

16 (intro.) and (a) and amended to read:

1           938.333 (2) RIGHTS OF JUVENILE. All of the following apply at a ~~waiver~~ hearing to  
2 impose an adult sentence under this section:

3           (a) The juvenile shall be represented by counsel. Written notice of the time, place, and  
4 purpose of the hearing shall be given to the juvenile, any parent, guardian, or legal custodian,  
5 and counsel at least 3 days prior to the hearing. ~~The notice shall contain a statement of the~~  
6 ~~requirements of s. 938.29 (2) with regard to substitution of the judge. If parents entitled to~~  
7 ~~notice have the same address, notice to one constitutes notice to the other. Counsel for the~~  
8 ~~juvenile shall have access to the social records and other reports under s. 938.293.~~

9           **SECTION 11.** 938.18 (3) (b) and (c) of the statutes are renumbered 938.333 (2) (b) and  
10 (c).

**NOTE:** Sets forth the rights of a juvenile in a hearing to impose an adult  
sentence.

11          **SECTION 12.** 938.18 (4) (title) and (a) of the statutes are repealed.

**NOTE:** Repeals the provision of the waiver statute under which the court  
must determine whether the matter has prosecutive merit before  
proceeding to determine if it should waive jurisdiction.

12          **SECTION 13.** 938.18 (4) (b) and (c) of the statutes are renumbered 938.333 (3) (a) and  
13 (b) and amended to read:

14           938.333 (3) (a) If a petition for ~~waiver of jurisdiction~~ imposition of an adult sentence  
15 is contested, the district attorney shall present relevant testimony and the court, after taking  
16 that testimony and considering other relevant evidence, shall base its decision whether to  
17 ~~waive jurisdiction~~ impose an adult sentence on the criteria specified in sub. (5).

18           (b) If a petition for ~~waiver of jurisdiction~~ imposition of an adult sentence is uncontested,  
19 the court shall inquire into the capacity of the juvenile to knowingly, intelligently, and  
20 voluntarily decide not to contest the ~~waiver of jurisdiction~~ imposition of an adult sentence.  
21 If the court is satisfied that the decision not to contest the ~~waiver of jurisdiction~~ imposition of

1 an adult sentence is knowingly, intelligently, and voluntarily made, no testimony need be  
2 taken and the court, after considering the petition for ~~waiver of jurisdiction~~ imposition of an  
3 adult sentence and other relevant evidence in the record before the court, shall base its decision  
4 whether to waive jurisdiction on the criteria specified in sub. (5).

**NOTE:** Modifies the current provisions relating to how the juvenile court must proceed based upon whether a petition for waiver of juvenile court jurisdiction is contested or uncontested to apply the provisions to a petition to impose an adult sentence.

5 **SECTION 14.** 938.18 (5) (intro.) of the statutes is renumbered 938.333 (5) (intro.) and  
6 amended to read:

7 938.333 (5) CRITERIA FOR WAIVER IMPOSITION OF ADULT SENTENCE. (intro.) ~~If prosecutive~~  
8 ~~merit is found, the~~ The court shall base its decision whether to ~~waive jurisdiction~~ impose an  
9 adult sentence on the following criteria:

10 **SECTION 15.** 938.18 (5) (a) of the statutes is renumbered 938.333 (5) (a).

11 **SECTION 16.** 938.18 (5) (am) of the statutes is renumbered 938.333 (5) (am) and  
12 amended to read:

13 938.333 (5) (am) The prior record of the juvenile, including whether the court has  
14 previously imposed an adult sentence on the juvenile, whether the court has previously waived  
15 its jurisdiction over the juvenile under s. 938.18, 2007 stats., whether the juvenile has been  
16 previously convicted following a waiver of the court's jurisdiction under s. 938.18, 2007 stats.,  
17 or has been previously found delinquent, whether such conviction or delinquency involved  
18 the infliction of serious bodily injury, the juvenile's motives and attitudes, and the juvenile's  
19 prior offenses.

20 **SECTION 17.** 938.18 (5) (b) and (c) of the statutes are renumbered 938.333 (5) (b) and  
21 (c).

**NOTE:** SECTIONS 14 to 17 provide that the criteria for waiver of juvenile court jurisdiction are the criteria for imposition of an adult sentence.

1       **SECTION 18.** 938.18 (5) (d) of the statutes is repealed.

**NOTE:** Repeals the criteria for waiver of jurisdiction under which the court must consider 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 court of criminal jurisdiction.

2       **SECTION 19.** 938.18 (6) of the statutes is renumbered 938.333 (6) and amended to read:

3       938.333 (6) DECISION ON WAIVER IMPOSITION OF ADULT SENTENCE. After considering the  
4 criteria under sub. (5), the court shall state its finding with respect to the criteria on the record,  
5 and, if the court determines on the record that there is clear and convincing evidence that it  
6 is contrary to the best interests of the juvenile or of the public to ~~hear the case~~ impose a juvenile  
7 disposition, the court shall enter ~~an order waiving jurisdiction and referring the matter to the~~  
8 ~~district attorney for appropriate proceedings in the court of criminal jurisdiction.~~ After the  
9 ~~order, the court of criminal jurisdiction has exclusive jurisdiction~~ a judgement of conviction.  
10 If the court does not make the findings required to impose an adult sentence, the court shall  
11 enter an order adjudging the juvenile delinquent. The court shall set a date for a dispositional  
12 hearing which allows reasonable time for the parties to prepare put is no more than 10 days  
13 from the hearing to impose an adult sentence for a juvenile who is held in secure custody and  
14 no more than 30 days from the hearing to impose an adult sentence for a juvenile who is not  
15 held in secure custody.

**NOTE:** Permits the juvenile court to enter a judgment of conviction of a juvenile and set a date for a sentencing hearing if the court determines on the record that there is clear and convincing evidence that it is contrary to the best interests of the juvenile or of the public to impose a juvenile disposition. If the court does not make the findings required to impose an adult sentence, the court must enter an order adjudging the juvenile delinquent and set a date for the dispositional hearing.



1           **SECTION 20.** 938.18 (8) of the statutes is renumbered 938.333 (8) and amended to read:

2           938.333 (8) ~~TRANSFER TO ADULT FACILITY; BAIL.~~ When waiver is granted a judgment of  
3 conviction is entered, the juvenile, if held in secure custody, shall be transferred to an  
4 appropriate officer or adult facility ~~and shall be eligible for bail in accordance with chs. 968~~  
5 ~~and 969.~~

**NOTE:** Provides that a juvenile held in secure custody must be transferred to an adult facility or an appropriate officer when a judgment of conviction is entered.

6           **SECTION 21.** 938.18 (9) of the statutes is repealed.

**NOTE:** Repeals the provision of the waiver statute which provides that, if a waiver request is granted, the district attorney may charge the offense and that any court or jury may convict the juvenile in regard to any offense.

7           **SECTION 22.** 938.183 (1) (b) of the statutes is amended to read:

8           938.183 (1) (b) A juvenile who is alleged to have violated any state criminal law if the  
9 juvenile has been convicted of a previous violation following waiver of jurisdiction under s.  
10 48.18, 1993 stats., or s. 938.18, 2007 stats., by the court assigned to exercise jurisdiction under  
11 this chapter and ch. 48 or if the court assigned to exercise jurisdiction under this chapter and  
12 ch. 48 ~~has waived its jurisdiction over the juvenile for a previous violation and criminal~~  
13 ~~proceedings on that previous violation are still pending~~ has imposed an adult sentence under  
14 s. 938.333 or a petition to impose an adult sentence under s. 938.18 is pending.

15           **SECTION 23.** 938.183 (1m) (c) 1. of the statutes is amended to read:

16           938.183 (1m) (c) 1. Except as provided in subd. 3., the court of criminal jurisdiction  
17 finds that the juvenile has committed a lesser offense or a joined offense that is not a violation  
18 of s. 940.20 (1) or (2m) or 946.43 under the circumstances described in sub. (1) (a), that is not  
19 an attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that is not

1 a violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am), and that  
2 is not an offense for which the court assigned to exercise jurisdiction under this chapter and  
3 ch. 48 may ~~waive its jurisdiction over the juvenile under s. 938.18~~ impose an adult sentence  
4 under s. 938.333.

5 **SECTION 24.** 938.183 (1m) (c) 2. of the statutes is amended to read:

6 938.183 **(1m)** (c) 2. Except as provided in subd. 3., the court of criminal jurisdiction  
7 finds that the juvenile has committed a lesser offense or a joined offense that is a violation of  
8 s. 940.20 (1) or (2m) or 946.43 under the circumstances described in sub. (1) (a), that is an  
9 attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that is a  
10 violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am), or that is  
11 an offense for which the court assigned to exercise jurisdiction under this chapter and ch. 48  
12 may ~~waive its jurisdiction over the juvenile~~ impose an adult sentence under s. ~~938.18~~ 938.333  
13 and the court of criminal jurisdiction, after considering the criteria specified in s. ~~938.18~~  
14 938.333 (5), determines that the juvenile has proved by clear and convincing evidence that it  
15 would be in the best interests of the juvenile and of the public to adjudge the juvenile to be  
16 delinquent and impose a disposition specified in s. 938.34.

17 **SECTION 25.** 938.183 (1m) (c) 3. of the statutes is amended to read:

18 938.183 **(1m)** (c) 3. For a juvenile who is alleged to have attempted or committed a  
19 violation of s. 940.01 or to have committed a violation of s. 940.02 or 940.05 on or after the  
20 juvenile's 15th birthday, the court of criminal jurisdiction finds that the juvenile has not  
21 attempted to commit a violation of s. 940.01 or committed a violation of s. 940.01, 940.02,  
22 or 940.05, and the court of criminal jurisdiction, after considering the criteria under s. ~~938.18~~  
23 938.333 (5), determines that the juvenile has proved by clear and convincing evidence that it

1 would be in the best interests of the juvenile and of the public to adjudge the juvenile to be  
2 delinquent and impose a disposition under s. 938.34.

3 **SECTION 26.** 938.185 (1) (intro.) of the statutes is amended to read:

4 938.185 (1) PROCEEDINGS GENERALLY. (intro.) Subject to subs. (3) and (4), venue for  
5 any proceeding under ss. 938.12, 938.125, 938.13, 938.135, and ~~938.18~~ 938.333 may be in  
6 any of the following:

**NOTE:** These SECTIONS modify provisions relating to original adult court  
jurisdiction.

7 **SECTION 27.** 938.209 (3) of the statutes is amended to read:

8 938.209 (3) JUVENILES UNDER ADULT COURT JURISDICTION. The restrictions of this section  
9 do not apply to the use of jail for a juvenile ~~who has been waived to adult court under s. 938.18~~  
10 ~~or~~ who is under the jurisdiction of an adult court under s. 938.183, unless the juvenile is under  
11 the jurisdiction of an adult court under s. 938.183 (1) and is under 15 years of age.

**NOTE:** Modifies current law relating to holding a juvenile in a jail or  
lock-up.

12 **SECTION 28.** 938.21 (2) (c) of the statutes is amended to read:

13 938.21 (2) (c) Prior to the commencement of the hearing, the court shall inform the  
14 juvenile of the allegations that have been or may be made, the nature and possible  
15 consequences of this hearing as compared to possible future hearings, the provisions of s.  
16 938.18 if applicable, the right to counsel under s. ~~938.23~~ 938.333 regardless of ability to pay  
17 if the juvenile is not yet represented by counsel, the right to remain silent, the fact that the  
18 silence may not be adversely considered by the court, the right to confront and cross-examine  
19 witnesses, and the right to present witnesses.

**NOTE:** Modifies current law relating to informing a juvenile of his or her  
rights at the temporary custody hearing.

20 **SECTION 29.** 938.243 (1) (b) of the statutes is amended to read:

1           938.243 (1) (b) The nature and possible consequences of the proceedings including the  
2 provisions of ss. ~~938.17~~ 938.333 and 938.18 if applicable.

3           **SECTION 30.** 938.243 (1) (c) of the statutes is amended to read:

4           938.243 (1) (c) The right to remain silent, the fact that in a delinquency proceeding the  
5 silence of the juvenile is not to be adversely considered by the court or jury, and the fact that  
6 in a nondelinquency proceeding the silence of any party may be relevant in the proceeding.

7           **SECTION 31.** 938.243 (1) (g) of the statutes is created to read:

8           938.243 (1) (g) The right to a jury trial if a petition for imposition of an adult sentence  
9 has been filed.

**NOTE:** SECTIONS 29 to 31 modify current law relating to the information  
          an intake worker must provide to the juvenile and his or her parents.

10          **SECTION 32.** 938.29 (2) of the statutes is repealed.

**NOTE:** Repeals current law relating to substitution of a judge for a  
          waiver hearing.

11          **SECTION 33.** 938.299 (4) (b) of the statutes is amended to read:

12          938.299 (4) (b) Except as provided in s. 901.05, common law and statutory rules of  
13 evidence are not binding at a ~~waiver~~ hearing to impose an adult sentence under s. ~~938.18~~  
14 938.333, a hearing for a juvenile held in custody under s. 938.21, a hearing under s. 938.296  
15 (4) for a juvenile who is alleged to have violated s. 940.225, 948.02, 948.025, 948.05, 948.06,  
16 or 948.085 (2), a hearing under s. 938.296 (5) for a juvenile who is alleged to have violated  
17 s. 946.43 (2m), a dispositional hearing, or any postdispositional hearing under this chapter.  
18 At those hearings, the court shall admit all testimony having reasonable probative value, but  
19 shall exclude immaterial, irrelevant, or unduly repetitious testimony, or evidence that is  
20 inadmissible under s. 901.05. Hearsay evidence may be admitted if it has demonstrable  
21 circumstantial guarantees of trustworthiness. The court shall give effect to the rules of

1 privilege recognized by law. The court shall apply the basic principles of relevancy,  
2 materiality, and probative value to proof of all questions of fact. Objections to evidentiary  
3 offers and offers of proof of evidence not admitted may be made and shall be noted in the  
4 record.

**NOTE:** Modifies current law relating to evidentiary rules at hearings  
under the Juvenile Justice Code.

5 **SECTION 34.** 938.30 (2) of the statutes is amended to read:

6 938.30 (2) INFORMATION TO JUVENILE AND PARENTS; BASIC RIGHTS; SUBSTITUTION. At or  
7 before the commencement of the hearing under this section the juvenile and the parent,  
8 guardian, or legal custodian shall be advised of their rights as specified in s. 938.243 and shall  
9 be informed that ~~the hearing shall be to the court and that~~ a request for a jury trial or for a  
10 substitution of judge under s. 938.29 must be made before the end of the plea hearing or is  
11 waived. Nonpetitioning parties, including the juvenile, shall be granted a continuance of the  
12 plea hearing if they wish to consult with an attorney on the request for a substitution of a judge.

**NOTE:** Requires the court, at the plea hearing, to inform the juvenile and  
his or her parents regarding requests for a jury trial.

13 **SECTION 35.** 938.30 (6) (a) of the statutes is amended to read:

14 938.30 (6) (a) If a petition is not contested, unless a petition for imposition of an adult  
15 sentence was timely filed the court shall set a date for the dispositional hearing which allows  
16 reasonable time for the parties to prepare but is no more than 10 days from the plea hearing  
17 for a juvenile who is held in secure custody and no more than 30 days from the plea hearing  
18 for a juvenile who is not held in secure custody. If all parties consent the court may proceed  
19 immediately with the dispositional hearing. If a citation is not contested, the court may  
20 proceed immediately to enter a dispositional order. If a petition for imposition of an adult  
21 sentence was filed, the court shall set a date for the hearing to impose an adult sentence which

1 allows reasonable time for the parties to prepare but is no more than 10 days from the plea  
2 hearing for a juvenile who is held in secure custody and no more than 30 days from the plea  
3 hearing for a juvenile who is not held in secure custody.

**NOTE:** Provides that in a plea hearing for which the petition is not contested, the court may not adjudge a juvenile delinquent if a petition for imposition of an adult sentence has been filed. Also, requires the court to set a date for the hearing to impose an adult sentence.

4 **SECTION 36.** 938.31 (2) (title) of the statutes is amended to read:

5 938.31 (2) (title) ~~HEARING TO THE COURT; PROCEDURES~~ PROCEDURES.

6 **SECTION 37.** 938.31 (2) of the statutes is renumbered 938.31 (2) (a) and amended to  
7 read:

8 938.31 (2) ~~HEARING TO THE COURT; PROCEDURES.~~ (a) ~~The~~ Except as provided in par. (b),  
9 the hearing shall be to the court.

10 (c) If the hearing involves a child victim, as defined in s. 938.02 (20m) (a) 1., or a child  
11 witness, as defined in s. 950.02 (5), the court may order that a deposition be taken by  
12 audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to (10) and,  
13 with the district attorney, shall comply with s. 971.105.

14 (d) At the conclusion of the hearing, the court shall make a determination of the facts.  
15 If the court finds that the juvenile is not within the jurisdiction of the court or the court finds  
16 that the facts alleged in the petition or citation have not been proved, the court shall dismiss  
17 the petition or citation with prejudice.

18 **SECTION 38.** 938.31 (2) (b) of the statutes is created to read:

19 938.31 (2) (b) *Hearing to impose adult sentence.* If a petition for imposition of an adult  
20 sentence under s. 938.18 was timely filed, the juvenile shall have a right to a trial by jury.

**NOTE:** Provides that a juvenile has a right to a jury trial in a fact-finding hearing on a delinquency petition if a petition for imposition of an adult sentence was filed.

1           **SECTION 39.** 938.31 (4) of the statutes is amended to read:

2           938.31 (4) FINDINGS BY COURT. The court shall make findings of fact and conclusions  
3 of law relating to the allegations of a petition under s. 938.12, 938.125 or 938.13 except that,  
4 if a petition for imposition of an adult sentence was timely filed, the court may not adjudge  
5 the juvenile delinquent until the conclusion of the hearing under s. 938.333 (6). In cases  
6 alleging a juvenile to be delinquent or in need of protection or services under s. 938.13 (12),  
7 the court shall make findings relating to the proof of the violation of law and to the proof that  
8 the juvenile named in the petition committed the violation alleged.

**NOTE:** Provides that, at the conclusion of a fact-finding hearing, the court may not adjudge a juvenile delinquent if a petition for imposition of an adult sentence has been filed.

9           **SECTION 40.** 938.31 (7) (a) of the statutes is amended to read:

10           938.31 (7) (a) At the close of the fact-finding hearing, unless a petition for imposition  
11 of an adult sentence was timely filed the court shall set a date for the dispositional hearing that  
12 allows a reasonable time for the parties to prepare but is no more than 10 days after the  
13 fact-finding hearing for a juvenile in secure custody and no more than 30 days after the  
14 fact-finding hearing for a juvenile not held in secure custody. If a petition for imposition of  
15 an adult sentence was timely filed, the court shall set a date for the hearing to decide whether  
16 to impose an adult sentence that allows a reasonable time for the parties to prepare but is no  
17 more than 10 days after the fact-finding hearing for a juvenile in secure custody and no more  
18 than 30 days after the fact-finding hearing for a juvenile not held in secure custody. If all  
19 parties consent, the court may immediately proceed with a dispositional hearing.

**NOTE:** Requires the court to set a date for a hearing to impose an adult sentence at the close of the fact-finding hearing if a petition to improve an adult sentence has been filed.

1       **SECTION 41.** 938.333 (4) (title) of the statutes is created to read:

2       938.333 **(4)** (title) CONTESTED OR UNCONTESTED PETITION.

3       **SECTION 42.** 938.34 (16) of the statutes is created to read:

4       938.34 **(16)** If the court has entered a judgment of conviction under s. 938.333 (6), the  
5 court shall impose a criminal penalty under s. 973.01.

**NOTE:** Requires the court to impose an adult sentence at the dispositional hearing if a judgment of conviction has been entered.

6       **SECTION 43.** 938.35 (1m) of the statutes is amended to read:

7       938.35 **(1m)** FUTURE CRIMINAL PROCEEDINGS BARRED. Disposition by the court assigned  
8 to exercise jurisdiction under this chapter and ch. 48 of any allegation under s. 938.12 or  
9 938.13 (12) shall bar any future proceeding on the same matter in criminal court when the  
10 juvenile attains 17 years of age. ~~This paragraph does not affect proceedings in criminal court  
11 that have been transferred under s. 938.18.~~

**NOTE:** Repeals language providing that future criminal proceedings following a juvenile court disposition are not barred in proceedings that have been transferred to the adult court following a waiver of juvenile court jurisdiction.

12       **SECTION 44.** 938.39 of the statutes is amended to read:

13       **938.39 Disposition by court bars criminal proceeding.** Disposition by the court of  
14 any violation of state law within its jurisdiction under s. 938.12 bars any future criminal  
15 proceeding on the same matter in circuit court when the juvenile reaches the age of 17. ~~This  
16 section does not affect criminal proceedings in circuit court that were transferred under s.  
17 938.18.~~

**NOTE:** Repeals language providing that future criminal proceedings following a juvenile court disposition are not barred in proceedings that



have been transferred to the adult court following a waiver of juvenile court jurisdiction.

1           **SECTION 45.** 948.60 (2) (d) of the statutes is amended to read:

2           948.60 (2) (d) A person under 17 years of age who has violated this subsection is subject  
3 to the provisions of ch. 938 unless ~~jurisdiction is waived under s. 938.18 or~~ the person is  
4 subject to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

**NOTE:** Modifies the current offense of possession of a dangerous weapon by a person under 18 to remove the reference to juveniles over whom juvenile court jurisdiction has been waived.

5           **SECTION 46.** 948.61 (4) of the statutes is amended to read:

6           948.61 (4) A person under 17 years of age who has violated this section is subject to  
7 the provisions of ch. 938, unless ~~jurisdiction is waived under s. 938.18 or~~ the person is subject  
8 to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

**NOTE:** Modifies the current offense of possession of a dangerous weapon on school premises to remove the reference to juveniles over whom juvenile court jurisdiction has been waived.

9           **SECTION 47.** 970.035 of the statutes is repealed.

**NOTE:** Repeals the preliminary examination for a juvenile younger than 15 years of age over whom juvenile court jurisdiction has been waived.

10          **SECTION 48.** 978.05 (6) (a) of the statutes is amended to read:

11          978.05 (6) (a) Institute, commence or appear in all civil actions or special proceedings  
12 under and perform the duties set forth for the district attorney under ch. 980 and ss. 17.14,  
13 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, 103.50 (8), 103.92 (4), 109.09, 343.305 (9)  
14 (a), 453.08, 806.05, 938.09, 938.18, 938.333, 938.355 (6) (b) and (6g) (a), 946.86, 946.87,  
15 961.55 (5), 971.14 and 973.075 to 973.077, perform any duties in connection with court  
16 proceedings in a court assigned to exercise jurisdiction under chs. 48 and 938 as the judge may  
17 request and perform all appropriate duties and appear if the district attorney is designated in

1 specific statutes, including matters within chs. 782, 976 and 979 and ss. 51.81 to 51.85.  
2 Nothing in this paragraph limits the authority of the county board to designate, under s. 48.09  
3 (5), that the corporation counsel provide representation as specified in s. 48.09 (5) or to  
4 designate, under s. 48.09 (6) or 938.09 (6), the district attorney as an appropriate person to  
5 represent the interests of the public under s. 48.14 or 938.14.

**NOTE:** Adds to the duties of a district attorney responsibilities in  
proceedings to impose an adult sentence.

6

**(END)**