

2009 BILL

1 AN ACT *to amend* 970.032 (2) (c) and 971.31 (13) (a) 3.; *to repeal and recreate*
2 970.032 (2) (b) and . 971.31 (13) (a) 2.; and *to create* 970.032 (2) (d) of the
3 statutes; **relating to:** the criteria for waiver of adult criminal court jurisdiction
4 over a juvenile and transfer of the case to juvenile court.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on High-Risk Juvenile Offenders.

Under current law, the court of criminal jurisdiction (adult court) has original jurisdiction over the following juveniles:

1. A juvenile who has been previously adjudicated delinquent and who is alleged to have committed battery or assault while placed in a juvenile correctional facility, detention facility, or secured residential care center for children and youth or to have committed battery to a probation and parole agent or to an aftercare agent.

2. A juvenile who is alleged to have attempted or committed first-degree intentional homicide or to have committed first-degree reckless homicide or second-degree intentional homicide on or after the juvenile's 10th birthday.

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3. A juvenile who is alleged to have violated any state criminal law under one of the following circumstances:

a. The juvenile has been convicted of a previous violation in adult court following a waiver of the jurisdiction of the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court).

b. The juvenile court has waived its jurisdiction over a juvenile for a previous violation and the criminal proceedings for that violation are still pending.

c. The juvenile has been convicted of a previous violation over which the adult court had original jurisdiction.

d. Proceedings for a violation over which the adult court has original jurisdiction are still pending.

Under current law, the adult court also has original jurisdiction over any violation of the Wisconsin Criminal Code that may be charged in the same complaint, or “joined”, with a violation over which the adult court already has original jurisdiction, as described above. Two or more crimes may be charged in the same complaint if the crimes charged are: (1) of the same or similar character; (2) based on the same act or transaction; or (3) based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

If certain conditions are met, a juvenile over whom the adult court has original jurisdiction may be “reverse waived” to the juvenile court, that is, the adult court may waive its jurisdiction over the juvenile and transfer the case to the juvenile court.

If a juvenile is under the original jurisdiction of the adult court for committing a felony and a preliminary examination is held, the adult court must first determine whether there is probable cause to believe that the juvenile committed the violation of which he or she is accused under the circumstances required for the adult court to have original jurisdiction. If the adult court does not make that finding, the adult court must order that the juvenile be discharged, but proceedings may still be brought under the Juvenile Justice Code.

If the adult court finds probable cause to believe that the juvenile committed the offense under the required circumstances, the adult court must determine whether to retain jurisdiction or to transfer jurisdiction to the juvenile court. The adult court must retain jurisdiction unless the juvenile proves by a preponderance of the evidence all of the following:

1. That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system.

2. That transferring jurisdiction to the juvenile court would not depreciate the seriousness of the offense.

3. That retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the violation of which the juvenile is accused under the circumstances required for the adult court to have original jurisdiction.

If the adult court transfers jurisdiction to the juvenile court, the juvenile is then subject to the procedures and dispositions in the Juvenile Justice Code.

This bill modifies the second criterion for reverse waiver so that the juvenile must prove that retaining jurisdiction is not necessary to protect the community because appropriate sanctions, including an appropriate length of incarceration, are available under the Juvenile Justice Code instead of requiring proof that transferring jurisdiction would not depreciate the seriousness of the offense.

The bill also modifies the third criterion for reverse waiver so that the juvenile is required to prove only that retention of jurisdiction by the adult court is not necessary to deter the juvenile, and not other juveniles, from committing the violation of which the juvenile is accused under the circumstances required for original adult court jurisdiction.

Finally, the bill creates a fourth criterion for reverse waiver, under which a juvenile who is alleged to have committed battery or assault while placed in a juvenile correctional facility, detention facility, or secured residential care center for children and youth or to

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have committed battery to a probation and parole agent or to an aftercare agent must prove that the retention of jurisdiction by the adult court is not necessary to deter other juveniles from committing the violation of which the juvenile is accused.

1 **SECTION 1.** 970.032 (2) (b) of the statutes is repealed and recreated to read:

2 970.032 (2) (b) That retaining jurisdiction is not necessary to protect the
3 community because appropriate sanctions, including an appropriate length of
4 incarceration, are available under ch. 938.

5 **SECTION 2.** 970.032 (2) (c) of the statutes is amended to read:

6 970.032 (2) (c) That retaining jurisdiction is not necessary to deter the juvenile
7 ~~or other juveniles~~ from committing the violation of which the juvenile is accused
8 under the circumstances specified in s. 938.183 (1) (a), (am), (ar), (b) or (c), whichever
9 is applicable.

NOTE: These SECTIONS modify criteria for reverse waiver to juvenile court of juveniles over whom the adult court has original jurisdiction. The first modification provides that the juvenile must prove that retaining jurisdiction is not necessary to protect the community because appropriate sanctions, including an appropriate length of incarceration, are available under the Juvenile Justice Code instead of proving that retaining jurisdiction would not depreciate the seriousness of the offense.

The second modification requires the juvenile to only prove that retention of jurisdiction by the adult court is not necessary to deter the juvenile, and not other juveniles, from committing the violation of which the juvenile is accused under the circumstances required for original adult court jurisdiction.

10 **SECTION 3.** 970.032 (2) (d) of the statutes is created to read:

11 970.032 (2) (d) For a juvenile alleged to have committed a violation under the
12 circumstances specified in s. 938.183 (1) (a), that retaining jurisdiction is not
13 necessary to deter other juveniles from committing the violation of which the
14 juvenile is accused under the circumstances specified in s. 938.183 (1) (a).

NOTE: This SECTION creates an additional criterion for reverse waiver under which a juvenile who is alleged to have committed battery or assault while placed in a juvenile correctional facility, detention facility, or secured residential care center for children and youth or to have committed battery to a probation and parole agent or to an aftercare agent must prove that retention of jurisdiction by the adult court is not necessary to deter other juveniles from committing the violation of which the juvenile is accused.

15 **SECTION 4.** 971.31 (13) (a) 2. of the statutes is repealed and recreated to read:

