



2009 SENATE BILL 153

April 6, 2009 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT** *to repeal* 938.18 (5) (d); *to renumber and amend* 938.18 (5) (intro.)
2 (except 938.18 (5) (title)), 938.18 (5) (a), 938.18 (5) (am), 938.18 (5) (b) and
3 938.18 (5) (c); *to amend* 938.18 (2); and *to create* 938.18 (5) (ar) (intro.) and
4 938.18 (5) (bm) (intro.) and 3. of the statutes; **relating to:** petitions for waiver
5 of juvenile court jurisdiction and the criteria for that waiver.

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.

Current law specifies that under certain circumstances the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) may waive its jurisdiction over a juvenile alleged to be delinquent and transfer the case to a court of criminal jurisdiction (adult court). The waiver proceeding is initiated by a petition for

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waiver of that jurisdiction. The petition may be filed by the district attorney or the juvenile or may be initiated by the juvenile court.

This bill repeals the language permitting a juvenile to file a petition for waiver of juvenile court jurisdiction.

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 must base its decision whether to waive jurisdiction on the following criteria:

1. The personality of the juvenile, including all of the following:
 - a. Whether the juvenile has a mental illness or developmental disability.
 - b. The juvenile's physical and mental maturity.
 - c. The juvenile's pattern of living, 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 juvenile court has previously waived its jurisdiction over the juvenile.
 - b. Whether the juvenile has been previously convicted following a waiver of the juvenile court's jurisdiction or has been previously found delinquent.
 - c. Whether any prior conviction or delinquency adjudication 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 adult court.

This bill requires the juvenile 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 bill, the juvenile court must consider the following factors as factors that favor retaining juvenile court jurisdiction over the juvenile:

- Whether the juvenile has a mental illness or developmental disability that could be treated more effectively in the juvenile justice system than in the adult criminal justice system.

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- Whether 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.
- Whether the juvenile’s pattern of living indicates that the juvenile will take responsibility for his or her actions and maintain positive relationships.
- Whether the juvenile’s prior treatment history indicates that the juvenile will respond to future treatment.
- Whether 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 bill provides that the juvenile court must consider the following factors as factors that favor waiving juvenile court jurisdiction over the juvenile:

- Whether 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.
- Whether a prior conviction or delinquency involved the infliction of serious bodily injury.
- Whether the juvenile’s prior treatment history indicates that the juvenile will not respond to future treatment.
- Whether the juvenile’s motives and attitudes demonstrate a lack of responsibility and remorse for the juvenile’s actions.
- Whether the juvenile’s prior offenses are serious offenses or have become progressively more serious.
- Whether the offense was against a person and was committed in a violent, aggressive, premeditated, or willful manner.
- Finally, the bill eliminates as a waiver criterion 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 adult court.

1 **SECTION 1.** 938.18 (2) of the statutes is amended to read:

2 938.18 (2) PETITION. The petition for waiver of jurisdiction may be filed by the
3 district attorney ~~or the juvenile~~ or may be initiated by the court and shall contain a
4 brief statement of the facts supporting the request for waiver. The petition for waiver
5 of jurisdiction shall be accompanied by or filed after the filing of a petition alleging
6 delinquency and shall be filed prior to the plea hearing, except that if the juvenile
7 denies the facts of the petition and becomes 17 years of age before an adjudication,
8 the petition for waiver of jurisdiction may be filed at any time prior to the
9 adjudication. If the court initiates the petition for waiver of jurisdiction, the judge
10 shall disqualify himself or herself from any future proceedings on the case.

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NOTE: Repeals the language permitting a juvenile to file a petition for waiver to adult court.

1 **SECTION 2.** 938.18 (5) (intro.) (except 938.18 (5) (title)) of the statutes is
2 renumbered 938.18 (5) (ag) and amended to read:

3 938.18 (5) (ag) If prosecutive merit is found, the court shall base its decision
4 whether to waive jurisdiction on the following criteria: in this subsection.

5 **SECTION 3.** 938.18 (5) (a) of the statutes is renumbered 938.18 (5) (ar) 1. and
6 amended to read:

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

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

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

16 4. Whether the juvenile's prior treatment history, and apparent potential for
17 responding indicates 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:

- Whether the juvenile has a mental illness or developmental disability that could be treated more effectively in the juvenile justice system than in the adult criminal justice system.

- Whether 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.

- Whether the juvenile's pattern of living indicates that the juvenile will take responsibility for his or her actions and maintain positive relationships.

- Whether the juvenile's prior treatment history indicates that the juvenile will respond to future treatment.

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

3 938.18 **(5)** (bm) 1. ~~The prior record of the juvenile, including whether~~ Whether
4 the court has previously waived its jurisdiction over the juvenile, ~~whether or~~ or the
5 juvenile has been previously convicted following a waiver of the court's jurisdiction
6 or has been previously found delinquent, ~~whether such.~~

7 2. Whether a prior conviction or delinquency involved the infliction of serious
8 bodily injury, ~~the.~~

9 4. Whether the juvenile's motives and attitudes, and the demonstrate a lack of
10 responsibility and remorse for the juvenile's actions.

11 5. Whether the juvenile's prior offenses are serious offenses or have become
12 progressively more serious.

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

- Whether 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.

- Whether a prior conviction or delinquency involved the infliction of serious bodily injury.

- Whether the juvenile's motives and attitudes demonstrate a lack of responsibility and remorse for the juvenile's actions.

- Whether the juvenile's prior offenses are serious offenses or have become progressively more serious.

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

14 938.18 **(5)** (ar) (intro.) The court shall consider the following criteria as factors
15 that favor retaining jurisdiction over the juvenile:

16 **SECTION 6.** 938.18 (5) (b) of the statutes is renumbered 938.18 (5) (bm) 6. and
17 amended to read:

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1 938.18 (5) (bm) 6. ~~The type and seriousness of Whether the offense, including~~
2 ~~whether it was against persons or property a person and the extent to which it was~~
3 ~~committed in a violent, aggressive, premeditated, or willful manner.~~

NOTE: Provides that the juvenile court must consider whether 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.

4 **SECTION 7.** 938.18 (5) (bm) (intro.) and 3. of the statutes are created to read:

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

7 3. Whether the juvenile's prior treatment history indicates that the juvenile
8 will not respond to future treatment.

NOTE: Provides that the juvenile court must consider whether the juvenile's prior treatment history indicates that the juvenile will not respond to future treatment as a factor favoring waiving juvenile court jurisdiction.

9 **SECTION 8.** 938.18 (5) (c) of the statutes is renumbered 938.18 (5) (ar) 5. and
10 amended to read:

11 938.18 (5) (ar) 5. ~~The adequacy and suitability of Whether the facilities,~~
12 ~~services, and procedures available for treatment of the juvenile and protection of the~~
13 ~~public within the juvenile justice system, and, where applicable, the mental health~~
14 ~~system are adequate and suitable for the juvenile or and the suitability of the~~
15 ~~juvenile for placement in the serious juvenile offender program under s. 938.538 or~~
16 ~~the adult intensive sanctions program under s. 301.048 is suitable for the juvenile.~~

NOTE: Provides that whether 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.

17 **SECTION 9.** 938.18 (5) (d) of the statutes is repealed.

NOTE: Repeals as a waiver criterion 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 adult court.

