

**2009 DRAFTING REQUEST**

**Bill**

Received: **01/23/2009**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Council - JLC 7-9485**

By/Representing: **Anne Sappenfield**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Add. Drafters:

Subject: **Children - juvenile justice**

Extra Copies:

Submit via email: **YES**

Requester's email: **anne.sappenfield@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Waiver of criminal court jurisdiction over a juvenile; criteria

---

**Instructions:**

See attached--draft up WLC-0045/4

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	gmalaise 01/24/2009	nmatzke 01/28/2009		_____			S&L
/1			mduchek 01/30/2009	_____	sbasford 01/30/2009	cduerst 03/31/2009	

FE Sent For: @ intro. 4/6/09

<END>

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/?	gmalaise	/1 <sup>run</sup> 1/27	LC concession 1/23 pk	_____	_____		

FE Sent For:

<END>

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PIT  
1/29 30

1        **AN ACT** *to amend* 970.032 (2) (c); *to repeal and recreate* 970.032 (2) (b); and *to*  
2        *create* 970.032 (2) (d) of the statutes; **relating to:** reverse waiver.

*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 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.
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 juvenile court jurisdiction.
  - 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 2 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.

If a juvenile is under the original jurisdiction of the adult court for committing a felony and a preliminary examination is held, the 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 court does not make that finding, the court must order that the juvenile be discharged, but proceedings may still be brought under the juvenile justice code.

If the court finds probable cause that the juvenile committed the offense under the required circumstances, the court must determine whether to retain jurisdiction or to transfer jurisdiction to the juvenile court. The 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 child 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.

The draft 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 draft also modifies the third criterion for reverse waiver so that the juvenile is required only to prove that the adult court retaining jurisdiction is not necessary to deter the juvenile from committing the

violation of which the juvenile is accused under the circumstances required for original adult court jurisdiction.

Finally, the draft creates a fourth criterion 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 the adult court retaining jurisdiction 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 community  
3 because appropriate sanctions, including an appropriate length of incarceration, are available  
4 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 ~~or other~~  
7 juveniles from committing the violation of which the juvenile is accused under the  
8 circumstances specified in s. 938.183 (1) (a), (am), (ar), (b) or (c), whichever 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 the adult court retaining jurisdiction is not necessary to deter the juvenile from committing the violation of which the juvenile is accused under the circumstances required for original adult court jurisdiction.

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

10           970.032 (2) (d) For a juvenile alleged to have committed a violation under the  
11 circumstances specified in s. 938.18 (1) (a), that retaining jurisdiction is not necessary to deter

1 other juveniles from committing the violation of which the juvenile is accused under the  
2 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 the adult court retaining jurisdiction is not necessary to deter other juveniles from committing the violation of which the juvenile is accused.

3

**(END)**



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1754/P4

GMM:j..ph

nwn

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RNR

P.W.F.

IN 1124  
don  
Dnote

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

This bill is explained in the <sup>(3)</sup> NOTES provided by the  
Joint Legislative Council in the bill  
FE-SL

SA ✓  
X-refv

Regen.

of adult criminal court jurisdiction over a  
juvenile and transfer of the case to juvenile court

the criteria for

- 1 AN ACT to amend 970.032 (2) (c); to repeal and recreate 970.032 (2) (b); and
- 2 to create 970.032 (2) (d) of the statutes; relating to: reverse waiver.

**Analysis by the Legislative Reference Bureau**

~~This is a preliminary draft. An analysis will be provided in a later version.~~

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

of criminal jurisdiction (adult court)

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

Under current law, the adult court has original jurisdiction over the following juveniles:

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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 juvenile court jurisdiction.

of the court assigned to exercise jurisdiction under the  
Juvenile Justice Code (juvenile court)

that is, the adult court may waive its jurisdiction over the juvenile and transfer the case to the 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.

LPS: Please close up all line spaces.

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 2 or more acts or transactions connected together or constituting parts of a common scheme or plan.

two

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adult

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

adult

to believe

adult

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 child is accused under the circumstances required for the adult court to have original jurisdiction.

Juvenile

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

The draft 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.

bill

The draft also modifies the third criterion for reverse waiver so that the juvenile is required only to prove that the adult court retaining jurisdiction is not necessary to deter the juvenile from committing the violation of which the juvenile is accused under the circumstances required for original adult court jurisdiction.

bill

Finally, the draft creates a fourth criterion 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

for reverse waiver under which

retention of by the adult court

committed battery to a probation and parole agent or to an aftercare agent must prove that the ~~adult court retaining jurisdiction~~ 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.

retention of by the adult court and not other juveniles

The second modification requires the juvenile to only prove that ~~the adult court retaining jurisdiction~~ is not necessary to deter the juvenile from committing the violation of which the juvenile is accused under the circumstances required for original adult court jurisdiction.

938.183

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  
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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 ~~the adult court retaining jurisdiction~~ is not necessary to deter other juveniles from committing the violation of which the juvenile is accused.

Insert 3-15

15

(END)

SEC # Initial applicability. (1)(2) REVERSE WAIVER CRITERIA. This act first applies to offenses committed on the effective date of this subsection. retention of by the adult court

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1754/lins  
GMM.....

(INSERT 3-15)

1           **SECTION 1.** 971.31 (13) (a) 2. of the statutes is repealed and recreated to read:

2           971.31 (13) (a) 2. 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.** 971.31 (13) (a) 3. of the statutes is amended to read:

6           971.31 (13) (a) 3. 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) (b) or (c), whichever is applicable. ✓

9 **History:** 1975 c. 184; 1985 a. 275; 1987 a. 332 s. 64; 1993 a. 227, 486; 1995 a. 352, 387, 456; 1997 a. 205; 2005 a. 277; 2007 a. 116.

9           **SECTION 3. Initial applicability.**

10           (1) REVERSE WAIVER CRITERIA. This act first applies to offenses committed on the  
11 effective date of this subsection. ✓ 

(INSERT 3-15)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1754/1dn

GMM: | : : : :  
nwn

*Date*

Anne:

As you will see, this draft also amends s. 971.31 (13) for conformity with the changes made to s. 970.032. Section 971.31 (13) is the parallel provision to s. 970.032 for when a juvenile who is once waived/always waived commits a misdemeanor.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.wisconsin.gov](mailto:gordon.malaise@legis.wisconsin.gov)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1754/1dn  
GMM:nwn:md

January 29, 2009

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E-mail: [gordon.malaise@legis.wisconsin.gov](mailto:gordon.malaise@legis.wisconsin.gov)

**Duerst, Christina**

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**From:** Sappenfield, Anne  
**Sent:** Tuesday, March 31, 2009 8:56 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-1754/1 Topic: Waiver of criminal court jurisdiction over a juvenile; criteria

Please Jacket LRB 09-1754/1 for the SENATE.