



2003 ASSEMBLY BILL 101

February 26, 2003 - Introduced by Representatives HUBER, BIES, STASKUNAS, LADWIG, UNDERHEIM, PLOUFF, J. LEHMAN, MUSSER and TURNER, cosponsored by Senators ROESSLER and DECKER. Referred to Committee on Corrections and the Courts.

1 **AN ACT to amend** 125.07 (4) (d), 125.085 (3) (bt), 125.09 (2) (d), 938.17 (2) (a) 1.,
2 938.17 (2) (b) (intro.), 938.17 (3), 938.21 (3) (ag), 938.243 (1) (intro.), 938.255 (1)
3 (intro.), 938.255 (1) (e), 938.29 (1g), 938.30 (1), 938.30 (3), 938.31 (1), 938.344
4 (3), 938.345 (1) (c), 938.345 (1) (d) and 938.355 (6) (a); and **to create** 938.13 (8),
5 938.17 (4) and 938.345 (2m) of the statutes; **relating to:** juvenile in need of
6 protection or services jurisdiction over a juvenile who commits a 3rd alcohol
7 beverage violation.

Analysis by the Legislative Reference Bureau

Under current law, the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) and the municipal court have concurrent jurisdiction over a juvenile who is alleged to have knowingly possessed or consumed an alcohol beverage, procured or attempted to procure an alcohol beverage, entered or attempted to enter a premises licensed to sell alcohol beverages, falsely represented his or her age for the purpose of receiving an alcohol beverage, or made, altered, duplicated, carried, or used an official identification card that purports to show that the juvenile has attained the legal drinking age (alcohol beverage violation). If the juvenile court or the municipal court finds that a juvenile has committed an alcohol beverage violation, the juvenile court or municipal court may impose a forfeiture, suspend the juvenile's operating privilege, require the juvenile

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to participate in a supervised work program, or impose any combination of those penalties, with the amount of the forfeiture and the length of the operating privilege suspension being dependent upon the violation involved and whether the juvenile had any previous violations in a 12-month period, or the juvenile court or municipal court, after ordering such a penalty, may stay the penalty and instead order the juvenile to participate in an alcohol or other drug abuse (AODA) assessment, an outpatient AODA treatment program, a pupil assistance program, an AODA education program, or a teen court program.

This bill grants to the juvenile court exclusive juvenile in need of protection or services (JIPS) jurisdiction over a juvenile who is alleged to have committed an alcohol beverage violation and who has two or more previous adjudications for an alcohol beverage violation. By granting JIPS jurisdiction over such a juvenile, the bill permits a juvenile court to impose on such a juvenile not only the dispositions permitted under current law for an alcohol beverage violation, but also the dispositions permitted for a juvenile who is subject to the juvenile court's JIPS jurisdiction. Those dispositions include counseling, supervision, a nonsecure out-of-home placement, or inpatient treatment for not more than 30 days. In addition, by granting JIPS jurisdiction over such a juvenile, the bill permits the caseworker of such a juvenile who violates a condition of his or her dispositional order to take the juvenile into custody and, without a hearing, place the juvenile in short-term detention in nonsecure custody for not more than 72 hours.

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:

1 **SECTION 1.** 125.07 (4) (d) of the statutes is amended to read:

2 125.07 (4) (d) A person who is under 17 years of age on the date of disposition
3 is subject to s. 938.344 or, if applicable, s. 938.345 (1) and (2m) (a), unless proceedings
4 have been instituted against the person in a court of civil or criminal jurisdiction
5 after dismissal of the citation under s. 938.344 (3) or dismissal of the petition under
6 s. 938.345 (2m) (b).

7 **SECTION 2.** 125.085 (3) (bt) of the statutes is amended to read:

8 125.085 (3) (bt) A person who is under 17 years of age on the date of disposition
9 is subject to s. 938.344 or, if applicable, s. 938.345 (1) and (2m) (a), unless proceedings
10 have been instituted against the person in a court of civil or criminal jurisdiction

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1 after dismissal of the citation under s. 938.344 (3) or dismissal of the petition under
2 s. 938.345 (2m) (b).

3 **SECTION 3.** 125.09 (2) (d) of the statutes is amended to read:

4 125.09 (2) (d) A person who violates this subsection is subject to a forfeiture of
5 not more than \$200, except that ss. 125.07 (4) (c) and (d) and 938.344 or, if applicable,
6 s. 938.345 (1) and (2m) (a) provide the penalties applicable to underage persons.

7 **SECTION 4.** 938.13 (8) of the statutes is created to read:

8 938.13 (8) Who has engaged in conduct prohibited under s. 125.07 (4) (a) or (b),
9 125.085 (3) (b), or 125.09 (2) and who has 2 or more prior adjudications for a violation
10 of s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2) or of a municipal ordinance that
11 conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2).

12 **SECTION 5.** 938.17 (2) (a) 1. of the statutes is amended to read:

13 938.17 (2) (a) 1. Except as provided in ~~sub.~~ subs. (1), (3), and (4), municipal
14 courts have concurrent jurisdiction with the court assigned to exercise jurisdiction
15 under this chapter and ch. 48 in proceedings against juveniles aged 12 or older for
16 violations of county, town, or other municipal ordinances. If evidence is provided by
17 the school attendance officer that the activities under s. 118.16 (5) have been
18 completed or were not required to be completed as provided in s. 118.16 (5m), the
19 municipal court specified in subd. 2. may exercise jurisdiction in proceedings against
20 a juvenile for a violation of an ordinance enacted under s. 118.163 (2) regardless of
21 the juvenile's age and regardless of whether the court assigned to exercise
22 jurisdiction under this chapter and ch. 48 has jurisdiction under s. 938.13 (6).

23 **SECTION 6.** 938.17 (2) (b) (intro.) of the statutes is amended to read:

24 938.17 (2) (b) (intro.) When a juvenile ~~12 years of age or older~~ is alleged to have
25 violated a civil law punishable by a forfeiture or ~~where~~ when a juvenile 12 years of

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1 age or older is alleged to have violated a municipal ordinance but there is no
2 municipal court in the municipality, the juvenile may be:

3 **SECTION 7.** 938.17 (3) of the statutes is amended to read:

4 938.17 (3) SAFETY AT SPORTING EVENTS. ~~Notwithstanding sub. (2), courts~~ Courts
5 of criminal or civil jurisdiction have exclusive jurisdiction in proceedings against
6 juveniles under s. 167.32 or under a local ordinance strictly conforming to s. 167.32.
7 A juvenile convicted of a violation under s. 167.32 or under a local ordinance strictly
8 conforming to s. 167.32 shall be treated as an adult for sentencing purposes.

9 **SECTION 8.** 938.17 (4) of the statutes is created to read:

10 938.17 (4) REPEAT ALCOHOL BEVERAGE VIOLATIONS. (a) The court assigned to
11 exercise jurisdiction under this chapter and ch. 48 has exclusive jurisdiction under
12 s. 938.13 (8) over a juvenile who is alleged to have engaged in conduct prohibited
13 under s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2) and who has 2 or more prior
14 adjudications for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2) or
15 of a municipal ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), or
16 125.09 (2).

17 (b) When a citation is issued under sub. (2) (a) 3. a. directing a juvenile to appear
18 in municipal court or to make a deposit or stipulation and deposit in lieu of
19 appearance for a violation of a municipal ordinance that conforms to s. 125.07 (4) (a)
20 or (b), 125.085 (3) (b), or 125.09 (2), the municipal attorney shall investigate to
21 determine whether the juvenile has 2 or more prior adjudications for a violation of
22 s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2) or of a municipal ordinance that
23 conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2). If the municipal
24 attorney determines that the juvenile has 2 or more prior adjudications for any of
25 those violations, the municipal attorney shall make a motion to transfer jurisdiction

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1 to the court assigned to exercise jurisdiction under this chapter and ch. 48. If the
2 municipal court transfers jurisdiction, the municipal court shall reject any deposit
3 or stipulation and deposit made by the juvenile, dismiss the citation, and refer the
4 juvenile to the intake worker under s. 938.24 for a determination of whether a
5 petition under s. 938.13 (8) should be filed with the court assigned to exercise
6 jurisdiction under this chapter and ch. 48.

7 (c) When a citation is issued under sub. (2) (a) 3. b. or (b) 1. directing a juvenile
8 to appear in the court assigned to exercise jurisdiction under this chapter and ch. 48
9 or to make a deposit or stipulation and deposit in lieu of appearance for a violation
10 of s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2) or of a municipal ordinance that
11 conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2), the district attorney
12 or corporation counsel shall investigate to determine whether the juvenile has 2 or
13 more prior adjudications for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), or
14 125.09 (2) or of a municipal ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085
15 (3) (b), or 125.09 (2). If the district attorney or corporation counsel determines that
16 the juvenile has 2 or more prior adjudications for any of those violations, the district
17 attorney or corporation counsel shall make a motion to dismiss the citation. If the
18 court dismisses the citation, the court shall reject any deposit or stipulation and
19 deposit made by the juvenile and refer the juvenile to the intake worker under s.
20 938.24 for a determination of whether a petition under s. 938.13 (8) should be filed
21 with the court.

22 (d) When a juvenile is referred to the intake worker under sub. (2) (a) 3. c. or
23 (b) 2. for a determination of whether a petition should be filed in the court assigned
24 to exercise jurisdiction under this chapter and ch. 48 pursuant to s. 938.125 for a
25 violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2) or of a municipal

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1 ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2), the
2 intake worker shall investigate to determine whether the juvenile has 2 or more prior
3 adjudications for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2) or
4 of a municipal ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), or
5 125.09 (2). If the intake worker determines that the juvenile has 2 or more prior
6 adjudications for any of those violations and that as a result of the intake inquiry the
7 juvenile should be referred to the court, the intake worker shall request the district
8 attorney or corporation counsel to file a petition initiating proceedings under s.
9 938.13 (8).

10 (e) Notwithstanding s. 938.396 (2) (a), upon request of a district attorney,
11 corporation counsel, municipal attorney, or intake worker to review court records for
12 the purpose of determining whether a juvenile has 2 or more adjudications for a
13 violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2) or of a municipal
14 ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2), the
15 court assigned to exercise jurisdiction under this chapter and ch. 48 or the municipal
16 court shall open for inspection by any authorized representative of the requester its
17 records relating to the juvenile.

18 **SECTION 9.** 938.21 (3) (ag) of the statutes is amended to read:

19 938.21 (3) (ag) Proceedings concerning a juvenile who comes within the
20 jurisdiction of the court under s. 938.13 (4), (6), (6m), (8), or (14) shall be conducted
21 according to this subsection.

22 **SECTION 10.** 938.243 (1) (intro.) of the statutes is amended to read:

23 938.243 (1) (intro.) Before conferring with the parent or juvenile during the
24 intake inquiry, the intake worker shall personally inform a juvenile alleged to have
25 committed a delinquent act, and parents and juveniles 10 years of age or over who

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1 are the focus of an inquiry regarding the need for protection or services under s.
2 938.13 (4), (6), (6m) ~~or~~, (7), (8), or (14), of all of the following:

3 **SECTION 11.** 938.255 (1) (intro.) of the statutes is amended to read:

4 938.255 (1) (intro.) A petition initiating proceedings under this chapter, other
5 than a petition initiating proceedings under s. 938.12, 938.125, or 938.13 (8), (12),
6 or (14), shall be entitled, "In the interest of (juvenile's name), a person under the age
7 of 18". A petition initiating proceedings under s. 938.12, 938.125, or 938.13 (8), (12),
8 or (14) shall be entitled, "In the interest of (juvenile's name), a person under the age
9 of 17". A petition initiating proceedings under this chapter shall set forth with
10 specificity all of the following:

11 **SECTION 12.** 938.255 (1) (e) of the statutes is amended to read:

12 938.255 (1) (e) If the juvenile is alleged to come within the provisions of s.
13 938.13 (4), (6), (6m), (7), (8), or (14) or 938.14, reliable and credible information which
14 forms the basis of the allegations necessary to invoke the jurisdiction of the court and
15 to provide reasonable notice of the conduct or circumstances to be considered by the
16 court, together with a statement that the juvenile is in need of supervision, services,
17 care, or rehabilitation.

18 **SECTION 13.** 938.29 (1g) of the statutes is amended to read:

19 938.29 (1g) The juvenile may not request the substitution of a judge in a
20 proceeding under s. 938.12 or 938.13 (12), and the juvenile and the juvenile's parent,
21 guardian, or legal custodian may not request the substitution of a judge in a
22 proceeding under s. 938.13 (4), (6), (6m) ~~or~~, (7), (8), or (14), if the judge assigned to
23 the proceeding has entered a dispositional order with respect to the juvenile in a
24 previous proceeding under s. 48.12, 1993 stats., s. 48.13 (4), (6), (6m), (7) ~~or~~, (12), or
25 (14), 1993 stats., or s. 938.12 or 938.13 (4), (6), (6m), (7) ~~or~~, (8), (12), or (14) or the

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1 juvenile or the juvenile's parent, guardian, or legal custodian has requested the
2 substitution of a judge in a previous proceeding under s. 48.12, 1993 stats., s. 48.13
3 (4), (6), (6m), (7) ~~or~~ (12), or (14), 1993 stats., or s. 938.12 or 938.13 (4), (6), (6m), (7)
4 ~~or~~ (8), (12), or (14).

5 **SECTION 14.** 938.30 (1) of the statutes is amended to read:

6 938.30 (1) Except as provided in this subsection, the hearing to determine the
7 juvenile's plea to a citation or a petition under s. 938.12, 938.125, or 938.13 (12), or
8 to determine whether any party wishes to contest an allegation that the juvenile is
9 in need of protection or services under s. 938.13 (4), (6), (6m), (7), (8), or (14) shall take
10 place on a date ~~which~~ that allows reasonable time for the parties to prepare but is
11 within 30 days after the filing of a petition or issuance of a citation for a juvenile who
12 is not being held in secure custody or within 10 days after the filing of a petition or
13 issuance of a citation for a juvenile who is being held in secure custody. In a
14 municipal court operated jointly by 2 or more cities, towns, or villages under s. 755.01
15 (4), the hearing to determine the juvenile's plea shall take place within 45 days after
16 the filing of a petition or issuance of a citation for a juvenile who is not being held in
17 secure custody.

18 **SECTION 15.** 938.30 (3) of the statutes is amended to read:

19 938.30 (3) If a petition alleges that a juvenile is in need of protection or services
20 under s. 938.13 (4), (6), (6m), (7), (8), or (14), the nonpetitioning parties and the
21 juvenile, if he or she is 12 years of age or older or is otherwise competent to do so, shall
22 state whether they desire to contest the petition.

23 **SECTION 16.** 938.31 (1) of the statutes is amended to read:

24 938.31 (1) In this section, "fact-finding hearing" means a hearing to determine
25 if the allegations of a petition under s. 938.12 or 938.13 (12) are supported beyond

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1 a reasonable doubt or a hearing to determine if the allegations in a petition or citation
2 under s. 938.125 or 938.13 (4), (6), (6m), (7), ~~(8)~~, or (14) are proved by clear and
3 convincing evidence.

4 **SECTION 17.** 938.344 (3) of the statutes is amended to read:

5 938.344 (3) If the juvenile who is alleged to have committed the violation is
6 within 3 months of his or her 17th birthday, the court assigned to exercise jurisdiction
7 under this chapter and ch. 48 may, at the request of the district attorney or on its own
8 motion, dismiss the citation without prejudice and refer the matter to the district
9 attorney for prosecution under s. 125.07 (4), 125.085 (3), or 125.09 (2). The juvenile
10 is entitled to a hearing only on the issue of his or her age. This subsection does not
11 apply to violations under s. 961.573 (2), 961.574 (2), or 961.575 (2) or a local ordinance
12 that strictly conforms to one of those statutes.

13 **SECTION 18.** 938.345 (1) (c) of the statutes is amended to read:

14 938.345 (1) (c) Order payment of a forfeiture or surcharge, except as provided
15 under sub. (2) or (2m).

16 **SECTION 19.** 938.345 (1) (d) of the statutes is amended to read:

17 938.345 (1) (d) Restrict, suspend, or revoke the driving privileges of the
18 juvenile, except as provided under sub. (2) or (2m).

19 **SECTION 20.** 938.345 (2m) of the statutes is created to read:

20 938.345 (2m) (a) Subject to par. (b), if the court finds that a juvenile is in need
21 of protection or services under s. 938.13 (8) based on the fact that the juvenile has
22 engaged in conduct prohibited under s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09
23 (2) and has 2 or more prior adjudications for a violation of s. 125.07 (4) (a) or (b),
24 125.085 (3) (b), or 125.09 (2) or of a municipal ordinance that conforms to s. 125.07
25 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2), the court, instead of or in addition to any

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1 other disposition imposed under sub. (1), may enter an order permitted under s.
2 938.344.

3 (b) If the juvenile who is alleged to have engaged in the conduct prohibited
4 under s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2) is within 3 months of his
5 or her 17th birthday, the court may, at the request of the district attorney or
6 corporation counsel or on its own motion, dismiss the petition without prejudice and
7 refer the matter to the district attorney for prosecution under s. 125.07 (4), 125.085
8 (3), or 125.09 (2).

9 **SECTION 21.** 938.355 (6) (a) of the statutes is amended to read:

10 938.355 (6) (a) If a juvenile who has been adjudged delinquent ~~or~~ who has been
11 found to be in need of protection or services under s. 938.13 (8), or who has been
12 adjudged to have violated a civil law or ordinance, other than an ordinance enacted
13 under s. 118.163 (1m) or (2), violates a condition specified in sub. (2) (b) 7., the court
14 may impose on the juvenile any of the sanctions specified in par. (d) if, at the
15 dispositional hearing under s. 938.335, the court explained the conditions to the
16 juvenile and informed the juvenile of those possible sanctions or if before the
17 violation the juvenile has acknowledged in writing that he or she has read, or has had
18 read to him or her, those conditions and possible sanctions and that he or she
19 understands those conditions and possible sanctions. If a juvenile who has been
20 found to be in need of protection or services under s. 938.13 (4), (6m), (7), (12), or (14)
21 violates a condition specified in sub. (2) (b) 7., the court may impose on the juvenile
22 any of the sanctions specified in par. (d), other than placement in a secure detention
23 facility or juvenile portion of a county jail, if, at the dispositional hearing under s.
24 938.335, the court explained the conditions to the juvenile and informed the juvenile
25 of those possible sanctions or if before the violation the juvenile has acknowledged

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1 in writing that he or she has read, or has had read to him or her, those conditions and
2 possible sanctions and that he or she understands those conditions and possible
3 sanctions.

4 **SECTION 22. Initial applicability.**

5 (1) JURISDICTION OVER 3RD JUVENILE ALCOHOL BEVERAGE VIOLATIONS. This act first
6 applies to conduct prohibited under section 125.07 (4) (a) or (b), 125.085 (3) (b), or
7 125.09 (2) of the statutes engaged in on the effective date of this subsection, but does
8 not preclude the consideration of an adjudication for a violation of section 125.07 (4)
9 (a) or (b), 125.085 (3) (b), or 125.09 (2) of the statutes or of a municipal ordinance that
10 conforms to section 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2) of the statutes
11 made before the effective date of this subsection in determining whether the court
12 assigned to exercise jurisdiction under chapters 48 and 938 of the statutes has
13 jurisdiction over a juvenile under section 938.13 (8) of the statutes, as created by this
14 act.

15 (END)