



2009 ASSEMBLY BILL 223

April 23, 2009 – Introduced by Representatives KESSLER, ROYS, PASCH, TURNER and BERCEAU, cosponsored by Senators TAYLOR and LEHMAN. Referred to Committee on Corrections and the Courts.

1 **AN ACT** *to renumber and amend* 938.317; *to amend* 756.06 (2) (d), 938.243 (1)
2 (c), 938.255 (1) (d), 938.30 (2), 938.31 (2), 938.31 (4) and 938.355 (4) (b); and *to*
3 **create** 938.235 (6), 938.243 (1) (g), 938.317 (2) and 938.355 (4) (c) of the
4 statutes; **relating to:** the right to a trial by jury for a juvenile for whom the
5 petitioner has reserved the right to recommend placement in the Serious
6 Juvenile Offender Program or in a juvenile correctional facility beyond the age
7 of majority.

Analysis by the Legislative Reference Bureau

Under current law, a juvenile who is alleged to be delinquent, and the parent, guardian, or legal custodian of that juvenile, do not have the right to a trial by jury in a proceeding under the Juvenile Justice Code. This bill grants that right to such a juvenile and to his or her parent, guardian, or legal custodian, if the person filing the delinquency petition reserves the right to recommend placement of the juvenile in the Serious Juvenile Offender Program or in a juvenile correctional facility beyond the age of 17 years.

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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.** 756.06 (2) (d) of the statutes is amended to read:

2 756.06 (2) (d) This subsection does not apply to cases under ch. 938 other than
3 cases described in s. 938.30 (2) in which the juvenile has the right to a jury trial.

4 **SECTION 2.** 938.235 (6) of the statutes is created to read:

5 938.235 (6) COMMUNICATION TO A JURY. In jury trials under this chapter, the
6 guardian ad litem or the court may tell the jury that the guardian ad litem represents
7 the interests of the person for whom the guardian ad litem was appointed.

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

9 938.243 (1) (c) The right to remain silent, the fact that in a delinquency
10 proceeding the silence of the juvenile is not to be adversely considered by the court
11 or jury, and the fact that in a nondelinquency proceeding the silence of any party may
12 be relevant in the proceeding.

13 **SECTION 4.** 938.243 (1) (g) of the statutes is created to read:

14 938.243 (1) (g) The right to a jury trial, if the petitioner reserves the right under
15 s. 938.255 (1) (d) to recommend placement of the juvenile in the Serious Juvenile
16 Offender Program under s. 938.34 (4h) or in a juvenile correctional facility under s.
17 938.34 (4m) beyond the juvenile's 17th birthday.

18 **SECTION 5.** 938.255 (1) (d) of the statutes is amended to read:

19 938.255 (1) (d) If violation of a criminal statute, an ordinance, or another law
20 is alleged, the citation to the appropriate law or ordinance as well as, facts sufficient
21 to establish probable cause that an offense has been committed and that the juvenile

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1 named in the petition committed the offense, and a statement whether the petitioner
2 is reserving the right to recommend placement of the juvenile in the Serious Juvenile
3 Offender Program under s. 938.34 (4h) or in a juvenile correctional facility under s.
4 938.34 (4m) beyond the juvenile's 17th birthday.

5 **SECTION 6.** 938.30 (2) of the statutes is amended to read:

6 **938.30 (2) INFORMATION TO JUVENILE AND PARENTS; BASIC RIGHTS; SUBSTITUTION.**

7 At or before the commencement of the hearing under this section the juvenile and
8 the parent, guardian, or legal custodian shall be advised of their rights as specified
9 in s. 938.243 and shall be informed that the hearing shall be to the court and that
10 a request for a substitution of judge under s. 938.29 must be made before the end of
11 the plea hearing or is waived, except that if the juvenile is before the court on a
12 petition under s. 938.12 in which the petitioner has reserved the right under s.
13 938.255 (1) (d) to recommend placement of the juvenile in the Serious Juvenile
14 Offender Program under s. 938.34 (4h) or in a juvenile correctional facility under s.
15 938.34 (4m) beyond the juvenile's 17th birthday, the court shall inform the juvenile
16 and the parent, guardian, or legal custodian that a request for a jury trial must be
17 made before the end of the plea hearing or is waived. Nonpetitioning parties,
18 including the juvenile, shall be granted a continuance of the plea hearing if they wish
19 to consult with an attorney on the request for a jury trial or substitution of a judge.

20 **SECTION 7.** 938.31 (2) of the statutes is amended to read:

21 **938.31 (2) HEARING TO THE COURT; PROCEDURES.** The hearing shall be to the court
22 unless a juvenile who has the right to a jury trial as described in s. 938.30 (2) or the
23 parent, guardian, or legal custodian of the juvenile exercises that right by
24 demanding a jury trial at any time before or during the plea hearing. Sections 972.03
25 and 972.04 shall govern the selection of jurors in cases in which a jury trial has been

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1 demanded. If the hearing involves a child victim, as defined in s. 938.02 (20m) (a)
2 1., or a child witness, as defined in s. 950.02 (5), the court may order that a deposition
3 be taken by audiovisual means and allow the use of a recorded deposition under s.
4 967.04 (7) to (10) and, with the district attorney, shall comply with s. 971.105. At the
5 conclusion of the hearing, the court or jury shall make a determination of the facts.
6 If the court finds that the juvenile is not within the jurisdiction of the court or the
7 court or jury finds that the facts alleged in the petition or citation have not been
8 proved, the court shall dismiss the petition or citation with prejudice.

9 **SECTION 8.** 938.31 (4) of the statutes is amended to read:

10 938.31 (4) **FINDINGS BY COURT OR JURY**. The court shall make findings of fact and
11 conclusions of law relating to the allegations of a petition under s. 938.12, 938.125,
12 or 938.13, except that in cases in which the petitioner has reserved the right under
13 s. 938.255 (1) (d) to recommend placement of the juvenile in the Serious Juvenile
14 Offender Program under s. 938.34 (4h) or in a juvenile correctional facility under s.
15 938.34 (4m) beyond the juvenile's 17th birthday, the court or jury shall make findings
16 of fact and the court shall make conclusions of law relating to the allegations of the
17 petition. In cases alleging a juvenile to be delinquent or in need of protection or
18 services under s. 938.13 (12), the court shall make findings relating to the proof of
19 the violation of law and to the proof that the juvenile named in the petition committed
20 the violation alleged.

21 **SECTION 9.** 938.317 of the statutes is renumbered 938.317 (intro.) and amended
22 to read:

23 **938.317 Jeopardy.** (intro.) Jeopardy attaches:

24 **(1) In a trial to the court**, when a witness is sworn.

25 **SECTION 10.** 938.317 (2) of the statutes is created to read:

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1 938.317 (2) In a jury trial, when the jury selection is completed and the jury
2 is sworn.

3 **SECTION 11.** 938.355 (4) (b) of the statutes is amended to read:

4 938.355 (4) (b) Except as provided ~~in~~ under par. (c) and s. 938.368, an order
5 under s. 938.34 (4d) or (4m) made before the juvenile attains 18 years of age may
6 apply for up to 2 years after the date on which the order is granted or until the
7 juvenile's 18th birthday, whichever is earlier, unless the court specifies a shorter
8 period of time or the court terminates the order sooner. If the order does not specify
9 a termination date, it shall apply for one year after the date on which the order is
10 granted or until the juvenile's 18th birthday, whichever is earlier, unless the court
11 terminates the order sooner. ~~Except as provided in~~ under par. (c) and s. 938.368, an
12 order under s. 938.34 (4h) made before the juvenile attains 18 years of age shall apply
13 for 5 years after the date on which the order is granted, if the juvenile is adjudicated
14 delinquent for committing a violation of s. 943.10 (2) or for committing an act that
15 would be punishable as a Class B or C felony if committed by an adult, or until the
16 juvenile reaches 25 years of age, if the juvenile is adjudicated delinquent for
17 committing an act that would be punishable as a Class A felony if committed by an
18 adult. ~~Except as provided in~~ under par. (c) and s. 938.368, an extension of an order
19 under s. 938.34 (4d), (4h), (4m), or (4n) made before the juvenile attains 17 years of
20 age shall terminate at the end of one year after the date on which the order is granted
21 unless the court specifies a shorter period of time or the court terminates the order
22 sooner. No extension under s. 938.365 of an original dispositional order under s.
23 938.34 (4d), (4h), (4m), or (4n) may be granted for a juvenile who is 17 years of age
24 or older when the original dispositional order terminates.

25 **SECTION 12.** 938.355 (4) (c) of the statutes is created to read:

