



1995 SENATE BILL 91

March 2, 1995 - Introduced by Senators ROSENZWEIG, HUELSMAN, ANDREA, DARLING, RUDE, BUETTNER, SCHULTZ and ZIEN, cosponsored by Representatives LADWIG, KRUSICK, DOBYNS, DUFF, WOOD, HUBER, LAZICH, KLUSMAN, LA FAVE, FREESE, VRAKAS, GROBSCHMIDT, OTT, AINSWORTH, KAUFERT, ZIEGELBAUER, WARD, MUSSER, HANDRICK, HAHN, OWENS, SERATTI, NASS, GROTHMAN, WALKER and HASENOHRL. Referred to Committee on Judiciary.

1 **AN ACT to amend** 48.02 (3m), 48.12 (1), 48.13 (12), 48.20 (3), 48.245 (2) (a) 5.,
2 48.245 (2) (a) 6., 48.32 (1), 48.32 (1t), 48.34 (4m) (a), 48.34 (5), 48.34 (9) (a), 48.34
3 (9) (c) and (d) and 48.52 (1) (d) of the statutes; **relating to:** the age at which a
4 child may be adjudicated delinquent.

Analysis by the Legislative Reference Bureau

Under current law, a child 12 years of age or older may be adjudicated delinquent, and a child under 12 years of age may be found to be in need of protection or services, for committing an act that is a violation of a state or federal criminal law. This bill lowers from 12 years of age to 10 the age at which a child may be adjudicated delinquent for committing first-degree intentional homicide, first-degree reckless homicide, felony murder, 2nd-degree intentional homicide or 2nd-degree reckless homicide. The bill also lowers from 12 years of age to 10 the age at which a child may participate in a restitution project or a supervised work program under an informal disposition, consent decree or court-ordered disposition, if the child is alleged or found to have committed first-degree intentional homicide, first-degree reckless homicide, felony murder, 2nd-degree intentional homicide or 2nd-degree reckless homicide. The bill also permits a child who is 10 or 11 years of age and who has committed first-degree intentional homicide to be placed in a secured correctional facility.

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:

5 **SECTION 1.** 48.02 (3m) of the statutes is amended to read:

1 48.02 **(3m)** "Delinquent" means a child who is less than 18 years of age and 12
2 years of age or older who has violated any state or federal criminal law, except as
3 provided in ss. 48.17, 48.18 and 48.183, or who has committed a contempt of court,
4 as defined in s. 785.01 (1), as specified in s. 48.355 (6g), or a child who is 10 or 11 years
5 of age who has violated s. 940.01, 940.02, 940.03, 940.05 or 940.06 or who has
6 committed a contempt of court as specified in s. 48.355 (6g).

7 **SECTION 2.** 48.12 (1) of the statutes is amended to read:

8 48.12 **(1)** The court has exclusive jurisdiction, except as provided in ss. 48.17,
9 48.18 and 48.183, over any child ~~12~~ 10 years of age or older who is alleged to be
10 delinquent ~~as defined in s. 48.02 (3m).~~

11 **SECTION 3.** 48.13 (12) of the statutes is amended to read:

12 48.13 **(12)** Who, being under ~~12~~ 10 years of age, has ~~committed a delinquent~~
13 ~~act as defined in s. 48.12~~ violated any state or federal criminal law or who, being 10
14 or 11 years of age, has violated any state or federal criminal law other than s. 940.01,
15 940.02, 940.03, 940.05 or 940.06;

16 **SECTION 4.** 48.20 (3) of the statutes is amended to read:

17 48.20 **(3)** If the child is released under sub. (2) (b) to (d) or (g), the person who
18 took the child into custody shall immediately notify the child's parent, guardian and
19 legal custodian of the time and circumstances of the release and the person, if any,
20 to whom the child was released. If the child is not released under sub. (2), the person
21 who took the child into custody shall arrange in a manner determined by the court
22 and law enforcement agencies for the child to be interviewed by the intake worker
23 under s. 48.067 (2), and shall make a statement in writing with supporting facts of
24 the reasons why the child was taken into physical custody and shall give any child
25 10 or 11 years of age who is taken into custody based on a reasonable belief that the

1 child has committed a violation of s. 940.01, 940.02, 940.03, 940.05 or 940.06 or who
2 is 12 years of age or older a copy of the statement in addition to giving a copy to the
3 intake worker. When the intake interview is not done in person, the report may be
4 read to the intake worker.

5 **SECTION 5.** 48.245 (2) (a) 5. of the statutes is amended to read:

6 48.245 (2) (a) 5. a. That the child participate in a restitution project if the child
7 has attained the age of 12 and the act for which the informal disposition is being
8 imposed has resulted in damage to the property of another, or in actual physical
9 injury to another excluding pain and suffering, or if the child is 10 or 11 years of age
10 and the act for which the informal disposition is being imposed is a violation of s.
11 940.01, 940.02, 940.03, 940.05 or 940.06. Subject to subd. 5. c., the informal
12 disposition may require the child to repair damage to property or to make reasonable
13 restitution for the damage or injury if the intake worker, after taking into
14 consideration the well-being and needs of the victim, considers it beneficial to the
15 well-being and behavior of the child. Any such informal disposition shall include a
16 determination that the child alone is financially able to pay and may allow up to the
17 date of the expiration of the disposition for the payment.

18 b. In addition to any other employment or duties permitted under ch. 103 or
19 any rule or order under ch. 103, a child who is ~~12 or~~ 10 to 13 years of age who is
20 participating in a restitution project provided by the county may, for the purpose of
21 making restitution, be employed or perform any duties under any circumstances in
22 which a child 14 or 15 years of age is permitted to be employed or to perform duties
23 under ch. 103 or any rule or order under ch. 103.

24 c. Under this subdivision, an informal disposition may not require a child who
25 is ~~12 or~~ 10 to 13 years of age to make more than \$250 in restitution.

1 **SECTION 6.** 48.245 (2) (a) 6. of the statutes is amended to read:

2 48.245 (2) (a) 6. a. That the child participate in a supervised work program if
3 the child has attained the age of 12, or if the child is 10 or 11 years of age and the act
4 for which the informal disposition is being imposed is a violation of s. 940.01, 940.02,
5 940.03, 940.05 or 940.06, and the county has a supervised work program in
6 accordance with s. 48.34 (9) (a). The supervised work program shall be of a
7 constructive nature designed to promote the rehabilitation of the child, shall be
8 appropriate to the age level and physical ability of the child and shall be combined
9 with counseling from a member of the staff of the county department or community
10 agency or other qualified person. The program may not conflict with the child's
11 regular attendance at school. Subject to subd. 6. c., the amount of work required shall
12 be reasonably related to the seriousness of the child's offense.

13 b. In addition to any other employment or duties permitted under ch. 103 or
14 any rule or order under ch. 103, a child who is ~~12 or~~ 10 to 13 years of age who is
15 participating in a community service project provided by the county may, for
16 purposes of performing community service work ordered by the court under this
17 subsection, be employed or perform any duties under any circumstances in which a
18 child 14 or 15 years of age is permitted to be employed or to perform duties under ch.
19 103 or any rule or order under ch. 103.

20 c. Under this subdivision, an informal disposition may not require a child who
21 is ~~12 or~~ 10 to 13 years of age to perform more than 40 total hours of community service
22 work.

23 **SECTION 7.** 48.32 (1) of the statutes is amended to read:

24 48.32 (1) At any time after the filing of a petition for a proceeding relating to
25 s. 48.12 or 48.13 and before the entry of judgment, the judge or juvenile court

1 commissioner may suspend the proceedings and place the child under supervision
2 in the child's own home or present placement. The court may establish terms and
3 conditions applicable to the parent, guardian or legal custodian, and to the child,
4 including any conditions specified in subs. (1d), (1g) and (1t). The order under this
5 section shall be known as a consent decree and must be agreed to by the child if the
6 child is 12 years of age or older or is alleged to be delinquent; the parent, guardian
7 or legal custodian; and the person filing the petition under s. 48.25. If the consent
8 decree includes any conditions specified in sub. (1g), the consent decree shall include
9 provisions for payment of the services as specified in s. 48.361. The consent decree
10 shall be reduced to writing and given to the parties.

11 **SECTION 8.** 48.32 (1t) of the statutes is amended to read:

12 48.32 (1t) (a) 1. Subject to subd. 3., if the petition alleges that the child is 12
13 years of age or older and has committed a delinquent act that has resulted in damage
14 to the property of another, or in actual physical injury to another excluding pain and
15 suffering, or if the petition alleges that the child is 10 or 11 years of age and has
16 violated s. 940.01, 940.02, 940.03, 940.05 or 940.06, the judge or juvenile court
17 commissioner may require the child, ~~if the child is 12 years of age or older~~, as a
18 condition of the consent decree, to repair damage to property or to make reasonable
19 restitution for the damage or injury if the judge or juvenile court commissioner, after
20 taking into consideration the well-being and needs of the victim, considers it
21 beneficial to the well-being and behavior of the child. Any consent decree that
22 includes a condition of restitution shall include a finding that the child alone is
23 financially able to pay and may allow up to the date of the expiration of the consent
24 decree for the payment. Objection by the child to the amount of damages claimed

1 shall entitle the child to a hearing on the question of damages before the amount of
2 restitution is made part of the consent decree.

3 2. In addition to any other employment or duties permitted under ch. 103 or
4 any rule or order under ch. 103, a child who is ~~12 or~~ 10 to 13 years of age who is
5 participating in a restitution project provided by the county may, for the purpose of
6 making restitution under the consent decree, be employed or perform any duties
7 under any circumstances in which a child 14 or 15 years of age is permitted to be
8 employed or to perform duties under ch. 103 or any rule or order under ch. 103.

9 3. Under this paragraph, a judge or juvenile court commissioner may not order
10 a child who is ~~12 or~~ 10 to 13 years of age to make more than \$250 in restitution.

11 (b) 1. The court or juvenile court commissioner may require a child to
12 participate in a supervised work program, as a condition of the consent decree, if the
13 child has attained the age of 12, or if the petition alleges that the child is 10 or 11
14 years of age and has violated s. 940.01, 940.02, 940.03, 940.05 or 940.06, and the
15 county has a supervised work program in accordance with s. 48.34 (9) (a). The
16 supervised work program shall be of a constructive nature designed to promote the
17 rehabilitation of the child, shall be appropriate to the age level and physical ability
18 of the child and shall be combined with counseling from a member of the staff of the
19 county department or community agency or other qualified person. The program
20 may not conflict with the child's regular attendance at school. Subject to subd. 3., the
21 amount of work required shall be reasonably related to the seriousness of the child's
22 offense.

23 2. In addition to any other employment or duties permitted under ch. 103 or
24 any rule or order under ch. 103, a child who is ~~12 or~~ 10 to 13 years of age who is
25 participating in a community service project provided by the county may, for

1 purposes of performing community service work ordered by the court under this
2 subsection, be employed or perform any duties under any circumstances in which a
3 child 14 or 15 years of age is permitted to be employed or to perform duties under ch.
4 103 or any rule or order under ch. 103.

5 3. Under this paragraph, a judge or juvenile court commissioner may not order
6 a child who is ~~12 or~~ 10 to 13 years of age to perform more than 40 total hours of
7 community service work.

8 **SECTION 9.** 48.34 (4m) (a) of the statutes is amended to read:

9 48.34 **(4m)** (a) The child, if 12 years of age or older, has been found to be
10 delinquent for the commission of an act which if committed by an adult would be
11 punishable by a sentence of 6 months or more or the child, if 10 or 11 years of age,
12 has been found to be delinquent for a violation of s. 940.01; and

13 **SECTION 10.** 48.34 (5) of the statutes is amended to read:

14 48.34 **(5)** (a) Subject to par. (c), if the child is found to have attained the age of
15 12 and to have committed a delinquent act which has resulted in damage to the
16 property of another, or actual physical injury to another excluding pain and
17 suffering, or if the child is found to be 10 or 11 years of age and to have committed
18 a violation of s. 940.01, 940.02, 940.03, 940.05 or 940.06, the judge may order the
19 child to repair damage to property or to make reasonable restitution for the damage
20 or injury if the judge, after taking into consideration the well-being and needs of the
21 victim, considers it beneficial to the well-being and behavior of the child. Any such
22 order shall include a finding that the child alone is financially able to pay and may
23 allow up to the date of the expiration of the order for the payment. Objection by the
24 child to the amount of damages claimed shall entitle the child to a hearing on the
25 question of damages before the amount of restitution is ordered.

1 (b) In addition to any other employment or duties permitted under ch. 103 or
2 any rule or order under ch. 103, a child who is ~~12 or~~ 10 to 13 years of age who is
3 participating in a restitution project provided by the county may, for the purpose of
4 making restitution ordered by the court under this subsection, be employed or
5 perform any duties under any circumstances in which a child 14 or 15 years of age
6 is permitted to be employed or perform duties under ch. 103 or any rule or order
7 under ch. 103.

8 (c) Under this subsection, a court may not order a child who is ~~12 or~~ 10 to 13
9 years of age to make more than \$250 in restitution.

10 **SECTION 11.** 48.34 (9) (a) of the statutes is amended to read:

11 48.34 (9) (a) The judge may utilize as a dispositional alternative court-ordered
12 participation in a supervised work program if the child is 12 years of age or older or
13 is 10 or 11 years of age and is found to have committed a violation of s. 940.01, 940.02,
14 940.03, 940.05 or 940.06. The judge shall set standards for the program within the
15 budgetary limits established by the county board of supervisors. The work program
16 may provide the child reasonable compensation reflecting a reasonable market value
17 of the work performed, or it may consist of uncompensated community service work,
18 and shall be administered by the county department or a community agency
19 approved by the judge.

20 **SECTION 12.** 48.34 (9) (c) and (d) of the statutes are amended to read:

21 48.34 (9) (c) In addition to any other employment or duties permitted under ch.
22 103 or any rule or order under ch. 103, a child who is ~~12 or~~ 10 to 13 years of age who
23 is participating in a community service project provided by the county may, for
24 purposes of performing community service work ordered by the court under this
25 subsection, be employed or perform any duties under any circumstances in which a

1 child 14 or 15 years of age is permitted to be employed or perform duties under ch.
2 103 or any rule or order under ch. 103.

3 (d) Under this subsection, a court may not order a child who is ~~12 or~~ 10 to 13
4 years of age to perform more than 40 total hours of community service work.

5 **SECTION 13.** 48.52 (1) (d) of the statutes is amended to read:

6 48.52 (1) (d) Institutions, facilities and services, including without limitation
7 forestry or conservation camps for the training and treatment of children ~~12~~ 10 years
8 of age or older who have been adjudged delinquent; and

9 **SECTION 14. Initial applicability.**

10 (1) This act first applies to delinquent acts committed on the effective date of
11 this subsection.

12

(END)