

### 2001 DRAFTING REQUEST

#### Bill

Received: 09/20/2000

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Administration-Budget 6-8270

By/Representing: Coomber

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Alt. Drafters:

Subject: Children - juvenile justice

Extra Copies:

#### Pre Topic:

DOA:.....Coomber -

#### Topic:

Transfer of serious juvenile offender

#### Instructions:

See Attached

#### 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>
/?	malaigm 09/21/2000	hhagen 09/25/2000		_____			State
/1			martykr 09/25/2000	_____	lrb_docadmin 09/25/2000		State
/2	malaigm 02/03/2001	jdyer 02/03/2001	jfrantze 02/03/2001	_____	lrb_docadmin 02/03/2001		State
/3	malaigm 02/06/2001	jdyer 02/07/2001	martykr 02/07/2001	_____	lrb_docadmin 02/07/2001		

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FE Sent For:

1/3 2/1 jld  
cmk  
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<END>

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7/2/3      7/6/2000  
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09/20/00	malaigm	hmk 9/22 10/1	Jan 9/25	Jan 9/25			
		1 9/22 jld					

FE Sent For:

<END>



#3

**Department of Corrections  
2001-2003 BIENNIAL BUDGET  
Statutory Language Request**

**Topic:** Delete Statutory Authority to transfer Serious Juvenile Offender Youth and Other Youth on Juvenile Correctional Court Orders to Adult Type 1 or Type 2 Prison.

**Current Language**

Current language at §301.03(10), §938.183, §938.357, and §938.358 allow Serious Juvenile Offender (SJO) youth and other youth on juvenile correctional court orders to adult Type 1 or Type 2 prisons.

**Proposed Change**

Delete references in the following sections from the statutes:

- 301.03 (10) -- Duties of the Office of Juvenile Offender Review authorizing transfers to Racine YOFC -- delete authorizing language.
- 938.183 (3) -- The reference to Racine YOFC transfers is not needed. DOC has authority to transfer any person with a criminal sentence to prison at age 16 under s. 973.013 (3m). Delete reference.
- 938.357 (4)(d) -- Entire section on Racine YOFC transfers of persons with juvenile court orders under ch. 938 is invalid and should be removed.
- 938.538 (3)(a)1. -- Language permitting SJO transfers to adult prisons should be removed.
- 938.538 (3)(a)1m. -- Remove language permitting SJO transfers to adult prisons.
- 938.538 (4)(a), (5)(c), and (6) -- References to SJO prison transfers should be removed.

**Effect of the Change**

This change removes from statutes the provisions that permit the Department to transfer persons to prison who have been placed with the Department by the juvenile court under ch. 938, Stats.

**Rationale for the Change**

On July 3, 1998, the Wisconsin Supreme Court invalidated the prison transfer provisions for youth with juvenile court orders under ch. 938, citing them as unconstitutional. To clarify that the DOC will not make such transfers to adult prison, the language permitting these transfers should be deleted.

<b>Desired Effective Date:</b>	Upon Passage of Bill
<b>Agency:</b>	DOC
<b>Agency Contact:</b>	Shelley Hagan
<b>Phone:</b>	266-5820



State of Wisconsin  
2001 - 2002 LEGISLATURE

*note*

LRB-0447/3

GMM *mi mi...*  
*hmk*  
*a*

*jed*

DOA:.....Coomber – Transfer of serious juvenile offender

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

*Do Not Gen.*

1 AN ACT ...; relating to: the budget. ✓

*Analysis by the Legislative Reference Bureau*

✓ CORRECTIONAL SYSTEM ✓

✓ JUVENILE CORRECTIONAL SYSTEM ✓

*Class*

✓ Under current law, a court assigned to exercise jurisdiction under the juvenile justice code (juvenile court) may place a juvenile who has committed a Class A or B felony in the serious juvenile offender program (SJOP) if the juvenile court finds that the only other disposition that would be appropriate for the juvenile would be placement in a secured correctional facility. The SJOP contains various component phases for its participants, including placement in a secured correctional facility, a secured child caring institution, or, if the participant is 17 years of age or over, an adult prison. The SJOP also includes a component phase of intensive or other field ✓ supervision, including corrective sanctions supervision, aftercare supervision, or, if the participant is 17 years of age or over, intensive sanctions supervision. Also, under current law, DOC may transfer a juvenile who is placed in a secured correctional facility to the Racine Youthful Offender Correctional Facility, which is a medium security adult correctional institution for offenders 15 to 21 years of age, if the juvenile is 15 years of age or over and the conduct of the juvenile in the secured correctional facility presents a serious problem to the juvenile or others.

The Wisconsin Supreme Court recently held, however, in *State of Wisconsin v. Hezzie R.*, 219 Wis. 2d 849 (1998), that subjecting a juvenile who has been adjudicated delinquent and who has no right to a trial by jury under the juvenile

justice code to placement in an adult prison violates the juvenile's constitutional right to a trial by jury because placement in an adult prison constitutes criminal punishment rather than juvenile rehabilitation. Accordingly, this ~~draft~~ <sup>bill</sup> eliminates the authority of DOC to transfer a juvenile who has been adjudicated delinquent to an adult prison, including the intensive sanctions program, which is defined in the statutes as a state prison.

Current law contains conflicting provisions relating to the age under which a juvenile who has been sentenced to an adult prison (juvenile prisoner) must be placed in a juvenile secured correctional facility and the age at which a juvenile prisoner may be transferred to an adult prison. One provision requires DOC to keep juvenile prisoners under 15 years of age in a juvenile secured correctional facility, another provision requires DOC to keep juvenile prisoners under 16 years of age in a juvenile secured correctional facility, and another provision does not permit DOC to transfer a juvenile prisoner to an adult prison until the juvenile attains 17 years of age. This bill provides a uniform age of 15 years at which DOC may transfer a juvenile prisoner to an adult prison.

For further information see the *state* 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           <sup>x</sup>  
SECTION 1. 48.366 (8) of the statutes is amended to read:

2           48.366 (8) TRANSFER TO OR BETWEEN FACILITIES. The department of corrections  
3 may transfer a person subject to an order between secured correctional facilities.  
4 After the person attains the age of 17 years, the department of corrections may place  
5 the person in a state prison named in s. 302.01. ~~If the person is 15 years of age or~~  
6 ~~over, the department of corrections may transfer the person to the Racine youthful~~  
7 ~~offender correctional facility named in s. 302.01 as provided in s. 938.357 (4) (d).~~ <sup>✓</sup> If  
8 the department of corrections places a person subject to an order under this section  
9 in a state prison, that department shall provide services for that person from the  
10 appropriate appropriation under s. 20.410 (1). The department of corrections may  
11 transfer a person placed in a state prison under this subsection to or between state



1 prisons named in s. 302.01 without petitioning for revision of the order under sub.  
2 (5) (a).

3 **SECTION 2.** 301.03<sup>X</sup> (10) (d) of the statutes is amended to read:

4 301.03 (10) (d) Administer the office of juvenile offender review in the division  
5 of juvenile corrections in the department. The office shall be responsible for decisions  
6 regarding case planning, and the release of juvenile offenders from secured  
7 correctional facilities or secured child caring institutions to aftercare placements  
8 ~~and the transfer of juveniles to the Racine youthful offender correctional facility~~  
9 ~~named in s. 302.01 as provided in s. 938.357 (4) (d)~~

History: 1989 a. 31, 107, 121, 188, 336; 1991 a. 39; 1993 a. 16, 377, 479; 1995 a. 27 ss. 6355, 6356m, 6356p, 9126 (19); 1995 a. 77, 141; 1997 a. 27, 35, 237, 275, 283, 284; 1999 a. 9, 32.

10 **SECTION 3.** 302.11<sup>X</sup> (10) of the statutes is amended to read:

11 302.11 (10) An inmate subject to an order under s. 48.366 ~~or 938.34 (4h)~~ is not  
12 entitled to mandatory release and may be released or discharged only as provided  
13 under s. 48.366 ~~or 938.538~~

14 **SECTION 4.** 302.18<sup>X</sup> (7) of the statutes is amended to read:

15 302.18 (7) Except as provided in s. 973.013 (3m), the department shall keep all  
16 ~~prisoners~~ a person under 15 years of age who has been sentenced to the Wisconsin  
17 state prisons in a secured juvenile correctional facilities or facility or a secured child  
18 caring institutions institution, but the department may transfer ~~them~~ that person  
19 to an adult correctional institutions institution after they attain the person attains  
20 15 years of age.

21 **SECTION 5.** 302.255<sup>X</sup> of the statutes is amended to read:

22 **302.255 Interstate corrections compact; additional applicability.**

23 "Inmate", as defined under s. 302.25 (2) (a), includes persons subject to an order

1 under s. 48.366 who are confined to a state prison under s. 302.01 and persons subject  
2 to an order under s. 938.34 (4h) who are 17 years of age or older.

3 SECTION 6. 302.386 (5) (d) of the statutes is amended to read:

4 302.386 (5) (d) Any participant in the serious juvenile offender program under  
5 s. 938.538 unless he or she the participant is placed in a Type 1 secured correctional  
6 facility, as defined in s. 938.02 (19), or in a Type 1 prison other than the institution  
7 authorized under s. 301.046 (1).

8 SECTION 7. 938.183 (3) of the statutes is amended to read:

9 938.183 (3) Except as provided in s. 973.013 (3m), the department shall place  
10 a juvenile under 15 years of age who is subject to a criminal penalty under sub. (1m)  
11 or (2) in a secured correctional facility or a secured child caring institution. When  
12 a juvenile who is subject to a criminal penalty under sub. (1m) or (2) attains the age  
13 of 17 15 years, the department may place the juvenile in a state prison named in s.  
14 302.01. ~~If a juvenile who is subject to a criminal penalty under sub. (1m) or (2) is 15~~  
15 ~~years of age or over, the department may transfer the juvenile to the Racine youthful~~  
16 ~~offender correctional facility named in s. 302.01 as provided in s. 938.357 (4) (d).~~ A  
17 juvenile who is subject to a criminal penalty under sub. (1m) or (2) for an act  
18 committed before December 31, 1999, is eligible for parole under s. 304.06.

19 SECTION 8. 938.357 (4) (d) of the statutes is repealed.

20 SECTION 9. 938.538 (3) (a) 1. of the statutes is amended to read:

21 938.538 (3) (a) 1. Subject to subd. 1m., placement in a Type 1 secured  
22 correctional facility, or a secured child caring institution or, if the participant is 17  
23 years of age or over or 15 years of age or over and transferred under s. 938.357 (4)  
24 (d), a Type 1 prison, as defined in s. 301.01 (5), for a period of not more than 3 years.

25 SECTION 10. 938.538 (3) (a) 1m. of the statutes is amended to read:

1           938.538 (3) (a) 1m. If the participant has been adjudicated delinquent for  
2 committing an act that would be a Class A felony if committed by an adult, placement  
3 in a Type 1 secured correctional facility, or a secured child caring institution ~~or, if the~~  
4 ~~participant is 17 years of age or over or 15 years of age or over and transferred under~~  
5 ~~s. 938.357 (4) (d), a Type 1 prison, as defined in s. 301.01 (5), until the participant~~  
6 reaches 25 years of age, unless the participant is released sooner, subject to a  
7 mandatory minimum period of confinement of not less than one year.

8           **SECTION 11.** 938.538 (3) (a) 2. of the statutes is amended to read:

9           938.538 (3) (a) 2. Intensive or other field supervision, including corrective  
10 sanctions supervision under s. 938.533, or aftercare supervision ~~or, if the participant~~  
11 ~~is 17 years of age or over, intensive sanctions supervision under s. 301.048,~~

12           **SECTION 12.** 938.538 (4) (a) of the statutes is amended to read:

13           938.538 (4) (a) A participant in the serious juvenile offender program is under  
14 the supervision and control of the department, is subject to the rules and discipline  
15 of the department, and is considered to be in custody, as defined in s. 946.42 (1) (a).  
16 Notwithstanding ss. 938.19 to 938.21, if a participant violates a condition of his or  
17 her participation in the program under sub. (3) (a) 2. to 9. while placed in a Type 2  
18 secured correctional facility the department may, without a hearing, take the  
19 participant into custody and return him or her to placement in a Type 1 secured  
20 correctional facility, or a secured child caring institution ~~or, if the participant is 17~~  
21 ~~years of age or over, a Type 1 prison, as defined in s. 301.01 (5). Any intentional~~  
22 failure of a participant to remain within the extended limits of his or her placement  
23 while participating in the serious juvenile offender program ~~or to return within the~~  
24 ~~time prescribed by the administrator of the division of intensive sanctions in the~~  
25 department is considered an escape under s. 946.42 (3) (c).

1           **SECTION 13.** 938.538<sup>X</sup> (5) (c) of the statutes is amended to read:

2           938.538 (5) (c) Sections 938.357 and 938.363 do not apply to changes of  
3 placement and revisions of orders for a juvenile who is a participant in the serious  
4 juvenile offender program, ~~except that s. 938.357 (4) (d) applies to the transfer of a~~  
5 ~~participant to the Racine youthful offender correctional facility named in s. 302.01~~○

6           **SECTION 14.** 938.538<sup>X</sup> (6) of the statutes is amended to read:

7           938.538 (6) PURCHASE OF SERVICES. The department of corrections may contract  
8 with the department of health and family services, a county department, or any  
9 public or private agency for the purchase of goods, care, and services for participants  
10 in the serious juvenile offender program. The department of corrections shall  
11 reimburse a person from whom it purchases goods, care,<sup>✓</sup> or services under this  
12 subsection from the appropriation under s. 20.410 (3) (cg) ~~or, if the person for whom~~  
13 ~~the goods, care or services are purchased is placed in a Type 1 prison, as defined s.~~  
14 ~~301.01 (5), or is under intensive sanctions supervision under s. 301.048, from the~~  
15 ~~appropriate appropriation under s. 20.410 (1)~~○

16           **SECTION 15.** 938.992<sup>X</sup> (3) of the statutes is amended to read:

17           938.992 (3) Notwithstanding s. 938.991 (3) (b), "delinquent juvenile" does not  
18 include a person subject to an order under s. 48.366 who is confined to a state prison  
19 under s. 302.01 ~~or a person subject to an order under s. 938.34 (1h) who is 17 years~~  
20 ~~of age or over.~~

21           **SECTION 16.** 973.013<sup>X</sup> (3m) of the statutes is amended to read:

22           973.013 (3m) If a person who has not attained the age of 16 <sup>✓</sup>15 years is  
23 sentenced to the Wisconsin state prisons, the department of corrections shall place  
24 the person at a secured juvenile correctional facility or a secured child caring  
25 institution, unless the department of corrections determines that placement in an

1 institution under s. 302.01 is appropriate based on the person's prior record of  
2 adjustment in a correctional setting, if any; the person's present and potential  
3 vocational and educational needs, interests, and abilities; the adequacy and  
4 suitability of available facilities; the services and procedures available for treatment  
5 of the person within the various institutions; the protection of the public; and any  
6 other considerations promulgated by the department of corrections by rule. This  
7 subsection does not preclude the department of corrections from designating an  
8 adult correctional institution as a reception center for the person and subsequently  
9 transferring the person to a secured juvenile correctional facility or a secured child  
10 caring institution. Section 302.11 and ch. 304 apply to all persons placed in a secured  
11 juvenile correctional facility or a secured child caring institution under this  
12 subsection.

13 **SECTION 17.** 976.08 of the statutes is amended to read:

14 **976.08 Additional applicability.** In this chapter, "prisoner" includes any  
15 person subject to an order under s. 48.366 or 938.183 who is confined to a Wisconsin  
16 state prison ~~and any person subject to an order under s. 938.34 (4h) who is 17 years~~  
17 ~~of age or older.~~

18 **SECTION 9311. Initial applicability; corrections.**

19 (1) ~~TRANSFER OF JUVENILE TO ADULT PRISON.~~ <sup>✓</sup> The treatment of sections 301.03 (10)  
20 (d), 302.11 (10), 302.255, 302.386 (5) (d), 938.183 (3) (with respect to transfer of a  
21 juvenile to the Racine youthful offender correctional facility), 938.357 (4) (d),  
22 938.538 (3) (a) 1., 1m., and 2., (4) (a), (5) (c), and (6), 938.992 (3), and 976.08 of the  
23 statutes first applies to violations committed on July 1, 1996.

24 (2) **AGE OF JUVENILE PLACEMENT IN ADULT PRISON.** <sup>✓</sup> The treatment of sections  
25 938.183 (3) (with respect to placement of a juvenile in a secured correctional facility,

1 a secured child caring institution, or a state prison) and 973.013 (3m) of the statutes ✓  
2 first applies to violations committed on the effective date of this subsection. ✓

3 (END)

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

LRB01-0447/1dn

GMM...  
huh  
&  
jcd

Dated

Brett:

Note that this draft, in addition to prohibiting the transfer of juveniles to a Type 1 prison or to the Racine Youthful Offender Correctional Facility, does all of the following:

1. Prohibits the placement of a serious juvenile offender program participant 17 years of age or over in the adult intensive sanctions program. This is necessary to conform the statutes to the holding of *Hezzie R.* because the intensive sanctions program is defined as a state prison. See ss. 301.048(4) (b) and 302.01.

2. Clears up a conflict among ss. 302.18 (7), 938.183 (3), and 973.013 (3m) over the age under which DOC must keep a juvenile who has been sentenced to the Wisconsin state prisons in a juvenile facility and the age at which DOC may transfer such a juvenile to an adult prison. Section 302.18 (7) says that age is 15, s. 973.013 (3m) says that age is 16, and s. 938.183 (3) says that age is 17. This draft reconciles those conflicting provisions by providing for a uniform age of 15, which is the age of waiver for any criminal violation. Although cleaning up this conflict is not within the four corners of DOC's drafting request, this draft is a good opportunity to clean up this conflict. Please run this by DOC to see if they agree. If they do not, these provisions can be deleted on redraft.

Gordon M. Malaise  
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Phone: (608) 266-9738  
E-mail: gordon.malaise@legis.state.wi.us

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

LRB01-0447/1dn  
GMM:hmh&jld:km

September 25, 2000

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2. Clears up a conflict among ss. 302.18 (7), 938.183 (3), and 973.013 (3m) over the age under which DOC must keep a juvenile who has been sentenced to the Wisconsin state prisons in a juvenile facility and the age at which DOC may transfer such a juvenile to an adult prison. Section 302.18 (7) says that age is 15, s. 973.013 (3m) says that age is 16, and s. 938.183 (3) says that age is 17. This draft reconciles those conflicting provisions by providing for a uniform age of 15, which is the age of waiver for any criminal violation. Although cleaning up this conflict is not within the four corners of DOC's drafting request, this draft is a good opportunity to clean up this conflict. Please run this by DOC to see if they agree. If they do not, these provisions can be deleted on redraft.

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State of Wisconsin  
2001 - 2002 LEGISLATURE

Draft

LRB-0447  
GMM:hmh&jld:km

2  
RMR

DOA:.....Coomber - Transfer of serious juvenile offender

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

a juvenile 14<sup>✓</sup> years of age or over  
who has committed a

1 AN ACT ...; relating to: the budget.

ten<sup>✓</sup> years of age or over

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

\* Under current law, a court assigned to exercise jurisdiction under the juvenile justice code (juvenile court) may place a juvenile who has committed a Class A or Class B felony in the serious juvenile offender program (SJOP) if the juvenile court finds that the only other disposition that would be appropriate for the juvenile would be placement in a secured correctional facility. The SJOP contains various component phases for its participants, including placement in a secured correctional facility, a secured child caring institution, or, if the participant is 17 years of age or over, an adult prison. The SJOP also includes a component phase of intensive or other field supervision, including corrective sanctions supervision, aftercare supervision or, if the participant is 17 years of age or over, intensive sanctions supervision. Also, under current law, DOC may transfer a juvenile who is placed in a secured correctional facility to the Racine Youthful Offender Correctional Facility, which is a medium security adult correctional institution for offenders 15 to 21 years of age, if the juvenile is 15 years of age or over and the conduct of the juvenile in the secured correctional facility presents a serious problem to the juvenile or others.

\* The Wisconsin Supreme Court recently held, however, in *State of Wisconsin v. Hezzie R.*, 219 Wis. 2d 849 (1998), that subjecting a juvenile who has been adjudicated delinquent and who has no right to a trial by jury under the juvenile

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juvenile

felony

adult

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\* justice code to placement in an adult prison violates the juvenile's constitutional right to a trial by jury because placement in an adult prison constitutes criminal punishment rather than juvenile rehabilitation. Accordingly, this bill eliminates the authority of DOC to transfer a juvenile who has been adjudicated delinquent to an adult prison, including the intensive sanctions program, which is defined in the statutes as a state prison.

Current law contains conflicting provisions relating to the age under which a juvenile who has been sentenced to an adult prison (juvenile prisoner) must be placed in a juvenile secured correctional facility and the age at which a juvenile prisoner may be transferred to an adult prison. One provision requires DOC to keep juvenile prisoners under 15 years of age in a juvenile secured correctional facility, another provision requires DOC to keep juvenile prisoners under 16 years of age in a juvenile secured correctional facility, and another provision does not permit DOC to transfer a juvenile prisoner to an adult prison until the juvenile attains 17 years of age. This bill provides a uniform age of 15 years at which DOC may transfer a juvenile prisoner to an adult prison.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 48.366 (8) of the statutes is amended to read:

2           **48.366 (8) TRANSFER TO OR BETWEEN FACILITIES.** The department of corrections  
3           may transfer a person subject to an order between secured correctional facilities.  
4           After the person attains the age of 17 years, the department of corrections may place  
5           the person in a state prison named in s. 302.01. ~~If the person is 15 years of age or~~  
6           ~~over, the department of corrections may transfer the person to the Racine youthful~~  
7           ~~offender correctional facility named in s. 302.01 as provided in s. 938.357 (4) (d).~~ If  
8           the department of corrections places a person subject to an order under this section  
9           in a state prison, that department shall provide services for that person from the  
10           appropriate appropriation under s. 20.410 (1). The department of corrections may  
11           transfer a person placed in a state prison under this subsection to or between state

1 prisons named in s. 302.01 without petitioning for revision of the order under sub.  
2 (5) (a).

3 **SECTION 2.** 301.03 (10) (d) of the statutes is amended to read:

4 301.03 (10) (d) Administer the office of juvenile offender review in the division  
5 of juvenile corrections in the department. The office shall be responsible for decisions  
6 regarding case planning, and the release of juvenile offenders from secured  
7 correctional facilities or secured child caring institutions to aftercare placements  
8 ~~and the transfer of juveniles to the Racine youthful offender correctional facility~~  
9 ~~named in s. 302.01 as provided in s. 938.357 (4) (d).~~

10 **SECTION 3.** 302.11 (10) of the statutes is amended to read:

11 302.11 (10) An inmate subject to an order under s. 48.366 ~~or 938.34 (4h)~~ is not  
12 entitled to mandatory release and may be released or discharged only as provided  
13 under s. 48.366 ~~or 938.538~~.

14 **SECTION 4.** 302.18 (7) of the statutes is amended to read:

15 302.18 (7) Except as provided in s. 973.013 (3m), the department shall keep all  
16 ~~prisoners~~ a person under 15 years of age who has been sentenced to the Wisconsin  
17 state prisons in a secured juvenile correctional facilities or facility or a secured child  
18 caring institutions institution, but the department may transfer them that person  
19 to an adult correctional institutions institution after they attain the person attains  
20 15 years of age.

21 **SECTION 5.** 302.255 of the statutes is amended to read:

22 **302.255 Interstate corrections compact; additional applicability.**

23 "Inmate", as defined under s. 302.25 (2) (a), includes persons subject to an order  
24 under s. 48.366 who are confined to a state prison under s. 302.01 ~~and persons subject~~  
25 ~~to an order under s. 938.34 (4h) who are 17 years of age or older.~~

1           **SECTION 6.** 302.386 (5) (d) of the statutes is amended to read:

2           302.386 (5) (d) Any participant in the serious juvenile offender program under  
3 s. 938.538 unless ~~he or she~~ the participant is placed in a Type 1 secured correctional  
4 facility, as defined in s. 938.02 (19), ~~or in a Type 1 prison other than the institution~~  
5 ~~authorized under s. 301.046 (1).~~

6           **SECTION 7.** 938.183 (3) of the statutes is amended to read:

7           938.183 (3) Except as provided in s. 973.013 (3m), the department shall place  
8 a juvenile under 15 years of age who is subject to a criminal penalty under sub. (1m)  
9 or (2) in a secured correctional facility or a secured child caring institution. When  
10 a juvenile who is subject to a criminal penalty under sub. (1m) or (2) attains the age  
11 of ~~17~~ 15 years, the department may place the juvenile in a state prison named in s.  
12 302.01. ~~If a juvenile who is subject to a criminal penalty under sub. (1m) or (2) is 15~~  
13 ~~years of age or over, the department may transfer the juvenile to the Racine youthful~~  
14 ~~offender correctional facility named in s. 302.01 as provided in s. 938.357 (4) (d).~~ A  
15 juvenile who is subject to a criminal penalty under sub. (1m) or (2) for an act  
16 committed before December 31, 1999, is eligible for parole under s. 304.06.

17           **SECTION 8.** 938.357 (4) (d) of the statutes is repealed.

18           **SECTION 9.** 938.538 (3) (a) 1. of the statutes is amended to read:

19           938.538 (3) (a) 1. Subject to subd. 1m., placement in a Type 1 secured  
20 correctional facility, or a secured child caring institution ~~or, if the participant is 17~~  
21 ~~years of age or over or 15 years of age or over and transferred under s. 938.357 (4)~~  
22 ~~(d), a Type 1 prison, as defined in s. 301.01 (5), for a period of not more than 3 years.~~

23           **SECTION 10.** 938.538 (3) (a) 1m. of the statutes is amended to read:

24           938.538 (3) (a) 1m. If the participant has been adjudicated delinquent for  
25 committing an act that would be a Class A felony if committed by an adult, placement

1 in a Type 1 secured correctional facility, or a secured child caring institution ~~or, if the~~  
2 ~~participant is 17 years of age or over or 15 years of age or over and transferred under~~  
3 ~~s. 938.357 (4) (d), a Type 1 prison, as defined in s. 301.01 (5), until the participant~~  
4 reaches 25 years of age, unless the participant is released sooner, subject to a  
5 mandatory minimum period of confinement of not less than one year.

6 **SECTION 11.** 938.538 (3) (a) 2. of the statutes is amended to read:

7 938.538 (3) (a) 2. Intensive or other field supervision, including corrective  
8 sanctions supervision under s. 938.533, or aftercare supervision ~~or, if the participant~~  
9 ~~is 17 years of age or over, intensive sanctions supervision under s. 301.048.~~

10 **SECTION 12.** 938.538 (4) (a) of the statutes is amended to read:

11 938.538 (4) (a) A participant in the serious juvenile offender program is under  
12 the supervision and control of the department, is subject to the rules and discipline  
13 of the department, and is considered to be in custody, as defined in s. 946.42 (1) (a).  
14 Notwithstanding ss. 938.19 to 938.21, if a participant violates a condition of his or  
15 her participation in the program under sub. (3) (a) 2. to 9. while placed in a Type 2  
16 secured correctional facility the department may, without a hearing, take the  
17 participant into custody and return him or her to placement in a Type 1 secured  
18 correctional facility; or a secured child caring institution ~~or, if the participant is 17~~  
19 ~~years of age or over, a Type 1 prison, as defined in s. 301.01 (5). Any intentional~~  
20 failure of a participant to remain within the extended limits of his or her placement  
21 while participating in the serious juvenile offender program ~~or to return within the~~  
22 ~~time prescribed by the administrator of the division of intensive sanctions in the~~  
23 department is considered an escape under s. 946.42 (3) (c).

24 **SECTION 13.** 938.538 (5) (c) of the statutes is amended to read:

1           938.538 (5) (c) Sections 938.357 and 938.363 do not apply to changes of  
2 placement and revisions of orders for a juvenile who is a participant in the serious  
3 juvenile offender program, ~~except that s. 938.357 (4) (d) applies to the transfer of a~~  
4 ~~participant to the Racine youthful offender correctional facility named in s. 302.01.~~

5           **SECTION 14.** 938.538 (6) of the statutes is amended to read:

6           938.538 (6) PURCHASE OF SERVICES. The department of corrections may contract  
7 with the department of health and family services, a county department, or any  
8 public or private agency for the purchase of goods, care, and services for participants  
9 in the serious juvenile offender program. The department of corrections shall  
10 reimburse a person from whom it purchases goods, care, or services under this  
11 subsection from the appropriation under s. 20.410 (3) (cg) ~~or, if the person for whom~~  
12 ~~the goods, care or services are purchased is placed in a Type 1 prison, as defined s.~~  
13 ~~301.01 (5), or is under intensive sanctions supervision under s. 301.048, from the~~  
14 ~~appropriate appropriation under s. 20.410 (1).~~

15           **SECTION 15.** 938.992 (3) of the statutes is amended to read:

16           938.992 (3) Notwithstanding s. 938.991 (3) (b), "delinquent juvenile" does not  
17 include a person subject to an order under s. 48.366 who is confined to a state prison  
18 under s. 302.01 ~~or a person subject to an order under s. 938.34 (4h) who is 17 years~~  
19 ~~of age or over.~~

20           **SECTION 16.** 973.013 (3m) of the statutes is amended to read:

21           973.013 (3m) If a person who has not attained the age of ~~16~~ 15 years is  
22 sentenced to the Wisconsin state prisons, the department of corrections shall place  
23 the person at a secured juvenile correctional facility or a secured child caring  
24 institution, unless the department of corrections determines that placement in an  
25 institution under s. 302.01 is appropriate based on the person's prior record of

1 adjustment in a correctional setting, if any; the person's present and potential  
2 vocational and educational needs, interests, and abilities; the adequacy and  
3 suitability of available facilities; the services and procedures available for treatment  
4 of the person within the various institutions; the protection of the public; and any  
5 other considerations promulgated by the department of corrections by rule. This  
6 subsection does not preclude the department of corrections from designating an  
7 adult correctional institution as a reception center for the person and subsequently  
8 transferring the person to a secured juvenile correctional facility or a secured child  
9 caring institution. Section 302.11 and ch. 304 apply to all persons placed in a secured  
10 juvenile correctional facility or a secured child caring institution under this  
11 subsection.

12 **SECTION 17.** 976.08 of the statutes is amended to read:

13 **976.08 Additional applicability.** In this chapter, "prisoner" includes any  
14 person subject to an order under s. 48.366 or 938.183 who is confined to a Wisconsin  
15 state prison and ~~any person subject to an order under s. 938.34 (4h) who is 17 years~~  
16 ~~of age or older.~~

17 **SECTION 9311. Initial applicability; corrections.**

18 (1) **TRANSFER OF JUVENILE TO ADULT PRISON.** The treatment of sections 301.03 (10)  
19 (d), 302.11 (10), 302.255, 302.386 (5) (d), 938.183 (3) (with respect to transfer of a  
20 juvenile to the Racine Youthful Offender Correctional Facility), 938.357 (4) (d),  
21 938.538 (3) (a) 1., 1m., and 2., (4) (a), (5) (c), and (6), 938.992 (3), and 976.08 of the  
22 statutes first applies to violations committed on July 1, 1996.

23 (2) **AGE OF JUVENILE PLACEMENT IN ADULT PRISON.** The treatment of sections  
24 938.183 (3) (with respect to placement of a juvenile in a secured correctional facility,

1 a secured child caring institution, or a state prison) and 973.013 (3m) of the statutes  
2 first applies to violations committed on the effective date of this subsection.

3 (END)

Dnote

Brett:

This redraft merely makes a few changes to the analysis to specify the ages at which a juvenile may be placed in the SOP and to distinguish better the juvenile component phases of the SOP from the adult component phases.

GMM



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

LRB-0447/2dn  
GMM:hmh&jld:jf

February 3, 2001

Brett:

This redraft merely makes a few changes to the analysis to specify the ages at which a juvenile may be placed in the SJOP and to distinguish better the juvenile component phases of the SJOP from the adult component phases.

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State of Wisconsin  
2001 - 2002 LEGISLATURE

DWT

LRB-0447/3  
GMM:hmb&jld:jf  
3  
PWR

DOA:.....Coomber – Transfer of serious juvenile offender

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

DO not gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*  
**CORRECTIONAL SYSTEM**  
**JUVENILE CORRECTIONAL SYSTEM**

Under current law, a court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) may place a juvenile ten years of age or over who has committed a Class A felony or a juvenile 14 years of age or over who has committed a Class B felony in the serious juvenile offender program (SJOP) if the juvenile court finds that the only other disposition that would be appropriate for the juvenile would be placement in a juvenile secured correctional facility. The SJOP contains various component phases for its participants, including placement in a juvenile secured correctional facility or, if the participant is 17 years of age or over, an adult prison. The SJOP also includes a component phase of intensive or other field supervision, including juvenile corrective sanctions supervision, juvenile aftercare supervision or, if the participant is 17 years of age or over, adult intensive sanctions supervision. Also, under current law, DOC may transfer a juvenile who is placed in a juvenile secured correctional facility to the Racine Youthful Offender Correctional Facility, which is a medium security adult correctional institution for offenders 15 to 21 years of age, if the juvenile is 15 years of age or over and the conduct of the juvenile in the juvenile secured correctional facility presents a serious problem to the juvenile or others.

The Wisconsin Supreme Court recently held, however, in *State of Wisconsin v. Hezzie R.*, 219 Wis. 2d 849 (1998), that subjecting a juvenile who has been

adjudicated delinquent and who has no right to a trial by jury under the Juvenile Justice Code to placement in an adult prison violates the juvenile's constitutional right to a trial by jury because placement in an adult prison constitutes criminal punishment rather than juvenile rehabilitation. Accordingly, this bill eliminates the authority of DOC to transfer a juvenile who has been adjudicated delinquent to an adult prison, including the intensive sanctions program, which is defined in the statutes as a state prison.

Current law contains conflicting provisions relating to the age under which a juvenile who has been sentenced to an adult prison (juvenile prisoner) must be placed in a juvenile secured correctional facility and the age at which a juvenile prisoner may be transferred to an adult prison. One provision requires DOC to keep juvenile prisoners under 15 years of age in a juvenile secured correctional facility, another provision requires DOC to keep juvenile prisoners under 16 years of age in a juvenile secured correctional facility, and another provision does not permit DOC to transfer a juvenile prisoner to an adult prison until the juvenile attains 17 years of age. This bill provides a uniform age of 15 years at which DOC may transfer a juvenile prisoner to an adult prison.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 48.366 (8) of the statutes is amended to read:

2           48.366 (8) **TRANSFER TO OR BETWEEN FACILITIES.** The department of corrections  
3           may transfer a person subject to an order between secured correctional facilities.  
4           After the person attains the age of 17 years, the department of corrections may place  
5           the person in a state prison named in s. 302.01. ~~If the person is 15 years of age or~~  
6           ~~over, the department of corrections may transfer the person to the Racine youthful~~  
7           ~~offender correctional facility named in s. 302.01 as provided in s. 938.357 (4) (d).~~ If  
8           the department of corrections places a person subject to an order under this section  
9           in a state prison, that department shall provide services for that person from the  
10           appropriate appropriation under s. 20.410 (1). The department of corrections may  
11           transfer a person placed in a state prison under this subsection to or between state

1 prisons named in s. 302.01 without petitioning for revision of the order under sub.  
2 (5) (a).

3 **SECTION 2.** 301.03 (10) (d) of the statutes is amended to read:

4 301.03 (10) (d) Administer the office of juvenile offender review in the division  
5 of juvenile corrections in the department. The office shall be responsible for decisions  
6 regarding case planning, and the release of juvenile offenders from secured  
7 correctional facilities or secured child caring institutions to aftercare placements  
8 ~~and the transfer of juveniles to the Racine youthful offender correctional facility~~  
9 ~~named in s. 302.01 as provided in s. 938.357 (4) (d).~~

10 **SECTION 3.** 302.11 (10) of the statutes is amended to read:

11 302.11 (10) An inmate subject to an order under s. 48.366 ~~or 938.34 (4h)~~ is not  
12 entitled to mandatory release and may be released or discharged only as provided  
13 under s. 48.366 ~~or 938.538~~.

14 **SECTION 4.** 302.18 (7) of the statutes is amended to read:

15 302.18 (7) Except as provided in s. 973.013 (3m), the department shall keep all  
16 ~~prisoners~~ a person under 15 years of age who has been sentenced to the Wisconsin  
17 state prisons in a secured juvenile correctional facilities or facility or a secured child  
18 caring institutions institution, but the department may transfer ~~them~~ that person  
19 to an adult correctional institutions institution after they attain the person attains  
20 15 years of age.

21 **SECTION 5.** 302.255 of the statutes is amended to read:

22 **302.255 Interstate corrections compact; additional applicability.**

23 "Inmate", as defined under s. 302.25 (2) (a), includes persons subject to an order  
24 under s. 48.366 who are confined to a state prison under s. 302.01 ~~and persons subject~~  
25 ~~to an order under s. 938.34 (4h) who are 17 years of age or older.~~

1           **SECTION 6.** 302.386 (5) (d) of the statutes is amended to read:

2           302.386 (5) (d) Any participant in the serious juvenile offender program under  
3 s. 938.538 unless ~~he or she~~ the participant is placed in a Type 1 secured correctional  
4 facility, as defined in s. 938.02 (19), ~~or in a Type 1 prison other than the institution~~  
5 ~~authorized under s. 301.046 (1).~~

6           **SECTION 7.** 938.183 (3) of the statutes is amended to read:

7           938.183 (3) Except as provided in s. 973.013 (3m), the department shall place  
8 a juvenile under 15 years of age who is subject to a criminal penalty under sub. (1m)  
9 or (2) in a secured correctional facility or a secured child caring institution. When  
10 a juvenile who is subject to a criminal penalty under sub. (1m) or (2) attains the age  
11 of ~~17~~ 15 years, the department may place the juvenile in a state prison named in s.  
12 302.01. ~~If a juvenile who is subject to a criminal penalty under sub. (1m) or (2) is 15~~  
13 ~~years of age or over, the department may transfer the juvenile to the Racine youthful~~  
14 ~~offender correctional facility named in s. 302.01 as provided in s. 938.357 (4) (d).~~ A  
15 juvenile who is subject to a criminal penalty under sub. (1m) or (2) for an act  
16 committed before December 31, 1999, is eligible for parole under s. 304.06.

17           **SECTION 8.** 938.357 (4) (d) of the statutes is repealed.

18           **SECTION 9.** ~~938.538 (3) (a) 1. of the statutes is amended to read:~~

19           ~~938.538 (3) (a) 1. Subject to subd. 1m., placement in a Type 1 secured~~  
20 ~~correctional facility, or a secured child caring institution or, if the participant is 17~~  
21 ~~years of age or over or 15 years of age or over and transferred under s. 938.357 (4)~~  
22 ~~(d), a Type 1 prison, as defined in s. 301.01 (5), for a period of not more than 3 years.~~

23           **SECTION 10.** 938.538 (3) (a) 1m. of the statutes is amended to read:

24           938.538 (3) (a) 1m. If the participant has been adjudicated delinquent for  
25 committing an act that would be a Class A felony if committed by an adult, placement

1 in a Type 1 secured correctional facility, or a secured child caring institution ~~or, if the~~  
2 ~~participant is 17 years of age or over or 15 years of age or over and transferred under~~  
3 ~~s. 938.357 (4) (d), a Type 1 prison, as defined in s. 301.01 (5), until the participant~~  
4 reaches 25 years of age, unless the participant is released sooner, subject to a  
5 mandatory minimum period of confinement of not less than one year.

6 **SECTION 11.** 938.538 (3) (a) 2. of the statutes is amended to read:

7 938.538 (3) (a) 2. Intensive or other field supervision, including corrective  
8 sanctions supervision under s. 938.533, or aftercare supervision ~~or, if the participant~~  
9 ~~is 17 years of age or over, intensive sanctions supervision under s. 301.048.~~

10 **SECTION 12.** <sup>auto eff to eff date</sup> 938.538 (4) (a) of the statutes is amended to read:

11 938.538 (4) (a) A participant in the serious juvenile offender program is under  
12 the supervision and control of the department, is subject to the rules and discipline  
13 of the department, and is considered to be in custody, as defined in s. 946.42 (1) (a).  
14 Notwithstanding ss. 938.19 to 938.21, if a participant violates a condition of his or  
15 her participation in the program under sub. (3) (a) 2. to 9. while placed in a Type 2  
16 secured correctional facility the department may, without a hearing, take the  
17 participant into custody and return him or her to placement in a Type 1 secured  
18 correctional facility, or a secured child caring institution ~~or, if the participant is 17~~  
19 ~~years of age or over, a Type 1 prison, as defined in s. 301.01 (5). Any intentional~~  
20 failure of a participant to remain within the extended limits of his or her placement  
21 while participating in the serious juvenile offender program ~~or to return within the~~  
22 ~~time prescribed by the administrator of the division of intensive sanctions in the~~  
23 department is considered an escape under s. 946.42 (3) (c).

24 **SECTION 13.** 938.538 (5) (c) of the statutes is amended to read:

1           938.538 (5) (c) Sections 938.357 and 938.363 do not apply to changes of  
2 placement and revisions of orders for a juvenile who is a participant in the serious  
3 juvenile offender program, ~~except that s. 938.357 (4) (d) applies to the transfer of a~~  
4 ~~participant to the Racine youthful offender correctional facility named in s. 302.01.~~

5           **SECTION 14.** 938.538 (6) of the statutes is amended to read:

6           938.538 (6) PURCHASE OF SERVICES. The department of corrections may contract  
7 with the department of health and family services, a county department, or any  
8 public or private agency for the purchase of goods, care, and services for participants  
9 in the serious juvenile offender program. The department of corrections shall  
10 reimburse a person from whom it purchases goods, care, or services under this  
11 subsection from the appropriation under s. 20.410 (3) (cg) ~~or, if the person for whom~~  
12 ~~the goods, care or services are purchased is placed in a Type 1 prison, as defined s.~~  
13 ~~301.01 (5), or is under intensive sanctions supervision under s. 301.048, from the~~  
14 ~~appropriate appropriation under s. 20.410 (1).~~

15           **SECTION 15.** 938.992 (3) of the statutes is amended to read:

16           938.992 (3) Notwithstanding s. 938.991 (3) (b), “delinquent juvenile” does not  
17 include a person subject to an order under s. 48.366 who is confined to a state prison  
18 under s. 302.01 ~~or a person subject to an order under s. 938.34 (4h) who is 17 years~~  
19 ~~of age or over.~~

20           **SECTION 16.** 973.013 (3m) of the statutes is amended to read:

21           973.013 (3m) If a person who has not attained the age of ~~16~~ 15 years is  
22 sentenced to the Wisconsin state prisons, the department of corrections shall place  
23 the person at a secured juvenile correctional facility or a secured child caring  
24 institution, unless the department of corrections determines that placement in an  
25 institution under s. 302.01 is appropriate based on the person’s prior record of

1 adjustment in a correctional setting, if any; the person's present and potential  
 2 vocational and educational needs, interests, and abilities; the adequacy and  
 3 suitability of available facilities; the services and procedures available for treatment  
 4 of the person within the various institutions; the protection of the public; and any  
 5 other considerations promulgated by the department of corrections by rule. This  
 6 subsection does not preclude the department of corrections from designating an  
 7 adult correctional institution as a reception center for the person and subsequently  
 8 transferring the person to a secured juvenile correctional facility or a secured child  
 9 caring institution. Section 302.11 and ch. 304 apply to all persons placed in a secured  
 10 juvenile correctional facility or a secured child caring institution under this  
 11 subsection.

12 SECTION 17. 976.08 of the statutes is amended to read:

13 **976.08 Additional applicability.** In this chapter, "prisoner" includes any  
 14 person subject to an order under s. 48.366 or 938.183 who is confined to a Wisconsin  
 15 state prison and ~~any person subject to an order under s. 938.34 (4h) who is 17 years~~  
 16 ~~of age or older.~~

*(with respect to placement of a juvenile in a Type I prison)*

17 **SECTION 9311. Initial applicability; corrections.**

18 (1) ~~TRANSFER OF JUVENILE TO ADULT PRISON.~~ The treatment of sections 301.03 (10)  
 19 (d), 302.11 (10), 302.255, 302.386 (5) (d), 938.183 (3) (with respect to transfer of a  
 20 juvenile to the Racine Youthful Offender Correctional Facility), 938.357 (4) (d),  
 21 938.538 (3) (a) 1, 1m., and 2., (4) (a), (5) (c), and (6), 938.992 (3), and 976.08 of the  
 22 statutes first applies to violations committed on July 1, 1996.

23 (2) ~~AGE OF JUVENILE PLACEMENT IN ADULT PRISON.~~ The treatment of sections  
 24 938.183 (3) (with respect to placement of a juvenile in a secured correctional facility,

*(by SECTION 16)*

*(with respect to return of a juvenile to a Type I prison and to escape under section 944.42 (3)(c) of the statutes)*



1 a secured child caring institution, or a state prison) and 973.013 (3m) of the statutes  
2 first applies to violations committed on the effective date of this subsection.

3 (END)

Brett:

D-Note

This draft reconciles LRB-0447/2, LRB-0446/1, and  
LRB-0448/2. LRB-0447, LRB-0446, and LRB-0448  
should all continue to appear in the compiled bill.

GMM

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

LRB-0447/3dn  
GMM:hmh&jld:cmh

February 7, 2001

Brett:

This draft reconciles LRB-0447/2, LRB-0446/1, and LRB-0448/2. LRB-0447/2, LRB-0446/1, and LRB-0448/2 should all continue to appear in the compiled bill.

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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0447/3  
GMM:hmh&jld:cmh

DOA:.....Coomber – Transfer of serious juvenile offender

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**CORRECTIONAL SYSTEM**

**JUVENILE CORRECTIONAL SYSTEM**

Under current law, a court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) may place a juvenile ten years of age or over who has committed a Class A felony or a juvenile 14 years of age or over who has committed a Class B felony in the serious juvenile offender program (SJOP) if the juvenile court finds that the only other disposition that would be appropriate for the juvenile would be placement in a juvenile secured correctional facility. The SJOP contains various component phases for its participants, including placement in a juvenile secured correctional facility or, if the participant is 17 years of age or over, an adult prison. The SJOP also includes a component phase of intensive or other field supervision, including juvenile corrective sanctions supervision, juvenile aftercare supervision or, if the participant is 17 years of age or over, adult intensive sanctions supervision. Also, under current law, DOC may transfer a juvenile who is placed in a juvenile secured correctional facility to the Racine Youthful Offender Correctional Facility, which is a medium security adult correctional institution for offenders 15 to 21 years of age, if the juvenile is 15 years of age or over and the conduct of the juvenile in the juvenile secured correctional facility presents a serious problem to the juvenile or others.

The Wisconsin Supreme Court recently held, however, in *State of Wisconsin v. Hezzie R.*, 219 Wis. 2d 849 (1998), that subjecting a juvenile who has been

adjudicated delinquent and who has no right to a trial by jury under the Juvenile Justice Code to placement in an adult prison violates the juvenile's constitutional right to a trial by jury because placement in an adult prison constitutes criminal punishment rather than juvenile rehabilitation. Accordingly, this bill eliminates the authority of DOC to transfer a juvenile who has been adjudicated delinquent to an adult prison, including the intensive sanctions program, which is defined in the statutes as a state prison.

Current law contains conflicting provisions relating to the age under which a juvenile who has been sentenced to an adult prison (juvenile prisoner) must be placed in a juvenile secured correctional facility and the age at which a juvenile prisoner may be transferred to an adult prison. One provision requires DOC to keep juvenile prisoners under 15 years of age in a juvenile secured correctional facility, another provision requires DOC to keep juvenile prisoners under 16 years of age in a juvenile secured correctional facility, and another provision does not permit DOC to transfer a juvenile prisoner to an adult prison until the juvenile attains 17 years of age. This bill provides a uniform age of 15 years at which DOC may transfer a juvenile prisoner to an adult prison.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 48.366 (8) of the statutes is amended to read:

2           **48.366 (8) TRANSFER TO OR BETWEEN FACILITIES.** The department of corrections  
3           may transfer a person subject to an order between secured correctional facilities.  
4           After the person attains the age of 17 years, the department of corrections may place  
5           the person in a state prison named in s. 302.01. ~~If the person is 15 years of age or~~  
6           ~~over, the department of corrections may transfer the person to the Racine youthful~~  
7           ~~offender correctional facility named in s. 302.01 as provided in s. 938.357 (4) (d).~~ If  
8           the department of corrections places a person subject to an order under this section  
9           in a state prison, that department shall provide services for that person from the  
10          appropriate appropriation under s. 20.410 (1). The department of corrections may  
11          transfer a person placed in a state prison under this subsection to or between state

1 prisons named in s. 302.01 without petitioning for revision of the order under sub.  
2 (5) (a).

3 **SECTION 2.** 301.03 (10) (d) of the statutes is amended to read:

4 301.03 (10) (d) Administer the office of juvenile offender review in the division  
5 of juvenile corrections in the department. The office shall be responsible for decisions  
6 regarding case planning, and the release of juvenile offenders from secured  
7 correctional facilities or secured child caring institutions to aftercare placements  
8 ~~and the transfer of juveniles to the Racine youthful offender correctional facility~~  
9 ~~named in s. 302.01 as provided in s. 938.357 (4) (d).~~

10 **SECTION 3.** 302.11 (10) of the statutes is amended to read:

11 302.11 (10) An inmate subject to an order under s. 48.366 ~~or 938.34 (4h)~~ is not  
12 entitled to mandatory release and may be released or discharged only as provided  
13 under s. 48.366 ~~or 938.538~~.

14 **SECTION 4.** 302.18 (7) of the statutes is amended to read:

15 302.18 (7) Except as provided in s. 973.013 (3m), the department shall keep ~~all~~  
16 ~~prisoners~~ a person under 15 years of age who has been sentenced to the Wisconsin  
17 state prisons in a secured juvenile correctional facilities or facility or a secured child  
18 caring institutions institution, but the department may transfer ~~them~~ that person  
19 to an adult correctional institutions institution after they attain the person attains  
20 15 years of age.

21 **SECTION 5.** 302.255 of the statutes is amended to read:

22 **302.255 Interstate corrections compact; additional applicability.**  
23 “Inmate”, as defined under s. 302.25 (2) (a), includes persons subject to an order  
24 under s. 48.366 who are confined to a state prison under s. 302.01 ~~and persons subject~~  
25 ~~to an order under s. 938.34 (4h) who are 17 years of age or older.~~

1           **SECTION 6.** 302.386 (5) (d) of the statutes is amended to read:

2           302.386 (5) (d) Any participant in the serious juvenile offender program under  
3 s. 938.538 unless ~~he or she~~ the participant is placed in a Type 1 secured correctional  
4 facility, as defined in s. 938.02 (19), ~~or in a Type 1 prison other than the institution~~  
5 ~~authorized under s. 301.046 (1).~~

6           **SECTION 7.** 938.183 (3) of the statutes is amended to read:

7           938.183 (3) Except as provided in s. 973.013 (3m), the department shall place  
8 a juvenile under 15 years of age who is subject to a criminal penalty under sub. (1m)  
9 or (2) in a secured correctional facility or a secured child caring institution. When  
10 a juvenile who is subject to a criminal penalty under sub. (1m) or (2) attains the age  
11 of ~~17~~ 15 years, the department may place the juvenile in a state prison named in s.  
12 302.01. ~~If a juvenile who is subject to a criminal penalty under sub. (1m) or (2) is 15~~  
13 ~~years of age or over, the department may transfer the juvenile to the Racine youthful~~  
14 ~~offender correctional facility named in s. 302.01 as provided in s. 938.357 (4) (d).~~ A  
15 juvenile who is subject to a criminal penalty under sub. (1m) or (2) for an act  
16 committed before December 31, 1999, is eligible for parole under s. 304.06.

17           **SECTION 8.** 938.357 (4) (d) of the statutes is repealed.

18           **SECTION 9.** 938.538 (3) (a) 1m. of the statutes is amended to read:

19           938.538 (3) (a) 1m. If the participant has been adjudicated delinquent for  
20 committing an act that would be a Class A felony if committed by an adult, placement  
21 in a Type 1 secured correctional facility, or a secured child caring institution ~~or, if the~~  
22 ~~participant is 17 years of age or over or 15 years of age or over and transferred under~~  
23 ~~s. 938.357 (4) (d), a Type 1 prison, as defined in s. 301.01 (5), until the participant~~  
24 reaches 25 years of age, unless the participant is released sooner, subject to a  
25 mandatory minimum period of confinement of not less than one year.

1           **SECTION 10.** 938.538 (3) (a) 2. of the statutes is amended to read:

2           938.538 (3) (a) 2. Intensive or other field supervision, including corrective  
3           sanctions supervision under s. 938.533, or aftercare supervision ~~or, if the participant~~  
4           ~~is 17 years of age or over, intensive sanctions supervision under s. 301.048.~~

5           **SECTION 11.** 938.538 (4) (a) of the statutes is amended to read:

6           938.538 (4) (a) A participant in the serious juvenile offender program is under  
7           the supervision and control of the department, is subject to the rules and discipline  
8           of the department, and is considered to be in custody, as defined in s. 946.42 (1) (a).  
9           Notwithstanding ss. 938.19 to 938.21, if a participant violates a condition of his or  
10          her participation in the program under sub. (3) (a) 2. to 9. while placed in a Type 2  
11          secured correctional facility the department may, without a hearing, take the  
12          participant into custody and return him or her to placement in a Type 1 secured  
13          correctional facility, or a secured child caring institution ~~or, if the participant is 17~~  
14          ~~years of age or over, a Type 1 prison, as defined in s. 301.01 (5).~~ Any intentional  
15          failure of a participant to remain within the extended limits of his or her placement  
16          while participating in the serious juvenile offender program ~~or to return within the~~  
17          ~~time prescribed by the administrator of the division of intensive sanctions in the~~  
18          ~~department~~ is considered an escape under s. 946.42 (3) (c).

19          **SECTION 12.** 938.538 (5) (c) of the statutes is amended to read:

20          938.538 (5) (c) Sections 938.357 and 938.363 do not apply to changes of  
21          placement and revisions of orders for a juvenile who is a participant in the serious  
22          juvenile offender program, ~~except that s. 938.357 (4) (d) applies to the transfer of a~~  
23          ~~participant to the Racine youthful offender correctional facility named in s. 302.01.~~

24          **SECTION 13.** 938.538 (6) of the statutes is amended to read:

1           938.538 (6) PURCHASE OF SERVICES. The department of corrections may contract  
2 with the department of health and family services, a county department, or any  
3 public or private agency for the purchase of goods, care, and services for participants  
4 in the serious juvenile offender program. The department of corrections shall  
5 reimburse a person from whom it purchases goods, care, or services under this  
6 subsection from the appropriation under s. 20.410 (3) (cg) ~~or, if the person for whom~~  
7 ~~the goods, care or services are purchased is placed in a 'type 1 prison, as defined s.~~  
8 ~~301.01 (5), or is under intensive sanctions supervision under s. 301.048, from the~~  
9 ~~appropriate appropriation under s. 20.410 (1).~~

10           **SECTION 14.** 938.992 (3) of the statutes is amended to read:

11           938.992 (3) Notwithstanding s. 938.991 (3) (b), "delinquent juvenile" does not  
12 include a person subject to an order under s. 48.366 who is confined to a state prison  
13 under s. 302.01 ~~or a person subject to an order under s. 938.34 (4h) who is 17 years~~  
14 ~~of age or over.~~

15           **SECTION 15.** 973.013 (3m) of the statutes is amended to read:

16           973.013 (3m) If a person who has not attained the age of ~~16~~ 15 years is  
17 sentenced to the Wisconsin state prisons, the department of corrections shall place  
18 the person at a secured juvenile correctional facility or a secured child caring  
19 institution, unless the department of corrections determines that placement in an  
20 institution under s. 302.01 is appropriate based on the person's prior record of  
21 adjustment in a correctional setting, if any; the person's present and potential  
22 vocational and educational needs, interests, and abilities; the adequacy and  
23 suitability of available facilities; the services and procedures available for treatment  
24 of the person within the various institutions; the protection of the public; and any  
25 other considerations promulgated by the department of corrections by rule. This



1 subsection does not preclude the department of corrections from designating an  
2 adult correctional institution as a reception center for the person and subsequently  
3 transferring the person to a secured juvenile correctional facility or a secured child  
4 caring institution. Section 302.11 and ch. 304 apply to all persons placed in a secured  
5 juvenile correctional facility or a secured child caring institution under this  
6 subsection.

7 **SECTION 16.** 976.08 of the statutes is amended to read:

8 **976.08 Additional applicability.** In this chapter, "prisoner" includes any  
9 person subject to an order under s. 48.366 or 938.183 who is confined to a Wisconsin  
10 state prison ~~and any person subject to an order under s. 938.34 (4h) who is 17 years~~  
11 ~~of age or older.~~

12 **SECTION 9311. Initial applicability; corrections.**

13 (1) **TRANSFER OF JUVENILE TO ADULT PRISON.** The treatment of sections 301.03 (10)  
14 (d), 302.11 (10), 302.255, 302.386 (5) (d), 938.183 (3) (with respect to transfer of a  
15 juvenile to the Racine Youthful Offender Correctional Facility), 938.357 (4) (d),  
16 938.538 (3) (a) 1. (with respect to placement of a juvenile in a Type 1 prison), 1m., and  
17 2., (4) (a) (by SECTION 11), (5) (c), and (6), 938.992 (3), and 976.08 of the statutes first  
18 applies to violations committed on July 1, 1996.

19 (2) **AGE OF JUVENILE PLACEMENT IN ADULT PRISON.** The treatment of sections  
20 938.183 (3) (with respect to placement of a juvenile in a secured correctional facility,  
21 a secured child caring institution, or a state prison) and 973.013 (3m) of the statutes  
22 first applies to violations committed on the effective date of this subsection.

23

(END)