

2005 DRAFTING REQUEST

Bill

Received: 11/11/2004

Received By: **gmalaise**

Wanted: 11/29/2004

Identical to LRB:

For: **Frederick Kessler (608) 266-5813**

By/Representing: **Himself**

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

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - juvenile justice**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kessler@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Age of adult criminal jurisdiction

Instructions:

Raise the age of adult criminal jurisdiction from 17 to 18.

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>
/?	gmalaise 11/11/2004	kfollett 11/19/2004		_____			S&L
/1			rschluet 11/19/2004	_____	sbasford 11/19/2004 mbarman 01/04/2005	mbarman 01/25/2005	

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→ At Intro.

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				_____	mbarman 01/04/2005		

e-mail only (with arrow pointing to mbarman 01/04/2005)

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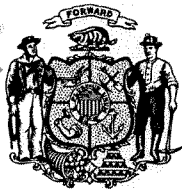
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FE Sent For:

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State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-07567

GMM. 1/29/06

NOTE

Mon 1/29

Res Gen

- 1 AN ACT ...; relating to: the age at which a person who is alleged to have violated
2 a criminal law, a civil law, or a municipal ordinance is subject to circuit court
3 or municipal court rather than juvenile court jurisdiction.

Analysis by the Legislative Reference Bureau

Under current law, a person 17 years of age or older who is alleged to have violated a criminal law is subject to the procedures specified in the Criminal Procedure Code and, on conviction, is subject to sentencing under the Criminal Code, which may include a sentence of imprisonment in the Wisconsin state prisons. Currently, subject to certain exceptions, a person under 17 years of age who is alleged to have violated a criminal law is subject to the procedures specified in the Juvenile Justice Code and, on being adjudicated delinquent, is subject to an array of dispositions under that code including placement in a juvenile secured correctional facility. This bill raises from 17 to 18 the age at which a person who is alleged to have violated a criminal law is subject to the procedures specified in the Criminal Procedure Code and, on conviction, to sentencing under the Criminal Code.

Similarly, under current law, a person 17 years of age or older who is alleged to have violated a civil law or municipal ordinance is subject to the jurisdiction and procedures of the circuit court or, if applicable, the municipal court, while a person under 17 years of age who is alleged to have violated a civil law or municipal ordinance, subject to certain exceptions, is subject to the jurisdiction and procedures of the court assigned to exercise jurisdiction under the Juvenile Justice Code. This bill raises from 17 to 18 the age at which a person who is alleged to have violated a civil law or municipal ordinance is subject to the jurisdiction and procedures of the circuit court or, if applicable, the municipal court.

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.** 48.02 (1d) of the statutes is amended to read:

2 48.02 (1d) "Adult" means a person who is 18 years of age or older, ~~except that~~
3 ~~for purposes of investigating or prosecuting a person who is alleged to have violated~~
4 ~~any state or federal criminal law or any civil law or municipal ordinance, "adult"~~
5 ~~means a person who has attained 17 years of age.~~

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447, 449; 1979 c. 135, 300, 352; 1981 c. 81; 1983 a. 189, 447, 471; 1985 a. 176; 1987 a. 27, 285, 339; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 107; 1991 a. 39; 1993 a. 98, 375, 377, 385, 446, 491; 1995 a. 27 ss. 2423 to 2426p, 9126 (19), 9145 (1); 1995 a. 77, 275, 352, 448; 1997 a. 27, 104, 191, 292; 1999 a. 9; 2001 a. 16, 59, 69.

6 **SECTION 2.** 48.02 (2) of the statutes is amended to read:

7 48.02 (2) "Child" means a person who is less than 18 years of age, ~~except that~~
8 ~~for purposes of investigating or prosecuting a person who is alleged to have violated~~
9 ~~a state or federal criminal law or any civil law or municipal ordinance, "child" does~~
10 ~~not include a person who has attained 17 years of age.~~

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447, 449; 1979 c. 135, 300, 352; 1981 c. 81; 1983 a. 189, 447, 471; 1985 a. 176; 1987 a. 27, 285, 339; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 107; 1991 a. 39; 1993 a. 98, 375, 377, 385, 446, 491; 1995 a. 27 ss. 2423 to 2426p, 9126 (19), 9145 (1); 1995 a. 77, 275, 352, 448; 1997 a. 27, 104, 191, 292; 1999 a. 9; 2001 a. 16, 59, 69.

11 **SECTION 3.** 48.366 (8) of the statutes is amended to read:

12 48.366 (8) TRANSFER TO OR BETWEEN FACILITIES. The department of corrections
13 may transfer a person subject to an order between secured correctional facilities.
14 After the person attains the age of 17 18 years, the department of corrections may
15 place the person in a state prison named in s. 302.01, ~~except that the department of~~
16 ~~corrections may not place any person under the age of 18 years in the correctional~~
17 ~~institution authorized in s. 301.16 (1n). If the person is 15 years of age or over, the~~
18 ~~department of corrections may transfer the person to the Racine youthful offender~~
19 ~~correctional facility named in s. 302.01 as provided in s. 938.357 (4) (d). If the~~

1 department of corrections places a person subject to an order under this section in
2 a state prison, that department shall provide services for that person from the
3 appropriate appropriation under s. 20.410 (1). The department of corrections may
4 transfer a person placed in a state prison under this subsection to or between state
5 prisons named in s. 302.01 without petitioning for revision of the order under sub.
6 (5) (a), except that the department of corrections may not transfer any person under
7 the age of 18 years to the correctional institution authorized in s. 301.16 (1n).

8 **History:** 1987 a. 27; 1989 a. 31, 107, 359; 1993 a. 98, 385; 1995 a. 27, 77; 1997 a. 27, 35; 2001 a. 16.

9 **SECTION 4.** Subchapter IX (title) of chapter 48 [precedes 48.44] of the statutes
is amended to read:

10 **CHAPTER 48**

11 **SUBCHAPTER IX**

12 **JURISDICTION OVER PERSON ~~17~~ 18 OR OLDER**

13 **SECTION 5.** 48.44 (title) of the statutes is amended to read:

14 **48.44** (title) **Jurisdiction over persons ~~17~~ 18 or older.**

15 **History:** 1971 c. 213 s. 5; 1975 c. 39; 1977 c. 354; 1987 a. 27; 1989 a. 121; 1995 a. 27; 1997 a. 35, 292.

16 **SECTION 6.** 48.44 (1) of the statutes is amended to read:

17 48.44 (1) The court has jurisdiction over persons ~~17~~ 18 years of age or older as
18 provided under ss. 48.133, 48.355 (4), and 48.45 and as otherwise specifically
provided in this chapter.

19 **History:** 1971 c. 213 s. 5; 1975 c. 39; 1977 c. 354; 1987 a. 27; 1989 a. 121; 1995 a. 27; 1997 a. 35, 292.

20 **SECTION 7.** 48.45 (1) (a) of the statutes is amended to read:

21 48.45 (1) (a) If in the hearing of a case of a child alleged to be in a condition
22 described in s. 48.13 it appears that any person ~~17~~ 18 years of age or older has been
23 guilty of contributing to, encouraging, or tending to cause by any act or omission,
24 ~~such that condition of the child,~~ the judge may make orders with respect to the
conduct of ~~such that~~ person in his or her relationship to the child, including orders

1 determining the ability of the person to provide for the maintenance or care of the
2 child and directing when, how, and from where funds for the maintenance or care
3 shall be paid.

4 **History:** 1977 c. 354, 449; 1987 a. 332 s. 64; 1989 a. 121; 1993 a. 118, 377; 1995 a. 27, 77; 1997 a. 35, 292.

4 **SECTION 8.** 48.45 (1) (am) of the statutes is amended to read:

5 48.45 (1) (am) If in the hearing of a case of an unborn child and the unborn
6 child's expectant mother alleged to be in a condition described in s. 48.133 it appears
7 that any person ~~17~~ 18 years of age or over has been guilty of contributing to,
8 encouraging, or tending to cause by any act or omission, ~~such that~~ that condition ~~of the~~
9 ~~unborn child and expectant mother~~, the judge may make orders with respect to the
10 conduct of ~~such that~~ that person in his or her relationship to the unborn child and
11 expectant mother.

12 **History:** 1977 c. 354, 449; 1987 a. 332 s. 64; 1989 a. 121; 1993 a. 118, 377; 1995 a. 27, 77; 1997 a. 35, 292.

12 **SECTION 9.** 48.45 (3) of the statutes is amended to read:

13 48.45 (3) If it appears at a court hearing that any person ~~17~~ 18 years of age or
14 older has violated s. 948.40, the judge shall refer the record to the district attorney
15 for criminal proceedings as may be warranted in the district attorney's judgment.
16 This subsection does not prevent prosecution of violations of s. 948.40 without the
17 prior reference by the judge to the district attorney, as in other criminal cases.

18 **History:** 1977 c. 354, 449; 1987 a. 332 s. 64; 1989 a. 121; 1993 a. 118, 377; 1995 a. 27, 77; 1997 a. 35, 292.

18 **SECTION 10.** 118.163 (4) of the statutes is amended to read:

19 118.163 (4) A person who is under ~~17~~ 18 years of age on the date of disposition
20 is subject to s. 938.342.

21 **History:** 1987 a. 285; 1991 a. 39; 1993 a. 363; 1995 a. 27 s. 9130 (4); 1995 a. 77, 352; 1997 a. 3, 35, 239; 2001 a. 16.

21 **SECTION 11.** 125.07 (4) (d) of the statutes is amended to read:

22 125.07 (4) (d) A person who is under ~~17~~ 18 years of age on the date of disposition
23 is subject to s. 938.344 unless proceedings have been instituted against the person

1 in a court of civil or criminal jurisdiction after dismissal of the citation under s.
2 938.344 (3).

History: 1981 c. 79, 202, 391; 1983 a. 74, 472, 538; 1985 a. 28, 29, 47, 120, 176, 221, 317, 337; 1987 a. 51, 354; 1989 a. 31, 121, 135, 253, 336, 359; 1991 a. 28, 39, 171, 269; 1993 a. 112, 472; 1995 a. 77, 334; 1997 a. 35, 84, 98, 100, 205, 337; 1999 a. 109; 2003 a. 246.

3 **SECTION 12.** 125.07 (4) (e) 1. of the statutes is amended to read:

4 125.07 (4) (e) 1. In this paragraph, "defendant" means a person found guilty
5 of violating par. (a) or (b) who is ~~17~~, 18, 19, or 20 years of age.

History: 1981 c. 79, 202, 391; 1983 a. 74, 472, 538; 1985 a. 28, 29, 47, 120, 176, 221, 317, 337; 1987 a. 51, 354; 1989 a. 31, 121, 135, 253, 336, 359; 1991 a. 28, 39, 171, 269; 1993 a. 112, 472; 1995 a. 77, 334; 1997 a. 35, 84, 98, 100, 205, 337; 1999 a. 109; 2003 a. 246.

6 **SECTION 13.** 125.085 (3) (bt) of the statutes is amended to read:

7 125.085 (3) (bt) A person who is under ~~17~~ 18 years of age on the date of
8 disposition is subject to s. 938.344 unless proceedings have been instituted against
9 the person in a court of civil or criminal jurisdiction after dismissal of the citation
10 under s. 938.344 (3).

History: 1989 a. 31, 253, 336; 1991 a. 39; 1995 a. 77; 1997 a. 27, 35, 205, 283; 2001 a. 109.

11 **SECTION 14.** 165.83 (1) (c) 1. of the statutes is amended to read:

12 165.83 (1) (c) 1. An act that is committed by a person who has attained the age
13 of ~~17~~ 18 and that is a felony or a misdemeanor.

History: 1971 c. 219; 1983 a. 27, 535; 1985 a. 29; 1993 a. 407; 1995 a. 448; 1997 a. 27.

14 **SECTION 15.** 165.83 (1) (c) 2. of the statutes is amended to read:

15 165.83 (1) (c) 2. An act that is committed by a person who has attained the age
16 of 10 but who has not attained the age of ~~17~~ 18 and that would be a felony or
17 misdemeanor if committed by an adult.

History: 1971 c. 219; 1983 a. 27, 535; 1985 a. 29; 1993 a. 407; 1995 a. 448; 1997 a. 27.

18 **SECTION 16.** 301.03 (10) (d) of the statutes is amended to read:

19 301.03 (10) (d) Administer the office of juvenile offender review in the division
20 of juvenile corrections in the department. The office shall be responsible for decisions
21 regarding case planning, the release of juvenile offenders from secured correctional
22 facilities or secured child caring institutions to aftercare placements and the transfer

1 ~~of juveniles to the Racine youthful offender correctional facility named in s. 302.01~~
2 ~~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; 2001 a. 16, 109; 2003 a. 321.

3 **SECTION 17.** 301.12 (2m) of the statutes is amended to read:

4 301.12 (2m) The liability specified in sub. (2) shall not apply to persons ~~17~~ 18
5 and older receiving care, maintenance, services, and supplies provided by prisons
6 named in s. 302.01.

History: 1995 a. 27 ss. 6361, 9126 (19); 1995 a. 77; 1997 a. 237; 1999 a. 103; 2001 a. 59.

7 **SECTION 18.** 301.12 (14) (a) of the statutes is amended to read:

8 301.12 (14) (a) Except as provided in pars. (b) and (c), liability of a person
9 specified in sub. (2) or s. 301.03 (18) for care and maintenance of persons under ~~17~~
10 18 years of age in residential, nonmedical facilities such as group homes, foster
11 homes, treatment foster homes, child caring institutions, and juvenile correctional
12 institutions is determined in accordance with the cost-based fee established under
13 s. 301.03 (18). The department shall bill the liable person up to any amount of
14 liability not paid by an insurer under s. 632.89 (2) or (2m) or by other 3rd-party
15 benefits, subject to rules ~~which~~ that include formulas governing ability to pay
16 promulgated by the department under s. 301.03 (18). Any liability of the resident not
17 payable by any other person terminates when the resident reaches age ~~17~~ 18, unless
18 the liable person has prevented payment by any act or omission.

History: 1995 a. 27 ss. 6361, 9126 (19); 1995 a. 77; 1997 a. 237; 1999 a. 103; 2001 a. 59.

19 **SECTION 19.** 302.11 (10) of the statutes is amended to read:

20 302.11 (10) An inmate subject to an order under s. 48.366 ~~or 938.34 (4h)~~ is not
21 entitled to mandatory release and may be released or discharged only as provided
22 under s. 48.366 ~~or 938.538~~.

History: 1977 c. 266, 353; 1979 c. 221; 1981 c. 266; 1983 a. 66, 528; 1985 a. 27; 1985 a. 332 s. 251 (1); 1987 a. 27, 412; 1989 a. 31 ss. 1629, 1630; Stats. s. 302.11; 1989 a. 107; 1991 a. 39; 1993 a. 79, 97, 194, 289, 483; 1995 a. 77, 448; 1997 a. 133, 275, 283, 284, 295, 326; 1999 a. 188; 2001 a. 16, 109.

23 **SECTION 20.** 302.255 of the statutes is amended to read:

1 **302.255 Interstate corrections compact; additional applicability.**

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

5 ~~History: 1987 a. 27; 1989 a. 31 s. 1642; Stats. 1989 s. 302.255; 1995 a. 77.~~

5 **SECTION 21.** 302.31 (7) of the statutes is amended to read:

6 302.31 (7) The temporary placement of persons in the custody of the
7 department, other than persons under ~~17~~ 18 years of age, and persons who have
8 attained the age of ~~17~~ 18 years but have not attained the age of 25 years who are
9 under the supervision of the department under s. 48.366 or 938.355 (4) and who have
10 been taken into custody pending revocation of aftercare supervision under s. 48.366
11 (5) or 938.357 (5) (e).

12 ~~History: 1981 c. 20; 1989 a. 31 s. 1646; Stats. 1989 s. 302.31; 1989 a. 336; 1991 a. 39; 1993 a. 16, 89, 385, 490; 1995 a. 27, 77; 2003 a. 81, 226, 326.~~

12 **SECTION 22.** 302.386 (5) (d) of the statutes is amended to read:

13 302.386 (5) (d) Any participant in the serious juvenile offender program under
14 s. 938.538 unless he or she is placed in a Type 1 secured correctional facility, as
15 defined in s. 938.02 (19), ~~or in a Type 1 prison other than the institution authorized~~
16 ~~under s. 301.046 (1).~~

17 ~~History: 1985 a. 29; 1989 a. 31 ss. 1661, 1662; Stats. 1989 s. 302.386; 1991 a. 39; 1995 a. 27, 77; 2001 a. 16.~~

17 **SECTION 23.** 938.02 (1) of the statutes is amended to read:

18 938.02 (1) “Adult” means a person who is 18 years of age or older, ~~except that~~
19 ~~for purposes of investigating or prosecuting a person who is alleged to have violated~~
20 ~~any state or federal criminal law or any civil law or municipal ordinance, “adult”~~
21 ~~means a person who has attained 17 years of age.~~

22 ~~History: 1995 a. 77, 216, 352, 448; 1997 a. 27, 35, 181, 191; 1999 a. 9, 162; 2001 a. 16, 59; 2003 a. 33, 284.~~

22 **SECTION 24.** 938.02 (10m) of the statutes is amended to read:

1 938.02 (10m) "Juvenile" means a person who is less than 18 years of age, ~~except~~
2 ~~that for purposes of investigating or prosecuting a person who is alleged to have~~
3 ~~violated a state or federal criminal law or any civil law or municipal ordinance,~~
4 ~~"juvenile" does not include a person who has attained 17 years of age.~~

5 History: 1995 a. 77, 216, 352, 448; 1997 a. 27, 35, 181, 191; 1999 a. 9, 162; 2001 a. 16, 59; 2003 a. 33, 284.

5 **SECTION 25.** 938.12 (2) of the statutes is amended to read:

6 938.12 (2) If a court proceeding has been commenced under this section before
7 a juvenile is 17 [✓]18 years of age, but the juvenile becomes 17 [✓]18 years of age before
8 admitting the facts of the petition at the plea hearing or if the juvenile denies the
9 facts, before an adjudication, the court retains jurisdiction over the case.

10 History: 1995 a. 77.

10 **SECTION 26.** 938.18 (2) of the statutes is amended to read:

11 938.18 (2) The waiver hearing shall be brought on by filing a petition alleging
12 delinquency drafted under s. 938.255 and a petition for waiver of jurisdiction which
13 shall contain a brief statement of the facts supporting the request for waiver. The
14 petition for waiver of jurisdiction shall be filed prior to the plea hearing, except that
15 if the juvenile denies the facts of the petition and becomes 17 [✓]18 years of age before
16 an adjudication, the petition for waiver of jurisdiction may be filed at any time prior
17 to the adjudication.

18 History: 1995 a. 77, 352, 448; 1997 a. 35.

18 **SECTION 27.** 938.183 (3) of the statutes is amended to read:

19 938.183 (3) When a juvenile who is subject to a criminal penalty under sub.
20 (1m) or (2) attains the age of 17 [✓]18 years, the department may place the juvenile in
21 a state prison named in s. 302.01, ~~except that the department may not place any~~
22 ~~person under the age of 18 years in the correctional institution authorized in s.~~
23 ~~301.16 (1n). If a juvenile who is subject to a criminal penalty under sub. (1m) or (2)~~
24 ~~is 15 years of age or over, the department may transfer the juvenile to the Racine~~

1 ~~youthful offender correctional facility named in s. 302.01 as provided in s. 938.357~~
2 (4)(d). A juvenile who is subject to a criminal penalty under sub. (1m) or (2) for an
3 act committed before December 31, 1999, is eligible for parole under s. 304.06.

4 **History:** 1995 a. 77, 216, 352; 1997 a. 27, 35, 205, 252, 283; 1999 a. 9, 32; 2001 a. 16.

4 **SECTION 28.** 938.255 (1) (intro.) of the statutes is amended to read:

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

12 **History:** 1995 a. 77, 352; 2001 a. 109; 2003 a. 284.

12 **SECTION 29.** 938.344 (3) of the statutes is amended to read:

13 938.344 (3) If the juvenile alleged to have committed the violation is within 3
14 months of his or her 17th ~~17th~~ ^{18th} birthday, the court assigned to exercise jurisdiction
15 under this chapter and ch. 48 may, at the request of the district attorney or on its own
16 motion, dismiss the citation without prejudice and refer the matter to the district
17 attorney for prosecution under s. 125.07 (4). The juvenile is entitled to a hearing only
18 on the issue of his or her age. This subsection does not apply to violations under s.
19 961.573 (2), 961.574 (2), or 961.575 (2) or a local ordinance that strictly conforms to
20 one of those statutes.

21 **History:** 1995 a. 77, 448; 1997 a. 84; 1999 a. 9 s. 3263; 1999 a. 109; 2001 a. 16.

21 **SECTION 30.** 938.35 (1m) of the statutes is amended to read:

22 938.35 (1m) Disposition by the court assigned to exercise jurisdiction under
23 this chapter and ch. 48 of any allegation under s. 938.12 or 938.13 (12) shall bar any
24 future proceeding on the same matter in criminal court when the juvenile reaches

1 the age of ~~17~~ [✓]18. This paragraph does not affect proceedings in criminal court which
2 have been transferred under s. 938.18.

3 **History:** 1995 a. 77; 1997 a. 35, 205; 1999 a. 32.

3 **SECTION 31.** 938.355 (4) (b) of the statutes is amended to read:

4 938.355 (4) (b) Except as provided in s. 938.368, an order under s. 938.34 (4d)
5 or (4m) made before the juvenile reaches 18 years of age may apply for up to 2 years
6 after its entry or until the juvenile's 18th birthday, whichever is earlier, unless the
7 court specifies a shorter period of time or the court terminates the order sooner.
8 Except as provided in s. 938.368, an order under s. 938.34 (4h) made before the
9 juvenile reaches 18 years of age shall apply for 5 years after its entry, if the juvenile
10 is adjudicated delinquent for committing a violation of s. 943.10 (2) or for committing
11 an act that would be punishable as a Class B or C felony if committed by an adult,
12 or until the juvenile reaches 25 years of age, if the juvenile is adjudicated delinquent
13 for committing an act that would be punishable as a Class A felony if committed by
14 an adult. Except as provided in s. 938.368, an extension of an order under s. 938.34
15 (4d), (4h), (4m), or (4n) made before the juvenile reaches ~~17~~ [✓]18 years of age shall
16 terminate at the end of one year after its entry unless the court specifies a shorter
17 period of time or the court terminates the order sooner. No extension under s.
18 938.365 of an original dispositional order under s. 938.34 (4d), (4h), (4m), or (4n) may
19 be granted for a juvenile who is ~~17~~ [✓]18 years of age or older when the original
20 dispositional order terminates.

21 **History:** 1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 252; 1999 a. 9, 32, 103; 2001 a. 16, 69, 109; 2003 a. 50.

21 **SECTION 32.** 938.355 (4m) (a) of the statutes is amended to read:

22 938.355 (4m) (a) A juvenile who has been adjudged delinquent may, on
23 attaining ~~17~~ [✓]18 years of age, petition the court to expunge the court's record of the
24 juvenile's adjudication. Subject to par. (b), the court may expunge the court's record

1 of the juvenile's adjudication if the court determines that the juvenile has
2 satisfactorily complied with the conditions of his or her dispositional order and that
3 the juvenile will benefit and society will not be harmed by the expungement.

4 **History:** 1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 252; 1999 a. 9, 32, 103; 2001 a. 16, 69, 109; 2003 a. 50.

SECTION 33. 938.357 (4) (d) of the statutes is repealed.

5 **SECTION 34.** 938.39 of the statutes is amended to read:

6 **938.39 Disposition by court bars criminal proceeding.** Disposition by the
7 court of any violation of state law coming within its jurisdiction under s. 938.12 bars
8 any future criminal proceeding on the same matter in circuit court when the juvenile
9 reaches the age of 17 18. This section does not affect criminal proceedings in circuit
10 court which were transferred under s. 938.18.

11 **History:** 1995 a. 77.

SECTION 35. Subchapter IX (title) of chapter 938 [precedes 938.44] of the
12 statutes is amended to read:

13 **CHAPTER 938**

14 **SUBCHAPTER IX**

15 **JURISDICTION OVER PERSONS 17 18 OR OLDER**

16 **SECTION 36.** 938.44 of the statutes is amended to read:

17 **938.44 Jurisdiction over persons 17 18 or older.** The court has jurisdiction
18 over persons 17 18 years of age or over as provided under ss. 938.355 (4) and 938.45
19 and as otherwise specifically provided in this chapter.

20 **History:** 1995 a. 77.

SECTION 37. 938.45 (1) (a) of the statutes is amended to read:

21 938.45 (1) (a) If in the hearing of a case of a juvenile alleged to be delinquent
22 under s. 938.12 or in need of protection or services under s. 938.13 it appears that any
23 person 17 18 years of age or over has been guilty of contributing to, encouraging, or
24 tending to cause by any act or omission, ~~such that~~ condition of the juvenile, the court

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1 may make orders with respect to the conduct of ~~such~~ that person in his or her
2 relationship to the juvenile, including orders determining the ability of the person
3 to provide for the maintenance or care of the juvenile and directing when, how, and
4 from where funds for the maintenance or care shall be paid.

History: 1995 a. 77; 1997 a. 35, 205; 2003 a. 138.

SECTION 38. 938.45 (3) of the statutes is amended to read:

6 938.45 (3) If it appears at a court hearing that any person 17 18 years of age
7 or older has violated s. 948.40, the court shall refer the record to the district attorney
8 for criminal proceedings as may be warranted in the district attorney's judgment.
9 This subsection does not prevent prosecution of violations of s. 948.40 without the
10 prior reference by the court to the district attorney, as in other criminal cases.

History: 1995 a. 77; 1997 a. 35, 205; 2003 a. 138.

SECTION 39. 938.48 (4m) (a) of the statutes is amended to read:

12 938.48 (4m) (a) Is at least 17 18 years of age.

History: 1995 a. 77; 1997 a. 27; 2001 a. 38.

SECTION 40. 938.48 (4m) (b) of the statutes is amended to read:

14 938.48 (4m) (b) Was under the supervision of the department under s. 938.183,
15 938.34 (4h), (4m), or (4n) or 938.357 (4) when the person reached 17 18 years of age.

History: 1995 a. 77; 1997 a. 27; 2001 a. 38.

SECTION 41. 938.48 (14) of the statutes is amended to read:

17 938.48 (14) Pay maintenance, tuition, and related expenses from the
18 appropriation under s. 20.410 (3) (ho) for persons who when they reached 17 18 years
19 of age were students regularly attending a school, college, or university or regularly
20 attending a course of vocational or technical training designed to fit them for gainful
21 employment, and who when reaching that age were under the supervision of the
22 department under s. 938.183, 938.34 (4h), (4m), or (4n) or 938.357 (4) as a result of
23 a judicial decision.

History: 1995 a. 77; 1997 a. 27; 2001 a. 38.

1 **SECTION 42.** 938.538 (3) (a) 1. of the statutes is amended to read:

2 938.538 (3) (a) 1. Subject to subd. 1m., placement in a Type 1 secured
3 correctional facility, or a secured child caring institution ~~or, if the participant is 17~~
4 ~~years of age or over or 15 years of age or over and transferred under s. 938.357 (4)~~
5 (d), a Type 1 prison, as defined in s. 301.01 (5), for a period of not more than 3 years.

NOTE: NOTE: The provisions of subd 1. that subject a juvenile to placement in an adult (Type 1) prison were held to violate Article I, s. 7 of the Wisconsin Constitution and the 6th and 14th amendments of the U. S. Constitution and to be severed from the remainder of ch. 938 by the Supreme Court in *State of Wisconsin v. Hezzie R.* 219 Wis. 2d 849, 580 N.W.2d 660 (1998).NOTE:

History: 1995 a. 77, 352; 1997 a. 27, 35; 2001 a. 16, 59; 2003 a. 33 ss. 2733, 9160.

6 **SECTION 43.** 938.538 (3) (a) 1m. of the statutes is amended to read:

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

NOTE: NOTE: The provisions of subd. 1m. that subject a juvenile to placement in an adult (Type 1) prison were held to violate Article I, s. 7 of the Wisconsin Constitution and the 6th and 14th amendments of the U. S. Constitution and to be severed from the remainder of ch. 938 by the Supreme Court in *State of Wisconsin v. Hezzie R.* 219 Wis. 2d 849, 580 N.W.2d 660 (1998).NOTE:

History: 1995 a. 77, 352; 1997 a. 27, 35; 2001 a. 16, 59; 2003 a. 33 ss. 2733, 9160.

14 **SECTION 44.** 938.538 (3) (a) 2. of the statutes is amended to read:

15 938.538 (3) (a) 2. Intensive or other field supervision, including corrective
16 sanctions supervision under s. 938.533, or aftercare supervision ~~or, if the participant~~
17 ~~is 17 years of age or over, intensive sanctions supervision under s. 301.048.~~

History: 1995 a. 77, 352; 1997 a. 27, 35; 2001 a. 16, 59; 2003 a. 33 ss. 2733, 9160.

18 **SECTION 45.** 938.538 (4) (a) of the statutes is amended to read:

19 938.538 (4) (a) A participant in the serious juvenile offender program is under
20 the supervision and control of the department, is subject to the rules and discipline
21 of the department and is considered to be in custody, as defined in s. 946.42 (1) (a).
22 Notwithstanding ss. 938.19 to 938.21, if a participant violates a condition of his or

1 her participation in the program under sub. (3) (a) 2. to 9. while placed in a Type 2
2 secured correctional facility the department may, without a hearing, take the
3 participant into custody and return him or her to placement in a Type 1 secured
4 correctional facility, or a secured child caring institution ~~or, if the participant is 17~~
5 ~~years of age or over, a Type 1 prison, as defined in s. 301.01 (5).~~ Any intentional
6 failure of a participant to remain within the extended limits of his or her placement
7 while participating in the serious juvenile offender program or to return within the
8 time prescribed by the administrator of the division of intensive sanctions in the
9 department is considered an escape under s. 946.42 (3) (c). This paragraph does not
10 preclude a juvenile who has violated a condition of the juvenile's participation in the
11 program under sub. (3) (a) 2. to 9. from being taken into and held in custody under
12 ss. 938.19 to 938.21.

History: 1995 a. 77, 352; 1997 a. 27, 35; 2001 a. 16, 59; 2003 a. 33 ss. 2733, 9160.

13 **SECTION 46.** 938.538 (5) (c) of the statutes is amended to read:

14 938.538 (5) (c) Sections 938.357 and 938.363 do not apply to changes of
15 placement and revisions of orders for a juvenile who is a participant in the serious
16 juvenile offender program, ~~except that s. 938.357 (4) (d) applies to the transfer of a~~
17 ~~participant to the Racine youthful offender correctional facility named in s. 302.01.~~

History: 1995 a. 77, 352; 1997 a. 27, 35; 2001 a. 16, 59; 2003 a. 33 ss. 2733, 9160.

18 **SECTION 47.** 938.538 (6) of the statutes is amended to read:

19 938.538 (6) PURCHASE OF SERVICES. The department of corrections may contract
20 with the department of health and family services, a county department, or any
21 public or private agency for the purchase of goods, care, and services for participants
22 in the serious juvenile offender program. The department of corrections shall
23 reimburse a person from whom it purchases goods, care or services under this
24 subsection from the appropriation under s. 20.410 (3) (cg) ~~or, if the person for whom~~

1 ~~the goods, care or services are purchased is placed in a Type 1 prison, as defined s.~~
2 ~~301.01 (5), or is under intensive sanctions supervision under s. 301.048, from the~~
3 ~~appropriate appropriation under s. 20.410 (1).~~

4 **History:** 1995 a. 77, 352; 1997 a. 27, 35; 2001 a. 16, 59; 2003 a. 33 ss. 2733, 9160.

4 **SECTION 48.** 938.57 (3) (a) 1. of the statutes is amended to read:

5 938.57 (3) (a) 1. Is ~~17~~ [✓]18 years of age or older.

6 **History:** 1995 a. 77; 1997 a. 27, 35; 1999 a. 9; 2001 a. 38, 59.

6 **SECTION 49.** 938.57 (3) (a) 3. of the statutes is amended to read:

7 938.57 (3) (a) 3. Received funding under s. 46.495 (1) (d) immediately prior to
8 his or her ~~17th~~ [✓]18th birthday.

9 **History:** 1995 a. 77; 1997 a. 27, 35; 1999 a. 9; 2001 a. 38, 59.

9 **SECTION 50.** 938.57 (3) (b) of the statutes is amended to read:

10 938.57 (3) (b) The funding provided for the maintenance of a juvenile under par.
11 (a) shall be in an amount equal to that to which the juvenile would receive under s.
12 46.495 (1) (d) if the juvenile were ~~16~~ [✓]17 years of age.

13 **History:** 1995 a. 77; 1997 a. 27, 35; 1999 a. 9; 2001 a. 38, 59.

13 **SECTION 51.** 938.992 (3) of the statutes is amended to read:

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

18 **History:** 1977 c. 449; 1981 c. 390; 1983 a. 189; 1985 a. 294; 1987 a. 27; 1989 a. 31, 107; 1995 a. 27; 1995 a. 77 s. 389 to 392; Stats. 1995 s. 938.992.

18 **SECTION 52.** 946.50 (intro.) of the statutes is amended to read:

19 **946.50 Absconding.** (intro.) Any person who is adjudicated delinquent, but
20 who intentionally fails to appear before the court assigned to exercise jurisdiction
21 under chs. 48 and 938 for his or her dispositional hearing under s. 938.335, and who

1 does not return to that court for a dispositional hearing before attaining the age of
2 17 [✓]18 years is guilty of the following:

3 **History:** 1995 a. 77; 2001 a. 109.

3 **SECTION 53.** 948.01 (1) of the statutes is amended to read:

4 948.01 (1) "Child" means a person who has not attained the age of 18 years,
5 ~~except that for purposes of prosecuting a person who is alleged to have violated a~~
6 ~~state or federal criminal law, "child" does not include a person who has attained the~~
7 ~~age of 17 years.~~

8 **History:** 1987 a. 332; 1989 a. 31; 1993 a. 446; 1995 a. 27, 67, 69, 100, 214; 2001 a. 16.

8 **SECTION 54.** 948.11 (2) (am) (intro.) of the statutes is amended to read:

9 948.11 (2) (am) (intro.) Any person who has attained the age of 17 [✓]18 and who,
10 with knowledge of the character and content of the description or narrative account,
11 verbally communicates, by any means, a harmful description or narrative account
12 to a child, with or without monetary consideration, is guilty of a Class I felony if any
13 of the following applies:

14 **History:** 1987 a. 332; 1989 a. 31; 1993 a. 220, 399; 1995 a. 27 s. 9154 (1); 1997 a. 27, 82; 1999 a. 9; 2001 a. 16, 104, 109.

14 **SECTION 55.** 948.45 (1) of the statutes is amended to read:

15 948.45 (1) Except as provided in sub. (2), any person 17 [✓]18 years of age or older
16 who, by any act or omission, knowingly encourages or contributes to the truancy, as
17 defined under s. 118.16 (1) (c), of a person 17 [✓]18 years of age or under is guilty of a
18 Class C misdemeanor.

19 **History:** 1987 a. 285; 1989 a. 31 s. 2835m; Stats. 1989 s. 948.45; 1995 a. 27.

19 **SECTION 56.** 948.60 (2) (d) of the statutes is amended to read:

20 948.60 (2) (d) A person under 17 [✓]18 years of age who has violated this
21 subsection is subject to the provisions of ch. 938 unless jurisdiction is waived under
22 s. 938.18 or the person is subject to the jurisdiction of a court of criminal jurisdiction
23 under s. 938.183.

History: 1987 a. 332; 1991 a. 18, 139; 1993 a. 98; 1995 a. 27, 77; 1997 a. 248; 2001 a. 109.

1 **SECTION 57.** 948.61 (4) of the statutes is amended to read:

2 948.61 (4) A person under ~~17~~ [✓]18 years of age who has violated this section is
3 subject to the provisions of ch. 938, unless jurisdiction is waived under s. 938.18 or
4 the person is subject to the jurisdiction of a court of criminal jurisdiction under s.
5 938.183.

6 **History:** 1987 a. 332; 1991 a. 17; 1993 a. 336; 1995 a. 27, 77; 2001 a. 109.

6 **SECTION 58.** 961.455 (1) of the statutes is amended to read:

7 961.455 (1) Any person who has attained the age of ~~17~~ [✓]18 years who knowingly
8 solicits, hires, directs, employs, or uses a person who is under the age of ~~17~~ [✓]18 years
9 for the purpose of violating s. 961.41 (1) is guilty of a Class F felony.

10 **History:** 1989 a. 121; 1991 a. 153; 1995 a. 27; 1995 a. 448 ss. 273 to 275; Stats. 1995 s. 961.455; 1997 a. 283; 2001 a. 109.

10 **SECTION 59.** 961.46 of the statutes is amended to read:

11 **961.46 Distribution to persons under age 18.** If a person ~~17~~ [✓]18 years of age
12 or over violates s. 961.41 (1) by distributing or delivering a controlled substance or
13 a controlled substance analog to a person 17 years of age or under who is at least 3
14 years his or her junior, the applicable maximum term of imprisonment prescribed
15 under s. 961.41 (1) for the offense may be increased by not more than 5 years.

16 **History:** 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 490; 1995 a. 27; 1995 a. 448 ss. 276 to 279; Stats. 1995 s. 961.46; 1999 a. 48, 57; 2001 a. 109.

16 **SECTION 60.** 961.573 (2) of the statutes is amended to read:

17 961.573 (2) Any person ~~who violates sub. (1) who is under 17~~ [✓]18 years of age
18 who violates sub. (1) is subject to a disposition under s. 938.344 (2e).

19 **History:** 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 312 to 314, 492; Stats. 1995 s. 961.573; 1999 a. 129; 2001 a. 109.

19 **SECTION 61.** 961.574 (2) of the statutes is amended to read:

20 961.574 (2) Any person ~~who violates sub. (1) who is under 17~~ [✓]18 years of age
21 who violates sub. (1) is subject to a disposition under s. 938.344 (2e).

22 **History:** 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 315 to 317, 493; Stats. 1995 s. 961.574; 1999 a. 129; 2001 a. 109.

22 **SECTION 62.** 961.575 (1) of the statutes is amended to read:

1 961.575 (1) Any person ~~17~~ [✓]18 years of age or over who violates s. 961.574 (1)
2 by delivering drug paraphernalia to a person 17 years of age or under who is at least
3 3 years younger than the violator may be fined not more than \$10,000 or imprisoned
4 for not more than 9 months or both.

5 **History:** 1989 a. 121; 1991 a. 39; 1995 a. 27, 77; 1995 a. 448 ss. 318, 494; Stats. 1995 s. 961.575; 1999 a. 129; 2001 a. 109.

5 **SECTION 63.** 961.575 (2) of the statutes is amended to read:

6 961.575 (2) Any person ~~who violates this section who is under 17~~ [✓]under 18 years
7 of age ~~who violates s. 961.574 (3)~~ [✓]is subject to a disposition under s. 938.344 (2e).

8 **History:** 1989 a. 121; 1991 a. 39; 1995 a. 27, 77; 1995 a. 448 ss. 318, 494; Stats. 1995 s. 961.575; 1999 a. 129; 2001 a. 109.

8 **SECTION 64.** 961.575 (3) of the statutes is amended to read:

9 961.575 (3) Any person ~~17~~ [✓]18 years of age or over who violates s. 961.574 (3)
10 by delivering drug paraphernalia to a person 17 years of age or under is guilty of a
11 Class G felony.

12 **History:** 1989 a. 121; 1991 a. 39; 1995 a. 27, 77; 1995 a. 448 ss. 318, 494; Stats. 1995 s. 961.575; 1999 a. 129; 2001 a. 109.

12 **SECTION 65.** 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 **History:** 1987 a. 27; 1995 a. 77.

17 **SECTION 66.** 990.01 (3) of the statutes is amended to read:

18 990.01 (3) ADULT. "Adult" means a person who has attained the age of 18 years,
19 ~~except that for purposes of investigating or prosecuting a person who is alleged to~~
20 ~~have violated any state or federal criminal law or any civil law or municipal~~
21 ~~ordinance, "adult" means a person who has attained the age of 17 years.~~

History: 1971 c. 164 ss. 80, 91; 1971 c. 213 s. 5; Sup. Ct. Order, 67 Wis. 2d 784; 1977 c. 305; 1979 c. 169; 1981 c. 291, 391; 1983 a. 447; 1985 a. 65, 182, 332; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 399; 1989 a. 56, 278; 1991 a. 39; 1993 a. 486; 1995 a. 27 ss. 7294, 7295, 9126 (19); 1995 a. 77, 352; 1997 a. 252, 306; 1999 a. 22, 85; 2001 a. 102; 2003 a. 110.

22 **SECTION 67.** 990.01 (20) of the statutes is amended to read:

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

LRB-0756/1dn

GMM. *[Signature]*

Date

Representative Kessler:

In addition to raising the age of adult jurisdiction from 17 to 18, this draft repeals language permitting the transfer of a juvenile to an adult prison. That language was held unconstitutional by the Wisconsin Supreme Court in *State v. Hezzie R.*, 219 Wis. 2d 849 (1998), because it would subject a juvenile to criminal punishment without a trial by jury. The draft repeals that language because it is found in many of the provisions referring to the age of majority treated by the draft.

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

LRB-0756/1dn
GMM:kjf:rs

November 19, 2004

Representative Kessler:

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Northrop, Lori

From: Little, Sharon
Sent: Monday, January 24, 2005 4:23 PM
To: LRB.Legal
Subject: Draft review: LRB 05-0756/1 Topic: Age of adult criminal jurisdiction

It has been requested by <Little, Sharon> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-0756/1 Topic: Age of adult criminal jurisdiction