



2005 ASSEMBLY BILL 110

February 17, 2005 - Introduced by Representatives KESSLER and A. WILLIAMS.
Referred to Committee on Family Law.

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

Analysis by the Legislative Reference Bureau

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

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

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

1 **SECTION 1.** 756.06 (2) (d) of the statutes is amended to read:

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

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

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

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

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

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

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

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

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

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

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

6 938.30 (2) At or before the commencement of the hearing under this section the
7 juvenile and the parent, guardian, or legal custodian shall be advised of their rights
8 as specified in s. 938.243 and shall be informed that the hearing shall be to the court
9 and that a request for a substitution of judge under s. 938.29 must be made before
10 the end of the plea hearing or be waived, except that if the juvenile is before the court
11 on a petition under s. 938.12 in which the petitioner has reserved the right under s.
12 938.255 (1) (d) to recommend placement of the juvenile in the Serious Juvenile
13 Offender Program under s. 938.34 (4h) or in a secured correctional facility under s.
14 938.34 (4m) beyond the juvenile's 17th birthday, the court shall inform the juvenile
15 and the parent, guardian, or legal custodian that a request for a jury trial must be
16 made before the end of the plea hearing or be waived. Nonpetitioning parties,
17 including the juvenile, shall be granted a continuance of the plea hearing if they wish
18 to consult with an attorney on the request for a jury trial or substitution of a judge.

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

20 938.31 (2) The hearing shall be to the court unless a juvenile who has the right
21 to a jury trial as described in s. 938.30 (2) or the parent, guardian, or legal custodian
22 of the juvenile exercises that right by demanding a jury trial at any time before or
23 during the plea hearing. Sections 972.03 and 972.04 shall govern the selection of
24 jurors in cases in which a jury trial has been demanded. If the hearing involves a
25 child victim, as defined in s. 938.02 (20m) (a) 1., or a child witness, as defined in s.

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1 950.02 (5), the court may order the taking and allow the use of a videotaped
2 deposition under s. 967.04 (7) to (10) and, with the district attorney, shall comply with
3 s. 971.105. At the conclusion of the hearing, the court or jury shall make a
4 determination of the facts. If the court finds that the juvenile is not within the
5 jurisdiction of the court or the court or jury finds that the facts alleged in the petition
6 or citation have not been proved, the court shall dismiss the petition or citation with
7 prejudice.

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

9 938.31 (4) The court shall make findings of fact and conclusions of law relating
10 to the allegations of a petition under s. 938.12, 938.125, or 938.13, except that in cases
11 in which the petitioner has reserved the right under s. 938.255 (1) (d) to recommend
12 placement of the juvenile in the Serious Juvenile Offender Program under s. 938.34
13 (4h) or in a secured correctional facility under s. 938.34 (4m) beyond the juvenile's
14 17th birthday, the court or jury shall make findings of fact and the court shall make
15 conclusions of law relating to the allegations of the petition. In cases alleging a
16 juvenile to be delinquent or in need of protection or services under s. 938.13 (12), the
17 court shall make findings relating to the proof of the violation of law and to the proof
18 that the juvenile named in the petition committed the violation alleged.

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

21 **938.317 Jeopardy** (intro.) Jeopardy attaches:

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

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

24 938.317 (2) In a jury trial, when the jury selection is completed and the jury
25 is sworn.

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

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

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

20 938.355 (4) (c) An order under s. 938.34 (4h) or (4m) may apply beyond the
21 juvenile's 17th birthday only if the petitioner has reserved the right under s. 938.255
22 (1) (d) to recommend placement of the juvenile in the Serious Juvenile Offender
23 Program under s. 938.34 (4h) or in a secured correctional facility under s. 938.34 (4m)
24 beyond the juvenile's 17th birthday.

25 **SECTION 13. Initial applicability.**

