



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1909/P6
EAW:kjf/wlj/skw

DOA:.....Schmidt, BB0587 - Extended juvenile jurisdiction

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Extended juvenile jurisdiction

Under current law, when an individual under the age of 17 is alleged delinquent for the violation of a criminal law, that juvenile is subject to the jurisdiction of the juvenile court and, upon being adjudged delinquent, is subject to an array of dispositions under the Juvenile Justice Code. Under current law, a juvenile who is alleged delinquent for certain acts may be under the original jurisdiction of the criminal court or may have juvenile court jurisdiction waived, in which case the juvenile, upon conviction, is subject to sentencing under the Criminal Code. Under current law, a dispositional order imposing a correctional placement under the Juvenile Justice Code generally terminates on the juvenile's 18th birthday and cannot be extended.

The bill creates extended juvenile jurisdiction (EJJ) for juveniles who are alleged delinquent for the commission of certain acts. Under the bill, if a juvenile meets the requirements for waiver of juvenile court jurisdiction, the district attorney or the juvenile may instead petition the juvenile court to place the juvenile under EJJ or the court may initiate such a proceeding on its own motion. In order to grant EJJ, the court must find that the juvenile qualifies for waiver, that the juvenile qualifies

for a correctional placement, if adjudged delinquent for the alleged acts, and that a correctional placement is insufficient to protect public safety or for rehabilitation of the juvenile. These findings must be made on clear and convincing evidence at a hearing to the court. If the court grants EJJ, the juvenile is entitled to a jury trial and the court may, after trial, impose any juvenile disposition that it deems appropriate.

The bill creates a new juvenile disposition that may be used only for juveniles subject to EJJ. The extended juvenile disposition is available only to juveniles who are given a juvenile correctional placement and for whom the court finds that the correctional placement alone is insufficient to protect public safety or for rehabilitation of the juvenile. In this case, the court may impose an extended juvenile disposition, which has the same force and effect as a criminal sentence, after a juvenile correctional placement terminates on the juvenile's 19th birthday. The extended juvenile disposition may not extend beyond the juvenile's 23rd birthday unless the juvenile is adjudicated delinquent for first-degree intentional homicide, in which case the extended juvenile disposition may extend to the juvenile's 25th birthday. The extended juvenile disposition is stayed in the original juvenile dispositional order until a hearing is held between the juvenile's 18th and 19th birthdays. The court must dismiss the extended juvenile disposition unless it finds, by clear and convincing evidence presented at the hearing, that the juvenile continues to pose a risk to the public, considering the juvenile's risk and treatment needs at the time of the hearing.

If the court upholds the extended juvenile disposition after the hearing, the court determines whether to impose probation or confinement in jail or prison and imposes the sentence. If the juvenile is on aftercare supervision, the court may only impose probation. Under the bill, DOC is charged with promulgating rules for release to extended juvenile supervision or discharge of individuals on an extended juvenile disposition. An extended juvenile disposition is not subject to the requirements of bifurcated sentencing, but a juvenile who violates a condition of probation or extended supervision under an extended juvenile disposition may have his or her probation or extended supervision revoked after a hearing held by the Division of Hearings and Appeals in DOA. If probation is revoked, the juvenile may be sent back to the court to determine the term of confinement in jail or 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:

SECTION 1. 301.03 (10) (d) of the statutes is amended to read:

301.03 (10) (d) Administer the office of juvenile offender review in the division of juvenile corrections in the department. The office shall be responsible for decisions

regarding case planning and the release of juvenile offenders who are under the supervision of the department from juvenile correctional facilities or secured residential care centers for children and youth to aftercare or community supervision placements and for the release of individuals subject to an extended juvenile disposition imposed under ss. 938.34 (4p) and 938.369. The department shall promulgate rules establishing the process and release criteria for individuals subject to an extended juvenile disposition.

SECTION 2. 938.184 of the statutes is created to read:

938.184 Extended juvenile jurisdiction. (1) EXTENDED JUVENILE COURT JURISDICTION; CONDITIONS FOR. A petition requesting extended juvenile jurisdiction may be granted if the court finds, after hearing, and by clear and convincing evidence, that all of the following conditions are met:

(a) The juvenile qualifies for waiver of juvenile court jurisdiction under s. 938.18.

(b) If adjudged delinquent, the juvenile qualifies for a correctional placement under s. 938.34 (4m).

(c) If adjudged delinquent, a disposition under s. 938.34 (4m) is insufficient to protect public safety or for rehabilitation of the juvenile.

(2) PETITION. A district attorney or a juvenile may file a petition requesting extended juvenile jurisdiction under this section or the court may initiate a hearing under this section on its own motion. The petition shall contain a brief statement of the facts supporting the request for extended juvenile jurisdiction and shall be accompanied by or filed after the filing of a petition alleging delinquency but prior to the plea hearing.

(3) AGENCY REPORT. The court may designate an agency, as defined in s. 938.38 (1) (a), to submit a report evaluating the juvenile's eligibility for jurisdiction under this section. The agency shall file the report with the court, and the court shall cause copies of the report to be given to the juvenile; any parent, guardian, or legal custodian of the juvenile; and the juvenile's counsel at least 3 days before the hearing. The court may rely on facts stated in the report in making its findings with respect to the criteria under sub. (1) (a) and (b).

(4) RIGHTS OF JUVENILE. The juvenile shall be represented by counsel. Written notice of the time, place, and purpose of the hearing shall be given to the juvenile; any parent, guardian, or legal custodian; and the juvenile's counsel at least 3 days prior to the hearing. The notice shall contain a statement of the requirements of s. 938.29 (2) with regard to substitution of the judge. If parents entitled to notice have the same address, notice to one constitutes notice to the other. Counsel for the juvenile shall have access to the social records and other reports under s. 938.293.

(5) DECISION ON PETITION. A hearing on a petition under this section shall be to the court. If the court determines on the record that the juvenile qualifies for extended juvenile jurisdiction based on the criteria in sub. (1), the court shall grant the petition and maintain jurisdiction of the juvenile.

(6) EFFECT OF EXTENDED JUVENILE JURISDICTION. If a juvenile is subject to extended juvenile jurisdiction, all of the following apply:

- (a) The juvenile has a right to a jury in the hearing under s. 938.31.
- (b) The court may impose any disposition available under s. 938.34.
- (c) If the court imposes a disposition under s. 938.34 (4p), the court maintains jurisdiction over the individual until the termination of the order under that subsection, as provided under s. 938.355 (4) (b) 5.

SECTION 3. 938.23 (1m) (as) of the statutes is created to read:

938.23 **(1m)** (as) A juvenile subject to a dispositional order under s. 938.34 (4p) is entitled to representation by counsel at the hearing under s. 938.369.

SECTION 4. 938.31 (2) of the statutes is amended to read:

938.31 **(2)** HEARING ~~TO THE COURT~~, PROCEDURES. ~~The~~ Except as provided in s. 938.184 (6) (a), the hearing shall be to the court. If the hearing involves a child victim, as defined in s. 938.02 (20m) (a) 1., or a child witness, as defined in s. 950.02 (5), the court may order that a deposition be taken by audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion of the hearing, the court shall make a determination of the facts. If the court finds that the juvenile is not within the jurisdiction of the court or the court finds that the facts alleged in the petition or citation have not been proved, the court shall dismiss the petition or citation with prejudice.

SECTION 5. 938.34 (intro.) of the statutes is amended to read:

938.34 Disposition of juvenile adjudged delinquent. (intro.) If the court adjudges a juvenile delinquent, the court shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan. A disposition under sub. (4m) must be combined with a disposition under sub. (4n), and a disposition under sub. (4p) must be combined with a disposition under subs. (4m) and (4n). In deciding the dispositions for a juvenile who is adjudicated delinquent, the court shall consider the seriousness of the act for which the juvenile is adjudicated delinquent and may consider any other delinquent act that is read into the record and dismissed at the time of the adjudication. The dispositions under this section are:

SECTION 6. 938.34 (4p) of the statutes is created to read:

938.34 **(4p)** EXTENDED JUVENILE DISPOSITION. In the case of a juvenile who has received a correctional placement under sub. (4m) and is subject to extended juvenile jurisdiction under s. 938.184, place the juvenile under the supervision of the department of corrections in an extended juvenile disposition upon termination of the order imposing the disposition under sub. (4m) if the court finds that a disposition under sub. (4m) is insufficient to protect public safety or for rehabilitation, considering the juvenile's risk, treatment needs, and age and the severity of the offense. A disposition under this subsection shall be stayed pending the outcome of the hearing under s. 938.369.

SECTION 7. 938.355 (2) (b) 6o. of the statutes is created to read:

938.355 **(2)** (b) 6o. If the juvenile is placed under the supervision of the department of corrections under s. 938.34 (4p), a finding that a disposition under s. 938.34 (4m) is insufficient to protect public safety or for rehabilitation, considering the juvenile's risk, treatment needs, and age and the severity of the offense.

SECTION 8. 938.355 (4) (b) 5. of the statutes is created to read:

938.355 **(4)** (b) 5. An order under ss. 938.34 (4p) and 938.369 (3) shall terminate on the juvenile's 23rd birthday, or, if the juvenile was convicted of a violation or attempted violation of s. 940.01, the juvenile's 25th birthday unless the court specifies a shorter period of time or the court terminates the order sooner.

***NOTE: This is reconciled s. 938.355 (4) (b). This SECTION has been affected by drafts with the following LRB numbers: -0556/P3 and -1909/P2. The treatment renumbering s. 938.355 (4) (b) 5. has been moved to LRB-0556/P4.

SECTION 9. 938.357 (5d) of the statutes is created to read:

938.357 **(5d)** REVOCATION OF EXTENDED JUVENILE PROBATION AND EXTENDED JUVENILE SUPERVISION. Notwithstanding ss. 973.10 (2) and 301.113 (9), if a juvenile

who is subject to an extended juvenile disposition under ss. 938.34 (4p) and 938.369 (3) and is placed on extended juvenile probation or extended juvenile supervision violates a condition of probation or extended supervision, the department of corrections may initiate a revocation proceeding before the division of hearings and appeals in the department of administration. A hearing examiner for the division shall conduct an administrative hearing and enter an order either revoking or not revoking probation or extended supervision. An order entered under this subsection shall provide one of the following:

(a) If extended juvenile probation is revoked, order the juvenile to confinement specified in the extended juvenile disposition. If the extended juvenile disposition did not specify a term of confinement, the order shall refer the matter to the court, which shall revise the extended juvenile disposition and order a term of confinement in accordance with s. 938.369 (3) (b) or (c).

(b) If extended juvenile supervision is revoked, order the juvenile to be returned to extended juvenile confinement for the remainder of the extended juvenile disposition entered under s. 938.369 (3). A juvenile returned to confinement under this paragraph remains subject to the department of correction's authority to release the juvenile under s. 301.03 (10) (d) or to discharge the juvenile under s. 938.53.

SECTION 10. 938.369 of the statutes is created to read:

938.369 Extended juvenile jurisdiction; extended disposition hearing.

(1) Except as provided under sub. (6), no sooner than a juvenile's 18th birthday and no later than 90 days before the juvenile's 19th birthday, the court shall hold a hearing to determine whether to impose a stayed portion of a disposition entered under s. 938.34 (4p).

(2) The court shall revise the dispositional order and remove the stayed portion of the disposition imposed under 938.34 (4p) unless the court finds by clear and convincing evidence that the disposition under 938.34 (4p) is necessary to protect public safety or for rehabilitation, considering the juvenile's risk and needs at the time of the hearing.

(3) If the court imposes the stayed portion of the disposition under s. 938.34 (4p), the court shall determine the length of the extended juvenile disposition and impose one of the following extended juvenile dispositions:

(a) Place the juvenile on extended juvenile probation under the supervision of the department of corrections on his or her 19th birthday. If the juvenile has been released to aftercare supervision under s. 938.34 (4n) on the date of the hearing, the court shall place the juvenile on probation under this paragraph.

(b) Place the juvenile on extended juvenile confinement in a county jail.

(c) Place the juvenile on extended juvenile confinement in prison followed by a term of extended juvenile supervision.

(4) A disposition imposed under this subsection has the same force and effect as a criminal conviction and may not extend beyond the juvenile's 23rd birthday, or, if the underlying offense was a violation or attempted violation of s. 940.01, the juvenile's 25th birthday.

(5) An extended juvenile disposition imposed under sub. (3) is not a bifurcated sentence under s. 973.01.

(6) If the department of corrections has discharged the juvenile under s. 938.53 prior to the juvenile's 18th birthday or the date of a hearing scheduled under sub. (1), a hearing shall not be held, and the court shall revise the dispositional order and remove the disposition imposed under 938.34 (4p).

SECTION 11. 938.396 (1) (b) 6. of the statutes is created to read:

938.396 (1) (b) 6. The disclosure of information relating to a case in which an extended dispositional order is entered under s. 938.369 (3).

SECTION 12. 938.396 (2) (a) of the statutes is amended to read:

938.396 (2) (a) Records of the court assigned to exercise jurisdiction under this chapter and ch. 48 and of municipal courts exercising jurisdiction under s. 938.17 (2) shall be entered in books or deposited in files kept for that purpose only. Those records shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter and ch. 48 or as required or permitted under sub. (2g), (2j), (2m) (b) or (c), or (10).

SECTION 13. 938.396 (2j) of the statutes is created to read:

938.396 (2j) *Records of an extended juvenile jurisdiction proceeding.* Subsection (2) does not prohibit disclosure of a record if an extended juvenile dispositional order is entered under s. 938.369 (3).

SECTION 14. 938.48 (7) of the statutes is created to read:

938.48 (7) SUPERVISION OVER INDIVIDUALS SUBJECT TO EXTENDED JUVENILE JURISDICTION. Accept supervision over individuals transferred to it under s. 938.34 (4p). The department shall promulgate rules for release of such individuals to extended juvenile supervision and for discharge from supervision as provided in s. 938.53.

SECTION 15. 938.78 (2) (m) of the statutes is created to read:

938.78 (2) (m) Paragraph (a) does not prohibit an agency from disclosing information about an individual under its supervision pursuant to an order under s. 938.369 (3).

SECTION 16. 973.01 (1) of the statutes is amended to read:

973.01 (1) BIFURCATED SENTENCE REQUIRED. Except as provided in sub. (3) and s. 938.34 (4p), whenever a court sentences a person to imprisonment in the Wisconsin state prisons for a felony committed on or after December 31, 1999, or a misdemeanor committed on or after February 1, 2003, the court shall impose a bifurcated sentence under this section.

SECTION 9408. Effective dates; Corrections.

(1) EXTENDED JUVENILE JURISDICTION. The treatment of ss. 301.03 (10) (d), 938.184, 938.23 (1m) (as), 938.31 (2), 938.34 (intro.) and (4p), 938.355 (2) (b) 6., 938.357 (5d), 938.369, 938.396 (1) (b) 6., (2) (a), and (2j), 938.48 (7), 938.78 (2) (m), and 973.01 (1); the renumbering and amendment of s. 938.355 (4) (b); and the creation of s. 938.355 (4) (b) 5. take effect on July 1, 2022.

(END)