



## 1997 ASSEMBLY BILL 410

June 10, 1997 - Introduced by Representatives LADWIG, HUEBSCH, AINSWORTH, ALBERS, BAUMGART, DOBYNS, GOETSCH, GREEN, GUNDERSON, HAHN, HANDRICK, HASENOHRL, HOVEN, KELSO, KRUSICK, OLSEN, OTT, OWENS, PORTER, POWERS, SERATTI, STASKUNAS, SYKORA and VRAKAS, cosponsored by Senators C. POTTER, DRZEWIECKI, FITZGERALD, ROESSLER, ROSENZWEIG and WELCH. Referred to Committee on Children and Families.

1     **AN ACT to repeal** 938.355 (6m), 971.31 (13) (a) 1., 971.31 (13) (a) 2. and 971.31  
2           (13) (a) 3.; **to renumber and amend** 938.183 (1m) (c) and 971.31 (13) (a)  
3           (intro.); **to consolidate, renumber and amend** 938.183 (2) (a) (intro.), 1. and  
4           2.; **to amend** 48.35 (1) (b) (intro.), 48.35 (1) (b) 1., 48.35 (1) (b) 2., 48.35 (1) (b)  
5           3., 48.66 (1), 301.08 (1) (b) 3., 800.08 (4), 895.035 (2m) (a), 895.035 (2m) (b),  
6           895.035 (2m) (bm) 1., 895.035 (3), 938.17 (2) (h) 2., 938.17 (2) (h) 3., 938.245 (2)  
7           (a) 5. a., 938.275 (1) (c), 938.299 (4) (b), 938.32 (1t) (a) 1., 938.34 (5) (a), 938.34  
8           (8), 938.343 (2), 938.343 (4), 938.35 (1) (a), 938.35 (1) (c), 938.355 (6) (a), 938.355  
9           (6) (b), 938.355 (6) (d) 2., 938.396 (2) (d), 938.78 (2) (e), 970.032 (title), 970.032  
10          (1), 970.032 (2) (intro.), 970.032 (2) (a), 970.032 (2) (c), 970.035, 971.31 (13) (b),  
11          972.14 (2), 972.15 (2s), 980.015 (2) (b) and 980.02 (2) (ag); and **to create** 48.396  
12          (2) (dr), 48.396 (2) (g), 48.396 (2) (h), 938.183 (1) (ar), 938.183 (1m) (c) 1., 938.183  
13          (1m) (c) 2., 938.355 (6) (e), 938.355 (6g) (c), 938.396 (2) (dr), 938.396 (2) (g),  
14          938.396 (2) (h) and 938.396 (2) (i) of the statutes; **relating to:** original adult

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1 court jurisdiction over a juvenile who is alleged to have attempted or committed  
2 a violation of any state criminal law if that violation may be joined with an  
3 alleged assault, battery, homicide or attempted homicide over which the adult  
4 court has original jurisdiction, the elimination of reverse waiver for a juvenile  
5 who is once waived always waived, the imposition of a juvenile adjudication and  
6 disposition by an adult court on a juvenile who has been found to have  
7 committed a lesser offense, the financial ability of a juvenile, either alone or  
8 with the assistance of a parent with custody of the juvenile, to make restitution  
9 for any damage or injury resulting from the juvenile's act or to pay a forfeiture  
10 imposed on the juvenile, sanctions for a juvenile in need of protection or services  
11 based on habitual truancy or being a school dropout who violates a condition of  
12 his or her dispositional order and sanctions for contempt of court by a juvenile  
13 who violates a condition of his or her dispositional order, the rules of evidence  
14 at postdispositional hearings under the juvenile justice code and the disclosure  
15 of juvenile court records to other juvenile courts for the purposes of preparing  
16 a presentence investigation, determining custody of a juvenile, setting bail,  
17 impeaching a witness and determining whether a juvenile who would  
18 otherwise be an heir has intentionally killed the decedent.

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***Analysis by the Legislative Reference Bureau***

This bill makes various changes to the juvenile justice code.

***Original adult court jurisdiction***

Under current law, a court assigned to exercise jurisdiction under the juvenile justice code (juvenile court), subject to certain exceptions, has exclusive jurisdiction over a juvenile who is alleged to have violated a criminal law. Currently, however, a court of criminal jurisdiction (adult court) has exclusive original jurisdiction over the following:

1. A juvenile who has been adjudicated delinquent and who is alleged to have committed assault or battery while placed in a secured correctional facility, a secure

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detention facility or a secured child caring institution or who has been adjudicated delinquent and who is alleged to have committed battery to an aftercare agent.

2. A juvenile who is alleged to have attempted or committed first-degree intentional homicide or to have committed first-degree reckless or 2nd-degree intentional homicide.

3. A juvenile who is alleged to have violated any state criminal law if the juvenile has been convicted of a previous violation under the original jurisdiction of the adult court or following waiver by the juvenile court of its jurisdiction over the juvenile or if criminal proceedings are still pending on a previous violation under the original jurisdiction of the adult court or following waiver by the juvenile court of its jurisdiction over the juvenile (once waived always waived).

Under current law, an adult court may transfer to the juvenile court its jurisdiction over a juvenile who is subject to the original jurisdiction of the adult court if the adult court finds that, if convicted, the juvenile could not receive adequate treatment in the criminal justice system and that retaining jurisdiction is not necessary as a deterrent (reverse waiver). This bill eliminates reverse waiver for a juvenile who is once waived always waived.

The bill also grants to an adult court exclusive original jurisdiction over a juvenile who is alleged to have attempted or committed a violation of any state criminal law if that violation can be joined in the same complaint, information or indictment as an assault, battery, homicide or attempted homicide over which the adult court has jurisdiction under current law. Currently, 2 or more crimes may be joined if the crimes charged are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan. Currently, an adult court has jurisdiction over an assault, battery, homicide or attempted homicide allegedly committed by a juvenile, but not over any other violations to which the assault, battery homicide or attempted homicide may be joined if committed by an adult. As such, those violations currently must be tried in a separate proceeding in juvenile court.

Currently, subject to certain exceptions, a juvenile who is subject to adult court jurisdiction is subject to the criminal penalties provided for the crime that the juvenile is alleged to have committed. The adult court, however, *may* impose a juvenile disposition on a juvenile described in item 1. or 2., above, who committed the act before his or her 15th birthday and *must* impose a juvenile disposition on a juvenile described in item 2., above, who committed the act on or after his or her 15th birthday if any of the following conditions applies:

1. The adult court convicts the juvenile of a lesser offense that is not attempted first-degree intentional homicide, that is not first-degree reckless homicide or 2nd-degree intentional homicide and that is not an offense for which the juvenile court may waive its jurisdiction (waivable offense). (Currently, a juvenile court may waive its jurisdiction if the juvenile is alleged to have committed felony murder, 2nd-degree reckless homicide, first-degree or 2nd-degree sexual assault, taking hostages, kidnapping, armed burglary, armed robbery or the manufacture, delivery or distribution of a controlled substance on or after the juvenile's 14th birthday; if the

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juvenile is alleged to have committed, on or after the juvenile's 14th birthday, a violation, at the request of or for the benefit of a criminal gang, that would be a felony if committed by an adult; or if the juvenile is alleged to have violated any criminal law on or after the juvenile's 15th birthday.)

2. The adult court convicts the juvenile of a lesser offense that is attempted first-degree intentional homicide, that is first-degree reckless homicide or 2nd-degree intentional homicide or that is a waivable offense and the adult court, after considering the personality and prior record of the juvenile, the type and seriousness of the offense, the adequacy and suitability of facilities, services and procedures available for the treatment of the juvenile and the protection of the public in the juvenile justice system and the desirability of trial and disposition in one court (waiver criteria), determines that a juvenile disposition would be in the best interests of the juvenile and the public.

This bill specifies that when an adult court imposes a juvenile disposition, the juvenile is considered to have been adjudged to be delinquent rather than convicted of a crime.

In addition, the bill permits, rather than requires, an adult court to impose a juvenile disposition on a juvenile who is alleged to have attempted or committed first-degree intentional homicide or to have committed first-degree reckless homicide or 2nd-degree intentional homicide on or after the juvenile's 15th birthday and who is found to have committed a lesser offense if any of the conditions specified in items 1. or 2., above, applies.

The bill also permits an adult court to impose a juvenile disposition on a juvenile who has been adjudicated delinquent and who is alleged to have committed assault or battery while placed in a secured correctional facility, a secure detention facility or a secured child caring institution or who has been adjudicated delinquent and who is alleged to have committed battery to an aftercare agent if any of the following conditions applies:

1. The adult court finds that the juvenile has committed a lesser offense that is not assault or battery while placed in a secured correctional facility, a secure detention facility or a secured child caring institution, that is not battery to an aftercare agent and that is not a waivable offense.

2. The adult court finds that the juvenile has committed a lesser offense that is assault or battery while placed in a secured correctional facility, a secure detention facility or a secured child caring institution, that is battery to an aftercare agent or that is a waivable offense, and the adult court, after considering the waiver criteria, determines that adjudging the juvenile to be delinquent and imposing a juvenile disposition, rather than convicting the juvenile, would be in the best interests of the juvenile and the public.

In addition, the bill requires an adult court to consider the waiver criteria in determining whether to impose a juvenile disposition in *all* cases of a juvenile who is alleged to have attempted or committed first-degree intentional homicide or to have committed first-degree reckless homicide or 2nd-degree intentional homicide on or after the juvenile's 15th birthday and who is found to have committed a lesser offense.

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Finally, with respect to the original jurisdiction of an adult court over a juvenile, the bill specifies that the burden of proving that a juvenile disposition would be in the best interests of the juvenile and of the public is on the juvenile.

***Restitution and forfeitures***

Under current law, a juvenile who has committed an act that has resulted in damage to the property of another or in actual physical injury to another, excluding pain and suffering, may be required under a deferred prosecution agreement, consent decree or dispositional order to make reasonable restitution for the damage or injury. Similarly, under current law, a juvenile who has committed a delinquent act or a civil law or municipal ordinance violation may be required to pay a forfeiture. Any deferred prosecution agreement or consent decree that requires the payment of restitution, and any dispositional order that requires the payment of restitution or a forfeiture, must include a finding that the juvenile alone is financially able to pay the restitution or forfeiture. If the juvenile does not pay the restitution or forfeiture as ordered or agreed to, the juvenile court may order that the amount of the restitution or forfeiture unpaid be entered and docketed as a judgment against the juvenile and the parent with custody of the juvenile.

This bill requires that any deferred prosecution agreement or consent decree that requires the payment of restitution, and any dispositional order that requires the payment of restitution or a forfeiture, must include a finding that the juvenile, either alone or with the assistance of a parent with custody of the juvenile, is financially able to pay the restitution or forfeiture.

***Sanctions and contempt***

Under current law, if a juvenile who has been adjudged delinquent or who has been found to have violated a civil law or ordinance violates a condition of his or her dispositional order, the juvenile court may impose the following sanctions on the juvenile:

1. Placement in a secure detention facility or a place of nonsecure detention for not more than 10 days.
2. Suspension or limitation of the juvenile's operating privilege (driver's license) or hunting or fishing license for not more than 3 years.
3. Home detention, with or without electronic monitoring, for not more than 30 days.
4. Not more than 25 hours of uncompensated community service work.

Also under current law, if a juvenile who has been found to be in need of protection or services based on habitual truancy from school violates a condition of his or her dispositional order, the juvenile court may order any combination of the following sanctions:

1. Suspension of the juvenile's driver's license for not more than one year.
2. Counseling or community service work.
3. Home detention.
4. Attendance at an educational program.
5. Revocation of the juvenile's work permit.
6. Placement in a teen court program.

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7. Participation of the juvenile's parent, guardian or legal custodian in counseling at his or her own expense.

This bill eliminates the sanctions provided specifically for a juvenile who has been found to be in need of protection or services based on habitual truancy from school and who has violated a condition of his or her dispositional order. Instead, under the bill, such a juvenile, as well as a juvenile who has been found to be in need of protection or services based on being a school dropout, is subject to the same sanctions, including placement in a secure detention facility for not more than 10 days, as a juvenile who has been adjudged delinquent or found to have violated a civil law or ordinance and who has violated a condition of his or her dispositional order.

Under current law, a court, including a juvenile court, may impose a sanction for contempt of court. Also, under current law, if a juvenile upon whom the juvenile court has imposed a sanction under the juvenile justice code commits a 2nd or subsequent violation of a condition specified in his or her dispositional order, the district attorney may file a delinquency petition charging the juvenile with contempt of court and the juvenile court may find the juvenile in contempt of court and order a delinquency disposition to be imposed on the juvenile.

This bill specifies that the sanctions and contempt procedures specified in the juvenile justice code do not preclude a person who is aggrieved by a juvenile's violation of a condition of his or her dispositional order from proceeding against the juvenile for contempt of court under the general contempt of court procedures available to all courts.

***Rules of evidence***

Under current law, the rules of evidence such as hearsay and relevancy govern the presentation of evidence at fact-finding hearings under the juvenile justice code, but are not binding at waiver, custody, dispositional, change in placement, revision of dispositional order or extension of dispositional order hearings or at hearings to determine whether a juvenile who is accused of sexual assault should undergo a test for the presence of the human immunodeficiency virus (HIV).

This bill provides that the rules of evidence are not binding at any postdispositional hearing under the juvenile justice code. Under current law, those hearings include, in addition to change in placement, revision and extension hearings, hearings on the imposition of a sanction for violating a dispositional order and hearings on the imposition of an original dispositional order that has been stayed.

***Disclosure of juvenile court records***

Under current law, the disposition imposed on a juvenile, and any record of evidence given in the juvenile court, is not admissible as evidence in any case or proceeding in any other court except for the following:

1. In sentencing proceedings after conviction of a felony or misdemeanor and then only for the purpose of a presentence study and report.
2. In a proceeding in any other juvenile court.
3. In a court of civil or criminal jurisdiction while it is exercising the jurisdiction of a family court (family court) when the family court is considering the custody of a juvenile.

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4. In a court of civil or criminal jurisdiction for purposes of setting bail or impeaching a witness.

5. In a court exercising probate jurisdiction the fact that a juvenile has been adjudicated delinquent on the basis of unlawfully and intentionally killing a person is admissible for the purpose of determining whether the juvenile is prevented from inheriting from the decedent on that basis.

Also, under current law, subject to certain exceptions, the records of the juvenile court may not be open to inspection and their contents may not be disclosed except by order of the juvenile court.

This bill requires a juvenile court to open for inspection the records of the juvenile court relating to a juvenile who has been the subject of a proceeding in the juvenile court as follows:

1. Upon the request of the department of corrections or any other person preparing a presentence investigation to review juvenile court records for the purpose of that investigation.

2. Upon request of any other juvenile court, a district attorney or corporation counsel to review that juvenile court's records for the purpose of any proceeding in the other juvenile court.

3. Upon request of the family court or of an attorney for a party or a guardian ad litem in an action affecting the family to review juvenile court records for the purpose of considering the custody of a juvenile.

4. Upon request of a court of criminal jurisdiction or a district attorney to review juvenile court records for the purpose of setting bail or impeaching a witness or upon the request of a court of civil jurisdiction or the attorney for a party to a proceeding in that court to review juvenile court records for the purpose of impeaching a witness.

5. Upon request of the probate court, the attorney general, the personal representative or special administrator of, or an attorney performing services for, the estate of a decedent in a probate proceeding, a person interested in a probate proceeding, for example, a beneficiary or heir, or an attorney, attorney-in-fact, guardian ad litem or guardian of the estate of a person interested in a probate proceeding to review court records for the purpose of determining whether a juvenile has unlawfully and intentionally killed another person and, therefore, is prevented from inheriting from the decedent on that basis.

For further information see the *state and local* 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.** 48.35 (1) (b) (intro.) of the statutes is amended to read:

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1           48.35 (1) (b) (intro.) The disposition of a child, and any record of evidence given  
2 in a hearing in court, shall not be admissible as evidence against the child in any case  
3 or proceeding in any other court except for the following:

4           **SECTION 2.** 48.35 (1) (b) 1. of the statutes is amended to read:

5           48.35 (1) (b) 1. In sentencing proceedings after conviction of a felony or  
6 misdemeanor and then only for the purpose of a presentence ~~study and report;~~  
7 investigation.

8           **SECTION 3.** 48.35 (1) (b) 2. of the statutes is amended to read:

9           48.35 (1) (b) 2. In a proceeding in any court assigned to exercise jurisdiction  
10 under this chapter and ch. 938; ~~or.~~

11           **SECTION 4.** 48.35 (1) (b) 3. of the statutes is amended to read:

12           48.35 (1) (b) 3. In a court of civil or criminal jurisdiction while it is exercising  
13 ~~the jurisdiction of a~~ over an action affecting the family court and is considering the  
14 custody of ~~children~~ a child.

15           **SECTION 5.** 48.396 (2) (dr) of the statutes is created to read:

16           48.396 (2) (dr) Upon request of the department of corrections or any other  
17 person preparing a presentence investigation under s. 972.15 to review court records  
18 for the purpose of preparing the presentence investigation, the court shall open for  
19 inspection by any authorized representative of the requester the records of the court  
20 relating to any child who has been the subject of a proceeding under this chapter.

21           **SECTION 6.** 48.396 (2) (g) of the statutes is created to read:

22           48.396 (2) (g) Upon request of any other court assigned to exercise jurisdiction  
23 under this chapter and ch. 938, a district attorney or corporation counsel to review  
24 court records for the purpose of any proceeding in that other court, the court shall  
25 open for inspection by any authorized representative of the requester the records of



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1 the court relating to any child who has been the subject of a proceeding under this  
2 chapter.

3 **SECTION 7.** 48.396 (2) (h) of the statutes is created to read:

4 48.396 (2) (h) Upon request of the court having jurisdiction over an action  
5 affecting the family or of an attorney for a party or a guardian ad litem in an action  
6 affecting the family to review court records for the purpose of considering the custody  
7 of a child, the court assigned to exercise jurisdiction under this chapter and ch. 938  
8 shall open for inspection by an authorized representative of the requester the records  
9 of the court relating to any child who has been the subject of a proceeding under this  
10 chapter.

11 **SECTION 8.** 48.66 (1) of the statutes is amended to read:

12 48.66 (1) The department shall license and supervise child welfare agencies,  
13 as required by s. 48.60, group homes, as required by s. 48.625, shelter care facilities,  
14 as required by s. 48.48 and day care centers, as required by s. 48.65. The department  
15 may license foster homes or treatment foster homes, as provided by s. 48.62, and may  
16 license and supervise county departments in accordance with the procedures  
17 specified in this section and in ss. 48.67 to 48.74. The department of corrections may  
18 license a child welfare agency to operate a secured child caring institution, as defined  
19 in s. 938.02 (15g), for holding in secure custody ~~children~~ juveniles who have been  
20 convicted under s. 938.183 or adjudicated delinquent under s. 983.183 or 938.34 (4d),  
21 (4h) or (4m) and referred to the child welfare agency by the court or the department  
22 of corrections and to provide supervision, care and maintenance for those children.

23 **SECTION 9.** 301.08 (1) (b) 3. of the statutes is amended to read:

24 301.08 (1) (b) 3. Contract with public, private or voluntary agencies for the  
25 supervision, maintenance and operation of secured correctional facilities, as defined

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1 in s. 938.02 (15m), child caring institutions, as defined in s. 938.02 (2c), and secured  
2 child caring institutions, as defined in s. 938.02 (15g), for the placement of juveniles  
3 who have been convicted under s. 938.183 or adjudicated delinquent under s. 938.183  
4 or 938.34 (4d), (4h) or (4m). The department may designate a secured correctional  
5 facility, child caring institution or a secured child caring institution contracted for  
6 under this subdivision as a Type 2 secured correctional facility, as defined in s. 938.02  
7 (20), and may designate a child caring institution or secured child caring institution  
8 contracted for under this subdivision as a Type 2 child caring institution, as defined  
9 in s. 938.02 (19r).

10 **SECTION 10.** 800.08 (4) of the statutes is amended to read:

11 800.08 (4) ~~Municipal~~ Except as provided in s. 938.17 (2) (h) 3., municipal courts  
12 shall be bound by the rules of evidence specified in chs. 901 to 911.

13 **SECTION 11.** 895.035 (2m) (a) of the statutes is amended to read:

14 895.035 (2m) (a) If a child fails to pay restitution under s. 938.245, 938.32,  
15 938.34 (5), 938.343 (4) or 938.345 as ordered by a court assigned to exercise  
16 jurisdiction under chs. 48 and 938, a court of criminal jurisdiction or a municipal  
17 court or as agreed to in a deferred prosecution agreement or if it appears likely that  
18 the child will not pay restitution as ordered or agreed to, the victim, the victim's  
19 insurer, the representative of the public interest under s. 938.09 or the agency, as  
20 defined in s. 938.38 (1) (a), supervising the child may petition the court assigned to  
21 exercise jurisdiction under chs. 48 and 938 to order that the amount of restitution  
22 unpaid by the child be entered and docketed as a judgment against the child and the  
23 parent with custody of the child and in favor of the victim or the victim's insurer, or  
24 both. A petition under this paragraph may be filed after the expiration of the  
25 deferred prosecution agreement, consent decree, dispositional order or sentence

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1 under which the restitution is payable, but no later than one year after the expiration  
2 of the deferred prosecution agreement, consent decree, dispositional order or  
3 sentence or any extension of the consent decree, dispositional order or sentence. A  
4 judgment rendered under this paragraph does not bar the victim or the victim's  
5 insurer, or both, from commencing another action seeking compensation from the  
6 child or the parent, or both, if the amount of restitution ordered under this paragraph  
7 is less than the total amount of damages claimed by the victim or the victim's insurer.

8 **SECTION 12.** 895.035 (2m) (b) of the statutes is amended to read:

9 895.035 (2m) (b) If a child fails to pay a forfeiture as ordered by a court assigned  
10 to exercise jurisdiction under chs. 48 and 938, a court of criminal jurisdiction or a  
11 municipal court or if it appears likely that the child will not pay the forfeiture as  
12 ordered, the representative of the public interest under s. 938.09, the agency, as  
13 defined in s. 938.38 (1) (a), supervising the child or the law enforcement agency that  
14 issued the citation to the child may petition the court assigned to exercise jurisdiction  
15 under chs. 48 and 938 to order that the amount of the forfeiture unpaid by the child  
16 be entered and docketed as a judgment against the child and the parent with custody  
17 of the child and in favor of the county or appropriate municipality. A petition under  
18 this paragraph may be filed after the expiration of the dispositional order or sentence  
19 under which the forfeiture is payable, but no later than one year after the expiration  
20 of the dispositional order or sentence or any extension of the dispositional order or  
21 sentence.

22 **SECTION 13.** 895.035 (2m) (bm) 1. of the statutes is amended to read:

23 895.035 (2m) (bm) 1. Before issuing an order under par. (a) or (b), the court  
24 assigned to exercise jurisdiction under chs. 48 and 938 shall give the child and the  
25 parent notice of the intent to issue the order and an opportunity to be heard

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1 regarding the order. The court shall give the child and the parent an opportunity to  
2 present evidence as to the amount of the restitution or forfeiture unpaid, but not as  
3 to the amount of the restitution or forfeiture originally ordered. The court shall also  
4 give the child and the parent an opportunity to present evidence as to the reason for  
5 the failure to pay the restitution or forfeiture and the ability of the child or the parent,  
6 or both, to pay the restitution or forfeiture. In considering the ability of the child or  
7 the parent, or both, to pay the restitution or forfeiture, the court may consider the  
8 assets, as well as the income, of the child or the parent, or both, and may consider  
9 the future ability of the child or parent, or both, to pay the restitution or forfeiture  
10 within the time specified in s. 893.40.

11 **SECTION 14.** 895.035 (3) of the statutes is amended to read:

12 895.035 (3) An adjudication under s. ~~938.31~~ 938.183 or 938.34 that the child  
13 violated a civil law or ordinance, is delinquent or is in need of protection and services  
14 under s. 938.13 (12), based on proof that the child committed the act, subject to its  
15 admissibility under s. 904.10, shall, in an action under sub. (1), stop a child's parent  
16 or parents from denying that the child committed the act that resulted in the injury,  
17 damage or loss.

18 **SECTION 15.** 938.17 (2) (h) 2. of the statutes is amended to read:

19 938.17 (2) (h) 2. A motion requesting the municipal court to impose or petition  
20 for a sanction may be brought by the person or agency primarily responsible for the  
21 provision of dispositional services, the municipal attorney or the court that entered  
22 the dispositional order. A motion requesting the municipal court to impose or  
23 petition for a sanction to be imposed on a juvenile who has been found to have  
24 violated an ordinance under s. 118.163 (2) or (2m) and who is alleged to have violated  
25 a condition of his or her dispositional order may also be brought by the administrator

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1 of the school district in which the juvenile is enrolled or resides. If the court initiates  
2 the motion, that court is disqualified from holding a hearing on the motion. Notice  
3 of the motion shall be given to the juvenile and the juvenile's parent, guardian or  
4 legal custodian.

5 **SECTION 16.** 938.17 (2) (h) 3. of the statutes is amended to read:

6 938.17 (2) (h) 3. Before imposing any sanction, the court shall hold a hearing,  
7 at which the juvenile may present evidence. Except as provided in s. 901.05, neither  
8 common law nor statutory rules of evidence are binding at a hearing under this  
9 subdivision.

10 **SECTION 17.** 938.183 (1) (ar) of the statutes is created to read:

11 938.183 (1) (ar) A juvenile specified in par. (a) or (am) who is alleged to have  
12 attempted or committed a violation of any state criminal law in addition to the  
13 violation alleged under par. (a) or (am) if the violation alleged under this paragraph  
14 and the violation alleged under par. (a) or (am) may be joined under s. 971.12 (1).

15 **SECTION 18.** 938.183 (1m) (c) of the statutes is renumbered 938.183 (1m) (c)  
16 (intro.) and amended to read:

17 938.183 (1m) (c) (intro.) If the juvenile is a juvenile described in sub. (1) (a),  
18 (am) or (ar) and is convicted of found to have committed a lesser offense than the  
19 offense alleged under sub. (1) (a), (am) or (ar) and if any of the following conditions  
20 specified in s. 938.183 (2) (a) 1. or 2. applies, the court of criminal jurisdiction may,  
21 in lieu of convicting the juvenile, adjudge the juvenile to be delinquent and impose  
22 a criminal penalty or a disposition specified in s. 938.34.;

23 **SECTION 19.** 938.183 (1m) (c) 1. of the statutes is created to read:

24 938.183 (1m) (c) 1. The court of criminal jurisdiction finds that the juvenile has  
25 committed a lesser offense that is not a violation of s. 940.20 (1) or (2m) or 946.43

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1 under the circumstances described in sub. (1) (a), that is not an attempt to violate s.  
2 940.01 under the circumstances described in sub. (1) (am), that is not a violation of  
3 s. 940.02 or 940.05 under the circumstances described in sub. (1) (am) and that is not  
4 an offense for which the court assigned to exercise jurisdiction under this chapter  
5 and ch. 48 may waive its jurisdiction over the juvenile under s. 938.18.

6 **SECTION 20.** 938.183 (1m) (c) 2. of the statutes is created to read:

7 938.183 **(1m)** (c) 2. The court of criminal jurisdiction finds that the juvenile has  
8 committed a lesser offense that is a violation of s. 940.20 (1) or (2m) or 946.43 under  
9 the circumstances described in sub. (1) (a), that is an attempt to violate s. 940.01  
10 under the circumstances described in sub. (1) (am), that is a violation of s. 940.02 or  
11 940.05 under the circumstances described in sub. (1) (am) or that is an offense for  
12 which the court assigned to exercise jurisdiction under this chapter and ch. 48 may  
13 waive its jurisdiction over the juvenile under s. 938.18 and the court of criminal  
14 jurisdiction, after considering the criteria specified in s. 938.18 (5), determines that  
15 the juvenile has proved by clear and convincing evidence that it would be in the best  
16 interests of the juvenile and of the public to adjudge the juvenile to be delinquent and  
17 impose a disposition specified in s. 938.34.

18 **SECTION 21.** 938.183 (2) (a) (intro.), 1. and 2. of the statutes are consolidated,  
19 renumbered 938.183 (2) (a) and amended to read:

20 938.183 **(2)** (a) Notwithstanding ss. 938.12 (1) and 938.18, courts of criminal  
21 jurisdiction have exclusive original jurisdiction over a juvenile who is alleged to have  
22 attempted or committed a violation of s. 940.01 or to have committed a violation of  
23 s. 940.02 or 940.05 on or after the juvenile's 15th birthday. Notwithstanding ss.  
24 938.12 (1) and 938.18, courts of criminal jurisdiction also have exclusive original  
25 jurisdiction over a juvenile specified in the preceding sentence who is alleged to have

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1 attempted or committed a violation of any state criminal law in addition to the  
2 violation alleged under the preceding sentence if the violation alleged under this  
3 sentence and the violation alleged under the preceding sentence may be joined under  
4 s. 971.12 (1). Notwithstanding subchs. IV to VI, a juvenile who is alleged to have  
5 attempted or committed a violation of s. 940.01 or to have committed a violation of  
6 s. 940.02 or 940.05 on or after the juvenile's 15th birthday and a juvenile who is  
7 alleged to have attempted or committed a violation of any state criminal law, if that  
8 violation and an attempt to commit a violation of s. 940.01 or the commission of a  
9 violation of s. 940.01, 940.02 or 940.05 may be joined under s. 971.12 (1), is subject  
10 to the procedures specified in chs. 967 to 979 and the criminal penalties provided for  
11 the crime that the juvenile is alleged to have committed, except that the court of  
12 criminal jurisdiction shall ~~may, in lieu of convicting the juvenile, adjudge the juvenile~~  
13 to be delinquent and impose a disposition specified in s. 938.34 if any of the following  
14 conditions applies: 1. ~~The the court of criminal jurisdiction ~~convicts~~ finds that the~~  
15 ~~juvenile of has committed a lesser offense that is not an attempt to violate s. 940.01,~~  
16 ~~that is not a violation of s. 940.02 or 940.05 and that is not an offense for which the~~  
17 ~~court assigned to exercise jurisdiction under this chapter and ch. 48 may waive its~~  
18 ~~jurisdiction over the juvenile under s. 938.18.~~ 2. ~~The court of criminal jurisdiction~~  
19 ~~convicts the juvenile of a lesser offense that is an attempt to violate s. 940.01, that~~  
20 ~~is a violation of s. 940.02 or 940.05 or that is an offense for which the court assigned~~  
21 ~~to exercise jurisdiction under this chapter and ch. 48 may waive its jurisdiction over~~  
22 ~~the juvenile under s. 938.18 than the offense alleged under this paragraph and the~~  
23 ~~court of criminal jurisdiction, after considering the criteria specified in s. 938.18 (5),~~  
24 ~~determines that the juvenile has proved by clear and convincing evidence that it~~

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1 would be in the best interests of the juvenile and of the public to adjudge the juvenile  
2 to be delinquent and impose a disposition specified in s. 938.34.

3 **SECTION 22.** 938.245 (2) (a) 5. a. of the statutes is amended to read:

4 938.245 (2) (a) 5. a. That the juvenile participate in a restitution project if the  
5 act for which the deferred prosecution agreement is being entered into has resulted  
6 in damage to the property of another, or in actual physical injury to another  
7 excluding pain and suffering. Subject to subd. 5. c., the deferred prosecution  
8 agreement may require the juvenile to repair the damage to property or to make  
9 reasonable restitution for the damage or injury if the intake worker, after taking into  
10 consideration the well-being and needs of the victim, considers it beneficial to the  
11 well-being and behavior of the juvenile. Any such deferred prosecution agreement  
12 shall include a determination that the juvenile, either alone or with the assistance  
13 of a parent with custody, as defined in s. 895.035 (1), of the juvenile, is financially able  
14 to pay and may allow up to the date of the expiration of the deferred prosecution  
15 agreement for the payment.

16 **SECTION 23.** 938.275 (1) (c) of the statutes is amended to read:

17 938.275 (1) (c) If the court imposes a sanction on a juvenile as specified in s.  
18 938.355 (6) (d) ~~or (6m) (a)~~ or finds the juvenile in contempt under s. 938.355 (6g) (b)  
19 and orders a disposition under s. 938.34 or if the juvenile is placed in a secure  
20 detention facility or place of nonsecure custody under s. 938.355 (6d) or 938.534 (1),  
21 the court shall order the parents of the juvenile to contribute toward the cost of the  
22 sanction, disposition or placement the proportion of the total amount which the court  
23 finds the parents are able to pay.

24 **SECTION 24.** 938.299 (4) (b) of the statutes is amended to read:



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1           938.299 (4) (b) Except as provided in s. 901.05, neither common law nor  
2           statutory rules of evidence are binding at a waiver hearing under s. 938.18, a hearing  
3           for a juvenile held in custody under s. 938.21, a hearing under s. 938.296 (4) for a  
4           juvenile who is alleged to have violated s. 940.225, 948.02, 948.025, 948.05 or 948.06,  
5           a dispositional hearing, or a any postdispositional hearing about changes in  
6           placement, revision of dispositional orders or extension of dispositional orders under  
7           this chapter. At those hearings, the court shall admit all testimony having  
8           reasonable probative value, but shall exclude immaterial, irrelevant or unduly  
9           repetitious testimony or evidence that is inadmissible under s. 901.05. Hearsay  
10          evidence may be admitted if it has demonstrable circumstantial guarantees of  
11          trustworthiness. The court shall give effect to the rules of privilege recognized by  
12          law. The court shall apply the basic principles of relevancy, materiality and probative  
13          value to proof of all questions of fact. Objections to evidentiary offers and offers of  
14          proof of evidence not admitted may be made and shall be noted in the record.

15           **SECTION 25.** 938.32 (1t) (a) 1. of the statutes is amended to read:

16           938.32 (1t) (a) 1. Subject to subd. 3., if the petition alleges that the juvenile  
17          committed a delinquent act that has resulted in damage to the property of another,  
18          or in actual physical injury to another excluding pain and suffering, the judge or  
19          juvenile court commissioner may require the juvenile as a condition of the consent  
20          decree, to repair the damage to property or to make reasonable restitution for the  
21          damage or injury if the judge or juvenile court commissioner, after taking into  
22          consideration the well-being and needs of the victim, considers it beneficial to the  
23          well-being and behavior of the juvenile. Any consent decree that includes a  
24          condition of restitution shall include a finding that the juvenile, either alone or with  
25          the assistance of a parent with custody, as defined in s. 895.035 (1), of the juvenile,

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1 is financially able to pay and may allow up to the date of the expiration of the consent  
2 decree for the payment. Objection by the juvenile to the amount of damages claimed  
3 shall entitle the juvenile to a hearing on the question of damages before the amount  
4 of restitution is made part of the consent decree.

5 **SECTION 26.** 938.34 (5) (a) of the statutes is amended to read:

6 938.34 (5) (a) Subject to par. (c), if the juvenile is found to have committed a  
7 delinquent act which has resulted in damage to the property of another, or actual  
8 physical injury to another excluding pain and suffering, order the juvenile to repair  
9 the damage to property or to make reasonable restitution for the damage or injury  
10 if the court, after taking into consideration the well-being and needs of the victim,  
11 considers it beneficial to the well-being and behavior of the juvenile. Any such order  
12 shall include a finding that the juvenile, either alone or with the assistance of a  
13 parent with custody, as defined in s. 895.035 (1), of the juvenile, is financially able  
14 to pay and may allow up to the date of the expiration of the order for the payment.  
15 Objection by the juvenile to the amount of damages claimed shall entitle the juvenile  
16 to a hearing on the question of damages before the amount of restitution is ordered.

17 **SECTION 27.** 938.34 (8) of the statutes is amended to read:

18 938.34 (8) FORFEITURE. Impose a forfeiture based upon a determination that  
19 this disposition is in the best interest of the juvenile and in aid of rehabilitation. The  
20 maximum forfeiture that the court may impose under this subsection for a violation  
21 by a juvenile is the maximum amount of the fine that may be imposed on an adult  
22 for committing that violation or, if the violation is applicable only to a person under  
23 18 years of age, \$100. Any such order shall include a finding that the juvenile, either  
24 alone or with the assistance of a parent with custody, as defined in s. 895.035 (1), of  
25 the juvenile, is financially able to pay the forfeiture and shall allow up to 12 months

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1 for payment. If the juvenile fails to pay the forfeiture, the court may vacate the  
2 forfeiture and order other alternatives under this section, in accordance with the  
3 conditions specified in this subchapter; or the court may suspend any license issued  
4 under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile's  
5 operating privilege as defined in s. 340.01 (40) for not less than 30 days nor more than  
6 5 years. If the court suspends any license under this subsection, the clerk of the court  
7 shall immediately take possession of the suspended license and forward it to the  
8 department which issued the license, together with a notice of suspension clearly  
9 stating that the suspension is for failure to pay a forfeiture imposed by the court. If  
10 the forfeiture is paid during the period of suspension, the suspension shall be reduced  
11 to the time period which has already elapsed and the court shall immediately notify  
12 the department which shall then return the license to the juvenile.

13 **SECTION 28.** 938.343 (2) of the statutes is amended to read:

14 938.343 (2) Impose a forfeiture not to exceed the maximum forfeiture that may  
15 be imposed on an adult for committing that violation or, if the violation is only  
16 applicable to a person under 18 years of age, \$50. Any such order shall include a  
17 finding that the juvenile, either alone or with the assistance of a parent with custody,  
18 as defined in s. 895.035 (1), of the juvenile, is financially able to pay and shall allow  
19 up to 12 months for the payment. If a juvenile fails to pay the forfeiture, the court  
20 may suspend any license issued under ch. 29 or suspend the juvenile's operating  
21 privilege as defined in s. 340.01 (40), for not less than 30 days nor more than 5 years.  
22 The court shall immediately take possession of the suspended license and forward  
23 it to the department which issued the license, together with the notice of suspension  
24 clearly stating that the suspension is for failure to pay a forfeiture imposed by the  
25 court. If the forfeiture is paid during the period of suspension, the court shall

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1 immediately notify the department, which will thereupon return the license to the  
2 person.

3 **SECTION 29.** 938.343 (4) of the statutes is amended to read:

4 938.343 (4) If the violation has resulted in damage to the property of another,  
5 or in actual physical injury to another excluding pain and suffering, the court may  
6 order the juvenile to make repairs of the damage to property or reasonable  
7 restitution for the damage or injury if the court, after taking into consideration the  
8 well-being and needs of the victim, considers it beneficial to the well-being and  
9 behavior of the juvenile. Any such order requiring payment for repairs or restitution  
10 shall include a finding that the juvenile, either alone or with the assistance of a  
11 parent with custody, as defined in s. 895.035 (1), of the juvenile, is financially able  
12 to pay and may allow up to the date of the expiration of the order for the payment.  
13 Objection by the juvenile to the amount of damages claimed shall entitle the juvenile  
14 to a hearing on the question of damages before the amount of restitution is ordered.

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

16 938.35 (1) (a) In sentencing proceedings after conviction of a felony or  
17 misdemeanor and then only for the purpose of a presentence study and report  
18 investigation.

19 **SECTION 31.** 938.35 (1) (c) of the statutes is amended to read:

20 938.35 (1) (c) In a court of civil or criminal jurisdiction while it is exercising the  
21 jurisdiction of ~~a~~ over an action affecting the family court and is considering the  
22 custody of juveniles a juvenile.

23 **SECTION 32.** 938.355 (6) (a) of the statutes is amended to read:

24 938.355 (6) (a) If a juvenile who has been adjudged delinquent ~~or~~ , who has been  
25 found to be in need of protection or services under s. 938.13 (6) or (6m) or who has

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1 been found to have violated a civil law or ordinance violates a condition specified in  
2 sub. (2) (b) 7., the court may impose on the juvenile any of the sanctions specified in  
3 par. (d) if, at the dispositional hearing under s. 938.335, the court explained the  
4 conditions to the juvenile and informed the juvenile of those possible sanctions or if  
5 before the violation the juvenile has acknowledged in writing that he or she has read,  
6 or has had read to him or her, those conditions and possible sanctions and that he or  
7 she understands those conditions and possible sanctions. ~~Subject to sub. (6m), if~~ If  
8 a juvenile who has been found to be in need of protection or services under s. 938.13  
9 (4), (7), (12) or (14) violates a condition specified in sub. (2) (b) 7., the court may  
10 impose on the juvenile any of the sanctions specified in par. (d), other than placement  
11 in a secure detention facility or juvenile portion of a county jail, if, at the dispositional  
12 hearing under s. 938.335, the court explained the conditions to the juvenile and  
13 informed the juvenile of those possible sanctions or if before the violation the juvenile  
14 has acknowledged in writing that he or she has read, or has had read to him or her,  
15 those conditions and possible sanctions and that he or she understands those  
16 conditions and possible sanctions. The court may not order the sanction of placement  
17 in a place of nonsecure custody specified in par. (d) 1. unless the court finds that the  
18 agency primarily responsible for providing services for the juvenile has made  
19 reasonable efforts to prevent the removal of the juvenile from his or her home and  
20 that continued placement of the juvenile in his or her home is contrary to the welfare  
21 of the juvenile.

22 **SECTION 33.** 938.355 (6) (b) of the statutes is amended to read:

23 938.355 (6) (b) A motion for imposition of a sanction may be brought by the  
24 person or agency primarily responsible for the provision of dispositional services, the  
25 district attorney or corporation counsel or the court that entered the dispositional

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1 order. A motion for imposition of a sanction on a juvenile who has been found to be  
2 in need of protection or services under s. 938.13 (6) or (6m) or who has been found  
3 to have violated an ordinance under s. 118.163 (2) or (2m) and who is alleged to have  
4 violated a condition specified under sub. (2) (b) 7. may also be brought by the  
5 administrator of the school district in which the juvenile is enrolled or resides. If the  
6 court initiates the motion, that court is disqualified from holding a hearing on the  
7 motion. Notice of the motion shall be given to the juvenile, guardian ad litem,  
8 counsel, parent, guardian, legal custodian and all parties present at the original  
9 dispositional hearing. The motion shall contain a statement of whether the juvenile  
10 may be subject to the federal Indian child welfare act, 25 USC 1911 to 1963.

11 **SECTION 34.** 938.355 (6) (d) 2. of the statutes is amended to read:

12 938.355 **(6)** (d) 2. Suspension of or limitation on the use of the juvenile's  
13 operating privilege, as defined under s. 340.01 (40), or of any approval issued under  
14 ch. 29 for a period of not more than 3 years. If the juvenile does not hold a valid  
15 operator's license under ch. 343, other than an instruction permit under s. 343.07 or  
16 a restricted license under s. 343.08, on the date of the order issued under this  
17 subdivision, the court may order the suspension to begin on the date that the  
18 operator's license would otherwise be reinstated or issued after the juvenile applies  
19 and qualifies for issuance or 2 years after the date of the order issued under this  
20 subdivision, whichever occurs first. If the court suspends the juvenile's operating  
21 privileges or an approval issued under ch. 29, the court shall immediately take  
22 possession of the suspended license or approval and forward it to the department  
23 that issued it, together with the notice of suspension.

24 **SECTION 35.** 938.355 (6) (e) of the statutes is created to read:

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1           938.355 (6) (e) This subsection does not preclude a person who is aggrieved by  
2 a juvenile's violation of a condition specified in sub. (2) (b) 7. from proceeding against  
3 the juvenile for contempt of court under ch. 785.

4           **SECTION 36.** 938.355 (6g) (c) of the statutes is created to read:

5           938.355 (6g) (c) This subsection does not preclude a person who is aggrieved  
6 by a juvenile's violation of a condition specified in sub. (2) (b) 7. from proceeding  
7 against the juvenile for contempt of court under ch. 785.

8           **SECTION 37.** 938.355 (6m) of the statutes is repealed.

9           **SECTION 38.** 938.396 (2) (d) of the statutes is amended to read:

10          938.396 (2) (d) Upon request of a court of criminal jurisdiction or a district  
11 attorney to review court records for the purpose of setting bail under ch. 969,  
12 impeaching a witness under s. 906.09 or investigating and determining whether a  
13 person has possessed a firearm in violation of s. 941.29 (2) or upon request of a court  
14 of civil jurisdiction or the attorney for a party to a proceeding in that court to review  
15 court records for the purpose of impeaching a witness under s. 906.09, the court  
16 assigned to exercise jurisdiction under this chapter and ch. 48 shall open for  
17 inspection by authorized representatives of the requester the records of the court  
18 relating to any juvenile who has been adjudicated ~~delinquent for an act that would~~  
19 ~~be a felony if committed by an adult~~ the subject of a proceeding under this chapter.

20          **SECTION 39.** 938.396 (2) (dr) of the statutes is created to read:

21          938.396 (2) (dr) Upon request of the department of corrections or any other  
22 person preparing a presentence investigation under s. 972.15 to review court records  
23 for the purpose of preparing the presentence investigation, the court shall open for  
24 inspection by any authorized representative of the requester the records of the court  
25 relating to any juvenile who has been the subject of a proceeding under this chapter.

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1           **SECTION 40.** 938.396 (2) (g) of the statutes is created to read:

2           938.396 (2) (g) Upon request of any other court assigned to exercise jurisdiction  
3 under this chapter and ch. 48, a district attorney or corporation counsel to review  
4 court records for the purpose of any proceeding in that other court, the court shall  
5 open for inspection by any authorized representative of the requester the records of  
6 the court relating to any juvenile who has been the subject of a proceeding under this  
7 chapter.

8           **SECTION 41.** 938.396 (2) (h) of the statutes is created to read:

9           938.396 (2) (h) Upon request of the court having jurisdiction over an action  
10 affecting the family or of an attorney for a party or a guardian ad litem in an action  
11 affecting the family to review court records for the purpose of considering the custody  
12 of a juvenile, the court assigned to exercise jurisdiction under this chapter and ch.  
13 48 shall open for inspection by an authorized representative of the requester the  
14 records of the court relating to any juvenile who has been the subject of a proceeding  
15 under this chapter.

16           **SECTION 42.** 938.396 (2) (i) of the statutes is created to read:

17           938.396 (2) (i) Upon request of the court assigned to exercise probate  
18 jurisdiction, the attorney general, the personal representative or special  
19 administrator of, or an attorney performing services for, the estate of a decedent in  
20 any proceeding under chs. 851 to 879, a person interested, a defined in s. 851.21, or  
21 an attorney, attorney-in-fact, guardian ad litem or guardian of the estate of a person  
22 interested to review court records for the purpose of s. 852.01 (2m) (bg), the court  
23 assigned to exercise jurisdiction under this chapter and ch. 48 shall open for  
24 inspection by any authorized representative of the requester the records of the court



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1 relating to any juvenile who has been adjudged delinquent on the basis of unlawfully  
2 and intentionally killing a person.

3 **SECTION 43.** 938.78 (2) (e) of the statutes is amended to read:

4 938.78 (2) (e) Paragraph (a) does not prohibit the department from disclosing  
5 information about an individual adjudged delinquent under s. ~~938.31~~ 938.183 or  
6 938.34 for a sexually violent offense, as defined in s. 980.01 (6), to the department  
7 of justice, or a district attorney or a judge acting under ch. 980 or to an attorney who  
8 represents a person subject to a petition under ch. 980. The court in which the  
9 petition under s. 980.02 is filed may issue any protective orders that it determines  
10 are appropriate concerning information disclosed under this paragraph.

11 **SECTION 44.** 970.032 (title) of the statutes is amended to read:

12 **970.032 (title) Preliminary examination; child juvenile under original**  
13 **adult court jurisdiction.**

14 **SECTION 45.** 970.032 (1) of the statutes is amended to read:

15 970.032 (1) Notwithstanding s. 970.03, if a preliminary examination is held  
16 regarding a ~~child~~ juvenile who is subject to the original jurisdiction of the court of  
17 criminal jurisdiction under s. 938.183 (1) or (2), the court shall first determine  
18 whether there is probable cause to believe that the child juvenile has committed the  
19 violation of which he or she is accused under the circumstances specified in s. 938.183  
20 (1) (a), (am), (ar), (b) or (c) or (2) (a), whichever is applicable. If the court does not  
21 make that finding, the court shall order that the child juvenile be discharged but  
22 proceedings may be brought regarding the child juvenile under ch. 938.

23 **SECTION 46.** 970.032 (2) (intro.) of the statutes is amended to read:

24 970.032 (2) (intro.) If the court finds probable cause as specified in sub. (1) to  
25 believe that the juvenile has committed the violation of which he or she is accused

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1 under the circumstances specified in s. 938.183 (1) (a), (am) or (ar), the court shall  
2 determine whether to retain jurisdiction or to transfer jurisdiction to the court  
3 assigned to exercise jurisdiction under chs. 48 and 938. The court shall retain  
4 jurisdiction unless the ~~child~~ juvenile proves by a preponderance of the evidence all  
5 of the following:

6 **SECTION 47.** 970.032 (2) (a) of the statutes is amended to read:

7 970.032 (2) (a) That, if convicted, the ~~child~~ juvenile could not receive adequate  
8 treatment in the criminal justice system.

9 **SECTION 48.** 970.032 (2) (c) of the statutes is amended to read:

10 970.032 (2) (c) That retaining jurisdiction is not necessary to deter the ~~child~~  
11 juvenile or other ~~children~~ juveniles from committing the violation of which the ~~child~~  
12 juvenile is accused under the circumstances specified in s. 938.183 (1) (a), (am), ~~(b)~~  
13 ~~or (e)~~ or (ar), whichever is applicable.

14 **SECTION 49.** 970.035 of the statutes is amended to read:

15 **970.035** (title) **Preliminary examination; ~~child~~ juvenile younger than**  
16 **16 15 years old.** Notwithstanding s. 970.03, if a preliminary examination under s.  
17 970.03 is held regarding a ~~child~~ juvenile who was waived under s. 938.18 for a  
18 violation which is alleged to have occurred prior to his or her 15th birthday, the court  
19 may bind the ~~child~~ juvenile over for trial only if there is probable cause to believe that  
20 a crime under s. 940.03, 940.06, 940.225 (1) or (2), 940.305, 940.31 or 943.10 (2),  
21 943.32 (2) or 961.41 (1) has been committed or that a crime that would constitute a  
22 felony under chs. 939 to 948 or 961 if committed by an adult has been committed at  
23 the request of or for the benefit of a criminal gang, as defined in s. 939.22 (9). If the  
24 court does not make any of those findings, the court shall order that the ~~child~~ juvenile

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1 be discharged but proceedings may be brought regarding the ~~child~~ juvenile under ch.  
2 938.

3 **SECTION 50.** 971.31 (13) (a) (intro.) of the statutes is renumbered 971.31 (13)  
4 (a) and amended to read:

5 971.31 **(13)** (a) (intro.) A child juvenile over whom the court has jurisdiction  
6 under s. 938.183 (1) (b) or (c) on a misdemeanor action may make a motion before trial  
7 to transfer jurisdiction to the court assigned to exercise jurisdiction under chs. 48 and  
8 938. The motion may allege that the child juvenile did not commit the violation  
9 under the circumstances described in s. 938.183 (1) (b) or (c), whichever is applicable,  
10 ~~or that transfer of jurisdiction would be appropriate because of all of the following:~~

11 **SECTION 51.** 971.31 (13) (a) 1. of the statutes is repealed.

12 **SECTION 52.** 971.31 (13) (a) 2. of the statutes is repealed:

13 **SECTION 53.** 971.31 (13) (a) 3. of the statutes is repealed.

14 **SECTION 54.** 971.31 (13) (b) of the statutes is amended to read:

15 971.31 **(13)** (b) The court shall retain jurisdiction unless the child proves by a  
16 preponderance of the evidence that he or she did not commit the violation under the  
17 circumstances described in s. 938.183 (1) (b) or (c) ~~or that transfer would be~~  
18 ~~appropriate because all of the factors specified in par. (a) 1., 2. and 3. are met,~~  
19 whichever is applicable.

20 **SECTION 55.** 972.14 (2) of the statutes is amended to read:

21 972.14 **(2)** Before pronouncing sentence, the court shall ask the defendant why  
22 sentence should not be pronounced upon him or her and allow the district attorney,  
23 defense counsel and defendant an opportunity to make a statement with respect to  
24 any matter relevant to the sentence. In addition, if the defendant is under 21 years  
25 of age and if the court has not ordered a presentence investigation under s. 972.15,

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1 the court shall ask the defendant if he or she has been adjudged delinquent under  
2 ch. 48, 1993 stats., or ch. 938 or has had a similar adjudication in any other state in  
3 the 3 years immediately preceding the date the criminal complaint relating to the  
4 present offense was issued.

5 **SECTION 56.** 972.15 (2s) of the statutes is amended to read:

6 972.15 (2s) If the defendant is under 21 years of age, the person preparing the  
7 presentence investigation report shall attempt to determine whether the defendant  
8 has been adjudged delinquent under ch. 48, 1993 stats., or ch.938 or has had a similar  
9 adjudication in any other state in the 3 years immediately preceding the date the  
10 criminal complaint relating to the present offense was issued and, if so, shall include  
11 that information in the report.

12 **SECTION 57.** 980.015 (2) (b) of the statutes is amended to read:

13 980.015 (2) (b) The anticipated release from a secured correctional facility, as  
14 defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02  
15 (15g), of a person adjudicated delinquent under s. 938.183 or 938.34 on the basis of  
16 a sexually violent offense.

17 **SECTION 58.** 980.02 (2) (ag) of the statutes is amended to read:

18 980.02 (2) (ag) The person is within 90 days of discharge or release, on parole  
19 or otherwise, from a sentence that was imposed for a conviction for a sexually violent  
20 offense, from a secured correctional facility, as defined in s. 938.02 (15m), or a secured  
21 child caring institution, as defined in s. 938.02 (15g), if the person was placed in the  
22 facility for being adjudicated delinquent under s. 938.183 or 938.34 on the basis of  
23 a sexually violent offense or from a commitment order that was entered as a result  
24 of a sexually violent offense.

25 **SECTION 59. Initial applicability.**

