



WISCONSIN LEGISLATIVE COUNCIL

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TO: REPRESENTATIVE GAREY BIES

FROM: Katie Bender-Olson, Staff Attorney

RE: Summary of LRB-1065/2, Relating to Treatment as an Adult for Criminal Prosecution

DATE: July 24, 2013

The following memorandum summarizes LRB-1065/2 (“the bill draft”), relating to the age at which a person is subject to criminal prosecution in adult court. The bill draft raises from 17 to 18 the age at which an offender is subject to prosecution and sentencing as an adult. The bill draft provides that a 17-year old offender is not subject to the jurisdiction of an adult criminal court, unless the offender has a prior record or commits certain “violent crimes.” The memorandum also outlines the “violent crimes” which automatically subject a 17-year old offender to the jurisdiction of an adult criminal court.

CURRENT LAW

Wisconsin law generally subjects juvenile offenders and adult offenders to different procedures and punishments for violating state criminal laws. Juvenile offenders are typically subject to the Juvenile Justice Code (ch. 938, Stats.), while adult offenders are subject to the Criminal Code (chs. 939 to 951, Stats.). Juvenile offenders found to have violated a law or ordinance are “adjudicated” by a court, rather than being found guilty and convicted. A court that adjudicates a juvenile offender imposes a “disposition,” rather than a criminal sentence. The dispositions which a court may impose on a juvenile offender differ somewhat from the criminal sanctions that a court may impose on an adult. Potential dispositions for juvenile offenders include consequences such as restrictions on driving privileges, victim-offender mediation, or placement in a juvenile correctional facility, but do not include placement in an adult prison.

Under current law, an offender who is 17 years old is an “adult” and not a “juvenile.” This means that a 17-year old offender is generally subject to prosecution in adult criminal court, rather than juvenile court, and faces adult criminal penalties. [s. 938.02 (1), Stats.] A 17-

year old offender is typically treated as an “adult” in the criminal justice system and may be placed in a state prison.¹

Juveniles (those 16 and younger) are generally subject to adjudication in juvenile court, but may be prosecuted in adult criminal court under certain circumstances. A juvenile may be prosecuted in adult criminal court if: (a) the adult court has “original jurisdiction” over the case; or (b) the case is “waived” from juvenile court into adult court. An adult court has “original jurisdiction” over a juvenile case if the juvenile commits particular offenses or has certain prior convictions or adjudications. For example, an adult court has original jurisdiction over any juvenile offender who is charged with first-degree intentional homicide after his or her 10th birthday. [s. 938.183 (1) (am), Stats.] In addition, a juvenile case may be “waived” into adult criminal court if the juvenile is charged with certain violent offenses, drug offenses, or gang-related offenses after age 14, or if the juvenile is charged with any crime after age 15. For example, a court may waive a 14-year old offender into adult court if the juvenile is charged with first-degree sexual assault. [s. 938.18 (1) (a) and (b), Stats.]

SUMMARY OF LRB-1065/2

LRB-1065/2 changes the manner in which 17-year old offenders are treated for purposes of criminal prosecution. The bill draft treats most (but not all) 17-year old offenders as “juveniles,” rather than treating 17-year old offenders as “adults.”

LRB-1065/2 provides that a 17-year old offender who violates a criminal law is subject to the Juvenile Justice Code and not to the adult Criminal Code, except under certain circumstances. Similarly, the bill provides that a 17-year old who violates a civil law or municipal ordinance is subject to the jurisdiction of a court acting under the Juvenile Justice Code, rather than being subject to the jurisdiction of a circuit court or municipal court system, except under certain circumstances.

LRB-1065/2 generally treats 17-year old offenders as juveniles; however, the bill draft continues to treat certain 17-year old offenders as adults. Under the bill draft, a 17-year old offender who has a prior record or who is charged with specified violent crimes is treated as an adult and faces prosecution and penalties in the adult criminal justice system.

LRB-1065/2 provides that the following 17-year old offenders are treated as “adults” for purposes of the adult criminal justice system:

- **17-Year Old With a Previous Adult Court Conviction.** A 17-year old offender who has previously been convicted of a crime.
- **17-Year Old With a Previous Juvenile Court Adjudication.** A 17-year old offender who has previously been adjudicated delinquent.

¹ Juvenile offenders who are prosecuted in adult criminal court may be placed in a state prison after reaching age 17, but cannot be placed in the correctional institution authorized in s. 301.16 (1n), Stats. (the Wisconsin Secure Program Facility, commonly referred to as the “Supermax Prison”). [s. 938.183 (3), Stats.]

- **17-Year Old Who Commits a Violent Crime**. A 17-year old offender who is alleged to have committed a violent crime specified in s. 939.632 (1) (e) 1., or 2., Stats. The list of qualifying crimes is provided in the following section.
- **17-Year Old Who Commits Intimidation of a Witness**. A 17-year old offender who commits a misdemeanor under s. 940.42, Stats., *Intimidation of witnesses*, if the underlying crime is a felony.
- **17-Year Old Who Commits Certain Dangerous Weapons Offenses**. A 17-year old offender who violates s. 941.20 (1) (b), (bm), (c), or (d), Stats., *Endangering safety by use of dangerous weapon*, or who violates 941.24, Stats., *Possession of a switchblade knife*.

Seventeen-year old offenders who meet these criteria will continue to be prosecuted in adult criminal court and will continue to be subject to adult criminal penalties.

“VIOLENT CRIMES” UNDER LRB-1065/2

As discussed above, one category of 17-year old offenders that LRB-1065/2 treats as “adults” and subjects to adult criminal procedures and penalties is 17-year old offenders who are charged with a “violent crime” specified in s. 939.632 (1) (e) 1., or 2., Stats. These qualifying “violent crimes” are the following:

- s. 940.01, Stats., first-degree intentional homicide.
- s. 940.02, Stats., first-degree reckless homicide.
- s. 940.03, Stats., felony murder.
- s. 940.05, Stats., second-degree intentional homicide.
- s. 940.09 (1c), Stats., homicide by intoxicated use of vehicle or firearm (death of an unborn child by operation or handling of a vehicle while under the influence of an intoxicant).
- s. 940.19 (2), (4), or (5), Stats., battery; substantial battery; aggravated battery.
- s. 940.21, Stats., mayhem.
- s. 940.225 (1), (2), or (3), Stats., sexual assault (first degree, second degree, third degree)
- s. 940.235, Stats., strangulation and suffocation.
- s. 940.305, Stats., taking hostages.
- s. 940.31, Stats., kidnapping.
- s. 941.20, Stats., endangering safety by use of a dangerous weapon (felony crimes)

- s. 941.21, Stats., disarming a peace officer.
- s. 943.02, Stats., arson of buildings; damage of property by explosives.
- s. 943.06, Stats., Molotov cocktails.
- s. 943.10 (2), Stats., burglary (armed with dangerous weapon and certain other circumstances).
- s. 943.23 (1g), Stats., carjacking.
- s. 943.32 (2), Stats., armed robbery.
- s. 948.02 (1) or (2), Stats., sexual assault of a child (first degree, second degree)
- s. 948.025, Stats., engaging in repeated acts of sexual assault of the same child.
- s. 948.03 (2) (a) or (c), Stats., physical abuse of a child (intentional causation of bodily harm).
- s. 948.05, Stats., sexual exploitation of a child.
- s. 948.051, Stats., trafficking of a child.
- s. 948.055, Stats., causing a child to view or listen to sexual activity.
- s. 948.07, Stats., child enticement.
- s. 948.08, Stats., soliciting a child for prostitution.
- s. 948.085, Stats., sexual assault of a child placed in substitute care.
- s. 948.30 (2), Stats., abduction of another's child (by force or threat of imminent force).
- s. 948.302 (2), Stats., human trafficking (for purposes of a commercial sex act).
- s. 939.30, Stats, solicitation (to commit a Class A felony).
- s. 939.31, Stats., conspiracy (to commit a Class A felony).
- s. 939.32, Stats., attempt (to commit a Class A felony).

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

KBO:ksm