

1 **AN ACT** *to amend* 938.02 (15d) and 938.02 (15m); and *to create* 938.01 (1) (title) and
 2 (2) (title) of the statutes; **relating to:** general provisions.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the joint legislative council’s special committee on recodification of ch. 938, the juvenile justice code. The draft proposes initial language for the recodification of subchapter I, relating to general provisions.

COMMENT: The following is a general question relating to the use, in all of ch. 938, of the term “court” (as defined in s. 938.02 (2m), stats., below) and “judge” (as defined in s. 938.02 (10), stats., below):

“938.02 (2m) “Court”, when used without further qualification, means the court assigned to exercise jurisdiction under this chapter and ch. 48 or, when used with reference to a juvenile who is subject to s. 938.183, a court of criminal jurisdiction or, when used with reference to a juvenile who is subject to s. 938.17 (2), a municipal court.

(10) “Judge”, if used without further qualification, means the judge of the court assigned to exercise jurisdiction under this chapter and ch. 48 or, if used with reference to a juvenile who is subject to s. 938.183, the judge of the court of criminal jurisdiction or, when used with reference to a juvenile who is subject to s. 938.17 (2), the judge of the municipal court.”.

The issue is: is it possible, with a few exceptions, to use the term “court” instead of “judge” throughout the chapter? There appear to be numerous provisions where “judge” and “court” are synonymous and there is no need to use the term “judge”. The working group should consider the possible use of “court” where “judge” appears in ch. 938. The use of “court” would make the chapter clearer and would be in accord with recent drafting practices by the Legislative Reference Bureau. Obviously, this suggested change would not apply in provisions specifically relating to the judge in a particular proceeding, such as assignment of a new judge [s. 938.03 (2), stats.] or substitution of judge.

3 **SECTION 1.** 938.01 (1) (title) and (2) (title) of the statutes are created to read:
 4 938.01 (1) (title) TITLE.

1 **(2)** (title) LEGISLATIVE INTENT.

2 **SECTION 2.** 938.02 (15d) of the statutes is amended to read:

3 938.02 **(15d)** “Residential care center for children and youth” means a facility operated
4 by a child welfare agency licensed under s. 48.60 for the care ~~and~~ and treatment
5 of persons residing in that facility.

COMMENT: The following suggestion from the Department of Corrections, Division of Juvenile Services (hereafter “DOC/DJS”) is reflected in the amendment to sub. (15d), above.

“Residential Care Centers also provide treatment in addition to care and maintenance”.

Is there any problem with including “treatment” in this definition?

6 **SECTION 3.** 938.02 (15m) of the statutes is amended to read:

7 938.02 **(15m)** “Secured [~~Secured Juvenile~~] correctional facility” means a correctional
8 institution operated or contracted for by the department of corrections or operated by the
9 department of health and family services for holding in secure custody persons adjudged
10 delinquent. “Secured correctional facility” includes the Mendota juvenile treatment center
11 under s. 46.057 and a facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539
12 (5).

COMMENTS: 1. In sub. (15m), is there a reason that “secured correctional facility” instead of “juvenile correctional facility” is used in ch. 938? “Juvenile correctional facility” seems to be a more descriptive term for use in a chapter that deals with juvenile offenders. “Secured correctional facility” does not indicate that the correctional facility is for juvenile offenders. Is this comment applicable to any other types of facilities defined in this section using the term “secured” [i.e., the definitions of “Type 1 secured correctional facility” in current sub. (19) and “Type 2 secured correctional facility” in current sub. (20)]?

2. An issue has been raised by DOC/DJS with reference to the definition of “Type 2 child caring institution” in s. 938.02 (19r), Stats. That statute reads as follows:

“Type 2 child caring institution” means a residential care center for children and youth that is designated by the department to provide care and maintenance for juveniles who have been placed in the residential care center for children and youth under the supervision of a county department under s. 938.34 (4d).”.

The issue raised is:

“There is some confusion because those facilities are not called residential care centers per 938.092 (15d) that are licensed for Type 2 youth. Should the CCI [child caring institution] designation be replaced with RCC [residential care center] to be consistent?”.

3. The following suggestion is from DOC/DJS:

“Due to the amendments to this chapter [ch. 938] related to federal law and permanency planning (ASFA) [Adoption and Safe Families Act], and many references to it, it would be pertinent to add a definition of out-of-home care to the chapter.”.

If this definition is added, what should be the precise language of the definition?