

1 **AN ACT** *to amend* 938.03 (2), 938.06 (1) (a) 1., (am) 2. and (b), (2) (a), (am) and (b)
 2 2., (3) and (5), 938.067 (intro.), 938.067 (2) and (3), 938.067 (5), 938.067 (7),
 3 938.067 (9), 938.069 (1) (intro.), (c), (dj) and (e), 938.07 (2) and (3), 938.08 (1) and
 4 (2), 938.08 (3) (a) (intro.) and (b), 938.09 (1) to (6) and 938.10; and *to create* 938.03
 5 (1) (title), 938.067 (1) (title), 938.067 (4) (title), 938.067 (6) (title), (6g) (title) and
 6 (6m) (title), 938.067 (8) (title) and (8m) (title), 938.069 (1) (title), 938.069 (2) (title),
 7 (3) (title) and (4) (title) and 938.08 (3) (title) of the statutes; **relating to:** organization
 8 of the court.

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 II, relating to reorganization of the court.

9 **SECTION 1.** 938.03 (1) (title) of the statutes is created to read:
 10 938.03 (1) (title) JUDGE TO SET TIME, PLACE.
 11 **SECTION 2.** 938.03 (2) of the statutes is amended to read:
 12 938.03 (2) IF ABSENCE OR DISABILITY. In the case of the absence or disability of the judge
 13 of a court assigned to exercise jurisdiction under this chapter and ch. 48, another judge shall
 14 be assigned under s. 751.03 to act temporarily in the judge’s place. If the judge assigned
 15 temporarily is from a circuit other than the one for which elected, the judge shall receive
 16 expenses as ~~provided~~ under s. 753.073.

1 **SECTION 3.** 938.06 (1) (a) 1., (am) 2. and (b), (2) (a), (am) and (b) 2., (3) and (5) of the
2 statutes are amended to read:

3 **938.06 Services for court. (1) COUNTIES WITH A POPULATION OF 500,000 OR MORE. (a)**

4 1. In counties with a population of 500,000 or more, the county board of supervisors shall
5 provide the court with the services necessary for investigating and supervising cases under this
6 chapter by operating a children's court center under the supervision of a director who is
7 appointed as ~~provided in~~ under s. 46.21 (1m) (a). ~~The~~ Except as otherwise provided in this
8 subsection, the director is the chief administrative officer of the center and of the intake and
9 probation sections and secure detention facilities of the center ~~except as otherwise provided~~
10 ~~in this subsection.~~ The director is ~~charged with administration of~~ responsible for managing
11 ~~the personnel of,~~ and administering the services of, the sections and ~~of~~ the secure detention
12 facilities, and ~~is responsible for supervising both the operation of the physical plant and the~~
13 maintenance and improvement of the buildings and grounds of the center. The center shall
14 include ~~investigative:~~

15 a. Investigative services, provided by the county department, for all juveniles alleged
16 to be in need of protection or services ~~to be provided by the county department.~~ ~~The center~~
17 ~~shall also include the~~

18 b. The services of an assistant district attorney or assistant corporation counsel, or both,
19 who shall be assigned to the center to provide investigative as well as and legal work in the
20 cases under this chapter and ch. 48.

21 2. The chief judge of the judicial administrative district shall ~~formulate~~ establish written
22 judicial ~~policy~~ policies governing intake and court services for juvenile matters under this
23 chapter and the director of the center shall ~~be charged with executing the judicial policy~~
24 execute the policies. The chief judge shall direct and supervise the work of all personnel of

1 the court, except the work of the district attorney or corporation counsel assigned to the court.
2 ~~The chief judge , and~~ may delegate his or her supervisory functions.

3 3. The county board of supervisors shall ~~develop~~ establish policies and ~~establish~~
4 ~~necessary~~ rules for the management and administration of the nonjudicial operations of the
5 children's court center including the activities of probation officers whenever they are not
6 performing services for the court. The director of the center shall report to, and is responsible
7 to, the director of the county department for ~~the execution of all nonjudicial operational~~
8 relating to the center director's duty to execute the policies and rules ~~governing the center,~~
9 ~~including activities of probation officers whenever they are not performing services for the~~
10 ~~court~~. The director of the center is also responsible for the preparation and submission to the
11 county board of supervisors of the annual budget for the center except for the judicial functions
12 or responsibilities which are delegated by law to the ~~judge or judges~~ court and clerk of circuit
13 court. The county board of supervisors ~~shall make provision in the organization of , in~~
14 organizing the office of director, shall provide for the devolution of the director's authority
15 in the case of temporary absence, illness, disability to act, or a vacancy in position and shall
16 establish the general qualifications for the position. The county board of supervisors also has
17 the authority to investigate, arbitrate, and resolve any conflict in the administration of the
18 center as between judicial and nonjudicial operational policy and rules. The county board of
19 supervisors does not have authority over, and may not assert jurisdiction over, the disposition
20 of any case or juvenile after a written order is made under s. 938.21 or if a petition is filed under
21 s. 938.25.

COMMENT: Is the removal of the following phrase from the 2nd sentence of subd. 3. and insertion of that language in the first sentence appropriate: "Including activities of probation officers whenever they are not performing services for the court"? If not, the current phrase in the 2nd sentence needs to be clarified in another manner.

1 4. All personnel of the intake and probation sections and of the secure detention
2 facilities shall be appointed under civil service by the director, except that existing court
3 service personnel having permanent civil service status may be reassigned to any of the
4 respective sections within the center specified in this paragraph.

COMMENT: An issue has been raised by DOC/DJS with reference to s. 938.06 (1) (am) 1., relating to intake worker qualifications. That provision reads:

“All intake workers providing services under this chapter who begin employment after May 15, 1980, shall have the qualifications required to perform entry level social work in a county department and shall have successfully completed 30 hours of intake training, approved or provided by the department, prior to the completion of the first 6 months of employment in the position. The department shall monitor compliance with this subdivision according to rules promulgated by the department.”.

The issue raised is:

“This section is sometimes interpreted to mean there is a necessity to have a degree and license as a Social Worker. However, many staff who perform social work are not Social Workers, but have degrees from four year accredited colleges in other human service related fields such as criminal justice, sociology, and psychology, and are trained upon hired to perform in accordance with state law and practice standards.”.

The same issue applies to s. 938.06 (2) (b), stats.

5 2. The department shall make training programs available annually that permit intake
6 workers providing services under this chapter to satisfy the requirements specified under subd.
7 1.

8 (b) Notwithstanding par. (a), the county board of supervisors may ~~institute~~ make
9 changes in the administration of services to the children’s court center in order to qualify for
10 the maximum amount of federal and state aid ~~as provided in~~ under sub. (4) and s. 46.495.

11 (2) COUNTIES WITH A POPULATION UNDER 500,000. (a) In counties having less than 500,000
12 population, the county board of supervisors shall authorize the county department or the court,

1 or both, to provide intake services required by under s. 938.067 and the staff needed to carry
2 out the objectives and provisions of this chapter under s. 938.069. Intake services under this
3 chapter shall be provided by employees of the court or the county department and may not be
4 subcontracted to other individuals or agencies, except as provided in under par. (am). Intake
5 workers shall be governed in their intake work, including their responsibilities for
6 recommending the filing of a petition and entering into a deferred prosecution agreement, by
7 general written policies which shall be formulated established by the circuit judges for the
8 county, subject to the approval of the chief judge of the judicial administrative district.

9 (am) ~~1.~~ Notwithstanding par. (a), ~~any~~:

10 1. A county which that had intake services under this chapter subcontracted from the
11 county sheriff's department on April 1, 1980, may continue to subcontract those intake
12 services from the county sheriff's department.

13 2. ~~Notwithstanding par. (a), any~~ A county in which the county sheriff's department
14 operates a secure detention facility may subcontract intake services under this chapter from
15 the county sheriff's department as provided in this subdivision. If a county subcontracts intake
16 services under this chapter from the county sheriff's department subdivision, employees of
17 the county sheriff's department who staff the secure detention facility may make secure
18 custody determinations under s. 938.208 between the hours of 6 p.m. and 6 a.m. ~~and any~~
19 ~~determination under s. 938.208 made by an employee of the county sheriff's department.~~ Such
20 a determination shall be reviewed by an intake worker employed by the court or county
21 department within 24 hours after ~~that determination~~ it is made.

22 (b) 2. The department shall make training programs available annually that permit
23 intake workers providing services under this chapter to satisfy the requirements specified
24 under subd. 1.

1 **(3) INTAKE SERVICES.** The court or county department responsible for providing intake
2 services under s. 938.067 shall specify one or more persons to provide intake services. If there
3 is more than one ~~such worker~~ person, one of the ~~workers~~ persons shall be designated as chief
4 ~~worker~~ and shall supervise the other workers persons.

5 **(5) SHORT-TERM DETENTION AS A DISPOSITION OR SANCTION OR FOR VIOLATION OF ORDER.**

6 (a) The county board of supervisors of any county may, by resolution, authorize the court to:

7 1. To use placement in a secure detention facility or juvenile portion of the county jail
8 as a disposition under s. 938.34 (3) (f), as a sanction under s. 938.355 (6m) (a) 1g. or as a place
9 of short-term detention under s. 938.355 (6d) (a) 1. or 2. or (b) 1. or 2. or 938.534 (1) (b) 1.
10 or 2.; ~~or to use~~

11 2. To use commitment to a county department under s. 51.42 or 51.437 for special
12 treatment or care in an inpatient facility, as defined in s. 51.01 (10), as a disposition under s.
13 938.34 (6) (am).

14 (b) The use by the court of a disposition under s. 938.34 (3) (f) or (6) (am), a sanction
15 under s. 938.355 (6m) (a) 1g. or short-term detention under s. 938.355 (6d) (a) 1. or 2. or (b)
16 1. or 2. or 938.534 (1) (b) 1. or 2. is subject to any resolution adopted under ~~this subsection~~
17 par. (a).

18 **SECTION 4.** 938.067 (intro.) of the statutes is amended to read:

19 **938.067** (intro.) To carry out the ~~objectives and~~ provisions of this chapter ~~but subject~~
20 ~~to its limitations~~, intake workers shall do all of the following:

21 **SECTION 5.** 938.067 (1) (title) of the statutes is created to read:

22 938.067 **(1)** (title) SCREENING.

23 **SECTION 6.** 938.067 (2) and (3) of the statutes are amended to read:

1 938.067 (2) INTERVIEWING. Interview, ~~unless impossible~~ if possible, any juvenile who
2 is taken into physical custody and not released, and ~~where, if~~ appropriate, ~~interview~~ other
3 available concerned parties. If the juvenile cannot be interviewed, the intake worker shall
4 consult with the juvenile's parent or a responsible adult [who knows the juvenile]. No juvenile
5 may be placed in a secure detention facility unless the juvenile has been interviewed in person
6 by an intake worker, except that if the intake worker is in a place which is distant from the place
7 where the juvenile is or the hour is unreasonable, as defined by written court intake rules, and
8 if the juvenile meets the criteria under s. 938.208, the intake worker, after consulting by
9 telephone with the law enforcement officer who took the juvenile into custody, may authorize
10 the secure holding of the juvenile while the intake worker is en route to the in-person interview
11 or until 8 a.m. of the morning after the night on which the juvenile was taken into custody.

COMMENT: In the 2nd sentence in sub. (2), should "who knows the juvenile" or a similar phrase be inserted after "responsible adult" or is "responsible adult" sufficient?

12 (3) WHETHER JUVENILE SHOULD BE HELD. Determine whether the juvenile shall be held
13 under s. 938.205 and ~~such policies as the judge shall promulgate~~ promulgated under s. 938.06
14 (1) or (2).

15 **SECTION 7.** 938.067 (4) (title) of the statutes is created to read:

16 938.067 (4) (title) WHERE HELD.

17 **SECTION 8.** 938.067 (5) of the statutes is amended to read:

18 938.067 (5) CRISIS COUNSELING. Provide any necessary crisis counseling during the
19 intake process ~~when such counseling appears to be necessary~~.

20 **SECTION 9.** 938.067 (6) (title), (6g) (title) and (6m) (title) of the statutes are created to
21 read:

22 938.067 (6) (title) REQUEST FOR PETITION; DEFERRED PROSECUTION.

1 **(6g)** (title) VICTIMS' RIGHTS.

2 **(6m)** (title) MULTIDISCIPLINARY SCREEN.

3 **SECTION 10.** 938.067 (7) of the statutes is amended to read:

4 938.067 **(7)** REFERRALS. Make referrals of cases to other agencies if their assistance
5 ~~appears~~ is to be needed or desirable.

6 **SECTION 11.** 938.067 (8) (title) and (8m) (title) of the statutes are created to read:

7 938.067 **(8)** (title) INTERIM RECOMMENDATIONS.

8 **(8m)** (title) TAKE INTO CUSTODY.

9 **SECTION 12.** 938.067 (9) of the statutes is amended to read:

10 938.067 **(9)** ANY OTHER FUNCTIONS. Perform any other functions ordered by the court,
11 and, when the court or chief judge requests, assist the court or chief judge of the judicial
12 administrative district in developing written policies or carrying out its other duties ~~when the~~
13 ~~court or chief judge so requests.~~

14 **SECTION 13.** 938.069 (1) (title) of the statutes is created to read:

15 938.069 **(1)** (title) DUTIES.

16 **SECTION 14.** 938.069 (1) (intro.), (c), (dj) and (e) of the statutes are amended to read:

17 938.069 **(1)** (intro.) The staff of the department, the court, a county department or a
18 licensed child welfare agency designated by the court to carry out the ~~objectives and~~
19 provisions of this chapter shall:

20 (c) Make an affirmative effort, and investigate and develop resources, to obtain
21 necessary or desired services for the juvenile and the juvenile's family ~~and investigate and~~
22 ~~develop resources toward that end.~~

23 (dj) Provide aftercare services for a juvenile ~~who has been~~ released from a secured
24 correctional facility, a secured child caring institution, or a secured group home.

1 (e) Perform any other court-ordered functions consistent with this chapter ~~which are~~
2 ~~ordered by the court.~~

3 **SECTION 15.** 938.069 (2) (title), (3) (title) and (4) (title) of the statutes are created to
4 read:

5 938.069 (2) (title) AGENCY APPROVAL NEEDED.

6 (3) (title) DESIGNATING DISPOSITION STAFF TO PROVIDE SERVICES.

7 (4) (title) QUALIFICATIONS OF CERTAIN STAFF.

8 **SECTION 16.** 938.07 (2) and (3) of the statutes are amended to read:

9 938.07 (2) LICENSED CHILD WELFARE AGENCY. The court may request the services of a
10 child welfare agency licensed under s. 48.60 in accordance with procedures established by that
11 agency. The ~~child welfare~~ agency shall receive no compensation for these services but may
12 be reimbursed out of funds made available to the court for the actual and necessary expenses
13 incurred in the performance of duties for the court.

14 (3) COUNTY DEPARTMENT IN POPULOUS COUNTIES. In counties having a population of
15 500,000 or more, the court may order the director of the county department ~~may be ordered~~
16 ~~by the court~~ to provide services for ~~furnishing~~ emergency shelter care services to any juvenile
17 whose need therefor for the services, either by reason of need of protection and services or
18 delinquency, is determined by the intake worker under s. 938.205. The court may authorize
19 the director to appoint members of the county department to furnish emergency shelter care
20 services for the juvenile. The emergency shelter care may be provided as ~~specified in~~ under
21 s. 938.207.

22 **SECTION 17.** 938.08 (1) and (2) of the statutes are amended to read:

23 938.08 (1) INVESTIGATIONS; REPORTS. It is the duty of each A person appointed to furnish
24 services to the court as ~~provided in~~ under ss. 938.06 and 938.07 to shall make such any

1 investigations and exercise ~~such~~ any discretionary powers as the judge may direct, ~~to~~ keep a
 2 written record of ~~such~~ the investigations, and ~~to~~ submit a report to the judge. The person shall
 3 keep informed concerning the conduct and condition of the juvenile under the person's
 4 supervision and shall report ~~thereon~~ on the conduct and condition as the judge directs.

5 (2) POWER TO TAKE JUVENILE INTO CUSTODY: LIMITS. Except as provided in sub. (3) and
 6 ss. 938.355 (6d) and 938.534 (1), ~~any~~ a person authorized to provide or providing intake or
 7 dispositional services for the court under s. 938.067 or 938.069 has the power of police officers
 8 and deputy sheriffs only for the purpose of taking a juvenile into physical custody when the
 9 juvenile comes voluntarily ~~or~~, is suffering from illness or injury, or is in immediate danger
 10 from his or her surroundings and removal from the surroundings is necessary.

COMMENT: In sub. (2) (intro.), is there better and more specific language
 than "has the power of police officers and deputy sheriffs" (e.g., "has the
 power of a law enforcement officer under s. _____")?

11 **SECTION 18.** 938.08 (3) (title) of the statutes is created to read:

12 938.08 (3) (title) CONDITIONS FOR CERTAIN OTHER PERSONS TO TAKE JUVENILE INTO
 13 CUSTODY.

14 **SECTION 19.** 938.08 (3) (a) (intro.) and (b) of the statutes are amended to read:

15 938.08 (3) (a) (intro.) In addition to the law enforcement authority ~~specified in~~ under
 16 sub. (2), department personnel designated by the department, personnel of an agency
 17 contracted with under s. 301.08 (1) (b) 3. and designated by agreement between the agency
 18 and the department, and personnel of a county contracted with under s. 301.08 (1) (b) 4. and
 19 designated by agreement between the county and the department have the power of law
 20 enforcement authorities to take a juvenile into physical custody under the following
 21 conditions:

1 (b) A juvenile who is taken into custody under par. (a) may be returned directly to the
2 secured correctional facility, residential care center for children and youth, or secured group
3 home and shall have a hearing regarding placement in a disciplinary cottage or in disciplinary
4 status in accordance with ch. 227.

COMMENT: Can the “in a disciplinary cottage” in current sub. (3) (b) be
deleted? If not, is there a more specific reference that can be inserted
here?

5 **SECTION 20.** 938.09 (1) to (6) of the statutes are amended to read:

6 938.09 (1) DELINQUENCY. By the district attorney, in any matter arising under s. 938.12.

7 (2) CIVIL LAW VIOLATION. By the district attorney or, if designated by the county board
8 of supervisors, by the corporation counsel, in any matter concerning a civil law violation
9 arising under s. 938.125. If the county board transfers this authority to or from the district
10 attorney on or after May 11, 1990, the board may do so only if the action is effective on
11 September 1 of an odd-numbered year and the board notifies the department of administration
12 of that change by January 1 of that odd-numbered year.

13 (3) ORDINANCE VIOLATION. By the city, village or town attorney, in any matter
14 concerning a city, village or town ordinance violation, respectively, arising under s. 938.125.

15 (4) NONCITY ORDINANCE VIOLATION. By any an appropriate person designated by the
16 county board of supervisors in any matter concerning a noncity ordinance violation arising
17 under s. 938.125.

18 (5) IN NEED OF PROTECTION OR SERVICES. By the district attorney or, if designated by the
19 county board of supervisors, by the corporation counsel, in any matter arising under s. 938.13.
20 If the county board transfers this authority to or from the district attorney on or after
21 May 11, 1990, the board may do so only if the action is effective on September 1 of an

1 odd-numbered year and the board notifies the department of administration of that change by
2 January 1 of that odd-numbered year.

3 (6) INTERSTATE COMPACT. By any an appropriate person designated by the county board
4 of supervisors in any matter arising under s. 938.14.

5 **SECTION 21.** 938.10 of the statutes is amended to read:

6 **938.10 Power of the judge to act as intake worker.** The duties of the intake worker
7 may be carried out ~~from time to time~~ by the judge at his or her discretion, but except that if
8 a request to file a petition is made, a citation is issued, or a deferred prosecution agreement
9 is entered into, the judge ~~shall be~~ is disqualified from participating further in the proceedings.

10 (END)