

1 **AN ACT** *to amend* 938.19 (1) (c), 938.19 (1) (d) 1. and 7., 938.19 (1m) and (2),
2 938.20 (2) (d) and (f) 2., 938.20 (3), 938.20 (5), 938.20 (7) (a) and (b), 938.20 (7) (c)
3 1. and 2., 938.20 (8), 938.205, 938.207 (1) (c), (cm) and (f) and (2), 938.208 (5),
4 938.209 (1) (b), 938.21 (1), 938.21 (2) (b), (c) and (d), 938.21 (3) (am), (b), (d) and
5 (e), 938.21 (4) (a), 938.21 (5) (b) 1., 938.21 (6), 938.22 (1) (a) and (c), 938.22 (2) (a)
6 and (b), 938.22 (3) (am), (ar) and (c), 938.22 (7) (a) and (b), 938.222 (1), 938.222
7 (2) (a) 1. and 2., 938.223 (2) (a) 1. and 2., 938.223 (3), 938.224 (1), 938.23 (1g) and
8 (1m) (a) and (am), 938.23 (3), (4) and (5), 938.235 (1) (a) and (3) (a) and (b) (intro.)
9 and 938.235 (7) and (8) (a) and (b); and *to create* 938.19 (1) (title), 938.19 (3) (title),
10 938.20 (2) (title), 938.20 (4) (title), 938.20 (6) (title), 938.207 (1) (title), 938.208 (1)
11 (title), (2) (title), (3) (title), (4) (title) and (6) (title), 938.209 (1) (title), 938.209 (2m)
12 (title) and (3) (title), 938.21 (4) (title), 938.22 (title), (1) (title), 938.22 (2) (title),
13 938.22 (3) (title), 938.22 (5) (title) and (7) (title), 938.222 (2) (title), 938.223 (1)
14 (title), 938.224 (2) (title), (3) (title) and (4) (title) and 938.237 (1) (title), (2) (title)
15 and (3) (title) of the statutes; **relating to:** holding a juvenile in custody.

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 IV, relating to holding a juvenile in custody.

16 **SECTION 1.** 938.19 (1) (title) of the statutes is created to read:
17 938.19 (1) **CRITERIA.**

1 **SECTION 2.** 938.19 (1) (c) of the statutes is amended to read:

2 938.19 **(1)** (c) An order of the judge if ~~made upon~~ there is a showing satisfactory to the
3 judge that the welfare of the juvenile demands that the juvenile be immediately removed from
4 his or her present custody. The order shall specify that the juvenile be held in custody under
5 s. 938.207.

6 **SECTION 3.** 938.19 (1) (d) 1. and 7. of the statutes are amended to read:

7 938.19 **(1)** (d) 1. A capias or a warrant for the juvenile's apprehension has been issued
8 in this state, or ~~that~~ the juvenile is a fugitive from justice.

9 7. The juvenile has violated the conditions of an order under s. 938.21 (4) or the
10 ~~conditions~~ of an order for temporary physical custody issued by an intake worker.

11 **SECTION 4.** 938.19 (1m) and (2) of the statutes are amended to read:

12 938.19 **(1m)** SCHOOL ABSENCE. A juvenile who is absent from school without an
13 acceptable excuse under s. 118.15 may be taken into custody by an individual designated
14 under s. 118.16 (2m) (a) if the school attendance officer of the school district in which the
15 juvenile resides, or the juvenile's parent, guardian, or legal custodian, requests that the
16 juvenile be taken into custody. The request shall specifically identify the juvenile.

17 **(2) NOTIFICATION OF PARENT, GUARDIAN, LEGAL CUSTODIAN.** When a juvenile is taken into
18 physical custody ~~as provided in~~ under this section, the person taking the juvenile into custody
19 shall immediately attempt to notify the parent, guardian, and legal custodian of the juvenile
20 by the most practical means. The person taking the juvenile into custody shall continue such
21 attempt until the parent, guardian, and legal custodian of the juvenile are notified, or the
22 juvenile is delivered to an intake worker under s. 938.20 (3), whichever occurs first. If the
23 juvenile is delivered to the intake worker before the parent, guardian, and legal custodian are

1 notified, the intake worker, or another person at his or her direction, shall continue the attempt
2 to notify until the parent, guardian, and legal custodian of the juvenile are notified.

3 **SECTION 5.** 938.19 (3) (title) of the statutes is created to read:

4 938.19 (3) (title) NOT AN ARREST.

5 **SECTION 6.** 938.20 (2) (title) of the statutes is created to read:

6 938.20 (2) (title) TO WHOM MAY BE RELEASED.

7 **SECTION 7.** 938.20 (2) (d) and (f) 2. of the statutes is amended to read:

8 938.20 (2) (d) If the juvenile is a runaway, the person who took the juvenile into custody
9 may release the juvenile to a home ~~authorized~~ under s. 48.227.

10 (f) 2. Make a determination of whether the juvenile is a child at risk, ~~as defined in~~ under
11 s. 118.153 (1) (a), unless that determination has been made within the current school semester.
12 If a juvenile is determined to be a child at risk under this subdivision, the school administrator
13 shall provide a program for the juvenile according to the plan developed under s. 118.153 (2)
14 (a).

15 **SECTION 8.** 938.20 (3) of the statutes is amended to read:

16 938.20 (3) NOTIFICATION OF PARENT, GUARDIAN, LEGAL CUSTODIAN. If the juvenile is
17 released under sub. (2) (b) to (d) or (g), the person who took the juvenile into custody shall
18 immediately notify the juvenile's parent, guardian, and legal custodian of the time and
19 circumstances of the release and the person, if any, to whom the juvenile was released. If the
20 juvenile is not released under sub. (2), the person who took the juvenile into custody shall
21 arrange in a manner determined by the court and law enforcement agencies for the juvenile
22 to be interviewed by the intake worker under s. 938.067 (2), ~~and~~. The person who took the
23 juvenile into custody shall make a statement in writing with supporting facts of the reasons
24 why the juvenile was taken into physical custody and shall give any juvenile 10 years of age

1 or older a copy of the statement ~~in addition to giving~~ and give a copy to the intake worker.

2 ~~When~~ If the intake interview is not done in person, the report may be read to the intake worker.

3 **SECTION 9.** 938.20 (4) (title) of the statutes is created to read:

4 938.20 (4) (title) DELIVERY TO HOSPITAL.

5 **SECTION 10.** 938.20 (5) of the statutes is amended to read:

6 938.20 (5) (title) DELIVERY UNDER CH. 51. If the juvenile is believed to be mentally ill,
7 drug dependent, or developmentally disabled, ~~and;~~ exhibits conduct which constitutes a
8 substantial probability of physical harm to the juvenile or to others, or a very substantial
9 probability of physical impairment or injury to the juvenile exists due to the impaired
10 judgment of the juvenile, ~~;~~ and the standards of s. 51.15 are met, the person taking the juvenile
11 into physical custody, the intake worker or other appropriate person shall proceed under s.
12 51.15.

13 **SECTION 11.** 938.20 (6) (title) of the statutes is created to read:

14 938.20 (6) (title) DELIVERY OF INTOXICATED JUVENILE.

15 **SECTION 12.** 938.20 (7) (a) and (b) of the statutes are amended to read:

16 938.20 (7) DUTIES OF INTAKE WORKER. (a) When a juvenile possibly involved in a
17 delinquent act is interviewed by an intake worker, the intake worker shall inform any the
18 juvenile possibly involved in a delinquent act of his or her right to counsel and the right against
19 self-incrimination.

20 (b) The intake worker shall review the need to hold the juvenile in custody and shall
21 make every effort to release the juvenile from custody as provided in par. (c). The intake
22 worker shall base his or her decision as to whether to release the juvenile or to continue to hold
23 the juvenile in custody on the criteria specified under in s. 938.205 and criteria established
24 under s. 938.06 (1) or (2).

1 **SECTION 13.** 938.20 (7) (c) 1. and 2. of the statutes are amended to read:

2 938.20 (7) (c) 1. To a parent, guardian, or legal custodian; or, if the parent, guardian,
3 or legal custodian is unavailable, unwilling, or unable to provide supervision for the juvenile,
4 ~~release the juvenile to a responsible adult, counseling or warning the juvenile as may be~~
5 ~~appropriate;~~ or, if the juvenile is 15 years of age or older, ~~release the juvenile without~~
6 immediate adult supervision, counseling, or warning the juvenile as may be appropriate.

7 2. In the case of a runaway juvenile, to a home authorized under s. 48.227.

8 **SECTION 14.** 938.20 (8) of the statutes is amended to read:

9 938.20 (8) NOTIFICATION THAT HELD IN CUSTODY. (a) If a juvenile is held in custody, the
10 intake worker shall notify the juvenile's parent, guardian, and legal custodian of the reasons
11 for holding the juvenile in custody and of the juvenile's whereabouts unless there is reason to
12 believe that notice would present imminent danger to the juvenile. ~~If a juvenile who has~~
13 ~~violated a condition of aftercare supervision administered by the department or a county~~
14 ~~department, a condition of the juvenile's placement in a Type 2 secured correctional facility~~
15 ~~or a Type 2 child caring institution, or a condition of the juvenile's participation in the intensive~~
16 ~~supervision program under s. 938.534 is held in custody, the intake worker shall also notify~~
17 ~~the department or county department, whichever has supervision over the juvenile, of the~~
18 ~~reasons for holding the juvenile in custody, of the juvenile's whereabouts, and of the time and~~
19 ~~place of the detention hearing required under s. 938.21.~~ The parent, guardian, and legal
20 custodian shall also be notified of the time and place of the detention hearing required under
21 s. 938.21, the nature and possible consequences of ~~that~~ the hearing, and the right to present
22 and cross-examine witnesses at the hearing. If the parent, guardian, or legal custodian is not
23 immediately available, the intake worker or another person designated by the court shall
24 provide notice as soon as possible. ~~When~~

1 **(b)** If the juvenile is alleged to have committed a delinquent act, the juvenile shall
2 receive the same notice about the detention hearing as the parent, guardian, or legal custodian.
3 The intake worker shall notify both the juvenile and the juvenile's parent, guardian, or legal
4 custodian.

5 **(c)** If a juvenile who has violated a condition of aftercare supervision administered by
6 the department or a county department, a condition of the juvenile's placement in a Type 2
7 secured correctional facility or a Type 2 child caring institution, or a condition of the juvenile's
8 participation in the intensive supervision program under s. 938.534 is held in custody, the
9 intake worker shall also notify the department or county department, whichever has
10 supervision over the juvenile, of the reasons for holding the juvenile in custody, of the
11 juvenile's whereabouts, and of the time and place of the detention hearing required under s.
12 938.21.

13 **SECTION 15.** 938.205 of the statutes is amended to read:

14 **938.205 Criteria for holding a juvenile in physical custody. (1) CRITERIA.** A juvenile
15 may be held under s. 938.207, 938.208, or 938.209 (1) if the intake worker determines that
16 there is probable cause to believe the juvenile is within the jurisdiction of the court and if
17 probable cause exists to believe any of the following:

18 (a) ~~That if~~ **If** the juvenile is not held he or she will commit injury to the person or
19 property of others.

20 (b) ~~That the~~ **The** parent, guardian, or legal custodian of the juvenile or other
21 responsible adult is neglecting, refusing, unable, or unavailable to provide adequate
22 supervision and care and ~~that~~ services to ensure the juvenile's safety and well-being are not
23 available or would be inadequate.

1 (c) ~~That the~~ The juvenile will run away or be taken away so as to be unavailable for
2 proceedings of the court or its officers, proceedings of the division of hearings and appeals in
3 the department of administration for revocation of aftercare supervision, or action by the
4 department or county department relating to a violation of a condition of the juvenile's
5 placement in a Type 2 secured correctional facility or a Type 2 child caring institution or a
6 condition of the juvenile's participation in the intensive supervision program under s. 938.534.

7 (2) TO WHOM APPLIES. The criteria for holding a juvenile in custody ~~specified in~~ under
8 this section ~~shall~~ govern the decision of all persons responsible for determining whether the
9 action is appropriate.

10 **SECTION 16.** 938.207 (1) (title) of the statutes is created to read:

11 938.207 (1) (title) WHERE MAY BE HELD.

12 **SECTION 17.** 938.207 (1) (c), (cm) and (f) and (2) of the statutes are amended to read:

13 938.207 (1) (c) A licensed foster home or a licensed treatment foster home ~~provided~~
14 if the placement does not violate the conditions of the license.

15 (cm) A licensed group home ~~provided that~~ if the placement does not violate the
16 conditions of the license.

17 (f) The home of a person not a relative, ~~if the placement does not exceed 30 days, though~~
18 ~~the placement may be extended for an additional 30 days for cause by the court, and if the~~
19 ~~person has not had a foster home or treatment foster home license refused, revoked, or~~
20 ~~suspended within the last previous 2 years. Such a placement may not exceed 30 days, unless~~
21 the placement is extended by the court for cause for an additional 30 days.

22 (2) If a facility listed in sub. (1) (b) to (k) is used to hold juveniles a juvenile in custody,
23 or if supervisory services of a home detention program are provided to juveniles a juvenile
24 held under sub. (1) (a), ~~its authorized rate shall be paid by the county~~ shall pay the facility's

1 authorized rate for the care of the juvenile. If no authorized rate has been established, the court
2 shall fix a reasonable sum to ~~be fixed by the court shall~~ be paid by the county for the
3 supervision or care of the juvenile.

4 **SECTION 18.** 938.208 (1) (title), (2) (title), (3) (title), (4) (title) and (6) (title) of the
5 statutes are created to read:

6 938.208 (1) (title) DELINQUENT ACT AND RISK OF HARM.

7 (2) (title) RUNAWAY FROM ANOTHER STATE OR SECURE CUSTODY.

8 (3) (title) PROTECTIVE ORDER.

9 (4) (title) RUNAWAY FROM NONSECURE CUSTODY.

10 (6) (title) SUBJECT TO JURISDICTION OF ADULT COURT.

COMMENT: In sub. (2), what is meant by “no reasonable opportunity to
return the juvenile”? Should this phrase be clarified?

11 **SECTION 19.** 938.208 (5) of the statutes is amended to read:

12 938.208 (5) RUNAWAY FROM ANOTHER COUNTY AND RISK OF RUNAWAY FROM NONSECURE
13 CUSTODY. Probable cause exists to believe that the juvenile has been adjudged or alleged to
14 be delinquent and has run away from another county and would run away from nonsecure
15 custody pending his or her return. A juvenile may be held in secure custody under this
16 subsection for no more than 24 hours after the end of the day that the decision to hold the
17 juvenile was made unless an extension of those 24 hours is ordered by the judge for good cause
18 shown. Only one extension may be ordered ~~by the judge.~~

19 **SECTION 20.** 938.209 (1) (title) of the statutes is created to read:

20 938.209 (1) (title) COUNTY JAIL.

21 **SECTION 21.** 938.209 (1) (b) of the statutes is amended to read:

1 (b) The juvenile presents a substantial risk of physical harm to other persons in the
2 secure detention facility, as evidenced by previous acts or attempts, which can only be avoided
3 by transfer to the jail. The conditions of par. (a) 1. to 5. shall be met. The juvenile shall be
4 given a hearing and may be transferred only upon order of the judge.

5 **SECTION 22.** 938.209 (2m) (title) and (3) (title) of the statutes are created to read:

6 938.209 (2m) (title) MUNICIPAL LOCKUP.

7 (3) (title) JUVENILES UNDER ADULT COURT JURISDICTION.

8 **SECTION 23.** 938.21 (1) of the statutes is amended to read:

9 938.21 (1) HEARING; WHEN HELD. (a) If a juvenile who has been taken into custody is
10 not released under s. 938.20, a hearing to determine whether to continue to hold the juvenile
11 ~~shall continue to be held~~ in custody under the criteria of ss. 938.205 to 938.209 (1) shall be
12 conducted by the judge or circuit court commissioner within 24 hours after the end of the day
13 that the decision to hold the juvenile was made, excluding Saturdays, Sundays, and legal
14 holidays. By the time of the hearing a petition under s. 938.25 shall be filed, except that no
15 petition need be filed ~~where~~ if a juvenile is taken into custody under s. 938.19 (1) (b) or (d)
16 2., 6., or 7. or ~~where~~ if the juvenile is a runaway from another state, in which case a written
17 statement of the reasons for holding a juvenile in custody shall be substituted if the petition
18 is not filed. If no hearing has been held within 24 hours or if no petition or statement has been
19 filed at the time of the hearing, the juvenile shall be released except as provided in par. (b).
20 ~~A parent not present at the hearing~~ The court shall be ~~granted~~ grant a rehearing upon request
21 of a parent not present at the hearing for good cause shown.

22 (b) If no petition has been filed by the time of the hearing, a juvenile may be held in
23 custody with the approval of the judge or circuit court commissioner for an additional 48 hours
24 from the time of the hearing only if, as a result of the facts brought forth at the hearing, the

1 judge or circuit court commissioner determines that probable cause exists to believe that the
2 juvenile is an imminent danger to himself or herself or to others, or that probable cause exists
3 to believe that the parent, guardian, or legal custodian of the juvenile or other responsible adult
4 is neglecting, refusing, unable, or unavailable to provide adequate supervision and care. The
5 extension may be granted only once for any petition. In the event of failure to file a petition
6 within the 48-hour extension period ~~provided for in~~ under this paragraph, the judge or circuit
7 court commissioner shall order the juvenile's immediate release from custody.

COMMENT: Should this subsection be modified so that a request for a change of placement under s. 938.357 or for revision of a dispositional order under s. 938.363 could be filed instead of a JIPS petition, if appropriate?

8 **SECTION 24.** 938.21 (2) (b), (c) and (d) of the statutes are amended to read:

9 938.21 (2) (b) A copy of the petition shall be given to the juvenile at or prior to the time
10 of the hearing. Prior notice of the hearing shall be given to the juvenile's parent, guardian, and
11 legal custodian and to the juvenile ~~in accordance with~~ under s. 938.20 (8).

12 (c) Prior to the commencement of the hearing, the juvenile ~~shall be informed by the~~
13 judge or circuit court commissioner shall inform the juvenile of the allegations that have been
14 or may be made, the nature and possible consequences of this hearing as compared to possible
15 future hearings, the provisions of s. 938.18 if applicable, the right to counsel under s. 938.23
16 regardless of ability to pay if the juvenile is not yet represented by counsel, the right to remain
17 silent, the fact that the silence may not be adversely considered by the judge or circuit court
18 commissioner, the right to confront and cross-examine witnesses, and the right to present
19 witnesses.

20 (d) If the juvenile is not represented by counsel at the hearing and the juvenile is
21 continued in custody as a result of the hearing, the juvenile may request through counsel

1 subsequently appointed or retained or through a guardian ad litem that the order to hold in
2 custody be reheard. If the request is made, a rehearing shall take place as soon as possible.
3 Whether or not counsel was present, ~~any order to hold the juvenile in custody shall be subject~~
4 ~~to rehearing~~ the order shall be reheard for good cause.

5 **SECTION 25.** 938.21 (3) (am), (b), (d) and (e) of the statutes are amended to read:

6 938.21 (3) (am) The parent, guardian, or legal custodian may waive his or her right to
7 participate in the hearing under this section subsection. After any waiver, a rehearing shall
8 be granted at the request of the parent, guardian, legal custodian, or any other interested party
9 for good cause shown.

COMMENT: The department of corrections/division of juvenile services
(DOC/DJS) has noted that waiver of participation by parents, guardians,
and legal custodians is not provided under sub. (2), relating to runaway
and delinquent juveniles. Should this provision be included in sub. (2)?
Also, should waivers be in writing?

10 (b) If present at the hearing, a copy of the petition shall be given to the parent, guardian,
11 or legal custodian, and to the juvenile if he or she is 12 years of age or older, before the hearing
12 begins. Prior notice of the hearing shall be given to the juvenile's parent, guardian, and legal
13 custodian and to the juvenile if he or she is 12 years of age or older ~~in accordance with~~ under
14 s. 938.20 (8).

15 (d) Prior to the commencement of the hearing, the court shall inform the parent,
16 guardian, or legal custodian ~~shall be informed by the court~~ of the allegations that have been
17 made or may be made, the nature and possible consequences of this hearing as compared to
18 possible future hearings, the right to confront and cross-examine witnesses, and the right to
19 present witnesses.

20 (e) If the parent, guardian, or legal custodian or the juvenile is not represented by
21 counsel at the hearing and the juvenile is continued in custody as a result of the hearing, the

1 parent, guardian, legal custodian, or juvenile may request through counsel subsequently
2 appointed or retained or through a guardian ad litem that the order to hold the juvenile in
3 custody be reheard. If the request is made, a rehearing shall take place as soon as possible.
4 Any An order to hold the juvenile in custody shall be ~~subject to rehearing~~ reheard for good
5 cause, whether or not counsel was present.

6 **SECTION 26.** 938.21 (4) (title) of the statutes is created to read:

7 938.21 (4) (title) ORDER TO CONTINUE IN CUSTODY.

8 **SECTION 27.** 938.21 (4) (a) of the statutes is amended to read:

9 938.21 (4) (a) Place the juvenile with a parent, guardian, legal custodian, or other
10 responsible person ~~and~~. The order may impose reasonable restrictions on the juvenile's travel,
11 and association with other persons or places of abode during the period of placement,
12 including a condition requiring the juvenile to return to other custody as requested; or subject
13 the juvenile to the supervision of an agency agreeing to supervise the juvenile. Reasonable
14 restrictions may be placed upon the conduct of the parent, guardian, legal custodian, or other
15 responsible person which may be necessary to ensure the safety of the juvenile.

16 **SECTION 28.** 938.21 (5) (b) 1. of the statutes is amended to read:

17 938.21 (5) (b) 1. A finding that continued placement of the juvenile in his or her home
18 would be contrary to the welfare of the juvenile. Unless the judge or circuit court
19 commissioner finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4.
20 applies, the order shall in addition include a finding as to whether the person who took the
21 juvenile into custody and the intake worker have made reasonable efforts to prevent the
22 removal of the juvenile from the home, while assuring that the juvenile's health and safety are
23 the paramount concerns, and a finding as to whether the person who took the juvenile into
24 custody and the intake worker have made reasonable efforts to make it possible for the juvenile

1 to return safely home ~~or, if,~~ If for good cause shown sufficient information is not available
2 for the judge or circuit court commissioner to make a finding as to whether those reasonable
3 efforts were made to prevent the removal of the juvenile from the home, the order shall include
4 a finding as to whether those reasonable efforts were made to make it possible for the juvenile
5 to return safely home and an order for the county department or agency primarily responsible
6 for providing services to the juvenile under the custody order to file with the court sufficient
7 information for the judge or circuit court commissioner to make a finding as to whether those
8 reasonable efforts were made to prevent the removal of the juvenile from the home by no later
9 than 5 days after the date of the order.

COMMENTS: 1. DOC/DJS recommends that this subdivision clarify that a second custody hearing must be held and a second custody order must be entered if the reasonable efforts finding cannot be made at the initial custody hearing.

2. DOC/DJS recommends that, the last sentence, the time limit of 5 days after the date of the order should exclude Saturdays, Sundays, and legal holidays.

10 **SECTION 29.** 938.21 (6) of the statutes is amended to read:

11 938.21 (6) AMENDMENT OF ORDER. An order ~~placing a juvenile~~ under sub. (4) (a) ~~on~~
12 ~~conditions specified in this section~~ may at any time be amended at any time, with notice, so
13 as to return the juvenile to another form of custody for failure to conform to the conditions
14 originally imposed. A juvenile may be transferred to secure custody if he or she meets the
15 criteria of s. 938.208.

COMMENT: In *In re Lindsey A.F.*, the Wisconsin Supreme Court held that s. 958.21 (7), which allows the court to dismiss a petition and refer a matter to the intake worker for deferred prosecution, is ambiguous and interpreted the subsection to mean that the court has the authority to dismiss a petition and refer the matter to the intake worker for deferred prosecution even when the juvenile is not in custody. [262 Wis. 2d 200, 663 N.W.2d 757, 763 (2003).] Should this provision be modified or moved to another section?

1 **SECTION 30.** 938.22 (title), (1) (title) of the statutes are created to read:

2 938.22 **(1)** (title) ESTABLISHMENT AND POLICIES.

3 **SECTION 31.** 938.22 (1) (a) and (c) of the statutes are amended to read:

4 **938.22 Establishment of county or County and private juvenile facilities.** (1) (a)

5 Subject to s. 48.66 (1) (b), the county board of supervisors of ~~any~~ a county may establish a
6 secured group home or a secure detention facility in accordance with ss. 301.36 and 301.37
7 or the county boards of supervisors for 2 or more counties may jointly establish a secured
8 group home or a secure detention facility in accordance with ss. 46.20, 301.36~~2~~ and 301.37.
9 The county board of supervisors of ~~any~~ a county may establish a shelter care facility in
10 accordance with ss. 46.16 and 46.17 or the county boards of supervisors for 2 or more counties
11 may jointly establish a shelter care facility in accordance with ss. 46.16, 46.17~~2~~ and 46.20. A
12 private entity may establish a secure detention facility in accordance with ss. 301.36 and
13 301.37 and contract with one or more county boards of supervisors under s. 938.222 ~~for~~
14 ~~holding to hold~~ hold juveniles in the private secure detention facility.

15 (c) In counties having a population of 500,000 or more, the nonjudicial operational
16 policies of a public secured group home, secure detention facility, and the detention section
17 of the children's court center shall be established by the county board of supervisors, and the
18 ~~execution thereof~~ policies shall be ~~the responsibility of~~ executed by the director of the
19 children's court center.

20 **SECTION 32.** 938.22 (2) (title) of the statutes is created to read:

21 938.22 **(2)** (title) PLANS AND REQUIREMENTS.

22 **SECTION 33.** 938.22 (2) (a) and (b) of the statutes are amended to read:

23 938.22 **(2)** (a) Counties shall submit plans for ~~the~~ a secured group home, secure
24 detention facility or juvenile portion of the county jail to the department of corrections and

1 submit plans for ~~the~~ a shelter care facility to the department of health and family services. A
2 private entity that proposes to establish a secure detention facility shall submit plans for the
3 ~~secure detention~~ facility to the department of corrections. The applicable department shall
4 review the submitted plans. A county or a private entity may not implement ~~any such~~ a plan
5 unless the applicable department has approved the plan. The department of corrections shall
6 promulgate rules establishing minimum requirements for the approval of ~~the~~ and operation
7 of secured group homes, secure detention facilities, and the juvenile portion of county jails.
8 The plans and rules shall be designed to protect the health, safety, and welfare of the juveniles
9 placed in those facilities.

10 (b) If the department approves, a secure detention facility or a holdover room may be
11 ~~a part of~~ in a public building in which there is a jail or other facility for the detention of adults
12 if the secure detention facility or holdover room is ~~so~~ physically segregated from the jail or
13 other facility so that juveniles may enter the secure detention facility or holdover room ~~may~~
14 ~~be entered~~ without passing through areas where adults are confined and ~~that~~ juveniles detained
15 in the secure detention facility or holdover room cannot communicate with or view adults
16 confined therein.

17 **SECTION 34.** 938.22 (3) (title) of the statutes is created to read:

18 938.22 (3) (title) SUPERVISION OF FACILITY.

19 **SECTION 35.** 938.22 (3) (am), (ar) and (c) of the statutes are amended to read:

20 938.22 (3) (am) If a secure detention facility or holdover room is part of a public
21 building in which there is a jail or other facility for the detention of adults, the sheriff or other
22 keeper of the jail or other facility for the detention of adults may nominate persons ~~to be~~
23 ~~considered under par. (a)~~ for the position of superintendent of the secure detention facility or
24 holdover room. Nominees under this paragraph shall have demonstrated administrative

1 abilities and a ~~demonstrated~~ interest in the ~~problems~~ of juvenile justice and the welfare of
2 juveniles.

3 (ar) Notwithstanding sub. (1) (b), if a secure detention facility or holdover room is part
4 of in a public building in which there is a jail or other facility for the detention of adults, the
5 sheriff or other keeper of the jail or other facility for the detention of adults shall determine
6 the security and emergency response policies of that secure detention facility or holdover
7 room ~~relating to security and emergency response~~ and shall determine the procedures for
8 implementing those policies.

9 (c) ~~All superintendents~~ A superintendent appointed under par. (a), (b),₂ or (bm) after
10 May 1, 1992, shall, within one year after that appointment, successfully complete an
11 administrative training program approved or provided by the department of justice.

12 **SECTION 36.** 938.22 (5) (title) and (7) (title) of the statutes are created to read:

13 938.22 (5) (title) COUNTY CONTRACTS WITH PRIVATE FACILITIES.

14 (7) (title) LICENSE AND FEES.

15 **SECTION 37.** 938.22 (7) (a) and (b) of the statutes are amended to read:

16 938.22 (7) (a) No person may establish a shelter care facility without first obtaining
17 a license under s. 48.66 (1) (a). To obtain a license under s. 48.66 (1) (a) to operate a shelter
18 care facility, a person must meet the minimum requirements for a license established by the
19 department of health and family services under s. 48.67, meet the requirements specified in
20 s. 48.685₂, and pay the license fee under par. (b). A license issued under s. 48.66 (1) (a) to
21 operate a shelter care facility is valid until revoked or suspended, but shall be reviewed every
22 2 years as ~~provided in~~ under s. 48.66 (5).

23 (b) Before the department of health and family services may issue a license under s.
24 48.66 (1) (a) to operate a shelter care facility, the shelter care facility ~~must~~ shall pay to ~~that~~ the

1 department a biennial fee of \$60.50, plus a biennial fee of \$18.15 per juvenile, based on the
2 number of juveniles that the shelter care facility is licensed to serve. A shelter care facility
3 that wishes to continue a license issued under s. 48.66 (1) (a) shall pay the fee ~~under this~~
4 ~~paragraph~~ by the continuation date of the license. A new shelter care facility shall pay the fee
5 ~~under this paragraph~~ by no later than 30 days before the opening of the shelter care facility.

6 **SECTION 38.** 938.222 (1) of the statutes is amended to read:

7 938.222 (1) USES OF FACILITIES. The county board of supervisors of any a county may
8 contract with a private entity that operates a secure detention facility for the use of the ~~secure~~
9 ~~detention facility for the holding of~~ to hold juveniles who meet the criteria under s. 48.208,
10 938.17 (1), 938.183 (1m) (a), or 938.208 or who are subject to a disposition under s. 938.17
11 (1) (b) or 938.34 (3) (f), a sanction under s. 938.355 (6) (d) 1., or short-term detention under
12 s. 938.355 (6d) or 938.534 (1).

13 **SECTION 39.** 938.222 (2) (title) of the statutes is created to read:

14 938.222 (2) (title) CONTRACT REQUIREMENTS.

15 **SECTION 40.** 938.222 (2) (a) 1. and 2. of the statutes are amended to read:

16 938.222 (2) (a) 1. That the private secure detention facility meet or exceed the minimum
17 requirements for the approval and operation of a secure detention facility established by the
18 department by ~~rules promulgated~~ rule under s. 938.22 (2) (a) and that the private secure
19 detention facility be approved by the department under s. 301.36.

20 2. That the private secure detention facility provide educational programming, health
21 care, and other care that is equivalent to that which a juvenile would receive ~~if held~~ in a public
22 secure detention facility.

23 **SECTION 41.** 938.223 (1) (title) of the statutes is created to read:

24 938.223 (1) (title) CONTRACT REQUIREMENTS.

1 **SECTION 42.** 938.223 (2) (a) 1. and 2. of the statutes are amended to read:

2 938.223 (2) (a) 1. That the Minnesota secure detention facility meet or exceed the
3 minimum requirements for the approval and operation of a Wisconsin secure detention facility
4 established by the department by rules promulgated rule under s. 938.22 (2) (a) and that the
5 Minnesota secure detention facility be approved by the department under s. 301.36.

6 2. That the Minnesota secure detention facility provide educational programming,
7 health care, and other care that is equivalent to that which a juvenile would receive if held in
8 a Wisconsin secure detention facility.

9 **SECTION 43.** 938.223 (3) of the statutes is amended to read:

10 938.223 (3) MINNESOTA JUVENILES IN WISCONSIN FACILITIES. The county board of
11 supervisors of ~~any~~ a county that operates a secure detention facility may contract with one or
12 more counties in Minnesota for the use of the secure detention facility operated by the
13 Wisconsin county for the holding of juveniles transferred to that secure detention facility by
14 the Minnesota county.

15 **SECTION 44.** 938.224 (1) of the statutes is amended to read:

16 938.224 (1) USE OF FACILITIES. The county board of supervisors of ~~any~~ a county may
17 contract with the department for the use of a secured correctional facility operated by the
18 department for the holding of juveniles who meet the criteria under s. 48.208, 938.17 (1),
19 938.183 (1m) (a), or 938.208 or who are subject to a disposition under s. 938.17 (1) (b) or
20 938.34 (3) (f), a sanction under s. 938.355 (6) (d) 1., or short-term detention under s. 938.355
21 (6d) or 938.534 (1).

22 **SECTION 45.** 938.224 (2) (title), (3) (title) and (4) (title) of the statutes are created to
23 read:

24 938.224 (2) (title) CONTRACT REQUIREMENTS.

1 **(3)** (title) ADDITIONAL REQUIREMENTS.

2 **(4)** (title) SUPERVISION AND CONTROL OF JUVENILES.

3 **SECTION 46.** 938.23 (1g) and (1m) (a) and (am) of the statutes are amended to read:

4 938.23 **(1g)** DEFINITION. In this section, “counsel” means an attorney acting as
5 adversary counsel who shall advance and protect the legal rights of the party represented, and
6 who. Counsel may not act as guardian ad litem for any party in the same proceeding.

7 **(1m)** (a) Any A juvenile alleged to be delinquent under s. 938.12 or held in a secure
8 detention facility shall be represented by counsel at all stages of the proceedings, but a. A
9 juvenile 15 years of age or older may waive counsel if the court is satisfied that the waiver is
10 knowingly and voluntarily made and the court accepts the waiver. If the waiver is accepted,
11 the court may not place the juvenile in a secured correctional facility, a secured child caring
12 institution, or a secured group home; transfer supervision of the juvenile to the department
13 for participation in the serious juvenile offender program; or transfer jurisdiction over the
14 juvenile to adult court.

15 (am) A juvenile subject to a sanction under s. 938.355 (6) (a) shall be is entitled to
16 representation by counsel at the hearing under s. 938.355 (6) (c).

17 **SECTION 47.** 938.23 (3), (4) and (5) of the statutes are amended to read:

18 938.23 **(3)** POWER OF THE COURT TO APPOINT COUNSEL. ~~Except in proceedings under s.~~
19 ~~938.13, at~~ At any time, upon request or on its own motion, the court may appoint counsel for
20 the juvenile or any party, unless the juvenile or the party has or wishes to retain counsel of his
21 or her own choosing. ~~The; however, the~~ however, the court may not appoint counsel for any party other than
22 the juvenile in a proceeding under s. 938.13.

23 **(4)** PROVIDING COUNSEL. ~~In any situation under this section in which~~ If a juvenile has
24 a right to be represented by counsel or is provided counsel at the discretion of the court under

1 this section and counsel is not knowingly and voluntarily waived, the court shall refer the
2 juvenile to the state public defender and counsel shall be appointed by the state public defender
3 under s. 977.08 without a determination of indigency. In any other situation under this section
4 in which a person has a right to be represented by counsel or is provided counsel at the
5 discretion of the court, competent and independent counsel shall be provided and reimbursed
6 in any manner suitable to the court regardless of the person's ability to pay, except that the
7 court may not order a person who files a petition under s. 813.122 or 813.125 to reimburse
8 counsel for the juvenile who is named as the respondent in that petition.

9 (5) COUNSEL OF OWN CHOOSING. ~~Regardless of any provision of~~ Notwithstanding this
10 section, any party is entitled to retain counsel of his or her own choosing at his or her own
11 expense in any proceeding under this chapter.

12 **SECTION 48.** 938.235 (1) (a) and (3) (a) and (b) (intro.) of the statutes are amended to
13 read:

14 **938.235 (1) APPOINTMENT.** (a) The court may appoint a guardian ad litem in any
15 appropriate matter under this chapter.

16 (3) DUTIES AND RESPONSIBILITIES. (a) The guardian ad litem shall be an advocate for
17 the best interests of the person for whom the appointment is made. The guardian ad litem shall
18 function independently, in the same manner as an attorney for a party to the action, and shall
19 consider, but shall not be bound by, the wishes of such the person or the positions of others
20 as to the best interests of such the person. If the guardian ad litem determines that the best
21 interests of the person are substantially inconsistent with the person's wishes ~~of such person,~~
22 the guardian ad litem shall so inform the court and the court may appoint counsel to represent
23 ~~that~~ the person. The guardian ad litem has none of the rights or duties of a general guardian.

1 (b) In addition to any other duties and responsibilities ~~required~~ of a guardian ad litem,
2 a guardian ad litem appointed for a juvenile who is the subject of a proceeding under s. 938.13
3 shall do all of the following:

4 **SECTION 49.** 938.235 (7) and (8) (a) and (b) of the statutes are amended to read:

5 938.235 (7) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a
6 guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon
7 the termination of any appeal in which the guardian ad litem participates. The guardian ad
8 litem may appeal, may participate in an appeal, or may do neither. If an appeal is taken by any
9 party and the guardian ad litem chooses not to participate in ~~that~~ the appeal, he or she shall file
10 with the appellate court a statement of reasons for not participating. Irrespective of the
11 guardian ad litem's decision not to participate in an appeal, the appellate court may order the
12 guardian ad litem to participate in the appeal. At any time, the guardian ad litem, any party,
13 or the person for whom the appointment is made may request in writing or on the record that
14 the court extend or terminate the appointment or reappointment. The court may extend that
15 appointment, or reappoint a guardian ad litem appointed under this section, after the entry of
16 the final order or after the termination of the appeal, but the court shall specifically state the
17 scope of the responsibilities of the guardian ad litem during the period of ~~that~~ the extension
18 or reappointment.

19 (8) COMPENSATION. (a) A guardian ad litem appointed under this chapter shall be
20 compensated at a rate that the court determines is reasonable, ~~except that, if,~~ If the court orders
21 a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed
22 the compensation payable to a private attorney under s. 977.08 (4m) (b).

23 (b) The court may order either or both ~~of the~~ parents of a juvenile for whom a guardian
24 ad litem is appointed under this chapter to pay all or any part of the compensation of the

1 guardian ad litem. ~~In addition, upon~~ Upon motion by the guardian ad litem, the court may
2 order either or both of the parents of the juvenile to pay the fee for an expert witness used by
3 the guardian ad litem, if the guardian ad litem shows that the use of the expert is necessary to
4 assist the guardian ad litem in performing his or her functions or duties under this chapter. If
5 one or both parents are indigent or if the court determines that it would be unfair to a parent
6 to require him or her to pay, the court may order the county of venue to pay the compensation
7 and fees, in whole or in part. If the court orders the county of venue to pay because a parent
8 is indigent, the court may also order either or both of the parents to reimburse the county, in
9 whole or in part, for the payment.

10 **SECTION 50.** 938.237 (1) (title), (2) (title) and (3) (title) of the statutes are created to
11 read:

12 938.237 **(1)** (title) CITATION FORM.

13 **(2)** (title) PROCEDURES.

14 **(3)** (title) DISPOSITION.

15 (END)