

1       **AN ACT** *to renumber* 938.315 (1) (g); *to renumber and amend* 938.315 (1) (h) and  
2       (i); *to amend* 938.24 (1), 938.24 (2) and (2m), 938.24 (5) to (7), 938.243 (1) (title)  
3       and (intro.), (am), (c) and (h), (1m) and (3), 938.245 (1) and (1m), 938.245 (2) (a) 2.,  
4       3. and 4., 938.245 (2) (a) 5. a., am. and c., 938.245 (2) (a) 7., 938.245 (2) (a) 8. c.,  
5       938.245 (2g) to (4), 938.245 (6) to (9), 938.25 (1) to (2m), 938.255 (1) (intro.) and  
6       (c), 938.265, 938.27 (3) (a) 1., 938.27 (4m), (5) and (6), 938.273 (1), 938.275 (2) (a),  
7       (b) and (c), 938.28, 938.29 (1), (1g) and (1m), 938.29 (2m) (b), 938.293 (3), 938.295  
8       (1), (1c) (intro.), (1g), (2) (a) and (b) and (3), 938.2965 (2), 938.297 (2) to (4),  
9       938.299 (1) (ar) and (b), 938.299 (4) (b) and (5), 938.299 (9) (a) and (b), 938.30 (2),  
10       938.30 (4) (a), (bm) and (4m), 938.30 (5) (a) 2., (c) (intro.), (d) (intro.) and (e) 1.,  
11       938.30 (6) (b) and (c) and (7), 938.30 (8) (b) and (9), 938.31 (7), 938.315 (1) (intro.)  
12       (a) to (fm), 938.32 (1) (a), (am), (b) 1., 1m. and 2., (c) 1. and 3. and (d), (1d) and  
13       (1g) (intro.) and (b), 938.32 (1m) (a), (1p), (1t) (a) 1. and 1m., (1v) and (1x), 938.32  
14       (3) and (4) and 938.32 (5) (a); and *to create* 938.24 (1m) (title), 938.24 (2r) (title),  
15       (3) (title) and (4) (title), 938.24 (4) (title), 938.245 (2) (title) and (2) (a) (title),  
16       938.245 (2) (a) 5. (title), 938.245 (2) (a) 6. (title), 938.245 (2) (a) 8. (title), 938.245  
17       (2) (a) 9m. (title) and (b) (title), 938.245 (5) (title), 938.25 (3) (title), (4) (title), (5)  
18       (title) and (6) (title), 938.255 (2) (title), (3) (title) and (4) (title), 938.263 (1) (title)  
19       and (2) (title), 938.27 (1) (title), (2) (title) and (3) (title), 938.27 (4) (title), 938.27 (7)  
20       (title) and (8) (title), 938.273 (2) (title) and (3) (title), 938.275 (1) (title) and (2)  
21       (title), 938.29 (2) (title) and (2m) (title), 938.29 (3) (title), (4) (title), (5) (title) and  
22       (6) (title), 938.293 (1) (title) and (2) (title), 938.295 (4) (title), 938.296 (1) (title),

1 938.2965 (1) (title), 938.297 (1) (title), 938.297 (5) (title), (6) (title) and (7) (title),  
2 938.299 (1) (title), 938.299 (4) (title), 938.299 (6) (title), (7) (title), (8) (title) and (9)  
3 (title), 938.30 (1) (title), 938.30 (3) (title) and (4) (title), 938.30 (5) (title), 938.30 (6)  
4 (title), 938.30 (8) (title), 938.30 (10) (title), 938.31 (1) (title), (2) (title) and (4)  
5 (title), 938.315 (2) (title), (2m) (title) and (3) (title), 938.32 (1) (title), 938.32 (1m)  
6 (title), 938.32 (1r) (title) and (2) (title), 938.32 (5) (title) and 938.32 (6) (title) of the  
7 statutes; **relating to:** procedure.

*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 V, relating to procedure.

8 **SECTION 1.** 938.24 (1) of the statutes is amended to read:

9 938.24 (1) REFERRAL OF INFORMATION TO INTAKE WORKER; INQUIRY. Except when a  
10 citation has been issued under s. 938.17 (2), information indicating that a juvenile should be  
11 referred to the court as delinquent, in need of protection or services or in violation of a civil  
12 law or a county, town or municipal ordinance shall be referred to ~~the~~ an intake worker, ~~who~~.  
13 The intake worker shall conduct an intake inquiry on behalf of the court to determine whether  
14 the available facts establish prima facie jurisdiction and to determine the best interests of the  
15 juvenile and of the public with regard to any action to be taken.

16 **SECTION 2.** 938.24 (1m) (title) of the statutes is created to read:

17 938.24 (1m) (title) COUNSELING.

18 **SECTION 3.** 938.24 (2) and (2m) of the statutes are amended to read:

1           938.24 (2) MULTIDISCIPLINARY SCREENS; INTAKE CONFERENCES. (a) As part of the intake  
2 inquiry ~~and with [after] notice to the juvenile, parent, guardian, and legal custodian,~~ the intake  
3 worker may conduct multidisciplinary screens and intake conferences ~~with notice to the~~  
4 ~~juvenile, parent, guardian and legal custodian.~~ If sub. (2m) applies and if the juvenile has not  
5 refused to participate under par. (b), the intake worker shall conduct a multidisciplinary screen  
6 under s. 938.547 ~~if the juvenile has not refused to participate under par. (b).~~

7           (b) No juvenile or other person may be compelled by an intake worker to appear at any  
8 conference, participate in a multidisciplinary screen, produce any papers or visit any place ~~by~~  
9 ~~an intake worker.~~

10           (2m) MULTIDISCIPLINARY SCREEN; PILOT PROGRAM. (a) In counties that have a pilot  
11 program under s. 938.547, a multidisciplinary screen shall be conducted for a juvenile:

12           1. ~~Any juvenile alleged~~ Alleged to have committed a violation specified under ch. 961.

13           2. ~~Any juvenile alleged~~ Alleged to be delinquent or in need of protection and services  
14 who has at least 2 prior adjudications for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b)  
15 or 125.09 (2) or a local ordinance that strictly conforms to any of those ~~sections~~ statutory  
16 provisions.

17           3. ~~Any juvenile alleged~~ Alleged to have committed any offense which appears to the  
18 intake worker to be directly motivated by the juvenile's need to purchase or otherwise obtain  
19 alcohol beverages, controlled substances or controlled substance analogs.

20           4. ~~Any juvenile 12~~ Twelve years of age or older who requests and consents to a  
21 multidisciplinary screen.

22           5. ~~Any juvenile who~~ Who consents to a multidisciplinary screen requested by his or her  
23 parents.

1 (b) The multidisciplinary screen may be conducted by an intake worker for any reason  
2 other than those specified ~~in the criteria under~~ in par. (a).

3 **SECTION 4.** 938.24 (2r) (title), (3) (title) and (4) (title) of the statutes are created to read:

4 938.24 **(2r)** (title) TRIBAL COURT FOR AMERICAN INDIAN.

5 **(3)** (title) REQUEST FOR PETITION.

6 **(4)** (title) DEFERRED PROSECUTION AGREEMENT OR CASE CLOSURE.

7 **SECTION 5.** 938.24 (4) (title) of the statutes is created to read:

8 938.24 **(4)** (title) NOT APPLICABLE IF AT S. 938.21 HEARING.

9 **SECTION 6.** 938.24 (5) to (7) of the statutes are amended to read:

10 **(5)** INTAKE WORKER REQUIREMENTS FOR PETITION DEFERRED PROSECUTION OR CLOSING

11 CASE: TIME PERIODS. The intake worker shall request that a petition be filed, enter into a  
12 deferred prosecution agreement or close the case within 40 days ~~or sooner~~ of receipt of referral  
13 information. Before entering into a deferred prosecution agreement, the intake worker shall  
14 comply with s. 938.245 (1m), if applicable. If the case is closed or a deferred prosecution  
15 agreement is entered into, the district attorney, corporation counsel or other official under s.  
16 938.09 shall receive written notice of ~~such~~ that action. If the case is closed, the known victims  
17 of the juvenile's alleged act shall receive notice as provided under sub. (5m), if applicable.  
18 A notice of deferred prosecution of an alleged delinquency case shall include a summary of  
19 the facts surrounding the allegation and a list of the juvenile's prior intake referrals and  
20 dispositions. If a law enforcement officer has made a recommendation concerning the  
21 juvenile, the intake worker shall forward ~~this~~ the recommendation to the district attorney  
22 under s. 938.09. Notwithstanding the requirements of this section, the district attorney may  
23 initiate a delinquency petition under s. 938.25 within 20 days after notice that the case has been  
24 closed or that a deferred prosecution agreement has been entered into. The judge shall grant

1 appropriate relief as ~~provided in~~ under s. 938.315 (3) with respect to any such petition which  
2 is not referred or filed within the time limits specified ~~within~~ in this subsection. Failure to  
3 object ~~if to the fact that~~ a petition is not referred or filed within a time limit specified in this  
4 subsection waives that time limit.

**COMMENT:** With reference to the “within 40 days or sooner of receipt of referral information” in the first sentence in sub. (5), the department of corrections/division of juvenile services (hereafter, DOC/DJS) raises the following concern:

**“This provision causes problems when a child protection worker receives a referral and is also trained as a juvenile court intake worker; but the CPS worker is not acting as the Intake Worker when receiving the information.”.**

5 **(5m) INFORMATION TO VICTIMS IF CASE TO BE CLOSED.** If a juvenile is alleged to be  
6 delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12) and  
7 the intake worker ~~decides to close~~ closes the case, the intake worker shall make a reasonable  
8 attempt to inform all of the known victims of the juvenile’s act ~~that the case is being closed~~  
9 ~~at that time~~ of the closure.

10 **(6) WRITTEN POLICIES.** The intake worker shall perform his or her responsibilities under  
11 this section under general written policies ~~which the judge shall promulgate~~ promulgated  
12 under s. 938.06 (1) or (2).

13 **(7) NO INTAKE INQUIRY OR REVIEW FOR CITATIONS.** If a citation is issued to a juvenile, the  
14 citation shall is ~~not be the subject of an intake~~ to an inquiry or a review by an intake worker  
15 for the purpose of recommending deferred prosecution.

16 **SECTION 7.** 938.243 (1) (title) and (intro.), (am), (c) and (h), (1m) and (3) of the statutes  
17 are amended to read:

18 938.243 **(1)** (title) INFORMATION TO JUVENILE. Before conferring with the parent or  
19 juvenile during the intake inquiry, the intake worker shall personally inform a juvenile alleged

1 to have committed a delinquent act, and juvenile and the parents and juveniles of a juvenile  
2 10 years of age or ~~over~~ older who are the focus of an inquiry regarding the need for protection  
3 or services under s. 938.13 (4), (6), (6m) or (7), of all of the following:

4 (am) What allegations ~~could~~ may be in the petition to the court.

5 (c) The right to remain silent ~~and~~, the fact that in a delinquency proceeding the silence  
6 of the juvenile ~~shall~~ is not to be adversely considered by the court ~~although~~, and that in a  
7 nondelinquency proceeding the silence of any party may be relevant in any nondelinquency  
8 the proceeding.

9 (h) The right to have the allegations of the petition proved by clear and convincing  
10 evidence unless the juvenile ~~comes~~ is within the court's jurisdiction under s. 938.12 or 938.13  
11 (12), in which case the standard of proof ~~shall be~~ is beyond a reasonable doubt.

12 **(1m) DISCLOSURE OF INFORMATION FOR USE IN CIVIL DAMAGES ACTION.** If the juvenile who  
13 is the subject of the intake inquiry is alleged to have committed an act which resulted in  
14 personal injury or damage to or loss of the property of another, the intake worker shall inform  
15 the juvenile's parents in writing of the possibility of ~~disclosure~~:

16 (a) Disclosure of the identity of the juvenile and the parents, and of the juvenile's police  
17 records ~~and~~.

18 (b) Disclosure of the outcome of proceedings against the juvenile for use in civil actions  
19 for damages against the juvenile or the parents ~~and of the~~.

20 (c) The parents' ~~potential~~ liability for acts of their juveniles.

21 **(3) INFORMATION WHERE JUVENILE NOT AT INTAKE CONFERENCE OR HAS NOT HAD S. 938.21**  
22 HEARING. If the juvenile has not had a hearing under s. 938.21 and was not present at an intake  
23 conference under s. 938.24, the intake worker shall ~~inform~~ notify the juvenile, parent,  
24 guardian and legal custodian as appropriate of their basic rights under this section. This notice

1 shall be given verbally, either in person or by telephone, and in writing. This notice shall be  
2 given so as in sufficient time to allow the juvenile, parent, guardian or legal custodian  
3 sufficient time to prepare for the plea hearing. This subsection does not apply to cases of  
4 deferred prosecution under s. 938.245.

5 **SECTION 8.** 938.245 (1) and (1m) of the statutes are amended to read:

6 938.245 (1) WHEN AVAILABLE. ~~The An~~ intake worker may enter into a written deferred  
7 prosecution agreement with all parties as provided in this section if:

8 (a) If the intake worker has determined that neither the interests of the juvenile nor of  
9 the public require filing of a petition for circumstances relating to s. 938.12, 938.125, 938.13  
10 or 938.14. ~~Deferred prosecution shall be available only if~~

11 (b) If the facts persuade the intake worker that the jurisdiction of the court, if sought,  
12 would exist ~~and upon.~~

13 (c) Upon consent of the juvenile, parent, guardian and legal custodian.

14 **(1m) VICTIMS: RIGHT TO CONFER WITH INTAKE WORKER.** If a juvenile is alleged to be  
15 delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12), an  
16 intake worker shall, as soon as practicable but ~~in any event~~ before entering into a deferred  
17 prosecution agreement under sub. (1), offer all of the victims of the juvenile's alleged act who  
18 have requested, ~~the opportunity~~ an opportunity to confer with the intake worker concerning  
19 the proposed deferred prosecution agreement. The duty to confer under this subsection does  
20 not limit the obligation of the intake worker to perform his or her responsibilities under this  
21 section.

**COMMENT:** What does the last sentence of sub. (1m) mean? Should this sentence be retained? Redrafted to make it clearer?

22 **SECTION 9.** 938.245 (2) (title) and (2) (a) (title) of the statutes are created to read:

1 938.245 (2) (title) CONTENTS OF AGREEMENT.

2 (2) (a) (title) *Specific provisions.*

3 **SECTION 10.** 938.245 (2) (a) 2., 3. and 4. of the statutes are amended to read:

4 938.245 (2) (a) 2. 'Compliance with obligations.' That the juvenile and a parent,  
5 guardian ~~and~~ or legal custodian abide by such obligations, including supervision, curfews,  
6 and school attendance requirements, as will tend to ensure the juvenile's rehabilitation,  
7 protection or care.

8 3. 'Alcohol and other drug abuse assessment.' That the juvenile submit to an alcohol  
9 and other drug abuse assessment that ~~conforms to~~ meets the criteria specified under s. 938.547  
10 (4) and that is conducted by an approved treatment facility for an examination of the juvenile's  
11 use of alcohol beverages, controlled substances, or controlled substance analogs and any  
12 medical, personal, family, or social effects caused by its use, if the multidisciplinary screen  
13 ~~conducted~~ under s. 938.24 (2) shows that the juvenile is at risk of having needs and problems  
14 related to the use of alcohol beverages, controlled substances, or controlled substance analogs  
15 and its medical, personal, family, or social effects.

16 4. 'Outpatient treatment program; education programs.' That the juvenile participate  
17 in an alcohol and other drug abuse outpatient treatment program, a court-approved pupil  
18 assistance program provided by the juvenile's school board, or a court-approved alcohol or  
19 other drug abuse education program, if an alcohol and other drug abuse assessment ~~conducted~~  
20 under subd. 3. recommends outpatient treatment, intervention, or education. The juvenile's  
21 participation in a court-approved pupil assistance program under this subdivision is subject  
22 to the approval of the juvenile's school board.

23 **SECTION 11.** 938.245 (2) (a) 5. (title) of the statutes is created to read:

24 938.245 (2) (a) 5. (title) 'Restitution.'



1           **SECTION 12.** 938.245 (2) (a) 5. a., am. and c. of the statutes are amended to read:

2           938.245 (2) (a) 5. a. That the juvenile participate in a restitution project if the act for  
3           which the ~~deferred prosecution~~ agreement is being entered into has resulted in damage to the  
4           property of another, or in actual physical injury to another excluding pain and suffering.  
5           Subject to subd. 5. c., the ~~deferred prosecution~~ agreement may require the juvenile to repair  
6           the damage to property or to make reasonable restitution for the damage or injury, either in  
7           the form of cash payments or, if the victim agrees, the performance of services for the victim,  
8           or both, if the intake worker, after taking into consideration the well-being and needs of the  
9           victim, considers it beneficial to the well-being and behavior of the juvenile. ~~Any such~~  
10          ~~deferred prosecution~~ An agreement shall include a determination that the juvenile alone is  
11          financially able to pay or physically able to perform the services, may allow up to the date of  
12          the expiration of the ~~deferred prosecution~~ agreement for the payment or for the completion  
13          of the services, and may include a schedule for the performance and completion of the  
14          services. Any recovery under this ~~sub. 5. a.~~ subparagraph shall be reduced by the amount  
15          recovered as ~~restitution~~ for the same act under ~~sub. 5.~~ subpar. am.

16          am. That the parent who has custody, as defined in s. 895.035 (1), of the juvenile make  
17          reasonable restitution for any damage to the property of another, or for any actual physical  
18          injury to another excluding pain and suffering, resulting from the act for which the ~~deferred~~  
19          ~~prosecution~~ agreement is being entered into. Except for recovery for retail theft under s.  
20          943.51, the maximum amount of any restitution ordered under this ~~subd. 5. am.~~ subparagraph  
21          for damage or injury resulting from any one act of a juvenile or from the same act committed  
22          by 2 or more juveniles in the custody of the same parent may not exceed \$5,000. Any order  
23          under this ~~subd. 5. am.~~ subparagraph shall include a finding that the parent ~~who has custody~~  
24          of the juvenile is financially able to pay the amount ordered and may allow up to the date of

1 the expiration of the ~~deferred prosecution~~ agreement for the payment. Any recovery under  
2 this ~~subd. 5. am. subparagraph~~ shall be reduced by the amount recovered as ~~restitution~~ for the  
3 same act under ~~subd. 5. subpar. a.~~

4 c. Under this subdivision, a ~~deferred prosecution~~ an agreement may not require a  
5 juvenile who is under 14 years of age to make more than \$250 in restitution or to perform more  
6 than 40 total hours of services for the victim as restitution.

**COMMENT:** With reference to this provision and s. 938.34 (5) (c), the DOC/DJS has the following suggestion and comment:

**“Clarify the requirement for juveniles under 14 years old to make restitution that is no more than \$250 and 40 hours of services to the victim. Is this \$250 and 40 hours per charge, per petition, per adjudication, or total?”.**

**NOTE:** Same issue in s. 938.34 (5) (c), stats.

7 **SECTION 13.** 938.245 (2) (a) 6. (title) of the statutes is created to read:

8 938.245 (2) (a) 6. ‘Supervised work program.’

9 **SECTION 14.** 938.245 (2) (a) 7. of the statutes is amended to read:

10 938.245 (2) (a) 7. ‘Volunteers in probation.’ That the juvenile be placed with a  
11 volunteers in probation program under such conditions as the intake worker determines are  
12 reasonable and appropriate, if the juvenile is alleged to have committed an act that would  
13 constitute a misdemeanor if committed by an adult, if the chief judge of the judicial  
14 administrative district has approved under s. 973.11 (2) a volunteers in probation program  
15 established in the juvenile’s county of residence, and if the intake worker determines that  
16 volunteer supervision under that ~~volunteers in probation~~ program will likely benefit the  
17 juvenile and the community. The conditions that the an intake worker may establish under  
18 this subdivision may include, ~~but need not be limited to,~~ a request to a volunteer to provide  
19 be a role model for the juvenile a ~~role model~~, informal counseling, general monitoring and

1 monitoring of the conditions established by the intake worker, or any combination of these  
2 functions, and any other deferred prosecution condition that the intake worker may establish  
3 under this paragraph.

**COMMENT:** The bracketed part of the last sentence in subd. 7. (in current law) seems superfluous since this list of possible conditions starts with “may include” (which means that the conditions are not limited to those listed). Should this last phrase be deleted?

4 **SECTION 15.** 938.245 (2) (a) 8. (title) of the statutes is created to read:

5 938.245 (2) (a) 8. ‘Teen court program.’

6 **SECTION 16.** 938.245 (2) (a) 8. c. of the statutes is amended to read:

7 938.245 (2) (a) 8. c. The juvenile admits to the intake worker, with in the presence of  
8 the juvenile’s parent, guardian, or legal custodian present, that the juvenile committed the  
9 alleged delinquent act or civil law or ordinance violation.

10 **SECTION 17.** 938.245 (2) (a) 9m. (title) and (b) (title) of the statutes are created to read:

11 938.245 (2) (a) 9m. (title) ‘Youth report center.’

12 (b) (title) *No out-of-home placement; term of agreement.*

13 **SECTION 18.** 938.245 (2g) to (4) of the statutes are amended to read:

14 938.245 (2g) GRAFFITI VIOLATION. If the deferred prosecution agreement is based on an  
15 allegation that the juvenile violated s. 943.017 and the juvenile has attained ~~the minimum age~~  
16 ~~at which a juvenile may be adjudicated delinquent~~ 10 years of age, the ~~deferred prosecution~~  
17 agreement may require that the juvenile participate for not less than 10 hours nor more than  
18 100 hours in a supervised work program under s. 938.34 (5g) or perform not less than 10 hours  
19 nor more than 100 hours of other community service work, except that if the juvenile has not  
20 attained 14 years of age the maximum number of hours is 40.

1           (2v) HABITUAL TRUANCY VIOLATION. If the deferred prosecution agreement is based on  
2 an allegation that the juvenile has violated a municipal ordinance enacted under s. 118.163 (2),  
3 the ~~deferred prosecution~~ agreement may require that the juvenile's parent, guardian or legal  
4 custodian attend school with the juvenile.

5           (3) OBLIGATIONS IN WRITING. The obligations imposed under a deferred prosecution  
6 agreement and its effective date shall be set forth in writing. ~~The~~ A copy of the agreement and  
7 order shall be given to the juvenile and a parent, guardian, and legal custodian shall receive  
8 ~~a copy of the agreement and order, as shall~~ and to any agency providing services under the  
9 agreement.

10           (4) RIGHT TO TERMINATE OR OBJECT TO TERMS. The intake worker shall inform the  
11 juvenile and the juvenile's parent, guardian, and legal custodian in writing of their right to  
12 terminate the deferred prosecution agreement at any time or to object at any time to the fact  
13 or terms of the ~~deferred prosecution~~ agreement. ~~If there is an objection arises,~~ the intake  
14 worker may alter the terms of the agreement or request the district attorney or corporation  
15 counsel to file a petition. ~~If the deferred prosecution agreement is terminated the intake worker~~  
16 may request the district attorney or corporation counsel to file a petition.

17           **SECTION 19.** 938.245 (5) (title) of the statutes is created to read:

18           938.245 (5) (title) TERMINATION UPON REQUEST.

19           **SECTION 20.** 938.245 (6) to (9) of the statutes are amended to read:

20           938.245 (6) TERMINATION IF DELINQUENCY PETITION FILED. A deferred prosecution  
21 agreement arising out of an alleged delinquent act is terminated if the district attorney files a  
22 delinquency petition within 20 days after receipt of notice of the deferred prosecution  
23 agreement under s. 938.24 (5). ~~In such case~~ If a petition is filed, statements made to the intake  
24 worker during the intake inquiry are inadmissible.

1           (7) CANCELLATION BY INTAKE WORKER. (a) If at any time during the period of a deferred  
2 prosecution agreement the intake worker determines that the obligations imposed under it are  
3 not being met, the intake worker may cancel the ~~deferred prosecution~~ agreement. Within 10  
4 days after the cancellation of the ~~deferred prosecution~~ agreement, the intake worker shall  
5 notify the district attorney, corporation counsel, or other official under s. 938.09 of the  
6 cancellation and may request that a petition be filed. In delinquency cases, the district attorney  
7 may initiate a petition within 20 days after the date of the notice regardless of whether the  
8 intake worker has requested that a petition be filed. The judge shall grant appropriate relief  
9 ~~as provided in~~ under s. 938.315 (3) with respect to any petition ~~which~~ that is not filed within  
10 the time limit specified in this ~~subsection~~ paragraph. Failure to object if a petition is not filed  
11 within the time limit specified in this ~~subsection~~ paragraph waives that time limit.

12           (b) In addition to the action taken under par. (a), if the intake worker cancels a deferred  
13 prosecution agreement based on a determination that the juvenile's parent, guardian, or legal  
14 custodian is not meeting the obligations imposed under the agreement, the intake worker shall  
15 request the district attorney, corporation counsel, or other official under s. 938.09 to file a  
16 petition requesting the court to order the juvenile's parent, guardian, or legal custodian to show  
17 good cause for not meeting the obligations ~~imposed under the agreement~~. If the ~~district~~  
18 ~~attorney, corporation counsel or other official under s. 938.09~~ files a petition under this  
19 paragraph is filed and if the court finds prosecutive merit for the petition, the court shall grant  
20 an order directing the parent, guardian, or legal custodian to show good cause, at a time and  
21 place fixed by the court, for not meeting the obligations ~~imposed under the agreement~~. If the  
22 parent, guardian or legal custodian does not show good cause ~~for not meeting the obligations~~  
23 ~~imposed under the agreement~~, the court may impose a forfeiture not to exceed \$1,000.

1           (8) WHEN OBLIGATIONS MET. If the obligations imposed under the deferred prosecution  
2 agreement are met, the intake worker shall so inform the juvenile and a parent, guardian and  
3 legal custodian in writing, and no petition may be filed or citation issued on the charges that  
4 brought about the ~~deferred prosecution agreement nor may~~ and the charges may not be the sole  
5 basis for a petition under s. 48.13, 48.133, 48.14, 938.13 or 938.14.

6           (9) WRITTEN POLICIES. The intake worker shall perform his or her responsibilities under  
7 this section under general written policies ~~which the judge shall promulgate~~ promulgated  
8 under s. 938.06 (1) or (2).

9           **SECTION 21.** 938.25 (1) to (2m) of the statutes are amended to read:

10           938.25 (1) REQUIREMENTS; WHO MAY FILE. A petition initiating proceedings under this  
11 chapter shall be signed by a person who has knowledge of the facts alleged or is informed of  
12 them and believes them to be true. ~~If a A petition under s. 938.12 is to be filed, it shall be~~  
13 ~~prepared, signed, and filed by the district attorney. The district attorney, corporation counsel,~~  
14 ~~or other appropriate official specified under s. 938.09 may file the petition if the proceeding~~  
15 ~~is under s. 938.125 or 938.13. The counsel or guardian ad litem for a parent, relative, guardian,~~  
16 ~~or juvenile may file a petition under s. 938.13 or 938.14. The district attorney, corporation~~  
17 ~~counsel or other appropriate person designated by the court may initiate proceedings under~~  
18 ~~s. 938.14 in a manner specified by the court.~~

19           (2) TIME LIMITS; REFERRAL BACK. (a) The district attorney, corporation counsel or other  
20 appropriate official shall file the petition, close the case, or refer the case back to intake or, with  
21 notice to intake, the law enforcement agency investigating the case within 20 days after the  
22 date that the intake worker's request was filed. A referral back to intake or to the law  
23 enforcement agency investigating the case may be made only when the district attorney,  
24 corporation counsel, or other appropriate official decides not to file a petition or determines

1 that further investigation is necessary. If the case is referred back to intake upon a decision  
2 not to file a petition, the intake worker shall close the case or enter into a deferred prosecution  
3 agreement within 20 days. If the case is referred back to intake or to the law enforcement  
4 agency investigating the case for further investigation, the appropriate agency or person shall  
5 complete the investigation within 20 days. If another referral is made to the district attorney,  
6 corporation counsel, or other appropriate official by intake or by the law enforcement agency  
7 investigating the case, it shall be considered a new referral to which the time limits of this  
8 subsection shall apply. The time limits in this subsection may only be extended by a judge  
9 upon a showing of good cause under s. 938.315. If a petition is not filed within the time  
10 ~~limitations set forth~~ limits in this subsection and the court has not granted an extension, the  
11 petition shall be accompanied by a statement of reasons for the delay. The court shall grant  
12 appropriate relief as provided in s. 938.315 (3) with respect to a petition ~~which~~ that is not filed  
13 within the time limits ~~specified~~ in this paragraph. Failure to object if a petition is not filed  
14 within the time limits ~~specified~~ in this paragraph waives those time limits.

**COMMENT:** The 5th sentence in sub. (2) (a) states, in part: “If another referral is made to the district attorney,...by intake or the law enforcement agency investigating the case...”. Can a law enforcement agency *refer* a case to the district attorney or other official mentioned in this sentence? If not, this sentence needs to be rewritten.

15 (b) In delinquency cases where there has been a case closure or deferred prosecution  
16 agreement, the petition shall be filed within 20 days of receipt of the notice of the closure or  
17 ~~deferred prosecution agreement~~. Failure to file within 20 days invalidates the petition and  
18 affirms the case closure or ~~deferred prosecution~~ agreement, except that the court shall grant  
19 appropriate relief as ~~provided in~~ under s. 938.315 (3) with respect to a petition that is not filed  
20 within the time limit ~~specified~~ in this paragraph ~~and that failure~~. Failure to object if a petition  
21 is not filed within the time limit ~~specified~~ in this paragraph waives that time limit. If a petition

1 is filed within 20 days or the time permitted by the court under s. 938.315 (3), whichever is  
2 later, the district attorney shall notify the parties to the agreement and the intake worker of the  
3 filing as soon as possible.

4 (2g) TRIBAL COURT PETITION FILED. If the circumstances described in s. 938.24 (2r) (a)  
5 apply, before filing a petition under s. 938.12 or 938.13 (12) the district attorney or corporation  
6 counsel shall determine whether the intake worker has received notification under s. 938.24  
7 (2r) (b) from a tribal official that a petition relating to the alleged delinquent act has been or  
8 may be filed in tribal court. If the intake worker has received ~~that~~ the notification or if a tribal  
9 official has provided ~~that~~ the notification directly to the district attorney or corporation  
10 counsel, the district attorney or corporation counsel shall attempt to consult with appropriate  
11 tribal officials before filing a petition under s. 938.12 or 938.13 (12).

12 (2m) NOTICE TO VICTIMS IF NO FILING. If a juvenile is alleged to be delinquent under s.  
13 938.12 or to be in need of protection or services under s. 938.13 (12) and the district attorney  
14 or corporation counsel decides not to file a petition, the district attorney or corporation counsel  
15 shall make a reasonable attempt to inform ~~all~~ of the known victims of the juvenile's act that  
16 a petition will not be filed against the juvenile at that time.

17 **SECTION 22.** 938.25 (3) (title), (4) (title), (5) (title) and (6) (title) of the statutes are  
18 created to read:

19 938.25 (3) (title) REQUEST FOR JUDGE TO ORDER FILING.

20 (4) (title) TIME LIMIT ON PROSECUTION.

21 (5) (title) CITATION AS INITIAL PLEADING.

22 (6) (title) TEMPORARY RESTRAINING ORDER AND INJUNCTION IF S. 938.13 PROCEEDINGS.

23 **SECTION 23.** 938.255 (1) (intro.) and (c) of the statutes are amended to read:



1           938.255 (1) TITLE AND CONTENTS. (intro.) A petition initiating proceedings under this  
 2 chapter, other than a petition initiating proceedings under s. 938.12, 938.125 or 938.13 (12),  
 3 shall be entitled, “In the interest of (juvenile’s name), a person under the age of 18”. A petition  
 4 initiating proceedings under s. 938.12, 938.125 or 938.13 (12) shall be entitled, “In the interest  
 5 of (juvenile’s name), a person under the age of 17”. A petition initiating proceedings under  
 6 this chapter shall ~~set forth with specificity~~ specify all of the following:

7           (c) Whether the juvenile is in custody, and, if so, the place where the juvenile is being  
 8 held and the time he or she was taken into custody unless there is reasonable cause to believe  
 9 that such ~~disclosure~~ disclosures would result in imminent danger to the juvenile or physical  
 10 custodian.

11           **SECTION 24.** 938.255 (2) (title), (3) (title) and (4) (title) of the statutes are created to  
 12 read:

13           938.255 (2) (title) IF FACTS NOT KNOWN.

14           (3) (title) IF CERTAIN REQUIRED INFORMATION NOT STATED.

15           (4) (title) COPY TO JUVENILE AND OTHERS.

16           **SECTION 25.** 938.263 (1) (title) and (2) (title) of the statutes are created to read:

17           938.263 (1) (title) NO DISMISSAL OR REVERSAL; WHEN.

**COMMENT:** Section 938.263 (1), stats., provides:

          “Except as provided in s. 938.255 (3), no petition, process or other proceeding may be dismissed or reversed for any error or mistake if the case and the identity of the juvenile named in the petition may be readily understood by the court; and the court may order an amendment curing the defects.”.

          What does the phrase “if the *case* and the *identity of the juvenile* named in the petition may be *readily understood by the court*” mean? This phrase needs to be clarified.

18           (2) (title) AMENDMENT IF NOTICE AND PLEA NOT TAKEN.

1           **SECTION 26.** 938.265 of the statutes is amended to read:

2           **938.265 Consultation with victims.** In a case in which the juvenile is alleged to be  
3 delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12), the  
4 district attorney or corporation counsel shall, as soon as practicable but ~~in any event~~ before  
5 the plea hearing under s. 938.30, offer all of the victims of the juvenile's alleged act who have  
6 requested ~~the opportunity~~ it an opportunity to confer with the district attorney or corporation  
7 counsel concerning the possible outcomes of the proceeding against the juvenile, including  
8 potential plea agreements and recommendations that the district attorney or corporation  
9 counsel may make concerning dispositions under s. 938.34 or 938.345. The duty to confer  
10 under this section does not limit the obligation of the district attorney or corporation counsel  
11 to exercise his or her discretion concerning the handling of the proceeding against the juvenile.

12           **SECTION 27.** 938.27 (1) (title), (2) (title) and (3) (title) of the statutes are created to read:

13           **938.27 (1) (title)** SUMMONS; WHEN ISSUED.

14           **(2) (title)** SUMMONS; NECESSARY PERSON.

15           **(3) (title)** NOTICE OF HEARINGS.

16           **SECTION 28.** 938.27 (3) (a) 1. of the statutes is amended to read:

17           **938.27 (3) (a) 1.** The court shall also notify, under s. 938.273, the juvenile, any parent,  
18 guardian, and legal custodian of the juvenile, any foster parent, treatment foster parent or other  
19 physical custodian described in s. 48.62 (2) of the juvenile, and any person specified in par.  
20 (b), if applicable, of all hearings involving the juvenile under this subchapter, except hearings  
21 on motions for which notice ~~need only~~ must be provided only to the juvenile and his or her  
22 counsel. ~~Where~~ If parents entitled to notice have the same place of residence, notice to one  
23 ~~shall constitute~~ constitutes notice to the other. The first notice to any interested party, foster  
24 parent, treatment foster parent or other physical custodian described in s. 48.62 (2) shall be

1 ~~written in writing~~ and may have a copy of the petition attached to it. ~~Thereafter, notice of~~  
2 Notices of subsequent hearings may be given by telephone at least 72 hours before the time  
3 of the hearing. The person giving telephone notice shall place in the case file a signed  
4 statement of the date and time notice was given and the person to whom he or she spoke.

5 **SECTION 29.** 938.27 (4) (title) of the statutes is created to read:

6 938.27 (4) (title) CONTENTS OF NOTICE.

7 **SECTION 30.** 938.27 (4m), (5) and (6) of the statutes are amended to read:

8 938.27 (4m) CONTACT VICTIM; NOTICE OF HEARINGS. The district attorney or corporation  
9 counsel shall make a reasonable attempt to contact any known victim or alleged victim of a  
10 juvenile's act or alleged act to inform them of the right to receive notice of any hearing under  
11 this chapter involving the juvenile. If a victim or alleged victim indicates that he or she wishes  
12 to receive notice ~~of any hearing under this chapter involving the juvenile~~, the district attorney  
13 or corporation counsel shall make a reasonable attempt to notify, under s. 938.273, that victim  
14 or alleged victim of any hearing under this chapter involving the juvenile. ~~Any failure~~ Failure  
15 to comply with this subsection is not a ground for an appeal of a judgment or dispositional  
16 order or for any court to reverse or modify a judgment or dispositional order.

17 (5) IDENTIFY AND NOTIFY CERTAIN OTHER PERSONS. Subject to sub. (3) (b), the court shall  
18 make ~~every reasonable effort~~ efforts to identify and notify any person who has filed a  
19 declaration of interest under s. 48.025 and any person who has been adjudged to be the  
20 biological father of the juvenile in a judicial proceeding unless the biological father's rights  
21 have been terminated.

22 (6) INTERSTATE COMPACT PROCEEDINGS; NOTICE AND SUMMONS. When a proceeding is  
23 initiated under s. 938.14, all interested parties shall receive notice and appropriate summons  
24 shall be issued in a manner specified by the court, consistent with applicable governing

1 statutes. ~~In addition, if~~ If the juvenile who is the subject of the proceeding is in the care of a  
2 foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), the  
3 court shall give the foster parent, treatment foster parent or other physical custodian notice and  
4 an opportunity to be heard as provided in sub. (3) (a).

**COMMENT:** In the first sentence of sub. (6), is the phrase “, consistent with applicable governing statutes” necessary? If not, it should be deleted.

5 **SECTION 31.** 938.27 (7) (title) and (8) (title) of the statutes are created to read:

6 938.27 (7) (title) CIVIL LAW AND ORDINANCE CITATIONS UNDER S. 938.17 (2).

7 (8) (title) REIMBURSE LEGAL COUNSEL COSTS IN CERTAIN CASES; NOTICE.

8 **SECTION 32.** 938.273 (1) of the statutes is amended to read:

9 938.273 (1) METHODS; CONTINUANCE. (a) Service of summons or notice required by s.  
10 938.27 may be made by mailing a copy thereof to the persons summoned or notified. If the  
11 persons, other than a person specified in s. 938.27 (4m), fail to appear at the hearing or  
12 otherwise to acknowledge service, a continuance shall be granted, except ~~where the court~~  
13 ~~determines otherwise because the juvenile is in secure custody, and service~~ under par. (c).

14 (b) Service shall be made personally by delivering to the persons a copy of the summons  
15 or notice; ~~except that if.~~ If the court is satisfied determines that it is impracticable to serve the  
16 summons or notice personally, it may ~~make an order providing for the service of the summons~~  
17 ~~or notice~~ by certified mail addressed to the last-known addresses of the persons.

18 (c) The court may refuse to grant a continuance when the juvenile is being held in secure  
19 custody, but ~~in such a case the court~~ if the court refuses, it shall order that service of notice of  
20 the next hearing be made personally or by certified mail to the last-known address of the  
21 person who failed to appear at the hearing.

1           (d) Personal service shall be made at least 72 hours before the time of the hearing. Mail  
2 shall be sent at least 7 days before the time of the hearing, except where the petition is filed  
3 under s. 938.13 and the person to be notified lives outside the state, in which case the mail shall  
4 be sent at least 14 days before the time of the hearing.

5           **SECTION 33.** 938.273 (2) (title) and (3) (title) of the statutes are created to read:

6           938.273 (2) (title) BY WHOM.

7           (3) (title) EXPENSES; CHARGE ON COUNTY

8           **SECTION 34.** 938.275 (1) (title) and (2) (title) of the statutes are created to read:

9           938.275 (1) (title) EXPENSE OF CUSTODY, POST-ADJUDICATION SERVICES, SANCTIONS OR  
10 PLACEMENT.

11           (2) (title) LEGAL COUNSEL; INDIGENCY.

12           **SECTION 35.** 938.275 (2) (a), (b) and (c) of the statutes are amended to read:

13           938.275 (2) (a) If ~~this~~ the state or a county provides legal counsel to a juvenile subject  
14 to a proceeding under s. 938.12 or 938.13, the court shall order the juvenile's parent to  
15 reimburse the state or county ~~in accordance with~~ under par. (b) or (c). The court may not order  
16 reimbursement if:

17           1. If a parent is the complaining or petitioning party ~~or if~~.

18           2. If the court finds that the interests of the parent and the interests of the juvenile in the  
19 proceeding are substantially and directly adverse and that reimbursement would be unfair to  
20 the parent. ~~The court may not order reimbursement until~~

21           3. Until the completion of the proceeding or until the state or county is no longer  
22 providing the juvenile with legal counsel in the proceeding.

23           (b) If ~~this~~ the state provides the juvenile with legal counsel and the court orders  
24 reimbursement under par. (a), the juvenile's parent may request the state public defender to

1 determine whether the parent is indigent as ~~provided~~ under s. 977.07 and to ~~determine~~ the  
2 amount of reimbursement. If the parent is found not to be indigent, the amount of  
3 reimbursement shall be the maximum amount established by the public defender board. If the  
4 parent is found to be indigent in part, the amount of reimbursement shall be the amount of  
5 partial payment determined ~~in accordance with the~~ under rules of the ~~public defender board~~  
6 promulgated under s. 977.02 (3).

7 (c) If the county provides the juvenile with legal counsel and the court orders  
8 reimbursement under par. (a), the court shall ~~either~~ make a determination of indigency or ~~shall~~  
9 appoint the county department to make the determination. If the court or the county  
10 department finds that the parent is not indigent or is indigent in part, the court shall establish  
11 the amount of reimbursement and ~~shall~~ order the parent to pay it.

12 **SECTION 36.** 938.28 of the statutes is amended to read:

13 **938.28 Failure to obey summons; capias.** If any person summoned under this chapter  
14 fails without reasonable cause to appear, he or she may be proceeded against for contempt of  
15 court under ch. 785. ~~In case~~ If the summons cannot be served or the parties served fail to  
16 obey, respond to the same summons, or ~~in any case when~~ if it appears to the court that the  
17 service will be ineffectual, a capias may be issued for the parent, guardian and legal custodian  
18 or for the juvenile. Subchapter IV governs the taking and holding of a juvenile in custody.

19 **SECTION 37.** 938.29 (1), (1g) and (1m) of the statutes are amended to read:

20 938.29 (1) WRITTEN REQUEST; BY WHOM. Except as provided in sub. (1g), the juvenile,  
21 either before or during the plea hearing, may file a written request with the clerk of the court  
22 or other person acting as the clerk for a substitution of the judge assigned to the proceeding.  
23 ~~Upon filing the written request, the~~ The juvenile shall immediately mail or deliver a copy of  
24 the request to the judge named ~~therein~~ in the request. In a proceeding under s. 938.12 or 938.13

1 (12), only the juvenile may request a substitution of the judge. ~~Whenever~~ If the juvenile has  
2 the right to request a substitution of judge, the juvenile's counsel or guardian ad litem may file  
3 the request. Not more than one ~~such~~ written request may be filed in any one proceeding, ~~nor~~  
4 may and any single request may not name more than one judge. This section shall not apply  
5 to proceedings under s. 938.21.

6 **(1g)** WHEN SUBSTITUTION REQUEST NOT PERMITTED. (a) The juvenile may not request  
7 the substitution of a judge in a proceeding under s. 938.12 or 938.13 (12), ~~and the~~

8 (b) A juvenile and the juvenile's parent, guardian, or legal custodian may not request  
9 the substitution of a judge in a proceeding under s. 938.13 (4), (6), (6m), or (7), if the judge  
10 assigned to the proceeding has entered a dispositional order with respect to the juvenile in a  
11 previous proceeding under s. 48.12, 1993 stats., s. 48.13 (4), (6), (6m), (7), or (12), 1993 stats.,  
12 s. 938.12, or 938.13 (4), (6), (6m), (7), or (12) or the juvenile or the juvenile's parent, guardian,  
13 or legal custodian has requested the substitution of a judge in a previous proceeding under s.  
14 48.12, 1993 stats., s. 48.13 (4), (6), (6m), (7) or (12), 1993 stats., s. 938.12 or 938.13 (4), (6),  
15 (6m), (7) or (12).

16 **(1m)** ASSIGNMENT OF NEW JUDGE. When the clerk receives a request for substitution,  
17 the clerk shall immediately contact the judge whose substitution has been requested for a  
18 determination of whether the request was made timely and in proper form. Except as provided  
19 in sub. (2), if the request is found to be timely and in proper form, the judge named in the  
20 request has no further jurisdiction and the clerk shall request the assignment of another judge  
21 under s. 751.03. If no determination is made within 7 days, the clerk shall refer the matter to  
22 the chief judge of the judicial administrative district for determination of whether the request  
23 was made timely and in proper form and for reassignment as necessary.

24 **SECTION 38.** 938.29 (2) (title) and (2m) (title) of the statutes are created to read:

1           938.29 (2) (title) SUBSTITUTION OF JUDGE SCHEDULED TO CONDUCT WAIVER HEARING.

2           (2m) (title) ASSAULT WITH SUBSTANCE BY PRISONER; ORDER FOR TESTS; WHEN APPLICABLE.

3           **SECTION 39.** 938.29 (2m) (b) of the statutes is amended to read:

4           938.29 (2m) (b) The district attorney or corporation counsel has probable cause to  
5 believe that the act or alleged act of the juvenile that constitutes a violation of s. 946.43 (2m)  
6 carried a potential for transmitting a communicable disease to the victim or alleged victim and  
7 involved the juvenile's blood, semen, vomit, saliva, urine or feces, or other bodily substance  
8 of the juvenile.

9           **SECTION 40.** 938.29 (3) (title), (4) (title), (5) (title) and (6) (title) of the statutes are  
10 created to read:

11           (3) (title) TIMES WHEN ORDER MAY BE SOUGHT.

12           (4) (title) HEARING ON APPLICATION UNDER SUB. (2); WHEN RESULTS CONFIDENTIAL.

13           (5) (title) HEARING ON APPLICATION UNDER SUB. (2M); WHEN RESULTS CONFIDENTIAL.

14           (6) (title) PAYMENT FOR TEST COSTS.

15           **SECTION 41.** 938.293 (1) (title) and (2) (title) of the statutes are created to read:

16           938.293 (1) (title) LAW ENFORCEMENT REPORTS.

17           (2) (title) RECORDS RELATING TO JUVENILE.

18           **SECTION 42.** 938.293 (3) of the statutes is amended to read:

19           (3) VIDEOTAPED ORAL STATEMENT. Upon request prior to the fact-finding hearing, the  
20 district attorney shall disclose to the juvenile, and to the juvenile's counsel or guardian ad  
21 litem, the existence of any videotaped oral statement of a juvenile under s. 908.08 ~~which~~ that  
22 is within the possession, custody or control of the state and shall make reasonable  
23 arrangements for the requesting person to view the videotaped oral statement. If, subsequent  
24 to compliance with this subsection, the state obtains possession, custody or control of such a



1 ~~the~~ videotaped ~~oral~~ statement, the district attorney shall promptly notify the requesting person  
2 of that fact and make reasonable arrangements for the requesting person to view the  
3 videotaped ~~oral~~ statement.

4 **SECTION 43.** 938.295 (1), (1c) (intro.), (1g), (2) (a) and (b) and (3) of the statutes are  
5 amended to read:

6 938.295 (1) EXAMINATION FOR ALCOHOL AND OTHER DRUG ABUSE. (a) After the filing  
7 of a petition and upon a finding by the court that reasonable cause exists to warrant an  
8 examination or an alcohol and other drug abuse assessment that conforms to the criteria  
9 ~~specified~~ under s. 938.547 (4), the court may order ~~any~~ a juvenile ~~coming~~ within its  
10 jurisdiction to be examined as an outpatient by personnel in an approved treatment facility for  
11 alcohol and other drug abuse, by a physician, psychiatrist or licensed psychologist, or by  
12 another expert appointed by the court holding at least a master's degree in social work or  
13 another related field of child development, in order that the juvenile's physical, psychological,  
14 alcohol or other drug dependency, mental or developmental condition may be considered. The  
15 court may also order an examination or an alcohol and other drug abuse assessment that  
16 conforms to the criteria ~~specified~~ under s. 938.547 (4) of a parent, guardian or legal custodian  
17 whose ability to care for a juvenile is at issue before the court.

18 (b) The court shall hear any objections by the juvenile and the juvenile's parents,  
19 guardian, or legal custodian to the request under par. (a) for ~~such~~ an examination or assessment  
20 before ordering the examination or assessment.

21 (c) The expenses of an examination, if approved by the court, shall be paid by the county  
22 of the court ordering the examination. The payment for an alcohol and other drug abuse  
23 assessment shall be in accordance with s. 938.361.

1           **(1c)** REASONABLE CAUSE FOR ASSESSMENT; WHEN. (intro.) Reasonable cause is  
2 considered to exist exists to warrant an alcohol and other drug abuse assessment under sub.  
3 (1) if any of the following applies:

4           **(1g)** REPORT OF RESULTS; TIME; RECOMMENDATIONS. If the court orders an alcohol or other  
5 drug abuse assessment under sub. (1), the approved treatment facility shall, within 14 days  
6 after the court order, report the results of the assessment to the court, ~~except that, upon request,~~  
7 If requested by the approved treatment facility and if the juvenile is not held in secure or  
8 nonsecure custody, the court may extend the period for assessment for not more than 20  
9 additional working days. The report shall include a recommendation as to whether the  
10 juvenile is in need of treatment, intervention or education relating to the use or abuse of alcohol  
11 beverages, controlled substances, or controlled substance analogs and, if so, shall recommend  
12 a service plan and appropriate treatment from an approved treatment facility, intervention  
13 from a court-approved pupil assistance program, or education from a court-approved alcohol  
14 or other drug abuse education program.

15           **(2)** EXAMINATION BY PSYCHIATRIST OR PSYCHOLOGIST. (a) If there is probable cause to  
16 believe that the juvenile has committed the alleged offense and if there is reason to doubt the  
17 juvenile's competency to proceed, or upon entry of a plea under s. 938.30 (4) (c), the court shall  
18 order the juvenile to be examined by a psychiatrist or licensed psychologist. ~~The~~ If the cost  
19 of the examination, ~~if is~~ approved by the court, the cost shall be paid by the county of the court  
20 ordering the examination, and the county may recover that cost from the juvenile's parent or  
21 guardian ~~as provided in~~ under par. (c). Evaluation shall be made on an outpatient basis unless  
22 the juvenile presents a substantial risk of physical harm to the juvenile or others; or the  
23 juvenile, parent, or guardian, and legal counsel or guardian ad litem, consent to an inpatient

1 evaluation. ~~Any~~ An inpatient evaluation shall be ~~for~~ completed in a specified period that is  
2 no longer than is necessary ~~to complete the evaluation.~~

3 (b) The examiner shall file a report of the examination with the court by the date  
4 specified in the order. The court shall cause copies to be transmitted to the district attorney  
5 or corporation counsel and to the juvenile's counsel or guardian ad litem. The report shall  
6 describe:

7 1. Describe the nature of the examination and identify the persons interviewed, the  
8 particular records reviewed and any tests administered to the juvenile. ~~If the~~

9 2. Contain, if examination is ordered following a plea under s. 938.30 (4) (c), ~~the report~~  
10 ~~shall also contain~~ an opinion regarding whether the juvenile suffered from mental disease or  
11 defect at the time of the commission of the act alleged in the petition and, if so, whether this  
12 caused the juvenile to lack substantial capacity to appreciate the wrongfulness of his or her  
13 conduct or to conform his or her conduct to the requirements of the law. ~~If~~

14 3. Contain, if the examination is ordered following a finding that there is probable cause  
15 to believe that the juvenile has committed the alleged offense and that there is reason to doubt  
16 the juvenile's competency to proceed, ~~the report shall also contain~~ an opinion regarding the  
17 juvenile's present mental capacity to understand the proceedings and assist in his or her  
18 defense and, if the examiner reports that the juvenile lacks competency to proceed, the  
19 examiner's opinion regarding the likelihood that the juvenile, if provided treatment, may be  
20 restored to competency within the time specified in s. 938.30 (5) (e) 1. ~~The report shall also~~  
21 state

22 4. State in reasonable detail the facts and reasoning upon which the examiner's opinions  
23 are based.

1           **(3) IF JUVENILE OR PARENT OBJECTS TO A PARTICULAR PROFESSIONAL.** If the juvenile or a  
2 parent objects to a particular physician, psychiatrist, licensed psychologist or other expert as  
3 ~~required under this section~~, the court shall appoint a different physician, psychiatrist,  
4 psychologist or other expert.

5           **SECTION 44.** 938.295 (4) (title) of the statutes is created to read:

6           938.295 **(4)** (title) MOTIONS OR OBJECTIONS.

7           **SECTION 45.** 938.296 (1) (title) of the statutes is created to read:

8           938.296 **(1)** (title) DEFINITIONS.

9           **SECTION 46.** 938.2965 (1) (title) of the statutes is created to read:

10          938.2965 **(1)** (title) DEFINITION.

11          **SECTION 47.** 938.2965 (2) of the statutes is amended to read:

12          938.2965 **(2)** COUNTY TO PROVIDE. If an area is available and use of the area is practical,  
13 a county shall provide a waiting area for a victim or witness to use during hearings under this  
14 chapter that ~~if~~ is separate from any area used by the juvenile, the juvenile's relatives, and  
15 witnesses for the juvenile. If a separate waiting area is not available or its use is not practical,  
16 a county shall provide other means to minimize the contact between the victim or witness and  
17 the juvenile, the juvenile's relatives and witnesses for the juvenile during hearings under this  
18 chapter.

19          **SECTION 48.** 938.297 (1) (title) of the statutes is created to read:

20          938.297 **(1)** (title) MOTIONS ABLE TO BE DETERMINED WITHOUT TRIAL.

21          **SECTION 49.** 938.297 (2) to (4) of the statutes are amended to read:

22          938.297 **(2)** DEFENSES AND OBJECTIONS BASED ON PROBABLE CAUSE AND OTHER GROUNDS.

23          Defenses If defenses and objections based on defects in the institution of proceedings, lack  
24 of probable cause on the face of the petition or citation, insufficiency of the petition or citation

1 or invalidity in whole or in part of the statute on which the petition or citation is founded shall  
2 be are not raised ~~not later than~~ within 10 days after the plea hearing ~~or be deemed, they are~~  
3 waived. Other motions capable of determination without trial may be brought any time before  
4 trial.

5 (3) SUPPRESSION OF EVIDENCE. Motions to suppress evidence as ~~having been~~ illegally  
6 seized or statements as ~~having been~~ illegally obtained shall be made before fact-finding on  
7 the issues. The court may ~~entertain~~ consider the motion at the fact-finding hearing if it appears  
8 that a party is surprised by the attempt to introduce ~~such~~ the evidence and that party waives  
9 jeopardy. Only the juvenile may waive jeopardy in cases under s. 938.12, 938.125 or 938.13  
10 (12).

11 (4) TAKING JUVENILE INTO CUSTODY AS AN ARREST. Although the taking of a juvenile into  
12 custody is not an arrest, it shall be considered an arrest for the purpose of deciding motions  
13 which require a decision about the propriety of the taking into custody, including ~~but not~~  
14 ~~limited to~~ motions to suppress evidence as illegally seized, motions to suppress statements as  
15 illegally obtained, and motions challenging the lawfulness of the taking into custody.

16 **SECTION 50.** 938.297 (5) (title), (6) (title) and (7) (title) of the statutes are created to  
17 read:

18 938.297 (5) (title) JUVENILE CONTINUED IN CUSTODY IF MOTION GRANTED.

19 (6) (title) SERVICE OF MOTION; ATTORNEY.

20 (7) (title) ORAL ARGUMENT BY TELEPHONE.

21 **SECTION 51.** 938.299 (1) (title) of the statutes is created to read:

22 938.299 (1) (title) WHO MAY BE PRESENT AT HEARINGS.

23 **SECTION 52.** 938.299 (1) (ar) and (b) of the statutes are amended to read:

1           938.299 (1) (ar) 1. Notwithstanding par. (a) and except under subd. 2., the general public  
2           may attend any hearing under this chapter relating to a juvenile who has been alleged to be  
3           delinquent for committing a violation that would be a felony if committed by an adult if the  
4           juvenile has been adjudicated delinquent previously and that previous adjudication remains  
5           of record and unreversed or relating to a juvenile who has been alleged to be delinquent for  
6           committing a violation specified in s. 938.34 (4h) (a), ~~except that the.~~

7           2. The court shall exclude the general public from a hearing if the victim of a sexual  
8           assault objects and may, in its discretion, exclude the general public from any portion of a  
9           hearing which deals with sensitive personal matters of the juvenile or the juvenile's family and  
10          which does not relate to the act or alleged act committed by the juvenile or from any other  
11          hearing described in this paragraph. If the court excludes the general public from a hearing  
12          described in this paragraph, only those persons who are permitted under par. (a) or (am) to  
13          attend a hearing from which the general public is excluded may attend.

14          (b) Except as provided in par. (av) and s. 938.396, any person who divulges any  
15          information ~~which~~ that would identify the juvenile or the family involved in any proceeding  
16          under this chapter is subject to ch. 785. This paragraph does not preclude a victim of the  
17          juvenile's act from commencing a civil action based upon the juvenile's act.

18          **SECTION 53.** 938.299 (4) (title) of the statutes is created to read:

19          938.299 (4) (title) EVIDENTIARY RULES AT HEARINGS.

20          **SECTION 54.** 938.299 (4) (b) and (5) of the statutes are amended to read:

21          938.299 (4) (b) Except as provided in s. 901.05, ~~neither~~ common law ~~nor~~ and statutory  
22          rules of evidence are not binding at a waiver hearing under s. 938.18, a hearing for a juvenile  
23          held in custody under s. 938.21, a hearing under s. 938.296 (4) for a juvenile who is alleged  
24          to have violated s. 940.225, 948.02, 948.025, 948.05, or 948.06, a hearing under s. 938.296

1 (5) for a juvenile who is alleged to have violated s. 946.43 (2m), a dispositional hearing, or  
2 any postdispositional hearing under this chapter. At those hearings, the court shall admit all  
3 testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or  
4 unduly repetitious testimony, or evidence that is inadmissible under s. 901.05. Hearsay  
5 evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness.  
6 The court shall give effect to the rules of privilege recognized by law. The court shall apply  
7 the basic principles of relevancy, materiality, and probative value to proof of all questions of  
8 fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be  
9 made and shall be noted in the record.

10 (5) HEARING BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. On request of any party, unless  
11 good cause to the contrary is shown, any hearing under s. 938.209 (1) (a) 5. or 938.21 (1) may  
12 be held on the record by telephone or live audiovisual means or testimony may be received  
13 by telephone or live audiovisual means as ~~prescribed in~~ under s. 807.13 (2). The request and  
14 the showing of good cause for not conducting the hearing or admitting testimony by telephone  
15 or live audiovisual means may be made by telephone.

16 **SECTION 55.** 938.299 (6) (title), (7) (title), (8) (title) and (9) (title) of the statutes are  
17 created to read:

18 (6) (title) APPEARANCE BY MALE ALLEGING HE IS FATHER; PROCEDURES.

19 (7) (title) APPEARANCE BY MALE NOT ALLEGING HE IS FATHER OR NO APPEARANCE.

20 (8) (title) RECORD OF JUVENILE'S MOTHER RELATING TO PATERNITY.

21 (9) (title) WHERE TRIBAL COURT INVOLVED.

22 **SECTION 56.** 938.299 (9) (a) and (b) of the statutes are amended to read:

23 938.299 (9) (a) If a petition under s. 938.12 or 938.13 (12) includes the statement in s.  
24 938.255 (1) (cr) 2. or if the court is informed during a proceeding under s. 938.12 or 938.13

1 (12) that a petition relating to the delinquent act has been filed in a tribe's court with respect  
2 to a juvenile to whom the circumstances specified in s. 938.255 (1) (cr) 1. apply, the court shall  
3 stay the proceeding and communicate with the tribal court in which the other proceeding is  
4 or may be pending to discuss which court ~~may be~~ is the more appropriate forum.

5 (b) If the court and tribal court either mutually agree or agree under the terms of an  
6 established judicial protocol applicable to the court that the tribal court ~~would be~~ is the more  
7 appropriate forum, the court shall dismiss the petition without prejudice or stay the  
8 proceeding. The court's decision shall be based on the best interests of the juvenile and of the  
9 public.

10 **SECTION 57.** 938.30 (1) (title) of the statutes is created to read:

11 938.30 (1) (title) DATE AND TIME PERIOD.

12 **SECTION 58.** 938.30 (2) of the statutes is amended to read:

13 (2) PERSONS TO BE ADVISED OF RIGHTS. At or before the commencement of the hearing  
14 under this section the juvenile and the parent, guardian, or legal custodian shall be advised of  
15 their rights as specified in s. 938.243 and shall be informed that the hearing shall be to the court  
16 and that a request for a substitution of judge under s. 938.29 must be made before the end of  
17 the plea hearing or ~~be~~ is waived. Nonpetitioning parties, including the juvenile, shall be  
18 granted a continuance of the plea hearing if they wish to consult with an attorney on the request  
19 for a substitution of a judge.

20 **SECTION 59.** 938.30 (3) (title) and (4) (title) of the statutes are created to read:

21 938.30 (3) (title) CONTESTING PETITION THAT JUVENILE IN NEED OF PROTECTION OR  
22 SERVICES.

23 (4) (title) POSSIBLE PLEAS.

24 **SECTION 60.** 938.30 (4) (a), (bm) and (4m) of the statutes are amended to read:



1           938.30 (4) (a) Admit some or all of the facts alleged in the petition or citation, ~~however,~~  
2 ~~such a.~~ This plea is an admission only of the commission of the acts and does not constitute  
3 an admission of delinquency.

4           (bm) Plead no contest to the allegations, ~~but only~~ if the court permits the juvenile to enter  
5 that plea.

6           **(4m)** COURT TO INQUIRE ABOUT NOTICE TO VICTIMS. Before accepting a plea under sub.  
7 (4) in a proceeding in which a juvenile is alleged to be delinquent under s. 938.12 or to be in  
8 need of protection or services under s. 938.13 (12), the court shall inquire of the district  
9 attorney or corporation counsel whether he:

10           (a) He or she has complied with s. ss. 938.265 and ~~whether he or she has complied with~~  
11 ~~s. 938.27 (4m), whether any.~~

12           (b) Any of the known victims requested notice of the date, time, and place of the plea  
13 hearing and, if so, whether the district attorney or corporation counsel provided ~~to the victim~~  
14 ~~notice of the date, time and place of the hearing.~~

15           **SECTION 61.** 938.30 (5) (title) of the statutes is created to read:

16           938.30 (5) (title) COMPETENCY TO PROCEED; NOT RESPONSIBLE BY REASON OF MENTAL  
17 DISEASE OR DEFECT.

18           **SECTION 62.** 938.30 (5) (a) 2., (c) (intro.), (d) (intro.) and (e) 1. of the statutes are  
19 amended to read:

20           938.30 (5) (a) 2. If the juvenile denies the allegations in the petition or citation, the court  
21 shall hold a fact-finding hearing on the allegations in the petition or citation as provided under  
22 s. 938.31. If, ~~at the end of the fact-finding~~ after the hearing, the court finds that the allegations  
23 in the petition have been proven, the court shall immediately hold a hearing to determine  
24 whether the juvenile was not responsible by reason of mental disease or defect.

1 (c) (intro.) If the court finds that the juvenile was not responsible by reason of mental  
2 disease or defect, as described under s. 971.15 (1) and (2), the court shall dismiss the petition  
3 with prejudice and ~~shall also~~ do one of the following:

4 (d) (intro.) If the court finds that the juvenile is not competent to proceed, as described  
5 in s. 971.13 (1) and (2), the court shall suspend proceedings on the petition and ~~shall also~~ do  
6 one of the following:

7 (e) 1. A juvenile who is not competent to proceed, as described in s. 971.13 (1) and (2),  
8 but who is likely to become competent to proceed within 12 months or within the time period  
9 of the maximum sentence that may be imposed on an adult for the most serious delinquent act  
10 with which the juvenile is charged, whichever is less, and who is committed under s. 51.20  
11 following an order under par. (d) 1. or who is placed under a dispositional order following an  
12 order under par. (d) 2., shall be periodically reexamined with written reports of those  
13 reexaminations to be submitted to the court every 3 months and within 30 days before the  
14 expiration of the juvenile's commitment or dispositional order. Each report shall indicate  
15 either that the one of the following:

16 a. The juvenile has become competent, ~~that the~~

17 b. The juvenile remains incompetent but that attainment of competence is likely within  
18 the remaining period of the commitment or dispositional order ~~or that the~~

19 c. The juvenile has not made such progress that attainment of competency is likely  
20 within the remaining period of the commitment or dispositional order.

21 **SECTION 63.** 938.30 (6) (title) of the statutes is created to read:

22 938.30 (6) (title) WHERE PETITION NOT CONTESTED; DISPOSITION.

23 **SECTION 64.** 938.30 (6) (b) and (c) and (7) of the statutes are amended to read:

1           938.30 (6) (b) If it appears to the court that disposition of the case may include  
2 placement of the juvenile outside the juvenile's home, the court shall order the juvenile's  
3 parent to provide a statement of income, assets, debts, and living expenses to the court or the  
4 designated agency under s. 938.33 (1) at least 5 days before the scheduled date of the  
5 dispositional hearing or as otherwise ordered by the court. The clerk of court shall provide,  
6 without charge, to any parent ordered to provide a this statement of income, assets, debts and  
7 living expenses a document setting forth the percentage standard established by the  
8 department of workforce development under s. 49.22 (9) and listing the factors that a court  
9 may consider under s. 301.12 (14) (c).

10           (c) If the court orders the juvenile's parent to provide a the statement of income, assets,  
11 ~~debts, and living expenses~~ under par. (b) to the court or if the court orders the juvenile's parent  
12 to provide ~~that~~ the statement to the designated agency under s. 938.33 (1) and ~~that~~ the  
13 designated agency is not the county department, the court shall also order the juvenile's parent  
14 to provide ~~that~~ the statement to the county department at least 5 days before the scheduled date  
15 of the dispositional hearing or as otherwise ordered by the court. The county department shall  
16 provide, without charge, to the parent a form on which to provide ~~that~~ the statement, and the  
17 parent shall provide ~~that~~ the statement on ~~that~~ the form. The county department shall use the  
18 information provided in the statement to determine whether the department may claim federal  
19 foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of  
20 providing care for the juvenile.

21           (7) WHERE PETITION OR CITATION CONTESTED: DATE FOR HEARING. If the petition or citation  
22 is contested, the court shall set a date for the fact-finding hearing ~~which~~ that allows a  
23 reasonable time for the parties to prepare but is no more than 20 days from the plea hearing

1 for a juvenile who is held in secure custody and no more than 30 days from the plea hearing  
2 for a juvenile who is not held in secure custody.

3 **SECTION 65.** 938.30 (8) (title) of the statutes is created to read:

4 938.30 (8) (title) WHAT COURT TO DO TO ENSURE PLEA IS VOLUNTARY AND BASED ON THE  
5 FACTS.

6 **SECTION 66.** 938.30 (8) (b) and (9) of the statutes are amended to read:

7 938.30 (8) (b) Establish whether any promises or threats were made to elicit a plea and  
8 ~~also~~ explain to unrepresented parties to the possibility that a lawyer may discover defenses  
9 or mitigating circumstances ~~which~~ that would not be apparent to them.

10 (9) WHERE COURT COMMISSIONER CONDUCTS HEARING; JUDGE TO REVIEW. If a circuit court  
11 commissioner conducts the plea hearing and accepts an admission of the alleged facts in a  
12 petition brought under s. 938.12 or 938.13, the judge shall review the admission at the  
13 beginning of the dispositional hearing by addressing the parties and making the inquires set  
14 ~~forth in~~ under sub. (8).

15 **SECTION 67.** 938.30 (10) (title) of the statutes is created to read:

16 938.30 (10) (title) COURT MAY PERMIT OTHERS TO PARTICIPATE BY TELEPHONE OR LIVE  
17 AUDIOVISUAL.

18 **SECTION 68.** 938.31 (1) (title), (2) (title) and (4) (title) of the statutes are created to read:

19 938.31 (1) (title) DEFINITION.

20 (2) (title) HEARING TO THE COURT; PROCESS.

21 (4) (title) FINDINGS BY COURT.

22 **SECTION 69.** 938.31 (7) of the statutes is amended to read:

23 (7) DISPOSITIONAL HEARING. (a) At the close of the fact-finding hearing, the court shall  
24 set a date for the dispositional hearing ~~which~~ that allows a reasonable time for the parties to

1 prepare but is no more than 10 days after the fact-finding hearing for a juvenile in secure  
2 custody and no more than 30 days after the fact-finding hearing for a juvenile not held in  
3 secure custody. If all parties consent, the court may immediately proceed with a dispositional  
4 hearing.

5 (b) If it appears to the court that disposition of the case may include placement of the  
6 juvenile outside the juvenile's home, the court shall order the juvenile's parent to provide a  
7 statement of income, assets, debts, and living expenses to the court or the designated agency  
8 under s. 938.33 (1) at least 5 days before the scheduled date of the dispositional hearing or as  
9 otherwise ordered by the court. The clerk of court shall provide, without charge, to any parent  
10 ordered to provide a the statement of income, assets, debts and living expenses a document  
11 setting forth the percentage standard established by the department of workforce development  
12 under s. 49.22 (9) and listing the factors that a court may consider under s. 301.12 (14) (c).

13 (c) If the court orders the juvenile's parent to provide a the statement of income, assets,  
14 ~~debts, and living expenses~~ under par. (b) to the court or if the court orders the juvenile's parent  
15 to provide ~~that~~ the statement to the designated agency under s. 938.33 (1) and ~~that~~ the  
16 designated agency is not the county department, the court shall also order the juvenile's parent  
17 to provide ~~that~~ the statement to the county department at least 5 days before the scheduled date  
18 of the dispositional hearing or as otherwise ordered by the court. The county department shall  
19 provide, without charge, to the parent a form on which to provide ~~that~~ the statement, and the  
20 parent shall provide ~~that~~ the statement on ~~that~~ the form. The county department shall use the  
21 information provided in the statement to determine whether the department may claim federal  
22 foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of  
23 providing care for the juvenile.

24 **SECTION 70.** 938.315 (1) (intro.) (a) to (fm) of the statutes are amended to read:

1           938.315 (1) TIME PERIODS TO BE EXCLUDED. The following time periods shall be  
2 excluded in computing time requirements ~~within this~~ under chapter:

3           (a) Any period of delay resulting from ~~other~~:

4           1. Other legal actions concerning the juvenile, including an examination under s.  
5 938.295 or a hearing related to the juvenile's mental condition, prehearing motions, waiver  
6 motions and hearings on other matters.

7           ~~(b) Any period of delay resulting from a~~

8           2. A continuance granted at the request of or with the consent of the juvenile and  
9 counsel.

10          ~~(c) Any period of delay caused by the~~

11          3. The disqualification or substitution of a judge or by any other transfer of the case or  
12 intake inquiry to a different judge, intake worker or county.

13          ~~(d) Any period of delay resulting from a~~

14          4. The continuance granted at the request of the representative of the public under s.  
15 938.09 if the continuance is granted because of the unavailability of evidence material to the  
16 case when he or she has exercised due diligence to obtain the evidence and there are reasonable  
17 grounds to believe that the evidence will be available at the later date, or to allow him or her  
18 additional time to prepare the case and additional time is justified because of the exceptional  
19 circumstances of the case.

20          ~~(dm) Any period of delay resulting from court~~

21          5. Court congestion or scheduling.

22          ~~(e) Any period of delay resulting from the~~

23          6. The imposition of a consent decree.

24          ~~(f) Any period of delay resulting from the~~

1           7. The absence or unavailability of the juvenile.

2           ~~(fm) Any period of delay resulting from the~~

3           8. The inability of the court to provide the juvenile with notice of an extension hearing  
4 under s. 938.365 due to the juvenile having run away or otherwise having made himself or  
5 herself unavailable to receive that notice.

6           **SECTION 71.** 938.315 (1) (g) of the statutes is renumbered 938.315 (1) (b).

7           **SECTION 72.** 938.315 (1) (h) and (i) of the statutes are renumbered 938.315 (1) (a) 9.  
8 and 10., respectively, and amended to read:

9           938.315 (1) (a) 9. ~~Any period of delay resulting from the~~ The need to appoint a qualified  
10 interpreter.

11           10. ~~Any period of delay resulting from consultation~~ Consultation under s. 938.24 (2r)  
12 or 938.25 (2g).

13           **SECTION 73.** 938.315 (2) (title), (2m) (title) and (3) (title) of the statutes are created to  
14 read:

15           938.315 (2) (title) CONTINUANCE FOR GOOD CAUSE.

**COMMENT:** Subsection (2) states:

“A continuance may be granted by the court only upon a showing of good cause in open court or **during a telephone conference** under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the representative of the public under s. 938.09 or the parties, the interests of the victims, and the interest of the public in the prompt disposition of cases.” [Emphasis added.]

The statutes, both in and outside of ch. 938, generally refer to “telephone conference”, but new technologies have allowed such conferences to be held by means in addition to telephonic transmission. Section 807.13, Stats., states: “by telephone or other live audiovisual means”. Is there any need to revise the reference to “telephone conference” to include other available technologies? What language should be used?

16           **(2m)** (title) WHEN NO CONTINUANCE, EXTENSION, OR EXCLUSION PERMITTED.

1           **(3)** (title) RESULT OF FAILURE TO COMPLY WITH TIME LIMIT OR TO OBJECT TO DELAY.

2           **SECTION 74.** 938.32 (1) (title) of the statutes is created to read:

3           938.32 **(1)** (title) WHEN ORDERED; TERMS AND PROCESS; VICTIMS' RIGHTS.

4           **SECTION 75.** 938.32 (1) (a), (am), (b) 1., 1m. and 2., (c) 1. and 3. and (d), (1d) and (1g)  
5 (intro.) and (b) of the statutes are amended to read:

6           938.32 **(1)** (a) At any time after the filing of a petition for a proceeding relating to s.  
7 938.12 or 938.13 and before the entry of judgment, the judge or circuit court commissioner  
8 may suspend the proceedings and place the juvenile under supervision in the juvenile's own  
9 home or present placement. The court may establish terms and conditions applicable to the  
10 parent, guardian, or legal custodian, and to the juvenile, including any of the conditions  
11 specified in subs. (1d), (1g), (1m), (1p), (1t), (1v), and (1x). The order under this section shall  
12 be known as a consent decree and must be agreed to by the juvenile; the parent, guardian, or  
13 legal custodian; and the person filing the petition under s. 938.25. If the consent decree  
14 includes any conditions specified in sub. (1g), the consent decree shall include provisions for  
15 payment of the services as specified in s. 938.361. The consent decree shall be ~~reduced to~~ in  
16 writing and be given to the parties.

17           (am) Before entering into a consent decree in a case in which the juvenile is alleged to  
18 be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12),  
19 the district attorney or corporation counsel shall, as soon as practicable but in any event before  
20 agreeing to the consent decree, offer all of the victims of the juvenile's alleged act who have  
21 so requested ~~the opportunity an~~ opportunity to confer with the district attorney or corporation  
22 counsel concerning the proposed consent decree. The duty to offer an opportunity to confer  
23 under this paragraph does not limit the obligation of the district attorney or corporation



1 counsel to exercise his or her discretion concerning the handling of the proceeding against the  
2 juvenile.

3 (b) ~~4.~~ Before entering into a consent decree in a proceeding in which a juvenile is  
4 alleged to be delinquent under s. 938.12 or to be in need of protection or services under s.  
5 938.13 (12), ~~the~~

6 1. The court shall determine whether a victim of the juvenile's act wants to make a  
7 statement to the court. If a victim wants to make a statement, the court shall allow the victim  
8 to make a statement in court or to submit a written statement to be read to the court. The court  
9 may allow any other person to make or submit a statement under this subdivision. Any  
10 statement made under this subdivision must be relevant to the consent decree.

11 ~~1m.~~ ~~Before entering into a consent decree in a proceeding in which a juvenile is alleged~~  
12 ~~to be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12),~~  
13 ~~the~~

14 2. The court shall inquire of the district attorney or corporation counsel whether he or  
15 she has complied with par. (am), ~~whether he or she has complied with subd. 2. and whether~~  
16 ~~he or she has complied with and subd. 3., s. 938.27 (4m),~~ whether any of the known victims  
17 requested notice of the date, time, and place of any hearing to be held on the consent decree  
18 and, if so, whether the district attorney provided to the victim notice of the date, time, and place  
19 of the hearing.

20 ~~2.~~ ~~Before entering into a consent decree in a proceeding in which a juvenile is alleged~~  
21 ~~to be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12),~~  
22 ~~the~~

23 3. The district attorney or corporation counsel shall make a reasonable attempt to  
24 contact any known victim to inform that person of the right to make a statement under subd.

1 1. Any failure to comply with this subdivision is not a ground for discharge of the juvenile,  
2 parent, guardian, or legal custodian from fulfilling the terms and conditions of the consent  
3 decree.

4 (c) 1. If at the time the consent decree is entered into the juvenile is placed outside the  
5 home under a voluntary agreement under s. 48.63 or is otherwise living outside the home  
6 without a court order and if the consent decree maintains the juvenile in that placement or other  
7 living arrangement, the consent decree shall include a

8 a. A finding that placement of the juvenile in his or her home would be contrary to the  
9 welfare of the juvenile, ~~a.~~

10 b. A finding as to whether the county department or the agency primarily responsible  
11 for providing services to the juvenile has made reasonable efforts to prevent the removal of  
12 the juvenile from the home, while assuring that the juvenile's health and safety are the  
13 paramount concerns, unless the judge or circuit court commissioner finds that any of the  
14 circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies, ~~and a.~~

15 c. A finding as to whether the county department or agency has made reasonable efforts  
16 to achieve the goal of the juvenile's permanency plan, unless return of the juvenile to the home  
17 is the goal of the permanency plan and the judge or circuit court commissioner finds that any  
18 of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

COMMENT: With reference to sub. (1) (c) 1., the DOC/DJS suggests the following change:

**“In the same section [s. 938.52,] under (1) (c) 1., delete the “unless return of the child to the home...” language. It’s confusing, and we can’t think of a circumstance in which it would apply, i.e., that a child who had been the subject of the aggravated circumstances in s. 938.355 (2d) would have a plan for return home.”.**

1           3. The judge or circuit court commissioner shall make the findings specified in subds.  
2           1. and 2. on a case-by-case basis based on circumstances specific to the juvenile and shall  
3           document or reference the specific information on which those findings are based in the  
4           consent decree. A consent decree that merely references subd. 1. or 2. without documenting  
5           or referencing that specific information in the consent decree or an amended consent decree  
6           that retroactively corrects an earlier consent decree that does not comply with this subdivision  
7           is not sufficient to comply with this subdivision.

8           (d) 1. If the judge or circuit court commissioner finds that any of the circumstances  
9           specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the judge or circuit court  
10          commissioner shall hold a hearing within 30 days after the date of that finding to determine  
11          the permanency plan for the juvenile. ~~If a hearing is held under this subdivision, the~~ The  
12          agency responsible for preparing the permanency plan shall file the permanency plan with the  
13          court not less than 5 days before the date of the hearing.

14          2. ~~If a hearing is held under subd. 1., at~~ At least 10 days before the date of the hearing  
15          under subd. 1., the court shall notify the juvenile, any parent, guardian, and legal custodian  
16          of the juvenile, and any foster parent, treatment foster parent, or other physical custodian  
17          described in s. 48.62 (2) of the juvenile of the time, place, and purpose of the hearing.

18          3. The court shall give a foster parent, treatment foster parent, or other physical  
19          custodian described in s. 48.62 (2) who is notified of a hearing under subd. 2. an opportunity  
20          to be heard at the hearing by permitting the foster parent, treatment foster parent, or other  
21          physical custodian to make a written or oral statement during the hearing, or to submit a  
22          written statement prior to the hearing, relevant to the issues to be determined at the hearing.  
23          A The foster parent, treatment foster parent, or other physical custodian ~~who receives a notice~~  
24          of a hearing under subd. 2. and an opportunity to be heard under this subdivision does not

1 become a party to the proceeding on which the hearing is held solely on the basis of receiving  
2 that the notice and having the opportunity to be heard.

COMMENT: With reference to s. 938.32 (1) (c), the DOC/DJS suggests the following change:

**“Add that if a consent decree maintains a juvenile out of the home, a hearing must be held to make findings. Some counties do not hold a hearing when entering into a consent decree, particularly if the juvenile remains in the home, saying that it is an agreement versus a court order. If a consent decree is a judicial order, there should be a “content of order” section in this area.”**

3 (1d) PLACEMENT IN VOLUNTEERS IN PROBATION PROGRAM. If the petition alleges that the  
4 juvenile has committed an act that would constitute a misdemeanor if committed by an adult,  
5 if the chief judge of the judicial administrative district has approved under s. 973.11 (2) a  
6 volunteers in probation program established in the juvenile’s county of residence, and if the  
7 judge or circuit court commissioner determines that volunteer supervision under that  
8 volunteers in probation program will likely benefit the juvenile and the community, the judge  
9 or circuit court commissioner may establish as a condition under sub. (1) that the juvenile be  
10 placed with that volunteers in probation program under such conditions as the judge or circuit  
11 court commissioner determines are reasonable and appropriate. ~~These~~ The conditions may  
12 include, ~~but need not be limited to,~~ any of the following:

13 (b) Any other conditions ~~that the judge or circuit court commissioner may establish~~  
14 under this section.

15 (1g) CONDITIONS IF ALCOHOL OR OTHER DRUG ABUSE PROBLEM. If the petition alleges that  
16 the juvenile committed a violation specified under ch. 961 and if the multidisciplinary screen  
17 conducted under s. 938.24 (2) shows that the juvenile is at risk of having needs and problems  
18 ~~related to the use of alcohol beverages, controlled substances or controlled substance analogs~~

1 and its ~~medical, personal, family and social effects~~ described in that subsection, the judge or  
2 circuit court commissioner may establish as a condition under sub. (1) any of the following:

3 (b) That the juvenile participate in a court-approved pupil assistance program provided  
4 by the juvenile's school board or a court-approved alcohol or other drug abuse education  
5 program. The juvenile's participation in a ~~court-approved~~ pupil assistance program ~~under this~~  
6 ~~paragraph~~ is subject to the approval of the juvenile's school board.

7 **SECTION 76.** 938.32 (1m) (title) of the statutes is created to read:

8 938.32 **(1m)** (title) PLACEMENT IN TEEN COURT PROGRAM.

9 **SECTION 77.** 938.32 (1m) (a), (1p), (1t) (a) 1. and 1m., (1v) and (1x) of the statutes are  
10 amended to read:

11 938.32 **(1m)** (a) The chief judge of the judicial administrative district has approved a  
12 teen court program established in the juvenile's county of residence and the judge or circuit  
13 court commissioner determines that participation in the ~~teen court~~ program will likely benefit  
14 the juvenile and the community.

15 **(1p)** PARTICIPATION IN YOUTH REPORT CENTER. The judge or juvenile [circuit] court  
16 commissioner may establish as a condition under sub. (1) that the juvenile report to a youth  
17 report center after school, in the evening, on weekends, on other nonschool days, or at any  
18 other time that the juvenile is not under immediate adult supervision, for participation in the  
19 social, behavioral, academic, community service, and other programming of the center.  
20 Section 938.34 (5g) applies to any community service work performed by a juvenile under this  
21 subsection.

**COMMENT:** Is there any reason “**juvenile** court commissioner” instead of  
“**circuit** court commissioner” is used in this subsection? If not, “circuit”  
should replace “juvenile”.

1           **(1t) REPAIR OF PROPERTY; RESTITUTION.** (a) 1. Subject to subd. 3., if the petition alleges  
2 that the juvenile committed a delinquent act that has resulted in damage to the property of  
3 another, or in actual physical injury to another excluding pain and suffering, the judge or  
4 circuit court commissioner may require the juvenile as a condition of the consent decree, to  
5 repair the damage to property or to make reasonable restitution for the damage or injury, either  
6 in the form of cash payments or, if the victim agrees, the performance of services for the  
7 victim, or both, if the judge or circuit court commissioner, after taking into consideration the  
8 well-being and needs of the victim, considers it beneficial to the well-being and behavior of  
9 the juvenile. Any consent decree that includes a condition of restitution by a juvenile shall  
10 include a finding that the juvenile alone is financially able to pay or physically able to perform  
11 the services, may allow up to the date of the expiration of the consent decree for the payment  
12 or for the completion of the services and may include a schedule for the performance and  
13 completion of the services. ~~Objection by~~ If the juvenile objects to the amount of damages  
14 claimed ~~shall entitle the juvenile to, a hearing on the question of damages shall be held to~~  
15 determine the amount of damages before ~~the~~ an amount of restitution is made part of the  
16 consent decree. Any recovery under this subdivision shall be reduced by the amount  
17 recovered as restitution for the same act under subd. 1m.

18           1m. If the petition alleges that the juvenile has committed a delinquent act that has  
19 resulted in damage to the property of another, or in actual physical injury to another excluding  
20 pain and suffering, the judge or circuit court commissioner may require a parent who has  
21 custody, as defined in s. 895.035 (1), of the juvenile, as a condition of the consent decree, to  
22 make reasonable restitution for the damage or injury. Except for recovery for retail theft under  
23 s. 943.51, the maximum amount of any restitution ordered under this subdivision for damage  
24 or injury resulting from any one act of a juvenile or from the same act committed by 2 or more

1 juveniles in the custody of the same parent may not exceed \$5,000. Any consent decree that  
2 includes a condition of restitution by a parent ~~who has custody of the juvenile~~ under this  
3 subdivision shall include a finding that the parent ~~who has custody of the juvenile~~ is financially  
4 able to pay the amount ordered and may allow up to the date of the expiration of the consent  
5 decree for the payment. ~~Objection by~~ If the parent objects to the amount of damages claimed  
6 ~~shall entitle the parent to,~~ a hearing ~~on the question of damages~~ shall be held to determine the  
7 amount of damages before the an amount of restitution is made part of the consent decree.  
8 Any recovery under this subdivision shall be reduced by the amount recovered as restitution  
9 for the same act under subd. 1.

10 **(1v) PARENT OR GUARDIAN TO ATTEND SCHOOL WITH JUVENILE.** If the petition alleges that  
11 the juvenile is in need of protection or services under s. 938.13 (6), the judge or circuit court  
12 commissioner may ~~establish~~ require as a condition under sub. (1), that the juvenile's parent,  
13 guardian, or legal custodian attend school with the juvenile.

14 **(1x) SUPERVISED WORK PROGRAM.** If the petition alleges that the juvenile violated s.  
15 943.017 and the juvenile has attained ~~the minimum age at which a juvenile may be adjudicated~~  
16 ~~delinquent~~ 10 years of age, the judge or circuit court commissioner may require, as a condition  
17 of the consent decree, that the juvenile participate for not less than 10 hours nor more than 100  
18 hours in a supervised work program under s. 938.34 (5g) or perform not less than 10 hours nor  
19 more than 100 hours of other community service work, except that if the juvenile has not  
20 attained 14 years of age the maximum number of hours is 40.

21 **SECTION 78.** 938.32 (1r) (title) and (2) (title) of the statutes are created to read:

22 938.32 **(1r)** (title) INFORMED CONSENT NECESSARY IF UNDER 12.

23 **(2)** (title) TIME PERIOD FOR CONSENT DECREE; EXTENSION.

24 **SECTION 79.** 938.32 (3) and (4) of the statutes are amended to read:

1           **(3) WHERE FAILURE TO FOLLOW CONSENT DECREE OR JUVENILE'S OBJECTION TO ITS**  
 2           CONTINUATION. If, prior to discharge by the court, or to the expiration of the consent decree,  
 3           the court finds that the juvenile or parent, legal guardian, or legal custodian has failed to fulfill  
 4           the express terms and conditions of the consent decree or that the juvenile objects to the  
 5           continuation of the consent decree, the hearing under which the juvenile was placed on  
 6           supervision may be continued to conclusion as if the consent decree had never been entered.

**COMMENT:** Is there a better phrase than “objects to *continuation* of the consent decree”? Use of the term “continuation” may be a bit confusing since here it means that the juvenile does not want to go any further with the terms and conditions of the consent decree, but elsewhere in the chapter (and the statutes in general), “continuance” is a legal term (e.g., the court ordering a continuance of certain time limits).

7           **(4) WHERE DISCHARGED BY COURT OR COMPLETION OF SUPERVISION.** ~~No~~ A juvenile who  
 8           is discharged by the court or who completes the period of supervision without reinstatement  
 9           of the original petition may ~~again~~ not be proceeded against in any court for the same offense  
 10          alleged in the petition or an offense based on the same conduct, and the original petition shall  
 11          be dismissed with prejudice. ~~Nothing in this~~ This subsection ~~precludes~~ does not preclude a  
 12          civil suit against the juvenile or parent for damages arising from the juvenile’s conduct.

13           **SECTION 80.** 938.32 (5) (title) of the statutes is created to read:

14           938.32 **(5)** (title) **WHEN COURT MAY NOT PARTICIPATE IN SUBSEQUENT PROCEEDINGS.**

15           **SECTION 81.** 938.32 (5) (a) of the statutes is amended to read:

16           938.32 **(5)** (a) The court refuses to enter into a consent decree ~~and~~, the allegations in  
 17          the petition remain to be decided in a hearing ~~where~~, and the juvenile denies the allegations  
 18          of delinquency.

19           **SECTION 82.** 938.32 (6) (title) of the statutes is created to read:



1 938.32 **(6)** (title) INFORMING JUVENILE OF RIGHT TO OBJECT TO CONTINUATION.

2 (END)