

1       **AN ACT** *to repeal* 938.357 (4) (d); and *to amend* 48.366 (8), 301.03 (10) (d), 302.11  
2           (10), 302.255, 302.386 (3) (a), 302.386 (5) (d), 938.183 (3), 938.538 (3) (a) 1.,  
3           938.538 (3) (a) 1m., 938.538 (3) (a) 2., 938.538 (4) (a), 938.538 (5) (c), 938.538 (6),  
4           938.992 (3) and 976.08 of the statutes; **relating to:** prohibition on transferring to an  
5           adult prison a juvenile who has been adjudicated delinquent.

*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 changes relating to prohibiting transfer to an adult prison of a juvenile who has been adjudicated delinquent.

In *State of Wisconsin v. Hezzie R.*, 219 Wis. 2d 849 (1998), the Wisconsin Supreme Court held that subjecting a juvenile who has no right to a trial by jury under the Juvenile Justice Code to placement in an adult prison violates the juvenile's constitutional right to a trial by jury because placement in an adult prison constitutes criminal punishment rather than juvenile rehabilitation. Accordingly, this draft eliminates the authority of the department of corrections (DOC) to transfer a juvenile who has been adjudicated delinquent to an adult prison, including the Intensive Sanctions Program, which is defined in the statutes as a state prison. This change is reflected: (1) in this subsection [s. 938.183, stats.]; (2) other provisions in the Juvenile Justice Code [ss. 938.357 (4) (d), 938.538 (3) (a) 1., 1m., and 2., (4) (a), (5) (c), and (6), and 938.992 (3)]; and in other provisions affected by this change that are outside of the Juvenile Justice Code.

6           **SECTION 1.** 48.366 (8) of the statutes is amended to read:  
7           48.366 (8) **TRANSFER TO OR BETWEEN FACILITIES.** The department of corrections may  
8           transfer a person subject to an order between secured juvenile correctional facilities. After the  
9           person attains the age of 17 years, the department of corrections may place the person in a state

1 prison named in s. 302.01, except that the department of corrections may not place any person  
2 under the age of 18 years in the correctional institution authorized in s. 301.16 (1n). ~~If the~~  
3 ~~person is 15 years of age or over, the department of corrections may transfer the person to the~~  
4 ~~Racine youthful offender correctional facility named in s. 302.01 as provided in s. 938.357 (4)~~  
5 ~~(d).~~ If the department of corrections places a person subject to an order under this section in  
6 a state prison, that department shall provide services for that person from the appropriate  
7 appropriation under s. 20.410 (1). The department of corrections may transfer a person placed  
8 in a state prison under this subsection to or between state prisons named in s. 302.01 without  
9 petitioning for revision of the order under sub. (5) (a), except that the department of  
10 corrections may not transfer any person under the age of 18 years to the correctional institution  
11 authorized in s. 301.16 (1n).

12 **SECTION 2.** 301.03 (10) (d) of the statutes is amended to read:

13 301.03 (10) (d) Administer the office of juvenile offender review in the division of  
14 juvenile corrections in the department. The office shall be responsible for decisions regarding  
15 case planning, and the release of juvenile offenders from secured juvenile correctional  
16 facilities ~~or secured child caring institutions~~ to aftercare placements ~~and the transfer of~~  
17 juveniles to the Racine youthful offender correctional facility named in s. 302.01 as provided  
18 ~~in s. 938.357 (4) (d).~~

19 **SECTION 3.** 302.11 (10) of the statutes is amended to read:

20 302.11 (10) An inmate subject to an order under s. 48.366 ~~or 938.34 (4h)~~ is not entitled  
21 to mandatory release and may be released or discharged only as provided under s. 48.366 ~~or~~  
22 938.538.

23 **SECTION 4.** 302.255 of the statutes is amended to read:

1           **302.255 Interstate corrections compact; additional applicability.** “Inmate”, as  
2 defined under s. 302.25 (2) (a), includes persons subject to an order under s. 48.366 who are  
3 confined to a state prison under s. 302.01 ~~and persons subject to an order under s. 938.34 (4h)~~  
4 ~~who are 17 years of age or older.~~

5           **SECTION 5.** 302.386 (3) (a) of the statutes is amended to read:

6           302.386 (3) (a) Except as provided in par. (b), the department may require a resident  
7 housed in a prison identified in s. 302.01 ~~or in a secured correctional facility, as defined in s.~~  
8 ~~938.02 (15m),~~ who receives medical or dental services to pay a deductible, coinsurance,  
9 copayment, or similar charge upon the medical or dental service that he or she receives. The  
10 department shall collect the allowable deductible, coinsurance, copayment, or similar charge.

11           **SECTION 6.** 302.386 (5) (d) of the statutes is amended to read:

12           302.386 (5) (d) Any participant in the serious juvenile offender program under s.  
13 938.538 ~~unless he or she~~ the participant is placed in a Type 1 secured juvenile correctional  
14 facility, as defined in s. 938.02 (19), ~~or in a Type 1 prison other than the institution authorized~~  
15 ~~under s. 301.046 (1).~~

16           **SECTION 7.** 938.183 (3) of the statutes is amended to read:

17           938.183 (3) When a juvenile who is subject to a criminal penalty under sub. (1m) or (2)  
18 attains the age of 17 years, the department may place the juvenile in a state prison named in  
19 s. 302.01, except that the department may not place any person under the age of 18 years in  
20 the correctional institution authorized in s. 301.16 (1n). ~~If a juvenile who is subject to a~~  
21 ~~criminal penalty under sub. (1m) or (2) is 15 years of age or over, the department may transfer~~  
22 ~~the juvenile to the Racine youthful offender correctional facility named in s. 302.01 as~~  
23 ~~provided in s. 938.357 (4) (d).~~ A juvenile who is subject to a criminal penalty under sub. (1m)  
24 or (2) for an act committed before December 31, 1999, is eligible for parole under s. 304.06.

1           **SECTION 8.** 938.357 (4) (d) of the statutes is repealed.

2           **SECTION 9.** 938.538 (3) (a) 1. of the statutes is amended to read:

3           938.538 (3) (a) 1. Subject to subd. 1m., placement in a Type 1 secured juvenile  
4           correctional facility, ~~a secured child-caring institution or, if the participant is 17 years of age~~  
5           ~~or over or 15 years of age or over and transferred under s. 938.357 (4) (d), a Type 1 prison,~~  
6           ~~as defined in s. 301.01 (5), for a period of not more than 3 years, unless that period is extended~~  
7           ~~under sub. (4m) (a) 1. or 2., or both.~~

8           **SECTION 10.** 938.538 (3) (a) 1m. of the statutes is amended to read:

9           938.538 (3) (a) 1m. If the participant has been adjudicated delinquent for committing  
10           an act that would be a Class A felony if committed by an adult, placement in a Type 1 secured  
11           juvenile correctional facility, ~~a secured child-caring institution or, if the participant is 17 years~~  
12           ~~of age or over or 15 years of age or over and transferred under s. 938.357 (4) (d), a Type 1~~  
13           ~~prison, as defined in s. 301.01 (5), until the participant reaches 25 years of age, unless the~~  
14           participant is released sooner, subject to a mandatory minimum period of confinement of not  
15           less than one year.

16           **SECTION 11.** 938.538 (3) (a) 2. of the statutes is amended to read:

17           938.538 (3) (a) 2. Intensive or other field supervision, including corrective sanctions  
18           supervision under s. 938.533, or aftercare supervision ~~or, if the participant is 17 years of age~~  
19           ~~or over, intensive sanctions supervision under s. 301.048.~~

20           **SECTION 12.** 938.538 (4) (a) of the statutes is amended to read:

21           938.538 (4) (a) A participant in the ~~serious juvenile offender~~ program under this section  
22           is under the supervision and control of the department, is subject to the rules and discipline  
23           of the department, and is considered to be in custody, as defined in s. 946.42 (1) (a).  
24           Notwithstanding ss. 938.19 to 938.21, if a participant violates a condition of his or her

1 participation in the program under sub. (3) (a) 2. to 9. while placed in a Type 2 secured juvenile  
2 correctional facility the department may, without a hearing, take the participant into custody  
3 and return him or her to placement in a Type 1 secured juvenile correctional facility, a secured  
4 child-caring institution or, if the participant is 17 years of age or over, a Type 1 prison, as  
5 defined in s. 301.01 (5). Any intentional failure of a participant to remain within the extended  
6 limits of his or her placement while participating in the serious juvenile offender program or  
7 to return within the time prescribed by the administrator of the division of intensive sanctions  
8 in the department is considered an escape under s. 946.42 (3) (c). This paragraph does not  
9 preclude a juvenile who has violated a condition of the juvenile's participation in the program  
10 under sub. (3) (a) 2. to 9. from being taken into and held in custody under ss. 938.19 to 938.21.

11 **SECTION 13.** 938.538 (5) (c) of the statutes is amended to read:

12 938.538 (5) (c) Sections 938.357 and 938.363 do not apply to changes of placement and  
13 revisions of orders for a juvenile who is a participant in the serious juvenile offender program,  
14 except that s. 938.357 (4) (d) applies to the transfer of a participant to the Racine youthful  
15 offender correctional facility named in s. 302.01 under this section.

16 **SECTION 14.** 938.538 (6) of the statutes is amended to read:

17 938.538 (6) PURCHASE OF SERVICES. The department of corrections may contract with  
18 the department of health and family services, a county department, or any public or private  
19 agency for the purchase of goods, care, and services for participants in the serious juvenile  
20 offender program under this section. The department of corrections shall reimburse a person  
21 from whom it purchases goods, care, or services under this subsection from the appropriation  
22 under s. 20.410 (3) (cg) or, if the person for whom the goods, care or services are purchased  
23 is placed in a Type 1 prison, as defined s. 301.01 (5), or is under intensive sanctions  
24 supervision under s. 301.048, from the appropriate appropriation under s. 20.410 (1).

