



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE SPECIAL COMMITTEE ON RECODIFICATION OF CH. 938,
THE JUVENILE JUSTICE CODE

FROM: Don Salm and Anne Sappenfield, Senior Staff Attorneys

RE: Discussion of Issues Relating to Previously Reviewed Drafts of Subchapters of Chapter 938,
the Juvenile Justice Code, and the Code in General

DATE: October 26, 2004

This Memo discusses:

- A number of specific issues relating to the drafts of subchs. I, III, and IV of ch. 938 (reviewed at the September 23, 2004 meeting of the Special Committee's Drafting Subcommittee).
- Several general issues and changes that are applicable to the entire ch. 938 (and, in some cases, to language changes outside of ch. 938 necessitated by new or amended revisions in ch. 938). Some of these general issues and changes are set forth under the subchs. I, III, and IV headings in the Memo.

Before setting forth these issues and changes, it should be noted that when the Drafting Subcommittee finishes its discussion of the final subchapters of ch. 938 and resolves issues raised in this Memo and any remaining issues raised at the final subcommittee meeting (which will probably be the November 4, 2004 meeting), the staff will combine all of the changes suggested by the subcommittee into a single draft for review by the full Special Committee. That is, there will be a single draft including all of ch. 938 with the suggested changes, as well as provisions outside of ch. 938 that require revision because of, or related to, the ch. 938 changes. The full committee will then review that single draft, make any necessary revisions to that draft, and vote on a final version of the draft to be presented to the Legislative Council for its consideration for introduction as a bill in the 2005-06 Legislative Session.

GENERAL COMMENT

Adoption and Safe Families Act

The Department of Corrections (DOC) has made several requests for modifications to clarify provisions that are intended to ensure compliance with the federal Adoption and Safe Families Act. The bill drafts include changes that relate to proceedings that are exclusive to the Juvenile Justice Code (e.g., sanctioning juveniles who violate a dispositional order), but do not include changes to provisions that are parallel to provisions in the Children's Code.

SUBCHAPTER I, RELATING TO GENERAL PROVISION

Definitions

The following changes will be made with reference to the definitions in s. 938.02, Stats.:

- The terms "secured" and "secure" in the following terms will be changed to "juvenile": "secured correctional facility," "secure detention facility," "Type 1 secured correctional facility," and "Type 2 secured correctional facility." Wherever they appear in the statutes, these terms will be changed to "juvenile correctional facility," "juvenile correctional facility," "Type 1 juvenile detention facility," and "Type 2 juvenile correctional facility."
- The terms "secured group home" and "secured child caring institution" will be deleted from the statutes. The Drafting Subcommittee and others have pointed out that these terms can be deleted because these types of entities do not exist and that continued statutory reference to them is not necessary.
- The term "Type 2 child caring institution" will be changed to "Type 2 residential care center for children and youth" wherever that term appears in the statutes. This is in accordance with a suggestion from the DOC's Division of Juvenile Corrections at the last subcommittee meeting.
- In the definition of "group home" in s. 938.02 (7), Stats., there will be a technical change, amending the current reference to "department" (which means "department of corrections" in ch. 938) to "department of health and family services" (DHFS), the department this definition is supposed to refer to.
- The term "treatment" will be added to the definitions of the terms "residential care center for children and youth" and "Type 2 residential care center for children and youth."

SUBCHAPTER III, RELATING TO JURISDICTION

Crimes Excepted Under s. 938.17

Under s. 938.17 (1), Stats., courts of criminal and civil jurisdiction have exclusive jurisdiction in proceedings against juveniles who commit traffic, boating, snowmobile, and all-terrain vehicle violations. This provision does not apply, however, to the following violations:

- Knowingly making a false statement in the application for a certificate of title under s. 342.06 (1), Stats.
- Forging proof of insurance or financial responsibility under s. 344.48 (1), Stats.
- Failing to render aid following a boating accident under s. 30.67 (1), Stats., if death or injury occurs.
- Failing to remain on the scene of an automobile accident under s. 346.67 (1), Stats., if death or injury occurs.

At the last meeting of the Drafting Subcommittee, the question of why these offenses are not under the jurisdiction of the criminal or civil court was raised. It appears that these offenses may not have been included because they are felonies and there was a policy decision to have felonies addressed in the juvenile court. However, this policy has not been consistent. For example, the felony of eluding an officer under s. 346.03 (4), Stats., is not included. Also, as of February 1, 2003, forging proof of insurance or financial responsibility is a misdemeanor.

SUBCHAPTER IV, RELATING TO HOLDING A JUVENILE IN CUSTODY

Parents' Right to Waive Participation in a Temporary Physical Custody Hearing Under s. 938.21

Under current law, in a proceeding concerning a runaway or delinquent juvenile, a juvenile held in nonsecure custody may waive his or her right to participate in the temporary physical custody hearing. For proceedings concerning a juvenile in need of protection or services, the parent, guardian, or legal custodian may waive his or her right to participate in the temporary physical custody hearing.

In its comments to committee staff, DOC questioned whether parents should be able to waive participation in hearings concerning a runaway or delinquent juvenile. The same distinction was made in the Children's Code when delinquents, runaways, and juveniles in need of protection or services were addressed in that Code, so it appears that the current difference in the two types of proceedings should remain.

Court Authority to Dismiss Petition Under s. 938.21 (7)

In *In re Lindsey A.F.*, the Wisconsin Supreme Court held that s. 938.21 (7), Stats., which allows a court to dismiss a petition and refer a matter to the intake worker for deferred prosecution, is ambiguous and interpreted the subsection to mean that the court has the authority to dismiss a petition and refer the matter to the intake worker for deferred prosecution even when the juvenile is not in custody.

At the last meeting of the Drafting Subcommittee, there was not a consensus to overturn the decision. Therefore, it appears that placing the provision in a different section may make the meaning clearer. Committee staff proposes placing the language in s. 938.263, Stats., which currently addresses amendments to petitions.