



WISCONSIN LEGISLATIVE COUNCIL
PROPOSED REPORT TO THE LEGISLATURE

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

April 25, 2005

PRL 2005-12

Special Committee on Recodification of Ch. 938, the Juvenile Justice Code

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April 25, 2005

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATION

The Special Committee on Recodification of Ch. 938, the Juvenile Justice Code, recommends the following proposal to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature.

LRB-2670/1, Relating to Reorganizing, Making Nonsubstantive Editorial Changes to, Revising and Creating Titles in, Clarifying Ambiguous Language in, and Making Minor Substantive Changes to the Juvenile Justice Code

LRB-2670/1, relating to the recodification of ch. 938, Stats., the Juvenile Justice Code, does the following:

- Modifies the definition of “residential care center for children and youth” to add “treatment” to the list of services provided by these facilities because they provide treatment as well as “care and maintenance.” Changes the term “secure child caring institution” to “secured residential care center for children and youth.”
- Changes the term “secured correctional facility” to “juvenile correctional facility.” The same change was made to the defined terms of “secure detention facility,” “Type 1 secured correctional facility,” and “Type 2 secured correctional facility.”
- Repeals the definition of “secured group home” as unnecessary and unworkable.
- Clarifies that a delinquency proceeding is commenced when a delinquency petition is filed.
- Provides that a request for a change in placement, a request for a revision of a dispositional order, or a request for an extension of a dispositional order may be filed instead of a delinquency or a juvenile in need of protection or services (JIPS) petition at a temporary custody hearing.
- Specifies that the five-day time limit to make a finding following the temporary custody hearing as to whether reasonable efforts were made to prevent removal of the juvenile from the home excludes Saturdays, Sundays, and legal holidays.
- 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 Supervision Program, which is defined in the statutes as a state prison.
- Clarifies that the maximum amount of restitution in terms of monetary amount or hours of services applies to all of the damages or injuries resulting from the act (or acts) that are the basis for a deferred prosecution agreement (i.e., the amount does not apply per charge or per petition, but is the total amount that can be required under the agreement).
- Adds attempted armed robbery and second-degree reckless homicide as serious juvenile offender offenses. Also clarifies this provision by specifying that conspiracy to commit an

offense [s. 939.31] means conspiracy to commit an offense listed as a serious juvenile offender offense.

- Permits a court ordering a disposition of secure placement to place a juvenile in either a juvenile correctional facility or a secure residential care center for children and youth.
- Provides that the district attorney and corporation counsel, in addition to the agency supervising the juvenile, may notify the court of a violation of a dispositional order that stays the imposition of another dispositional order.
- Requires the district attorney or corporation counsel to provide notice to a victim of how to request testing for communicable diseases of a juvenile who is alleged to have thrown or expelled a bodily substance at the victim.
- Provides that the statement of income, assets, debts, and living expenses required to be given by a parent whose child is placed in an out-of-home placement must state those of the parent and the juvenile.
- Provides that an order placing a juvenile in secure placement must apply for one year or until the juvenile's 18th birthday, whichever is earlier, if the order does not specify a termination date.
- Provides that a person who was adjudicated delinquent for an offense committed before July 1, 1996, may request to have his or her record expunged.
- Clarifies that a reasonable efforts findings need not be made when a juvenile is placed in nonsecure custody as a sanction if the finding has already been made in the dispositional order.
- Permits the supervisor of a caseworker who has placed a juvenile in custody for not more than 72 hours as a consequence for a violation of a dispositional order to modify the terms of the placement.
- Clarifies that the "one face-to-face contact per day" requirement for caseworkers supervising juveniles placed in the Intensive Supervision Program does not apply: (a) during a period that a youth is placed in shelter care or a secure facility for a violation of program rules for a 72-hour hold; or (b) during a period that a youth is placed in non-secure custody for not more than 30 days as crisis intervention.
- Clarifies that, with specified exceptions, the rule that agency records relating to a juvenile are confidential applies to the contents of any record kept or information received about an individual who is or was (i.e., currently or in the past) in the agency's care or legal custody.

PART II

COMMITTEE ACTIVITY

Assignment

The Joint Legislative Council established the Special Committee on Recodification of Ch. 938, the Juvenile Justice Code, and appointed the chair by a June 4, 2004 mail ballot. The committee was directed to conduct a study of the recodification of ch. 938, Stats., relating to the Juvenile Justice Code, to include a study of the possible reorganization of certain parts of the chapter to fit in a logical manner with the rest of the chapter, renumbering and retitling of certain sections and subsections, consolidating related provisions, modernizing language, resolving ambiguities in language, codifying court decisions, and making minor substantive changes.

Membership of the Special Committee, appointed by a July 21, 2004 mail ballot, consisted of two Senators, five Representatives and four public members. A list of committee members is included as **Appendix 3** to this report.

Summary of Meetings

Reflecting the technical nature of much of the recodification, the chair of the Special Committee appointed a Drafting Subcommittee in order to expedite the deliberations of the full committee. The Subcommittee consisted of the four public members of the Special Committee and any legislator member of the full committee who wished to attend and participate. The Drafting Subcommittee was directed to prepare draft legislation, consistent with the Special Committee's assignment. The Drafting Subcommittee was encouraged to work on a consensus basis and identify those areas where consensus could not be reached and to identify any policy decisions made by the Drafting Subcommittee for review by the Special Committee.

The Drafting Subcommittee held two meetings in Madison on the following dates:

September 23, 2004
November 4, 2004

During the course of the two meetings, the Drafting Subcommittee developed a draft proposal (WLC: 0081/2) recodifying ch. 938, Stats., for consideration by the Special Committee. The Subcommittee worked from drafts prepared by the staff for the committee proposing technical changes for each subchapter of ch. 938 and also worked from drafts addressing specific issues, such as reorganizing and clarifying provisions relating to juvenile records and repealing language permitting the DOC to place juveniles who have been adjudicated delinquent in adult prisons because that language has been held to be unconstitutional by the Wisconsin Supreme Court. The drafting committee was assisted by interested persons in its deliberations, including Robert Margolies, DOC, and Nancy Rottier, Office of the Director of State Courts, who served as legislative liaisons for those agencies.

The Special Committee met on March 30, 2005 to review and consider the draft proposal developed by the Drafting Subcommittee. The Special Committee reviewed and discussed some of the minor substantive provisions in the draft, and considered a few issues that had not received final review by the Drafting Subcommittee. The Special Committee then recommended WLC: 0081/2, with the following language changes, for submission to the full Legislative Council (see **Appendix 1** for the vote):

1. Delete the language in the bill draft codifying the decision of *In re Lindsay A.F.*, relating to dismissal of petitions under the Juvenile Justice Code (i.e., in ss. 938.21 (7) and 938.263 in the draft).

2. In s. 983.355 (4) (b) of the bill draft relating to the length of a dispositional order placing a juvenile in a juvenile correctional facility, add a sentence stating, "If the order does not specify a termination date, the order shall apply for one year after the date on which the order is granted or until the juvenile's 18th birthday, whichever is earlier, unless the court terminates the order sooner."

PART III

RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the draft as recommended by the Special Committee on Recodification of Ch. 938, the Juvenile Justice Code.

Background

Ch. 938, Stats., called “The Juvenile Justice Code,” was created by 1995 Wisconsin Act 77, which took effect on July 1, 1996. The major provisions in the new ch. 938 were previously found in the Children’s Code, ch. 48, Stats. The Act created the separate Juvenile Justice Code to govern juveniles who are alleged to have violated a criminal law, civil law, or municipal ordinance or who are alleged to be uncontrollable, dropouts, or habitually truant from home or school. Provisions of the statutes relating to children in need of protection or services (so-called “CHIPS,” for example, children who have been abandoned, abused, or neglected) remain in ch. 48, Stats. The changes in 1995 Act 77 were the result, in major part, of the recommendations of the Juvenile Justice Study Committee (established by 1993 Wisconsin Act 377).

Since the enactment of the new Juvenile Justice Code chapter, the statutes have been revised through piecemeal amendments, which have made certain statutes increasingly more complicated to read and understand. In addition, there have been numerous court decisions interpreting various provisions in the chapter. Finally, the use of headings and subheadings in the statutory sections in this chapter, which help considerably in the clarity of the chapter, has been inconsistent, and a number of provisions contain anachronistic, unnecessary, and confusing language that needs to be modernized, clarified, or deleted.

Description

Generally

The draft:

1. Reorganizes individual sections, or portions of sections, by combining them with other sections, dividing single sections into two or more sections, and internally reorganizing single sections.
2. Makes nonsubstantive editorial changes to modernize language and for consistency with current drafting style.
3. Revises section and subsection titles, where appropriate, and provides subsection titles throughout the chapter.
4. Clarifies ambiguous language.
5. Repeals several provisions considered no longer necessary.
6. Makes substantive changes the Drafting Subcommittee concluded were relatively noncontroversial.

As the Legislative Council staff prefatory note in the draft specifies, it is intended that, unless expressly noted, the draft makes no substantive changes in the statutory provisions treated by the draft.

Substantive changes in the draft are identified in Notes to the provisions substantively affected. If a question arises about the effect of any modification made by the draft, it is intended that the revisions in the draft be construed to have the same effect as the prior statutes.

Definitions and Terminology

1. Modifies the definition of “residential care center for children and youth” to add “treatment” to the list of services provided by these facilities because they provide treatment as well as “care and maintenance.” [s. 938.02 (15d).]

2. Changes the term “secure child caring institution” to “secured residential care center for children and youth.” The Drafting Subcommittee determined that “secured residential care center for children and youth” is a more appropriate term for these facilities. This change is made, where appropriate, throughout the statutes. [s. 938.02 (15g).]

3. Changes the term “secured correctional facility” to “juvenile correctional facility.” The Drafting Subcommittee determined that “juvenile correctional facility” is a more descriptive term for a facility that deals solely with juvenile offenders. The term “secured correctional facility” does not indicate that the correctional facility is for juvenile offenders. The same change was made to the defined terms of “secure detention facility,” “Type 1 secured correctional facility,” and “Type 2 secured correctional facility.” These terms are also revised to use “juvenile” instead of “secure” or “secured.” The draft replaces the terms throughout the statutes. [s. 938.02 (15m) (renumbered (10p) in the draft), (16) (renumbered (10r)), (19), and (20).]

4. Repeals the definition of “secured group home.” The Drafting Subcommittee determined that no secured group homes have been established since the concept was first recognized in the statutes and that the concept is unnecessary and unworkable. [s. 938.02 (15p).]

5. Provides that intake workers must have the qualifications required to perform entry level “case work” instead of “social work.” The Drafting Subcommittee found that this provision is sometimes interpreted to mean that an intake worker must have a degree in social work and be licensed as a social worker, but that the intent of the provision is to also permit persons who have degrees from four-year accredited colleges in other human service-related fields such as criminal justice, sociology, and psychology and are trained upon hire to perform in accordance with state law and practice standards to be intake workers. [s. 938.06 (1) (am) 1.]

6. Makes consistent language requiring an intake worker to request, instead of recommend, that the district attorney file a petition under ch. 938. [s. 938.06 (2) (a).]

Procedure

1. Clarifies that a delinquency proceeding is commenced when a delinquency petition is filed. [s. 938.12 (2); see *D.W.B. v. State*, 158 Wis. 2d 398, 462 N.W.2d 520, 521 (1990).]

2. Clarifies that the juvenile court must deny a petition for waiver if the court determines that the matter does not have prosecutive merit. [s. 938.18 (4) (a).]

3. Provides that a request for a change in placement, a request for a revision of a dispositional order, or a request for an extension of a dispositional order may be filed instead of a delinquency or a JIPS petition at a temporary custody hearing. [s. 938.21 (1) (a).]

4. Specifies that the five-day time limit to make a finding following the temporary custody hearing as to whether reasonable efforts were made to prevent removal of the juvenile from the home excludes Saturdays, Sundays, and legal holidays. [s. 938.21 (5) (b) 1.]

Dispositions and Dispositional Orders

1. Eliminates the authority of DOC to transfer a juvenile who has been adjudicated delinquent to an adult prison, including the Intensive Supervision Program, which is defined in the statutes as a state prison. 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. This change is reflected: (a) in various provisions in the Juvenile Justice Code [ss. 938.183 (3), 938.357 (4) (d), 938.538 (3) (a) 1., 1m., and 2., (4) (a), (5) (c), and (6), and 938.992 (3)]; and (b) in other provisions affected by this change that are outside of the Juvenile Justice Code.

2. Clarifies that the maximum amount of restitution in terms of monetary amount or hours of services applies to all of the damages or injuries resulting from the act (or acts) that are the basis for a deferred prosecution agreement (i.e., the amount does not apply per charge or per petition, but is the total amount that can be required under the agreement). [s. 938.245 (2) (a) 5. c.]

3. Clarifies that a juvenile under 14 years of age may not make more than \$250 in restitution or perform more than 40 hours of services for the victim in total restitution under a consent decree. [s. 938.32 (1t) 3.]

4. Clarifies that a juvenile under 14 years of age may not participate in more than 40 hours in a supervised work program or perform more than 40 hours of community service work in total under a consent decree. [s. 938.32 (1x).]

5. Adds attempted armed robbery and second-degree reckless homicide as serious juvenile offender offenses. Also clarifies this provision by specifying that conspiracy to commit an offense [s. 939.31] means conspiracy to commit an offense listed as a serious juvenile offender offense. [s. 938.34 (4h) (a).]

6. Permits a court ordering a disposition of secure placement to place a juvenile in either a juvenile correctional facility or a secure residential care center for children and youth. [s. 938.34 (4m) (intro.).]

7. Clarifies that a juvenile under 14 years of age may not make more than \$250 in restitution or perform more than 40 hours of services under a dispositional order. [s. 938.34 (5) (c).]

8. Provides that the district attorney and corporation counsel, in addition to the agency supervising the juvenile, may notify the court of a violation of a dispositional order that stays the imposition of another dispositional order. [s. 938.34 (16).]

9. Removes revocation of a juvenile's driving privileges as a JIPS disposition to be consistent with the parallel delinquency disposition under s. 938.34 (14m). [s. 938.345 (1) (d).]

10. Requires the district attorney or corporation counsel to provide notice to a victim of how to request testing for communicable diseases of a juvenile who is alleged to have thrown or expelled a bodily substance at the victim. Current law does not specify who must provide this notice. [s. 938.346 (1m).]

11. Provides that the statement of income, assets, debts, and living expenses required to be given by a parent whose child is placed in an out-of-home placement must state those of the parent and the juvenile. [See, e.g., s. 938.355 (2) (b) 4m.]

12. Provides that an order placing a juvenile in secure placement that does not specify a termination date must apply for one year or until the juvenile's 18th birthday, whichever is earlier, unless the court terminates the order sooner. Under current law, a dispositional order placing a

juvenile in a Type 2 residential care center for children and youth or in a juvenile correctional facility may apply for up to two years or until the juvenile's 18th birthday, whichever is earlier, unless the court specifies a shorter period of time. [s. 938.355 (4) (b).]

13. Provides that a person who was adjudicated delinquent for an offense committed before July 1, 1996, may request to have his or her record expunged. The current provision only applies to persons who were adjudicated delinquent on or after the effective date of ch. 938 (July 1, 1996). [s. 938.355 (4m); see *State v. Jason J.C.*, 216 Wis. 2d 12, 573 N.W.2d 564 (1997).]

Sanctions for Violations of Dispositional Orders

1. Clarifies that a reasonable efforts finding need not be made when a juvenile is placed in nonsecure custody as a sanction if the finding has already been made in the dispositional order. According to DOC and the Department of Health and Family Services (DHFS), a subsequent finding is not required. [s. 938.355 (6) (cm).]

2. Permits the supervisor of a caseworker who has placed a juvenile in custody for not more than 72 hours as a consequence for a violation of a dispositional order to modify the terms of the placement. Under current law, the supervisor may approve the placement or release the juvenile from custody. This change is also made for juveniles placed in custody under the Intensive Supervision Program. [ss. 938.355 (6d) (a) 2. and 938.534 (1) (b) 2.]

3. Provides that an extension of a dispositional order expires one year after the court orally makes, or grants, its order instead of one year after the order is filed with the clerk of court. [s. 938.365 (5).]

4. Clarifies that the "one face-to-face contact per day" requirement for caseworkers supervising juveniles placed in the Intensive Supervision Program does not apply: (a) during a period that a youth is placed in shelter care or a secure facility for a violation of program rules for a 72-hour hold; or (b) during a period that a youth is placed in non-secure custody for not more than 30 days as crisis intervention. The Drafting Subcommittee determined that under current practice, assigned caseworkers do not have daily contact with youth when they are being held in detention or in shelter care. [s. 938.534 (1) (a).]

Juvenile Records

Clarifies that, with specified exceptions, the rule that agency records relating to a juvenile are confidential applies to the contents of any record kept or information received about an individual who is or was (i.e., currently or in the past) in the agency's care or legal custody. [s. 938.78 (2) (a).]

Appendix 1

Committee and Joint Legislative Council Votes

WLC: 0081/2, relating to general provisions; organization of the court; jurisdiction; holding a juvenile in custody; procedure; disposition; permanency planning; jurisdiction over persons 17 years of age or older; authority of the department of corrections; county juvenile welfare services; general provisions on juvenile records; community services; prohibition on transferring to an adult prison a juvenile who has been adjudicated delinquent; and the confidentiality of juvenile records, was recommended by the Special Committee on Recodification of Ch. 938, the Juvenile Justice Code, to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature.

At the March 30, 2005 meeting, the Special Committee recommended WLC: 0081/2, with the changes agreed to at that meeting (see pages 5 and 6 of this report), on a vote of Ayes 8 (Reps. Suder, Bies, Kerkman, and Owens; and Public Members Borowski, Garber, Pruski, and Schleiwiler); Noes, 0; and Absent, 3 (Sens. Jauch and Zien; and Rep. Schneider).

Appendix 2

Joint Legislative Council

[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]

Co-Chair

ALAN LASEE
Senate President
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Co-Chair

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Speaker
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DEAN KAUFERT
1360 Alpine Lane
Neenah, WI 54956

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees. [s. 13.81, Stats.]

Joint Legislative Council

[Current Joint Legislative Council Members Receiving Committee Report]

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Co-Chair

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Majority Leader
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West Salem, WI 54669

MARK POCAN
309 N. Baldwin Street
Madison, WI 53703

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees. [s. 13.81, Stats.]

Appendix 3

Recodification of Ch. 938, the Juvenile Justice Code

Representative Scott Suder, **Chair**
102 South 4th Avenue
Abbotsford, WI 54405

Senator Robert Jauch
5271 South Maple Drive
Poplar, WI 54864

Representative Carol Owens
144 County Road C
Oshkosh, WI 54904

Senator David A. Zien
1716-63rd Street
Eau Claire, WI 54703

Don Garber
Dane County District Attorney's Office
City County Building
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Madison, WI 53703

Tom Schleitwiler
Jefferson County Human Services Department
N3995 Annex Road
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Representative Garey D. Bies
2590 Settlement Road
Sister Bay, WI 54234

Representative Samantha Kerkman
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Representative Marlin D. Schneider
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Gina Pruski
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Madison, WI 53707

STUDY ASSIGNMENT: The committee shall conduct a study of the recodification of ch. 938, Stats., relating to the Juvenile Justice Code, to include a study of the possible reorganization of certain parts of the chapter to fit in a logical manner with the rest of the chapter, renumbering and retitling of certain sections and subsections, consolidating related provisions, modernizing language, resolving ambiguities in language, codifying court decisions, and making minor substantive changes.

11 MEMBERS: 2 Senators, 5 Representatives, and 4 Public Members.

LEGISLATIVE COUNCIL STAFF: Don Salm and Anne Sappenfield, Senior Staff Attorneys, and Julie Learned, Support Staff.

Appendix 4

Committee Materials List

(Copies of documents are available at www.legis.state.wi.us/lc)

March 30, 2005 Meeting

- [Memo No. 3](#), Summary of WLC: 0081/2, Relating to the Recodification of Ch. 938, Stats., as Developed by the Drafting Subcommittee of the Special Committee (3-21-05)
- WLC: [0081/2](#), relating to general provisions; organization of the court; jurisdiction; holding a juvenile in custody; procedure; disposition; permanency planning; jurisdiction over persons 17 years of age or older; authority of the department of corrections; county juvenile welfare services; general provisions on juvenile records; community services; prohibition on transferring to an adult prison a juvenile who has been adjudicated delinquent; and the confidentiality of juvenile records

November 4, 2004 Drafting Subcommittee Meeting

- [Notice](#) of Drafting Subcommittee meeting
- [Agenda](#) for the November 4, 2004 meeting
- [Memo No. 2](#), Discussion of Issues Relating to Previously Reviewed Drafts of Subchapters of Chapter 938, the Juvenile Justice Code, and the Code in General (10-26-04)
- WLC: [0017/1](#), relating to disposition
- WLC: [0018/1](#), relating to permanency planning
- WLC: [0019/1](#), relating to jurisdiction over persons 17 years of age or older
- WLC: [0021/1](#), relating to authority of the department of corrections
- WLC: [0022/1](#), relating to county juvenile welfare services
- WLC: [0023/1](#), relating to general provisions on juvenile records
- WLC: [0024/1](#), relating to community services
- WLC: [0031/1](#), relating to prohibition on transferring to an adult prison a juvenile who has been adjudicated delinquent
- WLC: [0037/1](#), relating to the confidentiality of juvenile records
- [Letter](#), from Kevin Potter, Legal Counsel, Department of Corrections (10-22-04)

September 23, 2004 Drafting Subcommittee Meeting

- [Notice](#) of Drafting Subcommittee meeting
- [Agenda](#) for the September 23, 2004 meeting
- [Memo No. 1, Introduction to the Recodification of Ch. 938, Stats., the Juvenile Justice Code \(9-13-04\)](#)
 - [Chapter 938 Table of Contents](#) (enclosed with Memo No. 1)
- [WLC: 0005/1](#), relating to general provisions
- [WLC: 0006/1](#), relating to organization of the court
- [WLC: 0007/1](#), relating to jurisdiction
- [WLC: 0008/1](#), relating to holding a juvenile in custody
- [WLC: 0009/1](#), relating to procedure
- A copy of [ch. 938](#), Stats.