



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 5

TO: MEMBERS OF THE SPECIAL COMMITTEE ON HIGH-RISK JUVENILE OFFENDERS

FROM: Melissa Schmidt, Staff Attorney

RE: Comparison of Wisconsin's Current Serious Juvenile Offender Program With the Former Extended Court Jurisdiction and Youthful Offender Programs

DATE: August 5, 2008

At the July 10, 2008 meeting of the Special Committee on High-Risk Juvenile Offenders, information regarding Wisconsin's Youthful Offender Program was requested. The Youthful Offender Program was created by statute but was never implemented. This Memo describes that program, as well as the Extended Court Jurisdiction statutory provisions which permitted a juvenile adjudicated delinquent for one of several serious offenses to remain under the juvenile court's jurisdiction until the juvenile turned age 21 or 25, depending upon the offense. This program was in effect for approximately 20 years.

In 1995, the Serious Juvenile Offender Program was created and both the Youthful Offender Program and the Extended Court Jurisdiction statutory provisions were eliminated. This Memo briefly describes the Extended Court Jurisdiction and Youthful Offender Program statutes and highlights the differences between those two programs and Wisconsin's current Serious Juvenile Offender Program.

### **EXTENDED COURT JURISDICTION AND YOUTHFUL OFFENDER PROGRAM**

This section describes the Extended Court Jurisdiction and the Youthful Offender Program targeting juveniles adjudicated for more serious offenses as set forth in the 1993-94 statutes. At that time, juvenile delinquency programs were administered by the Department of Health and Social Services, Division of Youth Services (DYS).

#### **Extended Court Jurisdiction**

Before the creation of the Juvenile Justice Code in 1995, juveniles adjudicated delinquent for nine serious felonies were subject to extended juvenile court jurisdiction. Such a juvenile was subject to incarceration until he or she reached the age of either 21 or 25 years depending upon the offense for

which the juvenile was adjudged delinquent. If the juvenile committed one of the nine crimes listed, then the court was required to enter an order extending jurisdiction as follows:

- a. If the act for which the person was adjudged delinquent was a violation of first-degree intentional homicide,<sup>1</sup> the order was required to remain in effect until the person reached 25 years of age or until the termination of the order, whichever came first.
- b. If the act for which the person was adjudged delinquent was a violation of: (1) first-degree reckless homicide; (2) second-degree intentional homicide; (3) first-degree sexual assault; (4) mayhem; (5) physical abuse of a child; (6) mental harm to a child;<sup>2</sup> (7) battery by a prisoner; or (8) assault by a prisoner while placed in a secured correctional facility,<sup>3</sup> then the court was required to enter an order extending its jurisdiction until the person reached 21 years of age or until the termination of the order, whichever came first.

[s. 48.366 (1) (a) and (b), Stats. (1993-94).]

Once the court extended jurisdiction, the adjudicated delinquent remained incarcerated until his or her 21<sup>st</sup> or 25<sup>th</sup> birthday as described above, unless the court modified the order for extended jurisdiction. The statutes included specified procedures allowing the court to order that the juvenile be: (1) released to aftercare supervision; (2) discharged from extended court jurisdiction; or (3) revoked from aftercare. DYS and county departments could petition for these requests at any time, but juveniles were limited to once per year. [s. 48.366 (5) (b) and (c) and (6) (b), Stats. (1993-94).]

When the adjudicated delinquent turned age 18, DYS and the Department of Corrections (DOC) could jointly agree to transfer him or her from a juvenile correctional facility to a state prison. DYS, however, still had legal custody of the juvenile. Counties remained financially responsible for the costs of correctional care until the juvenile turned 19 years old. At age 19, the state provided for the costs of care. [Legislative Fiscal Bureau (LFB), Informational Paper No. 55, *Juvenile Justice and Youth Aids Program*, p. 13 (January 1995) (LFB Paper 55).]

### **Youthful Offender Program**

The Youthful Offender Program was created in 1993 as another way to address older adjudicated delinquents. This program applied to 16- and 17-year olds adjudicated delinquent of a Class A, B, C, or D felony.<sup>4</sup> DOC was designated to administer the Youthful Offender Program. This would have been the only delinquency-related program administered by DOC because in 1993, DYS administered delinquency-related programs.

The Youthful Offender Program was required to begin operations on December 1, 1995. DOC was to receive \$24,285,000 to build at least two secure correctional facilities providing a total of 250 beds, with at least 200 beds located in southeast Wisconsin. [LFB, *Wisconsin State Budget Summary 1995-97*, pp. 252-253 (Budget Summary).]

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<sup>1</sup> s. 940.01, Stats. (1993-94).

<sup>2</sup> s. 940.02, 940.05, 940.21, 940.225 (1) (a) and (c), 948.03, or 948.04, Stats. (1993-94).

<sup>3</sup> ss. 940.20 (1) and 946.43, Stats. (1993-94).

<sup>4</sup> Prior to February 1, 2003, there were five felony classifications: Class A, B, C, D, and E.

A juvenile who was adjudicated delinquent could be placed in the Youthful Offender Program only if all of the following conditions applied:

1. The juvenile was 16 years of age or over and had been adjudicated for committing a criminal violation punishable as a Class A, B, C, or D felony.
2. The juvenile had a previous dispositional order<sup>5</sup> and \$30,000 or more had been spent providing post-dispositional orders since the juvenile was 12 years of age.
3. The judge found that the only other disposition appropriate for the juvenile was placement in a secure correctional facility.
4. DOC recommended placement of the juvenile in the Youthful Offender Program.

[s. 48.34 (4g) (a) and (d), Stats. (1993-94).]

Under the Youthful Offender statutes, DOC was required to design the program to provide all of the following:

1. Supervision, care, and rehabilitation that was less costly than ordinary placement in a secured correctional facility and more restrictive than ordinary supervision in the community.
2. Component phases that were intensive and highly structured.
3. A series of component phases for each participant that were based on public safety considerations and the participant's need for supervision, care, and rehabilitation.

[s. 48.537 (2) (a) and (c), Stats. (1993-94).]

DOC was also required to provide each participant with one or more of the following sanctions:

1. Placement in a secure facility as follows:
  - a. For a Class B, C, or D felony, not more than *three years* in a secured correctional facility, **or** if the participant is 18 years of age or over, an adult prison, for a period of not more than *three years*.
  - b. For a Class A felony placement in a secured correctional facility **or** if the participant is 18 years of age or over, an adult prison, *until the participant reached 25 years of age*, unless the participant was released sooner, subject to a *mandatory minimum of not less than a one-year* period of confinement.
2. Intensive or other field supervision.
3. Electronic monitoring.

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<sup>5</sup> There were two types of dispositional orders applicable to this requirement, either a finding of delinquency or that the child was in need of protection or services (CHIPS). [s. 48.34 (4g), Stats. (1993-94).]

4. Alcohol or other drug abuse outpatient treatment or services.
5. Mental health treatment and services.
6. Community service.
7. Restitution.
8. Transitional services for education and employment.
9. Other programs as prescribed by DOC.

DOC was permitted to provide the above sanctions in any order, could provide more than one sanction at a time, and could return to a sanction that was previously used for a participant.

While an adjudicated delinquent was in the Youthful Offender Program, he or she was under the supervision and control of DOC, subject to its rules and discipline, and considered to be in its custody. If the participant violated a condition of his or her participation while not placed in a secured correctional facility, DOC could, without a hearing, take the participant back into custody and return him or her to placement in the secured facility. If the participant was 18 years of age or over, the participant was returned to an adult prison.

Furthermore, the Parole Commission could grant parole to the adjudicated delinquent at any time after he or she completed two years of participation in the Youthful Offender Program. DOC could also discharge a participant from the Youthful Offender Program at any time after he or she completed three years of participation in the program.

While DOC was required to have Youthful Offender facilities operational by the beginning of December 1995, no funding for operational costs had been appropriated at the time that the 1995-97 budget was created. DOC was prohibited by law from charging counties for Youthful Offender Program services. The funding process was not finalized, however, as Youthful Offenders was eliminated before funding was appropriated and the program became operational. [Budget Summary, p. 253.]

DOC was estimated to have Youthful Offender facilities operational during the 1997-99 biennium. [LFB Informational Paper No. 507, *1995-97 Budget*, April 1995, p. 2 (LFB Paper 507).] Created by the 1995-97 budget, the Serious Juvenile Offender Program replaced the Youthful Offender Program, along with Extended Court Jurisdiction, before any facilities could be built and juveniles could be eligible. [LFB Paper 507, p. 8.]

### **SERIOUS JUVENILE OFFENDER PROGRAM**

In many respects, the Serious Juvenile Offender Program is similar to the Youthful Offender Program. There are some major differences, however. This section describes Wisconsin's current program targeting juveniles adjudicated for more serious offenses. The differences between all three programs are described in the section to follow.

A juvenile who is adjudicated delinquent may be placed in the Serious Juvenile Offender Program only if all of the following conditions apply:

1. The juvenile is 14 years of age or over and has been adjudicated delinquent for committing or conspiring to commit one of the following violations: attempting to commit a Class A felony; felony murder; second-degree reckless homicide; mayhem; first-degree sexual assault; taking hostages; kidnapping; tampering with household products and causing death; arson or damage of property by explosives; armed burglary, burglary and battery to a person present, or burglary of a dwelling while the occupant is present; carjacking; armed sexual assault of a child; child abduction by use or threat of force; or attempted armed robbery<sup>6</sup> *or* the juvenile is 10 years of age or over and has been adjudicated delinquent for attempting or committing first-degree intentional homicide<sup>7</sup> or for committing first-degree reckless homicide or second-degree intentional homicide.<sup>8</sup>
2. The court finds that the only other disposition appropriate for the juvenile is placement in a juvenile correctional facility.<sup>9</sup>

[s. 938.34 (4h), Stats.]

DOC is required to design the Serious Juvenile Offender Program to provide all of the following:

1. Component phases that are intensive and highly structured.
2. A series of component phases for each participant that is based on public safety considerations and the participant's need for supervision, care, and rehabilitation.

The sanctions that DOC is required to provide are almost identical to those of the Youthful Offender Program. DOC is required to provide each participant with one or more of the following sanctions:

1. Placement in a juvenile correctional facility as follows:
  - a. For an offense that is not a Class A felony, not more than *three years* in a juvenile correctional facility or a secured residential care center for children and youth.
  - b. For a Class A felony, placement in such a facility *until the participant reaches 25 years of age*, unless the participant is released sooner, subject to a *mandatory minimum period of not less than one year* of confinement.
2. Alternate care, including placement in a foster home, treatment foster home, group home, residential care center for children and youth, or secured residential care center for children and youth.<sup>10</sup>

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<sup>6</sup> s. 939.32 (1) (a), 940.03, 940.06, 940.21, 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1), 948.025 (1), 948.30 (2), or 943.32 (2), Stats.

<sup>7</sup> s. 940.01, Stats.

<sup>8</sup> s. 940.02 or 940.05, Stats.

<sup>9</sup> The juvenile correctional facility referred to facilities operated by DOC designed to hold adjudicated delinquents in secure custody, including secured residential care centers.

<sup>10</sup> These facilities or homes are licensed by the Department of Children and Families. Prior to July 1, 2008, they were licensed by the Department of Health and Family Services.

3. Intensive or other field supervision, including corrective sanctions supervision or aftercare supervision, described below.
4. Electronic monitoring.
5. Alcohol or other drug abuse outpatient treatment and services.
6. Mental health treatment and services.
7. Community service.
8. Transitional services for education and employment.
9. Other programs as prescribed by DOC.

DOC may provide the above sanctions in any order, may provide more than one sanction at a time, and may return to a sanction that was used previously for a participant.

While a juvenile is in the Serious Juvenile Offender Program, he or she is under the supervision and control of DOC, subject to the rules and discipline of DOC, and considered to be in custody. If a Serious Juvenile Offender participant violates a condition of his or her participation in the program while he or she is not placed in a juvenile correctional facility, DOC may, without a hearing, take the participant into custody and return him or her to placement in a juvenile correctional facility. This custody status is referred to in the statutes as placement in a “Type 2 juvenile correctional facility.”

The DOC Office of Juvenile Offender Review<sup>11</sup> may release a participant to aftercare supervision at any time after the participant has completed two years of participation in Serious Juvenile Offender. Aftercare supervision must be provided by DOC. DOC may discharge a participant from participation in the Serious Juvenile Offender Program and from departmental supervision and control at any time after he or she has completed three years in the program. [s. 938.538, Stats.]

### **COMPARISON OF ALL THREE PROGRAMS**

The major statutory differences between Extended Court Jurisdiction, the Youthful Offender Program, and the Serious Juvenile Offender Program may be categorized as follows: (1) age of eligibility; (2) type of offense; (3) prior dispositional record; (4) cost of prior services; (5) departmental recommendation; (6) cost of program; (7) place of incarceration; and (8) supervision upon completion of program.

In general, the statutory changes by Serious Juvenile Offender resulted in: (1) a lowered age of eligibility; (2) reduction in number of offenses qualifying a juvenile for the program; and (3) elimination of the county’s burden to show the services it provided and the cost spent on them before a juvenile

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<sup>11</sup> The Office of Juvenile Offender Review, or OJOR, has the authority to make decisions relating to juveniles placed in juvenile correctional facilities, including decisions relating to release from a facility or from DOC supervision and administrative transfer of juveniles.

qualified for the program. In addition, as discussed below, a Wisconsin Supreme Court decision removed the authority to send older adjudicated juveniles to adult prison.

**A Comparison of Statutory Changes Between the Extended Court Jurisdiction,  
the Youthful Offender Program, and the Serious Juvenile Offender Program**

<b>Program Requirements</b>	<b>Extended Court Jurisdiction</b>	<b>Youthful Offender Program</b>	<b>Serious Juvenile Offender Program</b>
Age of Eligibility	Ages 12-17	Ages 16-17	Ages 14-16, generally, and ages 10-16 for: first-degree intentional homicide, second-degree intentional homicide, or first-degree reckless homicide
Type of Offenses	9 specified felonies: <sup>12</sup> 1. First-degree intentional homicide 2. First-degree reckless homicide 3. Second-degree intentional homicide 4. First-degree sexual assault 5. Mayhem 6. Physical abuse of a child 7. Mental harm to a child 8. Battery by a prisoner 9. Assault by a prisoner	Class A, B, C, or D felonies	19 specified felonies: <sup>13</sup> 1. Attempting to commit a Class A felony 2. Felony murder 3. Second-degree reckless homicide 4. Mayhem 5. First-degree sexual assault 6. Taking hostages 7. Kidnapping 8. Tampering with household products and causing death 9. Arson or damage of property by explosives 10. Armed burglary, burglary and battery to a person present, or burglary of a dwelling while the occupant is present 11. Carjacking 12. Armed robbery 13. First-degree sexual assault of a child 14. Engaging in repeated acts of first-degree sexual assault of a child 15. Child abduction by use or threat of force 16. Attempted armed robbery 17. Attempting or committing first-degree intentional homicide 18. First-degree reckless homicide 19. Second-degree intentional homicide
Prior Dispositional Record	Not applicable	Must have previous delinquency adjudication	Not applicable
Cost of Prior Services	Not applicable	Must have spent at least \$30,000 on dispositional services since age 12	Not applicable
Departmental Recommendation	Not applicable	DOC's report must recommend placement to the court	DOC's report may recommend placement, but does not limit court's authority to decide

<sup>12</sup> These offenses are currently classified as either Class A, B, C, D, E, F, G, or H felonies. (2007 Stats.)

<sup>13</sup> These offenses are currently classified as either Class A, B, C, D, or E felonies. (2007 Stats.)

<b>Program Requirements</b>	<b>Extended Court Jurisdiction</b>	<b>Youthful Offender Program</b>	<b>Serious Juvenile Offender Program</b>
Cost of Program	Not applicable	Must be less costly than placement in a secured correctional facility	Not applicable
Place of Incarceration	1. Under age 18: juvenile correctional facility 2. Age 18 and older: prison, after consulting with DOC	1. Under age 18: juvenile correctional facility 2. Age 18 and older: prison	Juvenile correctional facilities only, including: 1. Type 1 juvenile correctional facility; and 2. Type 2 juvenile correctional facility
Supervision Post-Program	Release to aftercare	Release to parole	Release to aftercare

As originally enacted, the Serious Juvenile Offender Program, like the Youthful Offender Program and Extended Court Jurisdiction, permitted placement of a participant in an adult prison. This changed, however, with the Wisconsin Supreme Court case *State v. Hezzie R.* In this 1998 case, the Wisconsin Supreme Court ruled that placing a juvenile adjudicated as delinquent in a prison, without being afforded the right to a jury trial, was unconstitutional.<sup>14</sup>

In the *Hezzie R.* decision, the Supreme Court stated that while adjudicated delinquents do not have the right to a jury trial, subjecting them to the threat of prison was equivalent to “criminal prosecution.”<sup>15</sup> This threat resulted in a “de facto criminal sentence,” that could not be imposed without the right to a jury trial.<sup>16</sup> The Court severed this requirement from the rest of the Serious Juvenile Offender Program statutes, holding that the remaining component phases were still constitutional.<sup>17</sup>

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<sup>14</sup> See *State of Wisconsin v. Hezzie R.*, 219 Wis. 2d 848, 887 and 891, 580 N.W.2d 660, 674 and 678 (1998).

<sup>15</sup> *Hezzie*, at pp. 887, 674.

<sup>16</sup> *Id.*

<sup>17</sup> *Hezzie*, at pp. 892-893, 676.