CHAPTER 938

JUVENILE JUSTICE CODE

SUBCHAPTER I
GENERAL PROVISIONS
938.01 Title, legislative intent and purposes.
938.02 Definitions.
938.028 Indian juvenile welfare.
SUBCHAPTER II
ORGANIZATION OF COURT
938.03 Time and place of court; absence or disability of judge.
938.06 Services for court.
938.067 Powers and duties of intake workers.
938.069 Powers and duties of disposition staff.
938.07 Additional sources of court services.
938.08 Duties of person furnishing services to court.
938.09 Representation of the interests of the public.
938.10 Power of the judge to act as intake worker.
SUBCHAPTER III
JURISDICTION
938.12 Jurisdiction over juveniles alleged to be delinquent.
938.125 Jurisdiction over juveniles alleged to have violated civil laws or ordinances.
938.13 Jurisdiction over juveniles alleged to be in need of protection or services.
938.135 Referral of juveniles to proceedings under ch. 51 or 55.
938.14 Jurisdiction over interstate compact proceedings.
938.15 Jurisdiction of other courts to determine legal custody.
938.17 Jurisdiction over traffic, boating, snowmobile, all−terrain vehicle, and utility terrain vehicle violations and over civil law and ordinance violations.
938.18 Jurisdiction for criminal proceedings for juveniles 14 or older; waiver hearing.
938.183 Original adult court jurisdiction for criminal proceedings.
938.185 Venue.
SUBCHAPTER IV
HOLDING A JUVENILE IN CUSTODY
938.19 Taking a juvenile into custody.
938.195 Recording custodial interrogations.
938.20 Release or delivery from custody.
938.205 Criteria for holding a juvenile in physical custody.
938.207 Places where a juvenile may be held in nonsecure custody.
938.208 Criteria for holding a juvenile in a juvenile detention facility.
938.209 Criteria for holding a juvenile in a county jail or a municipal lockup facility.
938.21 Hearing for juvenile in custody.
938.22 County and private juvenile facilities.
938.222 Contracts with private entities for juvenile detention facility services.
938.223 Contracts with Minnesota counties for juvenile detention facility services.
938.224 Contracts with department for juvenile detention facility services.
938.225 Statewide plan for juvenile detention facilities.
938.23 Right to counsel.
938.235 Guardian ad litem.
938.237 Civil law and ordinance proceedings initiated by citation in the court assigned to exercise jurisdiction under this chapter and ch. 48.
SUBCHAPTER V
PROCEDURE
938.24 Receipt of jurisdictional information; intake inquiry.
938.243 Basic rights: duty of intake worker.
938.245 Deferred prosecution.
938.25 Petition: authorization to file.
938.255 Petition; form and content.
938.263 Amendment of petition.
938.265 Consultation with victims.
938.27 Notice; summons.
938.273 Service of summons or notice; expense.
938.275 Parents' contribution to cost of custody, sanctions and court and legal services.
938.28 Failure to obey summons; capias.
938.29 Substitution of judge.
938.293 Discovery.
938.295 Physical, psychological, mental or developmental examination.
938.296 Testing for HIV infection and certain diseases.
938.2965 Waiting area for victims and witnesses.
938.297 Motions before trial.
938.299 Procedures at hearings.
938.30 Plea hearing.
938.305 Hearing upon the involuntary removal of a juvenile.
938.31 Fact−finding hearing.
938.312 Notice of dismissal.
938.315 Delays, continuances and extensions.
938.317 Jeopardy.
938.32 Consent decree.
SUBCHAPTER VI
DISPOSITION
938.33 Court reports.
938.331 Court reports; effect on victim.
938.335 Dispositional hearings.
938.34 Disposition of juvenile adjudged delinquent.
938.341 Delinquency adjudication; restriction on firearm possession.
938.3415 Delinquency adjudication; restriction on body armor possession.
938.342 Disposition; truancy and school dropout ordinance violations.
938.343 Disposition of juvenile adjudged to have violated a civil law or an ordinance.
938.344 Disposition; certain intoxicating liquor, beer and drug violations.
938.345 Disposition of juvenile adjudged in need of protection or services.
938.346 Notice to victims of juveniles' acts.
938.35 Effect of judgment and disposition.
938.355 Dispositional orders.
938.356 Duty of court to warn.
938.357 Change in placement.
938.358 Trial reunification.
938.36 Payment for services.
938.361 Payment for alcohol and other drug abuse services.
938.362 Payment for certain special treatment or care services.
938.363 Revision of dispositional orders.
938.364 Dismissal of certain dispositional orders.
938.365 Extension of orders.
938.368 Continuation of dispositional orders.
938.37 Costs.
938.371 Access to certain information by substitute care provider.
938.373 Medical authorization.
SUBCHAPTER VII
PERMANENCY PLANNING; RECORDS
938.38 Permanency planning.
938.39 Disposition by court bars criminal proceeding.
938.396 Records.
SUBCHAPTER IX
JURISDICTION OVER PERSONS 17 OR OLDER
938.44 Jurisdiction over persons 17 or older.
938.45 Orders applicable to adults.
SUBCHAPTER X
REHEARING AND APPEAL
938.46 New evidence.
938.47 Motion for postdisposition relief and appeal.
SUBCHAPTER XI
AUTHORITY
938.48 Authority of department.
938.49 Notification by court of placement with department; information for department.
938.50 Examination of juveniles under supervision of department.
938.505 Juveniles placed under correctional supervision.
938.51 Notification of release or escape of juvenile from correctional custody or supervision.
938.52 Facilities for care of juveniles in care of department.
938.53 Duration of control of department over delinquents.
938.533 Corrective sanctions.
938.534 Intensive supervision program.
938.535 Early release and intensive supervision program; limits.
938.538 Serious juvenile offender program.
938.539 Type 2 status.
938.54 Records.
938.547 Juvenile alcohol and other drug abuse pilot program.
938.548 Multidisciplinary screen and assessment criteria.
938.549 Juvenile classification system.
SUBCHAPTER XII
COUNTY JUVENILE WELFARE SERVICES
938.57 Powers and duties of county departments providing juvenile welfare services.
938.59 Examination and records.
938.595 Duration of control of county departments over delinquents.
SUBCHAPTER XVII
GENERAL PROVISIONS ON RECORDS
938.78 Confidentiality of records.
SUBCHAPTER XVIII
COMMUNITY SERVICES
938.795 Powers of the department.
SUBCHAPTER XX
MISCELLANEOUS PROVISIONS
938.988 Interstate placement of juveniles.
938.991 Interstate compact on juveniles.
938.992 Definitions.
938.993 Juvenile compact administrator.
938.994 Supplementary agreements.
938.995 Financial arrangements.

938.996 Compensation.
938.997 Responsibilities of state departments, agencies and officers.
938.998 Rendition of juveniles alleged to be delinquent.
938.9985 Renunciation of Interstate Compact on Juveniles.
938.999 Interstate Compact for Juveniles.
938.9995 Expediting interstate placements of juveniles.

SUBCHAPTER I

GENERAL PROVISIONS

938.01 Title, legislative intent and purposes. (1) TITLE. This chapter may be cited as "The Juvenile Justice Code", and shall be liberally construed in accordance with the objectives expressed in this section.

(2) LEGISLATIVE INTENT. It is the intent of the legislature to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system which will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively. To effectuate this intent, the legislature declares the following to be equally important purposes of this chapter:

(a) To protect citizens from juvenile crime.

(b) To hold each juvenile offender directly accountable for his or her acts.

(c) To provide an individualized assessment of each alleged and adjudicated delinquent juvenile, in order to prevent further delinquent behavior through the development of competency in the juvenile offender, so that he or she is more capable of living productively and responsibly in the community.

(d) To provide due process through which each juvenile offender and all other interested parties are assured fair hearings, during which constitutional and other legal rights are recognized and enforced.

(e) To divert juveniles from the juvenile justice system through early intervention as warranted, when consistent with the protection of the public.

(f) To respond to a juvenile offender's needs for care and treatment, consistent with the prevention of delinquency, each juvenile's best interest and protection of the public, by allowing the court to utilize the most effective dispositional option.

(g) To ensure that victims and witnesses of acts committed by juveniles that result in proceedings under this chapter are, consistent with this chapter and the Wisconsin constitution, afforded the same rights as victims and witnesses of crimes committed by adults, and are treated with dignity, respect, courtesy, and sensitivity throughout those proceedings.

(3) INDIAN JUVENILE WELFARE; DECLARATION OF POLICY. In Indian juvenile custody proceedings, the best interests of the Indian juvenile shall be determined in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and the policy specified in this subsection. It is the policy of this state for courts and agencies responsible for juvenile welfare to do all of the following:

(a) Cooperate fully with Indian tribes in order to ensure that the federal Indian Child Welfare Act is enforced in this state.

(b) Protect the best interests of Indian juveniles and promote the stability and security of Indian tribes and families by doing all of the following:

1. Establishing minimum standards for the removal of Indian juveniles from their families and the placement of those juveniles in out−of−home care placements that will reflect the unique value of Indian culture.

2. Using practices, in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, this section, and other applicable law, that are designed to prevent the voluntary or involuntary out−of−home care placement of Indian juveniles and, when an out−of−home care placement is necessary, placing an Indian juvenile in a placement that reflects the unique values of the Indian juvenile's tribal culture and that is best able to assist the Indian juvenile in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian juvenile's tribe and tribal community.

History: 1995 a. 77; 2005 a. 344; 2009 a. 94.

The due process standard in juvenile proceedings is fundamental fairness. Basic requirements are discussed. In Interest of D.O.H. 76 Wis. 2d 286, 251 N.W.2d 196 (1976).

Time Ripe for Change. Barry & Ladwig. Wis. Law. Apr. 1996.

938.02 Definitions. In this chapter:

(1) "Adult" means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age.

(1m) "Alcoholism" has the meaning given in s. 51.01 (1m).

(1p) "Alcohol or other drug abuse impairment" means a condition of a person which is exhibited by characteristics of habitual lack of self−control in the use of alcohol beverages, controlled substances or controlled substance analogs to the extent that the person's health is substantially affected or endangered or the person's social or economic functioning is substantially disrupted.

(1s) "Approved treatment facility" has the meaning given in s. 51.01 (2).

(2d) "Controlled substance" has the meaning given in s. 961.01 (4).

(2e) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(2f) "Coordinated services plan of care" has the meaning given in s. 46.56 (1) (cm).

(2g) "County department" means a county department under s. 46.215, 46.22 or 46.23, unless the context requires otherwise.

(2m) "Court", when used without further qualification, means the court assigned to exercise jurisdiction under this chapter and ch. 48 or, when used with reference to a juvenile who is subject to s. 938.183, a court of criminal jurisdiction or, when used with reference to a juvenile who is subject to s. 938.17 (2), a municipal court.

(3) "Court intake worker" means any person designated to provide intake services under s. 938.067.

(3m) "Delinquent" means a juvenile who is 10 years of age or older who has violated any state or federal criminal law, except as provided in ss. 938.17, 938.18 and 938.183, or who has committed a contempt of court, as defined in s. 785.01 (1), as specified in s. 938.355 (6g).

(4) "Department" means the department of corrections.

(5) "Developmental disability" has the meaning given in s. 51.01 (5).

(5g) "Drug dependent" has the meaning given in s. 51.01 (8).

(6) "Foster home" means any facility that is operated by a person required to be licensed by s. 48.62 (1) and that provides care and maintenance for no more than 4 juveniles or, if necessary to enable a sibling group to remain together, for no more than 6 juveniles or, if the department of children and families promulgates rules permitting a different number of juveniles, for the number of juveniles permitted under those rules.

(7) "Group home" means any facility operated by a person required to be licensed by the department of children and families under s. 48.625 for the care and maintenance of 5 to 8 juveniles.

(8) "Guardian" means the person named by the court having the duty and authority of guardianship.

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(8b) "Habitual truant" has the meaning given in s. 118.16 (1) (a).

(8d) "Indian" means any person who is a member of an Indian tribe or who is an Alaska native and a member of a regional corporation, as defined in 43 USC 1606.

(8e) "Indian custodian" means an Indian person who has legal custody under tribal law or custom or under state law of an Indian juvenile who is the subject of an Indian juvenile custody proceeding, as defined in s. 938.028 (2) (b), or of an Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is the subject of a temporary physical custody proceeding under ss. 938.19 to 938.21 or to whom temporary physical care, custody, and control has been transferred by the parent of that juvenile.

(8g) "Indian juvenile" means an unmarried person who is under 18 years of age and who is affiliated with an Indian tribe in any of the following ways:

(a) As a member of the Indian tribe.

(b) As a person who is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8m) "Indian juvenile's tribe" means one of the following:

(a) The Indian tribe in which an Indian juvenile is a member or eligible for membership.

(b) In the case of an Indian juvenile who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian juvenile has the more significant contacts.

(8r) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the services provided to Indians by the U.S. secretary of the interior because of Indian status, including any Alaska native village, as defined in 43 USC 1602 (c).

(10) "Judge", if used without further qualification, means the judge of the court assigned to exercise jurisdiction under this chapter and ch. 48 or, if used with reference to a juvenile who is subject to s. 938.183, the judge of the court of criminal jurisdiction or, when used with reference to a juvenile who is subject to s. 938.17 (2), the judge of the municipal court.

(10m) "Juvenile", when used without further qualification, means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, "juvenile" does not include a person who has attained 17 years of age.

(10p) "Juvenile correctional facility" means a correctional institution operated or contracted for by the department of corrections or operated by the department of health services for holding in secure custody persons adjudged delinquent. "Juvenile correctional facility" includes the Mendota juvenile treatment center under s. 46.057 and a facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5).

(10r) "Juvenile detention facility" means a locked facility approved by the department under s. 301.36 for the secure, temporary holding in custody of juveniles.

(11) "Legal custodian" means a person, other than a parent or guardian, or an agency to whom legal custody of a juvenile has been transferred by a court, but does not include a person who has only physical custody of the juvenile.

(12) "Legal custody" means a legal status created by the order of a court, which confers the right and duty to protect, train and discipline a juvenile, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the juvenile and subject to any residual parental rights and responsibilities and the provisions of any court order.

(12m) "Off−reservation trust land" means land in this state that is held in trust by the federal government for the benefit of an Indian tribe or individual and that is located outside the boundaries of an Indian tribe's reservation.

(13) "Parent" means a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the juvenile is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, "parent" includes a person acknowledged under s. 767.805 or a substantially similar law of another state or adjudicated to be the biological father. "Parent" does not include any person whose parental rights have been terminated. For purposes of the application of s. 938.028 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, "parent" means a biological parent, an Indian husband who has consented to the artificial insemination of his wife under s. 891.40, or an Indian person who has lawfully adopted an Indian juvenile, including an adoption under tribal law or custom, and includes, in the case of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, a person acknowledged under s. 767.805, a substantially similar law of another state, or tribal law or custom to be the biological father or a person adjudicated to be the biological father, but does not include any person whose parental rights have been terminated.

(14) "Physical custody" means actual custody of the person in the absence of a court order granting legal custody to the physical custodian.

(15) "Relative" means a parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother−in−law, sister−in−law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great−great, whether by blood, marriage, or legal adoption, or the spouse of any person named in this subsection, even if the marriage is terminated by death or divorce. For purposes of the application of s. 938.028 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, "relative" includes an extended family member, as defined in s. 938.028 (2) (a), whether by blood, marriage, or adoption, including adoption under tribal law or custom.

(15c) "Reservation," except as otherwise provided in s. 938.028 (2) (e), means land in this state within the boundaries of the reservation of a tribe.

(15d) "Residential care center for children and youth" means a facility operated by a child welfare agency licensed under s. 48.60 for the care, maintenance, and treatment of persons residing in that facility.

(15g) "Secured residential care center for children and youth" means a residential care center for children and youth operated by a child welfare agency that is licensed under s. 48.66 (1) (b) to hold in secure custody persons adjudged delinquent.

(17) "Shelter care facility" means a nonsecure place of temporary care and physical custody for juveniles, including a holdover room, licensed by the department of children and families under s. 48.66 (1) (a).

(17m) "Special treatment or care" means professional services which need to be provided to a juvenile or his or her family to protect the well−being of the juvenile, prevent placement of the juvenile outside the home or meet the special needs of the juvenile. This term includes medical, psychological or psychiatric treatment, alcohol or other drug abuse treatment or other services which the court finds to be necessary and appropriate.

(18) "Trial" means a fact−finding hearing to determine jurisdiction.

(18j) "Tribal court" means a court that has jurisdiction over juvenile custody proceedings, and that is either a court of Indian offenses or a court established and operated under the code or custom of an Indian tribe, or any other administrative body of an Indian tribe that is vested with authority over Indian juvenile custody proceedings.

(18k) "Tribal school" has the meaning given in s. 115.001 (15m).

(18m) "Truancy" has the meaning given in s. 118.16 (1) (c).

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(19) "Type 1 juvenile correctional facility" means a juvenile correctional facility, but excludes any correctional institution that meets the criteria under sub. (10p) solely because of its status under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5).

(19r) "Type 2 residential care center for children and youth" means a residential care center for children and youth that is designated by the department to provide care and maintenance for juveniles who have been placed in the residential care center for children and youth under the supervision of a county department under s. 938.34 (4d).

(20) "Type 2 juvenile correctional facility" means a juvenile correctional facility that meets the criteria under sub. (10p) solely because of its status under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5).

(20m) (a) "Victim" means any of the following:

1. A person against whom a delinquent act has been committed.

2. If the person specified in subd. 1. is a child, a parent, guardian or legal custodian of the child.

3. If a person specified in subd. 1. is physically or emotionally unable to exercise the rights granted under this chapter, s. 950.04 or article I, section 9m, of the Wisconsin constitution, a person designated by the person specified in subd. 1. or a family member, as defined in s. 950.02 (3), of the person specified in subd. 1.

4. If a person specified in subd. 1. is deceased, any of the following:

a. A family member, as defined in s. 950.02 (3), of the person who is deceased.

b. A person who resided with the person who is deceased.

5. If a person specified in subd. 1. has been adjudicated incompetent in this state, the guardian of the person appointed for him or her.

(b) "Victim" does not include a juvenile alleged to have committed the delinquent act.

(21) "Victim−witness coordinator" means a person employed or contracted by the county board of supervisors under s. 950.06 to provide services for the victims and witnesses of crimes or a person employed or contracted by the department of justice to provide the services specified in s. 950.08.

History: 1995 a. 77, 216, 352, 448; 1997 a. 27, 35, 181, 191; 1999 a. 9, 162; 2001 a. 16, 59; 2003 a. 33, 284; 2005 a. 232, 344, 387; 2005 a. 443 s. 265; 2007 a. 20 ss. 3780 to 3782, 9121 (6) (a); 2009 a. 28, 94, 302, 334; 2011 a. 32, 258; 2011 a. 260 s. 80.

NOTE: 2003 Wis. Act 284 contains explanatory notes.

938.028 Indian juvenile welfare. (1) DECLARATION OF POLICY. In Indian juvenile custody proceedings, the best interests of the Indian juvenile shall be determined in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and the policy specified in s. 938.01 (3).

(2) DEFINITIONS. In this section:

(a) "Extended family member" means a person who is defined as a member of an Indian juvenile's extended family by the law or custom of the Indian juvenile's tribe or, in the absence of such a law or custom, a person who has attained the age of 18 years and who is the Indian juvenile's grandparent, aunt, uncle, brother, sister, brother−in−law, sister−in−law, niece, nephew, first cousin, 2nd cousin, or stepparent.

(b) "Indian juvenile custody proceeding" means a proceeding under s. 938.13 (4), (6), (6m), or (7) that is governed by the federal Indian Child Welfare Act, 25 USC 1901 to 1963, in which an out−of−home care placement may occur.

(c) "Out−of−home care placement" means the removal of an Indian juvenile from the home of his or her parent or Indian custodian for temporary placement in a foster home, group home, residential care center for children and youth, or shelter care facility, in the home of a relative other than a parent, or in the home of a guardian, from which placement the parent or Indian custodian cannot have the juvenile returned upon demand. "Out−of−home care placement" does not include holding an Indian juvenile in custody under ss. 938.19 to 938.21.

(d) "Qualified expert witness" means a person who is any of the following:

1. A member of the Indian juvenile's tribe recognized by the Indian juvenile's tribal community as knowledgeable regarding the tribe's customs relating to family organization or child−rearing practices.

2. A member of another tribe who is knowledgeable regarding the customs of the Indian juvenile's tribe relating to family organization or child−rearing practices.

3. A professional person having substantial education and experience in the person's professional specialty and having substantial knowledge of the customs, traditions, and values of the Indian juvenile's tribe relating to family organization and child−rearing practices.

4. A layperson having substantial experience in the delivery of juvenile and family services to Indians and substantial knowledge of the prevailing social and cultural standards and child−rearing practices of the Indian juvenile's tribe.

(e) "Reservation" means Indian country, as defined in 18 USC 1151, or any land not covered under that section to which title is either held by the United States in trust for the benefit of an Indian tribe or individual or held by an Indian tribe or individual, subject to a restriction by the United States against alienation.

(3) JURISDICTION OVER INDIAN JUVENILE CUSTODY PROCEEDINGS. (a) *Applicability.* This section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply to any Indian juvenile custody proceeding regardless of whether the Indian juvenile is in the legal custody or physical custody of an Indian parent, Indian custodian, extended family member, or other person at the commencement of the proceeding and whether the Indian juvenile resides or is domiciled on or off of a reservation. A court assigned to exercise jurisdiction under this chapter may not determine whether this section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply to an Indian juvenile custody proceeding based on whether the Indian juvenile is part of an existing Indian family.

(b) *Exclusive tribal jurisdiction.* 1. An Indian tribe shall have exclusive jurisdiction over any Indian juvenile custody proceeding involving an Indian juvenile who resides or is domiciled within the reservation of the tribe, except when that jurisdiction is otherwise vested in the state by federal law and except as provided in subd. 2. If an Indian juvenile is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction regardless of the residence or domicile of the juvenile.

2. Subdivision 1. does not prevent an Indian juvenile who resides or is domiciled within a reservation, but who is temporarily located off the reservation, from being taken into and held in custody under ss. 938.19 to 938.21 in order to prevent imminent physical harm or damage to the Indian juvenile. The person taking the Indian juvenile into custody or the intake worker shall immediately release the Indian juvenile from custody upon determining that holding the Indian juvenile in custody is no longer necessary to prevent imminent physical damage or harm to the Indian juvenile and shall expeditiously restore the Indian juvenile to his or her parent or Indian custodian, release the Indian juvenile to an appropriate official of the Indian juvenile's tribe, or initiate an Indian juvenile custody proceeding, as may be appropriate.

(c) *Transfer of proceedings to tribe.* In any Indian juvenile custody proceeding under this chapter involving an out−of−home placement of an Indian juvenile who is not residing or domiciled within the reservation of the Indian juvenile's tribe, the court assigned to exercise jurisdiction under this chapter shall, upon the petition of the Indian juvenile's parent, Indian custodian, or tribe, transfer the proceeding to the jurisdiction of the tribe unless any of the following applies:

1. A parent of the Indian juvenile objects to the transfer.

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2. The Indian juvenile's tribe does not have a tribal court, or the tribal court of the Indian juvenile's tribe declines jurisdiction.

3. The court determines that good cause exists to deny the transfer. In determining whether good cause exists to deny the transfer, the court may not consider any perceived inadequacy of the tribal social services department or the tribal court of the Indian juvenile's tribe. The court may determine that good cause exists to deny the transfer only if the person opposing the transfer shows by clear and convincing evidence that any of the following applies:

a. The Indian juvenile is 12 years of age or over and objects to the transfer.

b. The evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court's rules of evidence.

c. The Indian juvenile's tribe received notice of the proceeding under sub. (4) (a), the tribe has not indicated to the court in writing that the tribe is monitoring the proceeding and may request a transfer at a later date, the petition for transfer is filed by the tribe, and the petition for transfer is filed more than 6 months after the tribe received notice of the proceeding.

(d) *Declination of jurisdiction.* If the court assigned to exercise jurisdiction under this chapter determines that the petitioner in an Indian juvenile custody proceeding has improperly removed the Indian juvenile from the custody of his or her parent or Indian custodian or has improperly retained custody of the Indian juvenile after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and immediately return the Indian juvenile to the custody of the parent or Indian custodian, unless the court determines that returning the Indian juvenile to his or her parent or Indian custodian would subject the Indian juvenile to substantial and immediate danger or the threat of that danger.

(e) *Intervention.* An Indian juvenile's Indian custodian or tribe may intervene at any point in an Indian juvenile custody proceeding under this chapter.

(f) *Full faith and credit.* The state shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe that are applicable to an Indian juvenile custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity.

(4) COURT PROCEEDINGS. (a) *Notice.* In any involuntary proceeding under s. 938.13 (4), (6), (6m), or (7) involving the out−of−home care placement of a juvenile whom the court knows or has reason to know is an Indian juvenile, the party seeking the out−of−home care placement shall, for the first hearing of the proceeding, notify the Indian juvenile's parent, Indian custodian, and tribe, by registered mail, return receipt requested, of the pending proceeding and of their right to intervene in the proceeding and shall file the return receipt with the court. Notice of subsequent hearings in a proceeding shall be in writing and may be given by mail, personal delivery, or facsimile transmission, but not by electronic mail. If the identity or location of the Indian juvenile's parent, Indian custodian, or tribe cannot be determined, that notice shall be given to the U.S. secretary of the interior in like manner. The first hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, Indian custodian, and tribe or until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for that hearing.

(b) *Appointment of counsel.* Whenever an Indian juvenile is the subject of a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the removal of the Indian juvenile from the home of his or her parent or Indian custodian or the placement of the Indian juvenile in an out−of−home care placement, the Indian juvenile's parent or Indian custodian shall have the right to be represented by court−appointed counsel as provided in s. 938.23 (2g). The court may also, in its discretion, appoint counsel for the Indian juvenile under s. 938.23 (1m) or (3) if the court finds that the appointment is in the best interests of the Indian juvenile.

(c) *Examination of reports and other documents.* Each party to a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the out−of−home care placement of an Indian juvenile shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the out−of−home care placement may be based.

(d) *Out−of−home care placement; serious damage and active efforts.* The court may not order an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) to be removed from the home of the Indian juvenile's parent or Indian custodian and placed in an out−of−home care placement unless all of the following occur:

1. The court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses chosen in the order of preference listed in par. (e), that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile.

2. The court finds by clear and convincing evidence that active efforts, as described in par. (f) 1., have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful. The court shall make that finding notwithstanding that a circumstance specified in s. 938.355 (2d) (b) 1. to 4. applies.

(e) *Qualified expert witness; order of preference.* 1. Any party to a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the out−of−home placement of an Indian juvenile may call a qualified expert witness. Subject to subd. 2., a qualified expert witness shall be chosen in the following order of preference:

a. A member of the Indian juvenile's tribe described in sub. (2) (d) 1.

b. A member of another tribe described in sub. (2) (d) 2.

c. A professional person described in sub. (2) (d) 3.

d. A layperson described in sub. (2) (d) 4.

2. A qualified expert witness from a lower order of preference may be chosen only if the party calling the qualified expert witness shows that it has made a diligent effort to secure the attendance of a qualified expert witness from a higher order of preference. A qualified expert witness from a lower order of preference may not be chosen solely because a qualified expert witness from a higher order of preference is able to participate in the Indian juvenile custody proceeding only by telephone or live audiovisual means as prescribed in s. 807.13 (2). The fact that a qualified expert witness called by one party is from a lower order of preference under subd. 1. than a qualified expert witness called by another party may not be the sole consideration in weighing the testimony and opinions of the qualified expert witnesses. In weighing the testimony of all witnesses, the court shall consider as paramount the best interests of the Indian juvenile as provided in s. 938.01 (3). The court shall determine the qualifications of a qualified expert witness as provided in ch. 907.

(f) *Active efforts standard.* 1. The court may not order an Indian juvenile to be removed from the home of the Indian juvenile's parent or Indian custodian and placed in an out−of−home care placement unless the evidence of active efforts under par. (d) 2. shows that there has been an ongoing, vigorous, and concerted level of case work and that the active efforts were made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian juvenile's tribe and that utilizes the available resources of the Indian juvenile's tribe,

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tribal and other Indian child welfare agencies, extended family members of the Indian juvenile, other individual Indian caregivers, and other culturally appropriate service providers. The court's consideration of whether active efforts were made under par. (d) 2. shall include whether all of the following activities were conducted:

a. Representatives designated by the Indian juvenile's tribe with substantial knowledge of the prevailing social and cultural standards and child−rearing practices within the tribal community were requested to evaluate the circumstances of the Indian juvenile's family and to assist in developing a case plan that uses the resources of the tribe and of the Indian community, including traditional and customary support, actions, and services, to address those circumstances.

am. A comprehensive assessment of the situation of the Indian juvenile's family was completed, including a determination of the likelihood of protecting the Indian juvenile's health, safety, and welfare effectively in the Indian juvenile's home.

b. Representatives of the Indian juvenile's tribe were identified, notified, and invited to participate in all aspects of the Indian juvenile custody proceeding at the earliest possible point in the proceeding and their advice was actively solicited throughout the proceeding.

c. Extended family members of the Indian juvenile, including extended family members who were identified by the Indian juvenile's tribe or parents, were notified and consulted with to identify and provide family structure and support for the Indian juvenile, to assure cultural connections, and to serve as placement resources for the Indian juvenile.

d. Arrangements were made to provide natural and unsupervised family interaction in the most natural setting that can ensure the Indian juvenile's safety, as appropriate to the goals of the Indian juvenile's permanency plan, including arrangements for transportation and other assistance to enable family members to participate in that interaction.

e. All available family preservation strategies were offered or employed and the involvement of the Indian juvenile's tribe was requested to identify those strategies and to ensure that those strategies are culturally appropriate to the Indian juvenile's tribe.

f. Community resources offering housing, financial, and transportation assistance and in−home support services, in−home intensive treatment services, community support services, and specialized services for members of the Indian juvenile's family with special needs were identified, information about those resources was provided to the Indian juvenile's family, and the Indian juvenile's family was actively assisted or offered active assistance in accessing those resources.

g. Monitoring of client progress and client participation in services was provided.

h. A consideration of alternative ways of addressing the needs of the Indian juvenile's family was provided, if services did not exist or if existing services were not available to the family.

2. If any of the activities specified in subd. 1. a. to h. were not conducted, the person seeking the out−of−home care placement shall submit documentation to the court explaining why the activity was not conducted.

(5) INVALIDATION OF ACTION. Any Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is the subject of an out−of−home care placement, any parent or Indian custodian from whose custody that Indian juvenile was removed, or the Indian juvenile's tribe may move the court to invalidate that out−of−home care placement on the grounds that the out−of−home care placement was made in violation of 25 USC 1911 or 1912. If the court finds that those grounds exist, the court shall invalidate the out−of−home care placement.

(6) PLACEMENT OF INDIAN JUVENILE. (a) *Out−of−home care placement; preferences.* Any Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is placed in an out−of−home care placement shall be placed in the least restrictive setting that most approximates a family, that meets the Indian juvenile's special needs, if any, and that is within reasonable proximity to the Indian juvenile's home, taking into account those special needs. Subject to pars. (b) to (d), in placing such an Indian juvenile in an out−of−home care placement, preference shall be given, in the absence of good cause, as described in par. (d), to the contrary, to a placement in one of the following, in the order of preference listed:

1. The home of an extended family member of the Indian juvenile.

2. A foster home licensed, approved, or specified by the Indian juvenile's tribe.

3. An Indian foster home licensed or approved by the department, a county department, or a child welfare agency.

4. A group home or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian juvenile.

(am) *Temporary physical custody; preferences.* Any Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is being held in temporary physical custody under s. 938.205 (1) shall be placed in compliance with par. (a) or, if applicable, par. (b), unless the person responsible for determining the placement finds good cause, as described in par. (d), for departing from the order of placement preference under par. (a) or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian juvenile shall be placed in compliance with the order of placement preference under par. (a) or, if applicable, par. (b).

(b) *Tribal or personal preferences.* In placing an Indian juvenile under par. (a) or (am), if the Indian juvenile's tribe has established, by resolution, an order of preference that is different from the order specified in par. (a), the order of preference established by that tribe shall be followed, in the absence of good cause, as described in par. (d), to the contrary, so long as the placement is the least restrictive setting appropriate for the Indian juvenile's needs as specified in par. (a). When appropriate, the preference of the Indian juvenile or parent shall be considered, and, when a parent who has consented to the placement evidences a desire for anonymity, that desire shall be given weight, in determining the placement.

(c) *Social and cultural standards.* The standards to be applied in meeting the placement preference requirements of this subsection shall be the prevailing social and cultural standards of the Indian community in which the Indian juvenile's parents or extended family members reside or with which the Indian juvenile's parents or extended family members maintain social and cultural ties.

(d) *Good cause.* 1. Whether there is good cause to depart from the order of placement preference under par. (a) or (b) shall be determined based on any one or more of the following considerations:

a. When appropriate, the request of the Indian juvenile's parent or, if the Indian juvenile is of sufficient age and developmental level to make an informed decision, the Indian juvenile, unless the request is made for the purpose of avoiding the application of this section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963.

b. Any extraordinary physical, mental, or emotional health needs of the Indian juvenile requiring highly specialized treatment services as established by the testimony of an expert witness, including a qualified expert witness. The length of time that an Indian juvenile has been in a placement does not, in itself, constitute an extraordinary emotional health need.

c. The unavailability of a suitable placement for the Indian juvenile after diligent efforts have been made to place the Indian juvenile in the order of preference under par. (a) or (b).

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2. The burden of establishing good cause to depart from the order of placement preference under par. (a) or (b) shall be on the party requesting that departure.

(e) *Report of placement.* A county department or a child welfare agency shall maintain a record of each out−of−home care placement made of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), evidencing the efforts made to comply with the placement preference requirements specified in this subsection, and shall make that record available at any time on the request of the U.S. secretary of the interior or the Indian juvenile's tribe.

(7) REMOVAL FROM OUT−OF−HOME CARE PLACEMENT. If an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) is removed from an out−of−home care placement for the purpose of placing the Indian juvenile in another out−of−home care placement, a preadoptive placement, as defined in s. 48.028 (2) (f), or an adoptive placement, as defined in s. 48.028 (2) (a), the placement shall be made in accordance with this section and s. 48.028. Removal of such an Indian juvenile from an out−of−home care placement for the purpose of returning the Indian juvenile to the home of the parent or Indian custodian from whose custody the Indian juvenile was originally removed is not subject to this section.

(8) HIGHER STATE OR FEDERAL STANDARD APPLICABLE. The federal Indian Child Welfare Act, 25 USC 1901 to 1963, supersedes this chapter in any Indian juvenile custody proceeding governed by that act, except that in any case in which this chapter provides a higher standard of protection for the rights of an Indian juvenile's parent or Indian custodian than the rights provided under that act, the court shall apply the standard under this chapter.

History: 1995 a. 352; 2005 a. 344; 2009 a. 94.

SUBCHAPTER II

ORGANIZATION OF COURT

938.03 Time and place of court; absence or disability of judge. (1) TIME AND PLACE OF COURT. The court shall set apart a time and place to hold court on juvenile matters.

(2) ABSENCE OR DISABILITY OF JUDGE. In the case of the absence or disability of the judge of a court assigned to exercise jurisdiction under this chapter and ch. 48, another judge shall be assigned under s. 751.03 to act temporarily in the judge's place. If the judge assigned temporarily is from a circuit other than the one for which elected, the judge shall receive expenses under s. 753.073.

History: 1995 a. 77; 2005 a. 344.

938.06 Services for court. (1) COUNTIES WITH A POPULATION OF 500,000 OR MORE. (a) 1. In counties with a population of 500,000 or more, the county board of supervisors shall provide the court with the services necessary for investigating and supervising cases under this chapter by operating a children's court center under the supervision of a director who is appointed as provided in s. 46.21 (1m) (a). Except as otherwise provided in this subsection, the director is the chief administrative officer of the center and of the intake and probation sections and juvenile detention facilities of the center. The director is responsible for managing the personnel of, and administering the services of, the sections and the juvenile detention facilities, and for supervising operation of the physical plant and maintenance and improvement of the buildings and grounds of the center.

1m. The center under subd. 1. shall include investigative services, provided by the county department, for juveniles alleged to be in need of protection or services and the services of an assistant district attorney or assistant corporation counsel, or both, who shall be assigned to the center to provide investigative and legal work in cases under this chapter and ch. 48.

2. The chief judge of the judicial administrative district shall establish written judicial policies governing intake and court services for juvenile matters under this chapter and the director of the center shall execute the policies. The chief judge shall direct and supervise the work of all personnel of the court, except the work of the district attorney or corporation counsel assigned to the court, and may delegate his or her supervisory functions.

3. The county board of supervisors shall establish policies and rules for the management and administration of the nonjudicial operations of the children's court center. The director of the center shall report to, and is responsible to, the director of the county department relating to the center director's duty to execute the policies and rules governing the center, including activities of probation officers whenever they are not performing services for the court. The director of the center is responsible for preparing and submitting to the county board of supervisors of the annual budget for the center except for the judicial functions or responsibilities which are delegated by law to the court and clerk of circuit court. The county board of supervisors, in organizing the office of director, shall provide for the devolution of the director's authority in the case of temporary absence, illness, disability to act, or a vacancy in position and shall establish the general qualifications for the position. The county board of supervisors has the authority to investigate, arbitrate, and resolve any conflict in the administration of the center between judicial and nonjudicial operational policy and rules. The county board of supervisors does not have authority over, and may not assert jurisdiction over, the disposition of any case or juvenile after a written order is made under s. 938.21 or if a petition is filed under s. 938.25.

4. All personnel of the intake and probation sections and of the juvenile detention facilities shall be appointed under civil service by the director, except that existing court service personnel having permanent civil service status may be reassigned to any of the sections within the center specified in this subdivision.

(am) 1. All intake workers providing services under this chapter who begin employment after May 15, 1980, shall have the qualifications required to perform entry level case work in a county department and shall have successfully completed 30 hours of intake training, approved or provided by the department, prior to the completion of the first 6 months of employment in the position. The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. The department shall make training programs available annually that permit intake workers providing services under this chapter to satisfy the requirements under subd. 1.

(b) Notwithstanding par. (a), the county board of supervisors may make changes in the administration of services to the children's court center in order to qualify for the maximum amount of federal and state aid as provided in sub. (4) and ss. 46.495 and 48.569.

(2) COUNTIES WITH A POPULATION UNDER 500,000. (a) In counties having less than 500,000 population, the county board of supervisors shall authorize the county department or the court, or both, to provide intake services under s. 938.067 and the staff needed to provide dispositional services under s. 938.069. Intake services shall be provided by employees of the court or the county department and may not be subcontracted to other individuals or agencies, except as provided in par. (am). Intake workers shall be governed in their intake work, including their responsibilities for requesting the filing of a petition and entering into a deferred prosecution agreement, by general written policies established by the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district.

(am) 1. A county that had intake services under this chapter subcontracted from the county sheriff's department on April 1, 1980, may continue to subcontract those intake services from the county sheriff's department.

2. A county in which the county sheriff's department operates a juvenile detention facility may subcontract intake services under this chapter from the county sheriff's department as provided in this subdivision. If a county subcontracts intake services under

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this subdivision, employees of the county sheriff's department who staff the juvenile detention facility may make secure custody determinations under s. 938.208 between the hours of 6 p.m. and 6 a.m. Such a determination shall be reviewed by an intake worker employed by the court or county department within 24 hours after it is made.

(b) 1. All intake workers providing services under this chapter who begin employment after May 15, 1980, excluding county sheriff's department employees who provide intake services under par. (am) 2., shall have the qualifications required to perform entry level case work in a county department. All intake workers providing services under this chapter who begin employment after May 15, 1980, including county sheriff's department employees who provide intake services under par. (am) 2., shall have successfully completed 30 hours of intake training approved or provided by the department prior to the completion of the first 6 months of employment in the position. The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. The department shall make training programs available annually that permit intake workers providing services under this chapter to satisfy the requirements under subd. 1.

(3) INTAKE SERVICES. The court or county department responsible for providing intake services under s. 938.067 shall specify one or more persons to provide intake services. If there is more than one person, one of the persons shall be designated as chief and shall supervise the other persons.

(4) STATE AID. State aid to any county for juvenile delinquency−related court services under this section shall be at the same net effective rate that each county is reimbursed for county administration under s. 48.569, except as provided in s. 301.26. Counties having a population of less than 500,000 may use funds received under ss. 48.569 (1) (d) and 301.26, including county or federal revenue sharing funds allocated to match funds received under s. 48.569 (1) (d), for the cost of providing court attached intake services in amounts not to exceed 50% of the cost of providing court attached intake services or $30,000 per county per calendar year, whichever is less.

(5) SHORT−TERM DETENTION AS A DISPOSITION OR SANCTION OR FOR VIOLATION OF ORDER. (a) The county board of supervisors of any county may, by resolution, authorize the court to do any of the following:

1. Use placement in a juvenile detention facility or juvenile portion of the county jail as a disposition under s. 938.34 (3) (f), as a sanction under s. 938.355 (6m) (a) 1g., or as a place of short−term detention under s. 938.355 (6d) (a) 1. or 2. or (b) 1. or 2. or 938.534 (1) (b) 1. or 2.

2. Use commitment to a county department under s. 51.42 or 51.437 for special treatment or care in an inpatient facility, as defined in s. 51.01 (10), as a disposition under s. 938.34 (6) (am).

(b) The use by the court of a disposition under s. 938.34 (3) (f) or (6) (am), a sanction under s. 938.355 (6m) (a) 1g., or short−term detention under s. 938.355 (6d) (a) 1. or 2. or (b) 1. or 2. or 938.534 (1) (b) 1. or 2. is subject to any resolution adopted under par. (a).

History: 1995 a. 77; 1997 a. 27, 205, 239; 2001 a. 61; 2005 a. 344; 2007 a. 20.
Cross−reference: See also ch. DOC 399, Wis. adm. code.

938.067 Powers and duties of intake workers. To carry out the objectives of this chapter, intake workers shall do all of the following:

(1) SCREENING. Provide intake services 24 hours a day, 7 days a week, for the purpose of screening juveniles taken into custody and not released under s. 938.20 (2).

(2) INTERVIEWING. Interview, if possible, any juvenile who is taken into physical custody and not released, and, if appropriate, other available concerned parties. If the juvenile cannot be interviewed, the intake worker shall consult with the juvenile's parent or a responsible adult. No juvenile may be placed in a juvenile detention facility unless the juvenile has been interviewed in person by an intake worker, except that if the intake worker is in a place which is distant from the place where the juvenile is or the hour is unreasonable, as defined by written court intake rules, and if the juvenile meets the criteria under s. 938.208, the intake worker, after consulting by telephone with the law enforcement officer who took the juvenile into custody, may authorize the secure holding of the juvenile while the intake worker is en route to the in−person interview or until 8 a.m. of the morning after the night on which the juvenile was taken into custody.

(3) WHETHER JUVENILE SHOULD BE HELD. Determine whether the juvenile shall be held under s. 938.205 and policies promulgated under s. 938.06 (1) or (2).

(4) WHERE JUVENILE SHOULD BE HELD. If the juvenile is not released, determine where the juvenile shall be held.

(5) CRISIS COUNSELING. Provide any necessary crisis counseling during the intake process.

(6) REQUEST FOR PETITION; DEFERRED PROSECUTION. Receive referral information, conduct intake inquiries, request that a petition be filed, and enter into deferred prosecution agreements under policies promulgated under s. 938.06 (1) or (2).

(6g) VICTIMS' RIGHTS. Provide information and notices to and confer with victims as required under s. 938.346 (1m).

(6m) MULTIDISCIPLINARY SCREEN. Conduct the multidisciplinary screen in counties that have a pilot program under s. 938.547.

(7) REFERRALS. Make referrals of cases to other agencies if their assistance is needed or desirable.

(8) INTERIM RECOMMENDATIONS. Make interim recommendations to the court concerning juveniles awaiting final disposition under s. 938.355.

(8m) TAKING JUVENILES INTO CUSTODY. Take juveniles into custody under ss. 938.355 (6d) (a), (b) and (c) and 938.534 (1) (b) and (c).

(9) OTHER FUNCTIONS. Perform any other functions ordered by the court, and, when the court or chief judge requests, assist the court or chief judge of the judicial administrative district in developing written policies or carrying out its other duties.

History: 1995 a. 77; 1997 a. 80, 181, 205; 2005 a. 344.

938.069 Powers and duties of disposition staff. **(1)** DUTIES. Subject to sub. (2), the staff of the department, the court, a county department, or a licensed child welfare agency designated by the court to carry out the objectives of this chapter shall:

(a) Supervise and assist a juvenile under a deferred prosecution agreement, a consent decree or an order of the court.

(b) Offer individual and family counseling.

(c) Make an affirmative effort, and investigate and develop resources, to obtain necessary or desired services for the juvenile and the juvenile's family.

(d) Prepare reports for the court recommending a plan of rehabilitation, treatment and care.

(dj) Provide aftercare services for a juvenile released from a juvenile correctional facility or a secured residential care center for children and youth.

(dm) Take juveniles into custody under ss. 938.355 (6d) (a), (b) and (c) and 938.534 (1) (b) and (c).

(e) Perform any other court-ordered functions consistent with this chapter.

(2) AGENCY APPROVAL NEEDED. Licensed child welfare agencies and the department shall provide services under this section only upon the approval of the agency from whom services are requested.

(3) INTAKE SERVICES. A court or county department responsible for disposition staff may agree with the court or county department responsible for providing intake services that the disposition staff may be designated to provide some or all of the intake services.

(4) QUALIFICATIONS OF DISPOSITION STAFF. Disposition staff employed to perform the duties specified in sub. (1) after Novem-

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ber 18, 1978, shall have the qualifications required under the county merit system.

History: 1995 a. 77; 1997 a. 205; 1999 a. 9; 2005 a. 344.

938.07 Additional sources of court services. If the county board of supervisors has complied with s. 938.06, the court may obtain supplementary services for investigating cases and providing supervision of cases from one or more of the following sources:

(2) LICENSED CHILD WELFARE AGENCY. The court may request the services of a child welfare agency licensed under s. 48.60 in accordance with procedures established by that agency. The agency shall receive no compensation for these services but may be reimbursed out of funds made available to the court for the actual and necessary expenses incurred in the performance of duties for the court.

(3) COUNTY DEPARTMENT IN POPULOUS COUNTIES. In counties having a population of 500,000 or more, the court may order the director of the county department to provide emergency shelter care services to any juvenile whose need for the services, either by reason of need of protection and services or delinquency, is determined by the intake worker under s. 938.205. The court may authorize the director to appoint members of the county department to furnish emergency shelter care services for the juvenile. The emergency shelter care may be provided under s. 938.207.

(4) COUNTY DEPARTMENTS THAT PROVIDE DEVELOPMENTAL DISABILITIES, MENTAL HEALTH OR ALCOHOL AND OTHER DRUG ABUSE SERVICES. Within the limits of available state and federal funds and of county funds appropriated to match state funds, the court may order county departments established under s. 51.42 or 51.437 to provide special treatment or care to a juvenile if special treatment or care has been ordered under s. 938.34 (6) and if s. 938.362 (4) applies.

History: 1995 a. 77; 2005 a. 344; 2011 a. 260 s. 81.

938.08 Duties of person furnishing services to court. **(1)** INVESTIGATIONS; REPORTS. A person appointed to furnish services to the court under ss. 938.06 and 938.07 shall make any investigations and exercise any discretionary powers that the court may direct, keep a written record of the investigations, and submit a report to the court. The person shall keep informed concerning the conduct and condition of the juvenile under the person's supervision and shall report on the conduct and condition as the court directs.

(2) POWER TO TAKE JUVENILE INTO CUSTODY; LIMITS. Except as provided in sub. (3) and ss. 938.355 (6d) and 938.534 (1), a person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 has the power of police officers and deputy sheriffs only for the purpose of taking a juvenile into physical custody when the juvenile comes voluntarily, is suffering from illness or injury, or is in immediate danger from his or her surroundings and removal from the surroundings is necessary.

(3) CONDITIONS FOR CERTAIN OTHER PERSONS TO TAKE JUVENILE INTO CUSTODY. (a) In addition to the law enforcement authority under sub. (2), department personnel designated by the department and personnel of an agency contracted with under s. 301.08 (1) (b) 3. and designated by agreement between the agency and the department have the power of law enforcement authorities to take a juvenile into physical custody under the following conditions:

1. If they are in prompt pursuit of a juvenile who has run away from a juvenile correctional facility or a residential care center for children and youth.

2. If the juvenile has failed to return to a juvenile correctional facility or a residential care center for children and youth after any authorized absence.

(b) A juvenile who is taken into custody under par. (a) may be returned directly to the juvenile correctional facility or residential care center for children and youth and shall have a hearing regarding placement in disciplinary status in accordance with ch. 227.

History: 1995 a. 77, 352; 1997 a. 205; 1999 a. 9; 2001 a. 59; 2005 a. 344; 2007 a. 97.

938.09 Representation of the interests of the public. The interests of the public shall be represented in proceedings under this chapter as follows:

(1) DELINQUENCY. By the district attorney, in any matter under s. 938.12.

(2) CIVIL LAW VIOLATION. By the district attorney or, if designated by the county board of supervisors, by the corporation counsel, in any matter concerning a civil law violation under s. 938.125. If the county board transfers this authority to or from the district attorney on or after May 11, 1990, the board may do so only if the action is effective on September 1 of an odd−numbered year and the board notifies the department of administration of that change by January 1 of that year.

(3) MUNICIPAL ORDINANCE VIOLATION. By the city, village, or town attorney, in any matter concerning a city, village, or town ordinance violation, respectively, under s. 938.125.

(4) COUNTY ORDINANCE VIOLATION. By a an appropriate person designated by the county board of supervisors in any matter concerning a county ordinance violation under s. 938.125.

(5) JUVENILE IN NEED OF PROTECTION OR SERVICES. By the district attorney or, if designated by the county board of supervisors, by the corporation counsel, in any matter under s. 938.13. If the county board transfers this authority to or from the district attorney on or after May 11, 1990, the board may do so only if the action is effective on September 1 of an odd−numbered year and the board notifies the department of administration of that change by January 1 of that year.

(6) INTERSTATE COMPACT. By an appropriate person designated by the county board of supervisors in any matter arising under s. 938.14.

History: 1995 a. 77; 2005 a. 344.

938.10 Power of the judge to act as intake worker. The duties of the intake worker may be carried out by the judge at his or her discretion, except that if a request to file a petition is made, a citation is issued, or a deferred prosecution agreement is entered into, the judge is disqualified from participating further in the proceedings.

History: 1995 a. 77; 1997 a. 80; 2005 a. 344.

SUBCHAPTER III

JURISDICTION

938.12 Jurisdiction over juveniles alleged to be delinquent. **(1)** IN GENERAL. The court has exclusive jurisdiction, except as provided in ss. 938.17, 938.18, and 938.183, over any juvenile 10 years of age or older who is alleged to be delinquent.

(2) SEVENTEEN−YEAR−OLDS. If a petition alleging that a juvenile is delinquent is filed before the juvenile is 17 years of age, but the juvenile becomes 17 years of age before admitting the facts of the petition at the plea hearing or if the juvenile denies the facts, before an adjudication, the court retains jurisdiction over the case.

History: 1995 a. 77; 2005 a. 344.

The state may not delay in charging a child in order to avoid juvenile court jurisdiction. State v. Becker, 74 Wis. 2d 675, 247 N.W.2d 495 (1976).

Notwithstanding s. 48.13 (12), the court had jurisdiction under s. 48.12 (1) over a child who committed a delinquent act before his 12th birthday but was charged after his 12th birthday. In Matter of D. V. 100 Wis. 2d 363, 302 N.W.2d 64 (Ct. App. 1981).

Under the facts of the case, the court retained jurisdiction to determine waiver although the juvenile turned 18 after the proceedings were commenced. In Interest of TDP, 109 Wis. 2d 495, 326 N.W.2d 741 (1982).

A contempt of court allegation did not support a determination of delinquency. In Interest of V.G. 111 Wis. 2d 647, 331 N.W.2d 632 (Ct. App. 1983).

A prior adult proceeding that litigated the question of the respondent's age collaterally estopped the state from relitigating the same question in juvenile court, and the

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juvenile court had subject matter jurisdiction of the case. In Interest of H.N.T. 125 Wis. 2d 242, 371 N.W.2d 395 (Ct. App. 1985).

Juvenile court proceedings are commenced under sub. (2) upon filing the petition. The child need not appear in juvenile court before reaching age 18 for the court to retain jurisdiction. In Interest of D.W.B. 158 Wis. 2d 398, 462 N.W.2d 520 (1990).

When a juvenile turns 18 during the pendency of proceedings, the filing of a waiver petition prior to a plea hearing is not required for waiver of jurisdiction under sub. (2). In Interest of K.A.P. 159 Wis. 2d 384, 464 N.W.2d 106 (Ct. App. 1990).

The age of the defendant at the time of charging determines juvenile court jurisdiction regardless of the defendant's age at the time of the offense. State v. Annola, 168 Wis. 2d 453, 484 N.W.2d 138 (1992).

Wisconsin courts have jurisdiction over resident juveniles alleged to be delinquent because they violated another state's criminal laws. 70 Atty. Gen. 143.

Greater Jurisdiction Discretion. Schneider & Harrison. Wis. Law. Apr. 1996.

NOTE: The above annotations cite to s. 48.12, the predecessor statute to s. 938.12.

A defendant is not entitled to an evidentiary hearing as a matter of right whenever there is a mere allegation that the state intentionally "manipulated the system" to avoid juvenile court jurisdiction. The standard for determining when a hearing should be granted is articulated. State v. Velez, 224 Wis. 2d 1, 589 N.W.2d 9 (1999), 96−2430.

The state does not have jurisdiction over delinquent acts committed by Menominee tribal members within reservation boundaries, but does have jurisdiction over acts committed off the reservation. State v. Elmer J.K. 224 Wis. 2d 372, 591 N.W.2d 176 (Ct. App. 1999), 98−2067.

938.125 Jurisdiction over juveniles alleged to have violated civil laws or ordinances. The court has exclusive jurisdiction over a juvenile alleged to have violated a law punishable by forfeiture or a county, town, or other municipal ordinance, except as follows:

(1) As provided under s. 938.17.

(2) The court has exclusive jurisdiction over a juvenile alleged to have violated an ordinance enacted under s. 118.163 (2) only if evidence is provided by the school attendance officer that the activities under s. 118.16 (5) have been completed or were not required to be completed as provided in s. 118.16 (5m).

History: 1995 a. 77; 1997 a. 35, 239; 2005 a. 344.

938.13 Jurisdiction over juveniles alleged to be in need of protection or services. Except as provided in s. 938.028 (3), the court has exclusive original jurisdiction over a juvenile alleged to be in need of protection or services which can be ordered by the court if any of the following conditions applies:

(4) UNCONTROLLABLE. The juvenile's parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to control the juvenile.

(6) HABITUALLY TRUANT FROM SCHOOL. Except as provided under s. 938.17 (2), the juvenile is habitually truant from school and evidence is provided by the school attendance officer that the activities under s. 118.16 (5) have been completed or were not required to be completed as provided in s. 118.16 (5m).

(6m) SCHOOL DROPOUT. The juvenile is a school dropout, as defined in s. 118.153 (1) (b).

(7) HABITUALLY TRUANT FROM HOME. The juvenile is habitually truant from home and either the juvenile, a parent or guardian, or a relative in whose home the juvenile resides signs the petition requesting jurisdiction and attests in court that reconciliation efforts have been attempted and have failed.

(12) DELINQUENT ACT BEFORE AGE 10. The juvenile is under 10 years of age and has committed a delinquent act.

(14) NOT RESPONSIBLE OR NOT COMPETENT. The juvenile has been determined, under s. 938.30 (5) (c), to be not responsible for a delinquent act by reason of mental disease or defect or has been determined, under s. 938.30 (5) (d), to be not competent to proceed.

History: 1995 a. 77, 275; 1997 a. 35, 239; 2005 a. 344; 2009 a. 94.

Sub. (6) specifically requires that the school attendance officer provide evidence that the activities under s. 118.16 (5) have been completed or were not required due to an exception under s. 118.16 (5m). Sub. (6) does not state that a protective services order requires a school attendance officer to provide evidence that all of the requirements under s. 118.16 were met. Richland County Health and Human Services v. Brandon L. Y. 2008 WI App 73, 312 Wis. 2d 406, 753 N.W.2d 529, 07−0834.

938.135 Referral of juveniles to proceedings under ch. 51 or 55. (1) JUVENILE WITH DEVELOPMENTAL DISABILITY, MENTAL ILLNESS, OR ALCOHOL OR DRUG DEPENDENCY. If a juvenile alleged to be delinquent or in need of protection or services is before the court and appears to have a developmental disability or mental illness or to be drug dependent or suffering from alcoholism, the court may proceed under ch. 51 or 55.

(2) ADMISSIONS, PLACEMENTS, AND COMMITMENTS TO INPATIENT FACILITIES. Any voluntary or involuntary admissions, placements, or commitments of a juvenile made in or to an inpatient facility, as defined in s. 51.01 (10), other than a commitment under s. 938.34 (6) (am), are governed by ch. 51 or 55.

History: 1995 a. 77; 2005 a. 344.

938.14 Jurisdiction over interstate compact proceedings. The court has exclusive jurisdiction over proceedings under the Interstate Compact on Juveniles under s. 938.991 and over proceedings under the Interstate Compact for Juveniles under s. 938.999.

History: 1995 a. 77; 2005 a. 234.

938.15 Jurisdiction of other courts to determine legal custody. Except as provided in s. 938.028 (3), nothing in this chapter deprives another court of the right to determine the legal custody of a juvenile by habeas corpus or to determine the legal custody or guardianship of a juvenile if the legal custody or guardianship is incidental to the determination of an action pending in that court. Except as provided in s. 938.028 (3), the jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 48 is paramount in all cases involving juveniles alleged to come within the provisions of ss. 938.12 to 938.14.

History: 1995 a. 77; 2005 a. 344; 2009 a. 94.

938.17 Jurisdiction over traffic, boating, snowmobile, all−terrain vehicle, and utility terrain vehicle violations and over civil law and ordinance violations. (1) TRAFFIC, BOATING, SNOWMOBILE, ALL−TERRAIN VEHICLE, AND UTILITY TERRAIN VEHICLE VIOLATIONS. Except for violations of ss. 342.06 (2) and 344.48 (1), and violations of ss. 30.67 (1) and 346.67 (1) when death or injury occurs, courts of criminal and civil jurisdiction have exclusive jurisdiction in proceedings against juveniles 16 years of age or older for violations of s. 23.33, of ss. 30.50 to 30.80, of chs. 341 to 351, and of traffic regulations, as defined in s. 345.20, and nonmoving traffic violations, as defined in s. 345.28 (1). A juvenile charged with a traffic, boating, snowmobile, all−terrain vehicle, or utility terrain vehicle offense in a court of criminal or civil jurisdiction shall be treated as an adult before the trial of the proceeding except that the juvenile may be held in secure custody only in a juvenile detention facility. A juvenile convicted of a traffic, boating, snowmobile, all−terrain vehicle, or utility terrain vehicle offense in a court of criminal or civil jurisdiction shall be treated as an adult for sentencing purposes except as follows:

(a) The court may disregard any minimum period of incarceration specified for the offense.

(b) If the court orders the juvenile to serve a period of incarceration of less than 6 months, the juvenile may serve that period of incarceration only in a juvenile detention facility.

(c) If the court of civil or criminal jurisdiction orders the juvenile to serve a period of incarceration of 6 months or more, that court shall petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to order one or more of the dispositions under s. 938.34, including placement of the juvenile in a juvenile correctional facility or a secured residential care center for children and youth, if appropriate.

(2) CIVIL LAW AND ORDINANCE VIOLATIONS. (a) *Concurrent municipal and juvenile court jurisdiction; ordinance violations.* 1. Except as provided in subd. 1m. and sub. (1), municipal courts have concurrent jurisdiction with the court assigned to exercise jurisdiction under this chapter and ch. 48 in proceedings against juveniles 12 years of age or over for violations of county, town, or other municipal ordinances. If evidence is provided by the school attendance officer that the activities under s. 118.16 (5) have been completed or were not required to be completed as provided in s.

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118.16 (5m), the municipal court specified in subd. 2. may exercise jurisdiction in proceedings against a juvenile for a violation of an ordinance enacted under s. 118.163 (2) regardless of the juvenile's age and regardless of whether the court assigned to exercise jurisdiction under this chapter and ch. 48 has jurisdiction under s. 938.13 (6).

1m. Except as provided in sub. (1), municipal courts have exclusive jurisdiction in proceedings against juveniles 12 years of age or over for violations of municipal ordinances enacted under ch. 349 that are in conformity with chs. 341 to 349. When a juvenile 12 years of age or over is alleged to have violated a municipal ordinance enacted under ch. 349 that is in conformity with chs. 341 to 349, the juvenile may be issued a citation directing the juvenile to appear in municipal court or make a deposit or stipulation and deposit in lieu of appearance or, if there is no municipal court in the municipality that enacted the ordinance, the juvenile may be issued a citation or referred to intake as provided in par. (b). If a municipal court finds that a juvenile has violated a municipal ordinance enacted under ch. 349 that is in conformity with chs. 341 to 349, the court shall enter any of the dispositional orders permitted under s. 938.343 that are authorized under sub. (2) (cm).

2. a. In this subdivision, "administrative center" means the main administrative offices of a school district.

b. The municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the same municipality as the administrative center of the school district in which the juvenile is enrolled, if that municipality has adopted an ordinance under s. 118.163.

c. If the municipality specified under subd. 2. b. has not adopted an ordinance under s. 118.163, the municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the municipality where the school in which the juvenile is enrolled is located, if that municipality has adopted an ordinance under s. 118.163.

d. If the municipality specified under subd. 2. b. or c. has not adopted an ordinance under s. 118.163, the municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the municipality where the juvenile resides, if that municipality has adopted an ordinance under s. 118.163.

3. Except as provided in subd. 1m., when a juvenile is alleged to have violated a municipal ordinance, one of the following may occur:

a. The juvenile may be issued a citation directing the juvenile to appear in municipal court or make a deposit or stipulation and deposit in lieu of appearance.

b. The juvenile may be issued a citation directing the juvenile to appear in the court assigned to exercise jurisdiction under this chapter and ch. 48 or make a deposit or stipulation and deposit in lieu of appearance as provided in s. 938.237.

c. The juvenile may be referred to intake for a determination whether a petition should be filed in the court assigned to exercise jurisdiction under this chapter and ch. 48 under s. 938.125.

(b) *Juvenile court jurisdiction; civil law and ordinance violations.* When a juvenile 12 years of age or older is alleged to have violated a civil law punishable by a forfeiture or to have violated a municipal ordinance but there is no municipal court in the municipality, one of the following may occur:

1. The juvenile may be issued a citation directing the juvenile to appear in the court assigned to exercise jurisdiction under this chapter and ch. 48 or make a deposit or stipulation and deposit in lieu of appearance as provided in s. 938.237.

2. The juvenile may be referred to intake for a determination whether a petition under s. 938.125 should be filed in the court assigned to exercise jurisdiction under this chapter and ch. 48.

(c) *Citation procedures.* The citation procedures described in ch. 800 govern proceedings involving juveniles in municipal court, except that this chapter governs the taking and holding of a juvenile in custody and par. (cg) governs the issuing of a summons to the juvenile's parent, guardian, or legal custodian. When a juvenile is before the court assigned to exercise jurisdiction under this chapter and ch. 48 upon a citation alleging that the juvenile violated a civil law or municipal ordinance, the procedures specified in s. 938.237 apply. If a citation is issued to a juvenile, the issuing agency shall notify the juvenile's parent, guardian, and legal custodian within 7 days. The agency issuing a citation to a juvenile who is 12 to 15 years of age for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.573 (2), 961.574 (2), or 961.575 (2) or an ordinance conforming to one of those statutes shall send a copy to an intake worker under s. 938.24 for informational purposes only.

(cg) *Summons procedures.* After a citation is issued, unless the juvenile and his or her parent, guardian, and legal custodian voluntarily appear, the municipal court may issue a summons requiring the parent, guardian, or legal custodian of the juvenile to appear personally at any hearing involving the juvenile and, if the court so orders, to bring the juvenile before the court at a time and place stated. Section 938.273 governs the service of a summons under this paragraph, except that the expense of service or publication of a summons and of the travelling expenses and fees of a person summoned allowed in ch. 885 shall be a charge on the municipality of the court issuing the summons when approved by the court. If any person summoned under this paragraph fails without reasonable cause to appear, he or she may be proceeded against for contempt of court under s. 785.06. If a summons cannot be served or if the person served fails to obey the summons or if it appears to the court that the service will be ineffectual, a capias may be issued for the juvenile and for the parent, guardian, or legal custodian.

(cm) *Authorization for dispositions and sanctions.* A city, village, or town may adopt an ordinance or bylaw specifying which of the dispositions under ss. 938.343 and 938.344 and sanctions under s. 938.355 (6) (d) and (6m) the municipal court of that city, village, or town is authorized to impose or to petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose. The use by the court of those dispositions and sanctions is subject to any ordinance or bylaw adopted under this paragraph.

(d) *Disposition; ordinance violations generally.* 1. If a municipal court finds that the juvenile violated a municipal ordinance other than an ordinance enacted under s. 118.163 or an ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.573 (2), 961.574 (2), or 961.575 (2), the court shall enter any of the dispositional orders permitted under s. 938.343 that are authorized under par. (cm). If a juvenile fails to pay the forfeiture imposed by the municipal court, the court may not impose a jail sentence but may suspend any license issued under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not more than 2 years.

2. If a court suspends a license or privilege under subd. 1., the court shall immediately take possession of the applicable license if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department that issued the license the notice of suspension stating that the suspension is for failure to pay a forfeiture imposed by the court, together with any license issued under ch. 29 of which the court takes possession. If the forfeiture is paid during the period of suspension, the court shall immediately notify the department, which shall then, if the license is issued under ch. 29, return the license to the person.

(e) *Disposition; alcohol and drug ordinance violations.* If a municipal court finds that a juvenile violated a municipal ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.573 (2), 961.574 (2) or 961.575 (2), the court shall enter a dispositional order under s. 938.344 that is authorized under par. (cm).

(f) *Notice to victims.* If the act the juvenile committed resulted in personal injury or damage to or loss of the property of another, the municipal court shall, to the extent possible, provide each

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known victim of the act with the information contained in the notice required under s. 938.346.

(g) *Disposition; truancy or school dropout ordinance violations.* If the municipal court finds that a juvenile violated a municipal ordinance enacted under s. 118.163 (1m), it shall enter a dispositional order under s. 938.342 (1d). If a municipal court finds that a juvenile violated a municipal ordinance enacted under s. 118.163 (2), it shall enter a dispositional order under s. 938.342 (1g), and may enter a dispositional order under s. 938.342 (1m) (a), that is consistent with the municipal ordinance. If a municipal court finds that a juvenile violated a municipal ordinance enacted under s. 118.163 (2m), it shall enter a dispositional order under s. 938.342 (2) that is consistent with the municipal ordinance.

(h) *Sanctions; dispositional order violations generally.* 1. If a juvenile who has violated a municipal ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of his or her dispositional order, the municipal court may impose on the juvenile any of the sanctions specified in s. 938.355 (6) (d) 2. to 5. that are authorized under par. (cm) except for monitoring by an electronic monitoring system. The municipal court may also petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction specified in s. 938.355 (6) (d) 1. or home detention with monitoring by an electronic monitoring system as specified in s. 938.355 (6) (d) 3., if authorized under par. (cm). A sanction may be imposed under this subdivision only if at the time of judgment the court explained the conditions to the juvenile and informed the juvenile of the possible sanctions under s. 938.355 (6) (d) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

2. A motion requesting the municipal court to impose or petition for a sanction may be brought by the person or agency primarily responsible for the provision of dispositional services, the municipal attorney, or the court that entered the dispositional order. If the court initiates the motion, that court may not hold a hearing on the motion. Notice of the motion shall be given to the juvenile and the juvenile's parent, guardian, or legal custodian.

3. Before imposing any sanction, the court shall hold a hearing, at which the juvenile may present evidence. Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a hearing under this subdivision.

4. If the court assigned to exercise jurisdiction under this chapter and ch. 48 imposes the sanction specified in s. 938.355 (6) (d) 1. or home detention with monitoring by an electronic monitoring system as specified in s. 938.355 (6) (d) 3., on a petition described in subd. 1., that court shall order the municipality of the municipal court that filed the petition to pay to the county the cost of providing the sanction imposed under s. 938.355 (6) (d) 1. or 3.

(i) *Sanctions; truancy or school dropout dispositional order violations.* 1. If a juvenile who has violated a municipal ordinance enacted under s. 118.163 (1m) violates a condition of his or her dispositional order, the municipal court may impose on the juvenile any of the sanctions specified in s. 938.355 (6m) (ag). A sanction may be imposed under this subdivision only if at the time of judgment the court explained the conditions to the juvenile and informed the juvenile of those possible sanctions or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

2m. If a juvenile who has violated a municipal ordinance enacted under s. 118.163 (2) violates a condition of his or her dispositional order, the municipal court may impose on the juvenile any of the sanctions specified in s. 938.355 (6m) (a) that are authorized under par. (cm) except for the sanction specified in s. 938.355 (6m) (a) 1g. The municipal court may also petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction specified in s. 938.355 (6m) (a) 1g., if authorized under par. (cm). A sanction may be imposed under this subdivision only if at the time of judgment the court explained the conditions to the juvenile and informed the juvenile of the possible sanctions under s. 938.355 (6m) (a) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

3g. A motion requesting the municipal court to impose or petition for a sanction may be brought by the person or agency primarily responsible for the provision of dispositional services, the municipal attorney, or the court that entered the dispositional order. If the court initiates the motion, that court may not hold a hearing on the motion. Notice of the motion shall be given to the juvenile and the juvenile's parent, guardian, or legal custodian.

4. Before imposing any sanction, the court shall hold a hearing, at which the juvenile may present evidence. Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a hearing under this subdivision.

4m. If the court assigned to exercise jurisdiction under this chapter and ch. 48 imposes the sanction specified in s. 938.355 (6m) (a) 1g., on a petition described in subd. 2m., that court shall order the municipality of the municipal court that filed the petition to pay to the county the cost of providing the sanction imposed under s. 938.355 (6m) (a) 1g.

(3) SAFETY AT SPORTING EVENTS. Notwithstanding sub. (2), courts of criminal or civil jurisdiction have exclusive jurisdiction in proceedings against juveniles under s. 167.32 or under a local ordinance strictly conforming to s. 167.32. A juvenile convicted of a violation under s. 167.32 or under a local ordinance strictly conforming to s. 167.32 shall be treated as an adult for sentencing purposes.

History: 1995 a. 77, 352, 448; 1997 a. 205, 239, 258; 1999 a. 9; 2001 a. 16; 2005 a. 190, 344; 2007 a. 97; 2009 a. 103, 208.

938.18 Jurisdiction for criminal proceedings for juveniles 14 or older; waiver hearing. (1) WAIVER OF JUVENILE COURT JURISDICTION; CONDITIONS FOR. Subject to s. 938.183, a petition requesting the court to waive its jurisdiction under this chapter may be filed if the juvenile meets any of the following conditions:

(a) The juvenile is alleged to have violated s. 940.03, 940.06, 940.225 (1) or (2), 940.305, 940.31, 943.10 (2), 943.32 (2), 943.87 or 961.41 (1) on or after the juvenile's 14th birthday.

(b) The juvenile is alleged to have committed a violation on or after the juvenile's 14th birthday at the request of or for the benefit of a criminal gang, as defined in s. 939.22 (9), that would constitute a felony under chs. 939 to 948 or 961 if committed by an adult.

(c) The juvenile is alleged to have violated any state criminal law on or after the juvenile's 15th birthday.

(2) PETITION. The petition for waiver of jurisdiction may be filed by the district attorney or the juvenile or may be initiated by the court and shall contain a brief statement of the facts supporting the request for waiver. The petition for waiver of jurisdiction shall be accompanied by or filed after the filing of a petition alleging delinquency and shall be filed prior to the plea hearing, except that if the juvenile denies the facts of the petition and becomes 17 years of age before an adjudication, the petition for waiver of jurisdiction may be filed at any time prior to the adjudication. If the court initiates the petition for waiver of jurisdiction, the judge shall disqualify himself or herself from any future proceedings on the case.

(2m) AGENCY REPORT. The court may designate an agency, as defined in s. 938.38 (1) (a), to submit a report analyzing the criteria specified in sub. (5). The agency shall file the report with the court and the court shall cause copies of the report to be given to the

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juvenile, any parent, guardian or legal custodian of the juvenile and counsel at least 3 days before the hearing. The court may rely on facts stated in the report in making its findings with respect to the criteria under sub. (5).

(3) RIGHTS OF JUVENILE. All of the following apply at a waiver hearing under this section:

(a) The juvenile shall be represented by counsel. Written notice of the time, place, and purpose of the hearing shall be given to the juvenile, any parent, guardian, or legal custodian, and counsel at least 3 days prior to the hearing. The notice shall contain a statement of the requirements of s. 938.29 (2) with regard to substitution of the judge. If parents entitled to notice have the same address, notice to one constitutes notice to the other. Counsel for the juvenile shall have access to the social records and other reports under s. 938.293.

(b) The juvenile has the right to present testimony on his or her own behalf including expert testimony and has the right to cross−examine witnesses.

(c) The juvenile does not have the right to a jury.

(4) PROSECUTIVE MERIT; CONTESTED OR UNCONTESTED PETITION. (a) The court shall determine whether the matter has prosecutive merit before proceeding to determine if it should waive jurisdiction. If the court determines that the matter does not have prosecutive merit, the court shall deny the petition for waiver.

(b) If a petition for waiver of jurisdiction is contested, the district attorney shall present relevant testimony and the court, after taking that testimony and considering other relevant evidence, shall base its decision whether to waive jurisdiction on the criteria specified in sub. (5).

(c) If a petition for waiver of jurisdiction is uncontested, the court shall inquire into the capacity of the juvenile to knowingly, intelligently and voluntarily decide not to contest the waiver of jurisdiction. If the court is satisfied that the decision not to contest the waiver of jurisdiction is knowingly, intelligently and voluntarily made, no testimony need be taken and the court, after considering the petition for waiver of jurisdiction and other relevant evidence in the record before the court, shall base its decision whether to waive jurisdiction on the criteria specified in sub. (5).

(5) CRITERIA FOR WAIVER. If prosecutive merit is found, the court shall base its decision whether to waive jurisdiction on the following criteria:

(a) The personality of the juvenile, including whether the juvenile has a mental illness or developmental disability, the juvenile's physical and mental maturity, and the juvenile's pattern of living, prior treatment history, and apparent potential for responding to future treatment.

(am) The prior record of the juvenile, including whether the court has previously waived its jurisdiction over the juvenile, whether the juvenile has been previously convicted following a waiver of the court's jurisdiction or has been previously found delinquent, whether such conviction or delinquency involved the infliction of serious bodily injury, the juvenile's motives and attitudes, and the juvenile's prior offenses.

(b) The type and seriousness of the offense, including whether it was against persons or property and the extent to which it was committed in a violent, aggressive, premeditated or willful manner.

(c) The adequacy and suitability of facilities, services and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system, and, where applicable, the mental health system and the suitability of the juvenile for placement in the serious juvenile offender program under s. 938.538 or the adult intensive sanctions program under s. 301.048.

(d) The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in the court of criminal jurisdiction.

(6) DECISION ON WAIVER. After considering the criteria under sub. (5), the court shall state its finding with respect to the criteria on the record, and, if the court determines on the record that there is clear and convincing evidence that it is contrary to the best interests of the juvenile or of the public to hear the case, the court shall enter an order waiving jurisdiction and referring the matter to the district attorney for appropriate proceedings in the court of criminal jurisdiction. After the order, the court of criminal jurisdiction has exclusive jurisdiction.

(7) JUVENILE WHO ABSCONDS. If the juvenile absconds and does not appear at the waiver hearing, the court may proceed with the waiver hearing as provided in subs. (4) to (6) in the juvenile's absence. If the waiver is granted, the juvenile may contest that waiver when the juvenile is apprehended by showing the court of criminal jurisdiction good cause for his or her failure to appear. If the court of criminal jurisdiction finds good cause for the juvenile's failure to appear, that court shall transfer jurisdiction to the court assigned to exercise jurisdiction under this chapter and ch. 48 for the purpose of holding the waiver hearing.

(8) TRANSFER TO ADULT FACILITY; BAIL. When waiver is granted, the juvenile, if held in secure custody, shall be transferred to an appropriate officer or adult facility and shall be eligible for bail in accordance with chs. 968 and 969.

(9) CRIMINAL CHARGE. If waiver is granted, sub. (1) does not restrict the authority of the district attorney to charge the offense he or she deems is appropriate and does not restrict the authority of any court or jury to convict the juvenile in regard to any offense.

History: 1995 a. 77, 352, 448; 1997 a. 35; 2005 a. 212, 344; 2007 a. 97.

Since juveniles receive the same Miranda warnings as adults, a confession made by a juvenile during custodial interrogation prior to a waiver into adult court was admissible in later adult proceedings. Theriault v. State, 66 Wis. 2d 33, 223 N.W.2d 850 (1974).

The state may not delay charging a child in order to avoid juvenile court jurisdiction. State v. Becker, 74 Wis. 2d 675, 247 N.W.2d 495 (1976).

An order waiving jurisdiction over a juvenile is appealable under s. 808.03 (2). A.E. v. Green Lake County Cir. Ct. 94 Wis. 2d 98, 288 N.W.2d 125 (1980).

A motion to suppress evidence on the ground of inadmissibility at trial is premature when brought at a waiver hearing. In Interest of D.E.D. 101 Wis. 2d 193, 304 N.W.2d 133 (Ct. App. 1981).

Even though a juvenile does not contest waiver, sub. (5) requires the state to present testimony on the issue of waiver. The determination of prosecutive merit under sub. (4) is discussed. In Interest of T.R.B. 109 Wis. 2d 179, 325 N.W.2d 329 (1982).

An involuntary confession, if reliable and trustworthy, may be used to determine prosecutive merit; it would not be admissible at trial. If a juvenile does not meet the burden of showing unreliability of the confession, no evidentiary hearing is required. In Interest of J.G. 119 Wis. 2d 748, 350 N.W.2d 668 (1984).

In certain contested cases, the state may establish prosecutive merit on the basis of reliable information provided in delinquency and waiver petitions alone. In Interest of P.A.K. 119 Wis. 2d 871, 350 N.W.2d 677 (1984).

The trial court did not abuse its discretion in declining to convene in camera proceedings to determine whether the state had complied with discovery orders. In Interest of G.B.K. 126 Wis. 2d 253, 376 N.W.2d 385 (Ct. App. 1985).

A waiver petition under sub. (2) that referred only to facts of the underlying charge and not to facts to be presented under sub. (5) was insufficient. In Interest of J.V.R. 127 Wis. 2d 192, 378 N.W.2d 266 (1985).

The court may consider a waiver investigation report containing information not included in a waiver petition. In Interest of S.N. 139 Wis. 2d 270, 407 N.W.2d 562 (Ct. App. 1987).

A juvenile court improperly denied a waiver based on the belief that the adult court would improperly sentence the juvenile. In Interest of C.W. 142 Wis. 2d 763, 419 N.W.2d 327 (Ct. App. 1987).

If the state shows that delay in charging an offense committed by an adult defendant while still a juvenile was not with manipulative intent, due process does not require dismissal. State v. Montgomery, 148 Wis. 2d 593, 436 N.W.2d 303 (1989).

Sub. (9) permits the state to charge an offense related to a homicide after waiver under sub. (1) is completed. State v. Karow, 154 Wis. 2d 375, 453 N.W.2d 181 (Ct. App. 1990).

By pleading guilty to criminal charges, a defendant waives the right to challenge a waiver proceeding. State v. Kraemer, 156 Wis. 2d 761, 457 N.W.2d 562 (Ct. App. 1990).

When a juvenile turns 18 during the pendency of proceedings, the filing of a waiver petition under s. 48.18 prior to a plea hearing is not required for waiver of jurisdiction under s. 48.12 (2). Interest of K.A.P. 159 Wis. 2d 384, 464 N.W.2d 106 (Ct. App. 1990).

Delinquency and waiver petitions must both be filed to bring about a waiver hearing. The trial court may not proceed with a waiver hearing if the time limits under s. 48.25 for a delinquency petition are not complied with. In Interest of Michael J.L. 174 Wis. 2d 131, 496 N.W.2d 758 (Ct. App. 1993).

A hearing to determine whether the state improperly delayed filing criminal charges to avoid juvenile jurisdiction addresses a potential constitutional violation, not the court's subject matter jurisdiction, and is waived if not requested prior to the entry of a guilty plea. State v. Schroeder, 224 Wis. 2d 706, 593 N.W.2d 76 (Ct. App. 1999), 98−1420.

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The department has exclusive authority to detain and release a child who has violated conditions of probation imposed by a court of criminal jurisdiction. A child can be held in an adult section of a county jail. 72 Atty. Gen. 104.

A person who commits a crime while under age 18, but is charged after attaining age of 18, is not constitutionally entitled to juvenile jurisdiction where delay in filing the charges was not the result of a deliberate effort to avoid juvenile jurisdiction or of prosecutorial negligence. Bendler v. Percy, 481 F. Supp. 813 (1979).

Juvenile waiver statute; delegation of legislative power to judiciary. Zekas, 1973 WLR 259.

Wisconsin's new juvenile waiver statute: when should we wave goodbye to juvenile court protections? 1979 WLR 190.

NOTE: The above annotations cite to s. 48.18, the predecessor statute to s. 938.18.

Sub. (2) allows waiver into adult court in certain cases although the conditions of sub. (1) are not met. When a person becomes 17 years old and adjudication has not been accomplished because of of some unlawful action by the person, waiver into adult court is appropriate. Interest of Pablo R. 2000 WI App 242, 239 Wis. 2d 479, 620 N.W.2d 423, 00−0697.

After the filing of a criminal complaint and the criminal court's assumption of jurisdiction, so long as the criminal court retains jurisdiction the juvenile court may not reconsider its waiver order under sub. (6). The juvenile court retains jurisdiction and may reconsider its waiver order until a criminal complaint is filed. A juvenile may seek review of a waiver order after commencement of criminal proceedings by seeking an interlocutory appeal or by filing a motion asking the criminal court to relinquish jurisdiction. State v. Vairin M. 2002 WI 96, 255 Wis. 2d 137, 647 N.W.2d 208, 01−0656.

There is no bright−line rule precluding an agency that under sub. (2m) is a preparing waiver investigation report from communicating directly with the state or the juvenile for purposes of preparing the report. Rather, the agency is free to compile information for a waiver investigation report in the manner it deems most beneficial to the circuit court. However, it may be a better practice for the agency to invite both parties, or neither party, to participate. State v. Tyler T. 2012 WI 52, 341 Wis. 2d 1, 814 N.W.2d 192, 10−0784.

938.183 Original adult court jurisdiction for criminal proceedings. (1) JUVENILES UNDER ADULT COURT JURISDICTION. Notwithstanding ss. 938.12 (1) and 938.18, courts of criminal jurisdiction have exclusive original jurisdiction over all of the following:

(a) A juvenile who has been adjudicated delinquent and who is alleged to have violated s. 940.20 (1) or 946.43 while placed in a juvenile correctional facility, a juvenile detention facility, or a secured residential care center for children and youth or who has been adjudicated delinquent and who is alleged to have committed a violation of s. 940.20 (2m).

(am) A juvenile who is alleged to have attempted or committed a violation of s. 940.01 or to have committed a violation of s. 940.02 or 940.05 on or after the juvenile's 10th birthday.

(ar) A juvenile specified in par. (a) or (am) who is alleged to have attempted or committed a violation of any state criminal law in addition to the violation alleged under par. (a) or (am) if the violation alleged under this paragraph and the violation alleged under par. (a) or (am) may be joined under s. 971.12 (1).

(b) A juvenile who is alleged to have violated any state criminal law if the juvenile has been convicted of a previous violation following waiver of jurisdiction under s. 48.18, 1993 stats., or s. 938.18 by the court assigned to exercise jurisdiction under this chapter and ch. 48 or if the court assigned to exercise jurisdiction under this chapter and ch. 48 has waived its jurisdiction over the juvenile for a previous violation and criminal proceedings on that previous violation are still pending.

(c) A juvenile who is alleged to have violated any state criminal law if the juvenile has been convicted of a previous violation over which the court of criminal jurisdiction had original jurisdiction under this section or if proceedings on a previous violation over which the court of criminal jurisdiction has original jurisdiction under this section are still pending.

(1m) CRIMINAL PENALTIES AND PROCEDURES. Notwithstanding subchs. IV to VI, a juvenile described in sub. (1) is subject to the procedures specified in chs. 967 to 979 and the criminal penalties for the crime that the juvenile is alleged to have committed except as follows:

(a) If the juvenile is under 15 years of age, the juvenile may be held in secure custody only in a juvenile detention facility or in the juvenile portion of a county jail.

(b) If a court of criminal jurisdiction transfers jurisdiction under s. 970.032 or 971.31 (13) to a court assigned to exercise jurisdiction under this chapter and ch. 48, the juvenile is subject to the procedures and dispositions specified in subch. IV to VI.

(c) If the juvenile is found to have committed a lesser offense than the offense alleged under sub. (1) (a), (am), (ar), (b) or (c) or is found to have committed the offense alleged under sub. (1) (ar), but not the offense under sub. (1) (a) or (am) to which the offense alleged under sub. (1) (ar) is joined, and if any of the following conditions applies, the court of criminal jurisdiction shall, in lieu of convicting the juvenile, adjudge the juvenile to be delinquent and impose a disposition specified in s. 938.34:

1. Except as provided in subd. 3., the court of criminal jurisdiction finds that the juvenile has committed a lesser offense or a joined offense that is not a violation of s. 940.20 (1) or (2m) or 946.43 under the circumstances described in sub. (1) (a), that is not an attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that is not a violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am), and that is not an offense for which the court assigned to exercise jurisdiction under this chapter and ch. 48 may waive its jurisdiction over the juvenile under s. 938.18.

2. Except as provided in subd. 3., the court of criminal jurisdiction finds that the juvenile has committed a lesser offense or a joined offense that is a violation of s. 940.20 (1) or (2m) or 946.43 under the circumstances described in sub. (1) (a), that is an attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that is a violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am), or that is an offense for which the court assigned to exercise jurisdiction under this chapter and ch. 48 may waive its jurisdiction over the juvenile under s. 938.18 and the court of criminal jurisdiction, after considering the criteria specified in s. 938.18 (5), determines that the juvenile has proved by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to adjudge the juvenile to be delinquent and impose a disposition specified in s. 938.34.

3. For a juvenile who is alleged to have attempted or committed a violation of s. 940.01 or to have committed a violation of s. 940.02 or 940.05 on or after the juvenile's 15th birthday, the court of criminal jurisdiction finds that the juvenile has not attempted to commit a violation of s. 940.01 or committed a violation of s. 940.01, 940.02, or 940.05, and the court of criminal jurisdiction, after considering the criteria under s. 938.18 (5), determines that the juvenile has proved by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to adjudge the juvenile to be delinquent and impose a disposition under s. 938.34.

(3) PLACEMENT IN STATE PRISON; PAROLE. When a juvenile who is subject to a criminal penalty under sub. (1m) or s. 938.183 (2), 2003 stats., attains the age of 17 years, the department may place the juvenile in a state prison named in s. 302.01, except that the department may not place any person under the age of 18 years in the correctional institution authorized in s. 301.16 (1n). A juvenile who is subject to a criminal penalty under sub. (1m) or under s. 938.183 (2), 2003 stats., for an act committed before December 31, 1999, is eligible for parole under s. 304.06.

(4) CHILD SUPPORT. If the juvenile is placed outside the juvenile's home under this section, the order shall contain a designation of the amount of support, if any, to be paid by the juvenile's parent, guardian or trustee, specifying that the support obligation begins on the date of the placement, or a referral to the county child support agency under s. 59.53 (5) for establishment of child support.

History: 1995 a. 77, 216, 352; 1997 a. 27, 35, 205, 252, 283; 1999 a. 9, 32; 2001 a. 16; 2005 a. 344; 2007 a. 97.

There is no constitutionally protected right that a juvenile's name not be released prior to a reverse waiver hearing under s. 48.183 [now s. 938.183]. State v. Hazen, 198 Wis. 2d 554, 543 N.W.2d 503 (Ct. App. 1995), 95−1379.

938.185 Venue. (1) PROCEEDINGS GENERALLY. Subject to subs. (3) and (4), venue for any proceeding under ss. 938.12, 938.125, 938.13, 938.135, and 938.18 may be in any of the following:

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(a) The county where the juvenile resides.

(b) The county where the juvenile is present.

(c) In the case of a violation of a state law or a county, town or municipal ordinance, the county where the violation occurred, except that in that case the court of the county where the violation occurred may, after the juvenile is adjudged delinquent, transfer the proceeding to the county where the juvenile resides for disposition, if the court of the county of residence agrees to that transfer.

(2) REVISION AND EXTENSION OF ORDERS. Venue for any proceeding under s. 938.363 or 938.365 shall be in the county where the dispositional order was issued, unless the juvenile's county of residence has changed, or the parent of the juvenile has resided in a different county of this state for at least 6 months. In either case, the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the juvenile or parent.

(3) SEX OFFENDER REGISTRY VIOLATIONS. Venue for a proceeding under s. 938.12 or 938.13 (12) based on an alleged violation of s. 301.45 (6) (a) or (ag) may be in the juvenile's county of residence at the time that the petition is filed. If the juvenile does not have a county of residence in this state at the time that the petition is filed, or if the juvenile's county of residence is unknown at the time that the petition is filed, venue for the proceeding may be in any of the following counties:

(a) Any county in which the juvenile has resided while subject to s. 301.45.

(b) The county in which the juvenile was adjudicated delinquent or found not responsible by reason of mental disease or defect for the sex offense that requires the juvenile to register under s. 301.45.

(c) If the juvenile is required to register under s. 301.45 (1g) (dt), the county in which the juvenile was found to be a sexually violent person under ch. 980.

(d) If the juvenile is required to register only under s. 301.45 (1g) (f) or (g), any county in which the juvenile has been a student in this state or has been employed or carrying on a vocation in this state.

(4) INDIAN JUVENILES. Venue for a proceeding under s. 938.12 or 938.13 (12) based on an allegation that an Indian juvenile has committed a delinquent act may not be in the county specified in sub. (1) (a), unless that county is specified in sub. (1) (b) or (c), if all of the following circumstances apply:

(a) At the time of the alleged delinquent act the juvenile was under an order of a tribal court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship.

(b) At the time of the alleged delinquent act the juvenile was physically outside the boundaries of the reservation of the Indian tribe of the tribal court and any off−reservation trust land of either that Indian tribe or a member of that Indian tribe as a direct consequence of a tribal court order under par. (a), including a tribal court order placing the juvenile in the home of a relative of the juvenile who on or after the date of the tribal court order resides physically outside the boundaries of a reservation and off−reservation trust land.

(c) A petition relating to the delinquent act has been filed in a tribal court that has jurisdiction over the juvenile.

History: 1995 a. 77, 352, 440; 1999 a. 89; 2003 a. 284; 2005 a. 344; 2009 a. 94.

NOTE: 2003 Wis. Act 284 contains explanatory notes.

Venue becomes an issue only in the event that it is contested. It is not an element of the crime charged. The county where a juvenile "resides" is the county of domicile. The county where a juvenile "is present" is the county where the child is present at the time a petition is filed. State v. Corey J.G. 215 Wis. 2d 395, 572 N.W.2d 845 (1998), 96−3148.

SUBCHAPTER IV

HOLDING A JUVENILE IN CUSTODY

938.19 Taking a juvenile into custody. (1) CRITERIA. A juvenile may be taken into custody under any of the following:

(a) A warrant.

(b) A capias issued by a court under s. 938.28.

(c) A court order if there is a showing that the welfare of the juvenile demands that the juvenile be immediately removed from his or her present custody. The order shall specify that the juvenile be held in custody under s. 938.207.

(d) Circumstances in which a law enforcement officer believes on reasonable grounds that any of the following conditions exists:

1. A capias or a warrant for the juvenile's apprehension has been issued in this state, or the juvenile is a fugitive from justice.

2. A capias or a warrant for the juvenile's apprehension has been issued in another state.

3. The juvenile is committing or has committed an act which is a violation of a state or federal criminal law.

4. The juvenile has run away from his or her parents, guardian or legal or physical custodian.

5. The juvenile is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary.

6. The juvenile has violated a condition of court−ordered supervision or aftercare supervision administered by the department or a county department, a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth, or a condition of the juvenile's participation in the intensive supervision program under s. 938.534.

7. The juvenile has violated the conditions of an order under s. 938.21 (4) or of an order for temporary physical custody issued by an intake worker.

8. The juvenile has violated a civil law or a local ordinance punishable by a forfeiture, except that in that case the juvenile shall be released immediately under s. 938.20 (2) (ag) or as soon as reasonably possible under s. 938.20 (2) (b) to (g).

10. The juvenile is absent from school without an acceptable excuse under s. 118.15.

(1m) TRUANCY. A juvenile who is absent from school without an acceptable excuse under s. 118.15 may be taken into custody by an individual designated under s. 118.16 (2m) (a) if the school attendance officer of the school district in which the juvenile resides, or the juvenile's parent, guardian, or legal custodian, requests that the juvenile be taken into custody. The request shall specifically identify the juvenile.

(2) NOTIFICATION OF PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN CUSTODIAN. When a juvenile is taken into physical custody under this section, the person taking the juvenile into custody shall immediately attempt to notify the parent, guardian, legal custodian, and Indian custodian of the juvenile by the most practical means. The person taking the juvenile into custody shall continue such attempt until the parent, guardian, legal custodian, and Indian custodian of the juvenile are notified, or the juvenile is delivered to an intake worker under s. 938.20 (3), whichever occurs first. If the juvenile is delivered to the intake worker before the parent, guardian, legal custodian, and Indian custodian are notified, the intake worker, or another person at his or her direction, shall continue the attempt to notify until the parent, guardian, legal custodian, and Indian custodian of the juvenile are notified.

(3) NOT AN ARREST. Taking into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence is lawful.

History: 1995 a. 77; 2001 a. 16; 2005 a. 344; 2009 a. 94.

A juvenile may not be taken into custody under sub. (1) (d) 8. for violating an ordinance that does not impose a forfeiture although a forfeiture may be imposed under s. 48.343 (2) [now s. 938.343]. In Interest of J.F.F. 164 Wis. 2d 10, 473 N.W.2d 546 (Ct. App. 1991).

NOTE: The above annotation cites to s. 48.19, the predecessor statute to s. 938.19.

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938.195 Recording custodial interrogations. (1) DEFINITIONS. In this section:

(a) "Custodial interrogation" has the meaning given in s. 968.073 (1) (a).

(b) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(c) "Place of detention" means a juvenile detention facility, jail, municipal lockup facility, or juvenile correctional facility, or a police or sheriff's office or other building under the control of a law enforcement agency, at which juveniles are held in custody in connection with an investigation of a delinquent act.

(2) WHEN REQUIRED. (a) A law enforcement agency shall make an audio or audio and visual recording of any custodial interrogation of a juvenile that is conducted at a place of detention unless a condition under s. 938.31 (3) (c) 1. to 5. applies.

(b) If feasible, a law enforcement agency shall make an audio or audio and visual recording of any custodial interrogation of a juvenile that is conducted at a place other than a place of detention unless a condition under s. 938.31 (3) (c) 1. to 5. applies.

(3) NOTICE NOT REQUIRED. A law enforcement officer or agent of a law enforcement agency conducting a custodial interrogation is not required to inform the subject of the interrogation that the officer or agent is making an audio or audio and visual recording of the interrogation.

History: 2005 a. 60; 2007 a. 97; s. 35.17 correction in (1) (a).

938.20 Release or delivery from custody. (2) RELEASE OF JUVENILE. (ag) Except as provided in pars. (b) to (g), a person taking a juvenile into custody shall make every effort to release the juvenile immediately to the juvenile's parent, guardian, legal custodian, or Indian custodian.

(b) If the juvenile's parent, guardian, legal custodian, or Indian custodian is unavailable, unwilling, or unable to provide supervision for the juvenile, the person who took the juvenile into custody may release the juvenile to a responsible adult after counseling or warning the juvenile as may be appropriate.

(c) If the juvenile is 15 years of age or older, the person who took the juvenile into custody may release the juvenile without immediate adult supervision after counseling or warning the juvenile as may be appropriate.

(cm) If the juvenile has violated a condition of aftercare supervision administered by the department or a county department, a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth, or a condition of the juvenile's participation in the intensive supervision program under s. 938.534, the person who took the juvenile into custody may release the juvenile to the department or county department, whichever has supervision over the juvenile.

(d) If the juvenile is a runaway, the person who took the juvenile into custody may release the juvenile to a home under s. 48.227.

(e) If a juvenile is taken into custody under s. 938.19 (1) (d) 10., the law enforcement officer who took the juvenile into custody may release the juvenile under par. (ag) or (b) or, if the school board of the school district in which the juvenile resides has established a youth service center under s. 118.16 (4) (e), may deliver that juvenile to that youth service center. If the juvenile is delivered to a youth service center, personnel of the youth service center may release the juvenile to the juvenile's parent, guardian or legal custodian, or release the juvenile to the juvenile's school, after counseling the juvenile as may be appropriate. If the juvenile is released to the juvenile's school, personnel of the youth service center shall immediately notify the juvenile's parent, guardian and legal custodian that the juvenile was taken into custody under s. 938.19 (1) (d) 10. and released to the juvenile's school.

(f) If a juvenile is taken into custody under s. 938.19 (1m), the person who took the juvenile into custody may release the juvenile under par. (ag), (b) or (e) or to the juvenile's school administrator, as defined in s. 125.09 (2) (a) 3., or a school employee designated by the school administrator. If a juvenile is released to a school administrator or the school administrator's designee under this paragraph, the school administrator or designee shall do all of the following:

1. Immediately notify the juvenile's parent, guardian or legal custodian that the juvenile was taken into custody under s. 938.19 (1m) and released to the school administrator or his or her designee.

2. Make a determination of whether the juvenile is a child at risk, as defined in s. 118.153 (1) (a), unless that determination has been made within the current school semester. If a juvenile is determined to be a child at risk under this subdivision, the school administrator shall provide a program for the juvenile according to the plan developed under s. 118.153 (2) (a).

3. Provide the juvenile and his or her parent or guardian with an opportunity for educational counseling to determine whether a change in the juvenile's program or curriculum, including any of the modifications specified in s. 118.15 (1) (d), would resolve the juvenile's truancy problem, unless the juvenile and his or her parent or guardian have been provided with an opportunity for educational counseling within the current school semester.

(g) If a juvenile is taken into custody under s. 938.19 (1) (d) 10. and is not released under par. (ag), (b) or (e) or if a juvenile is taken into custody under s. 938.19 (1m) and is not released under par. (ag), (b), (e) or (f), the person who took the juvenile into custody shall release the juvenile without immediate adult supervision after counseling or warning the juvenile as may be appropriate.

(3) NOTIFICATION TO PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN CUSTODIAN OF RELEASE. If the juvenile is released under sub. (2) (b) to (d) or (g), the person who took the juvenile into custody shall immediately notify the juvenile's parent, guardian, legal custodian, and Indian custodian of the time and circumstances of the release and the person, if any, to whom the juvenile was released. If the juvenile is not released under sub. (2), the person who took the juvenile into custody shall arrange in a manner determined by the court and law enforcement agencies for the juvenile to be interviewed by the intake worker under s. 938.067 (2). The person who took the juvenile into custody shall make a statement in writing with supporting facts of the reasons why the juvenile was taken into physical custody and shall give a copy of the statement to the intake worker and to any juvenile 10 years of age or older. If the intake interview is not done in person, the report may be read to the intake worker.

(4) DELIVERY TO HOSPITAL OR PHYSICIAN. If the juvenile is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the juvenile into physical custody, the intake worker or other appropriate person shall deliver the juvenile to a hospital as defined in s. 50.33 (2) (a) and (c) or physician's office.

(5) EMERGENCY DETENTION OF JUVENILE. If the juvenile is believed to have a mental illness or developmental disability or to be drug dependent and exhibits conduct that constitutes a substantial probability of physical harm to the juvenile or to others, or a very substantial probability of physical impairment or injury to the juvenile exists due to the impaired judgment of the juvenile and if the standards of s. 51.15 are met, the person taking the juvenile into physical custody, the intake worker, or other appropriate person shall proceed under s. 51.15.

(6) DELIVERY OF INTOXICATED JUVENILE. If the juvenile is believed to be an intoxicated person who has threatened, attempted or inflicted physical harm on himself or herself or on another and is likely to inflict such physical harm unless committed, or is incapacitated by alcohol, the person taking the juvenile into physical custody, the intake worker or other appropriate person shall proceed under s. 51.45 (11).

(7) DUTIES OF INTAKE WORKER. (a) When a juvenile who is possibly involved in a delinquent act is interviewed by an intake

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worker, the intake worker shall inform the juvenile of his or her right to counsel and the right against self−incrimination.

(b) The intake worker shall review the need to hold the juvenile in custody and shall make every effort to release the juvenile from custody as provided in par. (c). The intake worker shall base his or her decision as to whether to release the juvenile or to continue to hold the juvenile in custody on the criteria under s. 938.205 and criteria established under s. 938.06 (1) or (2).

(c) The intake worker may release the juvenile as follows:

1. To a parent, guardian, legal custodian, or Indian custodian, or to a responsible adult if the parent, guardian, legal custodian, or Indian custodian is unavailable, unwilling, or unable to provide supervision for the juvenile, counseling or warning the juvenile as may be appropriate; or, if the juvenile is 15 years of age or older, without immediate adult supervision, counseling or warning the juvenile as may be appropriate.

1m. In the case of a juvenile who has violated a condition of aftercare supervision administered by the department or a county department, a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth, or a condition of the juvenile's participation in the intensive supervision program under s. 938.534, to the department or county department, whichever has supervision of the juvenile.

2. In the case of a runaway juvenile, to a home under s. 48.227.

(d) If the juvenile is released from custody, the intake worker shall immediately notify the juvenile's parent, guardian, legal custodian, and Indian custodian of the time and circumstances of the release and the person, if any, to whom the juvenile was released.

(8) NOTIFICATION THAT HELD IN CUSTODY. (a) If a juvenile is held in custody, the intake worker shall notify the juvenile's parent, guardian, legal custodian, and Indian custodian of the reasons for holding the juvenile in custody and of the juvenile's whereabouts unless there is reason to believe that notice would present imminent danger to the juvenile. The parent, guardian, legal custodian, and Indian custodian shall also be notified of the time and place of the detention hearing required under s. 938.21, the nature and possible consequences of the hearing, the right to present and cross−examine witnesses at the hearing, and, in the case of a parent or Indian custodian of an Indian juvenile who is the subject of an Indian juvenile custody proceeding, as defined in s. 938.028 (2) (b), the right to counsel under s. 938.028 (4) (b). If the parent, guardian, legal custodian, or Indian custodian is not immediately available, the intake worker or another person designated by the court shall provide notice as soon as possible.

(b) If the juvenile is alleged to have committed a delinquent act, the juvenile shall receive the same notice about the detention hearing as the parent, guardian, or legal custodian. The intake worker shall notify both the juvenile and the juvenile's parent, guardian, or legal custodian.

(c) If a juvenile who has violated a condition of aftercare supervision administered by the department or a county department, a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth, or a condition of the juvenile's participation in the intensive supervision program under s. 938.534 is held in custody, the intake worker shall also notify the department or county department, whichever has supervision over the juvenile, of the reasons for holding the juvenile in custody, of the juvenile's whereabouts, and of the time and place of the detention hearing required under s. 938.21.

History: 1995 a. 77; 1997 a. 35; 2001 a. 16; 2005 a. 344; 2009 a. 94.

938.205 Criteria for holding a juvenile in physical custody. (1) CRITERIA. A juvenile may be held under s. 938.207, 938.208, or 938.209 (1) if the intake worker determines that there is probable cause to believe the juvenile is within the jurisdiction of the court and if probable cause exists to believe any of the following:

(a) That the juvenile will commit injury to the person or property of others if not held.

(b) That the parent, guardian, or legal custodian of the juvenile or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care and that services to ensure the juvenile's safety and well−being are not available or would be inadequate.

(c) That the juvenile will run away or be taken away so as to be unavailable for proceedings of the court or its officers, proceedings of the division of hearings and appeals in the department of administration for revocation of aftercare supervision, or action by the department or county department relating to a violation of a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth or a condition of the juvenile's participation in the intensive supervision program under s. 938.534.

(2) APPLICABILITY. The criteria for holding a juvenile in custody under this section govern the decision of all persons responsible for determining whether the action is appropriate.

History: 1995 a. 77, 275; 1997 a. 35, 296; 1999 a. 32; 2001 a. 16; 2005 a. 344.

938.207 Places where a juvenile may be held in nonsecure custody. (1) WHERE MAY BE HELD. A juvenile held in physical custody under s. 938.205 may be held in any of the following places:

(a) The home of a parent or guardian, except that a juvenile may not be held in the home of a parent or guardian if the parent or guardian has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of a parent of the juvenile, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The person making the custody decision shall consider the wishes of the juvenile in making that determination.

(b) The home of a relative, except that a juvenile may not be held in the home of a relative if the relative has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of a parent of the juvenile, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The person making the custody decision shall consider the wishes of the juvenile in making that determination.

(c) A licensed foster home if the placement does not violate the conditions of the license.

(cm) A licensed group home if the placement does not violate the conditions of the license.

(d) A nonsecure facility operated by a licensed child welfare agency.

(e) A licensed private or public shelter care facility.

(f) The home of a person not a relative if the person has not had a license under s. 48.62 refused, revoked, or suspended within the previous 2 years. A placement under this paragraph may not exceed 30 days, unless the placement is extended by the court for cause for an additional 30 days.

(g) A hospital as defined in s. 50.33 (2) (a) and (c) or physician's office if the juvenile is held under s. 938.20 (4).

(h) A place listed in s. 51.15 (2) if the juvenile is held under s. 938.20 (5).

(i) An approved public treatment facility for emergency treatment if the juvenile is held under s. 938.20 (6).

(k) A facility under s. 48.58.

(1g) INDIAN JUVENILE; PLACEMENT PREFERENCES. An Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is held in physical custody under s. 938.205 (1) shall be placed in compliance with s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the person responsible for determin-

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ing the placement finds good cause, as described in s. 938.028 (6) (d), for departing from the order of placement preference under s. 938.028 (6) (a) or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian juvenile shall be placed in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b).

(2) PAYMENT. If a facility listed in sub. (1) (b) to (k) is used to hold a juvenile in custody, or if supervisory services of a home detention program are provided to a juvenile held under sub. (1) (a), the county shall pay the facility's authorized rate for the care of the juvenile. If no authorized rate has been established, the court shall fix a reasonable sum to be paid by the county for the supervision or care of the juvenile.

History: 1995 a. 77; 1999 a. 9; 2005 a. 344; 2009 a. 28, 94.

938.208 Criteria for holding a juvenile in a juvenile detention facility. A juvenile may be held in a juvenile detention facility if the intake worker determines that any of the following conditions applies:

(1) DELINQUENT ACT AND RISK OF HARM OR RUNNING AWAY. Probable cause exists to believe that the juvenile has committed a delinquent act and either presents a substantial risk of physical harm to another person or a substantial risk of running away so as to be unavailable for a court hearing, a revocation of aftercare supervision hearing, or action by the department or county department relating to a violation of a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth or a condition of the juvenile's participation in the intensive supervision program under s. 938.534. For juveniles who have been adjudged delinquent, the delinquent act referred to in this section may be the act for which the juvenile was adjudged delinquent. If the intake worker determines that any of the following conditions applies, the juvenile is considered to present a substantial risk of physical harm to another person:

(a) Probable cause exists to believe that the juvenile has committed a delinquent act that would be a felony under s. 940.01, 940.02, 940.03, 940.05, 940.19 (2) to (6), 940.21, 940.225 (1), 940.31, 941.20 (3), 943.02 (1), 943.23 (1g), 943.32 (2), 947.013 (1t), (1v) or (1x), 948.02 (1) or (2), 948.025, 948.03, or 948.085 (2), if committed by an adult.

(b) Probable cause exists to believe that the juvenile possessed, used or threatened to use a handgun, as defined in s. 175.35 (1) (b), short−barreled rifle, as defined in s. 941.28 (1) (b), or short−barreled shotgun, as defined in s. 941.28 (1) (c), while committing a delinquent act that would be a felony under ch. 940 if committed by an adult.

(c) Probable cause exists to believe that the juvenile has possessed or gone armed with a short−barreled rifle or a short−barreled shotgun in violation of s. 941.28, or has possessed or gone armed with a handgun in violation of s. 948.60.

(2) RUNAWAY FROM ANOTHER STATE OR SECURE CUSTODY. Probable cause exists to believe that the juvenile is a fugitive from another state or has run away from a juvenile correctional facility or a secured residential care center for children and youth and there has been no reasonable opportunity to return the juvenile.

(3) PROTECTIVE CUSTODY. The juvenile consents in writing to being held in order to protect him or her from an imminent physical threat from another and such secure custody is ordered by the court in a protective order.

(4) RUNAWAY FROM NONSECURE CUSTODY. Probable cause exists to believe that the juvenile, having been placed in nonsecure custody by an intake worker under s. 938.207 or by the court under s. 938.21 (4), has run away or committed a delinquent act and no other suitable alternative exists.

(5) RUNAWAY FROM ANOTHER COUNTY. Probable cause exists to believe that the juvenile has been adjudged or alleged to be delinquent and has run away from another county and would run away from nonsecure custody pending his or her return. A juvenile may be held in secure custody under this subsection for no more than 24 hours after the end of the day that the decision to hold the juvenile was made unless an extension of those 24 hours is ordered by the court for good cause shown. Only one extension may be ordered.

(6) SUBJECT TO JURISDICTION OF ADULT COURT. Probable cause exists to believe that the juvenile is subject to the jurisdiction of the court of criminal jurisdiction under s. 938.183 (1) and is under 15 years of age.

History: 1995 a. 77, 352; 1999 a. 9; 2001 a. 16, 61, 109; 2005 a. 277, 344; 2007 a. 97.

938.209 Criteria for holding a juvenile in a county jail or a municipal lockup facility. (1) COUNTY JAIL. Subject to s. 938.208, a county jail may be used as a juvenile detention facility if the criteria under either par. (a) or (b) are met:

(a) There is no other juvenile detention facility approved by the department or a county which is available and all of the following conditions are met:

1. The jail meets the standards for juvenile detention facilities established by the department.

2. The juvenile is held in a room separated and removed from incarcerated adults.

3. The juvenile is not held in a cell designed for the administrative or disciplinary segregation of adults.

4. Adequate supervision is provided.

5. The court reviews the status of the juvenile every 3 days.

(b) The juvenile presents a substantial risk of physical harm to other persons in the juvenile detention facility, as evidenced by previous acts or attempts, which can only be avoided by transfer to the jail. The conditions of par. (a) 1. to 5. shall be met. The juvenile shall be given a hearing and may be transferred only upon a court order.

(2m) MUNICIPAL LOCKUP. (a) A juvenile who is alleged to have committed a delinquent act may be held in a municipal lockup facility if all of the following criteria are met:

1. The department has approved the municipal lockup facility as a suitable place for holding juveniles in custody.

2. The juvenile is held in the municipal lockup facility for not more than 6 hours while awaiting his or her hearing under s. 938.21 (1) (a).

3. There is sight and sound separation between the juvenile and any adult who is being held in the municipal lockup facility.

4. The juvenile is held for investigative purposes only.

(b) The department shall promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles in custody and for the operation of such a facility. The rules shall be designed to protect the health, safety and welfare of the juveniles held in those facilities.

(3) JUVENILES UNDER ADULT COURT JURISDICTION. The restrictions of this section do not apply to the use of jail for a juvenile who has been waived to adult court under s. 938.18 or who is under the jurisdiction of an adult court under s. 938.183, unless the juvenile is under the jurisdiction of an adult court under s. 938.183 (1) and is under 15 years of age.

History: 1995 a. 77, 352; 1997 a. 35, 296; 2005 a. 344; 2007 a. 97.

938.21 Hearing for juvenile in custody. (1) HEARING; WHEN HELD. (a) If a juvenile who has been taken into custody is not released under s. 938.20, a hearing to determine whether to continue to hold the juvenile in custody under the criteria of ss. 938.205 to 938.209 (1) shall be conducted by the court within 24 hours after the end of the day on which the decision to hold the juvenile was made, excluding Saturdays, Sundays, and legal holidays. By the time of the hearing a petition under s. 938.25 or a request for a change in placement under s. 938.357, a request for a revision of the dispositional order under s. 938.363, or a request for an extension of a dispositional order under s. 938.365 shall be filed, except that no petition or request need be filed if a juvenile

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is taken into custody under s. 938.19 (1) (b) or (d) 2., 6., or 7. or if the juvenile is a runaway from another state, in which case a written statement of the reasons for holding a juvenile in custody shall be substituted if the petition is not filed. If no hearing has been held within 24 hours or if no petition, request, or statement has been filed at the time of the hearing, the juvenile shall be released except as provided in par. (b). The court shall grant a rehearing upon request of a parent not present at the hearing for good cause shown.

(b) If no petition or request has been filed by the time of the hearing, a juvenile may be held in custody with the approval of the court for an additional 48 hours from the time of the hearing only if, as a result of the facts brought forth at the hearing, the court determines that probable cause exists to believe that the juvenile is an imminent danger to himself or herself or to others, or that probable cause exists to believe that the parent, guardian, or legal custodian of the juvenile or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care. The extension may be granted only once for any petition. If a petition or request is not filed within the 48−hour extension period under this paragraph, the court shall order the juvenile's immediate release from custody.

(2) PROCEEDINGS CONCERNING DELINQUENT JUVENILES. (ag) Proceedings concerning a juvenile who comes within the jurisdiction of the court under s. 938.12 or 938.13 (12) or (14) shall be conducted according to this subsection.

(am) A juvenile held in a nonsecure place of custody may waive in writing his or her right to participate in the hearing under this section. After any waiver, a rehearing shall be granted upon the request of the juvenile or any other interested party for good cause shown. Any juvenile transferred to a juvenile detention facility shall thereafter have a rehearing under this section.

(b) A copy of the petition or request shall be given to the juvenile at or prior to the time of the hearing. Prior notice of the hearing shall be given to the juvenile's parent, guardian, and legal custodian and to the juvenile under s. 938.20 (8).

(c) Prior to the commencement of the hearing, the court shall inform the juvenile of the allegations that have been or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the provisions of s. 938.18 if applicable, the right to counsel under s. 938.23 regardless of ability to pay if the juvenile is not yet represented by counsel, the right to remain silent, the fact that the silence may not be adversely considered by the court, the right to confront and cross−examine witnesses, and the right to present witnesses.

(d) If the juvenile is not represented by counsel at the hearing and the juvenile is continued in custody as a result of the hearing, the juvenile may request through counsel subsequently appointed or retained or through a guardian ad litem that the order to hold in custody be reheard. If the request is made, a rehearing shall take place as soon as possible. An order to hold the juvenile in custody shall be reheard for good cause whether or not counsel was present.

(e) If present at the hearing, the parent shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile. If the parent does not provide that information at the hearing, the county department or agency primarily responsible for providing services to the juvenile under the custody order shall permit the parent to provide that information at a later date.

(3) PROCEEDINGS CONCERNING JUVENILES IN NEED OF PROTECTION OR SERVICES. (ag) Proceedings concerning a juvenile who comes within the jurisdiction of the court under s. 938.13 (4), (6), (6m), or (7) shall be conducted according to this subsection.

(am) The parent, guardian, legal custodian, or Indian custodian may waive his or her right to participate in the hearing under this section. After any waiver, a rehearing shall be granted at the request of the parent, guardian, legal custodian, Indian custodian, or any other interested party for good cause shown.

(b) If present at the hearing, a copy of the petition or request shall be given to the parent, guardian, legal custodian, or Indian custodian, and to the juvenile if he or she is 12 years of age or older, before the hearing begins. Prior notice of the hearing shall be given to the juvenile's parent, guardian, legal custodian, and Indian custodian and to the juvenile if he or she is 12 years of age or older under s. 938.20 (8).

(d) Prior to the commencement of the hearing, the court shall inform the parent, guardian, legal custodian, or Indian custodian of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to present, confront, and cross−examine witnesses and, in the case of a parent or Indian custodian of an Indian juvenile who is the subject of an Indian juvenile custody proceeding, as defined in s. 938.028 (2) (b), the right to counsel under s. 938.028 (4) (b).

(e) If the parent, guardian, legal custodian, Indian custodian, or juvenile is not represented by counsel at the hearing and if the juvenile is continued in custody as a result of the hearing, the parent, guardian, legal custodian, Indian custodian, or juvenile may request through counsel subsequently appointed or retained or through a guardian ad litem that the order to hold the juvenile in custody be reheard. If the request is made, a rehearing shall take place as soon as possible. An order to hold the juvenile in custody shall be reheard for good cause, whether or not counsel was present.

(f) If present at the hearing, the parent shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile. If the parent does not provide that information at the hearing, the county department or agency primarily responsible for providing services to the juvenile under the custody order shall permit the parent to provide that information at a later date.

(3m) PARENTAL NOTICE REQUIRED. If the juvenile has been taken into custody because he or she committed an act which resulted in personal injury or damage to or loss of the property of another, the court, prior to the commencement of any hearing under this section, shall attempt to notify the juvenile's parents of the possibility of disclosure of the identity of the juvenile and the parents, of the juvenile's police records and of the outcome of proceedings against the juvenile for use in civil actions for damages against the juvenile or the parents and of the parents' potential liability for acts of their juveniles. If the court is unable to provide the notice before commencement of the hearing, it shall provide the juvenile's parents with the specified information in writing as soon as possible after the hearing.

(4) ORDER TO CONTINUE IN CUSTODY. If the court finds that the juvenile should be continued in custody under the criteria of s. 938.205, the court shall enter one of the following orders:

(a) Place the juvenile with a parent, guardian, legal custodian, or other responsible person and may impose reasonable restrictions on the juvenile's travel, association with other persons, or places of abode during the period of placement, including a condition requiring the juvenile to return to other custody as requested; or subject the juvenile to the supervision of an agency agreeing to supervise the juvenile. Reasonable restrictions may be placed upon the conduct of the parent, guardian, legal custodian, or other responsible person which may be necessary to ensure the safety of the juvenile.

(b) Order the juvenile held in an appropriate manner under s. 938.207, 938.208 or 938.209 (1).

(4m) ELECTRONIC MONITORING. An order under sub. (4) (a) or (b) may include a condition that the juvenile be monitored by an electronic monitoring system.

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(5) ORDERS IN WRITING. (a) All orders to hold in custody shall be in writing, listing the reasons and criteria forming the basis for the decision.

(b) An order relating to a juvenile held in custody outside of his or her home shall also include all of the following:

1. a. A finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile.

b. A finding as to whether the person who took the juvenile into custody and the intake worker have made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, unless the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

c. A finding as to whether the person who took the juvenile into custody and the intake worker have made reasonable efforts to make it possible for the juvenile to return safely home.

d. If the juvenile is under the supervision of the county department, an order ordering the juvenile into the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and assigning the county department primary responsibility for providing services to the juvenile.

1m. If for good cause shown sufficient information is not available for the court to make a finding as to whether reasonable efforts were made to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, a finding as to whether reasonable efforts were made to make it possible for the juvenile to return safely home and an order for the county department or agency primarily responsible for providing services to the juvenile under the custody order to file with the court sufficient information for the court to make a finding as to whether those reasonable efforts were made to prevent the removal of the juvenile from the home by no later than 5 days, excluding Saturdays, Sundays, and legal holidays, after the date on which the order is granted.

2. If the juvenile is held in custody outside the home in a placement recommended by the intake worker, a statement that the court approves the placement recommended by the intake worker or, if the juvenile is placed outside the home in a placement other than a placement recommended by the intake worker, a statement that the court has given bona fide consideration to the recommendations made by the intake worker and all parties relating to the placement of the juvenile.

2m. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been removed from the home, a finding as to whether the intake worker has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the court determines that a joint placement would be contrary to the safety or well−being of the juvenile or any of those siblings, in which case the court shall order the county department or agency primarily responsible for providing services to the juvenile under the custody order to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court determines that such visitation or interaction would be contrary to the safety or well−being of the juvenile or any of those siblings.

3. If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, a determination that the county department or agency primarily responsible for providing services under the custody order is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home.

(c) The court shall make the findings specified in par. (b) 1., 1m., and 3. on a case−by−case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the custody order. A custody order that merely references par. (b) 1., 1m., or 3. without documenting or referencing that specific information in the custody order or an amended custody order that retroactively corrects an earlier custody order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(d) If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency goal and, if applicable, any concurrent permanency goals for the juvenile.

NOTE: Par. (d) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(d) If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile.

(e) 1. In this paragraph, "adult relative" means a grandparent, great−grandparent, aunt, uncle, brother, sister, half brother, or half sister of a juvenile, whether by blood, marriage, or legal adoption, who has attained 18 years of age.

2. The court shall order the county department or agency primarily responsible for providing services to the juvenile under the custody order to conduct a diligent search in order to locate and provide notice of the information specified in this subdivision to all relatives of the juvenile named under sub. (2) (e) or (3) (f) and to all adult relatives of the juvenile within 30 days after the juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned to his or her home within that period. The court may also order the county department or agency to conduct a diligent search in order to locate and provide notice of the information specified in this subdivision to all other adult individuals named under sub. (2) (e) or (3) (f) within 30 days after the juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned to his or her home within that period. The county department or agency may not provide that notice to a person named under sub. (2) (e) or (3) (f) or to an adult relative if the county department or agency has reason to believe that it would be dangerous to the juvenile or to the parent if the juvenile were placed with that person or adult relative. The notice shall include all of the following:

a. A statement that the juvenile has been removed from the custody of the juvenile's parent.

b. A statement that explains the options that the person provided with the notice has under state or federal law to participate in the care and placement of the juvenile, including any options that may be lost by failing to respond to the notice.

c. A description of the requirements to obtain a foster home license under s. 48.62 or to receive kinship care or long−term kinship care payments under s. 48.57 (3m) or (3n) and of the additional services and supports that are available for juveniles placed in a foster home or in the home of a person receiving those payments.

d. A statement advising the person provided with the notice that he or she may incur additional expenses if the juvenile is placed in his or her home and that reimbursement for some of those expenses may be available.

e. The name and contact information of the agency that removed the juvenile from the custody of the juvenile's parent.

(6) AMENDMENT OF ORDER. An order under sub. (4) (a) may be amended at any time, with notice, so as to place the juvenile in another form of custody for failure to conform to the conditions originally imposed. A juvenile may be transferred to secure custody if he or she meets the criteria of s. 938.208.

(7) DEFERRED PROSECUTION. If the court determines that the best interests of the juvenile and the public are served, the court may enter a consent decree under s. 938.32 or dismiss the petition and refer the matter to the intake worker for deferred prosecution in accordance with s. 938.245.

History: 1995 a. 77, 275; 1997 a. 35, 237, 296; 2001 a. 16, 61, 109; 2005 a. 344; 2007 a. 20, 97; 2009 a. 28, 79, 94, 180; 2011 a. 181.

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When a district attorney receives notice of a deferred prosecution agreement from an intake worker under s. 938.24 (5), the 20 days during which the district attorney may terminate the agreement under s. 938.245 (6) begins. When a court orders a deferred prosecution agreement under sub. (7), the intake worker need not notify the district attorney and nothing triggers a district attorney's authority to terminate the agreement under s. 938.245 (6). An order under sub. (7) dismissing a petition and referring for deferred prosecution does not require district attorney consent. The district attorney may not override the order by filing a new petition with the same charges and facts. State v. Lindsey A.F. 2002 WI App 223, 257 Wis. 2d 650, 653 N.W.2d 116, 01−0081. Affirmed. 2003 WI 63, 262 Wis. 2d 200, 663 N.W.2d 757, 01−0081.

Deferred prosecutions under sub. (7) are not limited to situations in which the child is in custody. State v. Lindsey A.F. 2003 WI 63, 262 Wis. 2d 200, 663 N.W.2d 757, 01−0081.

938.22 County and private juvenile facilities. **(1)** ESTABLISHMENT AND POLICIES. (a) Subject to s. 48.66 (1) (b), the county board of supervisors of a county may establish a juvenile detention facility in accordance with ss. 301.36 and 301.37 or the county boards of supervisors for 2 or more counties may jointly establish a juvenile detention facility in accordance with ss. 46.20, 301.36, and 301.37. The county board of supervisors of a county may establish a shelter care facility in accordance with ss. 48.576 and 48.578 or the county boards of supervisors for 2 or more counties may jointly establish a shelter care facility in accordance with ss. 46.20, 48.576, and 48.578. A private entity may establish a juvenile detention facility in accordance with ss. 301.36 and 301.37 and contract with one or more county boards of supervisors under s. 938.222 to hold juveniles in the private juvenile detention facility.

(b) Subject to sub. (3) (ar), in counties having a population of less than 500,000, the nonjudicial operational policies of a public juvenile detention facility or shelter care facility shall be determined by the county board of supervisors or, in the case of a public juvenile detention facility or shelter care facility established by 2 or more counties, by the county boards of supervisors for the 2 or more counties jointly. Those policies shall be executed by the superintendent appointed under sub. (3) (a).

(c) In counties having a population of 500,000 or more, the nonjudicial operational policies of a public juvenile detention facility and the detention section of the children's court center shall be established by the county board of supervisors, and the policies shall be executed by the director of the children's court center.

(d) The nonjudicial operational policies of a private juvenile detention facility shall be established by the private entity operating the juvenile detention facility. Those policies shall be executed by the superintendent appointed under sub. (3) (bm).

(2) PLANS AND REQUIREMENTS. (a) Counties shall submit plans for a juvenile detention facility or juvenile portion of the county jail to the department of corrections and submit plans for a shelter care facility to the department of children and families. A private entity that proposes to establish a juvenile detention facility shall submit plans for the facility to the department of corrections. The applicable department shall review the submitted plans. A county or a private entity may not implement a plan unless the applicable department has approved the plan. The department of corrections shall promulgate rules establishing minimum requirements for the approval and operation of juvenile detention facilities and the juvenile portion of county jails. The plans and rules shall be designed to protect the health, safety, and welfare of the juveniles placed in those facilities.

(b) If the department approves, a juvenile detention facility or a holdover room may be located in a public building in which there is a jail or other facility for the detention of adults if the juvenile detention facility or holdover room is physically segregated from the jail or other facility so that juveniles may enter the juvenile detention facility or holdover room without passing through areas where adults are confined and juveniles detained in the juvenile detention facility or holdover room cannot communicate with or view adults confined in the jail or other facility.

(c) A shelter care facility shall be used for the temporary care of juveniles. A shelter care facility, other than a holdover room, may not be in the same building as a facility for the detention of adults.

(3) SUPERVISION OF FACILITY. (a) In counties having a population of less than 500,000, public juvenile detention facilities and public shelter care facilities shall be in the charge of a superintendent. The county board of supervisors or, where 2 or more counties operate joint public juvenile detention facilities or shelter care facilities, the county boards of supervisors for the 2 or more counties jointly shall appoint the superintendent and other necessary personnel for the care and education of the juveniles placed in those facilities, subject to par. (am) and to civil service regulations in counties having civil service.

(am) If a juvenile detention facility or holdover room is part of a public building in which there is a jail or other facility for the detention of adults, the sheriff or other keeper of the jail or other facility for the detention of adults may nominate persons for the position of superintendent of the juvenile detention facility or holdover room. Nominees under this paragraph shall have demonstrated administrative abilities and interest in juvenile justice and the welfare of juveniles.

(ar) Notwithstanding sub. (1) (b), if a juvenile detention facility or holdover room is located in a public building in which there is a jail or other facility for the detention of adults, the sheriff or other keeper of the jail or other facility for the detention of adults shall determine the security and emergency response policies of that juvenile detention facility or holdover room and the procedures for implementing those policies.

(b) In counties having a population of 500,000 or more, the director of the children's court center shall be in charge of and responsible for public juvenile detention facilities, the juvenile detention section of the center, and the personnel assigned to this section, including a detention supervisor or superintendent. The director of the children's court center may also serve as superintendent of detention if the county board of supervisors so determines.

(bm) A private juvenile detention facility shall be in the charge of a superintendent appointed by the private entity operating the juvenile detention facility.

(c) A superintendent appointed under par. (a), (b), or (bm) after May 1, 1992, shall, within one year after that appointment, successfully complete an administrative training program approved or provided by the department of justice.

(5) COUNTY CONTRACTS WITH PRIVATE FACILITIES. A county board of supervisors, or 2 or more county boards of supervisors jointly, may contract with privately operated juvenile detention facilities, shelter care facilities, or home detention programs for purchase of services. A county board of supervisors may delegate this authority to its county department.

(7) LICENSING OF SHELTER CARE FACILITIES. (a) No person may establish a shelter care facility without first obtaining a license under s. 48.66 (1) (a). To obtain a license under s. 48.66 (1) (a) to operate a shelter care facility, a person must meet the minimum requirements for a license established by the department of children and families under s. 48.67, meet the requirements specified in s. 48.685, and pay the license fee under par. (b). A license issued under s. 48.66 (1) (a) to operate a shelter care facility is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

(b) Except as provided in par. (d), before the department of children and families may issue a license under s. 48.66 (1) (a) to operate a shelter care facility, the shelter care facility shall pay to that department a biennial fee of $60.50, plus a biennial fee of $18.15 per juvenile, based on the number of juveniles that the shelter care facility is licensed to serve. A shelter care facility that wishes to continue a license issued under s. 48.66 (1) (a) shall pay the fee by the continuation date of the license. A new shelter care facility shall pay the fee by no later than 30 days before the opening of the shelter care facility.

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(c) A shelter care facility that wishes to continue a license issued under s. 48.66 (1) (a) and that fails to pay the fee under par. (b) by the continuation date of the license or a new shelter care facility that fails to pay the fee under par. (b) by 30 days before the opening of the shelter care facility shall pay an additional fee of $5 per day for every day after the deadline that the facility fails to pay the fee.

(d) An individual who is eligible for a fee waiver under the veterans fee waiver program under s. 45.44 is not required to pay the fee under par. (b) for a license to operate a shelter care facility.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352; 1997 a. 27, 35, 252; 1999 a. 9; 2005 a. 344; 2007 a. 20, 97; 2011 a. 209.

938.222 Contracts with private entities for juvenile detention facility services. (1) USES OF FACILITIES. The county board of supervisors of a county may contract with a private entity that operates a juvenile detention facility for the use of the facility to hold juveniles who meet the criteria under s. 48.208, 938.17 (1), 938.183 (1m) (a), or 938.208 or who are subject to a disposition under s. 938.17 (1) (b) or 938.34 (3) (f), a sanction under s. 938.355 (6) (d) 1., or short−term detention under s. 938.355 (6d) or 938.534 (1).

(2) CONTRACT REQUIREMENTS. (a) A contract under sub. (1) shall require all of the following:

1. That the private juvenile detention facility meet or exceed the minimum requirements for the approval and operation of a juvenile detention facility established by the department by rule under s. 938.22 (2) (a) and that the private juvenile detention facility be approved by the department under s. 301.36.

2. That the private juvenile detention facility provide educational programming, health care, and other care that is equivalent to that which a juvenile would receive in a public juvenile detention facility.

(b) In addition to the requirements under par. (a), a contract under sub. (1) shall include all of the following:

1. The rates to be paid by the county for holding a juvenile in the private juvenile detention facility and the charges to be paid by the county for any extraordinary medical and dental expenses and any programming provided for a juvenile who is held in the private juvenile detention facility.

2. An agreement that the county retains jurisdiction over a juvenile who is held in the private juvenile detention facility.

3. An agreement that the private juvenile detention facility is subject to investigation and inspection by the department under s. 301.36.

4. Any other matters that are necessary and appropriate concerning the obligations, responsibilities and rights of the contracting counties and the department.

History: 1997 a. 27; 2005 a. 344; 2007 a. 97.

938.223 Contracts with Minnesota counties for juvenile detention facility services. (1) USES OF FACILITIES. The county board of supervisors of any county may contract with one or more counties in Minnesota that operate a juvenile detention facility for the use of one or more Minnesota juvenile detention facilities for the holding of juveniles who meet the criteria under s. 48.208, 938.17 (1), 938.183 (1m) (a), or 938.208 or who are subject to a disposition under s. 938.17 (1) (b) or 938.34 (3) (f), a sanction under s. 938.355 (6) (d) 1., or short−term detention under s. 938.355 (6d) or 938.534 (1).

(2) CONTRACT REQUIREMENTS. (a) A contract under sub. (1) shall require all of the following:

1. That the Minnesota juvenile detention facility meet or exceed the minimum requirements for the approval and operation of a Wisconsin juvenile detention facility established by the department by rule under s. 938.22 (2) (a) and that the Minnesota juvenile detention facility be approved by the department under s. 301.36.

2. That the Minnesota juvenile detention facility provide educational programming, health care, and other care that is equivalent to that which a juvenile would receive in a Wisconsin juvenile detention facility.

(b) In addition to the requirements under par. (a), a contract under sub. (1) shall include all of the following:

1. The rates to be paid by the Wisconsin county for holding a juvenile in the Minnesota juvenile detention facility and the charges to be paid by the Wisconsin county for any extraordinary medical and dental expenses and any programming provided for a juvenile who is held in the Minnesota juvenile detention facility.

2. An agreement that the Wisconsin county retains jurisdiction over a juvenile who is held in the Minnesota juvenile detention facility.

3. An agreement that the Minnesota juvenile detention facility is subject to investigation and inspection by the department under s. 301.36.

4. Any other matters that are necessary and appropriate concerning the obligations, responsibilities and rights of the contracting counties and the department.

(3) MINNESOTA JUVENILES IN WISCONSIN FACILITIES. The county board of supervisors of a county that operates a juvenile detention facility may contract with one or more counties in Minnesota for the use of the juvenile detention facility operated by the Wisconsin county for the holding of juveniles transferred to that juvenile detention facility by the Minnesota county.

History: 1995 a. 352; 1997 a. 27; 2005 a. 344; 2007 a. 97.

938.224 Contracts with department for juvenile detention facility services. (1) USES OF FACILITIES. The county board of supervisors of a county may contract with the department for the use of a juvenile correctional facility operated by the department for the holding of juveniles who meet the criteria under s. 48.208, 938.17 (1), 938.183 (1m) (a), or 938.208 or who are subject to a disposition under s. 938.17 (1) (b) or 938.34 (3) (f), a sanction under s. 938.355 (6) (d) 1., or short−term detention under s. 938.355 (6d) or 938.534 (1).

(2) CONTRACT REQUIREMENTS. A contract under sub. (1) shall require all of the following:

(a) That the county may use a juvenile correctional facility for holding a juvenile under sub. (1) only if any of the following criteria are met:

1. There is no county−operated juvenile detention facility approved by the department within 40 miles of the county seat of the county.

2. There is no bed space available in a county−operated juvenile detention facility approved by the department within 40 miles of the county seat of the county.

(b) That the county may use a juvenile correctional facility for holding a juvenile under sub. (1) only if the department approves that use based on the availability of beds in the juvenile correctional facility and on the programming needs of the juvenile.

(3) ADDITIONAL REQUIREMENTS. In addition to the requirements under sub. (2), a contract under sub. (1) shall include all of the following:

(a) The per person daily rate to be paid by the county for holding a juvenile under sub. (1) and the charges to be paid by the county for any extraordinary medical and dental expenses and any programming provided for the juvenile by the department.

(b) Any other matters that are necessary and appropriate concerning the obligations, responsibilities and rights of the contracting county and the department.

(4) SUPERVISION AND CONTROL OF JUVENILES. A juvenile held in custody under sub. (1) is under the supervision and control of the department and is subject to the rules and discipline of the department.

History: 1997 a. 27; 2005 a. 344; 2007 a. 97.

938.225 Statewide plan for juvenile detention facilities. The department shall assist counties in establishing juvenile detention facilities under s. 938.22 by developing and promulgat-

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ing a statewide plan for the establishment and maintenance of suitable juvenile detention facilities reasonably accessible to each court.

History: 1995 a. 77; 2007 a. 97.

938.23 Right to counsel. (1g) DEFINITION. In this section, "counsel" means an attorney acting as adversary counsel.

(1j) DUTIES OF COUNSEL. Counsel shall advance and protect the legal rights of the party represented. Counsel may not act as guardian ad litem for any party in the same proceeding.

(1m) RIGHT OF JUVENILES TO LEGAL REPRESENTATION. Juveniles subject to proceedings under this chapter shall be afforded legal representation as follows:

(a) A juvenile alleged to be delinquent under s. 938.12 or held in a juvenile detention facility shall be represented by counsel at all stages of the proceedings. A juvenile 15 years of age or older may waive counsel if the court is satisfied that the waiver is knowingly and voluntarily made and the court accepts the waiver. If the waiver is accepted, the court may not place the juvenile in a juvenile correctional facility or a secured residential care center for children and youth, transfer supervision of the juvenile to the department for participation in the serious juvenile offender program, or transfer jurisdiction over the juvenile to adult court.

(am) A juvenile subject to a sanction under s. 938.355 (6) (a) is entitled to representation by counsel at the hearing under s. 938.355 (6) (c).

(ar) A juvenile subject to proceedings under s. 938.357 (3) or (5) shall be afforded legal representation as provided in those subsections.

(b) 1. If a juvenile is alleged to be in need of protection or services under s. 938.13, the juvenile may be represented by counsel at the discretion of the court. Except as provided in subd. 2., a juvenile 15 years of age or older may waive counsel if the court is satisfied such waiver is knowingly and voluntarily made and the court accepts the waiver.

2. If the petition is contested, the court may not place the juvenile outside his or her home unless the juvenile is represented by counsel at the fact−finding hearing and subsequent proceedings. If the petition is not contested, the court may not place the juvenile outside his or her home unless the juvenile is represented by counsel at the hearing at which the placement is made. For a juvenile under 12 years of age, the court may appoint a guardian ad litem instead of counsel.

(2g) RIGHT OF INDIAN JUVENILE'S PARENT OR INDIAN CUSTODIAN TO COUNSEL. Whenever an Indian juvenile is the subject of a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the removal of the Indian juvenile from the home of his or her parent or Indian custodian or the placement of the Indian juvenile in an out−of−home care placement, the Indian juvenile's parent or Indian custodian shall have the right to be represented by counsel as provided in sub. (4).

(3) POWER OF THE COURT TO APPOINT COUNSEL. Except as provided in this subsection, at any time, upon request or on its own motion, the court may appoint counsel for the juvenile or any party, unless the juvenile or the party has or wishes to retain counsel of his or her own choosing. Except as provided in sub. (2g), the court may not appoint counsel for any party other than the juvenile in a proceeding under s. 938.13.

(4) PROVIDING COUNSEL. If a juvenile has a right to be represented by counsel or is provided counsel at the discretion of the court under this section and counsel is not knowingly and voluntarily waived, the court shall refer the juvenile to the state public defender and counsel shall be appointed by the state public defender under s. 977.08 without a determination of indigency. In any situation under sub. (2g) in which a parent 18 years of age or over is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent is unable to afford counsel in full, or the parent so indicates; the court shall refer the parent to the authority for indigency determinations specified under s. 977.07 (1). In any other situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, competent and independent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay, except that the court may not order a person who files a petition under s. 813.122 or 813.125 to reimburse counsel for the juvenile who is named as the respondent in that petition.

(5) COUNSEL OF OWN CHOOSING. Notwithstanding subs. (3) and (4), any party is entitled to retain counsel of his or her own choosing at his or her own expense in any proceeding under this chapter.

History: 1995 a. 77; 1999 a. 9; 2001 a. 103; 2005 a. 344; 2009 a. 94.

The right to be represented by counsel includes the right to effective counsel. In Interest of M.D.(S), 168 Wis. 2d 996, 485 N.W.2d 52 (1992).

938.235 Guardian ad litem. (1) APPOINTMENT. (a) The court may appoint a guardian ad litem in any appropriate matter under this chapter.

(e) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any juvenile alleged or found to be in need of protection or services, if the court has ordered, or if a request or recommendation has been made that the court order, the juvenile to be placed out of his or her home under s. 938.345 or 938.357.

(2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, who appears as counsel in a proceeding on behalf of any party or who is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.

(3) DUTIES AND RESPONSIBILITIES. (a) The guardian ad litem shall be an advocate for the best interests of the person for whom the appointment is made. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the person or the positions of others as to the best interests of the person. If the guardian ad litem determines that the best interests of the person are substantially inconsistent with the person's wishes, the guardian ad litem shall so inform the court and the court may appoint counsel to represent the person. The guardian ad litem has none of the rights or duties of a general guardian.

(b) In addition to any other duties and responsibilities of a guardian ad litem, a guardian ad litem appointed for a juvenile who is the subject of a proceeding under s. 938.13 shall do all of the following:

1. Unless granted leave by the court not to do so, personally, or through a trained designee, meet with the juvenile, assess the appropriateness and safety of the juvenile's environment and, if the juvenile is old enough to communicate, interview the juvenile and determine the juvenile's goals and concerns regarding his or her placement.

2. Make clear and specific recommendations to the court concerning the best interest of the juvenile at every stage of the proceeding.

(4) MATTERS INVOLVING JUVENILE IN NEED OF PROTECTION OR SERVICES. (a) In any matter involving a juvenile found to be in need of protection or services, the guardian ad litem may, if reappointed or if the appointment is continued under sub. (7), do any of the following:

1. Participate in permanency planning under ss. 48.43 (5) and 938.38.

2. Petition for a change in placement under s. 938.357.

3. Petition for termination of parental rights or any other matter specified under s. 48.14 or 938.14.

4. Petition for revision of dispositional orders under s. 938.363.

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5. Petition for extension of dispositional orders under s. 938.365.

6. Petition for a temporary restraining order and injunction under s. 813.122 or 813.125.

7. Petition for relief from a judgment terminating parental rights under s. 48.028 or 48.46.

7g. Petition for the appointment of a guardian under s. 48.977 (2), the revision of a guardianship order under s. 48.977 (6) or the removal of a guardian under s. 48.977 (7).

7m. Bring an action or motion for the determination of the juvenile's paternity under s. 767.80.

8. Perform any other duties consistent with this chapter and ch. 48.

(b) The court shall order the agency identified under s. 938.33 (1) (c) as primarily responsible for the provision of services to notify the guardian ad litem, if any, regarding actions to be taken under par. (a).

(7) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates. The guardian ad litem may appeal, participate in an appeal, or do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in the appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal. At any time, the guardian ad litem, any party, or the person for whom the appointment is made may request in writing or on the record that the court extend or terminate the appointment or reappointment. The court may extend that appointment, or reappoint a guardian ad litem appointed under this section, after the entry of the final order or after the termination of the appeal, but the court shall specifically state the scope of the responsibilities of the guardian ad litem during the period of the extension or reappointment.

(8) COMPENSATION. (a) A guardian ad litem appointed under this chapter shall be compensated at a rate that the court determines is reasonable, except that, if the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation payable to a private attorney under s. 977.08 (4m) (b).

(b) The court may order either or both of the parents of a juvenile for whom a guardian ad litem is appointed under this chapter to pay all or any part of the compensation of the guardian ad litem. Upon motion by the guardian ad litem, the court may order either or both of the parents of the juvenile to pay the fee for an expert witness used by the guardian ad litem, if the guardian ad litem shows that the use of the expert is necessary to assist the guardian ad litem in performing his or her functions or duties under this chapter. If one or both of the parents are indigent or if the court determines that it would be unfair to a parent to require him or her to pay, the court may order the county of venue to pay the compensation and fees, in whole or in part. If the court orders the county of venue to pay, the court may also order either or both of the parents to reimburse the county, in whole or in part, for the payment.

(c) At any time before the final order in a proceeding in which a guardian ad litem is appointed for a juvenile under this chapter, the court may order a parent of the juvenile to place payments in an escrow account in an amount estimated to be sufficient to pay any compensation and fees payable under par. (b).

(d) If the court orders a parent to reimburse a county under par. (b), the court may order a separate judgment for the amount of the reimbursement in favor of the county and against the parent who is responsible for the reimbursement.

(e) The court may enforce its orders under this subsection by means of its contempt powers.

History: 1995 a. 77, 275; 1997 a. 237; 2005 a. 344; 2005 a. 443 s. 265; 2007 a. 20; 2009 a. 94.

938.237 Civil law and ordinance proceedings initiated by citation in the court assigned to exercise jurisdiction under this chapter and ch. 48. (1) CITATION FORM. The citation forms under s. 23.54, 66.0113, 778.25, 778.26 or 800.02 may be used to commence an action for a violation of civil laws and ordinances in the court.

(2) PROCEDURES. The procedures for issuance and filing of a citation, and for forfeitures, stipulations, and deposits in ss. 23.50 to 23.67, 23.75 (3) and (4), 66.0113, 778.25, 778.26, and 800.01 to 800.035 except s. 800.035 (7) (b), when the citation is issued by a law enforcement officer, shall be used as appropriate, except that this chapter shall govern taking and holding a juvenile in custody, s. 938.37 shall govern costs, fees, and surcharges imposed under ch. 814, and a capias shall be substituted for an arrest warrant. Sections 66.0113 (3) (c) and (d), 66.0114 (1), and 778.10 as they relate to collection of forfeitures do not apply.

(3) DISPOSITION. If a juvenile to whom a citation has been issued does not submit a deposit or a stipulation and deposit, the juvenile shall appear in the court for a plea hearing under s. 938.30 at the date, time and place for the court appearance specified on the citation. If the juvenile does not submit a stipulation and deposit or if the court refuses to accept a deposit unaccompanied by a stipulation, the juvenile may be summoned to appear and the procedures that govern petitions for civil law or ordinance violations under s. 938.125 shall govern all proceedings initiated by a citation, except that the citation shall not be referred to the court intake worker for an intake inquiry. If the court finds that a juvenile violated a municipal ordinance or a civil law punishable by a forfeiture under this section, the court shall enter a dispositional order under s. 938.344, if applicable, or if s. 938.344 does not apply, the court may enter any of the dispositional orders under s. 938.343.

History: 1995 a. 77; 1999 a. 150 s. 672; 2001 a. 30 s. 108; 2003 a. 139; 2005 a. 344; 2009 a. 402.

SUBCHAPTER V

PROCEDURE

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

(1m) COUNSELING. As part of the intake inquiry, the intake worker shall inform the juvenile and the juvenile's parent, guardian and legal custodian that they may request counseling from a person designated by the court to provide dispositional services under s. 938.069.

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

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

(2m) MULTIDISCIPLINARY SCREEN; PILOT PROGRAM. (a) In counties that have a pilot program under s. 938.547, a multidisciplinary screen shall be conducted for a juvenile who is or does any of the following:

1. Alleged to have committed a violation specified under ch. 961.

2. Alleged to be delinquent or in need of protection and services and has at least 2 prior adjudications for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2) or a local ordinance that strictly conforms to any of those sections.

3. Alleged to have committed any offense that appears to the intake worker to be directly motivated by the juvenile's need to purchase or otherwise obtain alcohol beverages, controlled substances, or controlled substance analogs.

4. Twelve years of age or older and requests and consents to a multidisciplinary screen.

5. Consents to a multidisciplinary screen requested by his or her parents.

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

(2r) INDIAN JUVENILE; NOTIFICATION OF TRIBAL COURT. (a) If the intake worker determines as a result of the intake inquiry that the juvenile is an Indian juvenile who has allegedly committed a delinquent act and that all of the following circumstances apply, the intake worker shall promptly notify the clerk of the tribal court under subd. 1., a person who serves as the tribal juvenile intake worker, or a tribal prosecuting attorney that the juvenile has allegedly committed a delinquent act under those circumstances:

1. At the time of the delinquent act the juvenile was under an order of a tribal court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship.

2. At the time of the delinquent act the juvenile was physically outside the boundaries of s the reservation of the Indian tribe of the tribal court and any off−reservation trust land of either that Indian tribe or a member of that Indian tribe as a direct consequence of a tribal court order under subd. 1., including a tribal court order placing the juvenile in the home of a relative of the juvenile who on or after the date of the tribal court order resides physically outside the boundaries of a reservation and off−reservation trust land.

(b) If the intake worker is notified by an official of the Indian tribe that a petition relating to the delinquent act has been or may be filed in tribal court, the intake worker shall consult with tribal officials, unless the intake worker determines under sub. (4) that the case should be closed. After the consultation, the intake worker shall determine whether the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court. If the intake worker determines that the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court, the intake worker shall close the case. If the intake worker determines that the best interests of the juvenile and of the public would not be served by having the matter proceed solely in tribal court, the intake worker shall proceed under sub. (3) or (4).

(3) REQUEST FOR PETITION. If the intake worker determines as a result of the intake inquiry that the juvenile should be referred to the court, the intake worker shall request that the district attorney, corporation counsel or other official specified in s. 938.09 file a petition.

(4) DEFERRED PROSECUTION AGREEMENT OR CASE CLOSURE. If the intake worker determines as a result of the intake inquiry that the case should be subject to a deferred prosecution agreement, or should be closed, the intake worker shall so proceed. If a petition has been filed, a deferred prosecution agreement may not be entered into or a case may not be closed unless the petition is withdrawn by the district attorney, corporation counsel or other official specified in s. 938.09, or is dismissed by the court.

(5) REQUEST FOR PETITION, DEFERRED PROSECUTION, OR CASE CLOSURE; TIME PERIODS. The intake worker shall request that a petition be filed, enter into a deferred prosecution agreement, or close the case within 40 days after receipt of referral information. Before entering into a deferred prosecution agreement, the intake worker shall comply with s. 938.245 (1m), if applicable. If the case is closed or a deferred prosecution agreement is entered into, the district attorney, corporation counsel, or other official under s. 938.09 shall receive written notice of that action. If the case is closed, the known victims of the juvenile's alleged act shall receive notice as provided under sub. (5m), if applicable. A notice of deferred prosecution of an alleged delinquency case shall include a summary of the facts surrounding the allegation and a list of the juvenile's prior intake referrals and dispositions. If a law enforcement officer has made a recommendation concerning the juvenile, the intake worker shall forward the recommendation to the district attorney under s. 938.09. Notwithstanding the requirements of this section, the district attorney may initiate a delinquency petition under s. 938.25 within 20 days after notice that the case has been closed or that a deferred prosecution agreement has been entered into. The court shall grant appropriate relief as provided in s. 938.315 (3) with respect to any petition that is not referred or filed within the time period specified in this subsection. Failure to object to the fact that a petition is not referred or filed within a time period specified in this subsection waives any challenge to the court's competency to act on the petition.

(5m) CASE CLOSURE; INFORMATION TO VICTIMS. If a juvenile is alleged to be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12) and the intake worker decides to close the case, the intake worker shall make a reasonable attempt to inform all of the known victims of the juvenile's act that the case is being closed at that time.

(6) WRITTEN POLICIES. The intake worker shall perform his or her responsibilities under this section under general written policies promulgated under s. 938.06 (1) or (2).

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

History: 1995 a. 77, 275, 352, 448; 1997 a. 181; 1999 a. 9; 2003 a. 284; 2005 a. 344; 2007 a. 199; 2009 a. 94.

NOTE: 2003 Wis. Act 284 contains explanatory notes.

Under the facts of the case, sub. (5) did not mandate dismissal although referral was not made within 40 days. In re J.L.W. 143 Wis. 2d 126, 420 N.W.2d 398 (Ct. App. 1988).

Under sub. (1), "information indicating that a child should be referred to the court as delinquent" is that quantum of information that would allow a reasonable intake worker to evaluate the appropriate disposition of the matter. In Interest of J.W.T. 159 Wis. 2d 754, 465 N.W.2d 520 (Ct. App. 1990).

Sub. (5), when read in conjunction with sub. (3), requires that an intake worker request the district attorney to file a delinquency petition and does not require the intake worker to make a recommendation that a petition be filed. Interest of Antonio M.C. 182 Wis. 2d 301, 513 N.W.2d 662 (Ct. App. 1994).

Procedural Changes. Plum. Wis. Law. Apr. 1996.

NOTE: The above annotations cite to s. 48.24, the predecessor statute to s. 938.24.

When a district attorney receives notice of a deferred prosecution agreement from an intake worker under sub. (5), the 20 days during which the district attorney may terminate the agreement under s. 938.245 (6) begins. When a court orders a deferred prosecution agreement under s. 938.21 (7), the intake worker need not notify the district attorney and nothing triggers a district attorney's authority to terminate the agreement under s. 938.245 (6). An order under s. 938.21 (7) dismissing a petition and referring for deferred prosecution does not require district attorney consent. The district attorney may not override the order by filing a new petition with the same charges and facts. State v. Lindsey A.F. 2002 WI App 223, 257 Wis. 2d 650, 653 N.W.2d 116, 01−0081. Affirmed. 2003 WI 63, 262 Wis. 2d 200, 663 N.W.2d 757, 01−0081.

938.243 Basic rights: duty of intake worker. (1) INFORMATION TO JUVENILE AND PARENTS; BASIC RIGHTS. Before conferring with the parent or juvenile during the intake inquiry, the intake worker shall personally inform a juvenile alleged to have committed a delinquent act, a juvenile 10 years of age or older who is the focus of an inquiry regarding the need for protection or ser-

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vices under s. 938.13 (4), (6), (6m), or (7), and the parents of those juveniles of all of the following:

(ag) That the referral may result in a petition to the court.

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

(b) The nature and possible consequences of the proceedings including the provisions of ss. 938.17 and 938.18 if applicable.

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

(d) The right to confront and cross−examine those appearing against them.

(e) The right to counsel under s. 938.23.

(f) The right to present and subpoena witnesses.

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

(1m) DISCLOSURE OF INFORMATION FOR USE IN CIVIL DAMAGES ACTION. If the juvenile who is the subject of the intake inquiry is alleged to have committed an act that resulted in personal injury or damage to or loss of the property of another, the intake worker shall inform the juvenile's parents in writing of all of the following:

(a) The possibility of disclosure of the identity of the juvenile and the parents, of the juvenile's police records, and of the outcome of proceedings against the juvenile for use in civil actions for damages against the juvenile or the parents.

(b) The parents' liability for acts of their juveniles.

(3) INFORMATION WHEN JUVENILE NOT AT INTAKE CONFERENCE OR HAS NOT HAD CUSTODY HEARING. If the juvenile has not had a hearing under s. 938.21 and was not present at an intake conference under s. 938.24, the intake worker shall notify the juvenile, parent, guardian, and legal custodian as appropriate of their basic rights under this section. The notice shall be given verbally, either in person or by telephone, and in writing. The notice shall be given in sufficient time to allow the juvenile, parent, guardian, or legal custodian to prepare for the plea hearing. This subsection does not apply to cases of deferred prosecution under s. 938.245.

(4) APPLICABILITY. This section does not apply if the juvenile was present at a hearing under s. 938.21.

History: 1995 a. 77; 1997 a. 35; 2005 a. 344; 2009 a. 94.

938.245 Deferred prosecution. (1) WHEN AVAILABLE. An intake worker may enter into a written deferred prosecution agreement with all parties as provided in this section if all of the following apply:

(a) The intake worker has determined that neither the interests of the juvenile nor of the public require filing of a petition for circumstances relating to s. 938.12, 938.125, 938.13, or 938.14.

(b) The facts persuade the intake worker that the jurisdiction of the court, if sought, would exist.

(c) The juvenile, parent, guardian and legal custodian consent.

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

(2) CONTENTS OF AGREEMENT. (a) *Specific conditions.* A deferred prosecution agreement may provide for any one or more of the following:

1. 'Counseling.' That the juvenile and the juvenile's parent, guardian or legal custodian participate in individual, family or group counseling and that the parent, guardian or legal custodian participate in parenting skills training.

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

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

4. 'Alcohol and other drug abuse treatment and education.' That the juvenile participate in an alcohol and other drug abuse outpatient treatment program or a court−approved alcohol or other drug abuse education program, if an alcohol and other drug abuse assessment under subd. 3. recommends outpatient treatment, intervention, or education.

5. 'Restitution.' a. That the juvenile participate in a restitution project if the act for which the agreement is being entered into resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering. Subject to subd. 5. c., the agreement may require the juvenile to repair the damage to property or to make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the intake worker, after taking into consideration the well−being and needs of the victim, considers it beneficial to the well−being and behavior of the juvenile. The agreement shall include a determination that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the agreement for the payment or for the completion of the services, and may include a schedule for the performance and completion of the services. Any recovery under this subd. 5. a. shall be reduced by the amount recovered for the same act under subd. 5. am.

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

b. In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a restitution project provided by the county or who is performing services for the victim as restitution may, for the purpose of making restitution, be employed or perform any duties under any circumstances in which a juvenile 14 or 15 years of age is permitted to be employed or to perform duties under ch. 103 or any rule or order under ch. 103. A juvenile who is participating in a restitution project provided by the county or who is performing services for the victim as restitution is exempt from the permit requirement under s. 103.70 (1).

c. An agreement under this subdivision may require a juvenile who is under 14 years of age to make not more than $250 in restitu-

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tion or to perform not more than 40 total hours of services for the victim as total restitution.

6. 'Supervised work program.' That the juvenile participate in a supervised work program or other community service work in accordance with s. 938.34 (5g).

7. 'Volunteers in probation.' That the juvenile be placed with a volunteers in probation program under conditions the intake worker determines are reasonable and appropriate, if the juvenile is alleged to have committed an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under s. 973.11 (2) a volunteers in probation program established in the juvenile's county of residence, and if the intake worker determines that volunteer supervision under that program will likely benefit the juvenile and the community. The conditions an intake worker may establish under this subdivision may include a request to a volunteer to be a role model for the juvenile, informal counseling, general monitoring, monitoring of the conditions established by the intake worker, or any combination of these functions, and any other deferred prosecution condition that the intake worker may establish under this paragraph.

8. 'Teen court program.' That the juvenile be placed in a teen court program if all of the following conditions apply:

a. The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the intake worker determines that participation in the teen court program will likely benefit the juvenile and the community.

b. The juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult or a civil law or ordinance violation.

c. The juvenile admits to the intake worker, in the presence of the juvenile's parent, guardian, or legal custodian, that the juvenile committed the alleged delinquent act or civil law or ordinance violation.

d. The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged delinquent act or civil law or ordinance violation.

9m. 'Youth report center.' That the juvenile report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a juvenile under this subdivision.

(b) *No out−of−home placement; term of agreement.* A deferred prosecution agreement may not include any form of out−of−home placement and may not exceed one year.

(c) *Alcohol or other drug abuse treatment; informed consent.* If the deferred prosecution agreement provides for alcohol and other drug abuse outpatient treatment under par. (a) 4., the juvenile and the juvenile's parent, guardian or legal custodian shall execute an informed consent form that indicates that they are voluntarily and knowingly entering into a deferred prosecution agreement for the provision of alcohol and other drug abuse outpatient treatment.

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

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

(3) OBLIGATIONS IN WRITING. The obligations imposed under a deferred prosecution agreement and its effective date shall be set forth in writing. The intake worker shall provide a copy of the agreement and order to the juvenile, to the juvenile's parent, guardian, and legal custodian, and to any agency providing services under the agreement.

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

(5) TERMINATION UPON REQUEST. A deferred prosecution agreement may be terminated upon the request of the juvenile, parent, guardian, or legal custodian.

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

(7) CANCELLATION BY INTAKE WORKER. (a) If at any time during the period of a deferred prosecution agreement the intake worker determines that the obligations imposed under it are not being met, the intake worker may cancel the agreement. Within 10 days after the agreement is cancelled, the intake worker shall notify the district attorney, corporation counsel, or other official under s. 938.09 of the cancellation and may request that a petition be filed. In delinquency cases, the district attorney may initiate a petition within 20 days after the date of the notice regardless of whether the intake worker has requested that a petition be filed. The court shall grant appropriate relief as provided in s. 938.315 (3) with respect to any petition that is not filed within the time period specified in this paragraph. Failure to object to the fact that a petition is not filed within the time period specified in this paragraph waives any challenge to the court's competency to act on the petition.

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

(8) WHEN OBLIGATIONS MET. If the obligations imposed under the deferred prosecution agreement are met, the intake worker shall so inform the juvenile and a parent, guardian, and legal custodian in writing. No petition may be filed or citation issued on the charges that brought about the agreement and the charges may not be the sole basis for a petition under s. 48.13, 48.133, 48.14, 938.13, or 938.14.

(9) WRITTEN POLICIES. The intake worker shall perform his or her responsibilities under this section under general written policies promulgated under s. 938.06 (1) or (2).

History: 1995 a. 77, 352, 448; 1997 a. 80, 181, 183, 205, 239, 292; 1999 a. 9, 32; 2001 a. 16; 2003 a. 138; 2005 a. 344; 2007 a. 199; 2011 a. 32.

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When a district attorney receives notice of a deferred prosecution agreement from an intake worker under s. 938.24 (5), the 20 days during which the district attorney may terminate the agreement under sub. (6) begins. When a court orders a deferred prosecution agreement under s. 938.21 (7), the intake worker need not notify the district attorney and nothing triggers a district attorney's authority to terminate the agreement under sub. (6). An order under s. 938.21 (7) dismissing a petition and referring for deferred prosecution does not require district attorney consent. The district attorney may not override the order by filing a new petition with the same charges and facts. State v. Lindsey A.F. 2002 WI App 223, 257 Wis. 2d 650, 653 N.W.2d 116, 01−0081. Affirmed. 2003 WI 63, 262 Wis. 2d 200, 663 N.W.2d 757, 01−0081.

938.25 Petition: authorization to file. (1) REQUIREMENTS; WHO MAY FILE. A petition initiating proceedings under this chapter shall be signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true. The district attorney shall prepare, sign, and file a petition under s. 938.12. The district attorney, corporation counsel, or other appropriate official specified under s. 938.09 may file a petition under s. 938.125 or 938.13. The counsel or guardian ad litem for a parent, relative, guardian, or juvenile may file a petition under s. 938.13 or 938.14. The district attorney, corporation counsel or other appropriate person designated by the court may initiate proceedings under s. 938.14 in a manner specified by the court.

(2) TIME PERIODS; REFERRAL BACK. (a) The district attorney, corporation counsel, or other appropriate official shall file the petition, close the case, or refer the case back to intake or, with notice to intake, the law enforcement agency investigating the case within 20 days after the date that the intake worker's request was filed. A referral back to intake or to the law enforcement agency investigating the case may be made only when the district attorney, corporation counsel, or other appropriate official decides not to file a petition or determines that further investigation is necessary. If the case is referred back to intake upon a decision not to file a petition, the intake worker shall close the case or enter into a deferred prosecution agreement within 20 days after the date of the referral. If the case is referred back to intake or to the law enforcement agency investigating the case for further investigation, the appropriate agency or person shall complete the investigation within 20 days after the date of the referral. If another referral is made to the district attorney, corporation counsel, or other appropriate official by intake or by the law enforcement agency investigating the case, it shall be considered a new referral to which the time limits of this subsection apply. The time periods in this paragraph may only be extended by a court upon a showing of good cause under s. 938.315. If a petition is not filed within the time periods in this paragraph and the court has not granted an extension, the petition shall be accompanied by a statement of reasons for the delay. The court shall grant appropriate relief as provided in s. 938.315 (3) with respect to a petition that is not filed within the applicable time period in this paragraph. Failure to object to the fact that a petition is not filed within the applicable time period in this paragraph waives any challenge to the court's competency to act on the petition.

(b) In delinquency cases in which there has been a case closure or deferred prosecution agreement, the petition shall be filed within 20 days after receipt of the notice of the closure or agreement. Failure to file within those 20 days invalidates the petition and affirms the case closure or agreement, except that the court shall grant appropriate relief as provided in s. 938.315 (3) with respect to a petition that is not filed within the time period specified in this paragraph and that failure to object if a petition is not filed within that time period waives any challenge to the court's competency to act on the petition. If a petition is filed within those 20 days or the time permitted by the court under s. 938.315 (3), whichever is later, the district attorney shall notify the parties to the agreement and the intake worker of the filing as soon as possible.

(2g) INDIAN JUVENILE; CONSULTATION WITH TRIBAL COURT. If the circumstances described in s. 938.24 (2r) (a) apply, before filing a petition under s. 938.12 or 938.13 (12) the district attorney or corporation counsel shall determine whether the intake worker has received notification under s. 938.24 (2r) (b) from a tribal official that a petition relating to the alleged delinquent act has been or may be filed in tribal court. If the intake worker has received the notification or if a tribal official has provided the notification directly to the district attorney or corporation counsel, the district attorney or corporation counsel shall attempt to consult with appropriate tribal officials before filing a petition under s. 938.12 or 938.13 (12).

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

(3) COURT ORDER FOR FILING OF PETITION. If the district attorney, corporation counsel, or other appropriate official under s. 938.09 refuses to file a petition, any person may request the court to order that the petition be filed and a hearing shall be held on the request. The court may order the filing of the petition on its own motion. The matter may not be heard by the court that orders the filing of a petition.

(4) TIME PERIOD FOR PROSECUTION. Section 939.74 applies to delinquency petitions filed under this chapter.

(5) CITATION AS INITIAL PLEADING. A citation issued under s. 938.17 (2) may serve as the initial pleading and is sufficient to confer the court with jurisdiction over the juvenile when the citation is filed with the court.

(6) TEMPORARY RESTRAINING ORDER AND INJUNCTION. If a proceeding is brought under s. 938.13, any party to or any governmental or social agency involved in the proceeding may petition the court to issue a temporary restraining order and injunction as provided in s. 813.122 or 813.125. The court shall follow the procedure under s. 813.122 or 813.125 except that the court may combine hearings authorized under s. 813.122 or 813.125 and this chapter, the petitioner for the temporary restraining order and injunction is not subject to the limitations under s. 813.122 (2) or 813.125 (2) and no fee is required regarding the filing of the petition under s. 813.122 or 813.125.

History: 1995 a. 77, 352; 1997 a. 35, 181; 2003 a. 284; 2005 a. 344; 2007 a. 199; 2009 a. 94.

NOTE: 2003 Wis. Act 284 contains explanatory notes.

"Good cause" under sub. (2) (a) is defined. In Interest of F. E.W. 143 Wis. 2d 856, 422 N.W.2d 893 (Ct. App. 1988).

Delinquency and waiver petitions must both be filed to bring about a waiver hearing; the trial court may not proceed with a waiver hearing when the time limits under s. 48.25 for a delinquency petition are not complied with. In Interest of Michael J.L. 174 Wis. 2d 131, 496 N.W.2d 758 (Ct. App. 1993).

NOTE: The above annotations cite to s. 48.25, the predecessor statute to s. 938.25.

To the extent that sub. (1) prohibits the admission of delinquency adjudications in ch. 980 proceedings, it is repealed by implication. State v. Matthew A.B. 231 Wis. 2d 688, 605 N.W.2d 598 (Ct. App. 1999), 98−0229.

938.255 Petition; form and content. (1) TITLE AND CONTENTS. A petition initiating proceedings under this chapter, other than a petition initiating proceedings under s. 938.12, 938.125, or 938.13 (12), shall be entitled, "In the interest of (juvenile's name), a person under the age of 18". A petition initiating proceedings under s. 938.12, 938.125, or 938.13 (12) shall be entitled, "In the interest of (juvenile's name), a person under the age of 17". A petition initiating proceedings under this chapter shall specify all of the following:

(a) The name, birth date and address of the juvenile.

(b) The names and addresses of the juvenile's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative.

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

(cm) If the petition is initiating proceedings under s. 938.13 (4), (6), (6m), or (7), whether the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the

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juvenile may be subject to that act, the names and addresses of the juvenile's Indian custodian, if any, and Indian tribe, if known.

(cr) 1. If the petition is initiating proceedings under s. 938.12 or 938.13 (12) and all of the following circumstances apply, a statement to that effect:

a. The juvenile is an Indian juvenile.

b. At the time of the alleged delinquent act, the juvenile was under an order of a tribal court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship.

c. At the time of the delinquent act the juvenile was physically outside the boundaries of the reservation of the Indian tribe of the tribal court and any off−reservation trust land of either that Indian tribe or a member of that Indian tribe as a direct consequence of a tribal court order under subd. 1. b., including a tribal court order placing the juvenile in the home of a relative of the juvenile who on or after the date of the tribal court order resides physically outside the boundaries of a reservation and off−reservation trust land.

2. If the statement under subd. 1. is included in the petition and if the intake worker, district attorney, or corporation counsel has been notified by an official of the Indian tribe that a petition relating to the delinquent act has been or may be filed in tribal court with respect to the alleged delinquent act, a statement to that effect.

(d) If violation of a criminal statute, an ordinance or another law is alleged, the citation to the appropriate law or ordinance as well as facts sufficient to establish probable cause that an offense has been committed and that the juvenile named in the petition committed the offense.

(e) If the juvenile is alleged to come within the provisions of s. 938.13 (4), (6), (6m), (7) or (14) or 938.14, reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the court and to provide reasonable notice of the conduct or circumstances to be considered by the court together with a statement that the juvenile is in need of supervision, services, care or rehabilitation.

(f) If the juvenile is being held in custody outside of his or her home, reliable and credible information showing that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile and, unless any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies, reliable and credible information showing that the person who took the juvenile into custody and the intake worker have made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, and to make it possible for the juvenile to return safely home.

(g) If the petitioner knows or has reason to know that the juvenile is an Indian juvenile, if the juvenile is alleged to come within the provisions of s. 938.13 (4), (6), (6m), or (7), and if the juvenile has been removed from the home of his or her parent or Indian custodian, reliable and credible information showing that continued custody of the juvenile by the juvenile's parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and reliable and credible information showing that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful. The petition shall set forth with specificity both the information required under this paragraph and the information required under par. (f).

(2) If any of the facts in sub. (1) (a) to (cr), (f), and (g) are not known or cannot be ascertained by the petitioner, the petition shall so state.

(3) IF CERTAIN INFORMATION NOT STATED. If the information required under sub. (1) (d) or (e) is not stated the petition shall be amended under s. 938.263 (2) or dismissed.

(4) COPY TO JUVENILE, PARENTS, AND OTHERS. A copy of the petition shall be given to the juvenile and to the parents, guardian, legal custodian and physical custodian. If the juvenile is an Indian juvenile who is alleged to come within the provisions of s. 938.13 (4), (6), (6m), or (7), and who has been removed from the home of his or her parent or Indian custodian, a copy of the petition shall also be given to the Indian juvenile's Indian custodian and tribe.

History: 1995 a. 77, 352; 2001 a. 109; 2003 a. 284; 2005 a. 344; 2009 a. 94.

NOTE: 2003 Wis. Act 284 contains explanatory notes.

938.263 Amendment of petition. (1) TO CURE DEFECT. 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.

(2) BEFORE OR AFTER PLEA. With reasonable notification to the interested parties and prior to the taking of a plea under s. 938.30, the petition may be amended at the discretion of the court or person who filed the petition. After the taking of a plea, the court may allow amendment of the petition to conform to the proof if the amendment is not prejudicial to the juvenile.

History: 1995 a. 77; 2005 a. 344.

Sub. (2) did not authorize the trial court to *sua sponte* and without notice amend a juvenile petition charge to disorderly conduct and make a finding of guilt thereon after finding the juvenile not guilty of battery. The court's action unfairly prejudiced the juvenile's statutory and due process rights. State v. Tawanna H. 223 Wis. 2d 572, 590 N.W.2d 276 (Ct. App. 1998), 98−1404.

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

History: 1997 a. 181; 2005 a. 344.

938.27 Notice; summons. (1) SUMMONS; WHEN ISSUED. After a citation is issued or a petition has been filed relating to facts concerning a situation specified under s. 938.12, 938.125 or 938.13, unless the parties under sub. (3) voluntarily appear, the court may issue a summons requiring the parent, guardian and legal custodian of the juvenile to appear personally at any hearing involving the juvenile, and, if the court so orders, to bring the juvenile before the court at a time and place stated.

(2) SUMMONS; NECESSARY PERSONS. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the court, is necessary.

(3) NOTICE OF HEARINGS. (a) 1. The court shall notify, under s. 938.273, the juvenile, any parent, guardian, and legal custodian of the juvenile, any foster parent or other physical custodian described in s. 48.62 (2) of the juvenile, and any person specified in par. (b) or (d), if applicable, of all hearings involving the juvenile under this subchapter, except hearings on motions for which notice must be provided only to the juvenile and his or her counsel. If parents entitled to notice have the same place of residence, notice to one constitutes notice to the other. The first notice to any interested party, foster parent, or other physical custodian described in s. 48.62 (2) shall be in writing and may have a copy of the petition attached to it. Notices of subsequent hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the date and time notice was given and the person to whom he or she spoke.

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1m. The court shall give a foster parent or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. a right to be heard at the hearing by permitting the foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent or other physical custodian described in s. 48.62 (2) who receives a notice of a hearing under subd. 1. and a right to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

2. Failure to give notice under subd. 1. to a foster parent or other physical custodian described in s. 48.62 (2) does not deprive the court of jurisdiction in the action or proceeding. If a foster parent or other physical custodian described in s. 48.62 (2) is not given notice of a hearing under subd. 1., that person may request a rehearing on the matter during the pendency of an order resulting from the hearing. If the request is made, the court shall order a rehearing.

(b) 1. Except as provided in subd. 2., if the petition that was filed relates to facts concerning a situation under s. 938.13 and if the juvenile is a nonmarital child who is not adopted or whose parents do not subsequently intermarry as provided under s. 767.803 and if paternity has not been established, the court shall notify, under s. 938.273, all of the following persons:

a. A person who has filed a declaration of paternal interest under s. 48.025.

b. A person alleged to the court to be the father of the juvenile or who may, based on the statements of the mother or other information presented to the court, be the father of the juvenile.

2. A court is not required to provide notice, under subd. 1., to any person who may be the father of a juvenile conceived as a result of a sexual assault if a physician attests to his or her belief that there was a sexual assault of the juvenile's mother that may have resulted in the juvenile's conception.

(d) If the petition that was filed relates to facts concerning a situation under s. 938.13 (4), (6), (6m), or (7) involving an Indian juvenile who has been removed from the home of his or her parent or Indian custodian, the court shall notify, under s. 938.273, the Indian juvenile's Indian custodian and tribe and that Indian custodian or tribe may intervene at any point in the proceeding.

(4) CONTENTS OF NOTICE. The notice shall:

(a) Contain the name of the juvenile, and the nature, location, date and time of the hearing.

(b) Advise the juvenile and any other party, if applicable, of his or her right to legal counsel regardless of ability to pay.

(4m) NOTICE TO VICTIMS. The district attorney or corporation counsel shall make a reasonable attempt to contact any known victim or alleged victim of a juvenile's act or alleged act to inform them of the right to receive notice of any hearing under this chapter involving the juvenile. If a victim or alleged victim indicates that he or she wishes to receive that notice, the district attorney or corporation counsel shall make a reasonable attempt to notify, under s. 938.273, that victim or alleged victim of any hearing under this chapter involving the juvenile. Failure to comply with this subsection is not a ground for an appeal of a judgment or dispositional order or for any court to reverse or modify a judgment or dispositional order.

(5) NOTICE TO BIOLOGICAL FATHERS. Subject to sub. (3) (b), the court shall make reasonable efforts to identify and notify any person who has filed a declaration of paternal interest under s. 48.025, any person who has acknowledged paternity of the child under s. 767.805 (1), and any person who has been adjudged to be the father of the juvenile in a judicial proceeding unless the person's parental rights have been terminated.

(6) INTERSTATE COMPACT PROCEEDINGS; NOTICE AND SUMMONS. When a proceeding is initiated under s. 938.14, all interested parties shall receive notice and appropriate summons shall be issued in a manner specified by the court. If the juvenile who is the subject of the proceeding is in the care of a foster parent or other physical custodian described in s. 48.62 (2), the court shall give the foster parent or other physical custodian notice and a right to be heard as provided in sub. (3) (a).

(7) CITATIONS AS NOTICE. When a citation has been issued under s. 938.17 (2) and the juvenile's parent, guardian and legal custodian have been notified of the citation, subs. (3) and (4) do not apply.

(8) REIMBURSE LEGAL COUNSEL COSTS IN CERTAIN CASES; NOTICE. When a petition is filed under s. 938.12 or 938.13, the court shall notify, in writing, the juvenile's parents or guardian that they may be ordered to reimburse this state or the county for the costs of legal counsel provided for the juvenile, as provided under s. 938.275 (2).

History: 1995 a. 77, 275; 1997 a. 80, 181, 237; 2005 a. 293, 344; 2005 a. 443 s. 265; 2007 a. 96; 2009 a. 28, 79, 94.

938.273 Service of summons or notice; expense. **(1)** METHODS OF SERVICE; CONTINUANCE. (a) Except as provided in pars. (ag), (ar), and (b), service of summons or notice required by s. 938.27 may be made by mailing a copy of the summons or notice to the person summoned or notified.

(ag) In a situation described in s. 938.27 (3) (d), service of summons or notice required by s. 938.27 to an Indian juvenile's parent, Indian custodian, or tribe shall be made as provided in s. 938.028 (4) (a).

(ar) Except as provided in par. (b), if the person, other than a person specified in s. 938.27 (4m), fails to appear at the hearing or otherwise to acknowledge service, a continuance shall be granted, and service shall be made personally by delivering to the person a copy of the summons or notice; except that if the court determines that it is impracticable to serve the summons or notice personally, the court may order service by certified mail addressed to the last−known address of the person.

(b) The court may refuse to grant a continuance when the juvenile is being held in secure custody, but if the court so refuses, the court shall order that service of notice of the next hearing be made personally or by certified mail to the last−known address of the person who failed to appear at the hearing.

(c) Personal service shall be made at least 72 hours before the hearing. Mail shall be sent at least 7 days before the hearing, except as follows:

1. When the petition is filed under s. 938.13 and the person to be notified lives outside the state, the mail shall be sent at least 14 days before the hearing.

2. When a petition under s. 938.13 (4), (6), (6m), or (7) involves an Indian juvenile who has been removed from the home of his or her parent or Indian custodian and the person to be notified is the Indian juvenile's parent, Indian custodian, or tribe, the mail shall be sent so that it is received by the person to be notified at least 10 days before the hearing or, if the identity or location of the person to be notified cannot be determined by the U.S. secretary of the interior at least 15 days before the hearing.

(2) BY WHOM MADE. Service of summons or notice required by this chapter may be made by any suitable person under the direction of the court. Notification of the victim or alleged victim of a juvenile's act under s. 938.27 (4m) shall be made by the district attorney or corporation counsel.

(3) EXPENSES; CHARGE ON COUNTY. The expenses of service of summons or notice or of the publication of summons or notice and the traveling expenses and fees as allowed in ch. 885 incurred by any person summoned or required to appear at the hearing of any case coming within the jurisdiction of the court under s. 938.12, 938.125, 938.13 or 938.14 shall be a charge on the county when approved by the court.

History: 1995 a. 77; 1997 a. 35, 181; 1999 a. 32; 2005 a. 344; 2009 a. 94.

Failure to follow the statutory requirements for service defeated the state's assertion of personal jurisdiction and required the juvenile court to vacate its waiver order and the circuit court to dismiss criminal charges without prejudice. Personal jurisdiction depends on compliance with the procedures in sub. (1). The state's assertion that proper documents had been mailed to various addresses and not returned and that the juvenile had actual notice did not establish personal jurisdiction, nor does personal

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jurisdiction attach when a delinquency petition is filed. State v. Aufderhaar, 2005 WI 108, 283 Wis. 2d 336, 700 N.W.2d 4, 03−2820.

938.275 Parents' contribution to cost of custody, sanctions and court and legal services. (1) EXPENSE OF CUSTODY, SERVICES, SANCTIONS, OR PLACEMENT. (a) If a juvenile is held in custody under ss. 938.20 to 938.21, the court shall order the parents of the juvenile to contribute toward the expense of holding the juvenile in custody the proportion of the total amount which the court finds the parents are able to pay.

(b) If the court finds a juvenile to be delinquent under s. 938.12, in violation of a civil law or ordinance under s. 938.125 or in need of protection or services under s. 938.13, the court shall order the parents of the juvenile to contribute toward the expense of post−adjudication services to the juvenile, including any placement under s. 938.34 (3) (f), the proportion of the total amount which the court finds the parents are able to pay.

(c) If the court imposes a sanction on a juvenile as specified in s. 938.355 (6) (d) or (6m) (a) or (ag) or finds the juvenile in contempt under s. 938.355 (6g) (b) and orders a disposition under s. 938.34 or if the juvenile is placed in a juvenile detention facility or place of nonsecure custody under s. 938.355 (6d) (a), (b), or (c) or 938.534 (1) (b) or (c), the court shall order the parents of the juvenile to contribute toward the cost of the sanction, disposition or placement the proportion of the total amount which the court finds the parents are able to pay.

(2) LEGAL COUNSEL; INDIGENCY. (a) If the state or a county provides legal counsel to a juvenile subject to a proceeding under s. 938.12 or 938.13, the court shall order the juvenile's parent to reimburse the state or county under par. (b) or (c). The court may not order reimbursement if either of the following apply:

1. A parent is the complaining or petitioning party.

2. The court finds that the interests of the parent and the interests of the juvenile in the proceeding are substantially and directly adverse and that reimbursement would be unfair to the parent.

(am) The court may not order reimbursement under par. (a) until the completion of the proceeding or until the state or county is no longer providing the juvenile with legal counsel in the proceeding.

(b) If the state provides the juvenile with legal counsel and the court orders reimbursement under par. (a), the juvenile's parent may request the state public defender to determine whether the parent is indigent as provided under s. 977.07 and the amount of reimbursement. If the parent is found not to be indigent, the amount of reimbursement shall be the maximum amount established by the public defender board. If the parent is found to be indigent in part, the amount of reimbursement shall be the amount of partial payment determined under rules promulgated under s. 977.02 (3).

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

(cg) The court shall, upon motion by a parent, hold a hearing to review any of the following:

1. An indigency determination made under par. (b) or (c).

2. The amount of reimbursement ordered.

3. The court's finding, under par. (a) 2., that the interests of the parent and the juvenile are not substantially and directly adverse and that ordering the payment of reimbursement would not be unfair to the parent.

(cr) Following a hearing under par. (cg), the court may affirm, rescind or modify the reimbursement order.

(d) Reimbursement payments shall be made to the clerk of courts of the county where the proceedings took place. Each payment shall be transmitted to the county treasurer, who shall deposit 25% of the amount paid for state−provided counsel in the county treasury and transmit the remainder to the secretary of administration. Payments transmitted to the secretary of administration shall be deposited in the general fund and credited to the appropriation account under s. 20.550 (1) (L). The county treasurer shall deposit 100% of the amount paid for county−provided counsel in the county treasury.

(dm) Within 30 days after each calendar quarter, the clerk of court for each county shall report to the state public defender all of the following:

1. The total amount of reimbursement determined or ordered under par. (b) or (cr) for state−provided counsel during the previous calendar quarter.

2. The total amount collected under par. (d) for state−provided counsel during the previous calendar quarter.

(e) A person who fails to comply with an order under par. (b) or (c) may be proceeded against for contempt of court under ch. 785.

History: 1995 a. 77, 352; 1997 a. 205, 239; 2003 a. 33; 2005 a. 344.

Guardian ad litem fees are not reimbursable under sub. (2) (a). In Interest of G. & L. P. 119 Wis. 2d 349, 349 N.W.2d 743 (Ct. App. 1984).

NOTE: The above annotation cites to s. 48.275, the predecessor statute to s. 938.275.

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

History: 1995 a. 77; 1997 a. 35; 2005 a. 344.

The issuance of a capias to secure the physical attendance of a juvenile prior to the service of the summons and petition on the juvenile was error but did not deny the court personal jurisdiction. Interest of Jermaine T.J. 181 Wis. 2d 82, 510 N.W.2d 735 (Ct. App. 1993).

NOTE: The above annotation cites to s. 48.28, the predecessor statute to s. 938.28.

938.29 Substitution of judge. (1) REQUEST FOR SUBSTITUTION. Except as provided in sub. (1g), the juvenile, either before or during the plea hearing, may file a written request with the clerk of the court or other person acting as the clerk for a substitution of the judge assigned to the proceeding. Immediately upon filing the written request, the juvenile shall mail or deliver a copy of the request to the judge named in the request. In a proceeding under s. 938.12 or 938.13 (12), only the juvenile may request a substitution of the judge. If the juvenile has the right to request a substitution of judge, the juvenile's counsel or guardian ad litem may file the request. Not more than one written request may be filed in any one proceeding, and no single request may name more than one judge. This section does not apply to proceedings under s. 938.21.

(1g) WHEN SUBSTITUTION REQUEST NOT PERMITTED. The juvenile may not request the substitution of a judge in a proceeding under s. 938.12 or 938.13 (12), and the juvenile and the juvenile's parent, guardian, or legal custodian may not request the substitution of a judge in a proceeding under s. 938.13 (4), (6), (6m), or (7), if any of the following apply:

(a) The judge assigned to the proceeding has entered a dispositional order with respect to the juvenile in a previous proceeding under s. 48.12, 1993 stats., s. 48.13 (4), (6), (6m), (7), or (12), 1993 stats., s. 938.12, or 938.13 (4), (6), (6m), (7), or (12).

(b) The juvenile or the juvenile's parent, guardian, or legal custodian has requested the substitution of a judge in a previous proceeding under s. 48.12, 1993 stats., s. 48.13 (4), (6), (6m), (7) or (12), 1993 stats., s. 938.12 or 938.13 (4), (6), (6m), (7) or (12).

(1m) ASSIGNMENT OF NEW JUDGE. When the clerk receives a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. Except as provided in sub. (2), if the request is found to be timely

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and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge under s. 751.03. If no determination is made within 7 days after receipt of the request for substitution, the clerk shall refer the matter to the chief judge of the judicial administrative district for determination of whether the request was made timely and in proper form and for reassignment as necessary.

(2) SUBSTITUTION OF JUDGE SCHEDULED TO CONDUCT WAIVER HEARING. If the request for substitution of a judge is made for the judge scheduled to conduct a waiver hearing under s. 938.18, the request shall be filed before the close of the working day preceding the day that the waiver hearing is scheduled. Except as provided in sub. (1g), the judge may allow an authorized party to make a request for substitution on the day of the waiver hearing. If the request for substitution is made subsequent to the waiver hearing, the judge who conducted the waiver hearing may also conduct the plea hearing.

History: 1995 a. 77, 352; 2005 a. 344.

Section 801.58 (2) giving the chief judge authority to review a denial of a request for substitution applies when a juvenile's request for substitution is denied. Mateo D.O. v. Circuit Court for Winnebago County, 2005 WI App 85, 280 Wis. 2d 575, 696 N.W.2d 275, 05−0220.

A juvenile's request for judicial substitution, filed and signed by counsel, was in proper form. There is no requirement that the juvenile sign the substitution request. Mateo D.O. v. Circuit Court for Winnebago County, 2005 WI App 85, 280 Wis. 2d 575, 696 N.W.2d 275, 05−0220.

938.293 Discovery. (1) LAW ENFORCEMENT REPORTS. Copies of all law enforcement officer reports, including the officer's memorandum and witnesses' statements, shall be made available upon request to counsel or guardian ad litem prior to a plea hearing. The reports shall be available through the representative of the public designated under s. 938.09. The juvenile, through counsel or guardian ad litem, is the only party who shall have access to the reports in proceedings under s. 938.12, 938.125, or 938.13 (12). The identity of a confidential informant may be withheld under s. 905.10.

(2) RECORDS RELATING TO JUVENILE. All records relating to a juvenile which are relevant to the subject matter of a proceeding under this chapter shall be open to inspection by a guardian ad litem or counsel for any party, upon demand and upon presentation of releases where necessary, at least 48 hours before the proceeding. Persons entitled to inspect the records may obtain copies of the records with the permission of the custodian of the records or with the permission of the court. The court may instruct counsel not to disclose specified items in the materials to the juvenile or the parent if the court reasonably believes that the disclosure would be harmful to the interests of the juvenile. Section 971.23 shall be applicable in all delinquency proceedings under this chapter, except that the court shall establish the timetable for the disclosures required under. s. 971.23 (1), (2m), (8), and (9).

(3) AUDIOVISUAL RECORDING OF ORAL STATEMENT. Upon request prior to the fact−finding hearing, the district attorney shall disclose to the juvenile, and to the juvenile's counsel or guardian ad litem, the existence of any audiovisual recording of an oral statement of a child under s. 908.08 that is within the possession, custody, or control of the state and shall make reasonable arrangements for the requesting person to view the statement. If, after compliance with this subsection, the state obtains possession, custody, or control of the audiovisual recording of the oral statement, the district attorney shall promptly notify the requesting person of that fact and make reasonable arrangements for the requesting person to view the statement.

History: 1995 a. 77, 387; 1997 a. 35; 2001 a. 16; 2005 a. 42, 344; 2007 a. 97.

938.295 Physical, psychological, mental or developmental examination. (1) EXAMINATION OR ASSESSMENT OF JUVENILE OR PARENT. (a) After the filing of a petition and upon a finding by the court that reasonable cause exists to warrant a physical, psychological, mental, or developmental examination or an alcohol and other drug abuse assessment that conforms to the criteria under s. 938.547 (4), the court may order a juvenile within its jurisdiction to be examined as an outpatient by personnel in an approved treatment facility for alcohol and other drug abuse, by a physician, psychiatrist, or licensed psychologist, or by another expert appointed by the court holding at least a master's degree in social work or another related field of child development, in order that the juvenile's physical, psychological, alcohol or other drug dependency, mental, or developmental condition may be considered. The court may also order an examination or an alcohol and other drug abuse assessment that conforms to the criteria under s. 938.547 (4) of a parent, guardian, or legal custodian whose ability to care for a juvenile is at issue before the court.

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

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

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

(a) The multidisciplinary screen procedure conducted under s. 938.24 (2) indicates that the juvenile is at risk of having needs and problems related to alcohol or other drug abuse.

(b) The juvenile was adjudicated delinquent on the basis of an offense specified in ch. 961.

(c) The greater weight of the evidence at the fact−finding hearing indicates that any offense which formed the basis for the adjudication was motivated by the juvenile's need to purchase or otherwise obtain alcohol beverages, controlled substances or controlled substance analogs.

(1g) REPORT OF RESULTS AND RECOMMENDATIONS. If the court orders an alcohol or other drug abuse assessment under sub. (1), the approved treatment facility shall, within 14 days after the order, report the results of the assessment to the court, except that, if requested by the facility and if the juvenile is not held in secure or nonsecure custody, the court may extend the period for assessment for not more than 20 additional working days. The report shall include a recommendation as to whether the juvenile is in need of treatment, intervention, or education relating to the use or abuse of alcohol beverages, controlled substances, or controlled substance analogs and, if so, shall recommend a service plan and appropriate treatment from an approved treatment facility or education from a court−approved alcohol or other drug abuse education program.

(2) NOT COMPETENT OR NOT RESPONSIBLE. (a) If there is probable cause to believe that the juvenile has committed the alleged offense and if there is reason to doubt the juvenile's competency to proceed, or upon entry of a plea under s. 938.30 (4) (c), the court shall order the juvenile to be examined by a psychiatrist or licensed psychologist. If the cost of the examination is approved by the court, the cost shall be paid by the county of the court ordering the examination, and the county may recover that cost from the juvenile's parent or guardian as provided in par. (c). Evaluation shall be made on an outpatient basis unless the juvenile presents a substantial risk of physical harm to the juvenile or others; or the juvenile, parent, or guardian, and legal counsel or guardian ad litem, consent to an inpatient evaluation. An inpatient evaluation shall be completed in a specified period that is no longer than necessary.

(b) 1. The examiner shall file a report of the examination with the court by the date specified in the order. The court shall cause copies to be transmitted to the district attorney or corporation counsel and to the juvenile's counsel or guardian ad litem. The report shall describe the nature of the examination, identify the persons interviewed, the particular records reviewed, and any tests administered to the juvenile and state in reasonable detail the facts and reasoning upon which the examiner's opinions are based.

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

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

(c) A county that pays the cost of an examination under par. (a) may recover a reasonable contribution toward that cost from the juvenile's parent or guardian, based on the ability of the parent or guardian to pay. If the examination is provided or otherwise funded by the county department under s. 46.215, 46.22, or 46.23, the county department shall collect the contribution of the parent or guardian as provided in s. 301.03 (18). If the examination is provided or otherwise funded by the county department under s. 51.42 or 51.437, the county department shall collect the contribution of the parent or guardian as provided in s. 46.03 (18).

(3) OBJECTION TO A PARTICULAR PROFESSIONAL. If the juvenile or a parent objects to a particular physician, psychiatrist, licensed psychologist, or other expert, the court shall appoint a different physician, psychiatrist, psychologist or other expert.

(4) TELEPHONE OR LIVE AUDIOVISUAL PROCEEDING. Motions or objections under this section may be heard under s. 807.13.

History: 1995 a. 77, 448; 2001 a. 109; 2005 a. 344; 2011 a. 32.

938.296 Testing for HIV infection and certain diseases.

(1) DEFINITIONS. In this section:

(a) "Health care professional" has the meaning given in s. 252.15 (1) (am).

(b) "HIV" has the meaning given in s. 252.01 (1m).

(bm) "HIV test" has the meaning given in s. 252.01 (2m).

(c) "Sexually transmitted disease" has the meaning given in s. 252.11 (1).

(d) "Significant exposure" has the meaning given in s. 252.15 (1) (em).

(e) "Victim" has the meaning given in s. 938.02 (20m) (a) 1.

(2) SEXUALLY TRANSMITTED DISEASE AND HIV TESTING. In a proceeding under s. 938.12 or 938.13 (12) in which the juvenile is alleged to have violated s. 940.225, 948.02, 948.025, 948.05, 948.06, or 948.085 (2), the district attorney or corporation counsel shall apply to the court for an order requiring the juvenile to submit to an HIV test and a test or a series of tests to detect the presence of a sexually transmitted disease, each of which tests shall be administered by a health care professional, and to disclose the results of those tests as specified in sub. (4) (a) to (e), if all of the following apply:

(a) The victim or alleged victim, if an adult, or the parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child, requests the district attorney or corporation counsel to apply for that order.

(b) The district attorney or corporation counsel has probable cause to believe that the victim or alleged victim has had contact with body fluid of the juvenile that constitutes a significant exposure. If the juvenile is adjudicated delinquent, is found to be in need of protection or services or is found not responsible by reason of mental disease or defect under s. 938.30 (5), this paragraph does not apply.

(2m) COMMUNICABLE DISEASE TESTING. In a proceeding under s. 938.12 or 938.13 (12) in which the juvenile is alleged to have violated s. 946.43 (2m), the district attorney or corporation counsel shall apply to the court for an order requiring the juvenile to submit to a test or a series of tests administered by a health care professional to detect the presence of communicable diseases and to disclose the results of the test or tests as specified in sub. (5) (a) to (e), if all of the following apply:

(a) The victim or alleged victim, if an adult, or the parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child, requests the district attorney or corporation counsel to apply for the order.

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

(3) WHEN ORDER MAY BE SOUGHT. The district attorney or corporation counsel may apply for an order under sub. (2) or (2m) at any of the following times:

(a) At or after the plea hearing and before a dispositional order is entered.

(b) At any time after the juvenile is adjudicated delinquent or found to be in need of protection or services.

(c) At any time after the juvenile is found not responsible by reason of mental disease or defect under s. 938.30 (5).

(d) If the court has determined that the juvenile is not competent to proceed under s. 938.30 (5) and has suspended proceedings on the petition, at any time after the determination that the juvenile is not competent to proceed.

(4) DISCLOSURE OF SEXUALLY TRANSMITTED DISEASE AND HIV TEST RESULTS. On receipt of an application for an order under sub. (2), the court shall set a time for a hearing on the application. If the juvenile has been found not competent to proceed under s. 938.30 (5), the court may hold a hearing under this subsection only if the court first determines that the probable cause finding can be fairly made without the personal participation of the juvenile. If, after hearing, the court finds probable cause to believe that the victim or alleged victim has had contact with body fluid of the juvenile that constitutes a significant exposure, the court shall order the juvenile to submit to an HIV test and a test or series of tests to detect the presence of a sexually transmitted disease. The tests shall be administered by a health care professional. The court shall require the health care professional who performs the tests to refrain from making the test results part of the juvenile's permanent medical record and to disclose the results of the tests to any of the following:

(a) The parent, guardian or legal custodian of the juvenile.

(b) The victim or alleged victim, if the victim or alleged victim is an adult.

(c) The parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child.

(d) The health care professional that provides care for the juvenile, upon request by the parent, guardian or legal custodian of the juvenile.

(e) The health care professional that provides care for the victim or alleged victim, upon request by the victim or alleged victim or, if the victim or alleged victim is a child, upon request by the parent, guardian or legal custodian of the victim or alleged victim.

(5) DISCLOSURE OF COMMUNICABLE DISEASE TEST RESULTS. On receipt of an application for an order under sub. (2m), the court shall set a time for a hearing on the application. If the juvenile has been found not competent to proceed under s. 938.30 (5), the court may hold a hearing under this subsection only if the court first determines that the probable cause finding can be fairly made without the personal participation of the juvenile. If, after hearing, the court finds probable cause to believe that the act or alleged act of the juvenile that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the juvenile's blood, semen, vomit,

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saliva, urine or feces or other bodily substance of the juvenile, the court shall order the juvenile to submit to a test or a series of tests administered by a health care professional to detect the presence of any communicable disease that was potentially transmitted by the act or alleged act of the juvenile. The court shall require the health care professional who performs the test or series of tests to refrain from making the test results part of the juvenile's permanent medical record and to disclose the results of the test to any of the following:

(a) The parent, guardian or legal custodian of the juvenile.

(b) The victim or alleged victim, if the victim or alleged victim is an adult.

(c) The parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child.

(d) The health care professional that provides care for the juvenile, upon request by the parent, guardian or legal custodian of the juvenile.

(e) The health care professional that provides care for the victim or alleged victim, upon request by the victim or alleged victim or, if the victim or alleged victim is a child, upon request by the parent, guardian or legal custodian of the victim or alleged victim.

(6) PAYMENT FOR TEST COSTS. The court may order the county to pay for the cost of a test or series of tests ordered under sub. (4) or (5). This subsection does not prevent recovery of reasonable contribution toward the cost of that test or series of tests from the parent or guardian of the juvenile as the court may order based on the ability of the parent or guardian to pay. This subsection is subject to s. 301.03 (18).

History: 1995 a. 77; 1997 a. 181, 182, 237; 1999 a. 188; 2005 a. 277, 344; 2009 a. 209.

938.2965 Waiting area for victims and witnesses. (1) DEFINITION. In this section, "witness" has the meaning given in s. 950.02 (5).

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

History: 1997 a. 181; 2005 a. 344.

938.297 Motions before trial. (1) MOTIONS ABLE TO BE DETERMINED WITHOUT TRIAL. Any motion which is capable of determination without trial of the general issue may be made before trial.

(2) DEFENSES AND OBJECTIONS BASED ON PETITIONS FOR CITATION. If defenses and objections based on defects in the institution of proceedings, lack of probable cause on the face of the petition or citation, insufficiency of the petition or citation, or invalidity in whole or in part of the statute on which the petition or citation is founded are not raised within 10 days after the plea hearing, they are waived. Other motions capable of determination without trial may be brought any time before trial.

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

(4) PROPRIETY OF TAKING JUVENILE INTO CUSTODY. Although the taking of a juvenile into custody is not an arrest, it shall be considered an arrest for the purpose of deciding motions which require a decision about the propriety of the taking into custody, including motions to suppress evidence as illegally seized, motions to suppress statements as illegally obtained, and motions challenging the lawfulness of the taking into custody.

(5) CONTINUATION IN CUSTODY IF MOTION TO DISMISS GRANTED. If the juvenile is in custody and the court grants a motion to dismiss based upon a defect in the petition or citation or in the institution of the proceedings, the court may order the juvenile continued in custody for not more than 48 hours pending the filing of a new petition or citation.

(6) SERVICE OF MOTION ON ATTORNEY. A motion required to be served on a juvenile may be served upon his or her attorney of record.

(7) ORAL ARGUMENT BY TELEPHONE. Oral argument permitted on motions under this section may be heard by telephone under s. 807.13 (1).

(8) APPELLATE REVIEW. An order denying a motion to suppress evidence or a motion challenging the admissibility of a statement of a juvenile may be reviewed upon appeal from a final judgment or order notwithstanding the fact that the judgment or order was entered upon an admission or a plea of no contest to the allegations in the petition.

History: 1995 a. 77; 1997 a. 35; 2005 a. 344; 2009 a. 27.

938.299 Procedures at hearings. (1) CLOSED HEARINGS; EXCEPTIONS. (a) Except as provided in par. (ar), the general public shall be excluded from hearings under this chapter unless a public fact−finding hearing is demanded by a juvenile through his or her counsel. The court shall refuse to grant the public hearing, however, if the victim of an alleged sexual assault objects or, in a nondelinquency proceeding, if a parent or guardian objects. If a public hearing is not held, only the parties, their counsel, witnesses, a representative of the news media who wishes to attend the hearing for the purpose of reporting news without revealing the identity of the juvenile involved and other persons requested by a party and approved by the court may be present. Any other person the court finds to have a proper interest in the case or in the work of the court, including a member of the bar, may be admitted by the court.

(ag) If a public hearing is not held, in addition to persons permitted to attend under par. (a), the juvenile's foster parent or other physical custodian described in s. 48.62 (2) may be present, except that the court may exclude a foster parent or other physical custodian described in s. 48.62 (2) from any portion of the hearing if that portion of the hearing deals with sensitive personal information of the juvenile or the juvenile's family or if the court determines that excluding the foster parent or other physical custodian would be in the best interests of the juvenile.

(am) Subject to s. 906.15, if a public hearing is not held, in addition to persons permitted to attend under par. (a), a victim of a juvenile's act or alleged act may attend any hearing under this chapter based upon the act or alleged act, except that the court may exclude a victim from any portion of a hearing that deals with sensitive personal matters of the juvenile or the juvenile's family and that does not directly relate to the act or alleged act committed against the victim. A member of the victim's family and, at the request of the victim, a representative of an organization providing support services to the victim, may attend the hearing under this subsection.

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

2. The court shall exclude the general public from a hearing if the victim of a sexual assault objects and may, in its discretion, exclude the general public from any portion of a hearing that deals

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with sensitive personal matters of the juvenile or the juvenile's family and that does not relate to the act or alleged act committed by the juvenile or from any other hearing described in this paragraph. If the court excludes the general public from a hearing described in this paragraph, only those persons who are permitted under par. (a) or (am) to attend a hearing from which the general public is excluded may attend.

(av) If a public hearing is held under par. (a) or (ar), any person may disclose to anyone any information obtained as a result of that hearing.

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

(4) EVIDENTIARY RULES AT HEARINGS. (a) Chapters 901 to 911 govern the presentation of evidence at the fact−finding hearing under s. 938.31.

(b) Except as provided in s. 901.05, common law and statutory rules of evidence are not binding at a waiver hearing under s. 938.18, a hearing for a juvenile held in custody under s. 938.21, a hearing under s. 938.296 (4) for a juvenile who is alleged to have violated s. 940.225, 948.02, 948.025, 948.05, 948.06, or 948.085 (2), a hearing under s. 938.296 (5) for a juvenile who is alleged to have violated s. 946.43 (2m), a dispositional hearing, or any post-dispositional hearing under this chapter. At those hearings, the court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony, or evidence that is inadmissible under s. 901.05. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The court shall give effect to the rules of privilege recognized by law. The court shall apply the basic principles of relevancy, materiality, and probative value to proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

(5) TELEPHONE OR LIVE AUDIOVISUAL HEARINGS. On request of any party, unless good cause to the contrary is shown, any hearing under s. 938.209 (1) (a) 5. or 938.21 (1) may be held on the record by telephone or live audiovisual means or testimony may be received by telephone or live audiovisual means under s. 807.13 (2). The request and the showing of good cause for not conducting the hearing or admitting testimony by telephone or live audiovisual means may be made by telephone.

(6) ESTABLISHMENT OF PATERNITY WHEN MAN ALLEGES PATERNITY. If a man who has been given notice under s. 938.27 (3) (b) 1. appears at any hearing for which he received the notice, alleges that he is the father of the juvenile and states that he wishes to establish the paternity of the juvenile, all of the following apply:

(a) The court shall refer the matter to the state or to the attorney responsible for support enforcement under s. 59.53 (6) (a) for a determination, under s. 767.80, of whether an action should be brought for the purpose of determining the paternity of the juvenile.

(b) The state or the attorney responsible for support enforcement who receives a referral under par. (a) shall perform the duties specified under s. 767.80 (5) (c) and (6r).

(c) The court having jurisdiction over actions affecting the family shall give priority under s. 767.82 (7m) to an action brought under s. 767.80 whenever the petition filed under s. 767.80 indicates that the matter was referred by the court under par. (a).

(d) The court may stay the proceedings under this chapter pending the outcome of the paternity proceedings under subch. IX of ch. 767 if the court determines that the paternity proceedings will not unduly delay the proceedings under this chapter and the determination of paternity is necessary to the court's disposition of the juvenile if the juvenile is found to be in need of protection or services or if the court determines or has reason to know that the paternity proceedings may result in a finding that the juvenile is an Indian juvenile and in a petition by the juvenile's parent, Indian custodian, or tribe for transfer of the proceeding to the jurisdiction of the tribe.

(e) 1. In this paragraph, "genetic test" means a test that examines genetic markers present on blood cells, skin cells, tissue cells, bodily fluid cells or cells of another body material for the purpose of determining the statistical probability that a man who is alleged to be a juvenile's father is the juvenile's biological father.

2. The court shall, at the hearing, orally inform any man specified in sub. (6) (intro.) that he may be required to pay for any testing ordered by the court under this paragraph or under s. 885.23.

3. In addition to ordering testing as provided under s. 885.23, if the court determines that it would be in the best interests of the juvenile, the court may order any man specified in sub. (6) (intro.) to submit to one or more genetic tests which shall be performed by an expert qualified as an examiner of genetic markers present on the cells and of the specific body material to be used for the tests, as appointed by the court. A report completed and certified by the court−appointed expert stating genetic test results and the statistical probability that the man alleged to be the juvenile's father is the juvenile's biological father based upon the genetic tests is admissible as evidence without expert testimony and may be entered into the record at any hearing. The court, upon request by a party, may order that independent tests be performed by other experts qualified as examiners of genetic markers present on the cells of the specific body materials to be used for the tests.

4. If the genetic tests show that an alleged father is not excluded and that the statistical probability that the alleged father is the juvenile's biological father is 99.0% or higher, the court may determine that for purposes of a proceeding under this chapter or ch. 48, other than a proceeding under subch. VIII of ch. 48, the man is the juvenile's biological parent.

5. A determination by the court under subd. 4. is not a judgment of paternity under ch. 767 or an adjudication of paternity under subch. VIII of ch. 48.

(7) ESTABLISHMENT OF PATERNITY WHEN NO MAN ALLEGES PATERNITY. If a man who has been given notice under s. 938.27 (3) (b) 1. appears at any hearing for which he received the notice but does not allege that he is the father of the juvenile and state that he wishes to establish the paternity of the juvenile or if no man to whom such notice was given appears at a hearing, the court may refer the matter to the state or to the attorney responsible for support enforcement under s. 59.53 (6) (a) for a determination, under s. 767.80, of whether an action should be brought for the purpose of determining the paternity of the juvenile.

(8) TESTIMONY OF JUVENILE'S MOTHER RELATING TO PATERNITY. As part of the proceedings under this chapter, the court may order that a record be made of any testimony of the juvenile's mother relating to the juvenile's paternity. A record made under this subsection is admissible in a proceeding to determine the juvenile's paternity under subch. IX of ch. 767.

(9) INDIAN JUVENILE; TRIBAL COURT INVOLVEMENT. (a) If a petition under s. 938.12 or 938.13 (12) includes the statement in s. 938.255 (1) (cr) 2. or if the court is informed during a proceeding under s. 938.12 or 938.13 (12) that a petition relating to the delinquent act has been filed in a tribal court with respect to a juvenile to whom the circumstances specified in s. 938.255 (1) (cr) 1. apply, the court shall stay the proceeding and communicate with the tribal court in which the other proceeding is or may be pending to discuss which court is the more appropriate forum.

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

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(c) If a stay is ordered under par. (b), jurisdiction of the court continues over the juvenile until one year has elapsed since the last order affecting the stay was entered in the court. At any time during which jurisdiction of the court continues over the juvenile, the court may, on motion and notice to the parties, subsequently lift the stay order and take any further action in the proceeding as the interests of the juvenile and of the public require. When jurisdiction of the court over the juvenile terminates by reason of the lapse of the one year following the last order affecting the stay, the clerk of the court shall, without notice, enter an order dismissing the petition.

(10) If at any point in a proceeding under s. 938.13 (4), (6), (6m), or (7) the court determines or has reason to know that the juvenile is an Indian juvenile, the court shall provide notice of the proceeding to the juvenile's parent, Indian custodian, and tribe in the manner specified in s. 938.028 (4) (a). The next hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, Indian custodian, and tribe or, if the identity or location of the parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for that hearing.

History: 1995 a. 77, 275, 352; 1997 a. 35, 205, 252, 296; 1999 a. 32, 188; 2001 a. 16; 2003 a. 284, 326; 2005 a. 277, 344; 2005 a. 443 s. 265; 2007 a. 97; 2009 a. 28, 94.

NOTE: 2003 Wis. Act 284 contains explanatory notes.

Sub. (1) (am) allows relatives of homicide victims to attend the fact−finding hearing but not the dispositional hearing. In Interest of Shawn B. N. 173 Wis. 2d 343, 497 N.W.2d 141 (Ct. App. 1992).

NOTE: The above annotation cites to s. 48.299, the predecessor statute to s. 938.299.

938.30 Plea hearing. (1) TIME OF HEARING. Except as provided in this subsection and s. 938.299 (10), the hearing to determine the juvenile's plea to a citation or a petition under s. 938.12, 938.125, or 938.13 (12) or (14), or to determine whether any party wishes to contest an allegation that the juvenile is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) shall take place on a date which allows reasonable time for the parties to prepare but is within 30 days after the filing of a petition or issuance of a citation for a juvenile who is not being held in secure custody or within 10 days after the filing of a petition or issuance of a citation for a juvenile who is being held in secure custody. In a municipal court operated jointly by 2 or more cities, towns or villages under s. 755.01 (4), the hearing to determine the juvenile's plea shall take place within 45 days after the filing of a petition or issuance of a citation for a juvenile who is not being held in secure custody.

(2) INFORMATION TO JUVENILE AND PARENTS; BASIC RIGHTS; SUBSTITUTION. At or before the commencement of the hearing under this section the juvenile and the parent, guardian, legal custodian, or Indian custodian shall be advised of their rights as specified in s. 938.243 and shall be informed that the hearing shall be to the court and that a request for a substitution of judge under s. 938.29 must be made before the end of the plea hearing or is waived. Nonpetitioning parties, including the juvenile, shall be granted a continuance of the plea hearing if they wish to consult with an attorney on the request for a substitution of a judge.

(3) JUVENILE IN NEED OF PROTECTION OR SERVICES PROCEEDING; POSSIBLE PLEAS. If a petition alleges that a juvenile is in need of protection or services under s. 938.13 (4), (6), (6m), (7) or (14), the nonpetitioning parties and the juvenile, if he or she is 12 years of age or older or is otherwise competent to do so, shall state whether they desire to contest the petition.

(4) DELINQUENCY AND CIVIL LAW OR ORDINANCE PROCEEDINGS; POSSIBLE PLEAS. If a delinquency petition under s. 938.12, a civil law or ordinance violation petition or citation under s. 938.125, or a petition alleging that the juvenile is in need of protection or services under s. 938.13 (12) is filed, the juvenile may submit any of the following pleas:

(a) Admit some or all of the facts alleged in the petition or citation. This plea is an admission only of the commission of the acts and does not constitute an admission of delinquency.

(b) Deny the facts alleged in the petition or citation. If the juvenile stands mute or refuses to plead, the court shall direct entry of a denial of the facts alleged in the petition or citation on the juvenile's behalf.

(bm) Plead no contest to the allegations, if the court permits the juvenile to enter that plea.

(c) Except in the case of a petition or citation under s. 938.125, state that he or she is not responsible for the acts alleged in the petition by reason of mental disease or defect. This plea shall be joined with an admission under par. (a), a denial under par. (b), or a plea of no contest under par. (bm).

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

(a) Whether he or she has complied with ss. 938.265 and 938.27 (4m).

(b) Whether any of the known victims requested notice of the date, time, and place of the plea hearing and, if so, whether the district attorney or corporation counsel provided that notice.

(5) NOT COMPETENT OR NOT RESPONSIBLE. (a) If there is probable cause to believe that the juvenile has committed the alleged offense and if there is reason to doubt the juvenile's competency to proceed, or if the juvenile enters a plea of not responsible by reason of mental disease or defect, the court shall order an examination under s. 938.295 and shall specify the date by which the report must be filed in order to give the district attorney or corporation counsel and the juvenile's counsel a reasonable opportunity to review the report. The court shall set a date for hearing as follows:

1. If the juvenile admits or pleads no contest to the allegations in the petition, the hearing to determine whether the juvenile was not responsible by reason of mental disease or defect shall be held no more than 10 days from the plea hearing for a juvenile held in secure custody and no more than 30 days from the plea hearing for a juvenile who is not held in secure custody.

2. If the juvenile denies the allegations in the petition or citation, the court shall hold a fact−finding hearing on the allegations in the petition or citation as provided under s. 938.31. If, after the hearing, the court finds that the allegations in the petition have been proven, the court shall immediately hold a hearing to determine whether the juvenile was not responsible by reason of mental disease or defect.

3. If the court has found probable cause to believe that the juvenile has committed the alleged offense and reason to doubt the juvenile's competency to proceed, the hearing to determine whether the juvenile is competent to proceed shall be held no more than 10 days after the plea hearing for a juvenile who is held in secure custody and no more than 30 days after the plea hearing for a juvenile who is not held in secure custody.

(b) If the court, after a hearing under par. (a) 1. or 2., finds that the juvenile was responsible, the court shall proceed to a dispositional hearing.

(bm) If the court, after a hearing under par. (a) 3., finds that the juvenile is competent to proceed, the court shall resume the delinquency proceeding.

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

1. If the court finds that there is probable cause to believe that the juvenile meets the conditions specified under s. 51.20 (1) (a) 1. and 2., order the county department under s. 46.215, 46.22 or

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46.23 in the county of the juvenile's residence or the district attorney or corporation counsel who filed the petition under s. 938.12 or 938.13 (12) to file a petition under s. 51.20 (1).

2. Order the district attorney or corporation counsel who filed the petition under s. 938.12 or 938.13 (12) to file a petition alleging that the juvenile is in need of protection or services under s. 938.13 (14).

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

1. If the court finds that there is probable cause to believe that the juvenile meets the conditions specified under s. 51.20 (1) (a) 1. and 2., order the county department under s. 46.215, 46.22 or 46.23 in the county of the juvenile's residence or the district attorney or corporation counsel who filed the petition under s. 938.12 or 938.13 (12) to file a petition under s. 51.20 (1).

2. Order the district attorney or corporation counsel who filed the petition under s. 938.12 or 938.13 (12) to file a petition alleging that the juvenile is in need of protection or services under s. 938.13 (14).

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

a. That the juvenile has become competent.

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

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

2. The court shall cause copies of the reports under subd. 1. to be transmitted to the district attorney or corporation counsel and the juvenile's counsel. If a report under subd. 1. indicates that the juvenile has become competent, the court shall hold a hearing within 10 days after the court receives the report to determine whether the juvenile is competent. If the court determines that the juvenile is competent, the court shall terminate the juvenile's commitment or dispositional order and resume the delinquency proceeding.

3. If the juvenile is receiving psychotropic medication, the court may make appropriate orders for the continued administration of the psychotropic medication in order to maintain the competence of the juvenile for the duration of the proceeding.

(6) UNCONTESTED PETITIONS; DISPOSITION. (a) If a petition is not contested, the court, subject to s. 938.299 (10), shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 10 days from the plea hearing for a juvenile who is held in secure custody and no more than 30 days from the plea hearing for a juvenile who is not held in secure custody. Subject to s. 938.299 (10), if all parties consent, the court may proceed immediately with the dispositional hearing. If a citation is not contested, the court may proceed immediately to enter a dispositional order.

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

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

(7) CONTESTED PETITIONS OR CITATIONS; DATE FOR FACT−FINDING HEARING. If the petition or citation is contested, the court, subject to s. 938.299 (10), shall set a date for the fact−finding hearing that allows a reasonable time for the parties to prepare but is no more than 20 days after the plea hearing for a juvenile who is held in secure custody and no more than 30 days after the plea hearing for a juvenile who is not held in secure custody.

(8) ADMISSION OR NO CONTEST PLEA; INQUIRIES REQUIRED. Except when a juvenile fails to appear in response or stipulates to a citation before accepting an admission or plea of no contest of the alleged facts in a petition or citation, the court shall do all of the following:

(a) Address the parties present including the juvenile personally and determine that the plea or admission is made voluntarily with understanding of the nature of the acts alleged in the petition or citation and the potential dispositions.

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

(c) Make such inquiries as satisfactorily establish that there is a factual basis for the juvenile's plea or the parent's and juvenile's admission.

(9) HEARINGS CONDUCTED BY COURT COMMISSIONER; COURT TO REVIEW. If a circuit court commissioner conducts the plea hearing and accepts an admission of the alleged facts in a petition brought under s. 938.12 or 938.13, the court shall review the admission at the beginning of the dispositional hearing by addressing the parties and making the inquires under sub. (8).

(10) TELEPHONE OR LIVE AUDIOVISUAL PARTICIPATION. The court may permit any party to participate in hearings under this section by telephone or live audiovisual means except a juvenile who intends to admit the facts of the delinquency petition.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77; 1997 a. 27, 35, 181, 237, 252; 1999 a. 32, 103; 2001 a. 38, 61; 2005 a. 344; 2007 a. 20; 2009 a. 94.

The time limits under sub. (1) are mandatory. Failure to comply results in the court's loss of competency and is properly remedied by dismissal without prejudice. In Interest of Jason B. 176 Wis. 2d 400, 500 N.W.2d 384 (Ct. App. 1993).

A court's failure to inform a juvenile of the right to judicial substitution does not affect the court's competence and warrants reversal only if the juvenile suffers actual prejudice. State v. Kywanda F. 200 Wis. 2d 26, 546 N.W.2d 440 (1996), 94−1866.

NOTE: The above annotations cite to s. 48.30, the predecessor statute to s. 938.30.

938.305 Hearing upon the involuntary removal of a juvenile. Notwithstanding other time periods for hearings under this chapter, if a juvenile is removed from the physical custody of the juvenile's parent or guardian under s. 938.19 (1) (c) or (d) 5. without the consent of the parent or guardian, the court, subject to s. 938.299 (10), shall schedule a plea hearing and fact−finding

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hearing within 30 days after a request from the parent or guardian from whom custody was removed. The plea hearing and fact−finding hearing may be combined. This time period may be extended only with the consent of the requesting parent or guardian.

History: 1995 a. 77; 2009 a. 94.

938.31 Fact−finding hearing. (1) DEFINITION. In this section, "fact−finding hearing" means a hearing to determine if the allegations of a petition under s. 938.12 or 938.13 (12) are supported beyond a reasonable doubt or a hearing to determine if the allegations in a petition or citation under s. 938.125 or 938.13 (4), (6), (6m), (7) or (14) are proved by clear and convincing evidence.

(2) HEARING TO THE COURT; PROCEDURES. The hearing shall be to the court. If the hearing involves a child victim, as defined in s. 938.02 (20m) (a) 1., or a child witness, as defined in s. 950.02 (5), the court may order that a deposition be taken by audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion of the hearing, the court shall make a determination of the facts. If the court finds that the juvenile is not within the jurisdiction of the court or the court finds that the facts alleged in the petition or citation have not been proved, the court shall dismiss the petition or citation with prejudice.

(3) ADMISSIBILITY OF CUSTODIAL INTERROGATIONS. (a) In this subsection:

1. "Custodial interrogation" has the meaning given in 968.073 (1) (a).

2. "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

3. "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

4. "Statement" has the meaning given in s. 972.115 (1) (d).

(b) Except as provided under par. (c), a statement made by the juvenile during a custodial interrogation is not admissible in evidence against the juvenile in any court proceeding alleging the juvenile to be delinquent unless an audio or audio and visual recording of the interrogation was made as required under s. 938.195 (2) and is available.

(c) A juvenile's statement is not inadmissible in evidence under par. (b) if any of the following applies or if other good cause exists for not suppressing a juvenile's statement under par. (b):

1. The juvenile refused to respond or cooperate in the custodial interrogation if an audio or audio and visual recording was made of the interrogation so long as a law enforcement officer or agent of a law enforcement agency made a contemporaneous audio or audio and visual recording or written record of the juvenile's refusal.

2. The statement was made in response to a question asked as part of the routine processing after the juvenile was taken into custody.

3. The law enforcement officer or agent of a law enforcement agency conducting the interrogation in good faith failed to make an audio or audio and visual recording of the interrogation because the recording equipment did not function, the officer or agent inadvertently failed to operate the equipment properly, or, without the officer's or agent's knowledge, the equipment malfunctioned or stopped operating.

4. The statement was made spontaneously and not in response to a question by a law enforcement officer or agent of a law enforcement agency.

5. Exigent public safety circumstances existed that prevented the making of an audio or audio and visual recording or rendered the making of such a recording infeasible.

(d) Notwithstanding ss. 968.28 to 968.37, a juvenile's lack of consent to having an audio or audio and visual recording made of a custodial interrogation does not affect the admissibility in evidence of an audio or audio and visual recording of a statement made by the juvenile during the interrogation.

(4) FINDINGS BY COURT. The court shall make findings of fact and conclusions of law relating to the allegations of a petition under s. 938.12, 938.125 or 938.13. In cases alleging a juvenile to be delinquent or in need of protection or services under s. 938.13 (12), the court shall make findings relating to the proof of the violation of law and to the proof that the juvenile named in the petition committed the violation alleged.

(5) If the juvenile is an Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the court shall also determine at the fact−finding hearing whether continued custody of the Indian juvenile by the Indian juvenile's parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian juvenile under s. 938.028 (4) (d) 1. and whether active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and whether those efforts have proved unsuccessful, unless partial summary judgment on the allegations under s. 938.13 (4), (6), (6m), or (7) is granted, in which case the court shall make those determinations at the dispositional hearing.

(7) DATE FOR DISPOSITIONAL HEARING. (a) At the close of the fact−finding hearing, the court, subject to s. 938.299 (10), shall set a date for the dispositional hearing that allows a reasonable time for the parties to prepare but is no more than 10 days after the fact−finding hearing for a juvenile in secure custody and no more than 30 days after the fact−finding hearing for a juvenile not held in secure custody. Subject to s. 938.299 (10), if all parties consent, the court may immediately proceed with a dispositional hearing.

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

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

History: 1995 a. 27 s. 9126 (19); 1995 a. 77; 1997 a. 27, 35, 181, 237, 252; 1999 a. 32, 103; 2001 a. 38; 2005 a. 42, 60, 344; 2007 a. 20, 97; 2009 a. 94.

A fact−finding hearing under sub. (1) was not closed until the court ruled on a motion to set aside the verdict. In Interest of C.M.L. 157 Wis. 2d 152, 458 N.W.2d 573 (Ct. App. 1990).

A jury trial is not constitutionally required in the adjudicative phase of a state juvenile court delinquency proceeding. McKeiver v. Pennsylvania, 403 U.S. 528.

The Right to a Juvenile Jury Trial in Wisconsin: Rebalancing the Balanced Approach. Preciado. 1999 WLR 571.

Instituting Innocence Reform: Wisconsin's New Government Experiment. Kruse. 2006 WLR 645.

938.312 Notice of dismissal. If a petition alleges that a juvenile is delinquent under s. 938.12 or in need of protection or services under s. 938.13 (12) and the petition is dismissed or does not otherwise result in a consent decree or dispositional order, the district attorney or corporation counsel shall make a reasonable attempt to inform each known victim of the juvenile's alleged act

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that the petition has been dismissed or will not result in a consent decree or dispositional order.

History: 1997 a. 181.

938.315 Delays, continuances and extensions. (1) TIME PERIODS TO BE EXCLUDED. The following time periods shall be excluded in computing time periods under this chapter:

(a) Any period of delay resulting from any of the following:

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

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

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

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

5. Court congestion or scheduling.

6. The imposition of a consent decree.

7. The absence or unavailability of the juvenile.

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

9. The need to appoint a qualified interpreter.

10. Consultation under s. 938.24 (2r) or 938.25 (2g).

11. A continuance, not to exceed 20 days, granted at the request of the parent, Indian custodian, or tribe of a juvenile whom the court knows or has reason to know is an Indian juvenile to enable the requester to prepare for a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the out−of−home care placement of the juvenile.

(g) A reasonable period of delay when the juvenile is joined in a hearing with another juvenile as to whom the time for a hearing has not expired under this section if there is good cause for not hearing the cases separately.

(2) CONTINUANCE FOR GOOD CAUSE. 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.

(2m) WHEN NO CONTINUANCE, EXTENSION, OR EXCLUSION PERMITTED. No continuance or extension of a time period specified in this chapter may be granted and no period of delay specified in sub. (1) may be excluded in computing a time period under this chapter if the continuance, extension, or exclusion would result in any of the following:

(a) The court making an initial finding under s. 938.21 (5) (b) 1. or 1m., 938.355 (2) (b) 6., or 938.357 (2v) (a) 1. that reasonable efforts have been made to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, or an initial finding under s. 938.21 (5) (b) 3., 938.355 (2) (b) 6r., or 938.357 (2v) (a) 3. that those efforts were not required to be made because a circumstance specified in s. 938.355 (2d) (b) 1. to 4. applies, more than 60 days after the date on which the juvenile was removed from the home.

(b) The court making an initial finding under s. 938.38 (5m) that the agency primarily responsible for providing services to the juvenile has made reasonable efforts to achieve the permanency goal of the juvenile's permanency plan more than 12 months after the date on which the juvenile was removed from the home or making any subsequent findings under s. 938.38 (5m) as to those reasonable efforts more than 12 months after the date of a previous finding as to those reasonable efforts.

NOTE: Par. (b) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(b) The court making an initial finding under s. 938.38 (5m) that the agency primarily responsible for providing services to the juvenile has made reasonable efforts to achieve the goals of the juvenile's permanency plan more than 12 months after the date on which the juvenile was removed from the home or making any subsequent findings under s. 938.38 (5m) as to those reasonable efforts more than 12 months after the date of a previous finding as to those reasonable efforts.

(3) CONSEQUENCES OF FAILURE TO ACT WITHIN TIME PERIOD. Failure by the court or a party to act within any time period specified in this chapter does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction. Failure to object to a period of delay or a continuance waives any challenge to the court's competency to act during the period of delay or continuance. If the court or a party does not act within a time period specified in this chapter, the court, while assuring the safety of the juvenile, may grant a continuance under sub. (2), dismiss the petition with or without prejudice, release the juvenile from secure or nonsecure custody or from the terms of a custody order, or grant any other relief that the court considers appropriate.

History: 1995 a. 77, 352; 1997 a. 181; 2001 a. 16, 109; 2003 a. 284; 2005 a. 344; 2007 a. 20, 199; 2009 a. 94; 2011 a. 181.

NOTE: 2003 Wis. Act 284 contains explanatory notes.

A consent decree provides for a period of supervision that terminates when the period concludes. Its expiration is not a "time limit" under sub. (3). State v. Sarah R.P. 2001 WI App 49, 241 Wis. 2d 530, 624 N.W.2d 872, 00−2127.

The expiration date of a dispositional order is not a time limit contemplated in sub. (3). The length of time a dispositional order can remain in effect, however, is not really a requirement or deadline by which something must be done to proceed to the next step. State v. Michael S., Jr. 2005 WI 82, 282 Wis. 2d 1, 698 N.W.2d 673, 03−2934.

938.317 Jeopardy. Jeopardy attaches when a witness is sworn.

History: 1995 a. 77.

938.32 Consent decree. (1) WHEN ORDERED; TERMS; VICTIMS' RIGHTS; PROCEDURES. (a) At any time after the filing of a petition for a proceeding relating to s. 938.12 or 938.13 and before the entry of judgment, the court may suspend the proceedings and place the juvenile under supervision in the juvenile's own home or present placement. The court may establish terms and conditions applicable to the parent, guardian, or legal custodian, and to the juvenile, including any of the conditions specified in subs. (1d), (1g), (1m), (1p), (1t), (1v), and (1x). The order under this section shall be known as a consent decree and must be agreed to by the juvenile; the parent, guardian, or legal custodian; and the person filing the petition under s. 938.25. If the consent decree includes any conditions specified in sub. (1g), the consent decree shall include provisions for payment of the services as specified in s. 938.361. The consent decree shall be in writing and be given to the parties.

(am) Before entering into a consent decree in a case in which the juvenile is alleged to be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12), the district attorney or corporation counsel shall, as soon as practicable but before agreeing to the consent decree, offer all of the victims of the juvenile's alleged act who have so requested an opportunity to confer with the district attorney or corporation counsel concerning the proposed consent decree. The duty to offer an opportunity to confer under this paragraph does not limit the obligation of the district attorney or corporation counsel to exercise his or her discretion concerning the handling of the proceeding against the juvenile.

(b) Before entering into a consent decree in a proceeding in which a juvenile is alleged to be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12) all of the following shall occur:

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

1m. The court shall inquire of the district attorney or corporation counsel whether he or she has complied with par. (am), whether he or she has complied with subd. 2. and s. 938.27 (4m), whether any of the known victims requested notice of the date, time, and place of any hearing to be held on the consent decree, and, if so, whether the district attorney provided to the victim notice of the date, time, and place of the hearing.

2. The district attorney or corporation counsel shall make a reasonable attempt to contact any known victim to inform that person of the right to make a statement under subd. 1g. Any failure to comply with this subdivision is not a ground for discharge of the juvenile, parent, guardian, or legal custodian from fulfilling the terms and conditions of the consent decree.

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

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

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

c. If a permanency plan has previously been prepared for the juvenile, a finding as to whether the county department or agency has made reasonable efforts to achieve the permanency goal of the juvenile's permanency plan, including, if appropriate, through an out−of−state placement.

NOTE: Subd. 1. c. is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

c. If a permanency plan has previously been prepared for the juvenile, a finding as to whether the county department or agency has made reasonable efforts to achieve the goal of the juvenile's permanency plan, including, if appropriate, through an out−of−state placement.

d. If the juvenile's placement or other living arrangement is under the supervision of the county department, an order ordering the juvenile into the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and assigning the county department primary responsibility for providing services to the juvenile.

1m. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been removed from the home, the consent decree shall include a finding as to whether the county department or agency primarily responsible for providing services to the juvenile has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the court determines that a joint placement would be contrary to the safety or well−being of the juvenile or any of those siblings, in which case the court shall order the county department or agency to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court determines that such visitation or interaction would be contrary to the safety or well−being of the juvenile or any of those siblings.

2. If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the consent decree shall include a determination that the county department or agency primarily responsible for providing services under the consent decree is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home.

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

(d) If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency goal and, if applicable, any concurrent permanency goals for the juvenile.

NOTE: Par. (d) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(d) If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile.

(e) 1. In the case of an Indian juvenile who is the subject of a proceeding under s. 938.13 (4), (6), (6m), or (7), if at the time the consent decree is entered into the Indian juvenile is placed outside the home of his or her parent or Indian custodian under a voluntary agreement under s. 48.63 or is otherwise living outside that home without a court order and if the consent decree maintains the Indian juvenile in that placement or other living arrangement, the consent decree shall include a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 938.028 (4) (d) 1. and a finding that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful. The findings under this subdivision shall be in addition to the findings under par. (c) 1., except that for the sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under this subdivision and the findings under par. (c) 1. shall be considered to be the same findings.

2. If the placement or other living arrangement under subd. 1. departs from the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), the court shall also find good cause, as described in s. 938.028 (6) (d), for departing from that order.

(1d) VOLUNTEERS IN PROBATION PROGRAM. If the petition alleges that the juvenile has committed an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under s. 973.11 (2) a volunteers in probation program established in the juvenile's county of residence, and if the court determines that volunteer supervision under that volunteers in probation program will likely benefit the juvenile and the community, the court may establish as a condition under sub. (1) that the juvenile be placed with that volunteers in probation program under conditions that the court determines are reasonable and appropriate. The conditions may include any of the following:

(a) A directive to a volunteer to be a role model for the juvenile, informal counseling, general monitoring, monitoring of the conditions established by the court, or any combination of these functions.

(b) Any other conditions that the court may establish under this section.

(1g) ALCOHOL OR OTHER DRUG ABUSE TREATMENT AND EDUCATION. If the petition alleges that the juvenile committed a violation specified under ch. 961 and if the multidisciplinary screen con-

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ducted under s. 938.24 (2) shows that the juvenile is at risk of having needs and problems related to the use of alcohol beverages, controlled substances, or controlled substance analogs and its medical, personal, family, and social effects, the court may establish as a condition under sub. (1) any of the following:

(a) That the juvenile participate in outpatient treatment from an approved treatment facility for alcohol and other drug abuse, if an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 938.547 (4) was completed under s. 938.295 (1).

(b) That the juvenile participate in a court−approved alcohol or other drug abuse education program.

(1m) TEEN COURT PROGRAM. The court may establish as a condition under sub. (1) that the juvenile be placed in a teen court program if all of the following conditions apply:

(a) The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the court determines that participation in the program will likely benefit the juvenile and the community.

(b) The juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult.

(c) The juvenile admits or pleads no contest in open court, in the presence of the juvenile's parent, guardian or legal custodian, to the allegations that the juvenile committed the delinquent act.

(d) The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged delinquent act.

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

(1r) ALCOHOL AND OTHER DRUG ABUSE TREATMENT; INFORMED CONSENT. If the conditions of the consent decree provide for an alcohol and other drug abuse outpatient treatment program under sub. (1g) (a), the juvenile or, if the juvenile has not attained 12 years of age, the juvenile's parent, guardian, or legal custodian shall execute an informed consent form that indicates that they are voluntarily and knowingly entering into a consent decree for the provision of alcohol and other drug abuse outpatient treatment.

(1t) RESTITUTION. (a) 1. Subject to subd. 3., if the petition alleges that the juvenile committed a delinquent act that has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, the court may require the juvenile as a condition of the consent decree, to repair the damage to property or to make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the court, after taking into consideration the well−being and needs of the victim, considers it beneficial to the well−being and behavior of the juvenile. Any consent decree that includes a condition of restitution by a juvenile shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the consent decree for the payment or for the completion of the services, and may include a schedule for the performance and completion of the services. If the juvenile objects to the amount of damages claimed, a hearing shall be held to determine the amount of damages before an amount of restitution is made part of the consent decree. Any recovery under this subdivision shall be reduced by the amount recovered as restitution for the same act under subd. 1m.

1m. If the petition alleges that the juvenile has committed a delinquent act that has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, the court may require a parent who has custody, as defined in s. 895.035 (1), of the juvenile, as a condition of the consent decree, to make reasonable restitution for the damage or injury. Except for recovery for retail theft under s. 943.51, the maximum amount of any restitution ordered under this subdivision for damage or injury resulting from any one act of a juvenile or from the same act committed by 2 or more juveniles in the custody of the same parent may not exceed $5,000. Any consent decree that includes a condition of restitution by a parent under this subdivision shall include a finding that the parent is financially able to pay the amount ordered and may allow up to the date of the expiration of the consent decree for the payment. If the parent objects to the amount of damages claimed, a hearing shall be held to determine the amount of damages before an amount of restitution is made part of the consent decree. Any recovery under this subdivision shall be reduced by the amount recovered as restitution for the same act under subd. 1.

2. In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a restitution project provided by the county or who is performing services for the victim as restitution may, for the purpose of making restitution under the consent decree, be employed or perform any duties under any circumstances in which a juvenile 14 or 15 years of age is permitted to be employed or to perform duties under ch. 103 or any rule or order under ch. 103. A juvenile who is participating in a restitution project provided by the county or who is performing services for the victim as restitution is exempt from the permit requirement under s. 103.70 (1).

3. Under this paragraph, a court may order a juvenile who is under 14 years of age to make not more than $250 in restitution or to perform not more than 40 total hours of services for the victim as total restitution under the consent decree.

(b) The court may require the juvenile to participate in a supervised work program or other community service work under s. 938.34 (5g) as a condition of the consent decree.

(1v) PARENTAL SCHOOL ATTENDANCE. If the petition alleges that the juvenile is in need of protection or services under s. 938.13 (6), the court may require as a condition under sub. (1) that the juvenile's parent, guardian, or legal custodian attend school with the juvenile.

(1x) SUPERVISED WORK PROGRAM. If the petition alleges that the juvenile violated s. 943.017 and the juvenile has attained 10 years of age, the court may require, as a condition of the consent decree, that the juvenile participate for not less than 10 hours nor more than 100 hours in a supervised work program under s. 938.34 (5g) or perform not less than 10 hours nor more than 100 hours of other community service work, except that if the juvenile has not attained 14 years of age the maximum number of hours is a total of 40 under the consent decree.

(2) TIME PERIOD FOR CONSENT DECREE; EXTENSION. (a) A consent decree shall remain in effect for up to one year unless the juvenile, parent, guardian, or legal custodian is discharged sooner by the court.

(c) Upon the motion of the court or the application of the juvenile, parent, guardian, legal custodian, intake worker or any agency supervising the juvenile under the consent decree, the court may, after giving notice to the parties to the consent decree and their counsel, if any, extend the decree for up to an additional 6 months in the absence of objection to extension by the parties to the initial consent decree. If the parent, guardian or legal custodian objects to the extension, the court shall schedule a hearing and make a determination on the issue of extension.

(3) FAILURE TO FOLLOW; OBJECTION TO CONTINUANCE CONSENT DECREE. If, prior to discharge by the court or to the expiration of the consent decree, the court finds that the juvenile or parent, legal guardian, or legal custodian has failed to fulfill the express terms and conditions of the consent decree or that the juvenile objects to the continuation of the consent decree, the hearing under which

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the juvenile was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

(4) DISCHARGE BY COURT OR COMPLETION OF SUPERVISION. A juvenile who is discharged by the court or who completes the period of supervision without reinstatement of the original petition may not be proceeded against in any court for the same offense alleged in the petition or an offense based on the same conduct, and the original petition shall be dismissed with prejudice. This subsection does not preclude a civil suit against the juvenile or parent for damages arising from the juvenile's conduct.

(5) REFUSAL FROM SUBSEQUENT PROCEEDINGS. A court which, under this section, elicits or examines information or material about a juvenile which would be inadmissible in a hearing on the allegations of the petition may not, over objections of one of the parties, participate in any subsequent proceedings if any of the following applies:

(a) The court refuses to enter into a consent decree, the allegations in the petition remain to be decided, and the juvenile denies the allegations of delinquency.

(b) A consent decree is granted but the petition under s. 938.12 or 938.13 is subsequently reinstated.

(6) NOTICE TO JUVENILE OF RIGHT TO OBJECT TO CONTINUATION. The court shall inform the juvenile and the juvenile's parent, guardian, or legal custodian, in writing, of the juvenile's right to object to the continuation of the consent decree under sub. (3) and of the fact that the hearing under which the juvenile was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

History: 1995 a. 77, 352, 448; 1997 a. 181, 183, 205, 239; 1999 a. 9, 32; 2001 a. 16, 61, 105, 109; 2003 a. 138; 2005 a. 344; 2007 a. 20; 2009 a. 28, 79, 94, 185; 2011 a. 32, 181, 258.

A court may not vacate a consent decree and adjudicate a juvenile delinquent after the decree's expiration date. A court's authority to declare a juvenile delinquent is revoked when the consent decree expires. State v. Sarah R.P. 2001 WI App 49, 241 Wis. 2d 530, 624 N.W.2d 872, 00−2127.

SUBCHAPTER VI

DISPOSITION

938.33 Court reports. (1) REPORT REQUIRED. Before the disposition of a juvenile adjudged to be delinquent or in need of protection or services, the court shall designate an agency, as defined in s. 938.38 (1) (a), to submit a report that contains all of the following:

(a) The social history of the juvenile.

(b) A recommended plan of rehabilitation or treatment and care for the juvenile, based on the investigation conducted by the agency and any report resulting from an examination or assessment under s. 938.295, that employs the most effective means available to accomplish the objectives of the plan.

(c) A description of the specific services or continuum of services that the agency is recommending the court to order for the juvenile or family, the persons or agencies that would be primarily responsible for providing those services, and the identity of the person or agency that would provide case management or coordination of services, if any, and whether or not the juvenile should receive a coordinated services plan of care.

(d) A statement of the objectives of the plan, including any desired behavior changes and the academic, social and vocational skills needed by the juvenile.

(e) A plan for the provision of educational services to the juvenile, prepared after consultation with the staff of the school in which the juvenile is enrolled or the last school in which the juvenile was enrolled.

(f) If the agency is recommending that the court order the juvenile's parent, guardian, or legal custodian to participate in mental health treatment, anger management, individual or family counseling, or parent training and education, a statement as to the availability of those services and the availability of funding for those services.

(2) HOME PLACEMENT REPORTS. A report recommending that the juvenile remain in his or her home may be presented orally at the dispositional hearing if all parties consent. A report that is presented orally shall be transcribed and made a part of the court record.

(3) CORRECTIONAL PLACEMENT REPORTS. A report recommending placement of a juvenile in a juvenile correctional facility or a secured residential care center for children and youth shall be in writing, except that the report may be presented orally at the dispositional hearing if the juvenile and the juvenile's counsel consent. A report that is presented orally shall be transcribed and made a part of the court record. In addition to the information specified under sub. (1) (a) to (d), the report shall include all of the following:

(a) A description of any less restrictive alternatives that are available and that have been considered, and why they have been determined to be inappropriate. If the court has found that any of the conditions specified in s. 938.34 (4m) (b) 1., 2., or 3. applies, the report shall indicate that a less restrictive alternative than placement in a juvenile correctional facility or a secured residential care center for children and youth is not appropriate.

(b) A recommendation for an amount of child support to be paid by either or both of the juvenile's parents or for referral to the county child support agency under s. 59.53 (5) for the establishment of child support.

(3r) SERIOUS JUVENILE OFFENDER REPORT. If a juvenile has been adjudicated delinquent for committing a violation for which the juvenile may be placed in the serious juvenile offender program under s. 938.34 (4h) (a), the report shall be in writing and, in addition to the information specified in sub. (1) and in sub. (3) or (4), if applicable, shall include an analysis of the juvenile's suitability for placement in the serious juvenile offender program under s. 938.34 (4h) or in a juvenile correctional facility under s. 938.34 (4m), a placement specified in s. 938.34 (3), or placement in the juvenile's home with supervision and community−based programming and a recommendation as to the type of placement for which the juvenile is best suited.

(4) OTHER OUT−OF−HOME PLACEMENTS. A report recommending placement in a foster home, group home, or nonsecured residential care center for children and youth, in the home of a relative other than a parent, or in the home of a guardian under s. 48.977 (2) shall be in writing, except that the report may be presented orally at the dispositional hearing if all parties consent. A report that is presented orally shall be transcribed and made a part of the court record. The report shall include all of the following:

(a) A permanency plan prepared under s. 938.38.

(b) A recommendation for an amount of child support to be paid by either or both of the juvenile's parents or for referral to the county child support agency under s. 59.53 (5) for the establishment of child support.

(c) Specific information showing that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile, specific information showing that the county department or the agency primarily responsible for providing services to the juvenile has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, unless any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies, and, if a permanency plan has previously been prepared for the juvenile, specific information showing that the county department or agency has made reasonable efforts to achieve the permanency goal of the juvenile's permanency plan, including, if appropriate, through an out−of−state placement.

NOTE: Par. (c) is shown as affected eff. 11−1−12 by 2011 Wis. Acts 181 and 258 and as merged by the legislative reference bureau under s. 13.92 (2) (i). Prior to 11−1−12 it reads:

(c) Specific information showing that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile, specific infor-

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mation showing that the county department or the agency primarily responsible for providing services to the juvenile has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, unless any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies, and, if a permanency plan has previously been prepared for the juvenile, specific information showing that the county department or agency has made reasonable efforts to achieve the goal of the juvenile's permanency plan, including, if appropriate, through an out−of−state placement.

(d) 1. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have been removed from the home or for whom an out−of−home placement is recommended, specific information showing that the county department or agency primarily responsible for providing services to the juvenile has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the county department or agency recommends that the juvenile and his or her siblings not be placed in a joint placement, in which case the report shall include specific information showing that a joint placement would be contrary to the safety or well−being of the juvenile or any of those siblings and the specific information required under subd. 2.

2. If a recommendation is made that the juvenile and his or her siblings not be placed in a joint placement, specific information showing that the county department or agency has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the county department or agency recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to the safety or well−being of the juvenile or any of those siblings.

(dm) In the case of a proceeding under s. 938.13 (4), (6), (6m), or (7), if the agency knows or has reason to know that the juvenile is an Indian juvenile who is being removed from the home of his or her parent or Indian custodian, a description of any efforts undertaken to determine whether the juvenile is an Indian juvenile; specific information showing that continued custody of the juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile, under s. 938.028 (4) (d) 1.; specific information showing that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful; a statement as to whether the out−of−home care placement recommended is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b); and, if the recommended placement is not in compliance with that order, specific information showing good cause, as described in s. 938.028 (6) (d), for departing from that order.

(4m) SUPPORT RECOMMENDATIONS; INFORMATION TO PARENTS. In making a recommendation for an amount of child support under sub. (3) or (4), the agency shall consider the factors under s. 301.12 (14) (c). At or before the dispositional hearing under s. 938.335, the agency shall provide the juvenile's parent with all of the following:

(a) Its recommendation for child support.

(b) A written explanation of how the parent may request that the court modify the amount of child support under s. 301.12 (14) (c).

(c) A written explanation of how the parent may request a revision under s. 938.363 in the amount of child support ordered by the court under s. 938.355 (2) (b) 4.

(5) IDENTITY OF FOSTER PARENT; CONFIDENTIALITY. If the report recommends placement in a foster home, and the name of the foster parent is not available at the time the report is filed, the agency shall provide the court and the juvenile's parent or guardian with the name and address of the foster parent within 21 days after the dispositional order is entered, except that the court may order the information withheld from the juvenile's parent or guardian if the court finds that disclosure would result in imminent danger to the juvenile or to the foster parent. After notifying the juvenile's parent or guardian, the court shall hold a hearing prior to ordering the information withheld.

History: 1995 a. 77, 417; 1997 a. 27, 35, 237, 252; 1999 a. 9; 2001 a. 59, 109; 2005 a. 25, 344; 2009 a. 28, 79, 94, 185, 334; 2011 a. 181, 258; 2011 a. 260 s. 80; s. 13.92 (2) (i).

Cross−reference: See also s. DOC 397.04, Wis. adm. code.

938.331 Court reports; effect on victim. If the delinquent act would constitute a felony if committed by an adult, the person preparing the report under s. 938.33 (1) shall attempt to determine the economic, physical and psychological effect of the delinquent act on the victim, as defined in s. 938.02 (20m) (a) 1. and 4. The person preparing the report may ask any appropriate person for information. This section does not preclude the person who prepares the report from including any information for the court concerning the impact of a delinquent act on the victim. If the delinquent act would not constitute a felony but a victim, as defined in s. 938.02 (20m) (a) 1., has suffered bodily harm or the act involved theft or damage to property, the person preparing the report is encouraged to seek the information described in this section.

History: 1995 a. 77; 1997 a. 181.

938.335 Dispositional hearings. (1) WHEN REQUIRED. The court shall conduct a hearing to determine the disposition of a case in which a juvenile is adjudged to be delinquent under s. 938.12, to have violated a civil law or ordinance under s. 938.125, or to be in need of protection or services under s. 938.13, except that the court shall proceed under s. 938.237 (2) if a citation is issued and the juvenile fails to contest the citation.

(3) EVIDENCE AND RECOMMENDATIONS. At hearings under this section, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

(3g) REASONABLE EFFORTS FINDING. At hearings under this section, if the agency, as defined in s. 938.38 (1) (a), is recommending placement of the juvenile in a foster home, group home, or residential care center for children and youth, or in the home of a relative other than a parent, the agency shall present as evidence specific information showing all of the following:

(a) That continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile.

(b) That the county department or the agency primarily responsible for providing services to the juvenile has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, unless any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

(c) That, if a permanency plan has previously been prepared for the juvenile, the county department or agency has made reasonable efforts to achieve the permanency goal of the juvenile's permanency plan, including, if appropriate, through an out−of−state placement.

NOTE: Par. (c) is shown as affected eff. 11−1−12 by 2011 Wis. Acts 181 and 258 and as merged by the legislative reference bureau under s. 13.92 (2) (i). Prior to 11−1−12 it reads:

(c) That, if a permanency plan has previously been prepared for the juvenile, the county department or agency has made reasonable efforts to achieve the goal of the juvenile's permanency plan, including, if appropriate, through an out−of−state placement.

(d) 1. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have been removed from the home or for whom an out−of−home placement is recommended, that the county department or agency has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the county department or agency recommends that the juvenile and his or her siblings not be placed in a joint placement, in which case the county department or agency shall present as evidence specific information showing that a joint placement would be contrary to the safety or well−being of the juvenile or any of those siblings and the specific information required under subd. 2.

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2. If a recommendation is made that the juvenile and his or her siblings not be placed in a joint placement, that the county department or agency has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the county department or agency recommends that such visitation or interaction not be provided, in which case the county department or agency shall present as evidence specific information showing that such visitation or interaction would be contrary to the safety or well−being of the juvenile or any of those siblings.

(3j) INDIAN JUVENILE; ACTIVE EFFORTS FINDING. At hearings under this section involving an Indian juvenile who is the subject of a proceeding under s. 938.13 (4), (6), (6m), or (7), if the agency, as defined in s. 938.38 (1) (a), is recommending removal of the Indian juvenile from the home of his or her parent or Indian custodian and placement of the Indian juvenile in a foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent, the agency shall present as evidence specific information showing all of the following:

(a) That continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian juvenile under s. 938.028 (4) (d) 1.

(b) That active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful.

(c) That the placement recommended is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) or, if that placement is not in compliance with that order, good cause, as described in s. 938.028 (6) (d), for departing from that order.

(3m) VICTIMS' STATEMENTS. Before imposing a disposition in a proceeding in which a juvenile is adjudged to be delinquent under s. 938.12 or is found to be in need of protection or services under s. 938.13 (12), all of the following shall occur:

(ag) The court shall determine whether a victim of the juvenile's act wants to make a statement to the court. If a victim wants to make a statement, the court shall allow the victim to make a statement in court or to submit a written statement to be read to the court. The court may allow any other person to make or submit a statement under this paragraph. Any statement made under this paragraph must be relevant to the disposition.

(am) The court shall inquire of the district attorney or corporation counsel whether he or she has complied with par. (b) and s. 938.27 (4m), whether any of the known victims requested notice of the date, time, and place of the dispositional hearing, and, if so, whether the district attorney or corporation counsel provided to the victim notice of the date, time, and place of the hearing.

(b) The district attorney or corporation counsel shall make a reasonable attempt to contact any known victim to inform that person of the right to make a statement under par. (ag). Any failure to comply with this paragraph is not a ground for an appeal of a dispositional order or for any court to reverse or modify a dispositional order.

(3r) CHILD SUPPORT. At hearings under this section, a parent of the juvenile may present evidence relevant to the amount of child support to be paid by either or both parents.

(4) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. At hearings under this section, s. 938.357, 938.358, 938.363, or 938.365, on the request of any party, unless good cause to the contrary is shown, the court may admit testimony on the record by telephone or live audiovisual means, if available, under s. 807.13 (2). The request and the showing of good cause may be made by telephone.

NOTE: Sub. (4) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(4) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. At hearings under this section, s. 938.357, 938.363 or 938.365, on the request of any party, unless good cause to the contrary is shown, the court may admit testimony on the record by telephone or live audiovisual means, if available, under s. 807.13 (2). The request and the showing of good cause may be made by telephone.

(5) DISPOSITIONAL ORDER. At the conclusion of the hearing, the court shall make a dispositional order in accordance with s. 938.355.

(6) JUVENILE PLACED OUTSIDE THE HOME. If the dispositional order places the juvenile outside the home, the parent, if present at the hearing, shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile, unless that information has previously been provided under s. 938.21 (2) (e) or (3) (f). If the parent does not provide that information at the hearing, the county department or the agency primarily responsible for providing services to the juvenile under the dispositional order shall permit the parent to provide the information at a later date.

History: 1995 a. 77; 1997 a. 181, 252; 2001 a. 109; 2005 a. 344; 2009 a. 28, 79, 94, 185; 2011 a. 181, 258; s. 13.92 (2) (i).

938.34 Disposition of juvenile adjudged delinquent. If the court adjudges a juvenile delinquent, the court shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan. A disposition under sub. (4m) must be combined with a disposition under sub. (4n). In deciding the dispositions for a juvenile who is adjudicated delinquent, the court shall consider the seriousness of the act for which the juvenile is adjudicated delinquent and may consider any other delinquent act that is read into the record and dismissed at the time of the adjudication. The dispositions under this section are:

(1) COUNSELING. Counsel the juvenile or the parent, guardian or legal custodian.

(2) SUPERVISION. (a) Place the juvenile under the supervision of an agency, the department, if the department approves, or a suitable adult, including a friend of the juvenile, under conditions prescribed by the court, including reasonable rules for the juvenile's conduct, designed for the physical, mental, and moral well−being and behavior of the juvenile.

(b) If the juvenile is placed in the juvenile's home under the supervision of an agency or the department, order the agency or department to provide specified services to the juvenile and the juvenile's family, including individual, family, or group counseling, homemaker or parent aide services, respite care, housing assistance, child care, or parent skills training.

(c) Order the juvenile to remain at his or her home or other placement for a period of not more than 30 days under rules of supervision specified in the order.

(2g) VOLUNTEERS IN PROBATION PROGRAM. If the juvenile is adjudicated delinquent for the commission of an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under s. 973.11 (2) a volunteers in probation program established in the juvenile's county of residence, and if the court determines that volunteer supervision under that program will likely benefit the juvenile and the community, place the juvenile with the volunteers in probation program under conditions the court determines are reasonable and appropriate. These conditions may include any of the following:

(a) A directive to a volunteer to be a role model for the juvenile, informal counseling, general monitoring monitoring of the conditions established by the court, or any combination of these functions.

(b) Any other disposition that the court may impose under this section.

(2m) TEEN COURT PROGRAM. Order the juvenile to be placed in a teen court program if all of the following conditions apply:

(a) The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the court determines that participation in the teen court program will likely benefit the juvenile and the community.

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(b) The juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult.

(c) The juvenile admits or pleads no contest in open court, in the presence of the juvenile's parent, guardian, or legal custodian, to the allegations that the juvenile committed the delinquent act.

(d) The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged delinquent act.

(2r) INTENSIVE SUPERVISION. Order the juvenile to participate in an intensive supervision program under s. 938.534.

(3) PLACEMENT. Designate one of the following as the placement for the juvenile:

(a) The home of a parent or other relative of the juvenile, except that the court may not designate the home of a parent or other relative of the juvenile as the juvenile's placement if the parent or other relative has been convicted of the homicide of a parent of the juvenile under s. 940.01 or 940.05, and the conviction has not been reversed, set aside, or vacated, unless the court determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

(b) The home of a person who is not required to be licensed if placement is for less than 30 days, except that the court may not designate the home of a person who is not required to be licensed as the juvenile's placement if the person has been convicted of the homicide of a parent of the juvenile under s. 940.01 or 940.05, and the conviction has not been reversed, set aside, or vacated, unless the court determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

(c) A foster home licensed under s. 48.62 or a group home licensed under s. 48.625.

(cm) A group home described in s. 48.625 (1m) if the juvenile is at least 12 years of age, is a custodial parent, as defined in s. 49.141 (1) (b), or an expectant mother, is receiving inadequate care, and is in need of a safe and structured living arrangement.

(d) A residential treatment center operated by a child welfare agency licensed under s. 48.60.

(e) An independent living situation effective on or after the juvenile's 17th birthday, either alone or with friends, under supervision the court considers appropriate, but only if the juvenile is of sufficient maturity and judgment to live independently and only upon proof of a reasonable plan for supervision by an appropriate person or agency.

(f) A juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule, or in a place of nonsecure custody designated by the court, subject to all of the following:

1. The placement may be for any combination of single or consecutive days totalling not more than 180, including any placement under pars. (a) to (e). The juvenile shall be given credit against the period of detention or nonsecure custody imposed under this paragraph for all time spent in secure detention in connection with the course of conduct for which the detention or nonsecure custody was imposed.

2. The order may provide that the juvenile may be released from the juvenile detention facility, juvenile portion of the jail, or place of nonsecure custody during specified hours to attend school, to work at the juvenile's place of employment or to attend or participate in any activity which the court considers beneficial to the juvenile.

3. The use of placement in a juvenile detention facility or in a juvenile portion of a county jail as a disposition under this paragraph is subject to the adoption of a resolution by the county board of supervisors under s. 938.06 (5) authorizing the use of those placements as a disposition.

4. If a juvenile's placement under this paragraph exceeds 30 days, whether or not consecutive, the county department shall offer the juvenile alcohol or other drug abuse treatment, counseling, and education services under sub. (6r). The payment for those services shall be in accordance with s. 938.361.

(3g) ELECTRONIC MONITORING. Monitoring by an electronic monitoring system for a juvenile subject to an order under sub. (2), (2r), (3) (a) to (e), (4h) or (4n) who is placed in the community.

(4) TRANSFER OF LEGAL CUSTODY. If it is shown that the rehabilitation or the treatment and care of the juvenile cannot be accomplished by means of voluntary consent of the parent or guardian, transfer legal custody to any of the following:

(a) A relative of the juvenile.

(b) A county department.

(c) A licensed child welfare agency.

(4d) TYPE 2 RESIDENTIAL CARE CENTER FOR CHILDREN AND YOUTH PLACEMENT. Place the juvenile in a Type 2 residential care center for children and youth under the supervision of the county department and subject to Type 2 status, as described in s. 938.539, but only if all of the following apply:

(a) The juvenile has been found to be delinquent for the commission of an act that would be punishable by a sentence of 6 months or more if committed by an adult.

(b) The juvenile has been found to be a danger to the public and to be in need of restrictive custodial treatment. If the court determines that any of the conditions specified in sub. (4m) (b) 1., 2., or 3. applies, but that placement in the serious juvenile offender program under sub. (4h) or in a juvenile correctional facility under sub. (4m) would not be appropriate, that determination shall be prima facie evidence that the juvenile is a danger to the public and in need of restrictive custodial treatment under this subsection.

(4h) SERIOUS JUVENILE OFFENDER PROGRAM. Place the juvenile in the serious juvenile offender program under s. 938.538, but only if all of the following apply:

(a) The juvenile is 14 years of age or over and has been adjudicated delinquent for committing or conspiring to commit a violation of s. 939.32 (1) (a), 940.03, 940.06, 940.21, 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1), 948.025 (1), or 948.30 (2) or attempting a violation of s. 943.32 (2) or the juvenile is 10 years of age or over and has been adjudicated delinquent for attempting or committing a violation of s. 940.01 or for committing a violation of s. 940.02 or 940.05.

(b) The court finds that the only other disposition that is appropriate for the juvenile is placement in a juvenile correctional facility under sub. (4m).

(4m) CORRECTIONAL PLACEMENT. Place the juvenile in a juvenile correctional facility or a secured residential care center for children and youth under the supervision of the department if all of the following apply:

(a) The juvenile has been found to be delinquent for the commission of an act that would be punishable by a sentence of 6 months or more if committed by an adult.

(b) The juvenile has been found to be a danger to the public and to be in need of restrictive custodial treatment. If the court determines that any of the following conditions applies, but that placement in the serious juvenile offender program under sub. (4h) is not appropriate, that determination shall be prima facie evidence that the juvenile is a danger to the public and in need of restrictive custodial treatment under this subsection:

1. The juvenile has committed a delinquent act that would be a felony under s. 940.01, 940.02, 940.03, 940.05, 940.19 (2) to (6), 940.21, 940.225 (1), 940.31, 941.20 (3), 943.02 (1), 943.23 (1g), 943.32 (2), 947.013 (1t), (1v) or (1x), 948.02 (1) or (2), 948.025, 948.03, or 948.085 (2) if committed by an adult.

2. The juvenile has possessed, used or threatened to use a handgun, as defined in s. 175.35 (1) (b), short−barreled rifle, as

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defined in s. 941.28 (1) (b), or short−barreled shotgun, as defined in s. 941.28 (1) (c), while committing a delinquent act that would be a felony under ch. 940 if committed by an adult.

3. The juvenile has possessed or gone armed with a short−barreled rifle or a short−barreled shotgun in violation of s. 941.28 or has possessed or gone armed with a handgun in violation of s. 948.60.

(4n) AFTERCARE SUPERVISION. Subject to any arrangement between the department and a county department regarding the provision of aftercare supervision for juveniles who have been released from a juvenile correctional facility or a secured residential care center for children and youth, designate one of the following to provide aftercare supervision for the juvenile following the juvenile's release from the juvenile correctional facility or secured residential care center for children and youth:

(a) The department.

(b) The county department of the county of the court that placed the juvenile in the juvenile correctional facility or secured residential care center for children and youth.

(c) The county department of the juvenile's county of legal residence.

(5) RESTITUTION. (a) Subject to par. (c), if the juvenile is found to have committed a delinquent act that resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, order the juvenile to repair the damage to property or to make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the court, after taking into consideration the well−being and needs of the victim, considers it beneficial to the well−being and behavior of the juvenile. The order shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the order for the payment or for the completion of the services, and may include a schedule for the performance and completion of the services. If the juvenile objects to the amount of damages claimed, the juvenile is entitled to a hearing on the question of damages before the amount of restitution is ordered. Any recovery under this paragraph shall be reduced by the amount recovered as restitution under s. 938.45 (1r) (a).

(am) Subject to par. (c), order a juvenile who owes restitution under par. (a) and who is receiving income while placed in a juvenile correctional facility, residential care center for children and youth, or other out−of−home placement to contribute a specified percentage of that income towards that restitution.

(b) In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a restitution project provided by the county or who is performing services for the victim as restitution may, for the purpose of making restitution ordered by the court under this subsection, be employed or perform any duties under any circumstances in which a juvenile 14 or 15 years of age is permitted to be employed or perform duties under ch. 103 or any rule or order under ch. 103. A juvenile who is participating in a restitution project provided by the county or who is performing services for the victim as restitution is exempt from the permit requirement under s. 103.70 (1).

(c) Under this subsection, a court may order a juvenile who is under 14 years of age to make not more than $250 in restitution or to perform not more than 40 total hours of services for the victim as total restitution under the order.

(5g) SUPERVISED WORK PROGRAM OR OTHER COMMUNITY SERVICE WORK. (a) Order the juvenile to participate in a supervised work program administered by the county department or a community agency approved by the court or other community service work administered by a public agency or nonprofit charitable organization approved by the court.

(am) The court shall set standards for the supervised work program within the budgetary limits established by the county board of supervisors. The supervised work program may provide the juvenile reasonable compensation reflecting a reasonable market value of the work performed or it may consist of uncompensated community service work. Community service work may be in lieu of restitution only if also agreed to by the county department, community agency, public agency or nonprofit charitable organization and by the person to whom the restitution is owed. The court may use any available resources, including any community service work program, in ordering the juvenile to perform community service work.

(b) The supervised work program or other community service work shall be constructive and designed to promote the rehabilitation of the juvenile, appropriate to the age level and physical ability of the juvenile, and combined with counseling from a member of the staff of the county department, community agency, public agency, or nonprofit charitable organization or other qualified person. The supervised work program or other community service work may not conflict with the juvenile's regular attendance at school. Subject to par. (d), the amount of work required shall be reasonably related to the seriousness of the juvenile's offense.

(c) In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a supervised work program or other community service work may, for purposes of performing the supervised work or other community service work, be employed or perform any duties under any circumstances in which a juvenile 14 or 15 years of age is permitted to be employed or perform duties under ch. 103 or any rule or order under ch. 103. A juvenile who is participating in a supervised work program or other community service work is exempt from the permit requirement under s. 103.70 (1).

(d) Under this subsection, a juvenile who is under 14 years of age may not be required to perform more than 40 total hours of supervised work or other community service work, except as provided in subs. (13r) and (14t).

(5m) COMMUNITY SERVICE WORK PROGRAM. Order the juvenile to participate in a youth corps program, as defined in s. 16.22 (1) (dm) or another community service work program, if the sponsor of the program approves the juvenile's participation in the program.

(5r) VICTIM−OFFENDER MEDIATION PROGRAM. Order the juvenile to participate in a victim−offender mediation program if the victim of the juvenile's delinquent act agrees.

(6) SPECIAL TREATMENT OR CARE. (a) If the juvenile is in need of special treatment or care, as identified in an evaluation under s. 938.295 and the report under s. 938.33 (1), order the juvenile's parent to provide the special treatment or care.

(am) An order of special treatment or care under this subsection may include an order committing the juvenile to a county department under s. 51.42 or 51.437 for special treatment or care in an inpatient facility, as defined in s. 51.01 (10), if the evaluation under s. 938.295 and the report under s. 938.33 (1) indicate all of the following:

1. That the juvenile has an alcohol or other drug abuse impairment.

2. That the juvenile is a proper subject for treatment and is in need of inpatient treatment because appropriate treatment is not available on an outpatient basis.

(ap) An order under par. (am) is subject to all of the following:

1. The commitment may total not more than 30 days.

2. The use of commitment to a county department under s. 51.42 or 51.437 as a disposition under par. (am) is subject to the adoption of a resolution by the county board of supervisors under s. 938.06 (5) authorizing the use of that disposition.

(ar) If the parent fails or is financially unable to provide the special treatment or care ordered under par. (a) or (am), the court may order an appropriate agency to provide the special treatment or care whether or not legal custody has been taken from the parents. If the court orders a county department under s. 51.42 or

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51.437 to provide special treatment or care under par. (a) or (am), the provision of that special treatment or care shall be subject to conditions specified in ch. 51, except that an order under par. (am) may not be extended. An order of special treatment or care under this subsection may not include an order for the administration of psychotropic medication.

(b) Payment for alcohol and other drug abuse services ordered under par. (a) shall be in accordance with s. 938.361.

(c) Payment for services provided under ch. 51 that are ordered under par. (a), other than alcohol and other drug abuse services, shall be in accordance with s. 938.362.

(6m) COORDINATED SERVICES PLAN OF CARE. If the report prepared under s. 938.33 (1) recommends that the juvenile is in need of a coordinated services plan of care and if an initiative under s. 46.56 has been established in the county or, if applicable, by a tribe, order that an assessment of the juvenile and the juvenile's family for eligibility for and appropriateness of the initiative, and if eligible for enrollment in the initiative, that a coordinated services plan of care be developed and implemented.

(6r) ALCOHOL OR DRUG TREATMENT OR EDUCATION. (a) If the report prepared under s. 938.33 (1) recommends that the juvenile is in need of treatment for the use or abuse of alcohol beverages, controlled substances, or controlled substance analogs and its medical, personal, family, or social effects, order the juvenile to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility. The approved treatment facility shall, under the terms of a service agreement between the county and the approved treatment facility, or with the written informed consent of the juvenile or the juvenile's parent if the juvenile has not attained the age of 12, report to the agency primarily responsible for providing services to the juvenile as to whether the juvenile is cooperating with the treatment and whether the treatment appears to be effective.

(b) If the report prepared under s. 938.33 (1) recommends that the juvenile is in need of education relating to the use of alcohol beverages, controlled substances, or controlled substance analogs, order the juvenile to participate in an alcohol or other drug abuse education program approved by the court. The person or agency that provides the education program shall, under the terms of a service agreement between the county and the education program, or with the written informed consent of the juvenile or the juvenile's parent if the juvenile has not attained the age of 12, report to the agency primarily responsible for providing services to the juvenile about the juvenile's attendance at the program.

(c) Payment for the court−ordered treatment or education under this subsection in counties that have a pilot program under s. 938.547 shall be in accordance with s. 938.361.

(6s) DRUG TESTING. If the report under s. 938.33 (1) indicates that the juvenile is in need of treatment for the use or abuse of controlled substances or controlled substance analogs, order the juvenile to submit to drug testing under a drug testing program that the department shall promulgate by rule.

(7d) EDUCATION PROGRAM. (a) Except as provided in par. (d), order the juvenile to attend any of the following:

1. A nonresidential educational program, including a program for children at risk under s. 118.153, provided by the school district in which the juvenile resides.

2. Under a contractual agreement with the school district in which the juvenile resides, a nonresidential educational program provided by a licensed child welfare agency.

3. Under a contractual agreement with the school district in which the juvenile resides, an educational program provided by a private, nonprofit, nonsectarian agency that is located in the school district in which the juvenile resides and that complies with 42 USC 2000d.

4. Under a contractual agreement with the school district in which the juvenile resides, an educational program provided by a technical college district located in the school district in which the juvenile resides.

5. Under a contractual agreement with the school district in which the child resides, an educational program provided by a tribal school.

(b) The court shall order the school board to disclose the juvenile's pupil records, as defined under s. 118.125 (1) (d), to the county department or licensed child welfare agency responsible for supervising the juvenile, as necessary to determine the juvenile's compliance with the order under par. (a).

(c) The court shall order the county department or licensed child welfare agency responsible for supervising the juvenile to disclose to the school board, technical college district board, tribal school, or private, nonprofit, nonsectarian agency which is providing an educational program under par. (a) 3. records or information about the juvenile, as necessary to assure the provision of appropriate educational services under par. (a).

(d) This subsection does not apply to a juvenile who is a child with a disability, as defined under s. 115.76 (5).

(7g) EXPERIENTIAL EDUCATION. Order the juvenile to participate in a wilderness challenge program or other experiential education program.

(7j) YOUTH REPORT CENTER. Order the juvenile to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Subsection (5g) applies to any community service work performed by a juvenile under this subsection.

(7n) JUVENILE OFFENDER EDUCATION PROGRAM. Order the juvenile to participate in an educational program that is designed to deter future delinquent behavior by focusing on such issues as decision making, assertiveness instead of aggression, family and peer relationships, self−esteem, identification and expression of feelings, alcohol and other drug abuse recognition and errors in thinking and judgment.

(7r) VOCATIONAL TRAINING. If the report under s. 938.33 (1) recommends that the juvenile is in need of vocational assessment, counseling and training, order the juvenile to participate in that assessment, counseling and training.

(7w) DAY TREATMENT PROGRAM. If the report under s. 938.33 (1) indicates that the juvenile has specialized educational needs, order the juvenile to participate in a day treatment program.

(8) FORFEITURE. Impose a forfeiture based upon a determination that this disposition is in the best interest of the juvenile and the juvenile's rehabilitation. The maximum forfeiture that the court may impose under this subsection for a violation by a juvenile is the maximum amount of the fine that may be imposed on an adult for committing that violation or, if the violation is applicable only to a person under 18 years of age, $100. The order shall include a finding that the juvenile alone is financially able to pay the forfeiture and shall allow up to 12 months for payment. If the juvenile fails to pay the forfeiture, the court may vacate the forfeiture and order other alternatives under this section; or the court may suspend any license issued under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not more than 2 years. If the court suspends any license under this subsection, the clerk of the court shall immediately take possession of the suspended license if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department which issued the license a notice of suspension stating that the suspension is for failure to pay a forfeiture imposed by the court, together with any license issued under ch. 29 of which the court takes possession. If the forfeiture is paid during the period of suspension, the suspension shall be reduced to the time period

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which has already elapsed and the court shall immediately notify the department which shall then, if the license is issued under ch. 29, return the license to the juvenile. Any recovery under this subsection shall be reduced by the amount recovered as a forfeiture for the same act under s. 938.45 (1r) (b).

(8d) DELINQUENCY VICTIM AND WITNESS ASSISTANCE SURCHARGE. (a) In addition to any other disposition imposed under this section, the court shall impose a delinquency victim and witness assistance surcharge of $20.

(b) The clerk of court shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2.

(c) If a juvenile placed in a juvenile correctional facility or a secured residential care center for children and youth fails to pay the surcharge under par. (a), the department shall assess and collect the amount owed from the juvenile's wages or other moneys. Any amount collected shall be transmitted to the secretary of administration.

(d) If the juvenile fails to pay the surcharge under par. (a), the court may vacate the surcharge and order other alternatives under this section, in accordance with the conditions specified in this chapter; or the court may suspend any license issued under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less than 30 days nor more than 5 years. If the court suspends any license under this subsection, the clerk of the court shall immediately take possession of the suspended license if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department which issued the license a notice of suspension stating that the suspension is for failure to pay a surcharge imposed by the court, together with any license issued under ch. 29 of which the court takes possession. If the surcharge is paid during the period of suspension, the suspension shall be reduced to the time period which has already elapsed and the court shall immediately notify the department which shall then, if the license is issued under ch. 29, return the license to the juvenile.

(11) TRANSFER TO FOREIGN COUNTRIES UNDER TREATY. If a treaty is in effect between the United States and a foreign country, allowing a juvenile adjudged delinquent who is a citizen or national of the foreign country to be transferred to the foreign country and if the juvenile and the juvenile's parent, guardian and legal custodian agree, request the governor to commence a transfer of the juvenile to the juvenile's country.

(13r) VIOLENT VIOLATION IN A SCHOOL ZONE. (a) If the juvenile is adjudicated delinquent for a violation of a violent crime law specified in s. 939.632 (1) (e) in a school zone, as defined in s. 939.632 (1) (d), require that the juvenile participate for 100 hours in a supervised work program under sub. (5g) or perform 100 hours of other community service work.

(b) The court may not impose the requirement under par. (a) if the court determines that the juvenile would pose a threat to public safety while completing the requirement.

(13t) GRAFFITI VIOLATION. If the juvenile is adjudicated delinquent for a violation of s. 943.017, require that the juvenile participate for not less than 10 hours nor more than 100 hours in a supervised work program under sub. (5g) or perform not less than 10 hours nor more than 100 hours of other community service work, except that if the juvenile has not attained 14 years of age the maximum number of hours is 40.

(14d) HATE VIOLATIONS. In addition to any other disposition imposed under this section, if the juvenile is found to have committed a violation under circumstances in which, if committed by an adult, the adult would be subject to a penalty enhancement under s. 939.645, order any one or more of the following dispositions:

(a) Restitution under sub. (5).

(b) Participation in a supervised work program or other community service work under sub. (5g) or (5m).

(c) Participation in a victim−offender mediation program under sub. (5r) or an other means of apologizing to the victim.

(d) Participation in an educational program under sub. (7n) that includes sensitivity training or training in diversity.

(14m) VIOLATION INVOLVING A MOTOR VEHICLE. Restrict or suspend the operating privilege, as defined in s. 340.01 (40), of a juvenile who is adjudicated delinquent under a violation of any law in which a motor vehicle is involved. If the court suspends a juvenile's operating privilege under this subsection, the court may take possession of the suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation a notice stating the reason for and duration of the suspension. If the court limits a juvenile's operating privilege under this subsection, the court shall immediately notify the department of transportation of that limitation.

(14p) COMPUTER VIOLATION. If the juvenile is found to have violated s. 943.70, place restrictions on the juvenile's use of computers.

(14q) CERTAIN BOMB SCARES AND FIREARM VIOLATIONS. In addition to any other disposition imposed under this section, if the juvenile is found to have violated s. 947.015 and the property involved is owned or leased by the state or any political subdivision of the state, or if the property involved is a school premises, as defined in s. 948.61 (1) (c), or if the juvenile is found to have violated s. 941.235 or 948.605, immediately suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for 2 years. The court shall immediately forward to the department of transportation the notice of suspension, stating that the suspension is for a violation of s. 947.015 involving school premises, or for a violation of s. 941.235 or 948.605. If otherwise eligible, the juvenile is eligible for an occupational license under s. 343.10.

(14r) VIOLATIONS RELATING TO CONTROLLED SUBSTANCES OR CONTROLLED SUBSTANCE ANALOGS. (a) In addition to any other dispositions imposed under this section, if the juvenile is found to have violated ch. 961, the court may suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. If a court suspends a person's operating privilege under this paragraph, the court may take possession of any suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation the notice of suspension stating that the suspension or revocation is for a violation of ch. 961.

(b) This subsection does not apply to violations under s. 961.573 (2), 961.574 (2) or 961.575 (2) or a local ordinance that strictly conforms to one of those statutes.

(c) If the juvenile's license or operating privilege is currently suspended or revoked or if the juvenile does not currently possess a valid operator's license issued under ch. 343, the suspension under this subsection is effective on the date on which the juvenile is first eligible for issuance or reinstatement of an operator's license under ch. 343.

(14s) POSSESSION OF CONTROLLED SUBSTANCES OR CONTROLLED SUBSTANCE ANALOGS. (a) In addition to any other dispositions imposed under this section, if the juvenile is found to have violated s. 961.41 (3g), the court shall order one of the following penalties:

1. For a first violation, a forfeiture of not more than $50.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not more than $100.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500.

(am) In addition to any other dispositions imposed under this section, if the juvenile is found to have violated s. 961.41 (1) or (1m) or 961.65, the court shall order one of the following penalties:

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1. For a first violation, a forfeiture of not less than $250 nor more than $500.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not less than $300.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of $500.

(b) After ordering a disposition under par. (a) or (am), the court, with the agreement of the juvenile, may enter an additional order staying the execution of the dispositional order. If the court stays a dispositional order under this paragraph, the court shall enter an additional order requiring the juvenile to do any of the following:

1. Submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 938.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to conduct the alcohol and other drug abuse assessment and shall specify the date by which the assessment must be completed.

2. Participate in an outpatient alcohol or other drug abuse treatment program at an approved treatment facility, if an assessment conducted under subd. 1. or s. 938.295 (1) recommends treatment.

3. Participate in an alcohol or other drug abuse education program.

(c) If the approved treatment facility, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that the juvenile has submitted to an assessment under this subsection and that the juvenile does not need treatment, intervention or education, the court shall notify the juvenile of whether or not the original dispositional order will be reinstated.

(d) If the juvenile completes the alcohol or other drug abuse treatment program or court−approved alcohol or other drug abuse education program, the approved treatment facility or court−approved alcohol or other drug abuse education program shall, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notify the agency primarily responsible for providing services to the juvenile that the juvenile has complied with the order and the court shall notify the juvenile of whether or not the original dispositional order will be reinstated.

(e) If an approved treatment facility or court−approved alcohol or other drug abuse education program, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that a juvenile is not participating in, or has not satisfactorily completed, a recommended alcohol or other drug abuse treatment program or a court−approved alcohol or other drug abuse education program, the court shall impose the original disposition under par. (a) or (am).

(14t) POSSESSION OF A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE ANALOG ON OR NEAR CERTAIN PREMISES. If the juvenile is adjudicated delinquent under a violation of s. 961.41 (3g) by possessing or attempting to possess a controlled substance included in schedule I or II under ch. 961, a controlled substance analog of a controlled substance included in schedule I or II under ch. 961 or ketamine or flunitrazepam while in or on the premises of a scattered−site public housing project, as defined in s. 961.01 (20i), while in or on or otherwise within 1,000 feet of a state, county, city, village, or town park, a jail or correctional facility, as defined in s. 961.01 (12m), a multiunit public housing project, as defined in s. 961.01 (14m), a swimming pool open to members of the public, a youth center, as defined in s. 961.01 (22), or a community center, while in or on or otherwise within 1,000 feet of any private, tribal, or public school premises, or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall require that the juvenile participate for 100 hours in a supervised work program or other community service work under sub. (5g).

(15) DEOXYRIBONUCLEIC ACID ANALYSIS REQUIREMENTS. (a) 1. If the juvenile is adjudicated delinquent on the basis of a violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), the court shall require the juvenile to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

2. Except as provided in subd. 1., if the juvenile is adjudicated delinquent on the basis of any violation under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the juvenile to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

3. The results from deoxyribonucleic acid analysis of a specimen under subd. 1. or 2. may be used only as authorized under s. 165.77 (3). The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

(b) The department of justice shall promulgate rules providing procedures for juveniles to provide specimens under par. (a) and for the transportation of the specimens to the state crime laboratories under s. 165.77.

Cross−reference: See also ch. Jus 9, Wis. adm. code.

(15m) SEX OFFENDER REPORTING REQUIREMENTS. (am) 1. Except as provided in par. (bm), if the juvenile is adjudicated delinquent on the basis of any violation, or the solicitation, conspiracy, or attempt to commit any violation, under ch. 940, 944, or 948 or s. 942.08 or 942.09, or ss. 943.01 to 943.15, the court may require the juvenile to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the juvenile report under s. 301.45.

2. If the court under subd. 1. orders the juvenile to comply with the reporting requirements under s. 301.45 in connection with a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 942.09, the court may provide that the juvenile be released from the requirement to comply with the reporting requirements under s. 301.45 upon satisfying the conditions of the dispositional order imposed for the offense. If the juvenile satisfies the conditions of the dispositional order, the court shall notify the department that the juvenile has satisfied the conditions of the dispositional order.

(bm) If the juvenile is adjudicated delinquent on the basis of a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, or 948.085 (2), 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was a minor and the juvenile was not the victim's parent, the court shall require the juvenile to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the juvenile, that the juvenile is not required to comply under s. 301.45 (1m).

(c) In determining under par. (am) 1. whether it would be in the interest of public protection to have the juvenile report under s. 301.45, the court may consider any of the following:

1. The ages, at the time of the violation, of the juvenile and the victim of the violation.

2. The relationship between the juvenile and the victim of the violation.

3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.

4. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

5. The probability that the juvenile will commit other violations in the future.

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7. Any other factor that the court determines may be relevant to the particular case.

(d) If the court orders a juvenile to comply with the reporting requirements under s. 301.45, the court may order the juvenile to continue to comply with the reporting requirements until his or her death.

(e) If the court orders a juvenile to comply with the reporting requirements under s. 301.45, the clerk of the court in which the order is entered shall promptly forward a copy of the order to the department of corrections. If the finding of delinquency on which the order is based is reversed, set aside or vacated, the clerk of the court shall promptly forward to the department of corrections a certificate stating that the finding of delinquency has been reversed, set aside or vacated.

(16) STAY OF ORDER. After ordering a disposition under this section, enter an additional order staying the execution of the dispositional order contingent on the juvenile's satisfactory compliance with any conditions that are specified in the dispositional order and explained to the juvenile by the court. If the juvenile violates a condition of his or her dispositional order, the agency supervising the juvenile or the district attorney or corporation counsel in the county in which the dispositional order was entered shall notify the court and the court shall hold a hearing within 30 days after the filing of the notice to determine whether the original dispositional order should be imposed, unless the juvenile signs a written waiver of any objections to imposing the original dispositional order and the court approves the waiver. If a hearing is held, the court shall notify the parent, juvenile, guardian, and legal custodian, all parties bound by the original dispositional order, and the district attorney or corporation counsel in the county in which the dispositional order was entered of the time and place of the hearing at least 3 days before the hearing. If all parties consent, the court may proceed immediately with the hearing. The court may not impose the original dispositional order unless the court finds by a preponderance of the evidence that the juvenile has violated a condition of his or her dispositional order.

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109; 2003 a. 33, 50, 200, 321; 2005 a. 14, 253, 277, 344; 2007 a. 97, 116; 2009 a. 8, 28, 103, 137, 185, 302, 334; 2011 a. 32, 258; s. 35.17 correction in (3) (f) 4.

Cross−reference: See also ch. DOC 392, Wis. adm. code.

Sub. (4h) does not encompass similar offenses from other jurisdictions. A juvenile may not be placed in the serious juvenile offender program on the basis that the juvenile is adjudicated delinquent for violating similar statutes in other jurisdictions. State v. David L.W. 213 Wis. 2d 277, 570 N.W.2d 582 (Ct. App. 1997), 97−0606.

Sub. (16) permits a court to stay imposition of a dispositional order, including revisions. Failure to comply can trigger commencement of the stayed portion commencing when the stay is lifted and terminating upon the completion of the term stated in the stayed order. State v. Kendall G. 2001 WI App 95, 243 Wis. 2d 67, 625 N.W.2d 918, 00−3240.

Placement in the serious juvenile offender program under sub. (4h) must occur at an original disposition. It is not a disposition to extend, revise, or change a placement already in effect. State v. Terry T. 2002 WI App 81, 251 Wis. 2d 462, 643 N.W.2d 175, 01−2226.

A circuit court has discretion under sub. (16) to stay that part of a dispositional order requiring a delinquent child to register as a sex offender. In determining whether to stay an order, a court should consider the seriousness of the offense as well as the factors enumerated in sub. (15m) (c) and s. 301.45 (1m) (e). Sex offender registration is part of a disposition under this section and sub. (16) allows a circuit court to stay a dispositional order or any number of the dispositions set forth within the order. State v. Cesar G. 2004 WI 61, 272 Wis. 2d 22, 682 N.W.2d 1, 02−2106.

Mandatory sex offender registration under sub. (15m) is not criminal punishment. If a provision is not criminal punishment, there is no constitutional right to a jury trial. Sub. (15m) does not violate the guarantees of substantive due process or equal protection. State v. Jeremy P. 2005 WI App 13, 278 Wis. 2d 366, 692 N.W.2d 311, 04−0360.

Sub. (4m) permits a juvenile court to order an adjudged delinquent to a secured correctional facility. Under sub. (16), a trial court, after ordering a disposition, may stay the execution of the dispositional order contingent on the juvenile's satisfactory compliance with any conditions the court specifies in the dispositional order and explains to the juvenile. That the Racine County juvenile court, Racine County Human Services Department and Racine Unified School District joined together to offer a voluntary residential treatment program for adjudged juvenile delinquents as an alternative to a "secured correctional facility" not found in this section does not make a juvenile's participation illegal. State v. Andrew J. K. 2006 WI App 126, 293 Wis. 2d 739, 718 N.W.2d 229, 05−2395.

Under sub. (5) (a) assessing the damages to the victim is the first step in the court's determination of restitution and determining the amount the juvenile is capable of paying is the second. Whichever amount is lower is the maximum amount that the court may order as restitution. Under s. 895.035 (2m) (a), courts are without authority to order that the "total damage" figure be converted to a civil judgment. Section 895.035 (2m) (a) allows only for the conversion of restitution. State v. Anthony D. 2006 WI App 218, 296 Wis. 2d 771, 723 N.W. 2d 775, 05−2644.

Section 938.355 provides a variety of sanctions for juveniles who have violated their dispositional orders. Section 938.357 enumerates the ways in which a juvenile's placement may be changed. Nothing in either statute indicates that it is to be the exclusive mechanism for violation of a disposition order. Section 938.34 (16) specifically allows an alternative procedure for dealing with violations of a disposition order when part of the disposition is imposed and stayed. State v. Richard J. D. 2006 WI App 242, 297 Wis. 2d 20, 724 N.W.2d 665, 06−0555.

Sub. (7d) authorizes a circuit court to order a juvenile to attend a variety of educational programs, but it does not authorize a circuit court to order a school district to create an educational program or contract for an educational program. Madison Metropolitan School District v. Circuit Court for Dane County, 2011 WI 72, 336 Wis. 2d 95, 800 N.W.2d 442, 09−2845.

Dispositions: Increased Options. Wis. Law. Apr. 1996.

938.341 Delinquency adjudication; restriction on firearm possession. Whenever a court adjudicates a juvenile delinquent for an act that if committed by an adult in this state would be a felony, the court shall inform the juvenile of the requirements and penalties under s. 941.29.

History: 1995 a. 77.

938.3415 Delinquency adjudication; restriction on body armor possession. Whenever a court adjudicates a juvenile delinquent for an act that if committed by an adult in this state would be a violent felony, as defined in s. 941.291 (1) (b), the court shall inform the juvenile of the requirements and penalties under s. 941.291.

History: 2001 a. 95.

938.342 Disposition; truancy and school dropout ordinance violations. (1d) TRUANCY ORDINANCE VIOLATIONS. If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (1m), the court shall enter an order making one or more of the following dispositions if the disposition is authorized by the municipal ordinance:

(a) Order the person to attend school.

(b) Impose a forfeiture of not more than $50 plus costs for a first violation, or a forfeiture of not more than $100 plus costs for any 2nd or subsequent violation committed within 12 months of a previous violation, subject to s. 938.37 and subject to a maximum cumulative forfeiture amount of not more than $500 for all violations committed during a school semester. All or part of the forfeiture plus costs may be assessed against the person, the parent or guardian of the person, or both.

(c) Order the person to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the person is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a person under this paragraph.

(1g) HABITUAL TRUANCY ORDINANCE VIOLATIONS. If the court finds that a person under 18 years of age violated a municipal ordinance enacted under s. 118.163 (2), the court shall enter an order making one or more of the following dispositions if the disposition is authorized by the municipal ordinance:

(a) Suspend the person's operating privilege, as defined in s. 340.01 (40), for not less than 30 days nor more than one year. The court may take possession of the suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation a notice stating the reason for and duration of the suspension.

(b) Order the person to participate in counseling or a supervised work program or other community service work as described in s. 938.34 (5g). The costs of any counseling, supervised work program, or other community service work may be assessed against the person, the parents or guardian of the person, or both. Any county department, community agency, public agency, or nonprofit charitable organization administering a supervised work program or other community service work to which a person is assigned under an order under this paragraph

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acting in good faith has immunity from any civil liability in excess of $25,000 for any act or omission by or impacting on that person.

(c) Order the person to remain at home except during hours in which the person is attending religious worship or a school program, including travel time required to get to and from the school program or place of worship. The order may permit a person to leave his or her home if the person is accompanied by a parent or guardian.

(d) Order the person to attend an educational program under s. 938.34 (7d).

(e) Order the department of workforce development to revoke, under s. 103.72, a permit under s. 103.70 authorizing the employment of the person.

(f) Order the person to be placed in a teen court program if all of the following conditions apply:

1. The chief judge of the judicial administrative district has approved a teen court program established in the person's county of residence and the court determines that participation in the teen court program will likely benefit the person and the community.

2. The person admits or pleads no contest in open court, in the presence of the person's parent, guardian, or legal custodian, to the allegations that the person violated the municipal ordinance enacted under s. 118.163 (2).

3. The person has not successfully completed participation in a teen court program during the 2 years before the date of the alleged municipal ordinance violation.

(g) Order the person to attend school.

(h) Impose a forfeiture of not more than $500 plus costs, subject to s. 938.37. All or part of the forfeiture plus costs may be assessed against the person, the parent or guardian of the person, or both.

(i) Order the person to comply with any other reasonable conditions that are consistent with this subsection, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other juveniles or adults.

(j) Place the person under formal or informal supervision, as described in s. 938.34 (2), for up to one year.

(k) Order the person to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a person under this paragraph.

(1m) ORDERS APPLICABLE TO PARENTS, GUARDIANS, AND LEGAL CUSTODIANS. (a) If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (2), the court may, in addition to or instead of the dispositions under sub. (1g), order the person's parent, guardian, or legal custodian to participate in counseling at the parent's, guardian's, or legal custodian's own expense or to attend school with the person, or both, if the disposition is authorized by the municipal ordinance.

(am) If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (1m), the court may, as part of the disposition under sub. (1d), order the person's parent or guardian to pay all or part of a forfeiture plus costs assessed under sub. (1d) (b). If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (2), the court may, as part of the disposition under sub. (1g), order the person's parent or guardian to pay all or part of the costs of any program ordered under sub. (1g) (b) or to pay all or part of a forfeiture plus costs assessed under sub. (1g) (h).

(b) No order to any parent, guardian, or legal custodian under par. (a) or (am) may be entered until the parent, guardian, or legal custodian is given an opportunity to be heard on the contemplated order of the court. The court shall cause notice of the time, place, and purpose of the hearing to be served on the parent, guardian, or legal custodian personally at least 10 days before the date of the hearing. The procedure in these cases shall, as far as practicable, be the same as in other cases to the court. At the hearing, the parent, guardian, or legal custodian may be represented by counsel and may produce and cross−examine witnesses. A parent, guardian, or legal custodian who fails to comply with any order issued by a court under par. (a) or (am) may be proceeded against for contempt of court.

(1r) SCHOOL ATTENDANCE CONDITION. If school attendance is a condition of an order under sub. (1d) or (1g), the order shall specify what constitutes a violation of the condition and shall direct the school board of the school district or the governing body of the private school in which the person is enrolled, or shall request the governing body of the tribal school in which the person is enrolled, to notify the court or, if the person is under the supervision of an agency under sub. (1g) (j), the agency that is responsible for supervising the person, within 5 days after any violation of the condition by the person.

(2) SCHOOL DROPOUT ORDINANCE VIOLATION. (a) Except as provided in par. (b), if the court finds that a person is subject to a municipal ordinance enacted under s. 118.163 (2m) (a), the court shall enter an order suspending the person's operating privilege, as defined in s. 340.01 (40), until the person attains 18 years of age.

(b) The court may order any of the dispositions specified under sub. (1g) if the court finds that suspension of the person's operating privilege, as defined in s. 340.01 (40), until the person attains 18 years of age would cause an undue hardship to the person or the person's family.

History: 1995 a. 27 s. 9130 (4); 1995 a. 77, 352; 1997 a. 3, 239; 2001 a. 16; 2003 a. 82; 2005 a. 344; 2009 a. 103, 302.

938.343 Disposition of juvenile adjudged to have violated a civil law or an ordinance. Except as provided by ss. 938.342 and 938.344, if the court finds that the juvenile violated a civil law or an ordinance, the court shall enter an order making one or more of the following dispositions:

(1) COUNSELING. Counsel the juvenile or the parent or guardian.

(2) FORFEITURE. Impose a forfeiture not to exceed the maximum forfeiture that may be imposed on an adult for committing that violation or, if the violation is only applicable to a person under 18 years of age, $50. The order shall include a finding that the juvenile alone is financially able to pay and shall allow up to 12 months for the payment. If a juvenile fails to pay the forfeiture, the court may suspend any license issued under ch. 29 or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not more than 2 years. The court shall immediately take possession of the suspended license if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department which issued the license the notice of suspension stating that the suspension is for failure to pay a forfeiture imposed by the court, together with any license issued under ch. 29 of which the court takes possession. If the forfeiture is paid during the period of suspension, the court shall immediately notify the department, which shall, if the license is issued under ch. 29, return the license to the person. Any recovery under this subsection shall be reduced by the amount recovered as a forfeiture for the same act under s. 938.45 (1r) (b).

(2m) TEEN COURT PROGRAM. Order the juvenile to be placed in a teen court program if all of the following conditions apply:

(a) The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the court determines that participation in the teen court program will likely benefit the juvenile and the community.

(b) The juvenile admits or pleads no contest in open court, in the presence of the juvenile's parent, guardian or legal custodian, to the allegations that the juvenile violated the civil law or ordinance.

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(c) The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged civil law or ordinance violation.

(3) COMMUNITY SERVICE WORK PROGRAM. Order the juvenile to participate in a supervised work program or other community service work under s. 938.34 (5g).

(3m) YOUTH REPORT CENTER. Order the juvenile to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a juvenile under this subsection.

(4) RESTITUTION. If the violation has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, order the juvenile to make repairs of the damage to property or reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the court, after taking into consideration the well−being and needs of the victim, considers it beneficial to the well−being and behavior of the juvenile. An order requiring payment for repairs or restitution shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the order for the payment or for the completion of the services, and may include a schedule for the performance and completion of the services. If the juvenile objects to the amount of damages claimed, the juvenile is entitled to a hearing on the question of damages before the amount of restitution is ordered. Any recovery under this subsection shall be reduced by the amount recovered as restitution for the same act under s. 938.45 (1r) (a).

(5) BOATING SAFETY COURSE. If the violation is related to unsafe use of a boat, order the juvenile to attend a boating safety course under s. 30.74 (1). If the juvenile has a valid boating safety certificate at the time that the court imposes the disposition, the court shall revoke the certificate and order the person to obtain another boating safety certificate under s. 30.74 (1).

(6) HUNTING, TRAPPING, OR FISHING LICENSE SUSPENSION. If the violation is of ch. 29, suspend the license or licenses of the juvenile issued under that chapter for not more than one year or until the juvenile is 18 years of age, whichever occurs first.

(7) HUNTER EDUCATION PROGRAM. If the violation is related to the unsafe use of firearms, order the juvenile to attend the hunter education program course under s. 29.591.

(8) SNOWMOBILE SAFETY COURSE. If the violation is one under ch. 350 concerning the use of snowmobiles, order the juvenile to attend a snowmobile safety course under s. 350.055.

(9) ALL−TERRAIN OR UTILITY TERRAIN VEHICLE SAFETY COURSE. If the violation is one under s. 23.33 or under an ordinance enacted in accordance with s. 23.33 concerning the use of all−terrain vehicles or utility terrain vehicles, order the juvenile to attend an all−terrain vehicle or utility terrain vehicle safety course.

(10) ALCOHOL OR DRUG ASSESSMENT, TREATMENT, OR EDUCATION. If the violation is related to the use or abuse of alcohol beverages, controlled substances or controlled substance analogs, order the juvenile to do any of the following:

(a) Submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 938.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to perform the assessment and shall specify the date by which the assessment must be completed.

(b) Participate in an outpatient alcohol and other drug abuse treatment program if an assessment conducted under par. (a) or s. 938.295 (1) recommends treatment.

(c) Participate in a court−approved alcohol or other drug abuse education program.

History: 1995 a. 77, 352, 448; 1997 a. 84, 183, 197, 198, 205, 248; 1999 a. 9, 32, 185; 2001 a. 16; 2005 a. 344; 2009 a. 103, 367; 2011 a. 32, 208.

Municipal courts have statutory authority to order parents of a juvenile to pay a forfeiture imposed on their child for violating a nontraffic municipal ordinance. OAG 4−00.

938.344 Disposition; certain intoxicating liquor, beer and drug violations. (2) UNDERAGE ALCOHOL POSSESSION OR POSSESSION ON SCHOOL GROUNDS. If a court finds a juvenile committed a violation under s. 125.07 (4) (b) or 125.09 (2), or a local ordinance that strictly conforms to one of those statutes, the court shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not more than $50, suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 1., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(b) For a violation committed within 12 months of one previous violation, a forfeiture of not more than $100 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile's operating privilege may be suspended under s. 343.30 (6) (b) 2., except that if the violation of s. 125.07 (4) (b) involved a motor vehicle the juvenile's operating privilege shall be suspended under s. 343.30 (6) (b) 2.

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile's operating privilege may be suspended under s. 343.30 (6) (b) 3., except that if the violation of s. 125.07 (4) (b) involved a motor vehicle the juvenile's operating privilege shall be suspended under s. 343.30 (6) (b) 3.

(2b) UNDERAGE PURCHASE OF ALCOHOL OR ENTERING LICENSED PREMISES. If a court finds a juvenile committed a violation under s. 125.07 (4) (a), or a local ordinance which strictly conforms to s. 125.07 (4) (a), the court shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not less than $250 nor more than $500, suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 1., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(b) For a violation committed within 12 months of one previous violation, a forfeiture of not less than $300 nor more than $500 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile's operating privilege may be suspended under s. 343.30 (6) (b) 2., except that if the violation involved a motor vehicle the juvenile's operating privilege shall be suspended under s. 343.30 (6) (b) 2.

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of $500 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile's operating privilege may be suspended under s. 343.30 (6) (b) 3., except that if the violation involved a motor vehicle the juvenile's operating privilege shall be suspended under s. 343.30 (6) (b) 3.

(2d) FALSE PROOF OF AGE. If a court finds a juvenile committed a violation under s. 125.085 (3) (b), or a local ordinance which strictly conforms to s. 125.085 (3) (b), the court shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not less than $100 nor more than $500, suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 1., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(b) For a violation committed within 12 months of a previous violation, a forfeiture of not less than $300 nor more than $500,

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suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 2., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of $500, suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 3., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(2e) DRUG PARAPHERNALIA VIOLATION. (a) If a court finds a juvenile committed a violation under s. 961.573 (2), 961.574 (2) or 961.575 (2), or a local ordinance that strictly conforms to one of those statutes, the court shall suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years and, in addition, shall order one of the following penalties:

1. For a first violation, a forfeiture of not more than $50 or participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not more than $100 or participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500 or participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

(b) Whenever a court suspends a juvenile's operating privilege under this subsection, the court may take possession of any suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation the notice of suspension stating that the suspension is for a violation under s. 961.573 (2), 961.574 (2), or 961.575 (2), or a local ordinance that strictly conforms to one of those statutes.

(c) If the juvenile's license or operating privilege is currently suspended or revoked or the juvenile does not currently possess a valid operator's license under ch. 343, the suspension under this subsection is effective on the date on which the juvenile is first eligible for issuance or reinstatement of an operator's license under ch. 343.

(2g) STAY OF ORDER. (a) After ordering a penalty under sub. (2), (2b), (2d) or (2e), the court, with the agreement of the juvenile, may enter an additional order staying the execution of the penalty order and suspending or modifying the penalty imposed. The order under this paragraph shall require the juvenile to do any of the following:

1. Submit to an alcohol and other drug abuse assessment that conforms to the criteria under s. 938.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to conduct the alcohol and other drug abuse assessment and shall specify the date by which the assessment must be completed.

2. Participate in an outpatient alcohol or other drug abuse treatment program at an approved treatment facility, if an alcohol or other drug abuse assessment conducted under subd. 1. or s. 938.295 (1) recommends treatment.

3. Participate in a court−approved alcohol or other drug abuse education program.

4. Participate in a teen court program if all of the following conditions apply:

a. The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the court determines that participation in the teen court program will likely benefit the juvenile and the community.

b. The juvenile admits or pleads no contest in open court, in the presence of the juvenile's parent, guardian or legal custodian, to the allegations that the juvenile committed the violation specified in sub. (2), (2b), (2d) or (2e).

c. The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged violation.

5. Report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a juvenile under this subdivision.

(b) If the approved treatment facility, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that the juvenile has submitted to an assessment under par. (a) and that the juvenile does not need treatment, intervention or education, the court shall notify the juvenile of whether or not the penalty will be reinstated.

(c) If the juvenile completes the alcohol or other drug abuse treatment program or court−approved alcohol or other drug abuse education program, the approved treatment facility or court−approved alcohol or other drug abuse education program shall, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notify the agency primarily responsible for providing services to the juvenile that the juvenile has complied with the order and the court shall notify the juvenile of whether or not the penalty will be reinstated.

(d) If an approved treatment facility or court−approved alcohol or other drug abuse education program, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that a juvenile is not participating, or has not satisfactorily completed, a recommended alcohol or other drug abuse treatment program or a court−approved alcohol or other drug abuse education program, the court shall hold a hearing to determine whether to impose the penalties under sub. (2), (2b), (2d), or (2e).

(2m) COUNTING VIOLATIONS. For purposes of subs. (2) to (2e), all violations arising out of the same incident or occurrence shall be counted as a single violation.

(3) PROSECUTION IN ADULT COURT. If the juvenile alleged to have committed the violation is within 3 months of his or her 17th birthday, the court assigned to exercise jurisdiction under this chapter and ch. 48 may, at the request of the district attorney or on its own motion, dismiss the citation without prejudice and refer the matter to the district attorney for prosecution under s. 125.07 (4). The juvenile is entitled to a hearing only on the issue of his or her age. This subsection does not apply to violations under s. 961.573 (2), 961.574 (2) or 961.575 (2) or a local ordinance that strictly conforms to one of those statutes.

History: 1995 a. 77, 448; 1997 a. 84; 1999 a. 9 s. 3263; 1999 a. 109; 2001 a. 16; 2005 a. 344; 2009 a. 103; 2011 a. 32.

938.345 Disposition of juvenile adjudged in need of protection or services. (1) DISPOSITIONAL ORDER. If the court finds that the juvenile is in need of protection or services, the court shall enter an order including one or more of the dispositions under s. 938.34 under a care and treatment plan except that the order may not do any of the following:

(a) Place the juvenile in the serious juvenile offender program juvenile correctional facility or a secured residential care center for children and youth.

(c) Order payment of a forfeiture or surcharge.

(d) Restrict or suspend the driving privileges of the juvenile, except as provided under sub. (2).

(e) Place any juvenile not found under ch. 880, 2003 stats., or ch. 46, 49, 51, 54, or 115 to have a developmental disability or a mental illness or to be a child with a disability, as defined in s.

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115.76 (5), in a facility that exclusively treats one or more of those categories of juveniles.

(g) Place the juvenile in a juvenile detention facility or juvenile portion of a county jail or in nonsecure custody under s. 938.34 (3) (f).

(1m) INDIAN JUVENILE; PLACEMENT PREFERENCES. (a) Subject to s. 938.028 (6) (b), if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) and who is being removed from the home of his or her parent or Indian custodian and placed outside that home, the court shall designate one of the placements specified in s. 938.028 (6) (a) 1. to 4. as the placement for the Indian juvenile, in the order of preference listed, unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

(2) SCHOOL DROPOUTS AND HABITUAL TRUANTS. If the court finds that a juvenile is in need of protection or services based on the fact that the juvenile is a school dropout, as defined in s. 118.153 (1) (b), or based on habitual truancy, and the court also finds that the juvenile has dropped out of school or is a habitual truant as a result of the juvenile's intentional refusal to attend school rather than the failure of any other person to comply with s. 118.15 (1) (a) and (am), the court, instead of or in addition to any other disposition imposed under sub. (1), may enter an order permitted under s. 938.342.

(3) SEX OFFENDER REGISTRATION. (a) If the court finds that a juvenile is in need of protection or services on the basis of a violation, or the solicitation, conspiracy, or attempt to commit a violation, under ch. 940, 944, or 948 or s. 942.08 or 942.09, or ss. 943.01 to 943.15, the court may require the juvenile to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it is in the interest of public protection to have the juvenile report under s. 301.45. In determining whether it is in the interest of public protection to have the juvenile report under s. 301.45, the court may consider any of the following:

1. The ages, at the time of the violation, of the juvenile and the victim of the violation.

2. The relationship between the juvenile and the victim of the violation.

3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.

4. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

5. The probability that the juvenile will commit other violations in the future.

6. Any other factor that the court determines may be relevant to the particular case.

(b) If the court orders a juvenile to comply with the reporting requirements under s. 301.45, the court may order the juvenile to continue to comply with the reporting requirements until his or her death.

(c) If the court orders a juvenile to comply with the reporting requirements under s. 301.45, the clerk of the court in which the order is entered shall promptly forward a copy of the order to the department. If the finding of need of protection or services on which the order is based is reversed, set aside, or vacated, the clerk of the court shall promptly forward to the department a certificate stating that the finding has been reversed, set aside or vacated.

(d) If the court under par. (a) orders the juvenile to comply with the reporting requirements under s. 301.45 in connection with a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 942.09, the court may provide that the juvenile be released from the requirement to comply with the reporting requirements under s. 301.45 upon satisfying the conditions of the dispositional order imposed for the offense. If the juvenile satisfies the conditions of the dispositional order, the clerk of the court shall notify the department that the juvenile has satisfied the conditions of the dispositional order.

(4) UNCONTROLLABLE JUVENILES. If the court finds that a juvenile is in need of protection or services under s. 938.13 (4), the court, instead of or in addition to any other disposition imposed under sub. (1), may place the juvenile in the home of a guardian under s. 48.977 (2).

History: 1995 a. 77; 1997 a. 27, 164; 1999 a. 9, 89; 2003 a. 50; 2005 a. 25, 344, 387; 2007 a. 96, 97; 2009 a. 41, 94, 137.

938.346 Notice to victims of juveniles' acts. (1) INFORMATION TO VICTIMS. Each known victim of a juvenile's act shall receive timely notice of the following information:

(a) The procedures under s. 938.396 (1) (c) 5. and 6. for obtaining the identity of the juvenile and the juvenile's parents.

(b) The procedure under s. 938.396 (1) (c) 5. for obtaining the juvenile's police records.

(c) The potential liability of the juvenile's parents under s. 895.035.

(d) Either of the following:

1. Information regarding any decision to close a case under s. 938.24 (5m), any deferred prosecution agreement under s. 938.245, any decision not to file a petition under s. 938.25 (2m), any consent decree under s. 938.32 or any dispositional order under ss. 938.34 to 938.345. The information may not include reports under s. 938.295 or 938.33 or any other information that deals with sensitive personal matters of the juvenile and the juvenile's family and that does not directly relate to the act or alleged act committed against the victim. This subdivision does not affect the right of a victim to attend any hearing that the victim is permitted to attend under s. 938.299 (1) (am).

2. The procedure for obtaining the information in subd. 1.

(e) The procedure under s. 938.296 under which the victim, if an adult, or the parent, guardian or legal custodian of the victim, if the victim is a child, may request an order requiring a juvenile who is alleged to have violated s. 940.225, 948.02, 948.025, 948.05, 948.06, or 948.085 (2) to submit to an HIV test, as defined in s. 252.01 (2m), and a test or a series of tests to detect the presence of a sexually transmitted disease, as defined in s. 252.11 (1), and to have the results of the tests disclosed as provided in s. 938.296 (4) (a) to (e).

(ec) The procedure under s. 938.296 under which the victim, if an adult, or the parent, guardian or legal custodian of the victim, if the victim is a child, may request an order requiring a juvenile who is alleged to have violated s. 946.43 (2m) to submit to a test or a series of tests to detect the presence of communicable diseases and to have the results of that test or series of tests disclosed as provided in s. 938.296 (5) (a) to (e).

(em) The right to confer, if requested, with an intake worker regarding deferred prosecution agreements under s. 938.245 (1m) or with a district attorney or corporation counsel under s. 938.265 regarding the possible outcomes of the proceedings and under s. 938.32 (1) (am) regarding consent decrees.

(f) The right to request and receive notice of the time and place of any hearing that the victim may attend under s. 938.299 (1) (am).

(fm) All of the following:

1. The right to a separate waiting area as provided under s. 938.2965.

2. The right to have his or her interest considered concerning continuances in the case under s. 938.315 (2)

3. The right to have victim impact information included in a court report under s. 938.33 and to have the person preparing the court report attempt to contact the victim, as provided under s. 938.331.

4. The right to employer intercession services under s. 950.04 (1v) (bm).

(g) The right to make a statement to the court as provided in ss. 938.32 (1) (b) and 938.335 (3m).

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(h) All of the following:

1. The right to be accompanied by a service representative, as provided under s. 895.45.

2. The right to restitution, as provided under ss. 938.245, 938.32 (1t) and 938.34 (5).

3. The right to compensation, as provided under subch. I of ch. 949.

4. The right to a speedy disposition of the case under s. 950.04 (1v) (k).

5. The right to have personal property returned, as provided under s. 950.04 (1v) (s).

6. The right to complain to the department of justice concerning the treatment of crime victims, as provided under s. 950.08 (3), and to request review by the crime victims rights board of the complaint, as provided under s. 950.09 (2).

(1m) DUTIES OF INTAKE WORKERS AND DISTRICT ATTORNEYS. The intake worker shall make a reasonable attempt to provide notice of the information under sub. (1) (a), (b), (c), and (h), the information under sub. (1) (d) relating to a deferred prosecution agreement under s. 938.245, the information under sub. (1) (em) relating to the right to confer, if requested, on deferred prosecution agreements and the information under sub. (3) if the juvenile's case is closed. The district attorney or corporation counsel shall make a reasonable attempt to provide notice of the information under sub. (1) (e), (ec), (f), (fm), and (g), the information under sub. (1) (d) relating to a consent decree under s. 938.32 or a dispositional order under ss. 938.34 to 938.345, the information under sub. (1) (em) relating to the right to request an opportunity to confer, if requested, on amendment of petitions, consent decrees and disposition recommendations and the information under sub. (3) if he or she decides not to file a petition or the proceeding is terminated without a consent decree or dispositional order after the filing of a petition.

(2) RESTRICTIONS ON DISCLOSURE OF INFORMATION. The notice under sub. (1) shall include an explanation of the restrictions on disclosing information obtained under this chapter and the penalties for violating the restrictions.

(3) CLOSED CASES. If an inquiry is closed by an intake worker or otherwise does not result in a deferred prosecution agreement, the intake worker shall make a reasonable attempt to inform each known victim of the juvenile's alleged act as provided in s. 938.24 (5m). If a district attorney or corporation counsel decides not to file a petition or if, after a petition is filed, a proceeding is dismissed or otherwise does not result in a consent decree or dispositional order, a district attorney or corporation counsel shall make a reasonable attempt to inform each known victim of the juvenile's alleged act as provided in s. 938.25 (2m) or 938.312, whichever is applicable.

(4) CHILD VICTIMS. If the victim, as defined in s. 938.02 (20m) (a) 1., is a child, the notice under this section shall be given to the child's parents, guardian or legal custodian.

(5) COURT POLICIES AND RULES. Chief judges and circuit judges shall establish by policy and rule procedures for the implementation of this section. Subject to subs. (1m) and (3), the policies and rules shall specify when, how and by whom the notice under this section shall be provided to victims and with whom victims may confer regarding deferred prosecution agreements, amendment of petitions, consent decrees and disposition recommendations.

History: 1995 a. 77; 1997 a. 181, 205; 1999 a. 188; 2005 a. 155, 277, 344; 2007 a. 20; 2009 a. 209.

938.35 Effect of judgment and disposition. (1) EFFECT AND ADMISSIBILITY OF JUDGMENT. The court shall enter a judgment setting forth the court's findings and disposition in the proceeding. A judgment in a proceeding on a petition under this chapter is not a conviction of a crime, does not impose any civil disabilities ordinarily resulting from the conviction of a crime and does not operate to disqualify the juvenile in any civil service application or appointment. The disposition of a juvenile, and any record of evidence given in a hearing in court, is not admissible as evidence against the juvenile in any case or proceeding in any other court except for the following:

(a) In sentencing proceedings after conviction of a felony or misdemeanor and then only for the purpose of a presentence investigation.

(b) In a proceeding in any court assigned to exercise jurisdiction under this chapter and ch. 48.

(c) In a court of civil or criminal jurisdiction while it is exercising jurisdiction over an action affecting the family and is considering the custody of a juvenile.

(cm) In a court of civil or criminal jurisdiction for purposes of setting bail under ch. 969 or impeaching a witness under s. 906.09.

(d) The fact that a juvenile has been adjudged delinquent on the basis of unlawfully and intentionally killing a person is admissible for the purpose of s. 854.14 (5) (b).

(e) In a hearing, trial, or other proceeding under ch. 980.

(1m) FUTURE CRIMINAL PROCEEDINGS BARRED. Disposition by the court assigned to exercise jurisdiction under this chapter and ch. 48 of any allegation under s. 938.12 or 938.13 (12) shall bar any future proceeding on the same matter in criminal court when the juvenile attains 17 years of age. This paragraph [subsection] does not affect proceedings in criminal court that have been transferred under s. 938.18.

NOTE: The correct cross−reference is shown in brackets. Corrective legislation is pending.

(2) COURT DISCLOSURE OF INFORMATION. Except under sub. (1), this section does not preclude the court from disclosing information to qualified persons if the court considers the disclosure to be in the best interests of the juvenile or of the administration of justice.

History: 1995 a. 77; 1997 a. 35, 205; 1999 a. 32; 2005 a. 344, 434.

If evidence of a prior rape is introduced at a rape trial to prove identity, testimony of the prior rape victim is admissible notwithstanding that the defendant was tried as a juvenile for the prior rape. Sanford v. State, 76 Wis. 2d 72, 250 N.W.2d 348 (1977).

Inferential impeachment; the presence of parole officers at subsequent juvenile adjudications. O'Donnell, 55 MLR 349.

NOTE: The above annotations cite to s. 48.35, the predecessor statute to s. 938.35.

938.355 Dispositional orders. (1) INTENT. In any order under s. 938.34 or 938.345, the court shall decide on a placement and treatment finding based on evidence submitted to the court. The disposition shall employ those means necessary to promote the objectives under s. 938.01. If the court has determined that any of the conditions specified in s. 938.34 (4m) (b) 1., 2., or 3. applies, that determination shall be prima facie evidence that a less restrictive alternative than placement in a juvenile correctional facility or a secured residential care center for children and youth is not appropriate. If information under s. 938.331 has been provided in a court report under s. 938.33 (1), the court shall consider that information when deciding on a placement and treatment finding.

(2) CONTENT OF ORDER; COPY TO PARENT. (a) In addition to the order, the court shall make written findings of fact and conclusions of law based on the evidence presented to the court to support the disposition ordered, including findings as to the juvenile's condition and need for special treatment or care if an examination or assessment was conducted under s. 938.295. A finding may not include a finding that a juvenile is in need of psychotropic medications.

(b) The court order shall be in writing and shall contain:

1. The specific services to be provided to the juvenile and the juvenile's family, and, if custody is to be transferred to effect the treatment plan, the identity of the legal custodian.

1m. A notice that the juvenile's parent, guardian, or legal custodian or the juvenile, if 14 years of age or older, may request an agency that is providing care or services for the juvenile or that has legal custody of the juvenile to disclose to, or make available for inspection by, the parent, guardian, legal custodian, or juvenile the

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contents of any record kept or information received by the agency about the juvenile as provided in s. 938.78 (2) (ag).

2. If the juvenile is placed outside the home, the name of the place or facility, including transitional placements, where the juvenile shall be cared for or treated, except that if the placement is a foster home and the name and address of the foster parent is not available at the time of the order, the name and address of the foster parent shall be furnished to the court and the parent within 21 days after the order. If, after a hearing on the issue with due notice to the parent or guardian, the court finds that disclosure of the identity of the foster parent would result in imminent danger to the juvenile or the foster parent, the court may order the name and address of the prospective foster parents withheld from the parent or guardian.

3. The date of the expiration of the court's order.

4. If the juvenile is placed outside the juvenile's home, a designation of the amount of support, if any, to be paid by the juvenile's parent, guardian or trustee, specifying that the support obligation begins on the date of the placement, or a referral to the county child support agency under s. 59.53 (5) for establishment of child support.

4m. If the juvenile is placed outside the home and if the juvenile's parent has not provided a statement of the income, assets, debts, and living expenses of the juvenile and the juvenile's parent to the county department under s. 938.30 (6) (b) or (c) or 938.31 (7) (b) or (c), an order for the parent to provide that statement to the county department by a date specified by the court. The county department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on the form. The county department shall use the information in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the juvenile.

5. For a juvenile placed outside his or her home under an order under s. 938.34 (3) or 938.345, a permanency plan under s. 938.38 if one has been prepared.

6. If the juvenile is placed outside the home, a finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile or, if the juvenile has been adjudicated delinquent and is placed outside the home under s. 938.34 (3) (a), (c), (cm), or (d) or (4d), a finding that the juvenile's current residence will not safeguard the welfare of the juvenile or the community due to the serious nature of the act for which the juvenile was adjudicated delinquent. The court order shall also contain a finding as to whether the county department or the agency primarily responsible for providing services under a court order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, unless the court finds that any of the circumstances under sub. (2d) (b) 1. to 4. applies, and, if a permanency plan has previously been prepared for the juvenile, a finding as to whether the county department or agency has made reasonable efforts to achieve the permanency goal of the juvenile's permanency plan, including, if appropriate, through an out−of−state placement. The court shall make the findings specified in this subdivision on a case−by−case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the court order. A court order that merely references this subdivision without documenting or referencing that specific information in the court order or an amended court order that retroactively corrects an earlier court order that does not comply with this subdivision is not sufficient to comply with this subdivision.

NOTE: Subd. 6. is shown as affected eff. 11−1−12 by 2011 Wis. Acts 181 and 258 and as merged by the legislative reference bureau under s. 13.92 (2) (i). Prior to 11−1−12 it reads:

6. If the juvenile is placed outside the home, a finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile or, if the juvenile has been adjudicated delinquent and is placed outside the home under s. 938.34 (3) (a), (c), (cm), or (d) or (4d), a finding that the juvenile's current residence will not safeguard the welfare of the juvenile or the community due to the serious nature of the act for which the juvenile was adjudicated delinquent. The court order shall also contain a finding as to whether the county department or the agency primarily responsible for providing services under a court order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, unless the court finds that any of the circumstances under sub. (2d) (b) 1. to 4. applies, and, if a permanency plan has previously been prepared for the juvenile, a finding as to whether the county department or agency has made reasonable efforts to achieve the goal of the juvenile's permanency plan, including, if appropriate, through an out−of−state placement. The court shall make the findings specified in this subdivision on a case−by−case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the court order. A court order that merely references this subdivision without documenting or referencing that specific information in the court order or an amended court order that retroactively corrects an earlier court order that does not comply with this subdivision is not sufficient to comply with this subdivision.

6g. If the juvenile is placed outside the home under the supervision of the county department, an order ordering the juvenile into the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and assigning the county department primary responsibility for providing services to the juvenile.

6m. If the juvenile is placed outside the home in a placement recommended by the agency designated under s. 938.33 (1), a statement that the court approves the placement recommended by the agency or, if the juvenile is placed outside the home in a placement other than a placement recommended by that agency, a statement that the court has given bona fide consideration to the recommendations made by the agency and all parties relating to the juvenile's placement.

6p. If the juvenile is placed outside the home and if the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been placed outside the home, a finding as to whether the county department or the agency primarily responsible for providing services under a court order has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the court determines that a joint placement would be contrary to the safety or well−being of the juvenile or any of those siblings, in which case the court shall order the county department or agency to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court determines that such visitation or interaction would be contrary to the safety or well−being of the juvenile or any of those siblings.

6r. If the court finds that any of the circumstances under sub. (2d) (b) 1. to 4. applies with respect to a parent, a determination that the county department or agency primarily responsible for providing services under the court order is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home.

6v. If the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) and who is being removed from the home of his or her parent or Indian custodian and placed outside that home, a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and a finding that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful. The findings under this subdivision shall be in addition to the findings under subd. 6., except that for the sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under this subdivision and the findings under subd. 6. shall be considered to be the same findings. The findings under this subdivision are not required if they were made in a previous order in the proceeding unless a change in circumstances warrants new findings.

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7. A statement of the conditions with which the juvenile is required to comply.

(c) If school attendance is a condition of an order under par. (b) 7., the order shall specify what constitutes a violation of the condition and shall direct the school board of the school district or the governing body of the private school in which the juvenile is enrolled, or shall request the governing body of the tribal school in which the juvenile is enrolled, to notify the county department that is responsible for supervising the juvenile within 5 days after any violation of the condition by the juvenile.

(cm) 1. Subject to subd. 2., the court shall order the county department or the agency primarily responsible for providing services to the juvenile under the dispositional order to conduct a diligent search in order to locate and provide notice of the information specified in s. 938.21 (5) (e) 2. a. to e. to all relatives of the juvenile named under s. 938.335 (6) and to all adult relatives, as defined in s. 938.21 (5) (e) 1., of the juvenile within 30 days after the juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned to his or her home within that period. The court may also order the county department or agency to conduct a diligent search in order to locate and provide notice of that information to all other adult individuals named under s. 938.335 (6) within 30 days after the juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned to his or her home within that period. The county department or agency may not provide that notice to a person named under s. 938.335 (6) or to an adult relative if the county department or agency has reason to believe that it would be dangerous to the juvenile or to the parent if the juvenile were placed with that person or adult relative.

2. Subdivision 1. does not apply if the search required under subd. 1. was previously conducted and the notice required under subd. 1. was previously provided under s. 938.21 (5) (e) 2.

(d) The court shall provide a copy of the dispositional order to the juvenile's parent, guardian, legal custodian, or trustee and, if the juvenile is an Indian juvenile who has been removed from the home of his or her parent or Indian custodian and placed outside that home under s. 938.13 (4), (6), (6m), or (7), to the Indian juvenile's Indian custodian and tribe.

(2b) CONCURRENT REASONABLE EFFORTS PERMITTED. (a) In this subsection, "concurrent planning" means appropriate efforts to work simultaneously towards achieving more than one of the permanency goals listed in s. 938.38 (4) (fg) 1. to 5. for a juvenile who is placed in out−of−home care and for whom a permanency plan is required under s. 938.38 (2).

(b) A county department or the agency primarily responsible for providing services to a juvenile under a court order shall determine, in accordance with standards established by the department, whether to engage in concurrent planning. If, according to those standards, concurrent planning is required, the county department or agency shall engage in concurrent planning unless the court or permanency review panel determines under s. 938.38 (5) (c) 5m. that concurrent planning is inappropriate.

NOTE: Sub. (2b) is shown as affected eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county department or the agency primarily responsible for providing services to a juvenile under a court order may, at the same time as the county department or agency is making the reasonable efforts required under sub. (2) (b) 6. to prevent the removal of the juvenile from the home or to make it possible for the juvenile to return safely to his or her home, work with the department of children and families, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.61 (5) in making reasonable efforts to place the juvenile for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement, including reasonable efforts to identify an appropriate out−of−state placement.

(2c) REASONABLE EFFORTS STANDARDS. (a) When a court makes a finding under sub. (2) (b) 6. as to whether a county department which provides social services or the agency primarily responsible for providing services to the juvenile under a court order has made reasonable efforts to prevent the removal of the juvenile from his or her home, while assuring that the juvenile's health and safety are the paramount concerns, the court's consideration of reasonable efforts shall include whether:

1. A comprehensive assessment of the family's situation was completed, including a determination of the likelihood of protecting the juvenile's health, safety and welfare effectively in the home.

2. Financial assistance, if applicable, was provided to the family.

3. Services were offered or provided to the family, if applicable, and whether any assistance was provided to the family to enable the family to utilize the services. Examples of the types of services that may have been offered include:

a. In−home support services, such as homemakers and parent aides.

b. In−home intensive treatment services.

c. Community support services, such as child care, parenting skills training, housing assistance, employment training, and emergency mental health services.

d. Specialized services for family members with special needs.

4. Monitoring of client progress and client participation in services was provided.

5. A consideration of alternative ways of addressing the family's needs was provided, if services did not exist or existing services were not available to the family.

(b) When a court makes a finding under sub. (2) (b) 6. as to whether the county department or the agency primarily responsible for providing services to the juvenile under a court order has made reasonable efforts to achieve the permanency goal of the permanency plan, the court's consideration of reasonable efforts shall include the considerations under par. (a) and whether visitation schedules between the juvenile and his or her parents were implemented, unless visitation was denied or limited by the court.

NOTE: Par. (b) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(b) When a court makes a finding under sub. (2) (b) 6. as to whether the county department or the agency primarily responsible for providing services to the juvenile under a court order has made reasonable efforts to achieve the goal of the permanency plan, the court's consideration of reasonable efforts shall include the considerations under par. (a) and whether visitation schedules between the juvenile and his or her parents were implemented, unless visitation was denied or limited by the court.

(2d) REASONABLE EFFORTS NOT REQUIRED. (a) In this subsection:

1. "Aggravated circumstances" include abandonment in violation of s. 948.20 or in violation of the law of any other state or federal law if that violation would be a violation of s. 948.20 if committed in this state, torture, chronic abuse, and sexual abuse.

2. "Sexual abuse" means a violation of s. 940.225, 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.085, 948.09 or 948.10 or a violation of the law of any other state or federal law if that violation would be a violation of s. 940.225, 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.085 (2), 948.09 or 948.10 if committed in this state.

(b) Notwithstanding sub. (2) (b) 6., the court is not required to include in a dispositional order a finding as to whether the county department or the agency primarily responsible for providing services under a court order has made reasonable efforts with respect to a parent of a juvenile to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, or, if applicable, a finding as to whether the county department or agency has made reasonable efforts with respect to a parent of a juvenile to achieve the permanency goal of returning the juvenile safely to his or her home, if the court finds any of the following:

NOTE: Par. (b) (intro.) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(b) Notwithstanding sub. (2) (b) 6., the court is not required to include in a dispositional order a finding as to whether the county department or the agency primarily responsible for providing services under a court order has made rea-

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sonable efforts with respect to a parent of a juvenile to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, or, if applicable, a finding as to whether the county department or agency has made reasonable efforts with respect to a parent of a juvenile to achieve the permanency plan goal of returning the juvenile safely to his or her home, if the court finds any of the following:

1. That the parent has subjected the juvenile to aggravated circumstances, as evidenced by a final judgment of conviction.

2. That the parent has committed, has aided or abetted the commission of, or has solicited, conspired, or attempted to commit, a violation of s. 940.01, 940.02, 940.03, or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, as evidenced by a final judgment of conviction, and that the victim of that violation is a child of the parent.

3. That the parent has committed a violation of s. 940.19 (3), 1999 stats., or s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), or 948.085 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment of conviction, and that the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the juvenile or another child of the parent.

4. That the parental rights of the parent to another child have been involuntarily terminated, as evidenced by a final order of a court of competent jurisdiction terminating those parental rights.

(bm) The court shall make a finding specified in par. (b) 1. to 4. on a case−by−case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which that finding is based in the dispositional order. A dispositional order that merely references par. (b) 1. to 4. without documenting or referencing that specific information in the dispositional order or an amended dispositional order that retroactively corrects an earlier dispositional order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(c) If the court finds that any of the circumstances under par. (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency goal and, if applicable, any concurrent permanency goals for the juvenile.

NOTE: Par. (c) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(c) If the court finds that any of the circumstances under par. (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile.

(d) This subsection does not affect the requirement under sub. (2) (b) 6v. that the court include in a dispositional order removing an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from the home of his or her parent or Indian custodian and placing the juvenile outside that home a finding that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful.

(2e) PERMANENCY PLANS; FILING; AMENDED ORDERS; COPIES. (a) If a permanency plan has not been prepared at the time the dispositional order is entered, or if the court orders a disposition that is not consistent with the permanency plan, the agency responsible for preparing the plan shall prepare a permanency plan that is consistent with the order or revise the permanency plan to conform to the order and shall file the plan with the court within the time specified in s. 938.38 (3). A permanency plan filed under this paragraph shall be made a part of the dispositional order.

(b) Each time a juvenile's placement is changed under s. 938.357, a trial reunification is ordered under s. 938.358, or a dispositional order is revised under s. 938.363 or extended under s. 938.365, the agency that prepared the permanency plan shall revise the plan to conform to the order and shall file a copy of the revised plan with the court. Each plan filed shall be made a part of the court order.

NOTE: Par. (b) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(b) Each time a juvenile's placement is changed under s. 938.357 or a dispositional order is revised under s. 938.363 or extended under s. 938.365, the agency that prepared the permanency plan shall revise the plan to conform to the order and shall file a copy of the revised plan with the court. Each plan filed shall be made a part of the court order.

(c) Either the court or the agency that prepared the permanency plan shall furnish a copy of the original plan and each revised plan to the juvenile's parent or guardian, to the juvenile or the juvenile's counsel or guardian ad litem and to the person representing the interests of the public.

(2m) TRANSITIONAL PLACEMENTS. The court order may include the name of transitional placements, but may not designate a specific time when transitions are to take place. The procedures of ss. 938.357 and 938.363 govern when those transitions take place. The court may place specific time limitations on interim arrangements made for the care of the juvenile pending the availability of the dispositional placement.

(3) PARENTAL VISITATION. (a) Except as provided in par. (b), if, after a hearing on the issue with due notice to the parent or guardian, the court finds that it would be in the best interest of the juvenile, the court may set reasonable rules of parental visitation.

(b) 1. Except as provided in subd. 2., the court may not grant visitation under par. (a) to a parent of a juvenile if the parent has been convicted of the homicide of the juvenile's other parent under s. 940.01 or 940.05, and the conviction has not been reversed, set aside, or vacated.

1m. Except as provided in subd. 2., if a parent who is granted visitation rights with a juvenile under par. (a) is convicted of the homicide of the juvenile's other parent under s. 940.01 or 940.05, and the conviction has not been reversed, set aside, or vacated, the court shall issue an order prohibiting the parent from having visitation with the juvenile on petition of the juvenile, the guardian or legal custodian of the juvenile, a person or agency bound by the dispositional order, or the district attorney or corporation counsel of the county in which the dispositional order was entered, or on the court's own motion, and on notice to the parent.

2. Subdivisions 1. and 1m. do not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

(3m) ORDERS BASED ON EVIDENCE. Dispositional orders under s. 938.343 or 938.344 shall be based upon the evidence except that this subsection does not require a dispositional hearing for the disposition of an uncontested citation.

(4) TERMINATION OF ORDERS. (a) Except as provided under par. (b) or s. 938.368, an order under this section or s. 938.357 or 938.365 made before the juvenile attains 18 years of age that places or continues the placement of the juvenile in his or her home shall terminate at the end of one year after the date on which the order is granted unless the court specifies a shorter period of time or the court terminates the order sooner. Except as provided in par. (b) or s. 938.368, an order under this section or s. 938.357 or 938.365 made before the juvenile attains 18 years of age that places or continues the placement of the juvenile in a foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent shall terminate when the juvenile attains 18 years of age, at the end of one year after the date on which the order is granted, or, if the juvenile is a full−time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before attaining 19 years of age, when the juvenile attains 19 years of age, whichever is later, unless the court specifies a shorter period of time or the court terminates the order sooner.

(b) Except as provided in s. 938.368, an order under s. 938.34 (4d) or (4m) made before the juvenile attains 18 years of age may apply for up to 2 years after the date on which the order is granted or until the juvenile's 18th birthday, whichever is earlier, unless the court specifies a shorter period of time or the court terminates the order sooner. If the order does not specify a termination date,

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it 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. Except as provided in s. 938.368, an order under s. 938.34 (4h) made before the juvenile attains 18 years of age shall apply for 5 years after the date on which the order is granted, if the juvenile is adjudicated delinquent for committing a violation of s. 943.10 (2) or for committing an act that would be punishable as a Class B or C felony if committed by an adult, or until the juvenile reaches 25 years of age, if the juvenile is adjudicated delinquent for committing an act that would be punishable as a Class A felony if committed by an adult. Except as provided in s. 938.368, an extension of an order under s. 938.34 (4d), (4h), (4m), or (4n) made before the juvenile attains 17 years of age shall terminate at the end of one year after the date on which the order is granted unless the court specifies a shorter period of time or the court terminates the order sooner. No extension under s. 938.365 of an original dispositional order under s. 938.34 (4d), (4h), (4m), or (4n) may be granted for a juvenile who is 17 years of age or older when the original dispositional order terminates.

(4m) EXPUNGEMENT OF RECORD. (a) A juvenile who has been adjudged delinquent under s. 48.12, 1993 stats., or s. 938.12 may, on attaining 17 years of age, petition the court to expunge the court's record of the juvenile's adjudication. Subject to par. (b), the court may expunge the record if the court determines that the juvenile has satisfactorily complied with the conditions of his or her dispositional order and that the juvenile will benefit from, and society will not be harmed by, the expungement.

(b) The court shall expunge the court's record of a juvenile's adjudication if it was the juvenile's first adjudication based on a violation of s. 942.08 (2) (b), (c), or (d), and if the court determines that the juvenile has satisfactorily complied with the conditions of his or her dispositional order. Notwithstanding s. 938.396 (2), the court shall notify the department promptly of any expungement under this paragraph.

(5) EFFECT OF COURT ORDER. Any party, person or agency who provides services for the juvenile under this section shall be bound by the court order.

(6) SANCTIONS FOR VIOLATION OF ORDER. (a) *Juvenile court orders.* 1. If a juvenile who has been adjudged delinquent or to have violated a civil law or ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition specified in sub. (2) (b) 7., the court may impose on the juvenile any of the sanctions specified in par. (d). A sanction may be imposed under this subdivision only if, at the dispositional hearing under s. 938.335, the court explained the conditions to the juvenile and informed the juvenile of those possible sanctions or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

2. If a juvenile who has been found to be in need of protection or services under s. 938.13 (4), (6m), (7), (12), or (14) violates a condition specified in sub. (2) (b) 7., the court may impose on the juvenile any of the sanctions under par. (d), other than placement in a juvenile detention facility or juvenile portion of a county jail. A sanction may be imposed under this subdivision only if, at the dispositional hearing under s. 938.335, the court explained the conditions to the juvenile and informed the juvenile of those possible sanctions or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

(an) *Municipal court orders.* 1. If a juvenile who has violated a municipal ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of a dispositional order imposed by the municipal court, the municipal court may petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction under par. (d) 1. or the sanction under par. (d) 3., with monitoring by an electronic monitoring system. A sanction may be imposed under this subdivision only if, at the time of the judgment, the municipal court explained the conditions to the juvenile and informed the juvenile of those possible sanctions for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions. The petition shall contain a statement of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the juvenile may be subject to that act, the names and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

2. If the court assigned to exercise jurisdiction under this chapter and ch. 48 imposes the sanction under par. (d) 1. or home detention with monitoring by an electronic monitoring system under par. (d) 3., on a petition described in subd. 1., the court shall order the municipality of the municipal court that filed the petition to pay to the county the cost of providing the sanction imposed under par. (d) 1. or 3.

(b) *Motion to impose sanction.* A motion for imposition of a sanction may be brought by the person or agency primarily responsible for the provision of dispositional services, the district attorney or corporation counsel, or the court that entered the dispositional order. If the court initiates the motion, that court is disqualified from holding a hearing on the motion. Notice of the motion shall be given to the juvenile, guardian ad litem, counsel, parent, guardian, legal custodian, and all parties present at the original dispositional hearing. The motion shall contain a statement of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963 and, if the juvenile may be subject to that act, the names and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

(bm) *Indian juvenile; notice.* If the person initiating the motion knows or has reason to know that the juvenile is an Indian juvenile who has been found to be in need of protection or services under s. 938.13 (4), (6m), or (7) or who has been adjudged to have violated a civil law or ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), and if the motion is seeking removal of the juvenile from the home of his or her parent or Indian custodian and placement of the juvenile in a place of nonsecure custody specified in par. (d) 1., notice under par. (b) to the Indian juvenile's parent shall be provided in the manner specified in s. 938.028 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian custodian and tribe. No hearing may be held under par. (c) until at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or, if the identity or location of the Indian juvenile's parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

(c) *Sanction hearing.* Before imposing any sanction, the court shall hold a hearing, at which the juvenile is entitled to be represented by legal counsel and to present evidence.

(cm) *Reasonable efforts finding.* The court may not order the sanction of placement in a place of nonsecure custody specified in par. (d) 1. unless the court finds that the agency primarily responsible for providing services for the juvenile has made reasonable efforts to prevent the removal of the juvenile from his or her home and that continued placement of the juvenile in his or her home is contrary to the welfare of the juvenile. These findings are not required if they were made in the dispositional order under which the juvenile is being sanctioned. The court shall make the findings under this paragraph on a case−by−case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which that finding is based in the sanction order. A sanction order that merely references this paragraph without documenting or referencing that specific information in the sanction order or an amended sanction order that retro-

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actively corrects an earlier sanction order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(cr) *Indian juvenile; findings.* In the case of an Indian juvenile who has been found to be in need of protection or services under s. 938.13 (4), (6m), or (7) or who has been adjudged to have violated a civil law or ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), the court may not order the sanction of removal from the home of the Indian juvenile's parent or Indian custodian and placement in a place of nonsecure custody specified in par. (d) 1., unless the court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and the court finds that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful. These findings are not required if they were made in the dispositional order under which the juvenile is being sanctioned. The findings under this paragraph shall be in addition to the findings under par. (cm), except that for the sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under this paragraph and the findings under par. (cm) shall be considered to be the same findings.

(d) *Sanctions permitted.* If the court finds by a preponderance of the evidence that the juvenile has violated a condition of his or her dispositional order, the court may order any of the following sanctions as a consequence for any incident in which the juvenile has violated one or more conditions of his or her dispositional order:

1. Placement of the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody, for not more than 10 days and the provision of educational services consistent with his or her current course of study during the period of placement. The juvenile shall be given credit against the period of detention or nonsecure custody imposed under this subdivision for all time spent in secure detention in connection with the course of conduct for which the detention or nonsecure custody was imposed. If the court orders placement of the juvenile in a place of nonsecure custody under the supervision of the county department, the court shall order the juvenile into the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and shall assign the county department primary responsibility for providing services to the juvenile.

2. Suspension of or limitation on the use of the juvenile's operating privilege, as defined under s. 340.01 (40), or of any approval issued under ch. 29 for a period of not more than 3 years. If the juvenile does not hold a valid operator's license under ch. 343, other than an instruction permit under s. 343.07 or a restricted license under s. 343.08, on the date of the order issued under this subdivision, the court may order the suspension to begin on the date on which the juvenile is first eligible for issuance or reinstatement of an operator's license under ch. 343. If the court suspends the juvenile's operating privileges or an approval issued under ch. 29, the court shall immediately take possession of the suspended approval and may take possession of, and if possession is taken, shall destroy, the suspended license. The court shall forward to the department that issued the license or approval the notice of suspension, together with any approval of which the court takes possession.

3. Detention in the juvenile's home or current residence for a period of not more than 30 days under rules of supervision specified in the order. An order under this subdivision may require the juvenile to be monitored by an electronic monitoring system.

4. Not more than 25 hours of uncompensated participation in a supervised work program or other community service work under s. 938.34 (5g).

5. Participation after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, in the social, behavioral, academic, community service, and other programming of a youth report center. Subdivision 4. and s. 938.34 (5g) apply to any community service work performed by a juvenile under this subdivision.

(e) *Contempt of court.* This subsection does not preclude a person who is aggrieved by a juvenile's violation of a condition specified in sub. (2) (b) 7. from proceeding against the juvenile for contempt of court under ch. 785.

(6d) SHORT−TERM DETENTION. (a) *Violation of delinquency order.* 1. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile who has been adjudged delinquent violates a condition specified in sub. (2) (b) 7., the juvenile's caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours while the alleged violation and the appropriateness of a sanction under sub. (6) are being investigated. Short−term detention may be imposed under this subdivision only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement.

2. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile who has been adjudged delinquent violates a condition specified in sub. (2) (b) 7., the juvenile's caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours as a consequence of that violation. Short−term detention may be imposed under this subdivision only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement. A person who takes a juvenile into custody under this subdivision shall permit the juvenile to make a written or oral statement concerning the possible placement of the juvenile and the course of conduct for which the juvenile was taken into custody. A person designated by the court or county department who is employed in a supervisory position by a person authorized to provide or providing intake or dispositional services under s. 938.067 or 938.069 shall review that statement and either approve the placement, modify the terms of the placement, or order the juvenile to be released from custody.

3. A juvenile may be taken into and held in custody under both subds. 1. and 2. in connection with the same course of conduct, except that no juvenile may be held in custody for more than a total of 72 hours under subds. 1. and 2. in connection with the same course of conduct unless the juvenile receives a hearing under par. (d).

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4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile who has been adjudged delinquent and who has violated a condition specified in sub. (2) (b) 7. from being taken into and held in custody under ss. 938.19 to 938.21.

(b) *Violation of condition of county aftercare supervision.* 1. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) or (2), to any policies adopted by the county department relating to aftercare supervision administered by the county department, and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile who is on aftercare supervision administered by the county department violates a condition of that supervision, the juvenile's caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours while the alleged violation and the appropriateness of revoking the juvenile's aftercare status are being investigated. Short−term detention may be imposed under this subdivision only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement.

2. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) or (2), to any policies adopted by the county department relating to aftercare supervision administered by the county department, and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile who is on aftercare supervision administered by the county department violates a condition of that supervision, the juvenile's caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours as a consequence of that violation. Short−term detention under this subdivision may be imposed only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement. A person who takes a juvenile into custody under this subdivision shall permit the juvenile to make a written or oral statement concerning the possible placement of the juvenile and the course of conduct for which the juvenile was taken into custody. A person designated by the court or the county department who is employed in a supervisory position by a person authorized to provide or providing intake or dispositional services under s. 938.067 or 938.069 shall review that statement and either approve the placement of the juvenile, modify the terms of the placement, or order the juvenile to be released from custody.

3. A juvenile may be taken into and held in custody under both subds. 1. and 2. in connection with the same course of conduct, except that no juvenile may be held in custody for more than a total of 72 hours under subds. 1. and 2. in connection with the same course of conduct unless the juvenile receives a hearing under par. (d).

4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile who has violated a condition of aftercare supervision administered by a county department from being taken into and held in custody under ss. 938.19 to 938.21.

(c) *Violation of protection or services order.* 1. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile who has been found to be in need of protection or services under s. 938.13 violates a condition specified in sub. (2) (b) 7., the juvenile's caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a place of nonsecure custody designated by that person for not more than 72 hours while the alleged violation and the appropriateness of a sanction under sub. (6) or (6m) are being investigated. Short−term detention may be imposed under this subdivision only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement.

2. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile who has been found to be in need of protection or services under s. 938.13 violates a condition specified in sub. (2) (b) 7., the juvenile's caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a place of nonsecure custody designated by that person for not more than 72 hours as a consequence of that violation. Short−term detention may be imposed under this subdivision only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement. A person who takes a juvenile into custody under this subdivision shall permit the juvenile to make a written or oral statement concerning the possible placement of the juvenile and the course of conduct for which the juvenile was taken into custody. A person designated by the court or the county department who is employed in a supervisory position by a person authorized to provide or providing intake or dispositional services under s. 938.067 or 938.069 shall review that statement and either approve the placement, modify the terms of the placement, or order the juvenile to be released from custody.

3. A juvenile may be taken into and held in custody under both subds. 1. and 2. in connection with the same course of conduct, except that no juvenile may be held in custody for more than a total of 72 hours under subds. 1. and 2. in connection with the same course of conduct unless the juvenile receives a hearing under par. (d).

4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile who has been found to be in need of protection or services and who has violated a condition specified in sub. (2) (b) 7. from being taken into and held in custody under ss. 938.19 to 938.21.

(d) *Hearing; when required.* If a juvenile is held under par. (a), (b), or (c) in a juvenile detention facility, juvenile portion of a county jail, or place of nonsecure custody for longer than 72 hours, the juvenile is entitled to a hearing under sub. (6) (c) or s. 938.21. The hearing shall be conducted in the manner provided in sub. (6) or s. 938.21, except that, notwithstanding s. 938.21 (1) (a), the hearing shall be conducted within 72 hours, rather than 24 hours, after the time that the decision to hold the juvenile was

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made and a written statement of the reasons for continuing to hold the juvenile in custody may be filed instead of a petition under s. 938.25.

(e) *County board authorization required.* The use of placement in a juvenile detention facility or in a juvenile portion of a county jail as a place of short−term detention under par. (a) 1. or 2. or (b) 1. or 2. is subject to the adoption of a resolution by the county board of supervisors under s. 938.06 (5) authorizing the use of those placements as places of short−term detention under par. (a) 1. or 2. or (b) 1. or 2.

(6g) CONTEMPT FOR CONTINUED VIOLATION OF ORDER. (a) If a juvenile upon whom the court has imposed a sanction under sub. (6) (a) or (6m) commits a 2nd or subsequent violation of a condition specified in sub. (2) (b) 7., the district attorney may file a petition under s. 938.12 charging the juvenile with contempt of court, as defined in s. 785.01 (1), and reciting the recommended disposition under s. 938.34. The district attorney may file the petition on his or her own initiative or on the request of the court that imposed the condition specified in sub. (2) (b) 7. or that imposed the sanction under sub. (6) (a) or (6m). If the district attorney files the petition on the request of the court that imposed the condition specified in sub. (2) (b) 7. or that imposed the sanction under sub. (6) (a) or (6m), that court is disqualified from holding a hearing on the contempt petition.

(b) The court may find a juvenile in contempt of court, as defined in s. 785.01 (1), and order a disposition under s. 938.34 if the court makes all of the following findings:

1. That the juvenile has previously been sanctioned under sub. (6) (a) or (6m) for violating a condition specified in sub. (2) (b) 7. and, subsequent to that sanction, has committed another violation of a condition specified in sub. (2) (b) 7.

2. That at the sanction hearing the court explained the conditions to the juvenile and informed the juvenile of a possible finding of contempt for a violation and the possible consequences of that contempt.

3. That the violation is egregious.

4. That the court has considered less restrictive alternatives and found them to be ineffective.

(c) This subsection does not preclude a person who is aggrieved by a juvenile's violation of a condition specified in sub. (2) (b) 7. from proceeding against the juvenile for contempt of court under ch. 785.

(6m) SANCTIONS FOR VIOLATION OF ORDER: TRUANCY OR HABITUAL TRUANCY. (a) *Violation of habitual truancy order.* If the court finds by a preponderance of the evidence that a juvenile who has been found to have violated a municipal ordinance enacted under s. 118.163 (2) or who has been found to be in need of protection or services under s. 938.13 (6) has violated a condition specified under sub. (2) (b) 7., the court may order as a sanction any combination of the sanctions under subds.1g. to 4. and the dispositions under s. 938.342 (1g) (d) to (j) and (1m), regardless of whether the disposition was imposed in the order violated by the juvenile. A sanction may be imposed under this paragraph only if at the dispositional hearing under s. 938.335 the court explained those conditions to the juvenile and informed the juvenile of the possible sanctions under this paragraph for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions. The court may order as a sanction under this paragraph any of the following:

1g. Placement of the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody, for not more than 10 days and the provision of educational services consistent with his or her current course of study during the period of placement. The juvenile shall be given credit against the period of detention or nonsecure custody imposed under this subdivision for all time spent in secure detention in connection with the course of conduct for which the detention or nonsecure custody was imposed. The use of placement in a juvenile detention facility or in a juvenile portion of a county jail as a sanction under this subdivision is subject to the adoption of a resolution by the county board of supervisors under s. 938.06 (5) authorizing the use of those placements as a sanction. If the court orders placement of the juvenile in a place of nonsecure custody under the supervision of the county department, the court shall order the juvenile into the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and shall assign the county department primary responsibility for providing services to the juvenile.

1m. Suspension or limitation on the use of the juvenile's operating privilege, as defined under s. 340.01 (40), or of any approval issued under ch. 29 for not more than one year. If the juvenile does not hold a valid operator's license under ch. 343, other than an instruction permit under s. 343.07 or a restricted license under s. 343.08, on the date of the order issued under this subdivision, the court may order the suspension or limitation to begin on the date on which the juvenile is first eligible for issuance or reinstatement of an operator's license under ch. 343. If the court suspends a juvenile's operating privilege or an approval issued under ch. 29, the court shall immediately take possession of the suspended approval and may take possession of, and if possession is taken, shall destroy, the suspended license. The court shall forward to the department that issued the license or approval a notice stating the reason for and the duration of the suspension, together with any approval of which the court takes possession.

2. Counseling or participation for not more than 25 hours in a supervised work program or other community service work under s. 938.34 (5g).

3. Detention in the juvenile's home or current residence for a period of not more than 30 days except during hours in which the juvenile is attending religious worship or a school program, including travel time required to get to and from the place of worship or school program. The order may permit a juvenile to leave his or her home or current residence if he or she is accompanied by a parent or guardian.

4. Participation after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, in the social, behavioral, academic, community service, and other programming of a youth report center. Subdivision 2. and s. 938.34 (5g) apply to any community service work performed by a juvenile under this subdivision.

(ag) *Violation of truancy order.* If the court finds by a preponderance of the evidence that a juvenile who has been found to have violated a municipal ordinance enacted under s. 118.163 (1m) has violated a condition specified under sub. (2) (b) 7., the court may order as a sanction any combination of the operating privilege suspension specified in par. (a) and the dispositions specified in s. 938.342 (1g) (b) to (k) and (1m), regardless of whether the disposition was imposed in the order violated by the juvenile. A sanction may be imposed under this paragraph only if at the dispositional hearing under s. 938.335 the court explained those conditions to the juvenile and informed the juvenile of the possible sanctions under this paragraph for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

(am) *Violation of municipal court order.* 1. If a juvenile who has violated a municipal ordinance enacted under s. 118.163 (2) violates a condition of a dispositional order imposed by the municipal court, the municipal court may petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction specified in par. (a) 1g. A sanction may be imposed under this subdivision only if, at the time of the judgment the municipal court explained the conditions to the juvenile and informed the juvenile of that possible sanction or

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if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible sanction and that he or she understands those conditions and that possible sanction. The petition shall contain a statement of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the juvenile may be subject to that act, the names and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

2. If the court assigned to exercise jurisdiction under this chapter and ch. 48 imposes the sanction under par. (a) 1g. on a petition under subd. 1., the court shall order the municipality of the municipal court that filed the petition to pay to the county the cost of providing the sanction imposed under par. (a) 1g.

(b) *Motion for sanction.* A motion for the imposition of a sanction under par. (a) or (ag) may be brought by the person or agency primarily responsible for providing dispositional services to the juvenile, the district attorney, the corporation counsel or the court that entered the dispositional order. If the court initiates the motion, that court is disqualified from holding a hearing on the motion. Notice of the motion shall be given to the juvenile, guardian ad litem, counsel, parent, guardian, legal custodian and all parties present at the original dispositional hearing.

(bm) *Indian juvenile; notice.* If the person initiating the motion knows or has reason to know that the juvenile is an Indian juvenile who has been found to be in need of protection or services under s. 938.13 (6) or who has been adjudged to have violated an ordinance enacted under s. 118.163 (2), and if the motion is seeking removal of the juvenile from the home of his or her parent or Indian custodian and placement in a place of nonsecure custody specified in par. (a) 1g., notice under par. (b) to the Indian juvenile's parent shall be provided in the manner specified in s. 938.028 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian custodian and tribe. No hearing may be held under par. (c) until at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or, if the identity or location of the Indian juvenile's parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

(c) *Sanction hearing.* Before imposing a sanction under par. (a) or (ag), the court shall hold a hearing at which the juvenile is entitled to be represented by legal counsel and to present evidence. Except as provided in par. (bm), the hearing shall be held within 15 days after the filing of a motion under par. (b).

(cm) *Reasonable efforts finding.* The court may not order the sanction of placement in a place of nonsecure custody under par. (a) 1g. unless the court finds that the agency primarily responsible for providing services for the juvenile has made reasonable efforts to prevent the removal of the juvenile from his or her home and that continued placement of the juvenile in his or her home is contrary to the welfare of the juvenile. The court shall make the findings under this paragraph on a case−by−case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which that finding is based in the sanction order. A sanction order that merely references this paragraph without documenting or referencing that specific information in the sanction order or an amended sanction order that retroactively corrects an earlier sanction order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(cr) *Indian juvenile; findings.* In the case of an Indian juvenile who has been found to be in need of protection or services under s. 938.13 (6) or who has been adjudged to have violated an ordinance enacted under s. 118.163 (2), the court may not order the sanction of removal from the home of the Indian juvenile's parent or Indian custodian and placement in a place of nonsecure custody specified in par. (a) 1g., unless the court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and the court finds that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful. These findings are not required if they were made in the dispositional order under which the juvenile is being sanctioned. The findings under this paragraph shall be in addition to the findings under par. (cm), except that for the sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under this paragraph and the findings under par. (cm) shall be considered to be the same findings.

(7) ORDERS APPLICABLE TO PARENTS, GUARDIANS, LEGAL CUSTODIANS, AND OTHER ADULTS. In addition to any dispositional order entered under s. 938.34 or 938.345, the court may enter an order applicable to a juvenile's parent, guardian, or legal custodian or to another adult, as provided under s. 938.45.

History: 1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 252; 1999 a. 9, 32, 103; 2001 a. 16, 69, 109; 2003 a. 50; 2005 a. 277, 344; 2007 a. 20, 97; 2009 a. 28, 79, 94, 103, 180, 185, 302; 2011 a. 181, 258; s. 13.92 (2) (i).

Mandatory time limits affect the trial court's competency to act, but an objection must be raised before the trial court to avoid waiver. In Interest of L.M.C. 146 Wis. 2d 377, 430 N.W.2d 352 (Ct. App. 1988).

Section 118.16 (5) does not limit a court's discretion in setting school attendance requirements in a dispositional order for a delinquent juvenile and in imposing sanctions when the order is violated. By its terms, s. 118.16 (5) is limited to children who are in need of protection and services as a result of being habitual truants. State v. Jason R.N. 201 Wis. 2d 646, 549 N.W.2d 752 (Ct. App. 1996), 95−1728.

There is no requirement that the court apply the sanctions in sub. (6) (d) in graduated order of severity. Sanctions are solely within the discretion of the court. State v. Jason R.N. 201 Wis. 2d 646, 549 N.W.2d 752 (Ct. App. 1996), 95−1728.

Sanctions for a violation of a dispositional order by a delinquent were found to not be punitive for purposes of double jeopardy. Craig S.G. v. State, 209 Wis. 2d 65, 561 N.W.2d 807 (Ct. App. 1997), 96−0761.

NOTE: The above annotations cite to s. 48.355, the predecessor statute to s. 938.355.

All juveniles who violate a condition of a dispositional order are subject to sanctions under sub. (6) (d), but the restrictions that may be imposed on habitual truants are limited by sub. (6m). Under sub. (6g), no juvenile can be charged with contempt of court for the first violation of a dispositional order. State v. Aaron D. 214 Wis. 2d 56, 571 N.W.2d 399 (Ct. App. 1997), 97−0806.

The one−year limitation in sub. (4) is not limited to the original dispositional order but also applies to subsequent proceedings in the case including revisions of the dispositional order. State v. Kendall G. 2001 WI App 95, 243 Wis. 2d 67, 625 N.W.2d 918, 00−3240.

Sub. (6) (a) requires that the court assure that the juvenile has the ability to comprehend the conditions of a dispositional order and potential sanctions whether informed of them at the dispositional hearing or a later time. Once the issue of the juvenile's ability to understand the conditions and sanctions is raised, the burden shifts to the prosecution to establish that the juvenile is capable of understanding the court's warnings. State v. Eugene W. 2002 WI App 54, 251 Wis. 2d 259, 641 N.W.2d 467, 01−2274.

The focus of sub. (4) (a) is not on the juvenile's seventeenth birthday. The critical phrase is "original dispositional order." There is a critical distinction between an original dispositional order and an extended or revised dispositional order. State v. Terry T. 2003 WI App 21, 259 Wis. 2d 339, 657 N.W.2d 97, 02−2502.

Sub. (6) (d) recognizes that multiple conditions may be violated in any one incident but only allows one sanction per incident, not per condition violation. What constitutes an incident is determined by whether the juvenile's course of conduct is marked by different and distinct volitional acts in between which the juvenile had sufficient time to reflect and choose to commit himself or herself to a particular act. State v. Ellis H. 2004 WI App 123, 274 Wis. 2d 703, 684 N.W.2d 157, 03−3178.

Section 938.355 provides a variety of sanctions for juveniles who have violated their dispositional orders. Section 938.357 enumerates the ways in which a juvenile's placement may be changed. Nothing in either statute indicates that it is to be the exclusive mechanism for violation of a disposition order. Section 938.34 (16) specifically allows an alternative procedure for dealing with violations of a disposition order when part of the disposition is imposed and stayed. State v. Richard J. D. 2006 WI App 242, 297 Wis. 2d 20, 724 N.W.2d 665, 06−0555.

A circuit court judge hearing a municipal truancy case is acting as a juvenile court and the case is governed by ch. 938. The court lacks statutory authority to order sanctions if the court never enters written dispositional orders that could serve as a basis for sanctions. Under sub. (6m) (ag), a court may sanction a juvenile who has been adjudicated truant if it finds by a preponderance of the evidence that the juvenile violated a condition of a dispositional order. Sub. (2) (b) states that the dispositional order shall be in writing. A court's minutes sheet is not a court order. A court order must be signed by a judge. State v. Dylan S. 2012 WI App 25, 339 Wis. 2d 442, 813 N.W.2d 229, 11−1338.

938.356 Duty of court to warn. (1) ORAL WARNING. Whenever the court orders a juvenile to be placed outside his or her home or denies a parent visitation because the juvenile has been adjudged to be delinquent or to be in need of protection or services

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under s. 938.34, 938.345, 938.357, 938.363, or 938.365 and whenever the court reviews a permanency plan under s. 938.38 (5m), the court shall orally inform the parent or parents who appear in court of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the juvenile to be returned to the home or for the parent to be granted visitation.

(2) WRITTEN WARNING. In addition to the notice required under sub. (1), any written order which places a juvenile outside the home or denies visitation under sub. (1) shall notify the parent or parents of the information specified under sub. (1).

History: 1995 a. 77, 275; 2005 a. 344; 2009 a. 185.

938.357 Change in placement. (1) REQUEST BY PERSON OR AGENCY RESPONSIBLE FOR DISPOSITIONAL ORDER OR DISTRICT ATTORNEY. (a) *Applicable procedures.* The person or agency primarily responsible for implementing the dispositional order or the district attorney may request a change in the placement of the juvenile, whether or not the change requested is authorized in the dispositional order, as provided in par. (am) or (c), whichever is applicable.

(am) *From out−of−home placement.* 1. If the proposed change in placement involves any change in placement other than a change in placement under par. (c), the person or agency primarily responsible for implementing the dispositional order or the district attorney shall cause written notice of the proposed change in placement to be sent to the juvenile, the parent, guardian, and legal custodian of the juvenile, and any foster parent or other physical custodian described in s. 48.62 (2) of the juvenile. If the juvenile is an Indian juvenile who has been removed from the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), written notice shall also be sent to the Indian juvenile's Indian custodian and tribe. The notice shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court.

1g. If the juvenile is an Indian juvenile who has been removed from the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), and if the proposed change in placement would change the Indian juvenile's placement from a placement outside that home to another placement outside that home, a notice under subd. 1. shall also contain a statement as to whether the new placement is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance with that order, specific information showing good cause, as described in s. 938.028 (6) (d), for departing from that order.

2. Any person receiving the notice under subd. 1. or notice of a specific placement under s. 938.355 (2) (b) 2. may obtain a hearing on the matter by filing an objection with the court within 10 days after receipt of the notice. Placements may not be changed until 10 days after that notice is sent to the court unless the parent, guardian, legal custodian, or Indian custodian, the juvenile, if 12 or more years of age, and the juvenile's tribe, if the juvenile is an Indian juvenile who has been removed from the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), sign written waivers of objection, except that changes in placement that were authorized in the dispositional order may be made immediately if notice is given as required under subd. 1. In addition, a hearing is not required for placement changes authorized in the dispositional order except when an objection filed by a person who received notice alleges that new information is available that affects the advisability of the court's dispositional order.

3. If the court changes the juvenile's placement from a placement outside the home to another placement outside the home, the change in placement order shall contain the applicable order under sub. (2v) (a) 1m. and the applicable statement under sub. (2v) (a) 2. If the court changes the placement of an Indian juvenile who has been removed from the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7) from a placement outside that home to another placement outside that home, the change in placement order shall, in addition, comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

(c) *From placement in the home.* 1. If the proposed change in placement would change the placement of a juvenile placed in the home to a placement outside the home, the person or agency primarily responsible for implementing the dispositional order or the district attorney shall submit a request for the change in placement to the court. The request shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court. The request shall also contain specific information showing that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile and, unless any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns.

1m. If the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), and if the proposed change in placement would change the placement of the juvenile from a placement in the home of his or her parent or Indian custodian to a placement outside that home, a request under subd. 1. shall also contain specific information showing that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1., specific information showing that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful, a statement as to whether the new placement is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance with that order, specific information showing good cause, as described in s. 938.028 (6) (d), for departing from that order.

2. The court shall hold a hearing prior to ordering a change in placement requested under subd. 1. At least 3 days prior to the hearing, the court shall provide notice of the hearing, together with a copy of the request for the change in placement, to the juvenile, the parent, guardian, and legal custodian of the juvenile, all parties that are bound by the dispositional order, and, if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe. Subject to subd. 2r., if all parties consent, the court may proceed immediately with the hearing.

2m. If the court changes the juvenile's placement from a placement in the juvenile's home to a placement outside the juvenile's home, the parent, if present at the hearing, shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile, unless that information has previously been provided under this subdivision, sub. (2m) (bm), or s. 938.21 (2) (e) or (3) (f) or 938.335 (6). If the parent does not provide that information at the hearing, the county department or the agency primarily responsible for implementing the dispositional order shall permit the parent to provide the information at a later date.

2r. In a proceeding involving an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), if the proposed change in placement would change the placement of the juvenile from a placement in the home of his or her parent or Indian custodian to a placement outside that home notice under subd. 2. to the Indian juvenile's parent, Indian custodian, and tribe shall be provided in the manner specified in s. 938.028 (4) (a). No

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hearing on the request may be held until at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or, if the identity or location of the Indian juvenile's parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

3. If the court changes the juvenile's placement from a placement in the juvenile's home to a placement outside the juvenile's home, the change in placement order shall contain the findings under sub. (2v) (a) 1., the applicable order under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the determination under sub. (2v) (a) 3. If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the home of his or her parent or Indian custodian to a placement outside that home, the change in placement order shall contain the findings under sub. (2v) (a) 4. and comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

(2) EMERGENCY CHANGE IN PLACEMENT. If emergency conditions necessitate an immediate change in the placement of a juvenile placed outside the home, the person or agency primarily responsible for implementing the dispositional order may remove the juvenile to a new placement, whether or not authorized by the existing dispositional order, without the prior notice under sub. (1) (am) 1. The notice shall be sent within 48 hours after the emergency change in placement. Any party receiving notice may demand a hearing under sub. (1) (am) 2. In emergency situations, a juvenile may be placed in a licensed public or private shelter care facility as a transitional placement for not more than 20 days or in any placement authorized under s. 938.34 (3).

(2m) REQUESTS BY OTHERS. (a) *Request; information required.* The juvenile, the parent, guardian, or legal custodian of the juvenile, any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order, or, if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian may request a change in placement under this paragraph. The request shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement. If the proposed change in placement would change the placement of a juvenile placed in the juvenile's home to a placement outside the home, the request shall also contain specific information showing that continued placement of the juvenile in the juvenile's home would be contrary to the welfare of the juvenile and, unless any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns. The request shall be submitted to the court. The court may also propose a change in placement on its own motion.

(am) *Indian juvenile; information required.* 1. If the proposed change of placement would change the placement of an Indian juvenile placed in the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7) to a placement outside that home, a request under par. (a) shall also contain specific information showing that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1., specific information showing that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful, a statement as to whether the new placement is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance with that order, specific information showing good cause, as described in s. 938.028 (6) (d), for departing from that order.

2. If the proposed change in placement would change the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement outside the home of his or her parent or Indian custodian to another placement outside that home, a request under par. (a) shall also contain a statement as to whether the new placement is in compliance with the order of placement preference under s. 938.028 (6) (a) or if applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance with that order, specific information showing good cause, as described in s. 938.028 (6) (d), for departing from that order.

(b) *Hearing; when required.* The court shall hold a hearing prior to ordering any change in placement requested or proposed under par. (a) if the request states that new information is available that affects the advisability of the current placement. A hearing is not required if the requested or proposed change in placement does not involve a change in placement of a juvenile placed in the juvenile's home to a placement outside the juvenile's home, written waivers of objection to the proposed change in placement are signed by all parties entitled to receive notice under this paragraph, and the court approves. If a hearing is scheduled, not less than 3 days before the hearing the court shall notify the juvenile, the parent, guardian, and legal custodian of the juvenile, any foster parent or other physical custodian described in s. 48.62 (2) of the juvenile, all parties who are bound by the dispositional order, and, if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe. A copy of the request or proposal for the change in placement shall be attached to the notice. Subject to par. (br), if all of the parties consent, the court may proceed immediately with the hearing.

(bm) *Juvenile placed outside the home.* If the court changes the juvenile's placement from a placement in the juvenile's home to a placement outside the juvenile's home, the parent, if present at the hearing, shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile, unless that information has previously been provided under this paragraph, sub. (1) (c) 2m., or s. 938.21 (2) (e) or (3) (f) or 938.335 (6). If the parent does not provide that information at the hearing, the county department or the agency primarily responsible for implementing the dispositional order shall permit the parent to provide the information at a later date.

(br) *Indian juvenile; notice.* If the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), and if the proposed change in placement would change the placement of the Indian juvenile from a placement in the home of his or her parent or Indian custodian to a placement outside that home, notice under par. (b) to the Indian juvenile's parent, Indian custodian, and tribe shall be provided in the manner specified in s. 938.028 (4) (a). No hearing on the request or proposal may be held until at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or, if the identity or location of the Indian juvenile's parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

(c) *Findings required.* 1. If the court changes the juvenile's placement from a placement in the juvenile's home to a placement outside the juvenile's home, the change in placement order shall contain the findings under sub. (2v) (a) 1., the applicable order

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under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the determination under sub. (2v) (a) 3. If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the home of his or her parent or Indian custodian to a placement outside that home, the change in placement order shall, in addition, contain the findings under sub. (2v) (a) 4. and comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

2. If the court changes the juvenile's placement from a placement outside the home to another placement outside the home, the change in placement order shall contain the applicable order under sub. (2v) (a) 1m. and the applicable statement under sub. (2v) (a) 2. If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement outside the home of his or her parent or Indian custodian to another placement outside that home, the change in placement order shall, in addition, comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from the order.

(2r) REMOVAL FROM FOSTER HOME OR PHYSICAL CUSTODIAN. If a hearing is held under sub. (1) (am) 2. or (2m) (b) and the change in placement would remove a juvenile from a foster home or other placement with a physical custodian described in s. 48.62 (2), the court shall give the foster parent or other physical custodian a right to be heard at the hearing by permitting the foster parent or other physical custodian to make a written or oral statement during the hearing or to submit a written statement prior to the hearing relating to the juvenile and the requested change in placement. A foster parent or other physical custodian who receives notice of a hearing under sub. (1) (am) 1. or (2m) (b) and a right to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

(2v) CHANGE−IN−PLACEMENT ORDER. (a) *Contents of order.* A change in placement order under sub. (1) or (2m) shall contain all of the following:

1. If the court changes the juvenile's placement from a placement in the juvenile's home to a placement outside the juvenile's home, a finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile and, unless a circumstance under s. 938.355 (2d) (b) 1. to 4. applies, a finding that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns.

1m. If the change in placement order changes the placement of a juvenile who is under the supervision of the county department to a placement outside the juvenile's home, whether from a placement in the home or from another placement outside the home, an order ordering the juvenile into, or to be continued in, the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and assigning the county department primary responsibility, or continued primary responsibility, for providing services to the juvenile.

2. If the change in placement order would change the placement of the juvenile to a placement outside the home recommended by the person or agency primarily responsible for implementing the dispositional order, whether from a placement in the home or from another placement outside the home, a statement that the court approves the placement recommended by the person or agency. If the change in placement order would change the placement of the juvenile to a placement outside the home that is not a placement recommended by that person or agency, whether from a placement in the home or from another placement outside the home, a statement that the court has given bona fide consideration to the recommendations made by that person or agency and all parties relating to the juvenile's placement.

2m. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have been placed outside the home or for whom a change in placement to a placement outside the home is requested, a finding as to whether the county department or the agency primarily responsible for implementing the dispositional order has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the court determines that a joint placement would be contrary to the safety or well−being of the juvenile or any of those siblings, in which case the court shall order the county department or agency to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court determines that such visitation or interaction would be contrary to the safety or well−being of the juvenile or any of those siblings.

3. If the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, a determination that the agency primarily responsible for providing services under the change in placement order is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home.

4. If the change in placement order changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the home of his or her parent or Indian custodian to a placement outside that home, a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and a finding that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful. The findings under this subdivision shall be in addition to the findings under subd. 1., except that for the sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under this subdivision and the findings under subd. 1. shall be considered to be the same findings. The findings under this subdivision are not required if they were made in a previous order in the proceeding unless a change in circumstances warrants new findings.

(b) *Documentation of basis of findings.* The court shall make the findings under par. (a) 1. and 3. on a case−by−case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the change in placement order. A change in placement order that merely references par. (a) 1. or 3. without documenting or referencing that specific information in the change in placement order or an amended change in placement order that retroactively corrects an earlier change in placement order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(c) *Permanency hearing.* If the court finds under par. (a) 3. that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency goal and, if applicable, any concurrent permanency goals for the juvenile.

NOTE: Par. (c) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(c) *Permanency plan hearing.* If the court finds under par. (a) 3. that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile.

(d) 1. Subject to subd. 2., the court shall order the county department or the agency primarily responsible for implementing the dispositional order to conduct a diligent search in order to locate and provide notice of the information specified in s. 938.21

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(5) (e) 2. a. to e. to all relatives of the juvenile named under sub. (1) (c) 2m. or (2m) (bm) and to all adult relatives, as defined in s. 938.21 (5) (e) 1., of the juvenile within 30 days after the juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned to his or her home within that period. The court may also order the county department or agency to conduct a diligent search in order to locate and provide notice of that information to all other adult individuals named under sub. (1) (c) 2m. or (2m) (bm) within 30 days after the juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned to his or her home within that period. The county department or agency may not provide that notice to a person named under sub. (1) (c) 2m. or (2m) (bm) or to an adult relative if the county department or agency has reason to believe that it would be dangerous to the juvenile or to the parent if the juvenile were placed with that person or adult relative.

2. Subdivision 1. does not apply if the search required under subd. 1. was previously conducted and the notice required under subd. 1. was previously provided under s. 938.21 (5) (e) 2. or 938.355 (2) (cm) 1.

(3) PLACEMENT IN JUVENILE CORRECTIONAL FACILITY. Subject to subs. (4) (b) and (c) and (5) (e), if the proposed change in placement would involve placing a juvenile in a juvenile correctional facility or a secured residential care center for children and youth, notice shall be given as provided in sub. (1) (am) 1. A hearing shall be held, unless waived by the juvenile, parent, guardian, and legal custodian, before the court makes a decision on the request. The juvenile is entitled to counsel at the hearing, and any party opposing or favoring the proposed new placement may present relevant evidence and cross−examine witnesses. The proposed new placement may be approved only if the court finds, on the record, that the conditions set forth in s. 938.34 (4m) have been met.

(4) PLACEMENT WITH DEPARTMENT. (a) When the juvenile is placed with the department, the department may, after an examination under s. 938.50, place the juvenile in a juvenile correctional facility or a secured residential care center for children and youth or on aftercare supervision, either immediately or after a period of placement in a juvenile correctional facility or a secured residential care center for children and youth. The department shall send written notice of the change in placement to the parent, guardian, legal custodian, county department designated under s. 938.34 (4n), if any, and committing court. If the department places a juvenile in a Type 2 juvenile correctional facility operated by a child welfare agency, the department shall reimburse the child welfare agency at the rate established under s. 49.343 that is applicable to the type of placement that the child welfare agency is providing for the juvenile. A juvenile who is placed in a Type 2 juvenile correctional facility or a secured residential care center for children and youth remains under the supervision of the department, remains subject to the rules and discipline of that department, and is considered to be in custody, as defined in s. 946.42 (1) (a).

(b) 1. If a juvenile whom the department has placed in a Type 2 juvenile correctional facility operated by a child welfare agency violates a condition of his or her placement in the Type 2 juvenile correctional facility, the child welfare agency operating the Type 2 juvenile correctional facility shall notify the department and the department, after consulting with the child welfare agency, may place the juvenile in a Type 1 juvenile correctional facility under the supervision of the department, without a hearing under sub. (1) (am) 2.

2. If a juvenile whom the court has placed in a Type 2 residential care center for children and youth under s. 938.34 (4d) violates a condition of his or her placement in the Type 2 residential care center for children and youth, the child welfare agency operating the Type 2 residential care center for children and youth shall notify the county department that has supervision over the juvenile and, if the county department agrees to a change in placement under this subdivision, the child welfare agency shall notify the department, and the department, after consulting with the child welfare agency, may place the juvenile in a Type 1 juvenile correctional facility under the supervision of the department, without a hearing under sub. (1) (am) 2., for not more than 10 days. If a juvenile is placed in a Type 1 juvenile correctional facility under this subdivision, the county department that has supervision over the juvenile shall reimburse the child welfare agency operating the Type 2 residential care center for children and youth in which the juvenile was placed at the rate established under s. 49.343, and that child welfare agency shall reimburse the department at the rate specified in s. 301.26 (4) (d) 2. or 3., whichever is applicable, for the cost of the juvenile's care while placed in a Type 1 juvenile correctional facility.

3. The child welfare agency operating the Type 2 juvenile correctional facility or Type 2 residential care center for children and youth shall send written notice of a change in placement under subd. 1. or 2. to the parent, guardian, legal custodian, county department, and committing court.

4. A juvenile may seek review of a decision of the department under subd. 1. or 2. only by the common law writ of certiorari.

(c) 1. If a juvenile is placed in a Type 2 juvenile correctional facility operated by a child welfare agency under par. (a) and it appears that a less restrictive placement would be appropriate for the juvenile, the department, after consulting with the child welfare agency that is operating the Type 2 juvenile correctional facility, may place the juvenile in a less restrictive placement, and may return the juvenile to the Type 2 juvenile correctional facility without a hearing under sub. (1) (am) 2. The rate for each type of placement shall be established by the department of children and families, in consultation with the department, in the manner provided in s. 49.343.

2. If a juvenile is placed in a Type 2 residential care center for children and youth under s. 938.34 (4d) and it appears that a less restrictive placement would be appropriate for the juvenile, the child welfare agency operating the Type 2 residential care center for children and youth shall notify the county department that has supervision over the juvenile and, if the county department agrees to a change in placement under this subdivision, the child welfare agency may place the juvenile in a less restrictive placement. A child welfare agency may also, with the agreement of the county department that has supervision over a juvenile who is placed in a less restrictive placement under this subdivision, return the juvenile to the Type 2 residential care center for children and youth without a hearing under sub. (1) (am) 2. The rate for each type of placement shall be established by the department of children and families, in consultation with the department, in the manner provided in s. 49.343.

3. The child welfare agency operating the Type 2 juvenile correctional facility or Type 2 residential care center for children and youth shall send written notice of a change in placement under subd. 1. or 2. to the parent, guardian, legal custodian, county department, and committing court.

4. A juvenile may seek review of a decision of the department or county department under subd. 1. or 2. only by the common law writ of certiorari.

(4d) PROHIBITED PLACEMENTS BASED ON HOMICIDE OF PARENT. (a) Except as provided in par. (b), the court may not change a juvenile's placement to a placement in the home of a person who has been convicted of the homicide of a parent of the juvenile under s. 940.01 or 940.05, if the conviction has not been reversed, set aside, or vacated.

(am) Except as provided in par. (b), if a parent in whose home a juvenile is placed is convicted of the homicide of the juvenile's other parent under s. 940.01 or 940.05, and the conviction has not been reversed, set aside, or vacated, the court shall change the juvenile's placement to a placement out of the home of the parent on petition of the juvenile, the guardian or legal custodian of the juvenile, a person or agency bound by the dispositional order, or the district attorney or corporation counsel of the county in which

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the dispositional order was entered, or on the court's own motion with notice to the parent.

(b) Paragraphs (a) and (am) do not apply if the court determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

(4g) AFTERCARE PLAN. (a) Not later than 120 days after the date on which the juvenile is placed in a juvenile correctional facility or a secured residential care center for children and youth, or within 30 days after the date on which the department requests the aftercare plan, whichever is earlier, the aftercare provider designated under s. 938.34 (4n) shall prepare an aftercare plan for the juvenile. If the designated aftercare provider is a county department, that county department shall submit the aftercare plan to the department within the applicable time period specified in this paragraph, unless the department waives the time period under par. (b).

(b) The department may waive the time period within which an aftercare plan must be prepared and submitted under par. (a) if the department anticipates that the juvenile will remain in the juvenile correctional facility or secured residential care center for children and youth for a period exceeding 8 months or if the juvenile is subject to s. 48.366 or 938.183. If the department waives that time period, the designated aftercare provider shall prepare the aftercare plan within 30 days after the date on which the department requests the aftercare plan.

(c) An aftercare plan shall include all of the following:

1. The minimum number of supervisory contacts per week.

2. The conditions, if any, under which the juvenile's aftercare status may be revoked.

3. Services or programming to be provided to the juvenile while on aftercare.

4. The estimated length of time that aftercare supervision and services shall be provided to the juvenile.

(d) A juvenile may be released from a juvenile correctional facility or a secured residential care center for children and youth whether or not an aftercare plan has been prepared under this subsection.

(4m) RELEASE TO AFTERCARE SUPERVISION. The department shall try to release a juvenile to aftercare supervision under sub. (4) within 30 days after the date the department determines the juvenile is eligible for the release.

(5) REVOCATION OF AFTERCARE SUPERVISION. (a) The department or a county department, whichever has been designated as a juvenile's aftercare provider, may revoke the aftercare status of that juvenile. Prior notice of a change in placement under sub. (1) (am) 1. is not required.

(b) A juvenile on aftercare status may be taken into custody only as provided in ss. 938.19 to 938.21 and 938.355 (6d) (b).

(c) The juvenile is entitled to representation by counsel at all stages of the revocation proceeding.

(d) A hearing on the revocation shall be conducted by the division of hearings and appeals in the department of administration within 30 days after the juvenile is taken into custody for an alleged violation of a condition of the juvenile's aftercare supervision. This time period may be waived only upon the agreement of the aftercare provider, the juvenile, and the juvenile's counsel.

(e) If the hearing examiner finds that the juvenile has violated a condition of aftercare supervision, the hearing examiner shall determine whether confinement in a juvenile correctional facility or a secured residential care center for children and youth is necessary to protect the public, to provide for the juvenile's rehabilitation, or to not depreciate the seriousness of the violation.

(f) Review of a revocation decision shall be by certiorari to the court that placed the juvenile in the juvenile correctional facility or secured residential care center for children and youth.

(g) The department shall promulgate rules setting standards to be used by a hearing examiner to determine whether to revoke a juvenile's aftercare status. The standards shall specify that the burden is on the department or county department seeking revocation to show by a preponderance of the evidence that the juvenile violated a condition of aftercare supervision.

(5m) CHILD SUPPORT. (a) If a proposed change in placement would change a juvenile's placement from a placement in the juvenile's home to a placement outside the juvenile's home, the court shall order the juvenile's parent to provide a statement of the income, assets, debts, and living expenses of the juvenile and the juvenile's parent to the court or the person or agency primarily responsible for implementing the dispositional order by a date specified by the court. The clerk of court shall provide, without charge, to any parent ordered to provide that statement a document setting forth the percentage standard established by the department of children and families under s. 49.22 (9) and listing the factors under s. 301.12 (14) (c). If the juvenile is placed outside the juvenile's home, the court shall determine the liability of the parent in the manner provided in s. 301.12 (14).

(b) If the court orders the juvenile's parent to provide a statement of the income, assets, debts, and living expenses of the juvenile and juvenile's parent to the court or if the court orders the juvenile's parent to provide that statement to the person or agency primarily responsible for implementing the dispositional order and that person or agency is not the county department, the court shall also order the juvenile's parent to provide that statement to the county department by a date specified by the court. The county department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the juvenile.

(6) DURATION OF ORDER. No change in placement may extend the expiration date of the original order, except that if the change in placement is from a placement in the juvenile's home to a placement in a foster home, group home, or residential care center for children and youth or in the home of a relative who is not a parent, the court may extend the expiration date of the original order to the date on which the juvenile attains 18 years of age, to the date that is one year after the date of the change in placement order, or, if the juvenile is a full−time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before attaining 19 years of age, to the date on which the juvenile attains 19 years of age, whichever is later, or for a shorter period of time as specified by the court. If the change in placement is from a placement in a foster home, group home, or residential care center for children and youth or in the home of a relative to a placement in the juvenile's home and if the expiration date of the original order is more than one year after the date of the change in placement order, the court shall shorten the expiration date of the original order to the date that is one year after the date of the change in placement order or to an earlier date as specified by the court.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103; 2001 a. 16, 103, 109; 2005 a. 344; 2007 a. 20, 199; 2009 a. 28, 79, 94; 2011 a. 181, 258.

Cross−reference: See also ch. DOC 393, Wis. adm. code.

Section 938.355 provides a variety of sanctions for juveniles who have violated their dispositional orders. Section 938.357 enumerates the ways in which a juvenile's placement may be changed. Nothing in either statute indicates that it is to be the exclusive mechanism for violation of a disposition order. Section 938.34 (16) specifically allows an alternative procedure for dealing with violations of a disposition order when part of the disposition is imposed and stayed. State v. Richard J. D. 2006 WI App 242, 297 Wis. 2d 20, 724 N.W.2d 665, 06−0555.

938.358 Trial reunification. (1) DEFINITION. In this section:

(a) "Trial reunification" means a period of 7 consecutive days or longer, but not exceeding 150 days, during which a juvenile

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who is placed in an out−of−home placement under s. 938.355 or 938.357 resides in the home of a relative of the juvenile from which the juvenile was removed or in the home of either of the juvenile's parents for the purpose of determining the appropriateness of changing the placement of the juvenile to that home.

(b) "Trial reunification home" means the home in which a juvenile resides during a trial reunification.

(2) TRIAL REUNIFICATION; PROCEDURE. (a) *Request or proposal.* No trial reunification may occur without a court order. Only the person or agency primarily responsible for implementing the dispositional order may request the court to order a trial reunification. The request shall contain the name and address of the requested trial reunification home, a statement describing why the trial reunification is in the best interests of the juvenile, and a statement describing how the trial reunification satisfies the objectives of the juvenile's permanency plan. A request for a trial reunification may not be made on the sole grounds that an emergency condition necessitates an immediate removal of the juvenile from his or her out−of−home placement. If an emergency condition necessitates such an immediate removal, the person or agency primarily responsible for implementing the dispositional order shall proceed as provided in s. 938.357 (2).

(b) *Notice; information required.* The person or agency requesting the trial reunification shall submit the request to the court and shall cause written notice of the requested trial reunification to be sent to the juvenile, the parent, guardian, and legal custodian of the juvenile, any foster parent or other physical custodian described in s. 48.62 (2) of the juvenile, all parties who are bound by the dispositional order, and, if the juvenile is an Indian juvenile who has been removed from the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe. The notice shall contain the information that is required to be included in the request under par. (a).

(c) *Hearing; when required.* Any person receiving notice of a requested trial reunification under par. (b) may obtain a hearing on the matter by filing an objection with the court within 10 days after the request was filed with the court. If an objection is filed, a hearing shall be held within 30 days after the request was filed with the court. Not less than 3 days before the hearing the person or agency requesting the trial reunification or the court shall provide notice of the hearing to all persons who are entitled to receive notice under par. (b). A copy of the request for the trial reunification shall be attached to the notice. If all of the parties consent, the court may proceed immediately with the hearing.

(d) *Order.* If the court finds that the trial reunification is in the best interests of the juvenile and that the trial reunification satisfies the objectives of the juvenile's permanency plan, the court shall order the trial reunification. A trial reunification shall terminate 90 days after the date of the order, unless the court specifies a shorter period in the order, extends the trial reunification under sub. (3), or revokes the trial reunification under sub. (4) (c) or (6) (b). No trial reunification order may extend the expiration date of the original dispositional order under s. 938.355 or any extension order under s. 938.365. A trial reunification under this section is not a change in placement under s. 938.357. Unless revoked under sub. (4) (c) or (6) (b), at the end of a trial reunification, the person or agency primarily responsible for implementing the dispositional order shall do one of the following:

1. Return the juvenile to his or her previous out−of−home placement. The person or agency may do so without further order of the court, but within 5 days after the return the person or agency shall provide notice of the date of the return and the address of that placement to all persons who are entitled to receive notice under par. (b).

2. Request a change in placement under s. 938.357 to place the juvenile in a new out−of−home placement.

3. Request a change in placement under s. 938.357 to place the juvenile in the trial reunification home.

(3) EXTENSION OF TRIAL REUNIFICATION. (a) *Extension request.* The person or agency primarily responsible for implementing the dispositional order may request an extension of a trial reunification. The request shall contain a statement describing how the trial reunification continues to be in the best interests of the juvenile. No later than 10 days prior to the expiration of the trial reunification, the person or agency that requests the extension shall submit the request to the court that ordered the trial reunification and shall cause notice of the request to be provided to all persons who are entitled to receive notice under sub. (2) (b).

(b) *Extension hearing; when required.* Any person who is entitled to receive notice of the extension request under par. (a) may obtain a hearing on the matter by filing an objection with the court within 10 days after the request was filed with the court. If an objection is filed, the court shall schedule a hearing on the matter. If the court is unable to conduct a hearing on the matter before the trial reunification expires, the court may extend the trial reunification for not more than 30 days without a hearing. If a hearing is scheduled, not less than 3 days before the hearing the person or agency requesting the extension or the court shall provide notice of the hearing to all persons who are entitled to receive notice of the extension request under par. (a). A copy of the request for the extension shall be attached to the notice. If all of the parties consent, the court may proceed immediately with the hearing.

(c) *Extension order.* If the court finds that the trial reunification continues to be in the best interests of the juvenile, the court shall grant an order extending the trial reunification for a period specified by the court. Any number of extensions may be granted, but the total period for a trial reunification may not exceed 150 days.

(4) REVOCATION OF TRIAL REUNIFICATION. (a) *Revocation request; information required.* 1. If the person or agency primarily responsible for implementing the dispositional order determines based on current circumstances that a trial reunification is no longer in the best interests of the juvenile, that person or agency may, without prior court order, remove the juvenile from the trial reunification home and place the juvenile in the juvenile's previous out−of−home placement as provided in subd. 2. or place the juvenile in a new out−of−home placement as provided in subd. 3.

2. If the person or agency primarily responsible for implementing the dispositional order places the juvenile in the juvenile's previous out−of−home placement, within 3 days after removing the juvenile from the trial reunification home, that person or agency shall submit a request for revocation of the trial reunification to the court that ordered the trial reunification and shall cause notice of the request to be provided to all persons who are entitled to receive notice of the trial reunification under sub. (2) (b). The request shall contain the date on which the juvenile was removed from the trial reunification home, the address of the juvenile's current placement, and the reasons for the proposed revocation. Paragraphs (b) and (c) apply to a request for revocation submitted under this subdivision.

3. If the person or agency primarily responsible for implementing the dispositional order places the juvenile in a new out−of−home placement, within 3 days after removing the juvenile from the trial reunification home, that person or agency shall request a change in placement under s. 938.357 (1) (am). The procedures specified in s. 938.357 relating to a change in placement under s. 938.357 (1) (am) apply to a change in placement requested under this subdivision, except that the request shall include the date on which the juvenile was removed from the trial reunification home in addition to the information required under s. 938.357 (1) (am) 1., and the trial reunification is revoked when the change in placement order is granted.

(b) *Revocation hearing; when required.* Any person who is entitled to receive notice of a revocation request under par. (a) 2. may obtain a hearing on the matter by filing an objection with the court within 10 days after the request is filed with the court. If a hearing is scheduled, not less than 3 days prior to the hearing the court shall provide notice of the hearing, together with a copy of

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the request for the revocation, to all persons who are entitled to receive notice under par. (a) 2. If all parties consent, the court may proceed immediately with the hearing.

(c) *Revocation order.* If the court finds that the trial reunification is no longer in the best interests of a juvenile who has been placed in his or her previous out−of−home placement under par. (a) 1., the court shall grant an order revoking the trial reunification.

(5) REMOVAL FROM FOSTER HOME OR OTHER PHYSICAL CUSTODIAN. If a hearing is held under sub. (2) (c) and the trial reunification would remove a juvenile from a foster home or other placement with a physical custodian described in s. 48.62 (2), the court shall give the foster parent or other physical custodian a right to be heard at the hearing by permitting the foster parent or other physical custodian to make a written or oral statement during the hearing or to submit a written statement prior to the hearing relating to the juvenile and the requested trial reunification. A foster parent or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under sub. (2) (c) and a right to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

(6) PROHIBITED TRIAL REUNIFICATIONS BASED ON HOMICIDE OF PARENT. (a) *Prohibition.* Except as provided in par. (c), the court may not order a trial reunification in the home of a person who has been convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of a parent of the juvenile, if the conviction has not been reversed, set aside, or vacated.

(b) *Revocation.* Except as provided in par. (c), if a parent in whose home a juvenile is placed for a trial reunification is convicted under s. 940.01 of the first−degree intentional homicide, or under s. 940.05 of the 2nd−degree intentional homicide, of the juvenile's other parent, and the conviction has not been reversed, set aside, or vacated, the court shall revoke the trial reunification and the juvenile shall be returned to his or her previous out−of−home placement or, pursuant to s. 938.357, placed in a new out−of−home placement.

(c) *Exception.* Paragraphs (a) and (b) do not apply if the court determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

NOTE: This section is created eff. 11−1−12 by 2011 Wis. Act 181.

History: 2011 a. 181.

938.36 Payment for services. (1) RESIDENTIAL SERVICES; PARENTAL DUTY TO SUPPORT. (a) If legal custody is transferred from the parent or guardian or the court otherwise designates an alternative placement for the juvenile by a disposition made under s. 938.183, 938.34 or 938.345 or by a change in placement under s. 938.357, the duty of the parent or guardian to provide support shall continue even though the legal custodian or the placement designee may provide the support. A copy of the order transferring custody or designating alternative placement for the juvenile shall be submitted to the agency or person receiving custody or placement and the agency or person may apply to the court for an order to compel the parent or guardian to provide the support. Support payments for residential services, when purchased or otherwise funded or provided by the department of corrections, or a county department under s. 46.215, 46.22 or 46.23, shall be determined under s. 301.12 (14). Support payments for residential services, when purchased or otherwise funded by the department of health services, or a county department under s. 51.42 or 51.437, shall be determined under s. 46.10 (14).

(b) In determining the amount of support under par. (a), the court may consider all relevant financial information or other information relevant to the parent's earning capacity, including information reported under s. 49.22 (2m) to the department of children and families, or the county child support agency, under s. 59.53 (5). If the court has insufficient information with which to determine the amount of support, the court shall order the juvenile's parent to furnish a statement of the income, assets, debts, and living expenses of the juvenile and the juvenile's parent, if the parent has not already done so, to the court within 10 days after the court's order transferring custody or designating an alternative placement is entered or at such other time as ordered by the court.

(2) SERVICES OR TREATMENT; COUNTY PAYMENT; PARENTAL CONTRIBUTION. If a juvenile whose legal custody has not been taken from a parent or guardian is given educational and social services, or medical, psychological, or psychiatric treatment by order of the court, the court may order the county to pay for those services or treatment. This section does not prevent recovery of reasonable contribution toward the costs from the parent or guardian of the juvenile as the court may order based on the ability of the parent or guardian to pay. This subsection is subject to s. 301.03 (18).

(3) SERVICES PROVIDED BY SCHOOL DISTRICT. In determining county liability, this section does not apply to services specified in ch. 115.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77; 1997 a. 27, 35, 237, 252; 2005 a. 344; 2007 a. 20 s. 3823, 9121 (6) (a).

938.361 Payment for alcohol and other drug abuse services. (1) DEFINITIONS. In this section:

(a) "Alcohol and other drug abuse services" means all of the following:

1. Any alcohol or other drug abuse examination or assessment ordered under s. 938.295 (1), 938.34 (14s) (b) 1., 938.343 (10) (a) or 938.344 (2g) (a) 1.

2. Any special treatment or care that relates to alcohol or other drug abuse services ordered under s. 938.34 (6) (a) or (am).

3. Any alcohol or other drug abuse treatment or education ordered by a court under s. 938.32 (1g) or 938.34 (6) (a) or (am), (6r), or (14s) (b) 1. or 2.; or made available to a juvenile under 938.34 (3) (f) 4.

(b) "Municipality" means a city, village or town.

(2) PAYMENT BY PARENT OR INSURER. (a) 1. If a juvenile's parent neglects, refuses or is unable to provide alcohol and other drug abuse services for the juvenile through his or her health insurance or other 3rd−party payments, notwithstanding s. 938.36 (3) the court assigned to exercise jurisdiction under this chapter and ch. 48 or municipal court may order the parent to pay for the alcohol and drug abuse services. If the parent consents to provide alcohol and other drug abuse services for a juvenile through his or her health insurance or other 3rd−party payments but the health insurance provider or other 3rd−party payer refuses to provide the alcohol and other drug abuse services the court assigned to exercise jurisdiction under this chapter and ch. 48 or municipal court may order the health insurance provider or 3rd−party payer to pay for the alcohol and other drug abuse services in accordance with the terms of the parent's health insurance policy or other 3rd−party payment plan.

2. This paragraph applies to payment for alcohol and other drug abuse services in any county, including pilot counties under s. 938.547.

(am) 1. If a court assigned to exercise jurisdiction under this chapter and ch. 48 in a pilot county under s. 938.547 finds that payment cannot be attained under par. (a), the court may order payment under par. (b).

2. If a court assigned to exercise jurisdiction under this chapter and ch. 48 in a county that is not a pilot county under s. 938.547 finds that payment cannot be attained under par. (a), the court may order payment under s. 938.34 (6) (ar) or 938.36.

3. If a municipal court finds that payment cannot be attained under par. (a), the municipal court may order the municipality over which the municipal court has jurisdiction to pay for any alcohol and other drug abuse services ordered by the municipal court.

(b) 1. In pilot counties under s. 938.547, in addition to ordering payment under par. (a), the court assigned to exercise jurisdiction

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under this chapter and ch. 48 may order a county department of human services established under s. 46.23 or a county department established under s. 51.42 or 51.437 in the juvenile's county of legal residence to pay for the alcohol and other drug abuse services whether or not custody has been taken from the parent.

2. If a court orders a county department established under s. 51.42 or 51.437 to provide alcohol and other drug abuse services under this paragraph, the provision of the service is subject to conditions specified in ch. 51.

(c) Payment for alcohol and other drug abuse services by a county department or municipality under this section does not prohibit the county department or municipality from contracting with another county department, municipality, school district, or approved treatment facility for the provision of alcohol and other drug abuse services. Payment by the county or municipality under this section does not prevent recovery of reasonable contribution toward the costs of the court−ordered alcohol and other drug abuse services from the parent based upon the ability of the parent to pay. This subsection is subject to s. 46.03 (18).

History: 1995 a. 77, 275; 2005 a. 344; 2011 a. 32.

938.362 Payment for certain special treatment or care services. (1) DEFINITION. In this section, "special treatment or care" has the meaning given in s. 938.02 (17m), except that it does not include alcohol and other drug abuse services.

(2) APPLICABILITY. This section applies to the payment of court−ordered special treatment or care under s. 938.34 (6) (a) or (am), whether or not custody has been taken from the parent.

(3) PAYMENT BY PARENT OR INSURER. If a juvenile's parent neglects, refuses, or is unable to provide court−ordered special treatment or care for the juvenile through his or her health insurance or other 3rd−party payments, notwithstanding s. 938.36 (3), the court may order the parent to pay for the court−ordered special treatment or care. If the parent consents to provide court−ordered special treatment or care for a juvenile through his or her health insurance or other 3rd−party payments but the health insurance provider or other 3rd−party payer refuses to provide the special treatment or care, the court may order the health insurance provider or 3rd−party payer to pay for the special treatment or care in accordance with the terms of the parent's health insurance policy or other 3rd−party payment plan.

(4) PAYMENT BY COUNTY DEPARTMENT. (a) If the court finds that payment cannot be attained under sub. (3), the court may order the county department under s. 51.42 or 51.437 of the juvenile's county of legal residence to pay the cost of any court−ordered special treatment or care that is provided directly by or under contract with the county department.

(b) Payment for special treatment or care by a county department under par. (a) does not prohibit the county department from contracting with another county department or approved treatment facility for the provision of special treatment or care.

(c) A county department that pays for court−ordered special treatment or care under par. (a) may recover from the parent, based on the parent's ability to pay, a reasonable contribution toward the costs of court−ordered special treatment or care. This paragraph is subject to s. 46.03 (18).

History: 1995 a. 77, 275; 2005 a. 344.

938.363 Revision of dispositional orders. (1) REQUESTS FOR REVISION. (a) A juvenile, the juvenile's parent, guardian, or legal custodian, any person or agency bound by a dispositional order, the district attorney or corporation counsel in the county in which the dispositional order was entered or, if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian may request a revision in the order that does not involve a change in placement or a trial reunification, including a revision with respect to the amount of child support to be paid by a parent. The court may also propose a revision. The request or court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the court's disposition. The request or court proposal shall be submitted to the court. The court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or court proposal indicates that new information is available that affects the advisability of the court's dispositional order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice and the court approves.

NOTE: Par. (a) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(a) A juvenile, the juvenile's parent, guardian, or legal custodian, any person or agency bound by a dispositional order, the district attorney or corporation counsel in the county in which the dispositional order was entered or, if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian may request a revision in the order that does not involve a change in placement, including a revision with respect to the amount of child support to be paid by a parent. The court may also propose a revision. The request or court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the court's disposition. The request or court proposal shall be submitted to the court. The court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or court proposal indicates that new information is available that affects the advisability of the court's dispositional order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice and the court approves.

(b) If a hearing is held, at least 3 days before the hearing the court shall notify the juvenile, the juvenile's parent, guardian, and legal custodian, all parties bound by the dispositional order, the juvenile's foster parent or other physical custodian described in s. 48.62 (2), and the district attorney or corporation counsel in the county in which the dispositional order was entered. If the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the court shall also notify the Indian juvenile's Indian custodian and, if that juvenile is placed outside the home of his or her parent or Indian custodian, the Indian juvenile's tribe. A copy of the request or proposal shall be attached to the notice. If all parties consent, the court may proceed immediately with the hearing. No revision may extend the effective period of the original order, or revise an original order under s. 938.34 (6) (am) to impose more than a total of 30 days, or under s. 938.34 (3) (f) to impose more than a total of 180 days, of detention, nonsecure custody, or inpatient treatment on a juvenile.

(c) If the proposed revision is for a change in the amount of child support to be paid by a parent, the court shall order the juvenile's parent to provide a statement of the income, assets, debts, and living expenses of the juvenile and the juvenile's parent to the court and the person or agency primarily responsible for implementing the dispositional order by a date specified by the court. The clerk of court shall provide, without charge, to any parent ordered to provide that statement a document setting forth the percentage standard established by the department of children and families under s. 49.22 (9) and listing the factors that a court may consider under s. 301.12 (14) (c).

(d) If the court orders the juvenile's parent to provide a statement of the income, assets, debts, and living expenses of the juvenile and the juvenile's parent to the court or if the court orders the juvenile's parent to provide that statement to the person or agency primarily responsible for implementing the dispositional order and that person or agency is not the county department, the court shall also order the juvenile's parent to provide that statement to the county department by a date specified by the court. The county department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the juvenile.

(1m) EVIDENCE AND STATEMENTS. If a hearing is held under sub. (1) (a), any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the court shall give a foster parent or other physical custodian described in s. 48.62 (2) of the juvenile a right to be heard at the hearing by per-

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mitting the foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision. A foster parent or other physical custodian who receives notice of a hearing under sub. (1) (a) and a right to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

(2) REVISION OF SUPPORT. If the court revises the amount of child support to be paid by a parent under the dispositional order for the care and maintenance of the parent's juvenile who has been placed by a court order under this chapter in a residential, nonmedical facility, the court shall determine the liability of the parent under s. 301.12 (14).

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275; 1997 a. 35, 80, 237, 252; 1999 a. 103; 2001 a. 38, 109; 2005 a. 344; 2007 a. 20; 2009 a. 28, 79, 94; 2011 a. 32, 181.

938.364 Dismissal of certain dispositional orders. A juvenile, the juvenile's parent, guardian, or legal custodian, or the district attorney or corporation counsel in the county in which the dispositional order was entered may request the court to dismiss an order under s. 938.342 (2) if the juvenile shows documentary proof that he or she is enrolled in a school program or a high school equivalency program. The court may also propose such a dismissal.

History: 1995 a. 77; 2005 a. 344.

938.365 Extension of orders. (1) DATE ON WHICH JUVENILE PLACED OUTSIDE HOME. In this section, a juvenile is considered to have been placed outside of his or her home on the date on which the juvenile was first removed from his or her home, except that a juvenile who was removed from his or her home and first placed in a juvenile detention facility, a juvenile correctional facility, or a secured residential care center for children and youth for 60 days or more and then moved to a nonsecure out−of−home placement is considered to have been placed outside of his or her home on the date on which the juvenile was moved to the nonsecure out−of−home placement.

(1m) REQUEST FOR EXTENSION. The parent, juvenile, guardian, legal custodian, any person or agency bound by the dispositional order, the district attorney or corporation counsel in the county in which the dispositional order was entered, the court on its own motion, or, if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian may request an extension of an order under s. 938.355. The request shall be submitted to the court that entered the order. An order under s. 938.355 for placement of a juvenile in detention, nonsecure custody, or inpatient treatment under s. 938.34 (3) (f) or (6) (am) may not be extended. Other orders or portions of orders under s. 938.355 may be extended only as provided in this section.

(2) NOTICE. No order may be extended without a hearing. The court shall provide notice of the time and place of the hearing to the juvenile, the juvenile's parent, guardian, and legal custodian, all parties present at the original hearing, the juvenile's foster parent or other physical custodian described in s. 48.62 (2), and the district attorney or corporation counsel in the county in which the dispositional order was entered. If the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the court shall also notify the Indian juvenile's Indian custodian and, if that juvenile is placed outside the home of his or her parent or Indian custodian, the Indian juvenile's tribe.

(2g) COURT REPORT. (a) At the hearing the person or agency primarily responsible for providing services to the juvenile shall file with the court a written report stating to what extent the dispositional order has been meeting the objectives of the plan for the juvenile's rehabilitation or care and treatment. The office of juvenile offender review may file a written report regarding any juvenile examined by the program.

(b) If the juvenile is placed outside of his or her home, the report shall include all of the following:

1. A copy of the report of the review panel under s. 938.38 (5), if any, and a response to the report from the agency primarily responsible for providing services to the juvenile.

2. An evaluation of the juvenile's adjustment to the placement and of any progress the juvenile has made, suggestions for amendment of the permanency plan, and specific information showing the efforts that have been made to achieve the permanency goal of the permanency plan, including, if applicable, the efforts of the parents to remedy the factors that contributed to the juvenile's placement.

NOTE: Subd. 2. is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

2. An evaluation of the juvenile's adjustment to the placement and of any progress the juvenile has made, suggestions for amendment of the permanency plan, and specific information showing the efforts that have been made to achieve the goal of the permanency plan, including, if applicable, the efforts of the parents to remedy the factors that contributed to the juvenile's placement.

3. If the juvenile has been placed outside of his or her home in a foster home, group home, nonsecured residential care center for children and youth, or shelter care facility for 15 of the most recent 22 months, not including any period during which the juvenile was a runaway from the out−of−home placement or was residing in a trial reunification home, a statement of whether or not a recommendation has been made to terminate the parental rights of the parents of the juvenile. If a recommendation for a termination of parental rights has been made, the statement shall indicate the date on which the recommendation was made, any previous progress made to accomplish the termination of parental rights, any barriers to the termination of parental rights, specific steps to overcome the barriers and when the steps will be completed, reasons why adoption would be in the best interest of the juvenile and whether or not the juvenile should be registered with the adoption information exchange. If a recommendation for termination of parental rights has not been made, the statement shall include an explanation of the reasons why a recommendation for termination of parental rights has not been made. If the lack of appropriate adoptive resources is the primary reason for not recommending a termination of parental rights, the agency shall recommend that the juvenile be registered with the adoption information exchange or report the reason why registering the juvenile is contrary to the best interest of the juvenile.

NOTE: Subd. 3. is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

3. If the juvenile has been placed outside of his or her home in a foster home, group home, nonsecured residential care center for children and youth, or shelter care facility for 15 of the most recent 22 months, not including any period during which the juvenile was a runaway from the out−of−home placement or the first 6 months of any period during which the juvenile was returned to his or her home for a trial home visit, a statement of whether or not a recommendation has been made to terminate the parental rights of the parents of the juvenile. If a recommendation for a termination of parental rights has been made, the statement shall indicate the date on which the recommendation was made, any previous progress made to accomplish the termination of parental rights, any barriers to the termination of parental rights, specific steps to overcome the barriers and when the steps will be completed, reasons why adoption would be in the best interest of the juvenile and whether or not the juvenile should be registered with the adoption information exchange. If a recommendation for termination of parental rights has not been made, the statement shall include an explanation of the reasons why a recommendation for termination of parental rights has not been made. If the lack of appropriate adoptive resources is the primary reason for not recommending a termination of parental rights, the agency shall recommend that the juvenile be registered with the adoption information exchange or report the reason why registering the juvenile is contrary to the best interest of the juvenile.

4. If the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), specific information showing that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful.

(c) If the juvenile has not been placed outside the home, the report shall contain a description of efforts that have been made by all parties concerned toward meeting the objectives of treatment, care, or rehabilitation; an explanation of why these efforts have not yet succeeded in meeting the objective; and anticipated future planning for the juvenile.

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(2m) HEARING AND ORDER. (a) 1. Any party may present evidence relevant to the issue of extension. If the juvenile is placed outside of his or her home, the person or agency primarily responsible for providing services to the juvenile shall present as evidence specific information showing that the person or agency has made reasonable efforts to achieve the permanency goal of the juvenile's permanency plan, including, if appropriate, through an out−of−state placement. If an Indian juvenile is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the person or agency primarily responsible for providing services to the Indian juvenile shall also present as evidence specific information showing that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful.

NOTE: Subd. 1. is shown as affected eff. 11−1−12 by 2011 Wis. Acts 181 and 258 and as merged by the legislative reference bureau under s. 13.92 (2) (i). Prior to 11−1−12 it reads:

1. Any party may present evidence relevant to the issue of extension. If the juvenile is placed outside of his or her home, the person or agency primarily responsible for providing services to the juvenile shall present as evidence specific information showing that the person or agency has made reasonable efforts to achieve the goal of the juvenile's permanency plan, including, if appropriate, through an out−of−state placement. If an Indian juvenile is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the person or agency primarily responsible for providing services to the Indian juvenile shall also present as evidence specific information showing that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful.

1m. The court shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the person or agency primarily responsible for providing services to the juvenile to achieve the permanency goal of the juvenile's permanency plan, including, if appropriate, through an out−of−state placement. If the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the findings of fact shall also include a finding that active efforts under s. 938.028 (4) (d) 2. were made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful. An order shall be issued under s. 938.355.

NOTE: Subd. 1m. is shown as affected eff. 11−1−12 by 2011 Wis. Acts 181 and 258 and as merged by the legislative reference bureau under s. 13.92 (2) (i). Prior to 11−1−12 it reads:

1m. The court shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the person or agency primarily responsible for providing services to the juvenile to achieve the goal of the juvenile's permanency plan, including, if appropriate, through an out−of−state placement. If the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the findings of fact shall also include a finding that active efforts under s. 938.028 (4) (d) 2. were made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful. An order shall be issued under s. 938.355.

1r. a. If the juvenile is placed outside of his or her home and if the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been placed outside the home, the person or agency primarily responsible for providing services to the juvenile shall present as evidence specific information showing that the agency has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the court has determined that a joint placement would be contrary to the safety or well−being of the juvenile or any of those siblings, in which case the agency shall present as evidence specific information showing that agency has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court has determined that such visitation or interaction would be contrary to the safety or well−being of the juvenile or any of those siblings.

b. If the juvenile is placed outside the home and if the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been placed outside the home, the findings of fact shall include a finding as to whether reasonable efforts have been made by the agency primarily responsible for providing services to the juvenile to place the juvenile in a placement that enables the sibling group to remain together, unless the court has determined that a joint placement would be contrary to the safety or well−being of the juvenile or any of those siblings, in which case the findings of fact shall include a finding as to whether reasonable efforts have been made by the agency to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court has determined that such visitation or interaction would be contrary to the safety or well−being of the juvenile or any of those siblings.

2. If the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the order shall include a determination that the person or agency primarily responsible for providing services to the juvenile is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home.

3. The court shall make the findings under subd. 1m. relating to reasonable efforts to achieve the permanency goal of the juvenile's permanency plan and the findings under subd. 2. on a case−by−case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the order issued under s. 938.355. An order that merely references subd. 1m. or 2. without documenting or referencing that specific information in the order or an amended order that retroactively corrects an earlier order that does not comply with this subdivision is not sufficient to comply with this subdivision.

NOTE: Subd. 3. is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

3. The court shall make the findings under subd. 1m. relating to reasonable efforts to achieve the goal of the juvenile's permanency plan and the findings under subd. 2. on a case−by−case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the order issued under s. 938.355. An order that merely references subd. 1m. or 2. without documenting or referencing that specific information in the order or an amended order that retroactively corrects an earlier order that does not comply with this subdivision is not sufficient to comply with this subdivision.

(ad) If the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency goal and, if applicable, any concurrent permanency goals for the juvenile.

NOTE: Par. (ad) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(ad) If the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile.

(ag) The court shall give a foster parent or other physical custodian described in s. 48.62 (2) who is notified of a hearing under sub. (2) a right to be heard at the hearing by permitting the foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension. A foster parent or other physical custodian who receives notice of a hearing under sub. (2) and a right to be heard under this paragraph does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and having the right to be heard.

(b) If a juvenile has been placed outside the home under s. 938.345 and an extension is ordered under this subsection, the court shall state in the record the reason for the extension.

(3) WAIVER OF APPEARANCE. The appearance of any juvenile may be waived by consent of the juvenile, counsel or guardian ad litem.

(4) DISPOSITIONS TO BE CONSIDERED. The court shall determine which dispositions are to be considered for extensions.

(5) DURATION OF EXTENSION. Except as provided in s. 938.368, an order under this section that continues the placement of a juvenile in his or her home or that extends an order under s. 938.34 (4d), (4h), (4m), or (4n) shall be for a specified length of time not to exceed one year after its date of entry. Except as provided in s. 938.368, an order under this section that continues the

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placement of a juvenile in a foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent shall be for a specified length of time not to exceed the date on which the juvenile attains 18 years of age, one year after the date on which the order is granted, or, if the juvenile is a full−time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before attaining 19 years of age, the date on which the juvenile attains 19 years of age, whichever is later.

(6) HEARINGS CONDUCTED AFTER ORDER TERMINATES. If a request to extend a dispositional order is made prior to the termination of the order, but the court is unable to conduct a hearing on the request prior to the termination date, the court may extend the order for a period of not more than 30 days, not including any period of delay resulting from any of the circumstances under s. 938.315 (1). The court shall grant appropriate relief as provided in s. 938.315 (3) with respect to any request to extend a dispositional order on which a hearing is not held within the time period specified in this subsection. Failure to object if a hearing is not held within the time period under this subsection waives any challenge to the court's competency to act on the request.

(7) CHANGES IN PLACEMENT AND TRIAL REUNIFICATIONS NOT PERMITTED. Nothing in this section may be construed to allow any changes in placement, trial reunification, or revocation of aftercare supervision. Revocation and other changes in placement may take place only under s. 938.357, and trial reunifications may take place only under s. 938.358.

NOTE: Sub. (7) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(7) CHANGES IN PLACEMENT NOT PERMITTED. Nothing in this section may be construed to allow any changes in placement or revocation of aftercare supervision. Revocation and other changes in placement may take place only under s. 938.357.

History: 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 237; 2001 a. 109; 2005 a. 344; 2007 a. 199; 2009 a. 28, 79, 94, 185; 2011 a. 181, 258; 2011 a. 260 s. 80; s. 13.92 (2) (i).

A dispositional order may be extended without a finding of dangerousness. [cites former s. 48.365] In Interest of R.E.H. 101 Wis. 2d 647, 305 N.W.2d 162 (Ct. App. 1981).

An extension under sub. (6) [former s. 48.3650] does not deprive a juvenile of liberty without due process. In Interest of S.D.R. 109 Wis. 2d 567, 326 N.W.2d 762 (1982).

The court may extend a dispositional order for 30 days under sub. (6) to consider a petition to extend the original order even when the juvenile turns 18 during the extension period. [cites former s. 48.365] In Interest of W.P. 153 Wis. 2d 50, 449 N.W.2d 615 (1990).

After a juvenile's dispositional order expires, a circuit court may not grant a 30−day temporary extension of the order under sub. (6). The statute does not allow for an extension by implication, by inference, or after the fact. When no temporary extension was granted prior to the expiration of the dispositional order, the circuit court could not act with respect to the juvenile once the dispositional order expired. State v. Michael S., Jr. 2005 WI 82, 282 Wis. 2d 1, 698 N.W.2d 673, 03−2934.

938.368 Continuation of dispositional orders. (1) TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. If a petition for termination of parental rights is filed under s. 48.41 or 48.415 or an appeal from a judgment terminating or denying termination of parental rights is filed during the year in which a dispositional order under s. 938.355 or an extension order under s. 938.365 is in effect, the dispositional or extension order shall remain in effect until all proceedings related to the filing of the petition or an appeal are concluded.

(2) PLACEMENT WITH GUARDIAN. If a juvenile's placement with a guardian appointed under s. 48.977 (2) is designated by the court under s. 48.977 (3) as a permanent foster placement for the juvenile while a dispositional order under s. 938.345, a revision order under s. 938.363, or an extension order under s. 938.365 is in effect with respect to the juvenile, the dispositional order, revision order, or extension order shall remain in effect until the earliest of the following:

(a) Thirty days after the guardianship terminates under s. 48.977 (7).

(b) A court enters a change in placement order under s. 938.357.

(c) A court order terminates such dispositional order, revision order or extension order.

(d) The juvenile attains the age of 18 years.

History: 1995 a. 77; 1997 a. 80; 2005 a. 344.

938.37 Costs. (1) JUVENILE COURT. A court assigned to exercise jurisdiction under this chapter and ch. 48 may not impose costs, fees, or surcharges under ch. 814 against a juvenile under 14 years of age. A court may impose costs, fees, and surcharges under ch. 814 against a juvenile 14 years of age or older.

(3) CIVIL AND CRIMINAL COURTS. Notwithstanding sub. (1), courts of civil and criminal jurisdiction exercising jurisdiction under s. 938.17 may assess the same costs, fees, and surcharges imposed under ch. 814 against juveniles as they may assess against adults, except that witness fees may not be charged to the juvenile.

History: 1995 a. 77; 2003 a. 139; 2005 a. 344.

938.371 Access to certain information by substitute care provider. (1) MEDICAL INFORMATION. If a juvenile is placed in a foster home, group home, residential care center for children and youth, or juvenile correctional facility or in the home of a relative other than a parent, including a placement under s. 938.205 or 938.21, the agency, as defined in s. 938.38 (1) (a), that placed the juvenile or arranged for the placement of the juvenile shall provide the following information to the foster parent, relative, or operator of the group home, residential care center for children and youth, or juvenile correctional facility at the time of placement or, if the information has not been provided to the agency by that time, as soon as possible after the date on which the agency receives that information, but not more than 2 working days after that date:

(a) Results of an HIV test, as defined in s. 252.01 (2m), of the juvenile as provided under s. 252.15 (3m) (d) 15., including results included in a court report or permanency plan. At the time that the test results are provided, the agency shall notify the foster parent, relative, or operator of the group home, residential care center for children and youth, or juvenile correctional facility of the confidentiality requirements under s. 252.15 (6).

(b) Results of any tests of the juvenile to determine the presence of viral hepatitis, type B, including results included in a court report or permanency plan.

(c) Any other medical information concerning the juvenile that is necessary for the care of the juvenile.

(3) OTHER INFORMATION. At the time of placement of a juvenile in a foster home, group home, residential care center for children and youth, or juvenile correctional facility or in the home of a relative other than a parent or, if the information is not available at that time, as soon as possible after the date on which the court report or permanency plan has been submitted, but no later than 7 days after that date, the agency, as defined in s. 938.38 (1) (a), responsible for preparing the juvenile's permanency plan shall provide to the foster parent, relative, or operator of the group home, residential care center for children and youth, or juvenile correctional facility information contained in the court report submitted under s. 938.33 (1) or 938.365 (2g) or permanency plan submitted under s. 938.355 (2e) or 938.38 relating to findings or opinions of the court or agency that prepared the court report or permanency plan relating to any of the following:

(a) Any mental, emotional, cognitive, developmental, or behavioral disability of the juvenile.

(b) Any involvement of the juvenile in any criminal gang, as defined in s. 939.22 (9), or in any other group in which any child was traumatized as a result of his or her association with that group.

(c) Any involvement of the juvenile in any activities that are harmful to the juvenile's physical, mental, or moral well−being.

(d) Any involvement of the juvenile, whether as victim or perpetrator, in sexual intercourse or sexual contact in violation of s.

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940.225, 948.02, 948.025, or 948.085, prostitution in violation of s. 944.30, sexual exploitation of a child in violation of s. 948.05, or causing a child to view or listen to sexual activity in violation of s. 948.055, if the information is necessary for the care of the juvenile or for the protection of any person living in the foster home, group home, residential care center for children and youth, or juvenile correctional facility.

(e) The religious affiliation or beliefs of the juvenile.

(4) DISCLOSURE BEFORE PLACEMENT PERMITTED. Subsection (1) does not preclude an agency, as defined in s. 48.38 (1) (a), that is arranging for the placement of a juvenile from providing the information specified in sub. (1) (a) to (c) to a person specified in sub. (1) (intro.) before the time of placement of the juvenile. Subsection (3) does not preclude an agency, as defined in s. 48.38 (1) (a), responsible for preparing a juvenile's court report or permanency plan from providing the information specified in sub. (3) (a) to (e) to a person specified in sub. (3) (intro.) before the time of placement of the juvenile.

(5) CONFIDENTIALITY OF INFORMATION. Except as permitted under s. 252.15 (6), a foster parent, treatment foster parent, relative, or operator of a group home, residential care center for children and youth, or juvenile correctional facility that receives any information under sub. (1) or (3), other than the information described in sub. (3) (e), shall keep the information confidential and may disclose that information only for the purposes of providing care for the juvenile or participating in a court hearing or permanency review concerning the juvenile.

NOTE: Sub. (5) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(5) CONFIDENTIALITY OF INFORMATION. Except as permitted under s. 252.15 (6), a foster parent, treatment foster parent, relative, or operator of a group home, residential care center for children and youth, or juvenile correctional facility that receives any information under sub. (1) or (3), other than the information described in sub. (3) (e), shall keep the information confidential and may disclose that information only for the purposes of providing care for the juvenile or participating in a court hearing or permanency plan review concerning the juvenile.

History: 1995 a. 77, 275, 352; 1997 a. 35, 272; 1999 a. 32; 2001 a. 59; 2005 a. 232, 277, 344; 2007 a. 97; 2009 a. 28, 209; 2011 a. 181, 260.

938.373 Medical authorization. (1) AUTHORIZATION BY COURT. The court assigned to exercise jurisdiction under this chapter and ch. 48 may authorize medical services including surgical procedures when needed if the court assigned to exercise jurisdiction under this chapter and ch. 48 determines that reasonable cause exists for the services and that the juvenile is within the jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 48 and, except as provided in s. 938.296 (4) and (5), consents.

(2) ABORTION; JUDICIAL WAIVER OF PARENTAL CONSENT REQUIREMENT. Section 48.375 (7) applies if the medical service authorized under sub. (1) is an abortion.

History: 1995 a. 77; 1999 a. 188; 2005 a. 344.

SUBCHAPTER VII

PERMANENCY PLANNING; RECORDS

938.38 Permanency planning. (1) DEFINITIONS. In this section:

(a) "Agency" means the department, a county department or a licensed child welfare agency.

(am) "Independent agency" means a private, nonprofit organization, but does not include a licensed child welfare agency that is authorized to prepare permanency plans or that is assigned the primary responsibility of providing services under a permanency plan.

(b) "Permanency plan" means a plan designed to ensure that a juvenile is reunified with his or her family whenever appropriate, or that the juvenile quickly attains a placement or home providing long−term stability.

(2) PERMANENCY PLAN REQUIRED. Except as provided in sub. (3), for each juvenile living in a foster home, group home, residential care center for children and youth, juvenile detention facility, or shelter care facility, the agency that placed the juvenile or arranged the placement or the agency assigned primary responsibility for providing services to the juvenile under s. 938.355 (2) (b) 6g. shall prepare a written permanency plan, if any of the following conditions exists, and, for each juvenile living in the home of a guardian or a relative other than a parent, that agency shall prepare a written permanency plan, if any of the conditions under pars. (a) to (e) exists:

NOTE: Sub. (2) (intro.) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(2) PERMANENCY PLAN REQUIRED. Except as provided in sub. (3), for each juvenile living in a foster home, group home, residential care center for children and youth, juvenile detention facility, or shelter care facility, the agency that placed the juvenile or arranged the placement or the agency assigned primary responsibility for providing services to the juvenile under s. 938.355 (2) (b) 6g. shall prepare a written permanency plan, if any of the following conditions exists, and, for each juvenile living in the home of a relative other than a parent, that agency shall prepare a written permanency plan, if any of the conditions under pars. (a) to (e) exists:

(a) The juvenile is being held in physical custody under s. 938.207, 938.208 or 938.209 (1).

(b) The juvenile is in the legal custody of the agency.

(c) The juvenile is under the supervision of an agency under s. 48.64 (2), under a consent decree under s. 938.32 (1) (c), or under a court order under s. 938.355.

(d) The juvenile was placed under a voluntary agreement between the agency and the juvenile's parent under s. 48.63 (1) or (5) (b).

(e) The juvenile is under the guardianship of the agency.

(f) The juvenile's care would be paid for under s. 49.19 but for s. 49.19 (20), except that this paragraph does not apply to a juvenile whose care is being paid for under s. 48.623 (1).

(3) TIME. Subject to sub. (4m) (a), the agency shall file the permanency plan with the court within 60 days after the date on which the juvenile was first removed from his or her home, except under either of the following conditions:

(a) If the juvenile is alleged to be delinquent and is being held in a juvenile detention facility, juvenile portion of a county jail, or shelter care facility, and the agency intends to recommend that the juvenile be placed in a juvenile correctional facility or a secured residential care center for children and youth, the agency is not required to submit the permanency plan unless the court does not accept the recommendation of the agency. If the court places the juvenile in any facility outside of the juvenile's home other than a juvenile correctional facility or a secured c residential care center for children and youth, the agency shall file the permanency plan with the court within 60 days after the date of disposition.

(b) If the juvenile is held for less than 60 days in a juvenile detention facility, juvenile portion of a county jail, or a shelter care facility, no permanency plan is required if the juvenile is returned to his or her home within that period.

(4) CONTENTS OF PLAN. The permanency plan shall include all of the following:

(ag) The name, address, and telephone number of the juvenile's parent, guardian, and legal custodian.

(am) The date on which the juvenile was removed from his or her home and the date on which the juvenile was placed in out−of−home care.

(ar) A description of the services offered and any services provided in an effort to prevent the removal of the juvenile from his or her home, while assuring that the health and safety of the juvenile are the paramount concerns, and to achieve the goal of the permanency plan, except that the permanency plan is not required to include a description of the services offered or provided with respect to a parent of the juvenile to prevent the removal of the juvenile from the home or to achieve the permanency goal of returning the juvenile safely to his or her home if any of the circumstances under s. 938.355 (2d) (b) 1. to 4. apply to that parent.

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NOTE: Par. (ar) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(ar) A description of the services offered and any services provided in an effort to prevent the removal of the juvenile from his or her home, while assuring that the health and safety of the juvenile are the paramount concerns, and to achieve the goal of the permanency plan, except that the permanency plan is not required to include a description of the services offered or provided with respect to a parent of the juvenile to prevent the removal of the juvenile from the home or to achieve the permanency plan goal of returning the juvenile safely to his or her home if any of the circumstances under s. 938.355 (2d) (b) 1. to 4. apply to that parent.

(b) The basis for the decision to hold the juvenile in custody or to place the juvenile outside of his or her home.

(bm) A statement as to the availability of a safe and appropriate placement with a fit and willing relative of the juvenile and, if a decision is made not to place the juvenile with an available relative, a statement as to why placement with the relative is not safe or appropriate.

(br) 1. In this paragraph, "sibling" means a person who is a brother or sister of a juvenile, whether by blood, marriage, or adoption, including a person who has a brother or sister of a juvenile before the person was adopted or parental rights to the person were terminated.

2. If the juvenile has one or more siblings who have also been removed from the home, a description of the efforts made to place the juvenile in a placement that enables the sibling group to remain together and, if a decision is made not to place the juvenile and his or her siblings in a joint placement, a statement as to why a joint placement would be contrary to the safety or well−being of the juvenile or any of those siblings and a description of the efforts made to provide for frequent visitation or other ongoing interaction between the juvenile and those siblings. If a decision is made not to provide for that visitation or interaction, the permanency plan shall include a statement as to why that visitation or interaction would be contrary to the safety or well−being of the juvenile or any of those siblings.

(c) The location and type of facility in which the juvenile is currently held or placed, and the location and type of facility in which the juvenile will be placed.

(d) If the juvenile is living more than 60 miles from his or her home, documentation that placement within 60 miles of the juvenile's home is either unavailable or inappropriate.

(dg) Information about the juvenile's education, including all of the following:

1. The name and address of the school in which the juvenile is or was most recently enrolled.

2. Any special education programs in which the juvenile is or was previously enrolled.

3. The grade level in which the juvenile is or was most recently enrolled and all information that is available concerning the juvenile's grade level performance.

4. A summary of all available education records relating to the juvenile that are relevant to any education goals included in the education services plan prepared under s. 938.33 (1) (e).

(dm) If as a result of the placement the juvenile has been or will be transferred from the school in which the juvenile is or most recently was enrolled, documentation that a placement that would maintain the juvenile in that school is either unavailable or inappropriate or that a placement that would result in the juvenile's transfer to another school would be in the juvenile's best interests.

(dr) Medical information relating to the juvenile, including all of the following:

1. The names and addresses of the juvenile's physician, dentist, and any other health care provider that is or was previously providing health care services to the juvenile.

2. The juvenile's immunization record, including the name and date of each immunization administered to the juvenile.

3. Any known medical condition for which the juvenile is receiving medical care or treatment and any known serious medical condition for which the juvenile has previously received medical care or treatment.

4. The name, purpose, and dosage of any medication that is being administered to the juvenile and the name of any medication that causes the juvenile to suffer an allergic or other negative reaction.

(e) A plan for ensuring the safety and appropriateness of the placement and a description of the services provided to meet the needs of the juvenile and family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the juvenile or, if available, why such services are not safe or appropriate.

(f) A description of the services that will be provided to the juvenile, the juvenile's family, and the juvenile's foster parent, the operator of the facility where the juvenile is living, or the relative with whom the juvenile is living to carry out the dispositional order, including services planned to accomplish all of the following:

1. Ensure proper care and treatment of the juvenile and promote safety and stability in the placement.

2. Meet the juvenile's physical, emotional, social, educational and vocational needs.

3. Improve the conditions of the parents' home to facilitate the safe return of the juvenile to his or her home, or, if appropriate, obtain for the juvenile a placement for adoption, with a guardian, with a fit and willing relative, or in some other planned permanent living arrangement that includes an appropriate, enduring relationship with an adult.

NOTE: Subd. 3. is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

3. Improve the conditions of the parents' home to facilitate the safe return of the juvenile to his or her home, or, if appropriate, obtain an alternative permanent placement for the juvenile.

(fg) The goal of the permanency plan or, if the agency is engaging in concurrent planning, as defined in s. 938.355 (2b) (a), the permanency and concurrent permanency goals of the permanency plan. If a goal of the permanency plan is to place the juvenile for adoption, with a guardian, or with a fit and willing relative, the permanency plan shall include the rationale for deciding on that goal and the efforts made to achieve that goal, including, if appropriate, through an out−of−state placement. If the agency determines under s. 938.355 (2b) (b) to engage in concurrent planning, the permanency plan shall include the rationale for that determination and a description of the concurrent plan. The agency shall determine one or more of the following goals to be the goal or goals of a juvenile's permanency plan:

NOTE: Par. (fg) (intro.) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(fg) The goal of the permanency plan or, if the agency is making concurrent reasonable efforts under s. 938.355 (2b), the goals of the permanency plan. If a goal of the permanency plan is any goal other than return of the juvenile to his or her home, the permanency plan shall include the rationale for deciding on that goal. If a goal of the permanency plan is an alternative permanent placement under subd. 5., the permanency plan shall document a compelling reason why it would not be in the best interest of the juvenile to pursue a goal specified in subds. 1. to 4. The agency shall determine one or more of the following goals to be the goal or goals of a juvenile's permanency plan:

1. Return of the juvenile to the juvenile's home.

2. Placement of the juvenile for adoption.

3. Placement of the juvenile with a guardian.

4. Permanent placement of the juvenile with a fit and willing relative.

5. As provided in par. (fm), some other planned permanent living arrangement that includes an appropriate, enduring relationship with an adult, including sustaining care or long−term foster care, but not including independent living.

NOTE: Subd. 5. is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

5. Some other alternative permanent placement, including sustaining care, independent living, or long−term foster care.

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(fm) If the agency determines that there is a compelling reason why it currently would not be in the best interests of the juvenile to return the juvenile to his or her home or to place the juvenile for adoption, with a guardian, or with a fit and willing relative as the permanency goal for the juvenile, the permanency goal of placing the juvenile in some other planned permanent living arrangement described in par. (fg) 5. If the agency makes that determination, the plan shall include the efforts made to achieve that permanency goal, including, if appropriate, through an out−of−state placement, a statement of that compelling reason, and, notwithstanding that compelling reason, a concurrent plan under s. 938.355 (2b) towards achieving a goal under par. (fg) 1. to 4. as a concurrent permanency goal in addition to the permanency goal under par. (fg) 5.

NOTE: Par. (fm) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(fm) If the goal of the permanency plan is to place the juvenile for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement, the efforts made to achieve that goal, including, if appropriate, through an out−of−state placement.

(g) The conditions, if any, upon which the juvenile will be returned safely to his or her home, including any changes required in the parents' conduct, the juvenile's conduct or the nature of the home.

(h) If the juvenile is 15 years of age or older, an independent living plan describing the programs and services that are or will be provided to assist the juvenile in preparing for the transition from out−of−home care to independent living. The plan shall include all of the following:

1. The anticipated age at which the juvenile will be discharged from out−of−home care.

2. The anticipated amount of time available in which to prepare the juvenile for the transition from out−of−home care to independent living.

3. The anticipated location and living situation of the juvenile on discharge from out−of−home care.

4. A description of the assessment processes, tools, and methods that have been or will be used to determine the programs and services that are or will be provided to assist the juvenile in preparing for the transition from out−of−home care to independent living.

5. The rationale for each program or service that is or will be provided to assist the juvenile in preparing for the transition from out−of−home care to independent living, the time frames for delivering those programs or services, and the intended outcome of those programs or services.

(i) A statement as to whether the juvenile's age and developmental level are sufficient for the court to consult with the juvenile at the permanency hearing under sub. (4m) (c) or (5m) (c) 2. or for the court or panel to consult with the juvenile at the permanency review under sub. (5) (bm) 2. and, if a decision is made that it would not be age appropriate or developmentally appropriate for the court to consult with the juvenile, a statement as to why consultation with the juvenile would not be appropriate.

NOTE: Par. (i) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(i) A statement as to whether the juvenile's age and developmental level are sufficient for the court to consult with the juvenile at the permanency plan determination hearing under sub. (4m) (c) or at the permanency plan hearing under sub. (5m) (c) 2. or for the court or panel to consult with the juvenile at the permanency plan review under sub. (5) (bm) 2. and, if a decision is made that it would not be age appropriate or developmentally appropriate for the court to consult with the juvenile, a statement as to why consultation with the juvenile would not be appropriate.

(im) If the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), all of the following:

1. The name, address, and telephone number of the Indian juvenile's Indian custodian and tribe.

2. A description of the remedial services and rehabilitation programs offered under s. 938.028 (4) (d) 2. in an effort to prevent the breakup of the Indian juvenile's family.

3. A statement as to whether the Indian juvenile's placement is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the placement is not in compliance with that order, a statement as to whether there is good cause, as described in s. 938.028 (6) (d), for departing from that order.

(j) If the juvenile is placed in the home of a relative or other person described in s. 48.623 (1) (b) 1. who will be receiving subsidized guardianship payments, a description of all of the following:

1. The steps the agency has taken to determine that it is not appropriate for the juvenile to be returned to his or her home or to be adopted.

2. If a decision has been made not to place the juvenile and his or her siblings, as defined in par. (br) 1., in a joint placement, the reasons for separating the juvenile and his or her siblings during the placement.

3. The reasons why a permanent placement with a fit and willing relative or other person described in s. 48.623 (1) (b) 1. through a subsidized guardianship arrangement is in the best interests of the juvenile. In the case of an Indian juvenile, the best interests of the Indian juvenile shall be determined in accordance with s. 938.01 (3).

4. The ways in which the juvenile and the relative or other person described in s. 48.623 (1) (b) 1. meet the eligibility requirements specified in s. 48.623 (1) for the receipt of subsidized guardianship payments.

5. The efforts the agency has made to discuss adoption of the juvenile by the relative or other person described in s. 48.623 (1) (b) 1. as a more permanent alternative to guardianship and, if that relative or other person has chosen not to pursue adoption, documentation of the reasons for not pursuing adoption.

6. The efforts the agency has made to discuss the subsidized guardianship arrangement with the juvenile's parents or, if those efforts were not made, documentation of the reasons for not making those efforts.

(4m) REASONABLE EFFORTS NOT REQUIRED; PERMANENCY [PLAN] DETERMINATION HEARING. (a) If in a proceeding under s. 938.21, 938.32, 938.355, 938.357, or 938.365 the court finds that any of the circumstances in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the juvenile. If a hearing is held under this paragraph, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing. At the hearing, the court shall consider placing the juvenile in a placement outside this state if the court determines that such a placement would be in the best interests of the juvenile and appropriate to achieving the goal of the juvenile's permanency plan.

NOTE: The word "plan" in brackets was deleted by 2011 Wis. Act 181 but reinserted by 2011 Wis. Act 258. Corrective legislation to remove "plan" in order to give effect to the Act 181 treatment is pending.

(b) At least 10 days before the date of the hearing the court shall notify the juvenile; any parent, guardian, and legal custodian of the juvenile; any foster parent, or other physical custodian described in s. 48.62 (2) of the juvenile, the operator of the facility in which the juvenile is living, or the relative with whom the juvenile is living; and, if the juvenile is an Indian juvenile who is or is alleged to be in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe of the time, place, and purpose of the hearing, of the issues to be determined at the hearing, and of the fact that they shall have a right to be heard at the hearing.

(c) If the juvenile's permanency plan includes a statement under sub. (4) (i) indicating that the juvenile's age and developmental level are sufficient for the court to consult with the juvenile regarding the juvenile's permanency plan or if, notwithstanding a decision under sub. (4) (i) that it would not be appropriate for the court to consult with the juvenile, the court determines that con-

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sultation with the juvenile would be in the best interests of the juvenile, the court shall consult with the juvenile, in an age−appropriate and developmentally appropriate manner, regarding the juvenile's permanency plan and any other matters the court finds appropriate. If none of those circumstances apply, the court may permit the juvenile's caseworker, the juvenile's counsel, or, subject to s. 938.235 (3) (a), the juvenile's guardian ad litem to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, expressing the juvenile's wishes, goals, and concerns regarding the permanency plan and those matters. If the court permits such a written or oral statement to be made or submitted, the court may nonetheless require the juvenile to be physically present at the hearing.

(d) The court shall give a foster parent, other physical custodian described in s. 48.62 (2), operator of a facility, or relative who is notified of a hearing under par. (b) a right to be heard at the hearing by permitting the foster parent, other physical custodian, operator, or relative to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. The foster parent, other physical custodian, operator of a facility, or relative does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

(5) PERMANENCY REVIEW. (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed under par. (ag) shall review the permanency plan in the manner provided in this subsection not later than 6 months after the date on which the juvenile was first removed from his or her home and every 6 months after a previous review under this subsection for as long as the juvenile is placed outside the home, except that for the review that is required to be conducted not later than 12 months after the juvenile was first removed from his or her home and the reviews that are required to be conducted every 12 months after that review, the court shall hold a hearing under sub. (5m) to review the permanency plan. The hearing may be instead of or in addition to the review under this subsection. The 6−month and 12−month periods referred to in this paragraph include trial reunifications under s. 938.358.

NOTE: Sub. (5) (title) and (a) are shown as affected eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(5) PLAN REVIEW. (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed under par. (ag) shall review the permanency plan in the manner provided in this subsection not later than 6 months after the date on which the juvenile was first removed from his or her home and every 6 months after a previous review under this subsection for as long as the juvenile is placed outside the home, except that for the review that is required to be conducted not later than 12 months after the juvenile was first removed from his or her home and the reviews that are required to be conducted every 12 months after that review, the court shall hold a hearing under sub. (5m) to review the permanency plan. The hearing may be instead of or in addition to the review under this subsection.

(ag) If the court elects not to review the permanency plan, the court shall appoint a panel to review the permanency plan. The panel shall consist of 3 persons who are either designated by an independent agency that has been approved by the chief judge of the judicial administrative district or designated by the agency that prepared the permanency plan. A voting majority of persons on each panel shall be persons who are not employed by the agency that prepared the permanency plan and who are not responsible for providing services to the juvenile or the parents of the juvenile whose permanency plan is the subject of the review.

(am) The court may appoint an independent agency to designate a panel to conduct a permanency review under par. (a). If the court appoints an independent agency under this paragraph, the county department of the county of the court shall authorize and contract for the purchase of services from the independent agency.

NOTE: Par. (am) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(am) The court may appoint an independent agency to designate a panel to conduct a permanency plan review under par. (a). If the court appoints an independent agency under this paragraph, the county department of the county of the court shall authorize and contract for the purchase of services from the independent agency.

(b) The court or the agency shall notify the juvenile; the juvenile's parent, guardian, and legal custodian; the juvenile's foster parent, the operator of the facility in which the juvenile is living, or the relative with whom the juvenile is living; and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe of the time, place, and purpose of the review, of the issues to be determined as part of the review, and of the fact that they shall have a right to be heard at the review as provided in par. (bm) 1. The court or agency shall notify the person representing the interests of the public, the juvenile's counsel, and the juvenile's guardian ad litem of the time, place, and purpose of the review, of the issues to be determined as part of the review, and of the fact that they may have an opportunity to be heard at the review as provided in par. (bm) 1. The notices under this paragraph shall be provided in writing not less than 30 days before the review and copies of the notices shall be filed in the juvenile's case record.

(bm) 1. A juvenile, parent, guardian, legal custodian, foster parent, operator of a facility, or relative who is provided notice of the review under par. (b) shall have a right to be heard at the review by submitting written comments relevant to the determinations specified in par. (c) not less than 10 working days before the date of the review or by participating at the review. A person representing the interests of the public, counsel, or guardian ad litem who is provided notice of the review under par. (b) may have an opportunity to be heard at the review by submitting written comments relevant to the determinations specified in par. (c) not less than 10 working days before the date of the review. A foster parent, operator of a facility, or relative who receives notice of a review under par. (b) and a right to be heard under this subdivision does not become a party to the proceeding on which the review is held solely on the basis of receiving that notice and right to be heard.

2. If the juvenile's permanency plan includes a statement under sub. (4) (i) indicating that the juvenile's age and developmental level are sufficient for the court or panel to consult with the juvenile regarding the juvenile's permanency plan or if, notwithstanding a decision under sub. (4) (i) that it would not be appropriate for the court or panel to consult with the juvenile, the court or panel determines that consultation with the juvenile would be in the best interests of the juvenile, the court or panel shall consult with the juvenile, in an age−appropriate and developmentally appropriate manner, regarding the juvenile's permanency plan and any other matters the court or panel finds appropriate. If none of those circumstances apply, the court or panel may permit the juvenile's caseworker, the juvenile's counsel, or, subject to s. 938.235 (3) (a), the juvenile's guardian ad litem to make a written or oral statement during the review, or to submit a written statement prior to the review, expressing the juvenile's wishes, goals, and concerns regarding the permanency plan and those matters. If the court or panel permits such a written or oral statement to be made or submitted, the court or panel may nonetheless require the juvenile to be physically present at the review.

(c) The court or the panel shall determine each of the following:

1. The continuing necessity for and the safety and appropriateness of the placement.

2. The extent of compliance with the permanency plan by the agency and any other service providers, the juvenile's parents, the juvenile and the juvenile's guardian, if any.

3. The extent of any efforts to involve appropriate service providers in addition to the agency's staff in planning to meet the special needs of the juvenile and the juvenile's parents.

4. The progress toward eliminating the causes for the juvenile's placement outside of his or her home and toward returning the juvenile safely to his or her home or obtaining a permanent placement for the juvenile.

5. The date by which it is likely that the juvenile will be returned to his or her home or placed for adoption, with a guardian, with a fit and willing relative, or in some other planned permanent

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living arrangement that includes an appropriate, enduring relationship with an adult.

NOTE: Subd. 5. is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

5. The date by which it is likely that the juvenile will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement.

5m. The continuing appropriateness, according to standards established by the department, of the permanency goal and, if the court or panel considers appropriate, any concurrent permanency goals for the juvenile. If the court or panel does not approve of any of those goals or if the court or panel determines that a concurrent permanency goal is appropriate, the court or panel shall determine the permanency goal and, if appropriate, any concurrent permanency goals for the juvenile.

NOTE: Subd. 5m. is created eff. 11−1−12 by 2011 Wis. Act 181.

6. If the juvenile has been placed outside of his or her home, as described in s. 938.365 (1), in a foster home, group home, nonsecured residential care center for children and youth, or shelter care facility for 15 of the most recent 22 months, not including any period during which the juvenile was a runaway from the out−of−home placement or was residing in a trial reunification home, the appropriateness of the permanency plan and the circumstances which prevent the juvenile from any of the following:

NOTE: Subd. 6. (intro.) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

6. If the juvenile has been placed outside of his or her home, as described in s. 938.365 (1), in a foster home, group home, nonsecured residential care center for children and youth, or shelter care facility for 15 of the most recent 22 months, not including any period during which the juvenile was a runaway from the out−of−home placement or the first 6 months of any period during which the juvenile was returned to his or her home for a trial home visit, the appropriateness of the permanency plan and the circumstances which prevent the juvenile from any of the following:

a. Being returned safely to his or her home.

b. Having a petition for the involuntary termination of parental rights filed on behalf of the juvenile.

c. Being placed for adoption.

cg. Being placed with a guardian.

cm. Being placed in the home of a fit and willing relative of the juvenile.

d. Being placed in some other planned permanent living arrangement that includes an appropriate, enduring relationship with an adult, including sustaining care or long−term foster care, but not including independent living.

NOTE: Subdpar. d. is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

d. Being placed in some other alternative permanent placement, including sustaining care, independent living, or long−term foster care.

7. Whether reasonable efforts were made by the agency to achieve the permanency goal of the permanency plan, including, if appropriate, through an out−of−state placement.

NOTE: Subd. 7. is shown as affected eff. 11−1−12 by 2011 Wis. Acts 181 and 258 and as merged by the legislative reference bureau under s. 13.92 (2) (i). Prior to 11−1−12 it reads:

7. Whether reasonable efforts were made by the agency to achieve the goal of the permanency plan, including, if appropriate, through an out−of−state placement.

8. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been removed from the home, whether reasonable efforts were made by the agency to place the juvenile in a placement that enables the sibling group to remain together, unless the court or panel determines that a joint placement would be contrary to the safety or well−being of the juvenile or any of those siblings, in which case the court or panel shall determine whether reasonable efforts were made by the agency to provide for frequent visitation or other ongoing interaction between the juvenile and those siblings, unless the court or panel determines that such visitation or interaction would be contrary to the safety or well−being of the juvenile or any of those siblings.

8m. If the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), whether active efforts under s. 938.028 (4) (d) 2. were made to prevent the breakup of the Indian juvenile's family, whether those efforts have proved unsuccessful, whether the Indian child's placement is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), and, if the placement is not in compliance with that order, whether there is good cause, as described in s. 938.028 (6) (d), for departing from that order.

(d) Notwithstanding s. 938.78 (2) (a), the agency that prepared the permanency plan shall, at least 5 days before a review by a review panel, provide to each person appointed to the review panel, the juvenile's parent, guardian, and legal custodian, the person representing the interests of the public, the juvenile's counsel, the juvenile's guardian ad litem, and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe a copy of the permanency plan and any written comments submitted under par. (bm) 1. Notwithstanding s. 938.78 (2) (a), a person appointed to a review panel, the person representing the interests of the public, the juvenile's counsel, the juvenile's guardian ad litem, and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe may have access to any other records concerning the juvenile for the purpose of participating in the review. A person permitted access to a juvenile's records under this paragraph may not disclose any information from the records to any other person.

(e) Within 30 days, the agency shall prepare a written summary of the determinations under par. (c) and shall provide a copy to the court that entered the order; the juvenile or the juvenile's counsel or guardian ad litem; the person representing the interests of the public; the juvenile's parent, guardian, or legal custodian; the juvenile's foster parent, the operator of the facility where the juvenile is living, or the relative with whom the juvenile is living; and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe.

(f) If the summary prepared under par. (e) indicates that the review panel made recommendations that conflict with the juvenile's dispositional order or that provide for additional services not specified in the dispositional order, the agency primarily responsible for providing services to the juvenile shall request a revision of the dispositional order.

NOTE: Par. (f) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(f) If the summary prepared under par. (e) indicates that the review panel made recommendations that conflict with the court order or that provide for additional services not specified in the court order, the agency primarily responsible for providing services to the juvenile shall request a revision of the court order.

(5m) PERMANENCY HEARING. (a) The court shall hold a hearing to review the permanency plan and to make the determinations specified in sub. (5) (c) no later than 12 months after the date on which the juvenile was first removed from the home and every 12 months after a previous hearing under this subsection for as long as the juvenile is placed outside the home. The 12−month periods referred to in this paragraph include trial reunifications under s. 938.358.

NOTE: Sub. (5m) (title) and (a) are shown as affected eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 they read:

(5m) PERMANENCY PLAN HEARING. (a) The court shall hold a hearing to review the permanency plan and to make the determinations specified in sub. (5) (c) no later than 12 months after the date on which the juvenile was first removed from the home and every 12 months after a previous hearing under this subsection for as long as the juvenile is placed outside the home.

(b) Not less than 30 days before the date of the hearing, the court shall notify the juvenile; the juvenile's parent, guardian, and legal custodian; and the juvenile's foster parent, the operator of the facility in which the juvenile is living, or the relative with whom the juvenile is living of the time, place, and purpose of the hearing, of the issues to be determined at the hearing, and of the fact that they shall have a right to be heard at the hearing as provided in par. (c) 1. and shall notify the juvenile's counsel and the juvenile's

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guardian ad litem; the agency that prepared the permanency plan; the person representing the interests of the public; and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe of the time, place, and purpose of the hearing, of the issues to be determined at the hearing, and of the fact that they may have an opportunity to be heard at the hearing as provided in par. (c) 1.

(c) 1. A juvenile, parent, guardian, legal custodian, foster parent, operator of a facility, or relative who is provided notice of the hearing under par. (b) shall have a right to be heard at the hearing by submitting written comments relevant to the determinations specified in sub. (5) (c) not less than 10 working days before the date of the hearing or by participating at the hearing. A counsel, guardian ad litem, agency, or person representing the interests of the public who is provided notice of the hearing under par. (b) may have an opportunity to be heard at the hearing by submitting written comments relevant to the determinations specified in sub. (5) (c) not less than 10 working days before the date of the hearing or by participating at the hearing. A foster parent, operator of a facility, or relative who receives notice of a hearing under par. (b) and a right to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

2. If the juvenile's permanency plan includes a statement under sub. (4) (i) indicating that the juvenile's age and developmental level are sufficient for the court to consult with the juvenile regarding the juvenile's permanency plan or if, notwithstanding a decision under sub. (4) (i) that it would not be appropriate for the court to consult with the juvenile, the court determines that consultation with the juvenile would be in the best interests of the juvenile, the court shall consult with the juvenile, in an age−appropriate and developmentally appropriate manner, regarding the juvenile's permanency plan and any other matters the court finds appropriate. If none of those circumstances apply, the court may permit the juvenile's caseworker, the juvenile's counsel, or, subject to s. 938.235 (3) (a), the juvenile's guardian ad litem to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, expressing the juvenile's wishes, goals, and concerns regarding the permanency plan and those matters. If the court permits such a written or oral statement to be made or submitted, the court may nonetheless require the juvenile to be physically present at the hearing.

(d) At least 5 days before the date of the hearing the agency that prepared the permanency plan shall provide a copy of the permanency plan and any written comments submitted under par. (c) 1. to the court, to the juvenile's parent, guardian, and legal custodian, to the person representing the interests of the public, to the juvenile's counsel or guardian ad litem, and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), to the Indian juvenile's Indian custodian and tribe. Notwithstanding s. 938.78 (2) (a), the person representing the interests of the public, the juvenile's counsel or guardian ad litem, and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe may have access to any other records concerning the juvenile for the purpose of participating in the review. A person permitted access to a juvenile's records under this paragraph may not disclose any information from the records to any other person.

(e) After the hearing, the court shall make written findings of fact and conclusions of law relating to the determinations under sub. (5) (c) and shall provide a copy of those findings of fact and conclusions of law to the juvenile; the juvenile's parent, guardian, and legal custodian; the juvenile's foster parent, the operator of the facility in which the juvenile is living, or the relative with whom the juvenile is living; the agency that prepared the permanency plan; the person representing the interests of the public; and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe. The court shall make the findings specified in sub. (5) (c) 7. on a case−by−case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the findings of fact and conclusions of law prepared under this paragraph. Findings of fact and conclusions of law that merely reference sub. (5) (c) 7. without documenting or referencing that specific information in the findings of fact and conclusions of law or amended findings of fact and conclusions of law that retroactively correct earlier findings of fact and conclusions of law that do not comply with this paragraph are not sufficient to comply with this paragraph.

(f) If the findings of fact and conclusions of law under par. (e) conflict with the juvenile's dispositional order or provide for any additional services not specified in the dispositional order, the court shall revise the dispositional order under s. 938.363, order a change in placement under s. 938.357, or order a trial reunification under s. 938.358, as appropriate.

NOTE: Par. (f) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(f) If the findings of fact and conclusions of law under par. (e) conflict with the juvenile's dispositional order or provide for any additional services not specified in the dispositional order, the court shall revise the dispositional order under s. 938.363 or order a change in placement under s. 938.357, as appropriate.

(6) RULES. The department shall promulgate rules establishing the following:

(a) Procedures for conducting permanency reviews.

NOTE: Par. (a) is shown as amended eff. 11−1−12 by 2011 Wis. Act 181. Prior to 11−1−12 it reads:

(a) Procedures for conducting permanency plan reviews.

(b) Requirements for training review panels.

(c) Standards for reasonable efforts to prevent placement of juveniles outside of their homes, while assuring that their health and safety are the paramount concerns, and to make it possible for juveniles to return safely to their homes if they have been placed outside of their homes.

(d) The format for permanency plans and review panel reports.

(e) Standards and guidelines for decisions regarding the placement of juveniles.

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9; 2001 a. 59, 69, 109; 2003 a. 321; 2005 a. 156, 344, 448; 2007 a. 20, 97; 2009 a. 28, 79, 94, 185; 2011 a. 32, 181, 258; 2011 a. 260 s. 80; s. 13.92 (2) (i).

The time limits in sub. (3) are not a prerequisite to trial court jurisdiction. Interest of Scott Y. 175 Wis. 2d 222, 499 N.W.2d 219 (Ct. App. 1993).

NOTE: The above annotation cites to s. 48.38, the predecessor statute to s. 938.38.

938.39 Disposition by court bars criminal proceeding.

Disposition by the court of any violation of state law within its jurisdiction under s. 938.12 bars any future criminal proceeding on the same matter in circuit court when the juvenile reaches the age of 17. This section does not affect criminal proceedings in circuit court that were transferred under s. 938.18.

History: 1995 a. 77; 2005 a. 344.

The extension of a previously entered dispositional order due to the juvenile's participation in an armed robbery while subject to the order was not a "disposition" of the armed robbery charge, and the subsequent prosecution of the armed robbery charge in adult court did not violate s. 48.39 [now s. 938.39] or the constitutional protection against double jeopardy. State v. Stephens, 201 Wis. 2d 82, 548 N.W.2d 108 (Ct. App. 1996), 95−2103.

938.396 Records.

(1) LAW ENFORCEMENT RECORDS. (a) *Confidentiality.* Law enforcement agency records of juveniles shall be kept separate from records of adults. Law enforcement agency records of juveniles may not be open to inspection or their contents disclosed except under par. (b) or (c), sub. (1j), (2m) (c) 1p., or (10), or s. 938.293 or by order of the court.

(b) *Applicability.* Paragraph (a) does not apply to any of the following:

1. The disclosure of information to representatives of the news media who wish to obtain information for the purpose of reporting news. A representative of the news media who obtains

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information under this subdivision may not reveal the identity of the juvenile involved.

2. The confidential exchange of information between a law enforcement agency and officials of the public or private school attended by the juvenile. A public school official who obtains information under this subdivision shall keep the information confidential as required under s. 118.125, and a private school official who obtains information under this subdivision shall keep the information confidential in the same manner as is required of a public school official under s. 118.125.

2m. The confidential exchange of information between a law enforcement agency and officials of the tribal school attended by the juvenile if the law enforcement agency determines that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials to keep the information confidential in a manner at least as stringent as is required of a public school official under s. 118.125.

3. The confidential exchange of information between a law enforcement agency and another law enforcement agency. A law enforcement agency that obtains information under this subdivision shall keep the information confidential as required under par. (a) and s. 48.396 (1).

4. The confidential exchange of information between a law enforcement agency and a social welfare agency. A social welfare agency that obtains information under this subdivision shall keep the information confidential as required under ss. 48.78 and 938.78.

5. The disclosure of information relating to a juvenile 10 years of age or over who is subject to the jurisdiction of a court of criminal jurisdiction.

(c) *Exceptions.* Notwithstanding par. (a), law enforcement agency records of juveniles may be disclosed as follows:

1. If requested by the parent, guardian or legal custodian of a juvenile who is the subject of a law enforcement officer's report, or if requested by the juvenile, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, provide to the parent, guardian, legal custodian or juvenile a copy of that report.

2. Upon the written permission of the parent, guardian or legal custodian of a juvenile who is the subject of a law enforcement officer's report or upon the written permission of the juvenile, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, make available to the person named in the permission any reports specifically identified by the parent, guardian, legal custodian or juvenile in the written permission.

3. At the request of a school district administrator, administrator of a private school, or administrator of a tribal school, or designee of a school district administrator, private school administrator, or tribal school administrator, or on its own initiative, a law enforcement agency may, subject to official agency policy, provide to the school district administrator, private school administrator, or tribal school administrator or designee, for use as provided in s. 118.127, any information in its records relating to any of the following if the official agency policy specifies that the information may not be provided to an administrator of a tribal school or a tribal school administrator's designee unless the governing body of the tribal school agrees that the information will be used by the tribal school as provided in s. 118.127:

a. The use, possession, or distribution of alcohol or a controlled substance or controlled substance analog by a juvenile enrolled in the public school district, private school, or tribal school.

b. The illegal possession by a juvenile of a dangerous weapon, as defined in s. 939.22 (10).

c. An act for which a juvenile enrolled in the school district, private school, or tribal school was taken into custody under s. 938.19 based on a law enforcement officer's belief that the juvenile was committing or had committed a violation of any state or federal criminal law.

d. An act for which a juvenile enrolled in the public school district, private school, or tribal school was adjudged delinquent.

4. A law enforcement agency may enter into an interagency agreement with a school board, a private school, a tribal school, a social welfare agency, or another law enforcement agency providing for the routine disclosure of information under subs. (1) (b) 2. and 2m. and (c) 3. to the school board, private school, tribal school, social welfare agency, or other law enforcement agency.

5. If requested by a victim of a juvenile's act, a law enforcement agency may, subject to official agency policy, disclose to the victim any information in its records relating to the injury, loss or damage suffered by the victim, including the name and address of the juvenile and the juvenile's parents. The victim may use and further disclose the information only for the purpose of recovering for the injury, damage or loss suffered as a result of the juvenile's act.

6. If requested by the victim−witness coordinator, a law enforcement agency shall disclose to the victim−witness coordinator any information in its records relating to the enforcement of rights under the constitution, this chapter, and s. 950.04 or the provision of services under s. 950.06 (1m), including the name and address of the juvenile and the juvenile's parents. The victim−witness coordinator may use the information only for the purpose of enforcing those rights and providing those services and may make that information available only as necessary to ensure that victims and witnesses of crimes, as defined in s. 950.02 (1m), receive the rights and services to which they are entitled under the constitution, this chapter, and ch. 950. The victim−witness coordinator may also use the information to disclose the name and address of the juvenile and the juvenile's parents to the victim of the juvenile's act.

7. If a juvenile has been ordered to make restitution for any injury, loss or damage caused by the juvenile and if the juvenile has failed to make that restitution within one year after the entry of the order, the insurer of the victim, as defined in s. 938.02 (20m) (a) 1., may request a law enforcement agency to disclose to the insurer any information in its records relating to the injury, loss or damage suffered by the victim, including the name and address of the juvenile and the juvenile's parents, and the law enforcement agency may, subject to official agency policy, disclose to the victim's insurer that information. The insurer may use and further disclose the information only for the purpose of investigating a claim arising out of the juvenile's act.

8. If requested by a fire investigator under s. 165.55 (15), a law enforcement agency may, subject to official agency policy, disclose to the fire investigator any information in its records relating to a juvenile as necessary for the fire investigator to pursue his or her investigation under s. 165.55. The fire investigator may use and further disclose the information only for the purpose of pursuing that investigation.

(d) *Law enforcement access to school records.* On petition of a law enforcement agency to review pupil records, as defined in s. 118.125 (1) (d), other than pupil records that may be disclosed without a court order under s. 118.125 (2) or (2m), for the purpose of pursuing an investigation of any alleged delinquent or criminal activity or on petition of a fire investigator under s. 165.55 (15) to review those pupil records for the purpose of pursuing an investigation under s. 165.55 (15), the court may order the school board of the school district, or the governing body of the private school, in which a juvenile is enrolled to disclose to the law enforcement agency or fire investigator the pupil records of that juvenile as necessary for the law enforcement agency or fire investigator to pursue the investigation. The law enforcement agency or fire investigator may use the pupil records only for the purpose of the investigation and may make the pupil records available only to employees of the law enforcement agency or fire investigator who are working on the investigation.

(1j) LAW ENFORCEMENT RECORDS, COURT−ORDERED DISCLOSURE. (a) Any person who is denied access to a record under sub. (1) (a) or (10) may petition the court to order the disclosure of the

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record. The petition shall be in writing and shall describe as specifically as possible all of the following:

1. The type of information sought.

2. The reason the information is being sought.

3. The basis for the petitioner's belief that the information is contained in the records.

4. The relevance of the information sought to the petitioner's reason for seeking the information.

5. The petitioner's efforts to obtain the information from other sources.

(b) Subject to par. (bm), the court, on receipt of a petition, shall notify the juvenile, the juvenile's counsel, the juvenile's parents, and appropriate law enforcement agencies in writing of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence relating to the petitioner's need for the disclosure.

(bm) If the petitioner is seeking access to a record under sub. (1) (c) 3., the court shall, without notice or hearing, make the inspection and determinations specified in par. (c) and, if the court determines that disclosure is warranted, shall order disclosure under par. (d). The petitioner shall provide a copy of the disclosure order to the law enforcement agency that denied access to the record, the juvenile, the juvenile's counsel, and the juvenile's parents. Any of those persons may obtain a hearing on the court's determinations by filing a motion to set aside the disclosure order within 10 days after receipt of the order. If no motion is filed within those 10 days or if, after hearing, the court determines that no good cause has been shown for setting aside the order, the law enforcement agency shall disclose the juvenile's record as ordered.

(c) The court shall make an inspection, which may be in camera, of the juvenile's records. If the court determines that the information sought is for good cause and that it cannot be obtained with reasonable effort from other sources, it shall then determine whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality. In making this determination, the court shall balance the following private and societal interests:

1. The petitioner's interest in recovering for the injury, damage or loss he or she has suffered against the juvenile's interest in rehabilitation and in avoiding the stigma that might result from disclosure.

2. The public's interest in the redress of private wrongs through private litigation against the public's interest in protecting the integrity of the juvenile justice system.

3. If the petitioner is a person who was denied access to a record under sub. (1) (c) 3., the petitioner's legitimate educational interests, including safety interests, in the information against society's interest in protecting its confidentiality.

(d) If the court determines that disclosure is warranted, it shall order the disclosure of only as much information as is necessary to meet the petitioner's need for the information.

(e) The court shall record the reasons for its decision to disclose or not to disclose the juvenile's records. All records related to a decision under this subsection are confidential.

(2) COURT RECORDS; CONFIDENTIALITY. Records of the court assigned to exercise jurisdiction under this chapter and ch. 48 and of municipal courts exercising jurisdiction under s. 938.17 (2) shall be entered in books or deposited in files kept for that purpose only. Those records shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter and ch. 48 or as required or permitted under sub. (2g), (2m) (b) or (c), or (10).

(2g) CONFIDENTIALITY OF COURT RECORDS; EXCEPTIONS. Notwithstanding sub. (2), records of the court assigned to exercise jurisdiction under this chapter and ch. 48 and of courts exercising jurisdiction under s. 938.17 (2) may be disclosed as follows:

(ag) *Request of parent or juvenile.* Upon request of the parent, guardian, or legal custodian of a juvenile who is the subject of a record of a court assigned to exercise jurisdiction under this chapter and ch. 48 or of a municipal court exercising jurisdiction under s. 938.17 (2), or upon request of the juvenile, if 14 years of age or over, the court that is the custodian of the record shall open for inspection by the parent, guardian, legal custodian, or juvenile its records relating to that juvenile, unless that court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian, or juvenile would result in imminent danger to anyone.

(am) *Permission of parent or juvenile.* Upon the written permission of the parent, guardian, or legal custodian of a juvenile who is the subject of a record of a court assigned to exercise jurisdiction under this chapter and ch. 48 or of a municipal court exercising jurisdiction under s. 938.17 (2), or upon written permission of the juvenile if 14 years of age or over, the court that is the custodian of the record shall open for inspection by the person named in the permission any records specifically identified by the parent, guardian, legal custodian, or juvenile in the written permission, unless e that court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(b) *Federal program monitoring.* Upon request of the department, the department of children and families, or a federal agency to review court records for the purpose of monitoring and conducting periodic evaluations of activities as required by and implemented under 45 CFR 1355, 1356, and 1357, the court shall open those records for inspection by authorized representatives of that department or federal agency.

(c) *Law enforcement agencies.* Upon request of a law enforcement agency to review court records for the purpose of investigating alleged criminal activity or activity that may result in a court exercising jurisdiction under s. 938.12 or 938.13 (12), the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

(d) *Criminal and civil proceedings.* Upon request of a court of criminal jurisdiction to review court records for the purpose of conducting or preparing for a proceeding in that court, upon request of a district attorney to review court records for the purpose of performing his or her official duties in a proceeding in a court of criminal jurisdiction, or upon request of a court of civil jurisdiction or the attorney for a party to a proceeding in that court to review court records for the purpose of impeaching a witness under s. 906.09, the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

(dm) *Delinquency or criminal defense.* Upon request of a defense counsel to review court records for the purpose of preparing his or her client's defense to an allegation of delinquent or criminal activity, the court shall open for inspection by authorized representatives of the requester the records of the court relating to that client.

(dr) *Presentence investigation.* Upon request of the department of corrections or any other person preparing a presentence investigation under s. 972.15 to review court records for the purpose of preparing the presentence investigation, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

(em) *Sex offender registration.* Upon request of the department to review court records for the purpose of obtaining information concerning a juvenile who is required to register under s. 301.45, the court shall open for inspection by authorized represen-

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tatives of the department the records of the court relating to any juvenile who has been adjudicated delinquent or found in need of protection or services or not responsible by reason of mental disease or defect for an offense specified in s. 301.45 (1g) (a). The department may disclose information that it obtains under this paragraph as provided under s. 301.46.

(f) *Victim−witness coordinator.* Upon request of the victim−witness coordinator to review court records for the purpose of enforcing rights under the constitution, this chapter, and s. 950.04 and providing services under s. 950.06 (1m), the court shall open for inspection by the victim−witness coordinator the records of the court relating to the enforcement of those rights or the provision of those services, including the name and address of the juvenile and the juvenile's parents. The victim−witness coordinator may use any information obtained under this paragraph only for the purpose of enforcing those rights and providing those services and may make that information available only as necessary to ensure that victims and witnesses of crimes, as defined in s. 950.02 (1m), receive the rights and services to which they are entitled under the constitution, this chapter and ch. 950. The victim−witness coordinator may also use that information to disclose the name and address of the juvenile and the juvenile's parents to the victim of the juvenile's act.

(fm) *Victim's insurer.* Upon request of an insurer of the victim, as defined in s. 938.02 (20m) (a) 1., the court shall disclose to an authorized representative of the requester the amount of restitution, if any, that the court has ordered a juvenile to make to the victim.

(g) *Paternity of juvenile.* Upon request of a court having jurisdiction over actions affecting the family, an attorney responsible for support enforcement under s. 59.53 (6) (a) or a party to a paternity proceeding under subch. IX of ch. 767, the party's attorney or the guardian ad litem for the juvenile who is the subject of that proceeding to review or be provided with information from the records of the court assigned to exercise jurisdiction under this chapter and ch. 48 relating to the paternity of a juvenile for the purpose of determining the paternity of the juvenile or for the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41, the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by the requester its records relating to the paternity of the juvenile or disclose to the requester those records.

(gm) *Other courts.* Upon request of any court assigned to exercise jurisdiction under this chapter and ch. 48, any municipal court exercising jurisdiction under s. 938.17 (2), or a district attorney, corporation counsel, or city, village, or town attorney to review court records for the purpose of any proceeding in that court or upon request of the attorney or guardian ad litem for a party to a proceeding in that court to review court records for the purpose of that proceeding, the court assigned to exercise jurisdiction under this chapter and ch. 48 or the municipal court exercising jurisdiction under s. 938.17 (2) shall open for inspection by any authorized representative of the requester its records relating to any juvenile who has been the subject of a proceeding under this chapter.

(h) *Custody of juvenile.* Upon request of the court having jurisdiction over an action affecting the family or of an attorney for a party or a guardian ad litem in an action affecting the family to review court records for the purpose of considering the custody of a juvenile, the court assigned to exercise jurisdiction under this chapter and ch. 48 or a municipal court exercising jurisdiction under s. 938.17 (2) shall open for inspection by an authorized representative of the requester its records relating to any juvenile who has been the subject of a proceeding under this chapter.

(i) *Probate court.* Upon request of the court assigned to exercise probate jurisdiction, the attorney general, the personal representative or special administrator of, or an attorney performing services for, the estate of a decedent in any proceeding under chs. 851 to 879, a person interested, as defined in s. 851.21, or an attorney, attorney−in−fact, guardian ad litem or guardian of the estate of a person interested to review court records for the purpose of s. 854.14 (5) (b), the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by any authorized representative of the requester the records of the court relating to any juvenile who has been adjudged delinquent on the basis of unlawfully and intentionally killing a person.

(j) *Fire investigator.* Upon request of a fire investigator under s. 165.55 (15) to review court records for the purpose of pursuing an investigation under s. 165.55, the court shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been adjudicated delinquent or found to be in need of protection or services under s. 938.13 (12) or (14) for a violation of s. 940.08, 940.24, 941.10, 941.11, 943.01, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, or 943.06 or for an attempt to commit any of those violations.

(k) *Serious juvenile offenders.* Upon request of any person, the court shall open for inspection by the requester the records of the court, other than reports under s. 938.295 or 938.33 or other records that deal with sensitive personal information of the juvenile and the juvenile's family, relating to a juvenile who has been alleged to be delinquent for committing a violation specified in s. 938.34 (4h) (a). The requester may further disclose the information to anyone.

(L) *Repeat offenders.* Upon request of any person, the court shall open for inspection by the requester the records of the court, other than reports under s. 938.295 or 938.33 or other records that deal with sensitive personal information of the juvenile and the juvenile's family, relating to a juvenile who has been alleged to be delinquent for committing a violation that would be a felony if committed by an adult if the juvenile has been adjudicated delinquent at any time preceding the present proceeding and that previous adjudication remains of record and unreversed. The requester may further disclose the information to anyone.

(m) *Notification of juvenile's school.* 1. If a petition under s. 938.12 or 938.13 (12) is filed alleging that a juvenile has committed a delinquent act that would be a felony if committed by an adult, the court clerk shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the petition has been filed and the nature of the delinquent act alleged in the petition. If later the proceeding on the petition is closed, dismissed, or otherwise terminated without a finding that the juvenile has committed a delinquent act, the court clerk shall notify the school board of the school district or the governing body of the private school or tribal school in which the juvenile is enrolled or the designee of the school board or governing body that the proceeding has been terminated without a finding that the juvenile has committed a delinquent act.

2. Subject to subd. 4., if a juvenile is adjudged delinquent, within 5 days after the date on which the dispositional order is entered, the court clerk shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the juvenile has been adjudicated delinquent, the nature of the violation committed by the juvenile, and the disposition imposed on the juvenile under s. 938.34 as a result of the violation.

3. If school attendance is a condition of a dispositional order under s. 938.342 (1d) or (1g) or 938.355 (2) (b) 7., within 5 days after the date on which the dispositional order is entered, the clerk of the court assigned to exercise jurisdiction under this chapter and ch. 48 or the clerk of the municipal court exercising jurisdiction under s. 938.17 (2) shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the juvenile's school attendance is a condition of a dispositional order.

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4. If a juvenile is found to have committed a delinquent act at the request of or for the benefit of a criminal gang, as defined in s. 939.22 (9), that would have been a felony under chs. 939 to 948 or 961 if committed by an adult and is adjudged delinquent on that basis, within 5 days after the date on which the dispositional order is entered, the court clerk shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the juvenile has been adjudicated delinquent on that basis, the nature of the violation committed by the juvenile, and the disposition imposed on the juvenile under s. 938.34 as a result of that violation.

5. In addition to the disclosure made under subd. 2. or 4., if a juvenile is adjudicated delinquent and as a result of the dispositional order is enrolled in a different school district, private school, or tribal school from the school district, private school, or tribal school in which the juvenile is enrolled at the time of the dispositional order, the court clerk, within 5 days after the date on which the dispositional order is entered, shall provide the school board of the juvenile's new school district, the governing body of the juvenile's new private school, or the governing body of the tribal school or the designee of the school board or governing body with the information specified in subd. 2. or 4., whichever is applicable, and, in addition, shall notify that school board, governing body, or designee of whether the juvenile has been adjudicated delinquent previously by that court, the nature of any previous violations committed by the juvenile, and the dispositions imposed on the juvenile under s. 938.34 as a result of those previous violations.

6. Except as required under subds. 1. to 5. or by order of the court, no information from the juvenile's court records may be disclosed to the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body. Any information from a juvenile's court records provided to the school board of the school district or the governing body of the private school in which the juvenile is enrolled or the designee of the school board or governing body shall be disclosed by the school board, governing body, or designee to employees of the school district or private school who work directly with the juvenile or who have been determined by the school board, governing body, or designee to have legitimate educational interests, including safety interests, in the information. A school district or private school employee to whom that information is disclosed may not further disclose the information. If information is disclosed to the governing body of a tribal school under this subdivision, the court shall request that the governing body of the tribal school or its designee disclose the information to employees who work directly with the juvenile or who have been determined by the governing body or its designee to have legitimate educational interests, including safety interests, in the information, and shall further request that the governing body prohibit any employee to whom information is disclosed under this subdivision from further disclosing the information. A school board may not use any information from a juvenile's court records as the sole basis for expelling or suspending a juvenile or as the sole basis for taking any other disciplinary action against a juvenile, but may use information from a juvenile's court records as the sole basis for taking action against a juvenile under the school district's athletic code. A member of a school board or of the governing body of a private school or tribal school or an employee of a school district, private school, or tribal school may not be held personally liable for any damages caused by the nondisclosure of any information specified in this subdivision unless the member or employee acted with actual malice in failing to disclose the information. A school district, private school, or tribal school may not be held liable for any damages caused by the nondisclosure of any information specified in this subdivision unless the school district, private school, or tribal school or its agent acted with gross negligence or with reckless, wanton, or intentional misconduct in failing to disclose the information.

(n) *Firearms restriction record search or background check.* If a juvenile is adjudged delinquent for an act that would be a felony if committed by an adult, the court clerk shall notify the department of justice of that fact. No other information from the juvenile's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose any information provided under this subsection only as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

(o) *Criminal history record search.* If a juvenile is adjudged delinquent for committing a serious crime, as defined in s. 48.685 (1) (c), the court clerk shall notify the department of justice of that fact. No other information from the juvenile's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose any information provided under this subsection only as part of a criminal history record search under s. 48.685 (2) (am) 1. or (b) 1. a.

(2m) ELECTRONIC COURT RECORDS. (a) In this subsection, "court" means the court assigned to exercise jurisdiction under this chapter and ch. 48.

(b) 1. The court shall make information relating to a proceeding under this chapter that is contained in the electronic records of the court available to any other court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court exercising jurisdiction under s. 938.17 (2), a court of criminal jurisdiction, a person representing the interests of the public under s. 48.09 or 938.09, an attorney or guardian ad litem for a parent or child who is a party to a proceeding in a court assigned to exercise jurisdiction under this chapter or ch. 48 or a municipal court, a district attorney prosecuting a criminal case, a law enforcement agency, or the department, regardless of whether the person to whom the information is disclosed is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created. The director of state courts may use the circuit court automated information systems established under s. 758.19 (4) to make information contained in the electronic records of the court available as provided in this subdivision.

2. Subdivision 1. does not authorize disclosure of any information relating to the physical or mental health of an individual or that deals with any other sensitive personal matter of an individual, including information contained in a patient health care record, as defined in s. 146.81 (4), a treatment record, as defined in s. 51.30 (1) (b), the record of a proceeding under s. 48.135, a report resulting from an examination or assessment under s. 938.295, a court report under s. 938.33, or a permanency plan under s. 938.38, except with the informed consent of a person authorized to consent to that disclosure, by order of the court, or as otherwise permitted by law.

(c) 1g. A court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court exercising jurisdiction under s. 938.17 (2), or a court of criminal jurisdiction shall keep any information made available to that court under par. (b) 1. confidential and may use or allow access to that information only for the purpose of conducting or preparing for a proceeding in that court. That court may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

1m. A person representing the interests of the public under s. 48.09 or 938.09, an attorney or guardian ad litem for a parent or child who is a party to a proceeding in a court assigned to exercise jurisdiction under this chapter or ch. 48 or a municipal court, or a district attorney prosecuting a criminal case shall keep any information made available to that person under par. (b) 1. confidential and may use or allow access to that information only for the purpose of performing his or her official duties relating to a proceeding in a court assigned to exercise jurisdiction under this chapter

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and ch. 48, a municipal court, or a court of criminal jurisdiction. That person may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

1p. A law enforcement agency shall keep any information made available to the law enforcement agency under par. (b) 1. confidential and may use or allow access to that information only for the purpose of investigating alleged criminal activity or activity that may result in a court exercising jurisdiction under s. 938.12 or 938.13 (12). A law enforcement agency may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

1r. The department shall keep any information made available to the department under par. (b) 1. confidential and may use or allow access to that information only for the purpose of providing services under s. 48.06, 48.067, 48.069, 938.06, 938.067, or 938.069. The department may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

2. An individual who is allowed under subd. 1g., 1m., 1p., or 1r. to have access to any information made available under par. (b) 1. shall keep the information confidential and may use and further disclose the information only for the purpose described in subd. 1g., 1m., 1p., or 1r.

(d) Any person who intentionally uses or discloses information in violation of par. (c) may be required to forfeit not more than $5,000.

(3) MOTOR VEHICLE VIOLATION RECORDS. This section does not apply to proceedings for violations of chs. 340 to 349 and 351 or any county or municipal ordinance enacted under ch. 349, except that this section does apply to proceedings for violations of ss. 342.06 (2) and 344.48 (1), and ss. 30.67 (1) and 346.67 (1) when death or injury occurs.

(4) OPERATING PRIVILEGE RECORDS. When a court assigned to exercise jurisdiction under this chapter and ch. 48 or a municipal court exercising jurisdiction under s. 938.17 (2) revokes, suspends, or restricts a juvenile's operating privilege under this chapter, the department of transportation may not disclose information concerning or relating to the revocation, suspension, or restriction to any person other than a court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court exercising jurisdiction under s. 938.17 (2), a district attorney, county corporation counsel, or city, village, or town attorney, a law enforcement agency, the juvenile whose operating privilege is revoked, suspended, or restricted, or the juvenile's parent or guardian. Persons entitled to receive this information may not disclose the information to other persons or agencies.

NOTE: Sub. (4) is amended eff. the date stated in the notice provided by the secretary of transportation and published in the Wisconsin Administrative Register under section 85.515 (2) (b) of the statutes by 2007 Wis. Act 20 to read:

(4) OPERATING PRIVILEGE RECORDS. When a court assigned to exercise jurisdiction under this chapter and ch. 48 or a municipal court exercising jurisdiction under s. 938.17 (2) revokes, suspends, or restricts a juvenile's operating privilege under this chapter, the department of transportation may not disclose information concerning or relating to the revocation, suspension, or restriction to any person other than a court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court exercising jurisdiction under s. 938.17 (2), a district attorney, county corporation counsel, or city, village, or town attorney, a law enforcement agency, a driver licensing agency of another jurisdiction, the juvenile whose operating privilege is revoked, suspended, or restricted, or the juvenile's parent or guardian. Persons entitled to receive this information may not disclose the information to other persons or agencies.

(10) SEXUALLY VIOLENT PERSON COMMITMENT. A law enforcement agency's records and records of the court assigned to exercise jurisdiction under this chapter and ch. 48 shall be open for inspection by authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9, 32, 89; 2001 a. 95; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 3826 to 3827, 9121 (6) (a); 2007 a. 97; 2009 a. 302, 309, 338; 2011 a. 35, 165, 260, 270.

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293(2); 2) an inspection request of juvenile records under ss. 48.396 (2) and 938.396 (2); or 3) an inspection request of agency records under ss. 48.78 (2) (a) and 938.78(2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03−3018.

Applicable law allows electronic transmission of certain confidential case information among clerks of circuit court, county sheriff's offices, and the Department of Justice through electronic interfaces involving the Department of Administration's Office of Justice Assistance, specifically including electronic data messages about arrest warrants issued in juvenile cases that are confidential under sub. (2). OAG 2−10.

SUBCHAPTER IX

JURISDICTION OVER PERSONS 17 OR OLDER

938.44 Jurisdiction over persons 17 or older. The court has jurisdiction over persons 17 years of age or older as provided under ss. 938.355 (4) and 938.45 and as otherwise specified in this chapter.

History: 1995 a. 77; 2005 a. 344.

938.45 Orders applicable to adults. (1) ORDERS WHEN ADULT CONTRIBUTED TO CONDITION OF JUVENILE. (a) If in the hearing of a case of a juvenile alleged to be delinquent under s. 938.12 or in need of protection or services under s. 938.13 it appears that any person 17 years of age or older has been guilty of contributing to, encouraging, or tending to cause by any act or omission, such condition of the juvenile, the court may make orders with respect to the conduct of that person in his or her relationship to the juvenile, including orders relating to determining the ability of the person to provide for the maintenance or care of the juvenile and directing when, how, and where funds for the maintenance or care shall be paid.

(b) An act or failure to act contributes to a condition of a juvenile as described in s. 938.12 or 938.13, even if the juvenile is not found to come within the provisions of s. 938.12 or 938.13, if the natural and probable consequences of that act or failure to act would be to cause the juvenile to come within the provisions of s. 938.12 or 938.13.

(1m) ORDERS IMPOSING CONDITIONS ON JUVENILE'S PARENT, GUARDIAN, OR LEGAL CUSTODIAN. (a) In a proceeding in which a juvenile has been adjudicated delinquent or has been found to be in need of protection or services under s. 938.13, the court may order the juvenile's parent, guardian, or legal custodian to comply with any conditions determined by the court to be necessary for the juvenile's welfare. An order may include participation in mental health treatment, anger management, individual or family counseling or parent training and education, and a requirement for a reasonable contribution, based on ability to pay, toward the cost of those services.

(b) A court may not order inpatient treatment under par. (a) for a juvenile's parent, guardian or legal custodian. All inpatient treatment commitments or admissions must be conducted in accordance with ch. 51.

(1r) ORDER FOR PARENT TO PAY RESTITUTION OR FORFEITURE. (a) In a proceeding in which a juvenile is found to have committed a delinquent act or a civil law or ordinance violation that has resulted in damage to the property of another, or in actual physical

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injury to another excluding pain and suffering, the court may order a parent who has custody, as defined in s. 895.035 (1), of the juvenile to make reasonable restitution for the damage or injury. Except for recovery for retail theft under s. 943.51, the maximum amount of any restitution ordered for damage or injury resulting from any one act of a juvenile or from the same act committed by 2 or more juveniles in the custody of the same parent may not exceed $5,000. The order shall include a finding that the parent is financially able to pay the amount ordered and may allow up to the date of expiration of the order for the payment. Any recovery under this paragraph shall be reduced by the amount recovered as restitution for the same act under s. 938.34 (5) or 938.343 (4).

(b) In a proceeding in which the court has determined under s. 938.34 (8) or 938.343 (2) that the imposition of a forfeiture would be in the best interest of the juvenile and in aid of rehabilitation, the court may order a parent who has custody, as defined in s. 895.035 (1), of the juvenile to pay the forfeiture. The amount of any forfeiture ordered may not exceed $5,000. The order shall include a finding that the parent is financially able to pay the amount ordered and shall allow up to 12 months after the date of the order for the payment. Any recovery under this paragraph shall be reduced by the amount recovered as a forfeiture for the same act under s. 938.34 (8) or 938.343 (2).

(2) RIGHT TO HEARING ON ORDERS. No order under sub. (1) (a), (1m) (a), or (1r) (a) or (b) may be entered until the person who is the subject of the contemplated order is given an opportunity to be heard on the order. The court shall cause notice of the time, place, and purpose of the hearing to be served on the person personally at least 10 days before the date of hearing. The procedure in these cases shall, as far as practicable, be the same as in other cases in the court. At the hearing the person may be represented by counsel and may produce and cross−examine witnesses. A person who fails to comply with an order issued by a court under sub. (1) (a), (1m) (a), or (1r) (a) or (b) may be proceeded against for contempt of court. If the person's conduct involves a crime, the person may be proceeded against under the criminal law.

(3) PROSECUTION OF ADULT CONTRIBUTING TO DELINQUENCY OF JUVENILE. If it appears at a court hearing that any person 17 years of age or older has violated s. 948.40, the court shall refer the record to the district attorney. This subsection does not prohibit prosecution of violations of s. 948.40 without the prior reference by the court to the district attorney.

History: 1995 a. 77; 1997 a. 35, 205; 2003 a. 138; 2005 a. 344.

The plain meaning of "person" in sub. (1) refers to natural persons. Consequently, a school district is not capable of contributing to the delinquency of a minor under this statute. Accordingly, the circuit court erred as a matter of law when it relied on this provision to obtain authority over a school district. Madison Metropolitan School District v. Circuit Court for Dane County, 2011 WI 72, 336 Wis. 2d 95, 800 N.W.2d 442, 09−2845.

Municipal courts have statutory authority to order parents of a juvenile to pay a forfeiture imposed on their child for violating a nontraffic municipal ordinance. OAG 4−00.

SUBCHAPTER X

REHEARING AND APPEAL

938.46 New evidence. A juvenile whose status is adjudicated by the court under this chapter, or the juvenile's parent, guardian or legal custodian, may at any time within one year after the entering of the court's order petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's original adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing. This section does not apply to motions made under s. 974.07 (2).

History: 1995 a. 77; 2001 a. 16.

938.47 Motion for postdisposition relief and appeal. **(1)** APPEAL BY RESPONDENT. A motion for postdisposition relief from a final order or judgment by a person subject to this chapter shall be made in the time and manner provided in ss. 809.30 to 809.32. An appeal from a final order or judgment entered under this chapter or from an order denying a motion for postdisposition relief by a person subject to this chapter shall be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The person shall file a motion for postdisposition relief in circuit court before a notice of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.

(2) APPEAL BY STATE. An appeal by the state from a final judgment or order under this chapter may be taken to the court of appeals within the time specified in s. 808.04 (4) and in the manner provided for civil appeals under chs. 808 and 809.

History: 2009 a. 26.

SUBCHAPTER XI

AUTHORITY

938.48 Authority of department. The department may do all of the following:

(1) ENFORCEMENT OF LAWS. Promote the enforcement of the laws relating to delinquent juveniles and juveniles in need of protection or services and take the initiative in all matters involving the interests of those juveniles when adequate provision for those matters is not made. This duty shall be discharged in cooperation with the courts, county departments, licensed child welfare agencies, parents, and other individuals interested in the welfare of juveniles.

(2) JUVENILE WELFARE SERVICES. Assist in extending and strengthening juvenile welfare services with appropriate federal agencies and in conformity with the federal Social Security Act and in cooperation with parents, other individuals, and other agencies so that all juveniles needing such services are reached.

(3) SUPERVISION AND SPECIAL TREATMENT OR CARE. Accept supervision over juveniles transferred to it by the court under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4), and provide special treatment or care to juveniles when directed by the court. Except as provided in s. 938.505 (2), a court may not direct the department to administer psychotropic medications to juveniles who receive special treatment or care under this subsection.

(4) CARE, TRAINING, AND PLACEMENT. Provide appropriate care and training for juveniles under its supervision under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4), including serving those juveniles in their own homes, placing them in licensed foster homes or licensed group homes under s. 48.63, contracting for their care by licensed child welfare agencies, or replacing them in juvenile correctional facilities or secured residential care centers for children and youth in accordance with rules promulgated under ch. 227, except that the department may not purchase the educational component of private day treatment programs for a juvenile in its custody unless the department, the school board, as defined in s. 115.001 (7), and the state superintendent of public instruction all determine that an appropriate public education program is not available for the juvenile. Disputes between the department and the school district shall be resolved by the state superintendent of public instruction.

(4m) CONTINUING CARE AND SERVICES FOR JUVENILES OVER 17. Continue to provide appropriate care, training and services to any person who meets all of the following qualifications:

(a) Is at least 17 years of age.

(b) Was under the supervision of the department under s. 938.183, 938.34 (4h), (4m) or (4n) or 938.357 (4) when the person reached 17 years of age.

(c) Is less than 19 years of age.

(d) Is determined by the department to be in need of care and services designed to fit the person for gainful employment and has requested and consented to receive the care and services.

(5) MORAL AND RELIGIOUS TRAINING. Provide for the moral and religious training of a juvenile under its supervision under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4) according to the religious beliefs of the juvenile or of the juvenile's parents.

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(6) EMERGENCY SURGERY. Consent to emergency surgery under the direction of a licensed physician or surgeon for any juvenile under its supervision under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4) upon notification by a licensed physician or surgeon of the need for the surgery and if reasonable effort, compatible with the nature and time limitation of the emergency, has been made to secure the consent of the juvenile's parent or guardian.

(8p) INDIAN JUVENILE PLACEMENTS. Reimburse Indian tribes and county departments, from the appropriation under s. 20.410 (3) (kp), for unexpected or unusually high−cost out−of−home care placements of Indian juveniles who have been adjudicated delinquent by tribal courts. In this subsection, "unusually high−cost out−of−home care placements" means the amount by which the cost to an Indian tribe or to a county department of out−of−home care placements of Indian juveniles who have been adjudicated delinquent by tribal courts exceeds $50,000 in a fiscal year.

(13) ALLOWANCES AND CASH GRANTS. Promulgate rules for the payment of an allowance to juveniles in its institutions and a cash grant to a juvenile being discharged from its institutions or released to aftercare supervision.

(14) SCHOOL−RELATED EXPENSES FOR JUVENILES OVER 17. Pay maintenance, tuition, and related expenses from the appropriation under s. 20.410 (3) (ho) for persons who, when they attained 17 years of age, were students regularly attending a school, college, or university or regularly attending a course of vocational or technical training designed to prepare them for gainful employment, and who upon attaining that age were under the supervision of the department under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4) as a result of a judicial decision.

(16) STANDARDS FOR SERVICES. Establish and enforce standards for services under s. 938.183, 938.34, or 938.345.

History: 1995 a. 77; 1997 a. 27; 2001 a. 38; 2005 a. 344; 2009 a. 28, 233; 2011 a. 258.

Cross−reference: See also chs. DOC 371, 373, 374, 375, 376, 379, 380, 381, 383, 393, and 397, Wis. adm. code.

938.49 Notification by court of placement with department; information for department. (1) NOTICE TO DEPARTMENT OF PLACEMENT. When a court places a juvenile in a juvenile correctional facility or secured residential care center for children and youth under the supervision of the department, the court shall immediately notify the department of that action. The court shall, in accordance with procedures established by the department, provide transportation for the juvenile to a receiving center designated by the department or deliver the juvenile to department personnel.

(2) TRANSFER OF COURT REPORT AND PUPIL RECORDS. When a court places a juvenile in a juvenile correctional facility or a secured residential care center for children and youth under the supervision of the department, the court and all other public agencies shall immediately do all of the following:

(a) Transfer to the department a copy of the report submitted to the court under s. 938.33 or, if the report was presented orally, a transcript of the report and all other pertinent data in their possession.

(b) Notify the juvenile's last school district or, if the juvenile was last enrolled in a private school participating in the program under s. 118.60 or in the program under s. 119.23, the private school, in writing of its obligation under s. 118.125 (4).

History: 1995 a. 77; 2005 a. 344; 2009 a. 28; 2011 a. 32.

938.50 Examination of juveniles under supervision of department. The department shall examine every juvenile who is placed under its supervision to determine the type of placement best suited to the juvenile and to the protection of the public. The examination shall include an investigation of the personal and family history of the juvenile and his or her environment, any physical or mental examinations necessary to determine the type of placement appropriate for the juvenile, and an evaluation under s. 938.533 (2) to determine whether the juvenile is eligible for corrective sanctions supervision or serious juvenile offender supervision. The department shall screen a juvenile who is examined under this section to determine whether the juvenile is in need of special treatment or care because of alcohol or other drug abuse, mental illness, or severe emotional disturbance. In making the examination the department may use any facilities, public or private, that offer assistance in determining the correct placement for the juvenile.

History: 1995 a. 77; 2005 a. 344.

938.505 Juveniles placed under correctional supervision. (1) RIGHTS AND DUTIES OF DEPARTMENT OR COUNTY DEPARTMENT. When a juvenile is placed under the supervision of the department under s. 938.183, 938.34 (4h), (4m) or (4n) or 938.357 (4) or (5) (e) or under the supervision of a county department under s. 938.34 (4n), the department or county department having supervision over the juvenile shall have the right and duty to protect, train, discipline, treat and confine the juvenile and to provide food, shelter, legal services, education and ordinary medical and dental care for the juvenile, subject to the rights, duties and responsibilities of the guardian of the juvenile and subject to any residual parental rights and responsibilities and the provisions of any court order.

(2) PSYCHOTROPIC MEDICATION. (a) If a juvenile 14 years of age or older is under the supervision of the department or a county department as described in sub. (1), is not residing in his or her home, and wishes to be administered psychotropic medication but a parent with legal custody or the guardian refuses to consent to the administration of psychotropic medication or cannot be found, or if there is no parent with legal custody, the department or county department acting on the juvenile's behalf may petition the court assigned to exercise jurisdiction under this chapter and ch. 48 in the county in which the juvenile is located for permission to administer psychotropic medication to the juvenile. A copy of the petition and a notice of hearing shall be served upon the parent or guardian at his or her last−known address. If, after hearing, the court determines that all of the following apply, the court shall grant permission for the department or county department to administer psychotropic medication to the juvenile without the parent's or guardian's consent:

1. The parent's or guardian's consent is unreasonably withheld, the parent or guardian cannot be found, or there is no parent with legal custody, except that the court may not determine that a parent's or guardian's consent is unreasonably withheld solely because the parent or guardian relies on treatment by spiritual means through prayer for healing in accordance with his or her religious tradition.

2. The juvenile is 14 years of age or older, is competent to consent to the administration of psychotropic medication, and voluntarily consents to the administration of psychotropic medication.

3. The juvenile, based on the recommendation of a physician, is in need of psychotropic medication, and psychotropic medication is appropriate for the juvenile's needs and is the least restrictive treatment consistent with those needs.

(b) The court may, at the request of the department or county department, temporarily approve the administration of psychotropic medication, for not more than 10 days after the date of the request, pending the hearing on the petition. The hearing shall be held within that 10−day period.

History: 1995 a. 77; 2005 a. 344.

Cross−reference: See also chs. DOC 375 and 383, Wis. adm. code.

938.51 Notification of release or escape of juvenile from correctional custody or supervision. (1) RELEASE FROM SECURED FACILITY OR SUPERVISION. At least 15 days prior to the date of release from a juvenile correctional facility or a secured residential care center for children and youth of a juvenile who has been adjudicated delinquent and at least 15 days prior to the release from the supervision of the department or a county depart-

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ment of a juvenile who has been adjudicated delinquent, the department or county department having supervision over the juvenile shall make a reasonable attempt to do all of the following:

(a) Notify all of the following local agencies in the community in which the juvenile will reside of the juvenile's return to the community:

1. The law enforcement agencies.

2. The school district.

3. The county departments under ss. 46.215, 46.22, 46.23, 51.42 and 51.437.

(b) Subject to pars. (c) and (cm), notify any known victim of the act for which the juvenile has been found delinquent of the juvenile's release, if all of the following apply:

2. The victim can be found.

3. The victim has sent in a request card under sub. (2) or, if the victim was under 18 years of age when his or her parent sent in a request card under sub. (2), the parent or guardian authorized on the request card direct notification of the victim after the victim attains 18 years of age.

(c) Subject to par. (cm), notify an adult relative of the victim of the juvenile's release if all of the following apply:

1. The victim died as a result of the juvenile's delinquent act.

2. The adult relative can be found.

3. The adult relative has sent in a request card under sub. (2).

(cm) Notify the victim's parent or legal guardian of the juvenile's release if all of the following apply:

1. The victim is younger than 18 years of age.

2. The parent or legal guardian can be found.

3. The parent or legal guardian has sent in a request card under sub. (2).

(d) Notify any witness who testified against the juvenile in any court proceeding involving the delinquent act of the juvenile's release if all of the following apply:

1. The witness can be found.

2. The witness has sent in a request card under sub. (2).

(1d) RELEASE FROM NONSECURED RESIDENTIAL CARE CENTER. At least 15 days prior to the release from a nonsecured residential care center for children and youth of a juvenile who has either been adjudicated delinquent under s. 48.12, 1993 stats., or s. 938.12 or been found to be in need of protection or services under s. 48.13 (12), 1993 stats., or s. 938.13 (12) and who has been found to have committed a violation of ch. 940 or of s. 948.02, 948.025, 948.03, or 948.085 (2), and at least 15 days prior to the release from a nonsecured residential care center for children and youth of a juvenile who has been found to be in need of protection or services under s. 48.13 (14), 1993 stats., or s. 938.13 (14), the department or county department having supervision over the juvenile shall notify all of the following persons of the juvenile's release:

(a) Any known victim of the act for which the juvenile was found delinquent or to be in need of protection or services, if the criteria under sub. (1) (b) are met; an adult relative of the victim, if the criteria under sub. (1) (c) are met; or the victim's parent or guardian, if the criteria under sub. (1) (cm) are met.

(b) Any witness who testified against the juvenile in any court proceeding involving the act for which the juvenile was found delinquent or to be in need of protection or services, if the criteria under sub. (1) (d) are met.

(1g) RELEASE FROM INPATIENT FACILITY. At least 15 days prior to the release from an inpatient facility, as defined in s. 51.01 (10), of a juvenile who has been found to be in need of protection or services under s. 48.13 (14), 1993 stats., or s. 938.13 (14), the county department having supervision over the juvenile shall notify all of the following persons of the juvenile's release:

(a) Any known victim of the act for which the juvenile was found to be in need of protection or services, if the criteria under sub. (1) (b) are met; an adult relative of the victim, if the criteria under sub. (1) (c) are met; or the victim's parent or guardian, if the criteria under sub. (1) (cm) are met.

(b) Any witness who testified against the juvenile in any court proceeding involving the act for which the juvenile was found to be in need of protection or services, if the criteria under sub. (1) (d) are met.

(1m) NOTIFICATION OF LOCAL AGENCIES. The department or county department having supervision over a juvenile described in sub. (1) shall determine the local agencies that it will notify under sub. (1) (a) based on the residence of the juvenile's parents or on the juvenile's intended residence specified in the juvenile's aftercare supervision plan or, if those methods do not indicate the community in which the juvenile will reside following release from a juvenile correctional facility or a secured residential care center for children and youth or from the supervision of the department or county department, the community in which the juvenile states that he or she intends to reside.

(1r) CONTENTS OF NOTICE. The notification under sub. (1), (1d) or (1g) shall include only the juvenile's name, the date of the juvenile's release and the type of placement to which the juvenile is released.

(2) NOTIFICATION REQUEST CARDS. The department shall design and prepare cards for any person specified in sub. (1) (b), (c), (cm), or (d) to send to the department or county department having supervision over a juvenile described in sub. (1), (1d), or (1g). The cards shall have space for the person's name, telephone number and mailing address, the name of the applicable juvenile, and any other information that the department determines is necessary. The cards shall advise a victim who is under 18 years of age that he or she may complete a card requesting notification under sub. (1) (b), (1d), or (1g) if the notification occurs after the victim attains 18 years of age and advising the parent or guardian of a victim who is under 18 years of age that the parent or guardian may authorize on the card direct notification of the victim under sub. (1) (b), (1d), or (1g) if the notification occurs after the victim attains 18 years of age. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in sub. (1) (b) to (d). These persons may send completed cards to the department or county department having supervision over the juvenile. Department and county department records or portions of records that relate to telephone numbers and mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1).

(3) RELEASE NOT AFFECTED BY FAILURE TO NOTIFY. Timely release of a juvenile specified in sub. (1), (1d) or (1g) shall not be prejudiced by the fact that the department or county department having supervision over the juvenile did not provide notification as required under sub. (1), (1d) or (1g), whichever is applicable.

(4) NOTIFICATION IF ESCAPE OR ABSENCE. If a juvenile described in sub. (1), (1d), or (1g) escapes from a juvenile correctional facility, residential care center for children and youth, inpatient facility, juvenile detention facility, or juvenile portion of a county jail, or from the custody of a peace officer or a guard of such a facility, center, home, or jail, or has been allowed to leave a juvenile correctional facility, residential care center for children and youth, inpatient facility, juvenile detention facility, or juvenile portion of a county jail for a specified period of time and is absent from the facility, center, home, or jail for more than 12 hours after the expiration of the specified period, as soon as possible after the department or county department having supervision over the juvenile discovers the escape or absence, the department or county department shall make a reasonable attempt to notify by telephone all of the following persons:

(a) Any known victim of the act for which the juvenile was found delinquent or to be in need of protection or services, if the criteria under sub. (1) (b) are met; an adult relative of the victim, if the criteria under sub. (1) (c) are met; or the victim's parent or guardian, if the criteria under sub. (1) (cm) are met.

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(b) Any witness who testified against the juvenile in any court proceeding involving the act for which the juvenile was found delinquent or to be in need of protection or services, if the criteria under sub. (1) (d) are met.

History: 1995 a. 77, 352; 1997 a. 181, 207; 1999 a. 9, 32, 186; 2001 a. 59; 2005 a. 277, 344.

938.52 Facilities for care of juveniles in care of department. (1) FACILITIES MAINTAINED OR USED FOR JUVENILES. The department may maintain or use the following facilities for juveniles in its care:

(a) Receiving homes to be used for the temporary care of juveniles.

(b) Foster homes.

(c) Group homes.

(d) Institutions, facilities, and services, including forestry or conservation camps, for the training and treatment of juveniles 10 years of age or older who have been adjudged delinquent.

(f) Other facilities deemed by the department to be appropriate for the juvenile, except that no state funds may be used for the maintenance of a juvenile in the home of a parent or relative eligible for aid under s. 49.19 if such funds would reduce federal funds to this state.

(2) USE OF OTHER FACILITIES. (a) In addition to facilities and services under sub. (1), the department may use other facilities and services under its jurisdiction. The department may contract for and pay for the use of other public facilities or private facilities for the care and treatment of juveniles in its care. Placement of juveniles in private or public facilities not under the department's jurisdiction does not terminate its supervision under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4). Placements in institutions for persons with a mental illness or development disability shall be made in accordance with ss. 48.14 (5), 48.63, and 938.34 (6) (am) and ch. 51.

(b) Public facilities shall accept and care for persons placed with them by the department in the same manner as they would be required to do had the legal custody of these persons been transferred by a court of competent jurisdiction. Nothing in this subsection requires any public facility to serve the department in a manner that is inconsistent with the facility's functions or with the laws and regulations governing its activities or gives the department authority to use any private facility without its consent.

(c) The department may inspect any facility it is using and examine and consult with persons under its supervision under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4) who have been placed in the facility.

(4) COEDUCATIONAL PROGRAMS AND INSTITUTIONS. The department may establish and maintain coeducational programs and institutions under this chapter.

History: 1995 a. 77; 2005 a. 344; 2009 a. 28.

938.53 Duration of control of department over delinquents. Except as provided under ss. 48.366 and 938.183, a juvenile adjudged delinquent who has been placed under the supervision of the department under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4) shall be discharged as soon as the department determines that there is a reasonable probability that departmental supervision is no longer necessary for the rehabilitation and treatment of the juvenile or for the protection of the public.

History: 1995 a. 77; 1997 a. 27; 2005 a. 344.

938.533 Corrective sanctions. (2) CORRECTIVE SANCTIONS PROGRAM. From the appropriation under s. 20.410 (3) (hr), the department shall provide a corrective sanctions program to serve an average daily population of 136 juveniles unless the appropriation under s. 20.410 (3) (hr) is supplemented under s. 13.101 or 16.515 and the positions for the program are increased under s. 13.101 or 16.505 (2) or unless funding and positions to serve more than that average daily population are otherwise available, in at least 3 counties, including Milwaukee County. The department's office of juvenile offender review shall evaluate and select for participation in the program juveniles who have been placed under the supervision of the department under s. 938.183, 938.34 (4h) or (4m), or 938.357 (4). The department shall place a program participant in the community, provide intensive surveillance of that participant, and provide an average of not more than $3,000 per year per slot to purchase community−based treatment services for each participant. The department shall make the intensive surveillance available 24 hours a day, 7 days a week, and may purchase or provide electronic monitoring for the intensive surveillance of program participants. The department shall provide a report center in Milwaukee County to provide on−site programming after school and in the evening for juveniles from Milwaukee County who are placed in the corrective sanctions program. A contact worker providing services under the program shall have a case load of approximately 10 juveniles and, during the initial phase of placement in the community under the program of a juvenile who is assigned to that contact worker, shall have not less than one face−to−face contact per day with that juvenile. Case management services under the program shall be provided by a corrective sanctions agent who shall have a case load of approximately 15 juveniles. The department shall promulgate rules to implement the program.

(3) INSTITUTIONAL STATUS. (a) A participant in the corrective sanctions program is under the supervision of the department, is subject to the rules and discipline of the department, and is considered to be in custody, as defined in s. 946.42 (1) (a). Notwithstanding ss. 938.19 to 938.21, if a juvenile violates a condition of his or her participation in the corrective sanctions program the department may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or return the juvenile to placement in a Type 1 juvenile correctional facility or a secured residential care center for children and youth. This paragraph does not preclude a juvenile who has violated a condition of the his or her participation in the corrective sanctions program from being taken into and held in custody under ss. 938.19 to 938.21.

(b) The department shall operate the corrective sanctions program as a Type 2 juvenile correctional facility. The secretary may allocate and reallocate existing and future facilities as part of the Type 2 juvenile correctional facility. The Type 2 juvenile correctional facility is subject to s. 301.02. Construction or establishment of a Type 2 juvenile correctional facility shall be in compliance with all state laws except s. 32.035 and ch. 91. In addition to the exemptions under s. 13.48 (13), construction or establishment of a Type 2 juvenile correctional facility is not subject to the ordinances or regulations relating to zoning, including zoning under ch. 91, of the county and city, village, or town in which the construction or establishment takes place and is exempt from the investigations permitted under s. 46.22 (1) (c) 1. b.

(3m) ESCAPE. If a juvenile runs away from his or her placement in the community while participating in the corrective sanctions program, the juvenile is considered to have escaped in violation of s. 946.42 (3) (c).

History: 1995 a. 77; 1997 a. 27, 35, 252; 1999 a. 9; 2001 a. 16; 2005 a. 344.

Cross−reference: See also ch. DOC 396, Wis. adm. code.

938.534 Intensive supervision program. (1) PROGRAM REQUIREMENTS; VIOLATION OF CONDITION OF PARTICIPATION. (a) A county department may provide an intensive supervision program for juveniles who have been adjudicated delinquent and ordered to participate in an intensive supervision program under s. 938.34 (2r). A county department that provides a program shall purchase or provide intensive surveillance and community−based treatment services for participants in the program and may purchase or provide electronic monitoring for the intensive surveillance of program participants. A caseworker providing services under a program may have a case load of no more than 10 juveniles and shall have not less than one face−to−face contact per day with each juvenile who is assigned to that caseworker, except that the face−

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to−face contact requirement does not apply to a juvenile placed under par. (b) or (c).

(b) 1. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile violates a condition of his or her participation in the program, the juvenile's caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours while the alleged violation and the appropriateness of a sanction under s. 938.355 (6) or a change in the conditions of the juvenile's participation in the program are being investigated. Short−term detention under this subdivision may be imposed only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement.

2. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile violates a condition of the juvenile's participation in the program, the juvenile's caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours as a consequence of that violation. Short−term detention under this subdivision may be imposed only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement. A person who takes a juvenile into custody under this subdivision shall permit the juvenile to make a written or oral statement concerning the possible placement of the juvenile and the course of conduct for which the juvenile was taken into custody. A person designated by the court or the county department who is employed in a supervisory position by a person authorized to provide or providing intake or dispositional services under s. 938.067 or 938.069 shall review that statement and either approve the placement, modify the terms of the placement, or order the juvenile to be released from custody.

3. A juvenile may be taken into and held in custody under both subds. 1. and 2. in connection with the same course of conduct, except that no juvenile may be held in custody for more than a total of 72 hours under subds. 1. and 2. in connection with the same course of conduct unless the juvenile receives a hearing under par. (d).

3m. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile who has violated a condition of the juvenile's participation in the program from being taken into and held in custody under ss. 938.19 to 938.21.

4. The use of placement in a juvenile detention facility or in a juvenile portion of a county jail as a place of short−term detention under subd. 1. or 2. is subject to the adoption of a resolution by the county board of supervisors under s. 938.06 (5) authorizing the use of those placements as places of short−term detention under subd. 1. or 2.

(c) Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this paragraph, if the juvenile is in need of crisis intervention the juvenile's caseworker may, without a hearing, take the juvenile into custody and place the juvenile in a place of nonsecure custody for not more than 30 days. This placement may be made only if at the dispositional hearing the court informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement.

(d) If the juvenile is held under par. (b) 1. or 2. in a juvenile detention facility, juvenile portion of a county jail, or place of nonsecure custody for longer than 72 hours, the juvenile is entitled to a hearing under s. 938.21. The hearing shall be conducted in the manner provided in s. 938.21, except that the hearing shall be conducted within 72 hours, rather than 24 hours, after the end of the day that the decision to hold the juvenile was made and a written statement of the reasons for continuing to hold the juvenile in custody may be filed rather than a petition under s. 938.25.

(2) RULES FOR INTENSIVE SUPERVISION PROGRAM. The department shall promulgate rules specifying the requirements for an intensive supervision program under this section. The rules shall include provisions governing the use of placement in a juvenile detention facility, juvenile portion of a county jail, or place of nonsecure custody for not more than 72 hours under sub. (1) (b) and the use of placement in a place of nonsecure custody for not more than 30 days under sub. (1) (c).

History: 1995 a. 77; 1997 a. 205; 2001 a. 16; 2005 a. 344; 2007 a. 97.
Cross−reference: See also ch. DOC 398, Wis. adm. code.

938.535 Early release and intensive supervision program; limits. The department may establish a program for the early release and intensive supervision of juveniles who have been placed in a juvenile correctional facility or a secured residential care center for children and youth under s. 938.183 or 938.34 (4m). The program may not include any juveniles who have been placed in a juvenile correctional facility or a secured residential care center for children and youth as a result of a delinquent act involving the commission of a violent crime as defined in s. 969.035, but not including the crime specified in s. 948.02 (1).

History: 1995 a. 77; 2005 a. 344.

938.538 Serious juvenile offender program. (2) PROGRAM ADMINISTRATION AND DESIGN. The department shall administer a serious juvenile offender program for juveniles who have been adjudicated delinquent and ordered to participate in the program under s. 938.34 (4h). The department shall design the program to provide all of the following:

(a) Supervision, care and rehabilitation that is more restrictive than ordinary supervision in the community.

(b) Component phases that are intensive and highly structured.

(c) 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.

(3) COMPONENT PHASES. (a) The department shall provide each participant with one or more of the following sanctions:

1. Subject to subd. 1m., placement in a Type 1 juvenile correctional facility or a secured residential care center for children and youth for a period of not more than 3 years.

1m. If the participant has been adjudicated delinquent for committing an act that would be a Class A felony if committed by an adult, placement in a Type 1 juvenile correctional facility or a secured residential care center for children and youth until the participant reaches 25 years of age, unless the participant is released sooner, subject to a mandatory minimum period of confinement of not less than one year.

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1p. Alternate care, including placement in a foster home, group home, residential care center for children and youth, or secured residential care center for children and youth.

2. Intensive or other field supervision, including corrective sanctions supervision under s. 938.533 or aftercare supervision.

3. Electronic monitoring.

4. Alcohol or other drug abuse outpatient treatment and 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 the department.

(b) The department may provide the sanctions under par. (a) 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. Notwithstanding ss. 938.357, 938.363 and 938.533 (3), a participant is not entitled to a hearing regarding the department's exercise of authority under this subsection unless the department provides for a hearing by rule.

(4) INSTITUTIONAL STATUS. (a) A participant in the program under this section is under the supervision and control of the department, is subject to the rules and discipline of the department, and is considered to be in custody, as defined in s. 946.42 (1) (a). Notwithstanding ss. 938.19 to 938.21, if a participant violates a condition of his or her participation in the program under sub. (3) (a) 2. to 9. while placed in a Type 2 juvenile correctional facility the department may, without a hearing, take the participant into custody and return him or her to placement in a Type 1 juvenile correctional facility or a secured residential care center for children and youth. Any intentional failure of a participant to remain within the extended limits of his or her placement while participating in the serious juvenile offender program or to return within the time prescribed by the administrator of the division of intensive sanctions in the department is considered an escape under s. 946.42 (3) (c). This paragraph does not preclude a juvenile who has violated a condition of the juvenile's participation in the program under sub. (3) (a) 2. to 9. from being taken into and held in custody under ss. 938.19 to 938.21.

(b) The department shall operate the component phases of the program specified in sub. (3) (a) 2. to 9. as a Type 2 juvenile correctional facility. The secretary of corrections may allocate and reallocate existing and future facilities as part of the Type 2 juvenile correctional facility. The Type 2 juvenile correctional facility is subject to s. 301.02. Construction or establishment of a Type 2 juvenile correctional facility shall be in compliance with all state laws except s. 32.035 and ch. 91. In addition to the exemptions under s. 13.48 (13), construction or establishment of a Type 2 juvenile correctional facility is not subject to the ordinances or regulations relating to zoning, including zoning under ch. 91, of the county and city, village, or town in which the construction or establishment takes place and is exempt from inspections required under s. 301.36.

(5) TRANSFERS AND DISCHARGE. (a) The office of juvenile offender review in the division of juvenile corrections in the department may release a participant to aftercare supervision under s. 301.03 (10) (d) at any time after the participant has completed 2 years of participation in the serious juvenile offender program. Aftercare supervision of the participant shall be provided by the department.

(b) The department 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 3 years in the serious juvenile offender program.

(c) Sections 938.357 and 938.363 do not apply to changes of placement and revisions of orders for a juvenile who is a participant in the program.

(6) PURCHASE OF SERVICES. The department may contract with the department of health services, the department of children and families, a county department, or any public or private agency for the purchase of goods, care, and services for participants in the program under this section. The department shall reimburse a person from whom it purchases goods, care, or services under this subsection from the appropriation under s. 20.410 (3) (cg).

(6m) MINORITY HIRING. (a) In this subsection:

2. "Black" means a person whose ancestors originated in any of the black racial groups of Africa.

3. "Hispanic" means a person of any race whose ancestors originated in Mexico, Puerto Rico, Cuba, Central America or South America or whose culture or origin is Spanish.

4. "Minority group member" means a Black, a Hispanic, or an Indian person.

(b) In the selection of classified service employees for a juvenile correctional facility authorized under 1993 Wisconsin Act 377, section 9108 (1) (a), the appointing authority shall make every effort to use the expanded certification program under s. 230.25 (1n) or rules of the administrator of the division of merit recruitment and selection in the office of state employment relations to ensure that the percentage of employees who are minority group members approximates the percentage of the juveniles placed at that juvenile correctional facility who are minority group members. The administrator of the division of merit recruitment and selection in the office of state employment relations shall provide guidelines for the administration of the selection procedure.

(7) RULES. The department shall promulgate rules to implement this section.

History: 1995 a. 77, 352; 1997 a. 27, 35; 2001 a. 16, 59; 2003 a. 33 ss. 2733, 9160; 2005 a. 344; 2007 a. 20 ss. 3828, 9121 (6) (a); 2009 a. 28, 94.

Cross−reference: See also ch. DOC 396, Wis. adm. code.

Placement in the serious juvenile offender program must occur at an original disposition. It is not a disposition to extend, revise, or change a placement already in effect. State v. Terry T. 2002 WI App 81, 251 Wis. 2d 462, 643 N.W.2d 175, 01−2226.

938.539 Type 2 status. (1) TYPE 2 RESIDENTIAL CARE CENTER; COUNTY DEPARTMENT CONTROL. A juvenile who is placed in a Type 2 residential care center for children and youth under s. 938.34 (4d) or who, having been so placed, is replaced in a less restrictive placement under s. 938.357 (4) (c) is under the supervision and control of the county department, is subject to the rules and discipline of the county department, and is considered to be in custody, as defined in s. 946.42 (1) (a).

(2) TYPE 2 JUVENILE CORRECTIONAL FACILITY; DEPARTMENT CONTROL. A juvenile who is placed in a Type 2 juvenile correctional facility under s. 938.357 (4) (a) or who, having been so placed, is replaced in a less restrictive placement under s. 938.357 (4) (c) is under the supervision and control of the department, is subject to the rules and discipline of the department, and is considered to be in custody, as defined in s. 946.42 (1) (a).

(3) VIOLATION OF CONDITION OF PLACEMENT. Notwithstanding ss. 938.19 to 938.21, if a juvenile placed in a Type 2 residential care center for children and youth under s. 938.34 (4d) or 938.357 (4) (c) or in a Type 2 juvenile correctional facility under s. 938.357 (4) (a) or (c) violates a condition of his or her placement in the center or facility, the juvenile may be placed in a Type 1 juvenile correctional facility as provided in s. 938.357 (4) (b). This subsection does not preclude a juvenile who has violated a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth from being taken into and held in custody under ss. 938.19 to 938.21.

(4) ESCAPE OR ABSENCE. A juvenile placed in a Type 2 residential care center for children and youth under s. 938.34 (4d) or 938.357 (4) (c) or in a Type 2 juvenile correctional facility under s. 938.357 (4) (a) or (c) who intentionally fails to remain within the extended limits of his or her placement or to return within the time prescribed by the administrator of the center or facility is considered an escape under s. 946.42 (3) (c).

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(5) OPERATION AS TYPE 2 PLACEMENT. With respect to a juvenile who is placed in a secured residential care center for children and youth under s. 938.34 (4d) or 938.357 (4) (a) or in a less restrictive placement under s. 938.357 (4) (c), the child welfare agency operating the center in which the juvenile is placed, and the person operating any less restrictive placement in which the juvenile is placed, shall operate that center or less restrictive placement as a Type 2 residential care center for children and youth or a Type 2 juvenile correctional facility. This subsection does not preclude a child welfare agency or other person from placing in a residential care center for children and youth or less restrictive placement in which a juvenile is placed under s. 938.34 (4d) or 938.357 (4) (a) or (c) a juvenile who is not placed under s. 938.34 (4d) or 938.357 (4) (a) or (c).

(6) RULE−MAKING. The department shall promulgate rules to implement this section.

History: 1995 a. 352; 2001 a. 16, 59; 2005 a. 344.

Cross−reference: See also chs. DOC 394 and 396, Wis. adm. code.

938.54 Records. The department shall keep a complete record on each juvenile under its supervision under s. 938.183, 938.34 (4h), (4m) or (4n) or 938.357 (4). This record shall include the information received from the court, the date of reception, all available data on the personal and family history of the juvenile, the results of all tests and examinations given the juvenile, and a complete history of all placements of the juvenile while under the supervision of the department.

History: 1995 a. 77.

938.547 Juvenile alcohol and other drug abuse pilot program. (1) LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that the use and abuse of alcohol and other drugs by juveniles is a state responsibility of statewide dimension. The legislature recognizes that there is a lack of adequate procedures to screen, assess and treat juveniles for alcohol and other drug abuse. To reduce the incidence of alcohol and other drug abuse by juveniles, the legislature deems it necessary to experiment with solutions to the problems of the use and abuse of alcohol and other drugs by juveniles by establishing a juvenile alcohol and other drug abuse pilot program in a limited number of counties. The purpose of the program is to develop intake and court procedures that screen, assess and give new dispositional alternatives for juveniles with needs and problems related to the use of alcohol beverages, controlled substances or controlled substance analogs who come within the jurisdiction of a court assigned to exercise jurisdiction under this chapter and ch. 48 in the pilot counties selected by the department.

(2) DEPARTMENT RESPONSIBILITIES. Within the availability of funding under s. 20.437 (1) (mb) that is available for the pilot program, the department of children and families shall select counties to participate in the pilot program. Unless a county department of human services has been established under s. 46.23 in the county that is seeking to implement a pilot program, the application submitted to the department of children and families shall be a joint application by the county department that provides social services and the county department established under s. 51.42 or 51.437. The department of children and families shall select counties in accordance with the request−for−proposal procedures established by that department. The department of children and families shall give a preference to county applications that include a plan for case management.

(3) MULTIDISCIPLINARY SCREEN. The multidisciplinary screen developed for the pilot program shall be used by an intake worker to determine whether or not a juvenile is in need of an alcohol or other drug abuse assessment. The screen shall also include indicators that screen juveniles for:

(a) Family dysfunction.

(b) School or truancy problems.

(c) Mental health problems.

(d) Delinquent behavior patterns.

(4) ASSESSMENT CRITERIA. The uniform alcohol and other drug abuse assessment criteria that the department developed shall be used in the pilot program under ss. 938.245 (2) (a) 3., 938.295 (1), 938.32 (1g), 938.343 (10) and 938.344 (2g). An approved treatment facility that assesses a person under ss. 938.245 (2) (a) 3., 938.295 (1), 938.32 (1g), 938.343 (10) and 938.344 (2g) may not also provide the person with treatment unless the department permits the approved treatment facility to do both in accordance with the criteria established by rule by the department.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 448; 2007 a. 20.

938.548 Multidisciplinary screen and assessment criteria. The department of children and families shall make the multidisciplinary screen developed under s. 938.547 (3) and the assessment criteria developed under s. 938.547 (4) available to all counties.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77; 2007 a. 20.

938.549 Juvenile classification system. (1) CLASSIFICATION SYSTEM; CONTENT. The department shall make available to all counties a juvenile classification system that includes at least all of the following:

(a) A risk assessment instrument for determining the probability that a juvenile who has committed an offense will commit another offense.

(b) A needs assessment instrument for determining the service needs of a juvenile who has committed an offense.

(c) A services and placement guide for integrating the risk and needs of a juvenile who has committed an offense with other factors to determine an appropriate placement and level of services for the juvenile.

(2) USES OF CLASSIFICATION SYSTEM. A county may use the juvenile classification system to do any of the following:

(a) At the time of an intake inquiry, determine whether to close a case, enter into a deferred prosecution agreement or refer the case to the district attorney.

(b) At the time of disposition, recommend a placement and a plan of rehabilitation, treatment and care for the juvenile.

(c) After disposition, determine the level or intensity of supervisory contacts required for a juvenile under county supervision.

(3) TRAINING IN USE OF SYSTEM. Subject to the availability of resources, the department may provide training and technical assistance in the use of the juvenile classification system to any county that requests that training and technical assistance.

History: 1995 a. 77; 2005 a. 344.

SUBCHAPTER XII

COUNTY JUVENILE WELFARE SERVICES

938.57 Powers and duties of county departments providing juvenile welfare services. (1) COUNTY DEPARTMENT DUTIES; POWERS. Each county department shall administer and expend such amounts as may be necessary out of any moneys which may be appropriated for juvenile welfare purposes by the county board of supervisors or donated by individuals or private organizations. A county department may do any of the following:

(a) Investigate the conditions surrounding delinquent juveniles and juveniles in need of protection or services within the county and take every reasonable action within its power to secure for them the full benefit of all laws enacted for their benefit. Unless provided by another agency, the county department shall offer social services to the caretaker of any juvenile who is referred to it under the conditions specified in this paragraph. This duty shall be discharged in cooperation with the court and with the public officers or boards legally responsible for the administration and enforcement of these laws.

(b) Accept legal custody or supervision of juveniles transferred to it by the court under s. 938.355 and provide special treat-

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ment or care if ordered by the court. Except as provided in s. 938.505 (2), a court may not order a county department to administer psychotropic medications to juveniles who receive special treatment or care.

(c) Provide appropriate protection and services for juveniles in its care, including providing services for juveniles and their families in their own homes, placing the juveniles in licensed foster homes or licensed group homes in this state or another state within a reasonable proximity to the agency with legal custody, placing the juveniles in the homes of guardians under s. 48.977 (2), contracting for services for them by licensed child welfare agencies, or replacing them in juvenile correctional facilities or secured residential care centers for children and youth in accordance with rules promulgated under ch. 227, except that the county department may not purchase the educational component of private day treatment programs unless the county department, the school board, as defined in s. 115.001 (7), and the state superintendent of public instruction determine that an appropriate public education program is not available. Disputes between the county department and the school district shall be resolved by the state superintendent of public instruction.

(cm) Provide appropriate services for juveniles who are referred to the county department by a municipal court, except that if the funding, staffing, or other resources of the county department for juvenile welfare services are insufficient to meet the needs of all juveniles who are eligible to receive services from the county department, the county department shall give first priority to juveniles who are referred to it by the court assigned to exercise jurisdiction under this chapter and ch. 48.

(d) Provide for the moral and religious training of juveniles in its care according to the religious beliefs of the juvenile or of his or her parents.

(f) Provide services to the court under s. 938.06.

(g) Upon request of the department, provide service for any juvenile in the care of the department.

(h) Contract with any parent or guardian or other person for the care and maintenance of any juvenile.

(2) ASSISTANCE FROM PRIVATE INDIVIDUALS AND ORGANIZATIONS. In performing the functions under sub. (1), the county department may accept the assistance of an individual or private agency or organization interested in the social welfare of juveniles in the county.

(2m) NOTICE OF CHANGE OF COUNTY OF RESIDENCE. A county department, as soon as practicable after learning that a person who is receiving juvenile welfare services under sub. (1) from the county department has changed his or her county of residence, shall provide notice of that change to the county department of the person's new county of residence. The notice shall include a brief, written description of the services offered or provided to the person by the county department and the name, telephone number, and address of a person to contact for more information.

(3) CONTINUING MAINTENANCE FOR JUVENILES OVER 17. (a) From the reimbursement received under s. 48.569 (1) (d), counties may provide funding for the maintenance of any juvenile who meets all of the following qualifications:

1. Is 17 years of age or older.

2. Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma.

3. Received funding under s. 48.569 (1) (d) immediately prior to his or her 17th birthday.

4. Is living in a foster home, group home, residential care center for children and youth, or subsidized guardianship home.

(b) The funding provided for the maintenance of a juvenile under par. (a) shall be in an amount equal to that to which the juvenile would receive under s. 48.569 (1) (d) if the juvenile were 16 years of age.

(4) AFTERCARE SUPERVISION. A county department may provide aftercare supervision under s. 938.34 (4n) for juveniles who are released from juvenile correctional facilities or secured residential care centers for children and youth. If a county department intends to change its policy regarding whether the county department or the department shall provide aftercare supervision for juveniles released from juvenile correctional facilities or secured residential care centers for children and youth the county executive or county administrator, or, if the county has no county executive or county administrator, the chairperson of the county board of supervisors, or, for multicounty departments, the chairpersons of the county boards of supervisors jointly, shall submit a letter to the department stating that intent before July 1 of the year preceding the year in which the policy change will take effect.

History: 1995 a. 77; 1997 a. 27, 35; 1999 a. 9; 2001 a. 38, 59; 2005 a. 25, 293, 344; 2007 a. 20, 97; 2009 a. 28; 2011 a. 32.

938.59 Examination and records. (1) INVESTIGATION AND EXAMINATION. The county department shall investigate the personal and family history and environment of any juvenile transferred to its legal custody or placed under its supervision under s. 938.34 (4d) or (4n) and make any physical or mental examinations of the juvenile considered necessary to determine the type of care necessary for the juvenile. The county department shall screen a juvenile who is examined to determine whether the juvenile is in need of special treatment or care because of alcohol or other drug abuse, mental illness, or severe emotional disturbance. The county department shall keep a complete record of the information received from the court, the date of reception, all available data on the personal and family history of the juvenile, the results of all tests and examinations given the juvenile, and a complete history of all placements of the juvenile while in the legal custody or under the supervision of the county department.

(2) REPORT TO THE DEPARTMENT. At the department's request, the county department shall report to the department regarding juveniles in the legal custody or under the supervision of the county department.

History: 1995 a. 77, 352; 2005 a. 344.

938.595 Duration of control of county departments over delinquents. Except as provided in s. 48.366, a juvenile who has been adjudged delinquent and placed under the supervision of a county department under s. 938.34 (4d) or (4n) shall be discharged as soon as the county department determines that there is a reasonable probability that it is no longer necessary either for the rehabilitation and treatment of the juvenile or for the protection of the public that the county department retain supervision.

History: 1995 a. 77, 352.

SUBCHAPTER XVII

GENERAL PROVISIONS ON RECORDS

938.78 Confidentiality of records. (1) DEFINITION. In this section, unless otherwise qualified, "agency" means the department, a county department or a licensed child welfare agency.

(2) CONFIDENTIALITY; EXCEPTIONS. (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual who is or was in its care or legal custody, except as provided under sub. (3) or s. 48.396 (3) (bm) or (c) 1r., 938.371, 938.38 (5) (b) or (d) or (5m) (d), 938.396 (2m) (c) 1r., 938.51, or 938.57 (2m) or by order of the court.

(ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian, or legal custodian of the juvenile who is the subject of the record or upon the request of the juvenile, if 14 years of age or older, to the parent, guardian, legal custodian, or juvenile, unless the agency finds that inspection of the record by the juvenile, parent, guardian, or legal custodian would result in imminent danger to anyone.

(am) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record,

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upon the written permission of the parent, guardian, or legal custodian of the juvenile who is the subject of the record or upon the written permission of the juvenile, if 14 years of age or older, to the person named in the permission if the parent, guardian, legal custodian, or juvenile specifically identifies the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(b) 1. Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, the victim−witness coordinator, a fire investigator under s. 165.55 (15), a public school district or a private school regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 48.78. A law enforcement agency that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396 (1) and 938.396 (1) (a). A public school that obtains information under this paragraph shall keep the information confidential as required under s. 118.125, and a private school that obtains information under this paragraph shall keep the information confidential in the same manner as is required of a public school under s. 118.125. Paragraph (a) does not apply to the confidential exchange of information between an agency and officials of a tribal school regarding an individual in the care or legal custody of the agency if the agency determines that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials to keep the information confidential in a manner at least as stringent as is required of a public school official under s. 118.125.

1m. An agency may enter into an interagency agreement with a school board, a private school, a tribal school, a law enforcement agency, or another social welfare agency providing for the routine disclosure of information under subd. 1. to the school board, private school, tribal school, law enforcement agency, or other social welfare agency.

2. On petition of an agency to review pupil records, as defined in s. 118.125 (1) (d), other than pupil records that may be disclosed without court order under s. 118.125 (2) or (2m), for the purpose of providing treatment or care for an individual in the care or legal custody of the agency, the court may order the school board of the school district, or the governing body of the private school, in which an individual is enrolled to disclose to the agency the pupil records of the individual as necessary for the agency to provide that treatment or care. The court may request the governing body of the tribal school in which an individual is enrolled to disclose to the agency the pupil records of the individual as necessary for the agency to provide that treatment or care. The agency may use the pupil records only for the purpose of providing treatment or care and may make the pupil records available only to employees of the agency who are providing treatment or care for the individual.

(d) Paragraph (a) does not prohibit the department of health services or a county department from disclosing information about an individual formerly in the legal custody or under the supervision of that department under s. 48.34 (4m), 1993 stats., or formerly under the supervision of that department or county department under s. 48.34 (4n), 1993 stats., or s. 938.34 (4d) or (4n) to the department of corrections, if the individual is at the time of disclosure any of the following:

1. The subject of a presentence investigation under s. 972.15.

2. Under sentence to the Wisconsin state prisons under s. 973.15.

3. Subject to an order under s. 48.366 or 938.183 and placed in a state prison under s. 48.366 (8) or 938.183.

4. On probation to the department of corrections under s. 973.09.

5. On parole under s. 302.11 or ch. 304 or on extended supervision under s. 302.113 or 302.114.

(e) Notwithstanding par. (a), an agency shall, upon request, disclose information to authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the information involves or relates to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information disclosed under this paragraph. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

(g) Paragraph (a) does not prohibit an agency from disclosing information about an individual in its care or legal custody on the written request of the department of safety and professional services or of any interested examining board or affiliated credentialing board in that department for use in any investigation or proceeding relating to any alleged misconduct by any person who is credentialed or who is seeking credentialing under ch. 448, 455 or 457. Unless authorized by an order of the court, the department of safety and professional services and any examining board or affiliated credentialing board in that department shall keep confidential any information obtained under this paragraph and may not disclose the name of or any other identifying information about the individual who is the subject of the information disclosed, except to the extent that redisclosure of that information is necessary for the conduct of the investigation or proceeding for which that information was obtained.

(h) Paragraph (a) does not prohibit the department of children and families, a county department, or a licensed child welfare agency from entering the content of any record kept or information received by that department, county department, or licensed child welfare agency into the statewide automated child welfare information system established under s. 48.47 (7g) or the department of children and families from transferring any information maintained in that system to the court under s. 48.396 (3) (bm). If the department of children and families transfers that information to the court, the court and the director of state courts may allow access to that information as provided in s. 48.396 (3) (c) 2.

(i) Paragraph (a) does not prohibit an agency from disclosing information to a relative of a juvenile placed outside of his or her home only to the extent necessary to facilitate the establishment of a relationship between the juvenile and the relative or a placement of the juvenile with the relative or from disclosing information under s. 938.21 (5) (e), 938.355 (2) (cm), or 938.357 (2v) (d). In this paragraph, "relative" includes a relative whose relationship is derived through a parent of the juvenile whose parental rights are terminated.

(3) RELEASE OF INFORMATION WHEN ESCAPE OR ABSENCE; RULES. If a juvenile adjudged delinquent under s. 48.12, 1993 stats., or s. 938.12 or found to be in need of protection or services under s. 48.13 (12), 1993 stats., or s. 48.13 (14), 1993 stats., or s. 938.13 (12) or (14) on the basis of a violation of s. 943.23 (1m) or (1r), 1999 stats., or s. 941.10, 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.24, 941.26, 941.28, 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2) (a), 943.23 (1g), 943.32 (2), 948.02, 948.025, 948.03, 948.05, 948.055, 948.085 (2), 948.60, 948.605, or 948.61 or any crime specified in ch. 940 has escaped from a juvenile correctional facility, residential care center for children and youth, inpatient facility, as defined in s. 51.01 (10), juvenile detention facility, or juvenile portion of a county jail, or from the custody of a peace officer or a guard of such a facility, center, or jail, or has been allowed to leave a juvenile correctional facility, residential care center for

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children and youth, inpatient facility, juvenile detention facility, or juvenile portion of a county jail for a specified time period and is absent from the facility, center, home, or jail for more than 12 hours after the expiration of the specified period, the department or county department having supervision over the juvenile may release the juvenile's name and any information about the juvenile that is necessary for the protection of the public or to secure the juvenile's return to the facility, center, home, or jail. The department shall promulgate rules establishing guidelines for the release of the juvenile's name or information about the juvenile to the public.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283; 1999 a. 9; 2001 a. 38, 59, 109; 2003 a. 292, 321; 2005 a. 25, 277, 293, 344, 406, 434; 2007 a. 20 ss. 3834, 9121 (6) (a); 2007 a. 97; 2009 a. 79, 302, 338; 2011 a. 32, 270.

As a juvenile has a constitutional right to both inspect and reply to a hearing examiner's report on the revocation of aftercare supervision, s. 48.78 does not prevent a juvenile from having access to the report. State ex rel. R.R. v. Schmidt, 63 Wis. 2d 82, 216 N.W.2d 18 (1974).

NOTE: The above annotation cites to s. 48.78, the predecessor statute to s. 938.78.

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293(2); 2) an inspection request of juvenile records under ss. 48.396 (2) and 938.396 (2); or 3) an inspection request of agency records under ss. 48.78 (2) (a) and 938.78(2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03−3018.

SUBCHAPTER XVIII

COMMUNITY SERVICES

938.795 Powers of the department. The department may do all of the following:

(1) COLLECT STATISTICS AND INFORMATION. Collect and collaborate with other agencies in collecting statistics and information useful in determining the cause and amount of delinquency and crime in this state or in carrying out the powers and duties of the department relating to delinquency and crime.

(2) ASSIST COMMUNITIES. Assist communities in their efforts to combat delinquency and social breakdown likely to cause delinquency and crime and assist them in setting up programs for coordinating a total community program relating to delinquency and crime, including the improvement of law enforcement.

(3) ASSIST SCHOOLS. Assist schools in extending their particular contribution in identifying and helping juveniles vulnerable to delinquency and crime and in improving school services for all youth.

(4) ENLIGHTEN PUBLIC OPINION. Develop and maintain an enlightened public opinion in support of any program to control delinquency and crime.

History: 1995 a. 77; 2005 a. 344.

SUBCHAPTER XX

MISCELLANEOUS PROVISIONS

938.988 Interstate placement of juveniles. Sections 48.988 and 48.989 apply to the interstate placement of juveniles, except that s. 48.99, rather than those sections, applies to the interstate placement of juveniles following withdrawal from the Interstate Compact on the Placement of Children as described in s. 48.9895.

History: 1995 a. 77; 2009 a. 339.

938.991 Interstate compact on juveniles. The following compact, by and between the state of Wisconsin and any other state which has or shall hereafter ratify or legally join in the same, is ratified and approved:

INTERSTATE COMPACT ON JUVENILES.

The contracting states solemnly agree:

(1) ARTICLE I — FINDINGS AND PURPOSES. That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation, extended supervision or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any 2 or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

(2) ARTICLE II — EXISTING RIGHTS AND REMEDIES. That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

(3) ARTICLE III — DEFINITIONS. That, for the purposes of this compact:

(a) "Court" means any court having jurisdiction over delinquent, neglected or dependent children.

(b) "Delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court.

(c) "Probation, extended supervision or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto.

(d) "Residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

(e) "State" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(4) ARTICLE IV — RETURN OF RUNAWAYS. (a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of that parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the return of the juvenile. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of the juvenile's running away, the juvenile's location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his or her welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by 2 certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Further affidavits and other documents as may be deemed proper may be submitted with the petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel the return of the juvenile to the state. If the judge determines, either with or without a hear-

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ing, that the juvenile should be returned, the judge shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of the juvenile. The requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to legal custody of the juvenile, and that the return of the juvenile is in the best interest and for the protection of the juvenile. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when the juvenile runs away, the court may issue a requisition for the return of the juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing that person to take into custody and detain the juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon a detention order shall be delivered over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of a court in the state, who shall inform the juvenile of the demand made for his or her return, and who may appoint counsel or guardian ad litem for the juvenile. If the judge shall find that the requisition is in order, the judge shall deliver the juvenile over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(am) Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to that juvenile's legal custody, that juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for the juvenile and who shall determine after a hearing whether sufficient cause exists to hold the juvenile, subject to the order of the court, for the juvenile's own protection and welfare, for such a time not exceeding 90 days as will enable the return of the juvenile to another state party to this compact pursuant to a requisition for the return of the juvenile from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in that state, or if the juvenile is suspected of having committed within that state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of that state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for the offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of the officers' authority and the identity of the juvenile being returned, shall be permitted to transport the juvenile through any and all states party to this compact, without interference. Upon the return of the juvenile to the state from which the juvenile ran away, the juvenile shall be subject to further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this subsection shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this subsection means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to legal custody of such minor.

(5) ARTICLE V — RETURN OF ESCAPEES AND ABSCONDERS. (a) That the appropriate person or authority from whose probation, extended supervision or parole supervision a delinquent juvenile has absconded or from whose institutional custody the delinquent juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of the delinquent juvenile. The requisition shall state the name and age of the delinquent juvenile, the particulars of that person's adjudication as a delinquent juvenile, the circumstances of the breach of the terms of the delinquent juvenile's probation, extended supervision or parole or of the delinquent juvenile's escape from an institution or agency vested with legal custody or supervision of the delinquent juvenile, and the location of the delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by 2 certified copies of the judgment, formal adjudication, or order of commitment which subjects the delinquent juvenile to probation, extended supervision or parole or to the legal custody of the institution or agency concerned. Further affidavits and other documents as may be deemed proper may be submitted with the requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing that person to take into custody and detain the delinquent juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon a detention order shall be delivered over to the officer whom the appropriate person or authority demanding the delinquent juvenile shall have appointed to receive the delinquent juvenile, unless the delinquent juvenile shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform the delinquent juvenile of the demand made for the return of the delinquent juvenile and who may appoint counsel or guardian ad litem for the delinquent juvenile. If the judge shall find that the requisition is in order, the judge shall deliver the delinquent juvenile over to the officer whom the appropriate person or authority demanding shall have appointed to receive the delinquent juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(am) Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation, extended supervision or parole, or escaped from an institution or agency vested with legal custody or supervision of the person in any state party to this compact, the person may be taken into custody in any other state party to this compact without a requisition. In that event, the person must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for the person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for a time, not exceeding 90 days, as will enable the person's detention under a detention order issued on a requisition pursuant to this subsection. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation, extended supervision or parole or escaped from an institution or agency vested with legal custody or supervision of the delinquent juvenile, there is pending in the state wherein the delinquent juvenile is detained any criminal charge or any proceeding to have the delinquent juvenile adjudicated a delinquent juvenile for an act committed in that state, or if the delinquent juvenile is suspected

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of having committed within such state a criminal offense or an act of juvenile delinquency, the delinquent juvenile shall not be returned without the consent of that state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of the officers' authority and the identity of the delinquent juvenile being returned, shall be permitted to transport the delinquent juvenile through any and all states party to this compact, without interference. Upon the return of the delinquent juvenile to the state from which the delinquent juvenile escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this subsection shall be responsible for payment of the transportation costs of such return.

(6) ARTICLE VI — VOLUNTARY RETURN PROCEDURE. That any delinquent juvenile who has absconded while on probation, extended supervision or parole, or escaped from an institution or agency vested with legal custody or supervision of the delinquent juvenile in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under sub. (4) (a) or (5) (a), may consent to his or her immediate return to the state from which the juvenile or delinquent juvenile absconded, escaped or ran away. Consent shall be given by the juvenile or delinquent juvenile and his or her counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his or her counsel or guardian ad litem, if any, consent to the return of the juvenile or delinquent juvenile to the demanding state. Before the consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his or her rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver the juvenile or delinquent juvenile to the duly accredited officer or officers of the state demanding the return of the juvenile or delinquent juvenile, and shall cause to be delivered to the officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order the juvenile or delinquent juvenile to return unaccompanied to that state and shall provide the juvenile or delinquent juvenile with a copy of the court order; in that event a copy of the consent shall be forwarded to the compact administrator of the state to which the juvenile or delinquent juvenile is ordered to return.

(7) ARTICLE VII — COOPERATIVE SUPERVISION OF PROBATIONERS, PERSONS ON EXTENDED SUPERVISION AND PAROLEES. (a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation, extended supervision or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation, extended supervision or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer, parolee or person under extended supervision under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer, parolee or person under extended supervision in cases where the parent, guardian or person entitled to legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation, extended supervision or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation, extended supervision or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation, extended supervision or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation, extended supervision or parole, there is pending against the delinquent juvenile within the receiving state any criminal charge or any proceeding to have the delinquent juvenile adjudicated a delinquent juvenile for any act committed in that state, or if the delinquent juvenile is suspected of having committed within that state a criminal offense or an act of juvenile delinquency, the delinquent juvenile shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this subsection for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

(8) ARTICLE VIII — RESPONSIBILITY FOR COSTS. (a) That subs. (4) (b), (5) (b) and (7) (d) shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to sub. (4) (b), (5) (b) or (7) (d).

(9) ARTICLE IX — DETENTION PRACTICES. That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

(10) ARTICLE X — SUPPLEMENTARY AGREEMENTS. That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(a) Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

(b) Provide that the delinquent juvenile shall be given a court hearing prior to being sent to another state for care, treatment and custody;

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(c) Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(d) Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(e) Provide for reasonable inspection of such institutions by the sending state;

(f) Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to the delinquent juvenile's being sent to another state; and

(g) Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

(11) ARTICLE XI — ACCEPTANCE OF FEDERAL AND OTHER AID. That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

(12) ARTICLE XII — COMPACT ADMINISTRATORS. That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

(13) ARTICLE XIII — EXECUTION OF COMPACT. That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(14) ARTICLE XIV — RENUNCIATION. That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under sub. (7) shall continue as to parolees, probationers and persons on extended supervision residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under sub. (10) shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the 6 months' renunciation notice of the present Article.

(15) ARTICLE XV — SEVERABILITY. That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1981 c. 390; 1983 a. 189; 1991 a. 316; 1995 a. 77 s. 388; Stats. 1995 s. 938.991; 1997 a. 283; 1999 a. 85.

Cross−reference: See the appendix for a list of states that have ratified this compact.

938.992 Definitions. As used in the interstate compact on juveniles, the following words and phrases have the following meanings as to this state:

(1) (a) The "appropriate court" of this state to issue a requisition under s. 938.991 (4) is the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county of the petitioner's residence, or, if the petitioner is a child welfare agency, the court so assigned for the county where the agency has its principal office, or, if the petitioner is the department, any court so assigned in the state.

(b) The "appropriate court" of this state to receive a requisition under s. 938.991 (4) or (5) or 938.998 is the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county where the juvenile is located.

(2) "Executive authority" means the compact administrator.

(3) Notwithstanding s. 938.991 (3) (b), "delinquent juvenile" does not include a person subject to an order under s. 48.366 who is confined to a state prison under s. 302.01.

History: 1977 c. 449; 1981 c. 390; 1983 a. 189; 1985 a. 294; 1987 a. 27; 1989 a. 31, 107; 1995 a. 27; 1995 a. 77 s. 389 to 392; Stats. 1995 s. 938.992; 2005 a. 344.

938.993 Juvenile compact administrator. (1) Under the interstate compact on juveniles, the governor may designate an officer or employee of the department to be the compact administrator, who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms of the compact. The compact administrator shall serve subject to the pleasure of the governor. If there is a vacancy in the office of compact administrator or in the case of absence or disability, the functions shall be performed by the secretary of corrections, or other employee designated by the secretary. The compact administrator may cooperate with all departments, agencies and officers of and in the government of this state and its political subdivisions in facilitating the proper administration of the compact or of any supplementary agreement entered into by this state.

(2) The compact administrator shall determine for this state whether to receive juvenile probationers, parolees and persons on extended supervision of other states under s. 938.991 (7) and shall arrange for the supervision of each such probationer, parolee or person on extended supervision received, either by the department or by a person appointed to perform supervision service for the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county where the juvenile is to reside, whichever is more convenient. Those persons shall in all such cases make periodic reports to the compact administrator regarding the conduct and progress of the juveniles.

History: 1977 c. 449; 1981 c. 390; 1989 a. 31, 107; 1995 a. 27; 1995 a. 77 s. 393; Stats. 1995 s. 938.993; 1997 a. 35, 283.

938.994 Supplementary agreements. The department may enter into supplementary agreements with appropriate officials of other states under s. 938.991 (10). If the supplementary agreement requires or contemplates the use of any institution or facility of this state or the provision of any service by this state, the supplementary agreement has no effect until approved by the department or agency under whose jurisdiction the institution or facility is operated or which shall be charged with the rendering of the service.

History: 1981 c. 390; 1989 a. 31, 107; 1995 a. 27; 1995 a. 77 s. 394; Stats. 1995 s. 938.994.

938.995 Financial arrangements. The expense of returning juveniles to this state pursuant to s. 938.991 shall be paid as follows:

(1) In the case of a runaway under s. 938.991 (4), the court making the requisition shall inquire summarily regarding the financial ability of the petitioner to bear the expense and if it finds the petitioner is able to do so, shall order the petitioner to pay all the expenses of returning the juvenile; otherwise the court shall arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile, for that person's actual and necessary expenses; and the court may order that the petitioner reimburse the county for so much of the expense as the court finds the petitioner is able to pay. If the petitioner fails, without good cause, or refuses to pay that sum, the petitioner may be proceeded against for contempt.

(2) In the case of an escapee or absconder under s. 938.991 (5) or (6), if the juvenile is in the legal custody or under the supervi-

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sion of the department, it shall bear the expense of his or her return; otherwise the appropriate court shall, on petition of the person entitled to the juvenile's custody or charged with his or her supervision, arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile, for the person's actual and necessary expenses. In this subsection "appropriate court" means the court which adjudged the juvenile to be delinquent or, if the juvenile is under supervision for another state under s. 938.991 (7), then the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county of the juvenile's residence during the supervision.

(3) In the case of a voluntary return of a runaway without requisition under s. 938.991 (6), the person entitled to the juvenile's legal custody shall pay the expense of transportation and the actual and necessary expenses of the person, if any, who returns the juvenile; but if the person is financially unable to pay all the expenses he or she may petition the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county of the petitioner's residence for an order arranging for the transportation as provided in sub. (1). The court shall inquire summarily into the financial ability of the petitioner and, if it finds the petitioner is unable to bear any or all of the expense, the court shall arrange for the transportation at the expense of the county and shall order the county to reimburse the person, if any, who returns the juvenile, for the person's actual and necessary expenses. The court may order that the petitioner reimburse the county for so much of the expense as the court finds the petitioner is able to pay. If the petitioner fails, without good cause, or refuses to pay that sum, he or she may be proceeded against for contempt.

(4) In the case of a juvenile subject to a petition under s. 938.998, the appropriate court shall arrange for the transportation at the expense of the county in which the violation of criminal law is alleged to have been committed and order that the county reimburse the person, if any, who returns the juvenile, for the person's actual and necessary expenses. In this subsection "appropriate court" means the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county in which the violation of criminal law is alleged to have been committed.

History: 1977 c. 354, 447, 449; 1981 c. 390; 1985 a. 294; 1989 a. 31, 107; 1991 a. 316; 1995 a. 27; 1995 a. 77 s. 395 to 397; Stats. 1995 s. 938.995.

938.996 Compensation. Any judge of this state who appoints counsel or a guardian ad litem pursuant to the provisions of the interstate compact on juveniles may, in the judge's discretion, allow reasonable compensation in an amount not to exceed the compensation paid to private attorneys under s. 977.08 (4m) (b), to be paid by the county on order of the court.

History: 1991 a. 316; 1993 a. 16; 1995 a. 27; 1995 a. 77 s. 398; Stats. 1995 s. 938.996.

The courts' power to appropriate compensation for court−appointed counsel is necessary for the effective operation of the judicial system. In ordering compensation for court ordered attorneys, a court should abide by the s. 977.08 (4m) rate when it can retain effective counsel at that rate, but should order compensation at the rate under SCR 81.01 or 81.02 or a higher rate when necessary to secure effective counsel. Friedrich v. Dane County Circuit Court, 192 Wis. 2d 1, 531 N.W.2d 32 (1995).

938.997 Responsibilities of state departments, agencies and officers. The courts, departments, agencies and officers of this state and its political subdivisions shall enforce the interstate compact on juveniles and shall do all things appropriate to the effectuation of its purposes which may be within their respective jurisdictions.

History: 1995 a. 77 s. 399; Stats. 1995 s. 938.997.

938.998 Rendition of juveniles alleged to be delinquent. (1) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

(2) All provisions and procedures of s. 938.991 (5) and (6) shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in s. 938.991 (5) shall be forwarded by the judge of the court in which the petition has been filed.

History: 1985 a. 294; 1995 a. 77 s. 400; Stats. 1995 s. 938.998.

938.9985 Renunciation of Interstate Compact on Juveniles. Sections 938.991 to 938.998 do not apply to a juvenile from this state who is located in another state and who is a runaway, as described in s. 938.991 (4), an escapee or absconder, as described in s. 938.991 (5), a probationer, person on extended supervision, or parolee under the supervision of that other state, as described in s. 938.991 (7), or a juvenile charged as being a delinquent, as described in s. 938.998, or to a juvenile from another state who is located in this state and who is a runaway, as described in s. 938.991 (4), an escapee or absconder, as described in s. 938.991 (5), a probationer, person on extended supervision, or parolee under the supervision of this state, as described in s. 938.991 (7), or a juvenile charged as being a delinquent, as described in s. 938.998, if all of the following have occurred:

(1) The Interstate Compact for Juveniles under s. 938.999 is in effect as provided in s. 938.999 (10) (b).

(2) Both this state and the other state are parties to the Interstate Compact for Juveniles under s. 938.999.

(3) Both this state and the other state have renounced the Interstate Compact on Juveniles as provided under s. 938.991 (14).

History: 2005 a. 234.

938.999 Interstate Compact for Juveniles. (1) ARTICLE I — PURPOSE. (a) The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that the U.S. Congress, by enacting the Crime Control Act, 4 USC 112, has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to do all of the following:

1. Ensure that the adjudicated juveniles and status offenders who are subject to this compact are provided with adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state.

2. Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected.

3. Return juveniles who have run away, absconded, or escaped from supervision or control or who have been accused of an offense to the state requesting their return.

4. Make contracts for the cooperative institutionalization in public facilities in member states of delinquent youth needing special services.

5. Provide for the effective tracking and supervision of juveniles.

6. Equitably allocate the costs, benefits, and obligations of the compact among the compacting states.

7. Establish procedures to manage the movement between states of juvenile offenders who are released to the community under the jurisdiction of courts, juvenile departments, or other criminal or juvenile justice agencies that have jurisdiction over juvenile offenders.

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8. Ensure that immediate notice is given to jurisdictions where defined offenders are authorized to travel or to relocate across state lines.

9. Establish procedures to resolve pending charges or detainers against juvenile offenders before transfer or release to the community under this compact.

10. Establish a system of uniform data collection of information pertaining to juveniles who are subject to this compact that allows access by authorized juvenile justice and criminal justice officials and a system of regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators.

11. Monitor compliance with the rules governing the interstate movement of juveniles and intervene to address and correct any noncompliance with those rules.

12. Coordinate training and education regarding the regulation of the interstate movement of juveniles for officials who are involved in that activity.

13. Coordinate the implementation and operation of this compact with the Interstate Compact on the Placement of Children under ss. 48.988 and 48.989, the Interstate Compact for the Placement of Children under s. 48.99, the Interstate Compact for Adult Offender Supervision under s. 304.16, and other compacts affecting juveniles, particularly in those cases in which concurrent or overlapping supervision issues arise.

(c) It is the policy of the compacting states that the activities conducted by the interstate commission are the formation of public policies and, therefore, are public business. Furthermore, the compacting states shall cooperate with each other and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles who are subject to this compact.

(d) The compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

(2) ARTICLE II — DEFINITIONS. In this section:

(a) "Bylaws" means the bylaws established by the interstate commission for its governance or for directing or controlling its actions or conduct.

(b) "Commissioner" means the voting representative of each compacting state appointed under sub. (3) (b).

(c) "Compact administrator" means the person appointed under this compact in each compacting state who is responsible for the administration and management of the state's supervision and transfer of juveniles who are subject to this compact, the rules, and the policies adopted by the state board under this compact.

(d) "Compacting state" means a state that has enacted the enabling legislation for this compact.

(e) "Court" means a court having jurisdiction over delinquent, neglected, or dependent juveniles.

(f) "Deputy compact administrator" means the person, if any, appointed in each compacting state to act on behalf of a compact administrator in the administration and management of the state's supervision and transfer of juveniles who are subject to this compact, the rules, and the policies adopted by the state board under this compact.

(g) "Interstate commission" means the interstate commission for juveniles established under sub. (3) (a).

(h) "Juvenile" means a person who is defined as a juvenile under the law of any compacting state or by the rules, including all of the following:

1. An accused delinquent. For purposes of this subdivision, "accused delinquent" means a person who is charged with an offense that, if committed by an adult, would be a criminal offense.

2. An adjudicated delinquent. For purposes of this subdivision, "adjudicated delinquent" means a person who has been found to have committed an offense that, if committed by an adult, would be a criminal offense.

3. An accused status offender. For purposes of this subdivision, "accused status offender" means a person who is charged with an offense that would not be a criminal offense if committed by an adult.

4. An adjudicated status offender. For purposes of this subdivision, "adjudicated status offender" means a person who has been found to have committed an offense that would not be a criminal offense if committed by an adult.

5. A nonoffender. For purposes of this subdivision, "nonoffender" means a person who is in need of supervision, but who has not been charged with or found to have committed an offense.

(i) "Noncompacting state" means a state that has not enacted the enabling legislation for this compact.

(j) "Probation or parole" means any kind of supervision or conditional release of a juvenile that is authorized under the laws of a compacting state.

(k) Except as provided in sub. (6) (f), "rule" means a written statement by the interstate commission promulgated under sub. (6) that is of general applicability; that implements, interprets, or prescribes a policy or provision of the compact or an organizational, procedural, or practice requirement of the interstate commission; and that has the force of statutory law in a compacting state. "Rule" includes the amendment, repeal, or suspension of an existing rule.

(L) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, or the Northern Marianas Islands.

(m) "State board" means the state board for interstate juvenile supervision created by each compacting state under sub. (9).

(3) ARTICLE III — INTERSTATE COMMISSION FOR JUVENILES. (a) There is created the interstate commission for juveniles. The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all of the responsibilities, powers, and duties specified in this section and such additional powers as may be conferred upon the interstate commission by subsequent action of the respective legislatures of the compacting states exercised in accordance with this compact.

(b) The interstate commission shall consist of commissioners appointed by the appropriate appointing authority in each compacting state under the requirements of the compacting state and in consultation with the state board of the compacting state. The commissioner shall be the compact administrator, deputy compact administrator, or designee from the compacting state and shall serve on the interstate commission in that capacity under the applicable law of the compacting state.

(c) In addition to the commissioners who are the voting representatives of each compacting state, the interstate commission shall include, as nonvoting members, persons who are members of interested organizations. Those nonvoting members shall include members of the national organizations of governors, legislators, state supreme court chief justices, attorneys general, juvenile justice and juvenile corrections officials, and crime victims and members of the Interstate Compact on the Placement of Children, the Interstate Compact for the Placement of Children, and the Interstate Compact for Adult Offender Supervision. The interstate commission may provide in the bylaws for the inclusion of additional nonvoting members, including members of other national organizations, in such numbers as may be determined by the interstate commission.

(d) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws.

(e) The interstate commission shall meet at least once each year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings

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and, except as provided in par. (i), meetings shall be open to the public.

(f) The interstate commission shall establish an executive committee, which shall include officers and members of the interstate commission and others as determined by the bylaws. The executive committee may act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and amending the compact. The executive committee shall oversee the day−to−day activities of the administration of the compact that are managed by an executive director and interstate commission staff; administer enforcement of and compliance with the compact, the bylaws, and the rules; and perform such other duties as directed by the interstate commission or as specified in the bylaws.

(g) Each commissioner is entitled to cast the vote to which the compacting state represented by the commissioner is entitled and to participate in the business and affairs of the interstate commission. A commissioner shall vote in person and may not delegate a vote to another compacting state, except that a commissioner, in consultation with the state board of the commissioner's state, may appoint another authorized representative, in the absence of the commissioner, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or by other means of telecommunication or electronic communication.

(h) The bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent that the information or records would adversely affect personal privacy rights or proprietary interests.

(i) Public notice shall be given of all meetings, and all meetings shall be open to the public, except as specified in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public if the interstate commission or committee determines by a two−thirds vote that an open meeting would be likely to do any of the following:

1. Relate solely to the interstate commission's internal personnel practices and procedures.

2. Disclose matters that are specifically exempted from disclosure by statute.

3. Disclose trade secrets or commercial or financial information that is privileged or confidential.

4. Involve accusing any person of a crime or formally censuring any person.

5. Disclose information that is of a personal nature, if disclosure of the information would constitute a clearly unwarranted invasion of personal privacy.

6. Disclose investigative records that have been compiled for law enforcement purposes.

7. Disclose information that is contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for the use of the interstate commission with respect to a regulated person for the purpose of regulation or supervision of that person.

8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person.

9. Specifically relate to the interstate commission's issuance of a subpoena or the participation of the interstate commission in a civil action or other legal proceeding.

(j) For every meeting that is closed under par. (i), the interstate commission's legal counsel shall publicly certify that, in the opinion of the legal counsel, the meeting may be closed to the public and shall reference each provision under par. (i) authorizing closure of the meeting. The interstate commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons for those actions, including a description of each of the views expressed on any item and the record of any roll call vote reflecting the vote of each commissioner on the question. All documents considered in connection with any action shall be identified in the minutes.

(k) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed by the rules. The rules shall specify the date to be collected and the means of collection and shall specify data exchange and reporting requirements. Those methods of data collection, exchange, and reporting shall, insofar as is reasonably possible, conform to up−to−date technology and shall coordinate the interstate commission's information functions with the appropriate repository of records.

(4) ARTICLE IV — POWERS AND DUTIES OF THE INTERSTATE COMMISSION. The interstate commission shall have the power and duty to do all of the following:

(a) Provide for dispute resolution among compacting states.

(b) Promulgate rules to effect the purposes and obligations enumerated in this compact, which rules shall have the effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(c) Oversee, supervise, and coordinate the interstate movement of juveniles who are subject to this compact, the bylaws, and the rules.

(d) Enforce compliance with the compact, the bylaws, and the rules, using all necessary and proper means, including the use of judicial process.

(e) Establish and maintain offices that shall be located within one or more of the compacting states.

(f) Purchase and maintain insurance and bonds.

(g) Borrow, accept, hire, or contract for the services of personnel.

(h) Establish and appoint committees and hire staff that the interstate commission considers necessary for carrying out its functions, including an executive committee as required by sub. (3) (f), which shall have the power to act on behalf of the interstate commission in carrying out the powers and duties of the interstate commission under this compact.

(i) Elect or appoint officers, attorneys, employees, agents, or consultants; fix their compensation, define their duties, and determine their qualifications; and establish the personnel policies and programs of the interstate commission relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(j) Accept, receive, utilize, and dispose of donations and grants of money, equipment, supplies, materials, and services.

(k) Lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use any property, real, personal, or mixed.

(L) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(m) Establish a budget and make expenditures and levy assessments as provided in sub. (8).

(n) Sue and be sued.

(o) Adopt a seal and bylaws governing the management and operation of the interstate commission.

(p) Perform such functions as may be necessary to achieve the purposes of this compact.

(q) Report annually to the legislatures, governors, judiciary, and state boards of the compacting states concerning the activities of the interstate commission during the preceding year. Those reports shall also include any recommendations that have been adopted by the interstate commission.

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(r) Coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials who are involved in that activity.

(s) Establish uniform standards for reporting, collecting, and exchanging data.

(t) Maintain the corporate books and records of the interstate commission in accordance with the bylaws.

(5) ARTICLE V — ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION. (a) *Bylaws.* Within 12 months after the first meeting of the interstate commission, the interstate commission shall, by a majority vote of the members present and voting, adopt bylaws to govern the conduct of the interstate commission as may be necessary to carry out the purposes of the compact, including bylaws that do all of the following:

1. Establish the fiscal year of the interstate commission.

2. Establish an executive committee and such other committees as may be necessary.

3. Provide for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission.

4. Provide reasonable procedures for calling and conducting meetings of the interstate commission and for ensuring reasonable notice of each meeting.

5. Establish the titles and responsibilities of the officers of the interstate commission.

6. Provide a mechanism for concluding the operations of the interstate commission and for returning any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of the debts and obligations of the interstate commission.

7. Provide rules for the initial administration of the compact.

8. Establish standards and procedures for compliance and technical assistance in carrying out the compact.

(b) *Officers and staff.* 1. The interstate commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission, except that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

2. The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the interstate commission may consider appropriate. The executive director shall serve as secretary to the interstate commission, but may not be a member of the interstate commission, and shall hire and supervise such other staff as may be authorized by the interstate commission.

(c) *Qualified immunity, defense, and indemnification.* 1. The executive director, employees, and representatives of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property, personal injury, or other civil liability caused by, arising out of, or relating to any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, except that this subdivision does not protect any person from suit or liability for any damage, loss, injury, or liability that is caused by the intentional or willful and wanton misconduct of that person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of that person's employment or duties for any act, error, or omission occurring within that person's state may not exceed the limits of liability specified under the constitution and laws of that state for state officials, employees, and agents, except that this subdivision does not protect any person from suit or liability for any damage, loss, injury, or liability that is caused by the intentional or willful and wanton misconduct of that person.

3. The interstate commission shall defend the executive director, employees, and representatives of the interstate commission, and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend a commissioner and a commissioner's employees and agents, in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

4. The interstate commission shall indemnify and hold harmless the commissioner of a compacting state, the commissioner's employees and agents, and the interstate commission's executive director, employees, and representatives in the amount of any settlement or judgment obtained against those persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

(6) ARTICLE VI — RULE−MAKING FUNCTION OF THE INTERSTATE COMMISSION. (a) The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(b) Rule making shall occur under the criteria specified in this subsection and the bylaws and rules adopted under this subsection. Rule making shall substantially conform to the principles of the Model State Administrative Procedure Act, 1981 Act, Uniform Laws Annotated, volume 15, page 1, (2000), or any other administrative procedure act that the interstate commission considers appropriate, consistent with the due process requirements under the U.S. Constitution. All rules and amendments to the rules shall become binding as of the date specified in the final rule or amendment.

(c) When promulgating a rule, the interstate commission shall do all of the following:

1. Publish the entire text of the proposed rule and state the reason for the proposed rule.

2. Allow and invite persons to submit written data, facts, opinions, and arguments, which shall be added to the rule−making record and be made publicly available.

3. Provide an opportunity for an informal hearing, if petitioned by 10 or more persons.

4. Promulgate a final rule and its effective date, if appropriate, based on the rule−making record, including input from state or local officials and other interested parties.

(d) Not later that 60 days after a rule is promulgated, any interested person may file a petition in the U. S. district court for the District of Columbia or in the federal district court for the district in which the interstate commission's principal office is located for judicial review of that rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rule−making record, the court shall hold the rule unlawful and set the rule aside. For purposes of this paragraph, evidence is substantial if the evidence would be considered substantial evidence under the Model State Administrative Procedure Act.

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(e) If a majority of the legislatures of the compacting states reject a rule by enactment of a statute or resolution in the same manner used to adopt the compact, the rule shall have no further effect in any compacting state.

(f) The rules governing the operation of the Interstate Compact on Juveniles under ss. 938.991 to 938.998 shall be void 12 months after the first meeting of the interstate commission.

(g) If the interstate commission determines that an emergency exists, the interstate commission may promulgate an emergency rule that shall become effective immediately upon promulgation, except that the usual rule−making procedures provided under this subsection shall be retroactively applied to the rule as soon as is reasonably possible, but no later than 90 days after the effective date of the emergency rule.

(7) ARTICLE VII — OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION. (a) *Oversight and enforcement.* 1. The interstate commission shall oversee the administration and operations of the interstate movement of juveniles who are subject to this compact in the compacting states and shall monitor those activities being administered in noncompacting states that may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions that are necessary to effectuate the purposes and intent of the compact. This compact and the rules shall be received by all of the judges, public officers, commissions, and departments of each compacting state as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in the proceeding and shall have standing to intervene in the proceeding for all purposes.

(b) *Dispute resolution.* 1. The compacting states shall report to the interstate commission on all issues and activities that are necessary for the administration of the compact and on all issues and activities that pertain to compliance with this compact, the bylaws, and the rules.

2. The interstate commission shall attempt, upon the request of a compacting state, to resolve any dispute or other issue that is subject to the compact and that may arise among compacting states or between compacting states and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The interstate commission, in the reasonable exercise of its discretion, shall enforce this compact and the rules, using any or all of the means specified in sub. (11) (b) and (c).

(8) FINANCE. (a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The interstate commission shall levy on and collect from each compacting state an annual assessment to cover the cost of the internal operations and activities of the interstate commission and its staff. The aggregate amount of the annual assessment shall be in an amount that is sufficient to cover the annual budget of the interstate commission as approved each year and shall be allocated among the compacting states based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state. The interstate commission shall promulgate a rule binding on all compacting states that governs the assessment.

(c) The interstate commission may not incur any obligations of any kind before securing funds adequate to meet those obligations; nor may the interstate commission pledge the credit of any compacting state, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under the bylaws. All receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the interstate commission.

(9) ARTICLE IX — THE STATE BOARD. Each compacting state shall create a state board. Although each compacting state may determine the membership of its own state board, the membership of the state board of each compacting state shall include the compact administrator, the deputy compact administrator, or a designee, at least one representative from the legislative, judicial, and executive branches of government, and one representative of victims groups. Each compacting state retains the right to determine the qualifications of the compact administrator and deputy compact administrator. Each state board shall advise and may exercise oversight and advocacy concerning that state's participation in interstate commission activities and may exercise any other duties as may be determined by that state, including the development of policy concerning the operations and procedures of the compact within that state.

(10) ARTICLE X — COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT. (a) Any state is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date of the compact shall be July 1, 2005, or upon enactment into law by the 35th state, whichever is later. After that initial effective date, the compact shall become effective and binding as to any other compacting state upon enactment of the compact into law by that compacting state. The governors of noncompacting states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis before adoption of the compact by all states.

NOTE: On August 26, 2008, Illinois became the 35th state to ratify.

(c) The interstate commission may propose amendments to the compact for enactment by the compacting states. An amendment does not become effective and binding upon the interstate commission and the compacting states until the amendment is enacted into law by the unanimous consent of the compacting states.

(11) ARTICLE XI — WITHDRAWAL, DEFAULT, JUDICIAL ENFORCEMENT, AND DISSOLUTION. (a) *Withdrawal.* 1. Once effective, the compact shall continue in effect and remain binding upon each compacting state, except that a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law in that state and a compacting state's membership in the compact may be suspended or terminated as provided in par. (b) 1. d. and 3. The effective date of a withdrawal by a compacting state is the effective date of the repeal of the statute that enacted the compact into law in that state.

2. A withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days after receiving the written notice of intent to withdraw.

3. A withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations the performance of which extend beyond the effective date of the withdrawal.

4. Reinstatement in the compact following the withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(b) *Default.* 1. If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the

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bylaws, or the rules, the interstate commission may impose on the compacting state any or all of the following penalties:

a. Remedial training and technical assistance as directed by the interstate commission.

b. Alternate dispute resolution.

c. Forfeitures, fees, and costs in such amounts as are considered to be reasonable and as are fixed by the interstate commission.

d. Suspension or termination of membership in the compact, which may be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the governor of the defaulting state, the chief justice of the supreme court or the chief judicial officer of that state, the majority and minority leaders of the legislature of that state, and the state board of that state.

2. The grounds for default include the failure of a compacting state to perform any obligations or responsibilities imposed upon the compacting state by this compact, the bylaws, or the rules and any other ground designated in the bylaws or rules.

3. If the interstate commission determines that a compacting state has defaulted, the interstate commission shall immediately notify the defaulting state in writing of the default and of the penalty imposed by the interstate commission pending a cure of the default. The interstate commission shall stipulate the conditions under which and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by this compact shall be terminated beginning on the effective date of termination. Within 60 days after the effective date of termination of a defaulting state, the interstate commission shall notify the governor of the defaulting state, the chief justice of the supreme court or the chief judicial officer of that state, the majority and minority leaders of the legislature of that state, and the state board of that state of the termination.

4. A defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

5. The interstate commission shall not bear any costs relating to a defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

6. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission under the rules.

(c) *Judicial enforcement.* The interstate commission may, by a majority vote of the members, initiate legal action in the U.S. district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district court for the district in which the interstate commission has its offices to enforce compliance with the compact, the bylaws, and the rules against any compacting state that is in default. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of the litigation, including reasonable attorney fees.

(d) *Dissolution.* The compact dissolves effective upon the date of a withdrawal or default of a compacting state that reduces membership in the compact to one compacting state. Upon dissolution of the compact, the compact becomes void and shall be of no further effect, the business and affairs of the interstate commission shall be concluded, and any surplus funds shall be distributed in accordance with the bylaws.

(12) ARTICLE XII — CONSTRUCTION. The provisions of this compact shall be liberally construed to effectuate the purposes of the compact.

(13) ARTICLE XIII — BINDING EFFECT OF COMPACT AND OTHER LAWS. (a) *Other laws.* This compact does not prevent the enforcement of any other law of a compacting state that is not inconsistent with this compact. All compacting states' laws, other than state constitutions and other interstate compacts, that conflict with this compact are superseded to the extent of the conflict.

(b) *Binding effect of the compact.* 1. All lawful actions of the interstate commission, including the bylaws and rules, are binding upon the compacting states.

2. All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over the meaning or interpretation of an interstate commission action and upon a majority vote of the compacting states, the interstate commission may issue an advisory opinion regarding that meaning or interpretation.

4. If a provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the interstate commission shall be ineffective, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency of the compacting state to which those obligations, duties, powers, or jurisdiction are delegated by the law that is in effect at the time that this compact becomes effective.

History: 2005 a. 234; 2009 a. 339.

938.9995 Expediting interstate placements of juveniles. The courts of this state shall do all of the following to expedite the interstate placement of juveniles:

(1) Subject to ss. 48.396 (2) and 938.396 (2), cooperate with the courts of other states in the sharing of information.

(2) To the greatest extent possible, obtain information and testimony from agencies and parties located in other states without requiring interstate travel by those agencies and parties.

(3) Permit parents, juveniles, other necessary parties, attorneys, and guardians ad litem in proceedings involving the interstate placement of a juvenile to participate in those proceedings without requiring interstate travel by those persons.

History: 2009 a. 79.