



1995 SENATE BILL 485

January 16, 1996 - Introduced by LAW REVISION COMMITTEE. Referred to
Committee on Judiciary.

- 1 **AN ACT to amend** 48.24 (5) and 938.24 (5) of the statutes; **relating to:** permitting
2 a juvenile court intake worker to request, rather than recommend, that a
3 petition initiating proceedings under the children's code be filed.

Analysis by the Legislative Reference Bureau

Under current law, information indicating that a child should be referred to the court assigned to exercise jurisdiction under the children's code (juvenile court) as delinquent, in need of protection or services or in violation of a civil law or municipal ordinance must be referred to the juvenile court intake worker, who conducts an inquiry to determine whether the available facts establish prima facie jurisdiction and to determine the best interests of the child and the public with regard to any action to be taken. Currently, if the intake worker determines as a result of the intake inquiry that the child should be referred to the juvenile court, the intake worker must request that the district attorney file a petition initiating proceedings under the children's code. Current law also provides, however, that the intake worker must recommend that a petition be filed, enter into an informal disposition or close the case within 40 days after receipt of the intake referral.

The court of appeals, in *In the Interest of Antonio M. C.*, 182 Wis. 2d 301 (Ct. App. 1994), found that the provision of the children's code that states that the intake worker "shall recommend" that a petition be filed within 40 days after receipt of the intake referral is ambiguous when read in conjunction with another provision of the children's code that states that the intake worker "shall request" that the district attorney file a petition and concluded that an intake worker need only request that a petition be filed and that a recommendation is not necessary. This bill permits an intake worker to request, not recommend, that a petition be filed within 40 days after receipt of an intake referral.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is introduced by the law revision committee under s. 13.83 (1) (c), stats. After careful consideration of the various provisions of this bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 48.24 (5) of the statutes, as affected by 1995 Wisconsin Act 77, is
2 amended to read:

3 48.24 (5) The intake worker shall ~~recommend~~ request that a petition be filed,
4 enter into an informal disposition or close the case within 40 days or sooner of receipt
5 of referral information. If the case is closed or an informal disposition is entered into,
6 the district attorney, corporation counsel or other official under s. 48.09 shall receive
7 written notice of such action. If a law enforcement officer has made a
8 recommendation concerning the child, the intake worker shall forward this
9 recommendation to the district attorney, corporation counsel or other official under
10 s. 48.09. With respect to petitioning a child to be in need of protection or services,
11 information received more than 40 days before filing the petition may be included to
12 establish a condition or pattern which, together with information received within the
13 40-day period, provides a basis for conferring jurisdiction on the court. The judge
14 shall dismiss with prejudice any such petition which is not referred or filed within
15 the time limits specified within this subsection.

16 **SECTION 2.** 938.24 (5) of the statutes, as created by 1995 Wisconsin Act 77, is
17 amended to read:

18 938.24 (5) The intake worker shall ~~recommend~~ request that a petition be filed,
19 enter into a deferred prosecution agreement or close the case within 40 days or sooner

1 of receipt of referral information. If the case is closed or a deferred prosecution
2 agreement is entered into, the district attorney, corporation counsel or other official
3 under s. 938.09 shall receive written notice of such action. In addition, if a deferred
4 prosecution agreement is entered into placing a juvenile in a youth village program
5 as described in s. 118.42, the judge or juvenile court commissioner shall receive
6 written notice of such action and, on receipt of that notice, shall enter an order
7 requiring compliance with that agreement. A notice of deferred prosecution of an
8 alleged delinquency case shall include a summary of the facts surrounding the
9 allegation and a list of prior intake referrals and dispositions. If a law enforcement
10 officer has made a recommendation concerning the juvenile, the intake worker shall
11 forward this recommendation to the district attorney under s. 938.09.
12 Notwithstanding the requirements of this section, the district attorney may initiate
13 a delinquency petition under s. 938.25 within 20 days after notice that the case has
14 been closed or that a deferred prosecution agreement has been entered into. The
15 judge shall grant appropriate relief as provided in s. 938.315 (3) with respect to any
16 such petition which is not referred or filed within the time limits specified within this
17 subsection.

18 **SECTION 3. Effective date.**

19 (1) This act takes effect on July 1, 1996, or on the day after publication,
20 whichever is later.

21 (END)