

State of Wisconsin



1997 Assembly Bill 486

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1997 WISCONSIN ACT 296

AN ACT *to renumber* 938.209 (1); *to renumber and amend* 938.209 (intro.) and 938.209 (2); *to amend* 808.075 (4) (fn) 3., 938.205 (1) (intro.), 938.21 (1) (a), 938.21 (4) (b), 938.299 (5) and 938.38 (2) (a); and *to create* 938.209 (2m) of the statutes; **relating to:** holding juveniles in municipal lockup facilities and granting rule-making authority.

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

SECTION 1. 808.075 (4) (fn) 3. of the statutes is amended to read:

808.075 (4) (fn) 3. Review of secure detention orders under s. 938.208 and secure detention status reviews under s. 938.209 (1) ~~(e)~~ (a) 5.

SECTION 2. 938.205 (1) (intro.) of the statutes is amended to read:

938.205 (1) (intro.) 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 one of the following:

SECTION 3. 938.209 (intro.) of the statutes is renumbered 938.209 (1) (intro.) and amended to read:

938.209 (title) **Criteria for holding a juvenile in a county jail or a municipal lockup facility.** (1) (intro.) Subject to the provisions of s. 938.208, a county jail may be used as a secure detention facility if the criteria under either ~~sub. (1) par. (a)~~ or ~~(2) (b)~~ are met:

SECTION 4. 938.209 (1) of the statutes is renumbered 938.209 (1) (a).

SECTION 5. 938.209 (2) of the statutes is renumbered 938.209 (1) (b) and amended to read:

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

SECTION 6. 938.209 (2m) of the statutes is created to read:

938.209 (2m) (a) (intro.) 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 juve-

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

niles 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.

SECTION 7. 938.21 (1) (a) of the statutes is amended to read:

938.21 (1) (a) If a juvenile who has been taken into custody is not released under s. 938.20, a hearing to determine whether the juvenile shall continue to be held in custody under the criteria of ss. 938.205 to 938.209 (1) shall be conducted by the judge or juvenile court commissioner within 24 hours after the end of the day that 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 shall be filed, except that no petition need be filed where a juvenile is taken into custody under s. 938.19 (1) (b) or (d) 2., 6. or 7. or where 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 or statement has been filed at the time of the hearing, the juvenile shall be released except as provided in par. (b). A parent not present at the hearing shall be granted a rehearing upon request.

SECTION 8. 938.21 (4) (b) of the statutes is amended to read:

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

SECTION 9. 938.299 (5) of the statutes is amended to read:

938.299 (5) On request of any party, unless good cause to the contrary is shown, any hearing under s. 938.209 (1) ~~(e)~~ (a) 5. or 938.21 (1) may be held on the record by telephone or live audio–visual means or testimony may be received by telephone or live audio–visual means as prescribed in s. 807.13 (2). The request and the showing of good cause for not conducting the hearing or admitting testimony by telephone or live audio–visual means may be made by telephone.

SECTION 10. 938.38 (2) (a) of the statutes is amended to read:

938.38 (2) (a) The juvenile is being held in physical custody under s. 938.207, 938.208 or 938.209 (1).

SECTION 9311. Initial applicability.

(1) HOLDING JUVENILES IN MUNICIPAL LOCKUP FACILITIES. This act first applies to juveniles taken into custody on the effective date of this subsection.