

### 2001 DRAFTING REQUEST

#### Bill

Received: 11/15/2001

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Joseph Leibham (608) 266-0656

By/Representing: Patrick Vander Sanden

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Addl. Drafters:

Subject: Children - juvenile justice  
Children - juvenile courts

Extra Copies:

Submit via email: NO

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Juvenile competency examinations; reimbursement for cost of

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#### Instructions:

Permit counties to seek reimbursement from juvenile and his or her parents for the cost of administering a competency examination under s. 938.295.

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#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1			jfrantze 12/11/2001	_____	lrb_docadmin 12/11/2001		Local
/2	malaigm 01/04/2002	rschluet 01/08/2002	pgreensl 01/08/2002	_____	lrb_docadmin 01/08/2002	lrb_docadmin 01/09/2002 <del>lrb_docadmin</del> <del>01/09/2002</del>	

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*Pg*

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FE Sent For:

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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-42712 J  
GMM.....  
rs+cjs



1 AN ACT ... relating to: parental liability for the cost of an examination ordered  
2 to determine the competency to proceed of a juvenile who is alleged to have  
3 committed a delinquent act or to determine whether a juvenile is not  
4 responsible for a delinquent act by reason of mental disease or defect. ←

**Analysis by the Legislative Reference Bureau**

Under current law, if there is probable cause to believe that a juvenile has committed a delinquent act and if there is reason to doubt the juvenile's competency to proceed, or if a juvenile enters a plea that the juvenile is not responsible for an alleged delinquent act by reason of mental disease or defect, the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) must order the juvenile to be examined by a psychiatrist or psychologist, who must render an opinion as to the juvenile's mental capacity to understand the proceedings and to assist in his or her defense or as to whether at the time of the act the juvenile lacked the capacity to appreciate the wrongfulness of his or her conduct or to conform that conduct to the requirements of the law. Current law requires the county of the juvenile court to pay the costs of the examination. This bill permits a county that pays the costs of such an examination to recover from the juvenile's parents, based on the parents' ability to pay, a reasonable contribution toward those costs.

For further information see the local fiscal estimate, which will be printed as an appendix to this bill.

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

that cost

SECTION 1. 46.03 (18) (am) of the statutes is amended to read:

46.03 (18) (am) Paragraph (a) does not prevent the department from charging and collecting the cost of adoptive placement investigations and child care as authorized under s. 48.837 (7). Paragraph (a) also does not prevent a county department under s. 51.42 or 51.437 from charging and collecting the cost of an examination ordered under s. 938.295 (2) (a) as authorized under s. 938.295 (2) (c).

History: 1971 c. 270 s. 104; 1973 c. 90; 1973 c. 284 ss. 2, 32; 1973 c. 333; 1975 c. 39, 82; 1975 c. 189 s. 99 (1), (2); 1975 c. 224, 377, 413, 422; 1977 c. 29, 193; 1977 c. 196 s. 121; 1977 c. 203, 205, 271, 354; 1977 c. 418 ss. 287 to 289m, 924 (18) (d); 1977 c. 447, 449; 1979 c. 32 s. 92 (1); 1979 c. 34; 1979 c. 175 s. 46; 1979 c. 221, 331, 353; 1981 c. 20, 81; 1981 c. 314 s. 144; 1981 c. 390; 1983 a. 27, 193; 1983 a. 435 s. 7; 1983 a. 447, 474; 1983 a. 532 s. 36; 1985 a. 19, 29, 120, 176, 224, 285, 328, 331; 1985 a. 332 s. 251 (3); 1987 a. 3, 5, 27, 161, 186, 367, 339, 385, 399, 403, 413; 1989 a. 31 ss. 938m to 951, 2909g, 2909i; 1989 a. 56, 105, 107, 122; 1991 a. 39, 277; 1993 a. 16 ss. 851 to 859, 307d; 1993 a. 98, 377, 385, 446, 481; 1995 a. 27 ss. 2026m to 2038b, 9126 (19); 1995 a. 77, 261, 225, 352, 370, 404, 448; 1997 a. 3, 27, 111, 283, 292; 1999 a. 9, 83.

SECTION 2. 301.03 (18) (am) of the statutes is created to read:

301.03 (18) (am) Paragraph (a) does not prevent a county department under s. 46.215, 46.22, or 46.23 from charging and collecting the cost of an examination ordered under s. 938.295 (2) (a) as authorized under s. 938.295 (2) (c).

SECTION 3. 938.295 (2) (a) of the statutes is amended to read:

938.295 (2) (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. The expenses of an cost of the examination, if approved by the court, shall be paid by the county of the court ordering the examination, and the county may recover that cost from the juvenile's parent 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. Any inpatient evaluation

1 shall be for a specified period that is no longer than is necessary to complete the  
2 evaluation.

3 ~~History: 1995 a. 77, 448.~~

SECTION 4. 938.295 (2) (c) of the statutes is created to read:

4 938.295 (2) (c) A county that pays the cost of an examination under par. (a) may  
5 recover a reasonable contribution toward that cost from the juvenile's parent, based  
6 on the parent's ability to pay. If the examination is provided or otherwise funded by  
7 the county department under s. 46.21<sup>5</sup>, 46.2<sup>2</sup>, or 46.2<sup>3</sup>, the county department shall  
8 collect the parent's contribution as provided in s. 301.03 (18). If the examination is  
9 provided or otherwise funded by the county department under s. 51.4<sup>2</sup> or 51.4<sup>3</sup>7, the  
10 county department shall collect the parent's contribution as provided in s. 46.0<sup>3</sup> (18).

11 SECTION 5. Initial applicability.

12 (1) PARENTAL LIABILITY FOR JUVENILE COMPETENCY OR MENTAL DEFECT  
13 EXAMINATIONS. This act first applies to examinations ordered under section 938.295  
14 (2) (a) of the statutes on the effective date of this subsection.

15 (END)



-4271

1/4/02

Patrick -- Include guardians as well



LRB-4271A 2  
GMM:rs&cjs:jf  
Stay

2001 BILL

Parental

of a parent or guardian

1 AN ACT to amend 46.03 (18) (am) and 938.295 (2) (a); and to create 301.03 (18)  
2 (am) and 938.295 (2) (c) of the statutes; relating to: parental liability for the  
3 cost of an examination ordered to determine the competency to proceed of a  
4 juvenile who is alleged to have committed a delinquent act or to determine  
5 whether a juvenile is not responsible for a delinquent act by reason of mental  
6 disease or defect.

Analysis by the Legislative Reference Bureau

Under current law, if there is probable cause to believe that a juvenile has committed a delinquent act and if there is reason to doubt the juvenile's competency to proceed, or if a juvenile enters a plea that the juvenile is not responsible for an alleged delinquent act by reason of mental disease or defect, the court assigned to exercise jurisdiction under the juvenile justice code (juvenile court) must order the juvenile to be examined by a psychiatrist or psychologist, who must render an opinion as to the juvenile's mental capacity to understand the proceedings and to assist in his or her defense or as to whether at the time of the act the juvenile lacked the capacity to appreciate the wrongfulness of his or her conduct or to conform that conduct to the requirements of the law. Current law requires the county of the juvenile court to pay the cost of the examination. This bill permits a county that pays the cost of such an examination to recover from the juvenile's parents based on the parents' ability to pay a reasonable contribution toward that cost.

of the parent or guardian  
parent  
or guardian

**BILL**

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 46.03 (18) (am) of the statutes is amended to read:

2           46.03 (18) (am) Paragraph (a) does not prevent the department from charging  
3 and collecting the cost of adoptive placement investigations and child care as  
4 authorized under s. 48.837 (7). Paragraph (a) also does not prevent a county  
5 department under s. 51.42 or 51.437 from charging and collecting the cost of an  
6 examination ordered under s. 938.295 (2) (a) as authorized under s. 938.295 (2) (c).

7           **SECTION 2.** 301.03 (18) (am) of the statutes is created to read:

8           301.03 (18) (am) Paragraph (a) does not prevent a county department under  
9 s. 46.215, 46.22, or 46.23 from charging and collecting the cost of an examination  
10 ordered under s. 938.295 (2) (a) as authorized under s. 938.295 (2) (c).

11           **SECTION 3.** 938.295 (2) (a) of the statutes is amended to read:

12           938.295 (2) (a) If there is probable cause to believe that the juvenile has  
13 committed the alleged offense and if there is reason to doubt the juvenile's  
14 competency to proceed, or upon entry of a plea under s. 938.30 (4) (c) the court shall  
15 order the juvenile to be examined by a psychiatrist or licensed psychologist. The  
16 ~~expenses of an~~ cost of the examination, if approved by the court, shall be paid by the  
17 county of the court ordering the examination, and the county may recover that cost  
18 from the juvenile's parent, as provided in par. (c). Evaluation shall be made on an  
19 outpatient basis unless the juvenile presents a substantial risk of physical harm to  
20 the juvenile or others; or the juvenile, parent, or guardian, and legal counsel or  
21 guardian ad litem, consent to an inpatient evaluation. Any inpatient evaluation

or guardian

**BILL**

1 shall be for a specified period that is no longer than is necessary to complete the  
2 evaluation.

*of the parent or guardian*

*or guardian*

3 **SECTION 4.** 938.295 (2) (c) of the statutes is created to read:

4 938.295 (2) (c) A county that pays the cost of an examination under par (a) may  
5 recover a reasonable contribution toward that cost from the juvenile's <sup>parent</sup> parent, based  
6 on the parent's ability to pay. If the examination is provided or otherwise funded by  
7 the county department under s. 46.215, 46.22, or 46.23, the county department shall  
8 collect the parent's contribution as provided in s. 301.03 (18). If the examination is  
9 provided or otherwise funded by the county department under s. 51.42 or 51.437, the  
10 county department shall collect the parent's contribution as provided in s. 46.03 (18).

11 **SECTION 5. Initial applicability.**

12 (1) ~~PARENTAL LIABILITY~~ <sup>LIABILITY</sup> FOR JUVENILE COMPETENCY OR MENTAL DEFECT  
13 EXAMINATIONS. This act first applies to examinations ordered under section 938.295  
14 (2) (a) of the statutes on the effective date of this subsection.

(END)

*(use twice)*

*of the parent or guardian*

*CS*  
~~OF PARENT OR~~  
GUARDIAN



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
5TH FLOOR  
MADISON, WI 53701-2037

STEPHEN R. MILLER  
CHIEF

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-6948

January 8, 2002

### MEMORANDUM

To: Representative Leibham

From: Gordon M. Malaise, Senior Legislative Attorney

Re: LRB-4271/2 Juvenile competency examinations; reimbursement for cost of

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY     JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9738 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.