

2001 DRAFTING REQUEST

Bill

Received: **09/20/2000**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-8270**

By/Representing: **Coomber**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Children - juvenile justice**

Extra Copies:

Pre Topic:

DOA:.....Coomber -

Topic:

Criteria for holding juvenile in custody

Instructions:

See Attached

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			martykr 10/10/2000		lrb_docadmin 10/10/2000		
/2	malaigm 02/06/2001	gilfokm 02/06/2001	jfrantze 02/07/2001		lrb_docadmin 02/07/2001		

FE Sent For:

<END>

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/1		12-2/KMG 16-01	martykr 10/10/2000	_____	lrb_docadmin 10/10/2000		
FE Sent For:			to 2/17	to 2/17			

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1?	malaigm	1-10/2 hmg	12/10	1/10 km 10			

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Department of Corrections
2001-2003 BIENNIAL BUDGET
Statutory Language Request

Topic: Criteria for Holding a Juvenile in Custody

Current Language

Current language at §938.19(1)(d)6, §938.205 (1)(c) and §938.208 (1) specify the circumstances when a juvenile may be taken into custody, the criteria for holding a juvenile in physical custody, and the criteria for holding a juvenile in a secure detention facility.

Proposed Change

Amend §938.19(1)(d)6, §938.205 (1)(c) and §938.208 (1) to expand the criteria for holding youth taking a youth into custody, holding a youth in physical custody and holding a youth in a secured detention facility.

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

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

6. The juvenile has violated the terms of court-ordered supervision or aftercare supervision ^(c) administered by the department or a county department, or supervision by the department in a Type 2 secured correctional facility. [...]

§938.205 **Criteria for holding a juvenile in physical custody.** (1) 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 that the juvenile is within the jurisdiction of the court and if probable cause exists to believe any of the following: [...]

(c) That the juvenile will run away or be taken away so as to be unavailable for proceedings of the court or its officers or proceedings of the division of hearings and appeals in the department of administration for revocation of aftercare supervision, or proceedings by the department related to placement in a Type 2 secured correctional facility. [...]

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

1) Probable cause exists to believe ^{proceedings} 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 ^(d) or a revocation hearing for juveniles on aftercare supervision, or administrative action related to placement in a Type 2 secured correctional facility. 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: [...]

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Effect of the Change

Expands the criteria for holding a youth in custody.

Rationale for the Change

In addition to supervising youth on aftercare status, the Department supervises youth in several programs that by law are defined as Type 2 correctional facilities: Corrective Sanctions, Type 2 CCI, and Serious Juvenile Offender. When the custody statutes only reference youth supervised on aftercare, it creates ambiguity as to whether other youth on DOC community supervision may also be held in custody. The proposed change removes the ambiguity.

Desired Effective Date: ^{4/16} Three months after the first day of the month after the Act is signed into law, to provide time for local training and implementation.

Agency: DOC

Agency Contact: Shelley Hagan

Phone: 266-5820



9/29

State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-04467

GMM.....

King

note
SOON

DOA:.....Coomber – Criteria for holding juvenile in custody

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

DON'T
GEN. CAT.

1 AN ACT...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Under current law, a juvenile may be taken into custody under circumstances in which a law enforcement officer believes, on reasonable grounds, that the juvenile has violated the terms of supervision ordered by the court assigned to exercise jurisdiction under the juvenile justice code (juvenile court) or the terms of aftercare supervision administered by DOC or a county department of human services or social services (county department). A juvenile who has been taken into custody under that ground may be held in custody if probable cause exists to believe that the juvenile will run away so as to be unavailable for proceedings of the juvenile court or proceedings for revocation of aftercare supervision. This bill permits a juvenile who has violated a condition of the juvenile's placement in a Type 2 secured correctional facility or a Type 2 child caring institution (Type 2 CCI) or a condition of the juvenile's participation in the intensive sanctions program to be taken into custody by a law enforcement officer and held in custody if the juvenile is at risk of running away so as to be unavailable for action by DOC or a county department relating to that violation.

Type 2 secured correctional facilities consist of the corrective sanctions program, under which DOC places a juvenile in the community and provides the juvenile with intensive surveillance and community-based treatment services, the

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serious juvenile offender program, which includes certain component phases under which DOC provides a juvenile with supervision that is more restrictive than ordinary supervision in the community, and CCI's that DOC has designated as Type 2 secured correctional facilities for the placement of certain juveniles who have been adjudged delinquent. Similarly, Type 2 CCI's consist of CCI's that DOC has designated for the placement of certain juveniles who have been adjudged delinquent and placed under the supervision of a county department, and the intensive supervision program is a program under which a juvenile is placed in the community and the county department provides the juvenile with intensive surveillance and community-based treatment services.

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

1 **SECTION 1.** 938.19 (1) (d) 6. of the statutes is amended to read:

2 938.19 (1) (d) 6. The juvenile has violated ~~the terms~~ a condition of
3 court-ordered supervision or aftercare supervision administered by the department
4 or a county department, a condition of the juvenile's placement in a Type 2 secured
5 correctional facility or a Type 2 child caring institution, or a condition of the juvenile's
6 participation in the intensive supervision program under s. 938.534. ✓

7 History: 1995 a. 77.

7 **SECTION 2.** 938.20 (2) (cm) of the statutes is amended to read:

8 938.20 (2) (cm) If the juvenile has violated ~~the terms~~ a condition of aftercare
9 supervision administered by the department or a county department, a condition of
10 the juvenile's placement in a Type 2 secured correctional facility or a Type 2 child
11 caring institution, or a condition of the juvenile's participation in the intensive
12 supervision program under s. 938.534, ✓ the person who took the juvenile into custody
13 may release the juvenile to the department or county department, whichever has
14 aftercare supervision over the juvenile.

15 History: 1995 a. 77; 1997 a. 35.

15 **SECTION 3.** 938.20 (7) (c) 1m. of the statutes is amended to read:

1 938.20 (7) (c) 1m. In the case of a juvenile who has violated ~~the terms a~~
2 condition of aftercare supervision administered by the department or a county
3 department, a condition of the juvenile's placement in a Type 2 secured correctional
4 facility or a Type 2 child caring institution, or a condition of the juvenile's
5 participation in the intensive supervision program under s. 938.534, to the
6 department or county department, whichever has aftercare supervision of the
7 juvenile.

8 History: 1995 a. 77; 1997 a. 35.

8 **SECTION 4.** 938.20 (8) of the statutes is amended to read:

9 938.20 (8) If a juvenile is held in custody, the intake worker shall notify the
10 juvenile's parent, guardian^v and legal custodian of the reasons for holding the juvenile
11 in custody and of the juvenile's whereabouts unless there is reason to believe that
12 notice would present imminent danger to the juvenile. If a juvenile who has violated
13 ~~the terms a condition~~ of aftercare supervision administered by the department or a
14 county department, a condition of the juvenile's placement in a Type 2 secured
15 correctional facility or a Type 2 child caring institution, or a condition of the juvenile's
16 participation in the intensive supervision program under s. 938.534 is held in
17 custody, the intake worker shall also notify the department or county department,
18 whichever has supervision over the juvenile, of the reasons for holding the juvenile
19 in custody, of the juvenile's whereabouts^v and of the time and place of the detention
20 hearing required under s. 938.21. The parent, guardian^v and legal custodian shall
21 also be notified of the time and place of the detention hearing required under s.
22 938.21, the nature and possible consequences of that hearing^v and the right to present
23 and cross-examine witnesses at the hearing. If the parent, guardian^v or legal
24 custodian is not immediately available, the intake worker or another person

1 designated by the court shall provide notice as soon as possible. When the juvenile
2 is alleged to have committed a delinquent act, the juvenile shall receive the same
3 notice about the detention hearing as the parent, guardian^v or legal custodian. The
4 intake worker shall notify both the juvenile and the juvenile's parent, guardian^v or
5 legal custodian.

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

6 **SECTION 5.** 938.205 (1) (c) of the statutes is amended to read:

7 938.205 (1) (c) That the juvenile will run away or be taken away so as to be
8 unavailable for proceedings of the court or its officers ~~or~~, proceedings of the division
9 of hearings and appeals in the department of administration for revocation of
10 aftercare supervision, or action by the department or county department relating to
11 a violation of a condition of the juvenile's placement in a Type 2 secured correctional
12 facility or a Type 2 child caring institution or a condition of the juvenile's
13 participation in the intensive supervision program under s. 938.534.

History: 1995 a. 77, 275; 1997 a. 35, 206; 1999 a. 32.

14 **SECTION 6.** 938.208 (1) (intro.) of the statutes is amended to read:

15 938.208 (1) (intro.) Probable cause exists to believe that the juvenile has
16 committed a delinquent act and either presents a substantial risk of physical harm
17 to another person or a substantial risk of running away so as to be unavailable for
18 a court hearing ~~or~~, a revocation hearing for juveniles ~~on~~ of aftercare supervision
19 hearing, or action by the department relating to a violation of a condition of the
20 juvenile's placement in a Type 2 secured correctional facility or a Type 2 child caring
21 institution or a condition of the juvenile's participation in the intensive supervision
22 program under s. 938.534. For juveniles who have been adjudged delinquent, the
23 delinquent act referred to in this section may be the act for which the juvenile was
24 adjudged delinquent. If the intake worker determines that any of the following

1 conditions applies, the juvenile is considered to present a substantial risk of physical
2 harm to another person:

3 History: 1995 a. 77, 352; 1999 a. 9.

3 **SECTION 7.** 938.355 (6d) (a) 4. ✓ of the statutes is created to read:

4 938.355 (6d) (a) 4. Subject to par. (d), subds. 1. and 2. ✓ do not preclude a juvenile
5 who has been adjudged delinquent and who has violated a condition specified in sub.
6 (2) (b) 7. ✓ from being taken into and held in custody under ss. 938.19 to 938.21. ✓

7 **SECTION 8.** 938.355 (6d) (b) 4. ✓ of the statutes is created to read:

8 938.355 (6d) (b) 4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile
9 who has violated a condition of aftercare supervision administered by a county
10 department from being taken into and held in custody under ss. 938.19 to 938.21. ✓

11 **SECTION 9.** 938.355 (6d) (c) 4. ✓ of the statutes is created to read:

12 938.355 (6d) (c) 4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile
13 who has been found to be in need of protection or services and who has violated a
14 condition specified in sub. (2) (b) 7. from being taken into and held in custody under
15 ss. 938.19 to 938.21.

16 History: 1995 a. 77; 1997 a. 205.

16 **SECTION 10.** 938.533 (3) (a) of the statutes is amended to read:

17 938.533 (3) (a) A participant in the corrective sanctions program remains
18 under the supervision of the department, remains subject to the rules and discipline
19 of that department, ✓ and is considered to be in custody, as defined in s. 946.42 (1) (a).
20 Notwithstanding ss. 938.19 to 938.21, if a juvenile violates a condition of that
21 juvenile's participation in the corrective sanctions program the department may,
22 without a hearing, take the juvenile into custody and place the juvenile in a secured
23 detention facility or return the juvenile to placement in a Type 1 secured correctional
24 facility or a secured child caring institution. This paragraph does not preclude a

1 juvenile who has violated a condition of the juvenile's participation in the corrective
2 sanctions program from being taken into and held in custody under ss. 938.19 to
3 938.21.

4 History: 1995 a. 77; 1997 a. 27, 35, 252; 1999 a. 9.

4 **SECTION 11.** 938.534 (1) (b) 3m. of the statutes is created to read:

5 938.534 (1) (b) 3m. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile
6 who has violated a condition of the juvenile's participation in the program from being
7 taken into and held in custody under ss. 938.19 to 938.21.

8 **SECTION 12.** 938.538 (4) (a) of the statutes is amended to read:

9 938.538 (4) (a) A participant in the serious juvenile offender program is under
10 the supervision and control of the department, is subject to the rules and discipline
11 of the department[√] and is considered to be in custody, as defined in s. 946.42 (1) (a).
12 Notwithstanding ss. 938.19 to 938.21, if a participant violates a condition of his or
13 her participation in the program under sub. (3) (a) 2. to 9. while placed in a Type 2
14 secured correctional facility the department may, without a hearing, take the
15 participant into custody and return him or her to placement in a Type 1 secured
16 correctional facility, a secured child caring institution[√], or, if the participant is 17 years
17 of age or over, a Type 1 prison, as defined in s. 301.01 (5). Any intentional failure of
18 a participant to remain within the extended limits of his or her placement while
19 participating in the serious juvenile offender program or to return within the time
20 prescribed by the administrator of the division of intensive sanctions in the
21 department is considered an escape under s. 946.42 (3) (c). This paragraph does not
22 preclude a juvenile who has violated a condition of the juvenile's participation in the

1 program under sub. (3) (a) 2. to 9. from being taken into and held in custody under
2 ss. 938.19 to 938.21.

3 History: 1995 a. 77, 352; 1997 a. 27, 35.

3 **SECTION 13.** 938.539 (3) of the statutes is amended to read:

4 938.539 (3) Notwithstanding ss. 938.19 to 938.21, if a juvenile placed in a
5 Type 2 child caring institution under s. 938.34 (4d) or 938.357 (4) (c) or in a Type 2
6 secured correctional facility under s. 938.357 (4) (a) or (c) violates a condition of his
7 or her placement in the Type 2 child caring institution or Type 2 secured correctional
8 facility, the juvenile may be placed in a Type 1 secured correctional facility as
9 provided in s. 938.357 (4) (b). This subsection does not preclude a juvenile who has
10 violated a condition of the juvenile's placement in a Type 2 secured correctional
11 facility or a Type 2 child caring institution from being taken into and held in custody
12 under ss. 938.19 to 938.21.

13 History: 1995 a. 352.

13 **SECTION 9309. Initial applicability; circuit courts.**

14 (1) TAKING JUVENILES INTO CUSTODY. The treatment of sections 938.19 (1) (d) 6.,
15 938.20 (2) (cm), (7) (c) 1m., and (8), 938.205 (1) (c), 938.208 (1) (intro.), 938.355 (6d)
16 (a) 4., (b) 4., and (c) 4., 938.533 (3) (a), 938.534 (1) (b) 3m., 938.538 (4) (a), and 938.539
17 (3) of the statutes first applies to a violation of a condition of court-ordered
18 supervision or aftercare supervision, a condition of a juvenile's placement in a Type
19 2 secured correctional facility, as defined in section 938.02 (20) of the statutes, or in
20 a Type 2 child caring institution, as defined in section 938.02 (19r) of the statutes,
21 or a condition of a juvenile's participation in the intensive supervision program
22 under section 938.534 of the statutes, as affected by this act, committed on the
23 effective date of this subsection.

24 **SECTION 9409. Effective dates; circuit courts.**

SECTION 9409

1 (1) TAKING JUVENILES INTO CUSTODY. The treatment of sections 938.19 (1) (d) 6.,
2 938.20 (2) (cm), (7) (c) 1m., and (8), 938.205 (1) (c), 938.208 (1) (intro.), 938.355 (6d)
3 (a) 4., (b) 4., and (c) 4., 938.533 (3) (a), 938.534 (1) (b) 3m., 938.538 (4) (a), and 938.539
4 (3) of the statutes takes effect on the first day of the 4th month beginning after
5 publication.

6

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0446/1dn

GMM.....

Kmg

Brett and Shelley:

In reviewing this draft, please note all of the following:

1. That the draft permits to be taken into and held in custody not only a juvenile who has violated a condition of the juvenile's placement in a Type 2 secured correctional facility, but also a juvenile who has violated a condition of the juvenile's placement in a Type 2 CCI or the intensive supervision program. As I researched ~~chapter~~ ^{section} 938 in preparation for drafting your request, it occurred to me that a county-supervised Type 2 CCI placement is analogous to a DOC-supervised Type 2 secured correctional facility placement and that participation in a county-administered intensive supervision program is analogous to participation in the DOC-administered corrective sanctions program. Accordingly, it made sense to me to include within the scope of this draft juveniles placed in a Type 2 CCI or a county-administered intensive supervision program.

2. That, for the sake of consistency and clarity, this draft inserts not only in the statutes relating to the placements mentioned in item 1., above, but also in s. 938.355 (6d), relating to short-term detention of juveniles who have violated a condition of a court order or of aftercare supervision language clarifying that the short-term detention procedures do not preclude a juvenile from being taken into and held in custody under ss. 938.19 to 938.21.

If after reviewing this draft you determine that any of the additional changes described above are not wanted at this time, please advise and I will remove those changes from this draft.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0446/1dn
GMM:kmg:km

October 10, 2000

Brett and Shelley:

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2. That, for the sake of consistency and clarity, this draft inserts not only in the statutes relating to the placements mentioned in item 1., above, but also in s. 938.355 (6d), relating to short-term detention of juveniles who have violated a condition of a court order or of aftercare supervision language clarifying that the short-term detention procedures do not preclude a juvenile from being taken into and held in custody under ss. 938.19 to 938.21.

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State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0446/1
GMM:kmg:km

DNste

DOA:.....Coomber – Criteria for holding juvenile in custody

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT <sup>DON'T
GEN. CAT.</sup> relating to: the budget.

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Under current law, a juvenile may be taken into custody under circumstances in which a law enforcement officer believes, on reasonable grounds, that the juvenile has violated the terms of supervision ordered by the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) or the terms of aftercare supervision administered by DOC or a county department of human services or social services (county department). A juvenile who has been taken into custody on that ground may be held in custody if probable cause exists to believe that the juvenile will run away so as to be unavailable for proceedings of the juvenile court or proceedings for revocation of aftercare supervision. This bill permits a juvenile who has violated a condition of the juvenile's placement in a Type 2 secured correctional facility or a Type 2 child caring institution (Type 2 CCI) or a condition of the juvenile's participation in the intensive sanctions program to be taken into custody by a law enforcement officer and held in custody if the juvenile is at risk of running away so as to be unavailable for action by DOC or a county department relating to that violation.

Type 2 secured correctional facilities consist of the corrective sanctions program, under which DOC places a juvenile in the community and provides the juvenile with intensive surveillance and community-based treatment services, the

serious juvenile offender program, which includes certain component phases under which DOC provides a juvenile with supervision that is more restrictive than ordinary supervision in the community, and CCI's that DOC has designated as Type 2 secured correctional facilities for the placement of certain juveniles who have been adjudged delinquent. Similarly, Type 2 CCI's consist of CCI's that DOC has designated for the placement of certain juveniles who have been adjudged delinquent and placed under the supervision of a county department, and the intensive supervision program is a program under which a juvenile is placed in the community and the county department provides the juvenile with intensive surveillance and community-based treatment services.

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

1 **SECTION 1.** 938.19 (1) (d) 6. of the statutes is amended to read:

2 938.19 (1) (d) 6. The juvenile has violated ~~the terms~~ a condition of
3 court-ordered supervision or aftercare supervision administered by the department
4 or a county department, a condition of the juvenile's placement in a Type 2 secured
5 correctional facility or a Type 2 child caring institution, or a condition of the juvenile's
6 participation in the intensive supervision program under s. 938.534.

7 **SECTION 2.** 938.20 (2) (cm) of the statutes is amended to read:

8 938.20 (2) (cm) If the juvenile has violated ~~the terms~~ a condition of aftercare
9 supervision administered by the department or a county department, a condition of
10 the juvenile's placement in a Type 2 secured correctional facility or a Type 2 child
11 caring institution, or a condition of the juvenile's participation in the intensive
12 supervision program under s. 938.534, the person who took the juvenile into custody
13 may release the juvenile to the department or county department, whichever has
14 aftercare supervision over the juvenile.

15 **SECTION 3.** 938.20 (7) (c) 1m. of the statutes is amended to read:

16 938.20 (7) (c) 1m. In the case of a juvenile who has violated ~~the terms~~ a
17 condition of aftercare supervision administered by the department or a county

1 department, a condition of the juvenile's placement in a Type 2 secured correctional
2 facility or a Type 2 child caring institution, or a condition of the juvenile's
3 participation in the intensive supervision program under s. 938.534, to the
4 department or county department, whichever has aftercare supervision of the
5 juvenile.

6 **SECTION 4.** 938.20 (8) of the statutes is amended to read:

7 938.20 (8) If a juvenile is held in custody, the intake worker shall notify the
8 juvenile's parent, guardian, and legal custodian of the reasons for holding the
9 juvenile in custody and of the juvenile's whereabouts unless there is reason to believe
10 that notice would present imminent danger to the juvenile. If a juvenile who has
11 violated ~~the terms~~ a condition of aftercare supervision administered by the
12 department or a county department, a condition of the juvenile's placement in a Type
13 2 secured correctional facility or a Type 2 child caring institution, or a condition of
14 the juvenile's participation in the intensive supervision program under s. 938.534 is
15 held in custody, the intake worker shall also notify the department or county
16 department, whichever has supervision over the juvenile, of the reasons for holding
17 the juvenile in custody, of the juvenile's whereabouts, and of the time and place of the
18 detention hearing required under s. 938.21. The parent, guardian, and legal
19 custodian shall also be notified of the time and place of the detention hearing
20 required under s. 938.21, the nature and possible consequences of that hearing, and
21 the right to present and cross-examine witnesses at the hearing. If the parent,
22 guardian, or legal custodian is not immediately available, the intake worker or
23 another person designated by the court shall provide notice as soon as possible.
24 When the juvenile is alleged to have committed a delinquent act, the juvenile shall
25 receive the same notice about the detention hearing as the parent, guardian, or legal

1 custodian. The intake worker shall notify both the juvenile and the juvenile's parent,
2 guardian, or legal custodian.

3 **SECTION 5.** 938.205 (1) (c) of the statutes is amended to read:

4 938.205 (1) (c) That the juvenile will run away or be taken away so as to be
5 unavailable for proceedings of the court or its officers ~~or~~, proceedings of the division
6 of hearings and appeals in the department of administration for revocation of
7 aftercare supervision, or action by the department or county department relating to
8 a violation of a condition of the juvenile's placement in a Type 2 secured correctional
9 facility or a Type 2 child caring institution or a condition of the juvenile's
10 participation in the intensive supervision program under s. 938.534.

11 **SECTION 6.** 938.208 (1) (intro.) of the statutes is amended to read:

12 938.208 (1) (intro.) Probable cause exists to believe that the juvenile has
13 committed a delinquent act and either presents a substantial risk of physical harm
14 to another person or a substantial risk of running away so as to be unavailable for
15 a court hearing ~~or~~, a revocation ~~hearing for juveniles on~~ of aftercare supervision
16 hearing, or action by the department relating to a violation of a condition of the
17 juvenile's placement in a Type 2 secured correctional facility or a Type 2 child caring
18 institution or a condition of the juvenile's participation in the intensive supervision
19 program under s. 938.534. For juveniles who have been adjudged delinquent, the
20 delinquent act referred to in this section may be the act for which the juvenile was
21 adjudged delinquent. If the intake worker determines that any of the following
22 conditions applies, the juvenile is considered to present a substantial risk of physical
23 harm to another person:

24 **SECTION 7.** 938.355 (6d) (a) 4. of the statutes is created to read:

1 938.355 (6d) (a) 4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile
2 who has been adjudged delinquent and who has violated a condition specified in sub.
3 (2) (b) 7. from being taken into and held in custody under ss. 938.19 to 938.21.

4 **SECTION 8.** 938.355 (6d) (b) 4. of the statutes is created to read:

5 938.355 (6d) (b) 4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile
6 who has violated a condition of aftercare supervision administered by a county
7 department from being taken into and held in custody under ss. 938.19 to 938.21.

8 **SECTION 9.** 938.355 (6d) (c) 4. of the statutes is created to read:

9 938.355 (6d) (c) 4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile
10 who has been found to be in need of protection or services and who has violated a
11 condition specified in sub. (2) (b) 7. from being taken into and held in custody under
12 ss. 938.19 to 938.21.

13 **SECTION 10.** 938.533 (3) (a) of the statutes is amended to read:

14 938.533 (3) (a) A participant in the corrective sanctions program remains
15 under the supervision of the department, remains subject to the rules and discipline
16 of that department, and is considered to be in custody, as defined in s. 946.42 (1) (a).
17 Notwithstanding ss. 938.19 to 938.21, if a juvenile violates a condition of that
18 juvenile's participation in the corrective sanctions program the department may,
19 without a hearing, take the juvenile into custody and place the juvenile in a secured
20 detention facility or return the juvenile to placement in a Type 1 secured correctional
21 facility or a secured child caring institution. This paragraph does not preclude a
22 juvenile who has violated a condition of the juvenile's participation in the corrective
23 sanctions program from being taken into and held in custody under ss. 938.19 to
24 938.21.

25 **SECTION 11.** 938.534 (1) (b) 3m. of the statutes is created to read:

as affected by ~~the~~ Wisconsin Act ~~1000~~
(this act),

1 938.534 (1) (b) 3m. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile
2 who has violated a condition of the juvenile's participation in the program from being
3 taken into and held in custody under ss. 938.19 to 938.21.

4 SECTION 12. ^{author "KA"} 938.538 (4) (a) of the statutes is amended to read:

5 938.538 (4) (a) A participant in the serious juvenile offender program is under
6 the supervision and control of the department, is subject to the rules and discipline
7 of the department ^(plan) and is considered to be in custody, as defined in s. 946.42 (1) (a).
8 Notwithstanding ss. 938.19 to 938.21, if a participant violates a condition of his or
9 her participation in the program under sub. (3) (a) 2. to 9. while placed in a Type 2
10 secured correctional facility the department may, without a hearing, take the
11 participant into custody and return him or her to placement in a Type 1 secured
12 correctional facility, ^{or (plan)} a secured child caring institution, ~~or, if the participant is 17~~
13 ~~years of age or over, a Type 1 prison, as defined in s. 301.01 (5).~~ Any intentional
14 failure of a participant to remain within the extended limits of his or her placement
15 while participating in the serious juvenile offender program ~~or to return within the~~
16 ~~time prescribed by the administrator of the division of intensive sanctions in the~~
17 ~~department is considered an escape under s. 946.42 (3) (c). This paragraph does not~~
18 preclude a juvenile who has violated a condition of the juvenile's participation in the
19 program under sub. (3) (a) 2. to 9. from being taken into and held in custody under
20 ss. 938.19 to 938.21.

21 SECTION 13. 938.539 (3) of the statutes is amended to read:

22 938.539 (3) Notwithstanding ss. 938.19 to 938.21, if a juvenile placed in a
23 Type 2 child caring institution under s. 938.34 (4d) or 938.357 (4) (c) or in a Type 2
24 secured correctional facility under s. 938.357 (4) (a) or (c) violates a condition of his
25 or her placement in the Type 2 child caring institution or Type 2 secured correctional

*** NOTE: This is reconciled s. 938.538 (4) (a). This section
has been affected by drafts with the following LRB #'s: LRB-0446/1
and LRB-0447/2.

1 facility, the juvenile may be placed in a Type 1 secured correctional facility as
2 provided in s. 938.357 (4) (b). This subsection does not preclude a juvenile who has
3 violated a condition of the juvenile's placement in a Type 2 secured correctional
4 facility or a Type 2 child caring institution from being taken into and held in custody
5 under ss. 938.19 to 938.21.

6 **SECTION 9309. Initial applicability; circuit courts.**

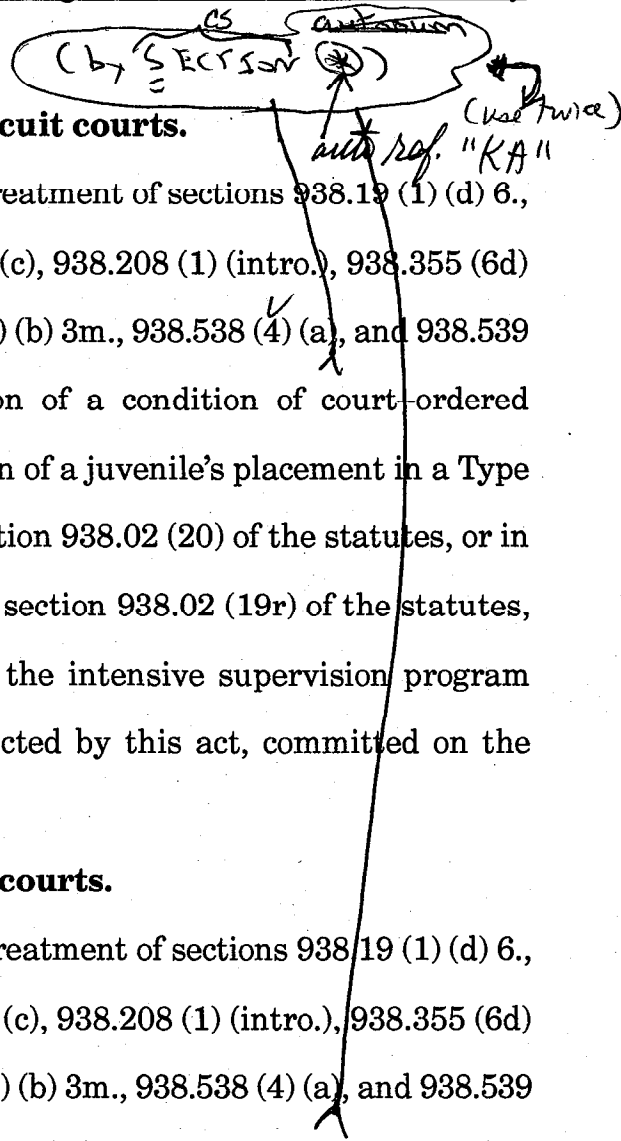
7 (1) TAKING JUVENILES INTO CUSTODY. The treatment of sections 938.19 (1) (d) 6.,
8 938.20 (2) (cm), (7) (c) 1m., and (8), 938.205 (1) (c), 938.208 (1) (intro.), 938.355 (6d)
9 (a) 4., (b) 4., and (c) 4., 938.533 (3) (a), 938.534 (1) (b) 3m., 938.538 (4) (a), and 938.539
10 (3) of the statutes first applies to a violation of a condition of court-ordered
11 supervision or aftercare supervision, a condition of a juvenile's placement in a Type
12 2 secured correctional facility, as defined in section 938.02 (20) of the statutes, or in
13 a Type 2 child caring institution, as defined in section 938.02 (19r) of the statutes,
14 or a condition of a juvenile's participation in the intensive supervision program
15 under section 938.534 of the statutes, as affected by this act, committed on the
16 effective date of this subsection.

17 **SECTION 9409. Effective dates; circuit courts.**

18 (1) TAKING JUVENILES INTO CUSTODY. The treatment of sections 938.19 (1) (d) 6.,
19 938.20 (2) (cm), (7) (c) 1m., and (8), 938.205 (1) (c), 938.208 (1) (intro.), 938.355 (6d)
20 (a) 4., (b) 4., and (c) 4., 938.533 (3) (a), 938.534 (1) (b) 3m., 938.538 (4) (a), and 938.539
21 (3) of the statutes ~~shall~~ effect on the first day of the 4th month beginning after
22 publication.

23 (END)

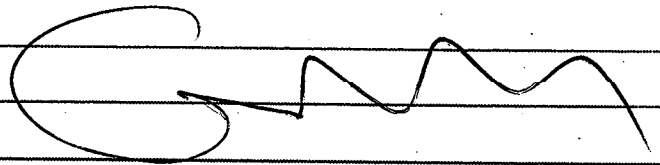
and SECTION 9309 (9309) (*) of this act
take
auto ref. "KB"
(use twice)



D-Note

This draft reconciles LRB-0446/1 and LRB-0447/2

Both LRB-0446 and LRB-0447 should continue to
appear in the compiled bill.

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a series of connected, wavy lines that resemble a signature.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0446/2dn
GMM.kmg:jf

February 7, 2001

This draft reconciles LRB-0446/1 and LRB-0447/2. Both LRB-0446 and LRB-0447 should continue to appear in the compiled bill.

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DOA:.....Coomber – Criteria for holding juvenile in custody

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to: the budget.**

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Under current law, a juvenile may be taken into custody under circumstances in which a law enforcement officer believes, on reasonable grounds, that the juvenile has violated the terms of supervision ordered by the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) or the terms of aftercare supervision administered by DOC or a county department of human services or social services (county department). A juvenile who has been taken into custody on that ground may be held in custody if probable cause exists to believe that the juvenile will run away so as to be unavailable for proceedings of the juvenile court or proceedings for revocation of aftercare supervision. This bill permits a juvenile who has violated a condition of the juvenile's placement in a Type 2 secured correctional facility or a Type 2 child caring institution (Type 2 CCI) or a condition of the juvenile's participation in the intensive sanctions program to be taken into custody by a law enforcement officer and held in custody if the juvenile is at risk of running away so as to be unavailable for action by DOC or a county department relating to that violation.

Type 2 secured correctional facilities consist of the corrective sanctions program, under which DOC places a juvenile in the community and provides the juvenile with intensive surveillance and community-based treatment services, the

serious juvenile offender program, which includes certain component phases under which DOC provides a juvenile with supervision that is more restrictive than ordinary supervision in the community, and CCIs that DOC has designated as Type 2 secured correctional facilities for the placement of certain juveniles who have been adjudged delinquent. Similarly, Type 2 CCIs consist of CCIs that DOC has designated for the placement of certain juveniles who have been adjudged delinquent and placed under the supervision of a county department, and the intensive supervision program is a program under which a juvenile is placed in the community and the county department provides the juvenile with intensive surveillance and community-based treatment services.

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

1 **SECTION 1.** 938.19 (1) (d) 6. of the statutes is amended to read:

2 938.19 (1) (d) 6. The juvenile has violated ~~the terms~~ a condition of
3 court-ordered supervision or aftercare supervision administered by the department
4 or a county department, a condition of the juvenile's placement in a Type 2 secured
5 correctional facility or a Type 2 child caring institution, or a condition of the juvenile's
6 participation in the intensive supervision program under s. 938.534.

7 **SECTION 2.** 938.20 (2) (cm) of the statutes is amended to read:

8 938.20 (2) (cm) If the juvenile has violated ~~the terms~~ a condition of aftercare
9 supervision administered by the department or a county department, a condition of
10 the juvenile's placement in a Type 2 secured correctional facility or a Type 2 child
11 caring institution, or a condition of the juvenile's participation in the intensive
12 supervision program under s. 938.534, the person who took the juvenile into custody
13 may release the juvenile to the department or county department, whichever has
14 ~~aftercare~~ supervision over the juvenile.

15 **SECTION 3.** 938.20 (7) (c) 1m. of the statutes is amended to read:

16 938.20 (7) (c) 1m. In the case of a juvenile who has violated ~~the terms~~ a
17 condition of aftercare supervision administered by the department or a county

1 department, a condition of the juvenile's placement in a Type 2 secured correctional
2 facility or a Type 2 child caring institution, or a condition of the juvenile's
3 participation in the intensive supervision program under s. 938.534, to the
4 department or county department, whichever has aftercare supervision of the
5 juvenile.

6 SECTION 4. 938.20 (8) of the statutes is amended to read:

7 938.20 (8) If a juvenile is held in custody, the intake worker shall notify the
8 juvenile's parent, guardian, and legal custodian of the reasons for holding the
9 juvenile in custody and of the juvenile's whereabouts unless there is reason to believe
10 that notice would present imminent danger to the juvenile. If a juvenile who has
11 violated ~~the terms~~ a condition of aftercare supervision administered by the
12 department or a county department, a condition of the juvenile's placement in a Type
13 2 secured correctional facility or a Type 2 child caring institution, or a condition of
14 the juvenile's participation in the intensive supervision program under s. 938.534 is
15 held in custody, the intake worker shall also notify the department or county
16 department, whichever has supervision over the juvenile, of the reasons for holding
17 the juvenile in custody, of the juvenile's whereabouts, and of the time and place of the
18 detention hearing required under s. 938.21. The parent, guardian, and legal
19 custodian shall also be notified of the time and place of the detention hearing
20 required under s. 938.21, the nature and possible consequences of that hearing, and
21 the right to present and cross-examine witnesses at the hearing. If the parent,
22 guardian, or legal custodian is not immediately available, the intake worker or
23 another person designated by the court shall provide notice as soon as possible.
24 When the juvenile is alleged to have committed a delinquent act, the juvenile shall
25 receive the same notice about the detention hearing as the parent, guardian, or legal

1 custodian. The intake worker shall notify both the juvenile and the juvenile's parent,
2 guardian, or legal custodian.

3 **SECTION 5.** 938.205 (1) (c) of the statutes is amended to read:

4 938.205 (1) (c) That the juvenile will run away or be taken away so as to be
5 unavailable for proceedings of the court or its officers ~~or~~ proceedings of the division
6 of hearings and appeals in the department of administration for revocation of
7 aftercare supervision, or action by the department or county department relating to
8 a violation of a condition of the juvenile's placement in a Type 2 secured correctional
9 facility or a Type 2 child caring institution or a condition of the juvenile's
10 participation in the intensive supervision program under s. 938.534.

11 **SECTION 6.** 938.208 (1) (intro.) of the statutes is amended to read:

12 938.208 (1) (intro.) Probable cause exists to believe that the juvenile has
13 committed a delinquent act and either presents a substantial risk of physical harm
14 to another person or a substantial risk of running away so as to be unavailable for
15 a court hearing ~~or~~, a revocation hearing ~~for juveniles on~~ of aftercare supervision
16 hearing, or action by the department relating to a violation of a condition of the
17 juvenile's placement in a Type 2 secured correctional facility or a Type 2 child caring
18 institution or a condition of the juvenile's participation in the intensive supervision
19 program under s. 938.534. For juveniles who have been adjudged delinquent, the
20 delinquent act referred to in this section may be the act for which the juvenile was
21 adjudged delinquent. If the intake worker determines that any of the following
22 conditions applies, the juvenile is considered to present a substantial risk of physical
23 harm to another person:

24 **SECTION 7.** 938.355 (6d) (a) 4. of the statutes is created to read:

1 938.355 (6d) (a) 4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile
2 who has been adjudged delinquent and who has violated a condition specified in sub.
3 (2) (b) 7. from being taken into and held in custody under ss. 938.19 to 938.21.

4 **SECTION 8.** 938.355 (6d) (b) 4. of the statutes is created to read:

5 938.355 (6d) (b) 4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile
6 who has violated a condition of aftercare supervision administered by a county
7 department from being taken into and held in custody under ss. 938.19 to 938.21.

8 **SECTION 9.** 938.355 (6d) (c) 4. of the statutes is created to read:

9 938.355 (6d) (c) 4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile
10 who has been found to be in need of protection or services and who has violated a
11 condition specified in sub. (2) (b) 7. from being taken into and held in custody under
12 ss. 938.19 to 938.21.

13 **SECTION 10.** 938.533 (3) (a) of the statutes is amended to read:

14 938.533 (3) (a) A participant in the corrective sanctions program remains
15 under the supervision of the department, remains subject to the rules and discipline
16 of that department, and is considered to be in custody, as defined in s. 946.42 (1) (a).
17 Notwithstanding ss. 938.19 to 938.21, if a juvenile violates a condition of that
18 juvenile's participation in the corrective sanctions program the department may,
19 without a hearing, take the juvenile into custody and place the juvenile in a secured
20 detention facility or return the juvenile to placement in a Type 1 secured correctional
21 facility or a secured child caring institution. This paragraph does not preclude a
22 juvenile who has violated a condition of the juvenile's participation in the corrective
23 sanctions program from being taken into and held in custody under ss. 938.19 to
24 938.21.

25 **SECTION 11.** 938.534 (1) (b) 3m. of the statutes is created to read:

1 938.534 (1) (b) 3m. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile
2 who has violated a condition of the juvenile's participation in the program from being
3 taken into and held in custody under ss. 938.19 to 938.21.

4 **SECTION 12.** 938.538 (4) (a) of the statutes, as affected by 2001 Wisconsin Act
5 (this act), is amended to read:

6 938.538 (4) (a) A participant in the serious juvenile offender program is under
7 the supervision and control of the department, is subject to the rules and discipline
8 of the department, and is considered to be in custody, as defined in s. 946.42 (1) (a).
9 Notwithstanding ss. 938.19 to 938.21, if a participant violates a condition of his or
10 her participation in the program under sub. (3) (a) 2. to 9. while placed in a Type 2
11 secured correctional facility the department may, without a hearing, take the
12 participant into custody and return him or her to placement in a Type 1 secured
13 correctional facility or a secured child caring institution. Any intentional failure of
14 a participant to remain within the extended limits of his or her placement while
15 participating in the serious juvenile offender program is considered an escape under
16 s. 946.42 (3) (c). This paragraph does not preclude a juvenile who has violated a
17 condition of the juvenile's participation in the program under sub. (3) (a) 2. to 9. from
18 being taken into and held in custody under ss. 938.19 to 938.21.

 ****NOTE: This is reconciled s. 938.538 (4) (a). This SECTION has been affected by
drafts with the following LRB numbers: LRB-0446/1 and LRB-0447/2.

19 **SECTION 13.** 938.539 (3) of the statutes is amended to read:

20 938.539 (3) Notwithstanding ss. 938.19 to 938.21, if a juvenile placed in a
21 Type 2 child caring institution under s. 938.34 (4d) or 938.357 (4) (c) or in a Type 2
22 secured correctional facility under s. 938.357 (4) (a) or (c) violates a condition of his
23 or her placement in the Type 2 child caring institution or Type 2 secured correctional

1 facility, the juvenile may be placed in a Type 1 secured correctional facility as
2 provided in s. 938.357 (4) (b). This subsection does not preclude a juvenile who has
3 violated a condition of the juvenile's placement in a Type 2 secured correctional
4 facility or a Type 2 child caring institution from being taken into and held in custody
5 under ss. 938.19 to 938.21.

6 **SECTION 9309. Initial applicability; circuit courts.**

7 (1) TAKING JUVENILES INTO CUSTODY. The treatment of sections 938.19 (1) (d) 6.,
8 938.20 (2) (cm), (7) (c) 1m., and (8), 938.205 (1) (c), 938.208 (1) (intro.), 938.355 (6d)
9 (a) 4., (b) 4., and (c) 4., 938.533 (3) (a), 938.534 (1) (b) 3m., 938.538 (4) (a) (by SECTION
10 12), and 938.539 (3) of the statutes first applies to a violation of a condition of
11 court-ordered supervision or aftercare supervision, a condition of a juvenile's
12 placement in a Type 2 secured correctional facility, as defined in section 938.02 (20)
13 of the statutes, or in a Type 2 child caring institution, as defined in section 938.02
14 (19r) of the statutes, or a condition of a juvenile's participation in the intensive
15 supervision program under section 938.534 of the statutes, as affected by this act,
16 committed on the effective date of this subsection.

17 **SECTION 9409. Effective dates; circuit courts.**

18 (1) TAKING JUVENILES INTO CUSTODY. The treatment of sections 938.19 (1) (d) 6.,
19 938.20 (2) (cm), (7) (c) 1m., and (8), 938.205 (1) (c), 938.208 (1) (intro.), 938.355 (6d)
20 (a) 4., (b) 4., and (c) 4., 938.533 (3) (a), 938.534 (1) (b) 3m., 938.538 (4) (a) (by SECTION
21 12), and 938.539 (3) of the statutes and SECTION 9309 (1) of this act take effect on the
22 first day of the 4th month beginning after publication.

23 (END)