

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:

Confinement limit for serious juvenile offender

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>
/?	malaigm 10/02/2000	gilfokm 10/10/2000		_____			S&L
/1			martykr 10/10/2000	_____	lrb docadmin 10/10/2000		S&L
/2	malaigm 12/01/2000	gilfokm 12/04/2000	pgreensl 12/04/2000	_____	gretskl 12/04/2000		S&L
/3	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			martykr 10/10/2000	_____	lrb_docadmin 10/10/2000		S&L
/2	malaigm 12/01/2000	gilfokm 12/04/2000	pgreensl 12/04/2000	_____	gretskl 12/04/2000		

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*1/3 - 2/1/mms
/6-a*

2/2/1

2/2/1
<END>

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/?	malaigm 10/02/2000	gilfokm 10/10/2000		12/4 pb/km			S&L
/1		12-12/2 kmg	martykr 10/10/2000		lrb_docadmin 10/10/2000		

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12/4
pb

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1/?	malaigm	11-10/10 kmj	kmj 10/10	kmj 10/10			

FE Sent For:

<END>

#4

**Department of Corrections
2001-2003 BIENNAL BUDGET
Statutory Language Request**

Topic: Confinement Limit for Serious Juvenile Offender Youth.

Current Language

Current language at §938.538(3)(a)1. provides that youth placed in the Serious Juvenile Offender (SJO) program under DOC supervision for 5 years must be placed in the community after 3 years of confinement in a Type 1 juvenile secured correctional facility.

Proposed Change

Amend §938.538(3)(a)1 to allow the 3-year limit to be extended by up to 30 days by administrative action of the Department or up to 2 years if ordered by the juvenile court.

MS
938.355 (4)(a)
+(b)

938.538(3)(a)1. Subject to subd. 1m., placement in a Type 1 secured correctional facility, a secured child caring institution or, if the participant is 17 years of age or over or 15 years of age or over and transferred under s. 938.357 (4) (d), a Type 1 prison, as defined in s. 301.01 (5), for a period of not more than 3 years, which may be extended by 30 days by administrative action of the Department, and by up to 2 years if ordered by the juvenile court.

Effect of the Change

Under current law, youth placed in the SJO program under DOC supervision for 5 years must be placed in the community after 3 years of confinement in a Type 1 juvenile secured correctional facility. The change would permit the 3-year limit be exceeded by up to 30 days by administrative action of the Department, and by up to 2 years if ordered by the juvenile court.

Rationale for the Change

Due to the 3-year incarceration limit, DOC has had to release some SJO youth to the community who still pose a danger to the public. Further, in these cases DOC has been left without the option of sanctioning a youth back to a Type 1 facility for misbehavior in the community, which has contributed to an uncooperative attitude on the part of the youth.

Desired Effective Date: Upon Passage of Bill
Agency: DOC
Agency Contact: Shelley Hagan
Phone: 266-5820



10/2

State of Wisconsin
2001 - 2002 LEGISLATURE

D-note

SOON

LRB-0448

GMM... King

DOA:.....Coomber – Confinement limit for serious juvenile offender
FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1

AN ACT ^{DON'T GEN. CAT.} relating to: the budget.

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Under current law, if a juvenile 14 years of age or over is adjudged delinquent for committing a violation that would be a Class B felony if committed by an adult and if the only other disposition that would be appropriate for the juvenile would be a placement in a secured correctional facility, the court assigned to exercise jurisdiction under the juvenile justice code (juvenile court) may place the juvenile in the serious juvenile offender program (SJOP) administered by DOC for a period of five years. DOC must provide each participant in the SJOP with a series of component phases that ~~is~~ based on public safety considerations and the participant's need for supervision, care, and rehabilitation, including a component phase consisting of a placement in a Type 1 secured correctional facility, such as Ethan Allen School or Lincoln Hills School, for a period of not more than three years. DOC may also return a participant to a component phase that was used previously for the participant without a hearing, unless DOC provides for a hearing by rule. *are*

This bill permits the juvenile court to extend the period for which a participant in the SJOP program may be placed in a Type 1 secured correctional facility for not more than an additional two years if the juvenile court finds that the participant is in need of the supervision, care, and rehabilitation that a placement in a Type 1 secured correctional facility provides and that public safety considerations require

JJC

that the participant be placed in such a facility. The bill also permits DOC, in returning a participant to a Type 1 secured correctional facility, to extend the period for which a participant in the SJOP program may be placed in a Type 1 secured correctional facility for not more than an additional 30 days without a hearing, unless DOC provides for a hearing by rule.

For further information see the *state and 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:

1 SECTION 1. 808.075 (4) (fn) 10. of the statutes is created to read:

2 808.075 (4) (fn) 10. Extension, under s. 938.538 (4m) of a placement under s.
3 938.538 (3) (a) 1.

4 SECTION 2. 938.185 (2) of the statutes is amended to read:

5 938.185 (2) Venue for any proceeding under s. 938.363 ~~or~~, 938.365, or 938.538
6 (4m) shall be in the county where the dispositional order was issued, unless the
7 juvenile's county of residence has changed, or the parent of the juvenile has resided
8 in a different county of this state for 6 months. In either case, the court may, upon
9 a motion and for good cause shown, transfer the case, along with all appropriate
10 records, to the county of residence of the juvenile or parent.

History: 1995 a. 77, 352, 440; 1999 a. 89.

11 SECTION 3. 938.538 (3) (a) 1. of the statutes is amended to read:

12 938.538 (3) (a) 1. Subject to subd. 1m., placement in a Type 1 secured
13 correctional facility, a secured child caring institution, or, if the participant is 17 years
14 of age or over or 15 years of age or over and transferred under s. 938.357 (4) (d), a
15 Type 1 prison, as defined in s. 301.01 (5), for a period of not more than 3 years, unless
16 that period is extended under par. (b) or sub. (4m).

NOTE: NOTE: The provisions of subd. 1. that subject a juvenile to placement in an adult (Type 1) prison were held to violate Article I, s. 7 of the Wisconsin Constitution and the 6th and 14th amendments of the U. S. Constitution and to be severed from the remainder of ch. 938 by the Supreme Court in *State of Wisconsin v. Herzog*, R. 219 Wis. 2d 849, 588 N.W.2d 660 (1998). NOTE:

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

17 SECTION 4. 938.538 (3) (b) of the statutes is amended to read:

1 938.538 (3) (b) The department may provide the sanctions under par. (a) in any
2 order, may provide more than one sanction at a time and, may return a participant
3 to a sanction that was used previously for the participant, and in returning a
4 participant to the sanction provided in par. (a) 1. may extend the period specified in
5 par. (a) 1. for not more than 30 days or may petition the court to extend that period
6 as provided in sub. (4m). Notwithstanding ss. 938.357, 938.363, and 938.533 (3), but
7 subject to sub. (4m), a participant is not entitled to a hearing regarding the
8 department's exercise of authority under this subsection unless the department
9 provides for a hearing by rule.

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

10 **SECTION 5.** 938.538 (4m) of the statutes is created to read:

11 938.538 (4m) EXTENSION OF TYPE 1 PLACEMENT PERIOD. The department or the
12 district attorney of the county in which the dispositional order was entered may
13 petition the court to extend the period for which a participant may be placed as
14 described in sub. (3) (a) 1. for an additional period of not more than 2 years. The
15 petition shall set forth in detail facts showing that the participant is in need of the
16 supervision, care, and rehabilitation that a placement described in sub. (3) (a) 1.
17 provides and that public safety considerations require that the participant be placed
18 in that placement. The court shall hold a hearing on the petition, unless written
19 waivers of objection to the extension are signed by all parties entitled to receive
20 notice and the court approves. If a hearing is held, the court shall provide notice of
21 the hearing, together with a copy of the petition, to the participant, the participant's
22 parent, guardian, and legal custodian, all parties bound by the dispositional order,
23 and the district attorney of the county in which the dispositional order was entered
24 at least 3 days prior to the hearing and, at the hearing, any of those persons may

1 present evidence relevant to the issue of extension and make alternative placement
2 recommendations. If the court finds by a preponderance of the evidence that the
3 participant is in need of the supervision, care, and rehabilitation that a placement
4 described in sub. (3) (a) 1. provides and that public safety considerations require that
5 the participant be placed in that placement, the court may extend the period for
6 which the participant may be placed as described in sub (3) (a) 1. for an additional
7 period of not more than 2 years.

8 **SECTION 9111. Nonstatutory provisions; corrections.**

9 (1) CONFINEMENT LIMITS FOR SERIOUS JUVENILE OFFENDERS. By the first day of the
10 2nd month beginning after the effective date of this subsection ~~...~~ revisor inserts
11 date, the department of corrections shall provide notice to all participants in the
12 serious juvenile offender program under section 938.538 of the statutes, as affected
13 by this act, that a placement under section 938.538 (3) (a) 1. of the statutes, as
14 affected by this act, may be extended under section 938.538 (3) (b) of the statutes, as
15 affected by this act, or section 938.538 (4m) of the statutes, as created by this act.
16 Notwithstanding section 938.538 (3) (a) 1. and (b) of the statutes, as affected by this
17 act, and section 938.538 (4m) of the statutes, as created by this act, the department
18 may not extend, or petition the court to extend, the placement under section 938.538
19 (3) (a) 1. of the statutes, as affected by this act, of a juvenile who is a participant in
20 the serious juvenile offender program on the effective date of this subsection based
21 on acts committed by that participant prior to the date on which the notice under this
22 subsection is given to that participant.

23 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0448/1dn

GMM.....

kmg

Brett and Shelley:

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

1. That the draft fleshes out DOC's requested change by placing the 30-day administrative extension in the context of returning a juvenile to a previous sanction under s. 938.538 (3) (b) and by spelling out a basic due process procedure for the two-year, court-ordered extension, that is, notice, a hearing, unless waived, and the finding that must be made before such an extension may be ordered.

2. Similarly, the draft provides due process for current participants in the serious juvenile offender program by requiring DOC to provide notice of the new extension language to those current participants and by prohibiting DOC from using acts committed by those participants prior to the giving of that notice as the basis for extending the placement in a Type 1 facility of those participants. I think that due process for current participants is a potential issue because the changes made by this draft are akin to changing the rules in the middle of the game. That is to say, when a current participant was placed in the program, the law was that after three years the participant had to be released from a Type 1 facility, with no extensions. Under the draft, however, that period may be extended. Accordingly, because such a deprivation of liberty should conform to notions of fair play and due process, this draft requires DOC to provide notice of the new extension language to all current participants so as to permit a participant to conform his or her behavior to the rules of the program and thereby avoid having his or her placement extended. Similarly, the draft prohibits DOC from using acts committed prior to the giving of that notice as the basis for an extension because at the time the participant committed such an act the law did not permit such an extension. *that*

You might want to run this draft by DOC's legal counsel to get their opinion on the due process requirements provided in the draft. If DOC legal counsel is of the opinion that those requirements should be modified, this draft can be modified in accordance with that opinion.

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-0448/1dn
GMM:kmg:km

October 10, 2000

Brett and Shelley:

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

1. That the draft fleshes out DOC's requested change by placing the 30-day administrative extension in the context of returning a juvenile to a previous sanction under s. 938.538 (3) (b) and by spelling out a basic due process procedure for the two-year, court-ordered extension, that is, notice, a hearing, unless waived, and the finding that must be made before such an extension may be ordered.

2. Similarly, the draft provides due process for current participants in the serious juvenile offender program by requiring DOC to provide notice of the new extension language to those current participants and by prohibiting DOC from using acts committed by those participants prior to the giving of that notice as the basis for extending the placement, in a Type 1 facility, of those participants. I think that due process for current participants is a potential issue because the changes made by this draft are akin to changing the rules in the middle of the game. That is to say, when a current participant was placed in the program, the law was that after three years the participant had to be released from a Type 1 facility, with no extensions. Under the draft, however, that period may be extended. Accordingly, because such a deprivation of liberty should conform to notions of fair play and due process, this draft requires DOC to provide notice of the new extension language to all current participants so as to permit a participant to conform his or her behavior to the rules of the program and thereby avoid having his or her placement extended. Similarly, the draft prohibits DOC from using acts committed prior to the giving of that notice as the basis for an extension because at the time that the participant committed such an act the law did not permit such an extension.

You might want to run this draft by DOC's legal counsel to get their opinion on the due process requirements provided in the draft. If DOC legal counsel is of the opinion that those requirements should be modified, this draft can be modified in accordance with that opinion.

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



State of Wisconsin
2001 - 2002 LEGISLATURE

D-N-76

LRB-0448/12
GMM:kmg:km

(2)
RMR

DOA:.....Coomber - Confinement limit for serious juvenile offender
FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

DON'T
GEN. CATT.

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

Analysis by the Legislative Reference Bureau
CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Under current law, if a juvenile 14 years of age or over is adjudged delinquent for committing a violation that would be a Class B felony if committed by an adult and if the only other disposition that would be appropriate for the juvenile would be a placement in a secured correctional facility, the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) may place the juvenile in the serious juvenile offender program (SJOP) administered by DOC for a period of five years. DOC must provide each participant in the SJOP with a series of component phases that are based on public safety considerations and the participant's need for supervision, care, and rehabilitation, including a component phase consisting of a placement in a Type 1 secured correctional facility, such as Ethan Allen School or Lincoln Hills School, for a period of not more than three years. DOC may also return a participant to a component phase that was used previously for the participant without a hearing, unless DOC provides for a hearing by rule.

This bill permits the juvenile court to extend the period for which a participant in the SJOP program may be placed in a Type 1 secured correctional facility for not more than an additional two years if the juvenile court finds that the participant is in need of the supervision, care, and rehabilitation that a placement in a Type 1 secured correctional facility provides and that public safety considerations require

In addition, the bill specifies that a 30-day extension under the bill does not preclude a two-year extension under the bill, and vice versa.

that the participant be placed in such a facility. The bill also permits DOC, in returning a participant to a Type 1 secured correctional facility, to extend the period for which a participant in the SJOP program may be placed in a Type 1 secured correctional facility for not more than an additional 30 days without a hearing, unless DOC provides for a hearing by rule.

For further information see the *state and 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:

^a
(a) 2.

1 SECTION 1. 808.075 (4) (fn) 10. of the statutes is created to read:

2 808.075 (4) (fn) 10. Extension, under s. 938.538 (4m), of a placement under s.
3 938.538 (3) (a) 1.

4 SECTION 2. 938.185 (2) of the statutes is amended to read:

5 (a) 2. 938.185 (2) Venue for any proceeding under s. 938.363 or, 938.365, or 938.538

6 (4m) shall be in the county where the dispositional order was issued, unless the
7 juvenile's county of residence has changed, or the parent of the juvenile has resided
8 in a different county of this state for 6 months. In either case, the court may, upon
9 a motion and for good cause shown, transfer the case, along with all appropriate
10 records, to the county of residence of the juvenile or parent.

11 SECTION 3. 938.538 (3) (a) 1. of the statutes is amended to read:

12 938.538 (3) (a) 1. Subject to subd. 1m., placement in a Type 1 secured
13 correctional facility, a secured child caring institution, or, if the participant is 17
14 years of age or over or 15 years of age or over and transferred under s. 938.357 (4)
15 (d), a Type 1 prison, as defined in s. 301.01 (5), for a period of not more than 3 years,

16 unless that period is extended under par (b) or sub. (4m). ~~(a) 1.~~ (a) 1. or 2. or both

17 SECTION 4. 938.538 (3) (b) of the statutes is amended to read:

(a) 2.0
- 3 -
or both

as provided in sub. (4m) (a) 1, or

1 938.538 (3) (b) The department may provide the sanctions under par. (a) in any
 2 order, may provide more than one sanction at a time and, may return a participant
 3 to a sanction that was used previously for a the participant, and, in returning a
 4 participant to the sanction provided in par. (a) 1., may extend the period specified in
 5 par. (a) 1. for not more than 90 days or may petition the court to extend that period
 6 as provided in sub. (4m). Notwithstanding ss. 938.357, 938.363, and 938.533 (3), but
 7 subject to sub. (4m), a participant is not entitled to a hearing regarding the
 8 department's exercise of authority under this subsection unless the department
 9 provides for a hearing by rule.

Insert 3-11

SECTION 5. 938.538 (4m) of the statutes is created to read:

11 938.538 (4m) EXTENSION OF TYPE 1 PLACEMENT PERIOD. The department or the
 12 district attorney of the county in which the dispositional order was entered may
 13 petition the court to extend the period for which a participant may be placed as
 14 described in sub. (3) (a) 1. for an additional period of not more than 2 years. The
 15 petition shall set forth in detail facts showing that the participant is in need of the
 16 supervision, care, and rehabilitation that a placement described in sub. (3) (a) 1.
 17 provides and that public safety considerations require that the participant be placed
 18 in that placement. The court shall hold a hearing on the petition, unless written
 19 waivers of objection to the extension are signed by all parties entitled to receive
 20 notice and the court approves. If a hearing is held, the court shall provide notice of
 21 the hearing, together with a copy of the petition, to the participant, the participant's
 22 parent, guardian, and legal custodian, all parties bound by the dispositional order,
 23 and the district attorney of the county in which the dispositional order was entered
 24 at least 3 days prior to the hearing and, at the hearing, any of those persons may
 25 present evidence relevant to the issue of extension and make alternative placement

Insert 436

1 recommendations. If the court finds by a preponderance of the evidence that the
2 participant is in need of the supervision, care, and rehabilitation that a placement
3 described in sub. (3) (a) 1. provides and that public safety considerations require that
4 the participant be placed in that placement, the court may extend the period for
5 which the participant may be placed as described in sub (3) (a) 1. for an additional
6 period of not more than 2 years.

7 **SECTION 9111. Nonstatutory provisions; corrections.**

8 (1) CONFINEMENT LIMITS FOR SERIOUS JUVENILE OFFENDERS. By the first day of the
9 2nd month beginning after the effective date of this subsection, the department of
10 corrections shall provide notice to all participants in the serious juvenile offender
11 program under section 938.538 of the statutes, as affected by this act, that a
12 placement under section 938.538 (3) (a) 1. of the statutes, as affected by this act, may
13 be extended under section 938.538 (3) (b) of the statutes, as affected by this act, or
14 section 938.538 (4m) of the statutes, as created by this act. Notwithstanding section
15 938.538 (3) (a) 1. and (b) of the statutes, as affected by this act, and section 938.538
16 (4m) of the statutes, as created by this act, the department may not extend, or
17 petition the court to extend, the placement under section 938.538 (3) (a) 1. of the
18 statutes, as affected by this act, of a juvenile who is a participant in the serious
19 juvenile offender program on the effective date of this subsection based on acts
20 committed by that participant prior to ~~the date on which the notice under this~~
21 ~~subsection is given to that participant.~~

22

(END)

Insert ✓
4-21

D-Notd

Insert 3-11 ✓

NOTE

(a) 1. The department may extend the period for which a participant may be placed as described in sub. (3)(a) 1. for an additional period of not more than 30 days. A participant is not entitled to a hearing regarding the department's exercise of authority under this subdivision unless the department provides for a hearing by rule.

¶ 2. The
" (end of insert)

~~Insert 4-6)~~

~~NOTE~~

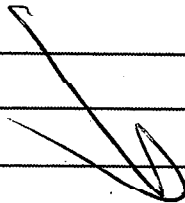
~~Insert 4-21~~ ✓

~~3. A participant~~

~~3. The department may extend under subd. 1. the placement of a participant whose placement has been extended under subd. 2, and a court may extend under subd. 2. the placement of a participant whose placement has been extended under subd. 1.~~

under subd. 1.

¶3. An extension of a participant's placement does not preclude an extension of that participant's placement under subd. 2., and vice versa.



Insert 4-26
-4-

... [revisor inserts date]

1 recommendations. If the court finds by a preponderance of the evidence that the
2 participant is in need of the supervision, care, and rehabilitation that a placement
3 described in sub. (3) (a) 1. provides and that public safety considerations require that
4 the participant be placed in that placement, the court may extend the period for
5 which the participant may be placed as described in sub (3) (a) 1. for an additional
6 period of not more than 2 years.

7 **SECTION 9111. Nonstatutory provisions; corrections.**

8 (1) ~~CONFINEMENT LIMITS FOR SERIOUS JUVENILE OFFENDERS.~~ By the first day of the

9 2nd month beginning after the effective date of this subsection, the department of
10 ~~corrections~~ shall provide notice to all participants in the serious juvenile offender
11 program under section 938.538 of the statutes, as affected by this act, that a

12 placement under section 938.538 (3) (a) 1. of the statutes, as affected by this act, may
13 be extended under section 938.538 (3) (b) of the statutes, as affected by this act, or

14 section 938.538 (4m) of the statutes, as created by this act. Notwithstanding section
15 938.538 (3) (a) 1. and (b) of the statutes, as affected by this act, and section 938.538

16 (4m) of the statutes, as created by this act, the department may not extend, or
17 petition the court to extend, the placement under section 938.538 (3) (a) 1. of the

18 statutes, as affected by this act, of a juvenile who is a participant in the serious
19 juvenile offender program on the effective date of this subsection based on acts

20 committed by that participant prior to the date on which the notice under this
21 subsection is given to that participant.

22

(END)

paragraph

... [revisor inserts date],

(col 1, row 1)

D-N-7e

Brett:

On the advice of LRB General Counsel Peter J. Dykman, this redraft ^{MOVES} moves the nonstatutory provision set forth in LRB-0449/1 to the statutes. Generally, a nonstatutory provision is appropriate for a temporary provision not extending beyond July 1 of the even-numbered year of the next legislative session, in this case, July 1, 2004. Because the budget is not likely to be enacted by July 1, 2001, and because the three-year secure placement of a juvenile serious serious juvenile offender limit of a ~~person~~ who is placed in the program ~~will~~ after July 1, 2001, but before the enactment of the budget, will expire after July 1, 2004, it is appropriate to place the nonstatutory provision in the statutes. That provision ^{can} can then be repealed next session. On the other hand, if there is no ^{likelihood} ~~likelihood~~ that a juvenile's placement would be extended for an act committed almost three years prior to the juvenile's

mandatory release date, the ~~1988~~ provision can
probably ^{go} ~~go~~ back into the nonstatutory provisions.

GMM

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0448/2dn
GMM:kmg:pg

December 4, 2000

Brett:

On the advice of LRB General Counsel Peter J. Dykman, this redraft moves the nonstatutory provision set forth in LRB-0448/1 to the statutes. Generally, a nonstatutory provision is appropriate for a temporary provision not extending beyond July 1 of the even-numbered year of the next legislative session, in this case, July 1, 2004. Because the budget is not likely to be enacted by July 1, 2001, and because the three-year secure placement limit of a juvenile who is placed in the serious juvenile offender program after July 1, 2001, but before the enactment of the budget, will expire after July 1, 2004, it is appropriate to place the nonstatutory provision in the statutes. That provision can then be repealed next session.

On the other hand, if there is no likelihood that a juvenile's placement would be extended for an act committed almost three years prior to the juvenile's mandatory release date, the provision can probably go back into the nonstatutory provisions.

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



State of Wisconsin
2001 - 2002 LEGISLATURE

(Dmt)

LRB-0448/2
GMM:kmg:pg 3

DOA:.....Coomber – Confinement limit for serious juvenile offender

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1

*DON'T
GEN. CAT.*
AN ACT relating to: the budget.

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Under current law, if a juvenile 14 years of age or over is adjudged delinquent for committing a violation that would be a Class B felony if committed by an adult and if the only other disposition that would be appropriate for the juvenile would be a placement in a secured correctional facility, the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) may place the juvenile in the serious juvenile offender program (SJOP) administered by DOC for a period of five years. DOC must provide each participant in the SJOP with a series of component phases that are based on public safety considerations and the participant's need for supervision, care, and rehabilitation, including a component phase consisting of a placement in a Type 1 secured correctional facility, such as Ethan Allen School or Lincoln Hills School, for a period of not more than three years. DOC may also return a participant to a component phase that was used previously for the participant without a hearing, unless DOC provides for a hearing by rule.

This bill permits the juvenile court to extend the period for which a participant in the SJOP program may be placed in a Type 1 secured correctional facility for not more than an additional two years if the juvenile court finds that the participant is in need of the supervision, care, and rehabilitation that a placement in a Type 1 secured correctional facility provides and that public safety considerations require

that the participant be placed in such a facility. The bill also permits DOC to extend the period for which a participant in the SJOP program may be placed in a Type 1 secured correctional facility for not more than an additional 30 days without a hearing, unless DOC provides for a hearing by rule. In addition, the bill specifies that a 30-day extension under the bill does not preclude a two-year extension under the bill, and vice versa.

For further information see the *state and 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:

1 **SECTION 1.** 808.075 (4) (fn) 10. of the statutes is created to read:

2 808.075 (4) (fn) 10. Extension, under s. 938.538 (4m) (a) 2., of a placement
3 under s. 938.538 (3) (a) 1.

4 **SECTION 2.** 938.185 (2) of the statutes is amended to read:

5 938.185 (2) Venue for any proceeding under s. 938.363 ~~or~~, 938.365, or 938.538
6 (4m) (a) 2. shall be in the county where the dispositional order was issued, unless the
7 juvenile's county of residence has changed, or the parent of the juvenile has resided
8 in a different county of this state for 6 months. In either case, the court may, upon
9 a motion and for good cause shown, transfer the case, along with all appropriate
10 records, to the county of residence of the juvenile or parent.

11 **SECTION 3.** 938.538 (3) (a) 1. of the statutes is amended to read:

12 938.538 (3) (a) ^{or} 1. Subject to subd. 1m., placement in a Type 1 secured
13 correctional facility, ~~a secured child caring institution, or, if the participant is 17~~
14 ~~years of age or over or 15 years of age or over and transferred under s. 938.357 (4)~~
15 ~~(d), a Type 1 prison, as defined in s. 301.01 (5), for a period of not more than 3 years,~~
16 unless that period is extended under sub. (4m) (a) 1. or 2. or both.

17 **SECTION 4.** 938.538 (3) (b) of the statutes is amended to read:

***NOTE: This is reconciled s. 938.538 (3) (a) 1. This section has
been affected by drafts with the following LRB #'s: LRB-0448/2
and LRB-0447/2.

1 938.538 (3) (b) The department may provide the sanctions under par. (a) in any
2 order, may provide more than one sanction at a time ~~and~~, may return a participant
3 to a sanction that was used previously for ~~a~~ the participant, and, in returning a
4 participant to the sanction provided in par. (a) 1., may extend the period specified in
5 par. (a) 1. as provided in sub. (4m) (a) 1. or petition the court to extend that period
6 as provided in sub. (4m) (a) 2., or both. Notwithstanding ss. 938.357, 938.363, and
7 938.533 (3), but subject to sub. (4m) (a) 2., a participant is not entitled to a hearing
8 regarding the department's exercise of authority under this subsection unless the
9 department provides for a hearing by rule.

10 **SECTION 5.** 938.538 (4m) of the statutes is created to read:

11 938.538 (4m) EXTENSION OF TYPE 1 PLACEMENT PERIOD. (a) 1. The department
12 may extend the period for which a participant may be placed as described in sub. (3)
13 (a) 1. for an additional period of not more than 30 days. A participant is not entitled
14 to a hearing regarding the department's exercise of authority under this subdivision
15 unless the department provides for a hearing by rule.

16 2. The department or the district attorney of the county in which the
17 dispositional order was entered may petition the court to extend the period for which
18 a participant may be placed as described in sub. (3) (a) 1. for an additional period of
19 not more than 2 years. The petition shall set forth in detail facts showing that the
20 participant is in need of the supervision, care, and rehabilitation that a placement
21 described in sub. (3) (a) 1. provides and that public safety considerations require that
22 the participant be placed in that placement. The court shall hold a hearing on the
23 petition, unless written waivers of objection to the extension are signed by all parties
24 entitled to receive notice and the court approves. If a hearing is held, the court shall
25 provide notice of the hearing, together with a copy of the petition, to the participant,

1 the participant's parent, guardian, and legal custodian, all parties bound by the
2 dispositional order, and the district attorney of the county in which the dispositional
3 order was entered at least 3 days prior to the hearing and, at the hearing, any of those
4 persons may present evidence relevant to the issue of extension and make
5 alternative placement recommendations. If the court finds by a preponderance of the
6 evidence that the participant is in need of the supervision, care, and rehabilitation
7 that a placement described in sub. (3) (a) 1. provides and that public safety
8 considerations require that the participant be placed in that placement, the court
9 may extend the period for which the participant may be placed as described in sub
10 (3) (a) 1. for an additional period of not more than 2 years.

11 3. An extension of a participant's placement under subd. 1. does not preclude
12 an extension of that participant's placement under subd. 2., and vice versa.

13 (b) By the first day of the 2nd month beginning after the effective date of this
14 paragraph [revisor inserts date], the department shall provide notice to all
15 participants in the serious juvenile offender program that a placement under sub.
16 (3) (a) 1. may be extended under par. (a) 1. or 2. or both. Notwithstanding par. (a) 1.
17 and 2. and sub. (3) (a) 1., the department may not extend, or petition the court to
18 extend, the placement under sub. (3) (a) 1. of a juvenile who is a participant in the
19 serious juvenile offender program on the effective date of this paragraph [revisor
20 inserts date], based on acts committed by that participant prior to the date on which
21 the notice under this paragraph is given to that participant.

22

(END)

D-Aste

Brett:

This draft reconciles LRB-0448/2 and LRB-0447/2. Both
LRB-0448 and LRB-0447 should continue to appear in the
compiled bill.

GMM

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0448/3dn
GMM:kmg:jf

February 7, 2001

Brett:

This draft reconciles LRB-0448/2 and LRB-0447/2. Both LRB-0448 and LRB-0447 should continue to appear in the compiled bill.

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

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7 as provided in sub. (4m) (a) 2., or both. Notwithstanding ss. 938.357, 938.363, and
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23 (END)