

2007 ASSEMBLY BILL 249

April 10, 2007 – Introduced by Representatives ALBERS, J. OTT, BERCEAU, HAHN, GUNDERSON and TOWNSEND, cosponsored by Senators ROESSLER and GROTHMAN. Referred to Committee on Corrections and Courts.

1 **AN ACT to amend** 118.125 (2) (cm), 938.19 (1) (d) 7., 938.21 (4) (a), 938.396 (2g)
2 (m) 3. and 946.495; and **to create** 938.208 (4m), 938.30 (7m) and 938.31 (8) of
3 the statutes; **relating to:** conditions prior to disposition for a juvenile who is
4 not being held in secure or nonsecure custody and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, if a juvenile who has been taken into custody under the Juvenile Justice Code is not released, the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) must hold a hearing to determine whether the juvenile shall continue to be held in custody. A juvenile may be held in nonsecure custody if there is probable cause to believe that the juvenile is within the jurisdiction of the juvenile court and that: 1) the juvenile will commit injury to the person or property of others if not held; 2) the juvenile's parent, guardian, or legal custodian or another responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care and that services to ensure the juvenile's safety and well-being are not available or would be inadequate; or 3) the juvenile will run away or be taken away so as to be unavailable for proceedings of the juvenile court.

If the juvenile court finds that the juvenile should be continued in custody, the juvenile court must either order the juvenile to be held in secure or nonsecure custody or place the juvenile with a parent, guardian, legal custodian, or other responsible person. If the juvenile court places the juvenile with a parent, guardian, legal custodian, or other responsible person, the juvenile court may also impose

ASSEMBLY BILL 249

reasonable restrictions on the juvenile's travel, association with other persons, or places of abode during the period of placement or may subject the juvenile to the supervision of an agency agreeing to supervise the juvenile (temporary physical custody order).

If the juvenile violates a condition of a temporary physical custody order, the juvenile may be taken into custody, and the temporary physical custody order may be amended so as to place the juvenile in another form of custody, including secure custody if the juvenile meets the criteria for being held in secure custody, which criteria include the condition that the juvenile, having been placed in nonsecure custody, has run away or committed a delinquent act and no other suitable alternative exists. Finally, under current law, a person placed in nonsecure custody who is alleged to have committed a delinquent act is guilty of a Class A misdemeanor, which if committed by an adult is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both, if the person intentionally fails to comply with the conditions of his or her placement in nonsecure custody.

This bill permits the juvenile court to impose similar conditions with similar consequences for a violation on a juvenile who is subject to the jurisdiction of the juvenile court, but who is not being held in custody. Specifically, under the bill, at the plea hearing the juvenile court may subject the juvenile to the supervision of any agency agreeing to supervise the juvenile; may impose reasonable restrictions on the juvenile's travel, association with other persons, or places of abode during the period between the plea hearing and the fact-finding or dispositional hearing; or may impose any other conditions considered reasonably necessary to protect the safety and welfare of the juvenile or of the community or to prevent intimidation of witnesses during that period, including a condition requiring the juvenile to attend school or to be monitored by an electronic monitoring system (predispositional conditions order). The bill also permits the juvenile court to impose a predispositional conditions order for the period between the fact-finding hearing and the dispositional hearing.

If the juvenile violates a condition of a predispositional conditions order, the juvenile may be taken into custody, and the predispositional conditions order may be amended so as to place the juvenile in temporary physical custody, including secure custody if the juvenile meets the criteria for being held in secure custody, which criteria under the bill include the condition that the juvenile, having had predispositional conditions imposed on him or her, has run away or committed a delinquent act and no other suitable alternative exists. Finally, under the bill, a person who is alleged to have committed a delinquent act and who has had predispositional conditions imposed on him or her is guilty of a Class A misdemeanor, if the person intentionally fails to comply with those conditions.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

ASSEMBLY BILL 249

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.** 118.125 (2) (cm) of the statutes is amended to read:

2 118.125 (2) (cm) If school attendance is a condition of a child's dispositional
3 order under s. 48.355 (2) (b) 7. or 938.355 (2) (b) 7., the school board shall notify the
4 county department that is responsible for supervising the child within 5 days after
5 any violation of the condition by the child. If school attendance is a condition of an
6 order under s. 938.21 (4) (a), 938.30 (7m), or 938.31 (8), the school board shall notify
7 the court or agency that is responsible for supervising the child within 5 days after
8 any violation of the condition by the child.

9 **SECTION 2.** 938.19 (1) (d) 7. of the statutes is amended to read:

10 938.19 (1) (d) 7. The juvenile has violated the conditions of an order under s.
11 938.21 (4), 938.30 (7m), or 938.31 (8) or of an order for temporary physical custody
12 issued by an intake worker.

13 **SECTION 3.** 938.208 (4m) of the statutes is created to read:

14 **938.208 (4m)** VIOLATIONS OF PREDISPOSITIONAL CONDITIONS; RUNAWAY OR
15 DELINQUENT ACT. Probable cause exists to believe that the juvenile, having had
16 conditions imposed on him or her under s. 938.30 (7m) or 938.31 (8), has run away
17 or committed a delinquent act and no other suitable alternative exists.

18 **SECTION 4.** 938.21 (4) (a) of the statutes is amended to read:

19 938.21 (4) (a) Place the juvenile with a parent, guardian, legal custodian, or
20 other responsible person and may impose reasonable restrictions on the juvenile's
21 travel, association with other persons, or places of abode during the period of

ASSEMBLY BILL 249

1 placement or any other conditions considered reasonably necessary to protect the
2 safety and welfare of the juvenile or of the community or to prevent intimidation of
3 witnesses during that period, including a condition requiring the juvenile to attend
4 school or to return to other custody as requested; or subject the juvenile to the
5 supervision of an agency agreeing to supervise the juvenile. Reasonable restrictions
6 may be placed upon the conduct of the parent, guardian, legal custodian, or other
7 responsible person which may be necessary to ensure the safety of the juvenile.

8 **SECTION 5.** 938.30 (7m) of the statutes is created to read:

9 **938.30 (7m) PREDISPOSITIONAL CONDITIONS ORDER.** (a) In the case of a juvenile
10 who is not being held in secure or nonsecure custody, if the court sets a date under
11 sub. (6) (a) or (7) for the fact-finding or dispositional hearing, the court may subject
12 the juvenile to the supervision of any agency agreeing to supervise the juvenile, may
13 impose reasonable restrictions on the juvenile's travel, association with other
14 persons, or places of abode during the period between the plea hearing and the
15 fact-finding or dispositional hearing, or may impose any other conditions considered
16 reasonably necessary to protect the safety and welfare of the juvenile or of the
17 community or to prevent intimidation of witnesses during that period, including a
18 condition requiring the juvenile to attend school or to be monitored by an electronic
19 monitoring system. The court may also place reasonable restrictions on the conduct
20 of the juvenile's parent, guardian, legal custodian, or any other person responsible
21 for the welfare of the juvenile which may be necessary to ensure the safety of the
22 juvenile.

23 (b) If school attendance is a condition of an order under par. (a), the order shall
24 specify what constitutes a violation of the condition and shall direct the school board
25 of the school district, or the governing body of the private school, in which the juvenile

ASSEMBLY BILL 249

1 is enrolled to notify the court or the agency that is responsible for supervising the
2 juvenile within 5 days after any violation of the condition by the juvenile.

3 (c) An order under par. (a) may be amended at any time, with notice, so as to
4 place the juvenile in custody for failure to conform to the conditions originally
5 imposed. A juvenile may be transferred to secure custody if he or she meets the
6 criteria of s. 938.208.

7 **SECTION 6.** 938.31 (8) of the statutes is created to read:

8 938.31 **(8)** PREDISPOSITIONAL CONDITIONS ORDER. (a) In the case of a juvenile who
9 is not being held in secure or nonsecure custody, if the court sets a date under sub.
10 (7) (a) for the dispositional hearing, the court may subject the juvenile to the
11 supervision of any agency agreeing to supervise the juvenile, may impose reasonable
12 restrictions on the juvenile's travel, association with other persons, or places of abode
13 during the period between the fact-finding hearing and the dispositional hearing,
14 or may impose any other conditions considered reasonably necessary to protect the
15 safety and welfare of the juvenile or of the community or to prevent intimidation of
16 witnesses during that period, including a condition requiring the juvenile to attend
17 school or to be monitored by an electronic monitoring system. The court may also
18 place reasonable restrictions on the conduct of the juvenile's parent, guardian, legal
19 custodian, or any other person responsible for the welfare of the juvenile which may
20 be necessary to ensure the safety of the juvenile.

21 (b) If school attendance is a condition of an order under par. (a), the order shall
22 specify what constitutes a violation of the condition and shall direct the school board
23 of the school district, or the governing body of the private school, in which the juvenile
24 is enrolled to notify the court or the agency that is responsible for supervising the
25 juvenile within 5 days after any violation of the condition by the juvenile.

ASSEMBLY BILL 249

1 (c) An order under par. (a) may be amended at any time, with notice, so as to
2 place the juvenile in custody for failure to conform to the conditions originally
3 imposed. A juvenile may be transferred to secure custody if he or she meets the
4 criteria of s. 938.208.

5 **SECTION 7.** 938.396 (2g) (m) 3. of the statutes is amended to read:

6 938.396 (2g) (m) 3. If school attendance is a condition of a dispositional order
7 under s. 938.342 (1d) or (1g) or 938.355 (2) (b) 7. or of an order under s. 938.21 (4) (a),
8 938.30 (7m), or 938.31 (8), within 5 days after the date on which the dispositional
9 order is entered, the clerk of the court assigned to exercise jurisdiction under this
10 chapter and ch. 48 or the clerk of the municipal court exercising jurisdiction under
11 s. 938.17 (2) shall notify the school board of the school district, or the governing body
12 of the private school, in which the juvenile is enrolled or the designee of the school
13 board or governing body of the fact that the juvenile's school attendance is a condition
14 of ~~a dispositional~~ the order.

15 **SECTION 8.** 946.495 of the statutes is amended to read:

16 **946.495 Violation of nonsecure custody or pre-dispositional conditions**
17 **order.** If a person has been placed in nonsecure custody by an intake worker under
18 s. 938.207 or by a judge or circuit court commissioner court under s. 938.21 (4) or has
19 had conditions imposed on him or her by a court order under s. 938.30 (7m) or 938.31
20 (8) and the person is alleged to be delinquent under s. 938.12, alleged to be in need
21 of protection or services under s. 938.13 (12) or has been taken into custody for
22 committing an act that is a violation of a state or federal criminal law, the person is
23 guilty of a Class A misdemeanor if he or she intentionally fails to comply with the
24 conditions of his or her placement in nonsecure custody or with the conditions of that
25 order.

