

## 2007 DRAFTING REQUEST

### Bill

Received: **09/21/2006**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Sheryl Albers (608) 266-8531**

By/Representing: **Joyce Waldrop**

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

Drafter: **gmalaise**

May Contact:

Adtl. Drafters:

Subject: **Children - juvenile justice**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Albers@legis.wisconsin.gov**

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Predispositional conditions on juvenile not held in custody

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### Instructions:

See Attached--permit juvenile court to impose predispositional conditions on juvenile who is not being held in custody

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 09/21/2006	kfollett 10/11/2006 jdye 10/12/2006	rschluet 10/11/2006	_____	_____	_____	S&L Crime
/1			pgreensl 10/12/2006	_____	lparisi 10/12/2006	sbasford 11/30/2006	

FE Sent For:

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*4/9*

<END>

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/?	gmalaise	1 10/12 jld	10/12	10/12			

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FE Sent For:

<END>

## Malaise, Gordon

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**From:** Waldrop, Joyce  
**Sent:** Tuesday, September 19, 2006 2:20 PM  
**To:** Malaise, Gordon  
**Subject:** Juvenile Proposal

Gordon,

Below is the communication regarding a change in the juvenile laws. It provides the background and probably is not necessary, however, it may clarify if needed.

### REQUEST

Give the juvenile court the power to make pre-dispositional orders to assure that the child will obey the laws and will not further injure or have contact with victims while the case is pending.

### NOTE

- I expect there will be other issues which the Representative may want to add. For example, providing that victims of juvenile crime be made whole. (restitution statutes)
- Eliminating restrictions on restitution to enhance rehabilitation potential.

However, Representative Albers has not asked this yet. This is merely speculation on my part.

If you have any questions please contact me.

Joyce  
Chief of Staff/Committee Clerk  
jwaldrop@legis.state.wi.us

Office of Representative Sheryl Albers  
Ph. 608/266-8531  
Fax 608/282-3650

### BACKGROUND IN FORMATION

The problem to be addressed come from a constituent, Andrew Sharp. His e-mail, received July 20, 2006 states"

"My judge recently ruled that a juvenile court lacks authority make orders regarding a juvenile's conduct prior to adjudication if the juvenile has not been taken into custody pursuant to sec. 938.19 and held in custody pursuant to 938.205.

The facts were that a juvenile appeared in court on a summons for a truancy petition. I asked the court to order the juvenile to attend school with no unexcused absences and the court so ordered. Later, after the juvenile completely violated that order (of course), the defense attorney attacked the order and argued that there are no provisions in the

statutes for the court to make such an order, absent the child being taken into custody. I argued that the court could do so under its inherent authority and noted that the Court was simply ordering the child to do what the law already required: go to school. (I also made other statutory arguments that do not pertain to this question.)

He ruled against me, noting that his "inherent authority" extended only so far as necessary to enable the court to function properly.

**I have sent out an e-mail to other prosecutors who agree that the court has no statutory authority to make "bail condition" orders in juvenile cases. So, under 938.205, unless the child will commit injury to the person or property of another, or the juvenile's parent is neglecting, refusing, unable or unavailable to provide adequate supervision AND care, or the juvenile will run away, there are no grounds to hold them and no bail condition-type orders can be made.**

Thus, a child cannot be ordered to attend school and can miss school for the entire time that his or her delinquency case is pending without any recourse. A child who sexually assaults another child cannot be ordered to not have contact with that child unless there are grounds to believe the charged child will further injure the victim. A child who steals from a victim cannot be ordered to stay away from the victim, etc.

Could someone look at drafting legislation that gives the juvenile court the power to make pre-dispositional orders to assure that the child will obey the laws and will not further injure or have contact with victims while the case is pending?"

The following question was posed to Don on July 21, 2006

- Does the restitution provision in the statutes apply only to adults or can restitution for victims be ordered for Juvenile offenders also?
- Does the statutes restrict the type of restitution or does it include cash?

Don cited the statute that allows restitution Chap. 938 which allows restitution as cash or services etc. Sheryl counter with a question regarding insurance what is "to preclude a court from ignoring a request for restitution by a victim, when insurance may cover part or less than all of the damages."

Don's response is rather lengthy. "Hi Joyce---Several comments on Rep. Albers' request:

1. The purpose of restitution in juvenile offender cases is not to make the victim whole (to compensate the victim for all of his or her damages)---the purposes of restitution are set forth in s. 938.34 (5), Stats. (a copy of which follows, with the purposes highlighted). The court, after taking into consideration the well-being and needs of the victim, must consider restitution to be beneficial to the well-being and behavior of the juvenile offender. The order must include a finding that the juvenile alone is financially able to pay the ordered restitution or physically able to perform the restitution services. There is definitely a rehabilitation of the juvenile factor in these requirements (rather than full compensation of the victim). The restitution question in the Juvenile Code is basically what the damages are, if restitution is beneficial to the well-being and behavior of the juvenile (after considering the well-being and needs of the victim), and whether the juvenile is able to pay the restitution. There is nothing in this statutory provision that would permit the court to consider the presence of insurance as a factor in ordering restitution---and, in light of the purposes of restitution as a possible juvenile disposition, as set forth above, it would not seem appropriate that a court consider insurance as part of this juvenile disposition restitution order. Note: restitution is one of the numerous options for dispositions in juvenile offender cases (set forth in s. 938.34, Stats.)---the court is not required to order restitution (it is required in adult court criminal convictions). Also, Anne Sappenfield of our office (who is the true ch. 938 expert in our office) told me that she thought that a lot of juveniles are found, by the court, not to be able to pay the restitution themselves

and, so, in accordance with the statute, restitution cannot be ordered as a disposition.

2. If the restitution in the juvenile dispositional order does not make the victim whole (which it isn't intended to do) and THERE ARE ASSETS OR APPLICABLE INSURANCE, the victim can file a civil action for damages in small claims court or regular circuit court (depending on the amount of the damages left unpaid). On this point, see item 3, below. The victim could also contact his or her insurance agent (who will contact the offender's insurance agent, etc....) to see if there is the offender has any applicable insurance or if the victim's insurance covers any of the damage. Of course, insurance doesn't cover intentional acts (which is most often the case with these juvenile offender cases) so insurance wouldn't factor in anyway. In addition, I'm sure the system does not want the juvenile courts to become civil damages courts.

3. There is a statute, s. 895.035, Stats. (Parental liability for acts of a minor child) that makes the parent or parents with custody of a minor child, in any circumstances where they may not be liable under the common law (that is, where they are not at fault in any way for the damages), liable for damages to the property, for the cost of repairing or replacing property or removing graffiti, for the value of unrecovered stolen property, or for personal injury if these are attributable to the "willful, malicious or wanton act of the child" (basically the same as "intentional act of the child"). See, s. 895.035, Stats.

NOTE: The victims rights statutes in ch. 949 and 950, Stats., apply to victims of adult criminal offenses under the Criminal Code, and not to victims under the Juvenile Justice Code. There is reference to the right to restitution in the Basic Bill of Rights for Victims and Witnesses in s. 950.04 (1v) (q) and (r), Stats., with cross-references to the specific adult court restitution provisions. There is no mention of consideration of the availability of insurance in these provisions.

So, although the restitution provisions in the Juvenile Justice Code are not designed to make the victim whole and are an optional disposition up to the court (and based on the court making the findings noted above), there are definitely ways for the victim of a juvenile offender's action to attempt to "be made whole" (have all of his or her damages recovered).

Don Salm

**From Act 344 (now in effect--so this is current law):**

**SECTION 382.** 938.34 (5) (a), (am) and (c) of the statutes are amended to read: 938.34 (5) (a) Subject to par. (c), if the juvenile is found to have committed a delinquent act which has that resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, **order the juvenile to repair the damage to property or to make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the court, after taking into consideration the well-being and needs of the victim, considers it beneficial to the well-being and behavior of the juvenile. Any such order shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the order for the payment or for the completion of the services, and may include a schedule for the performance and completion of the**



## services.

Objection by If the juvenile objects to the amount of damages claimed shall entitle, the juvenile is entitled to a hearing on the question of damages before the amount of restitution is ordered. Any recovery under this paragraph shall be reduced by the amount recovered as restitution under s. 938.45 (1r) (a). (am) Subject to par. (c), order a juvenile who owes restitution under par. (a) and who is receiving income while placed in a secured juvenile correctional facility, residential treatment care center for children and youth, or other out-of-home placement to contribute a stated specified percentage of that income towards that restitution.

(c) Under this subsection, a court may not order a juvenile who is under 14 years of age to make not more than \$250 in restitution or to perform not more than 40 total hours of services for the victim as total restitution under the order.

NOTE: Clarifies, in s. 938.34 (5) (c), stats., that a juvenile under 14 years of age may not make more than \$250 in restitution or perform more than 40 hours of services for each dispositional order.

This does not get at the problem Andy brought to us. See his response below

No, this does not address my concerns. The restitution language in the statute below does not address the situation I was speaking of. The facts were this: Officers arrived to home on a report that a juvenile girl was out of control. Upon arrival, they found this was true and attempted to take her into custody. She spit on both of them and bit one of them, breaking the skin. The police officers both asked for and received AIDS testing and the police department paid for it, about \$400 each. In Court, the juvenile girl entered an admission to the conduct. We requested restitution. The Judge found that juvenile restitution can only be ordered to repair the damage to property or to make reasonable restitution for the damage or injury. The costs of the AIDS test was neither damage to property nor an injury, therefore he ruled no restitution could be had no matter what findings he made concerning whether it would rehabilitate the girl to pay for it or whether she alone could pay it.

Now, the sense of what is below is that juveniles only have to pay restitution if it would be good for them. That is the limitation. But the above also imposes another limitation: the type of restitution. If it is meant to be rehabilitative, wouldn't it be good for their character if the court could make them make the victims whole? In other words, let's say that the judge would have found in the above case that THE WAY to rehabilitate this girl would have been to make her pay for the AIDS tests and that she alone could afford to pay it. (There wasn't much other restitution in the case.) With the statute written the way it is, the Judge still couldn't do it. Should we limit the court's ability to rehabilitate through paying restitution?

Second, what about increasing victim's rights? While the sense of Chapter 950 is to try to make victims whole, it only gives them rights to restitution as set out in the restitution statutes. So, to increase the restitution victims have a right to, one needs to change the restitution statute.

Third, the first thing that most victims want is to made financially whole. Why should people who were victims of crime be made to shoulder the responsibility for the costs? They are often no better able to afford it than their juvenile offender. Why not make them whole? Why not send the message to juveniles that we are seeking to rehabilitate them and the first step in that process is to make the victim as whole as possible?

If this issue was put to the electorate, I have no doubt as to how it would come out. Juvenile offenders who have risen to the level of having a formal petition filed against them are rarely the type who need to be mollycoddled. The Beaver Cleavers of the juvenile world get informal agreements and never see the courtroom. Sending the message that they can do wrong and not have to pay for it is the wrong message, no matter what, in my opinion.

Regards, Andrew Sharp

Following Andy's response Rep. Albers is proposing the following:

"Give the juvenile court the power to make pre-dispositional orders to assure that the child will obey the laws and will not further injure or have contact with victims while the case is pending."



State of Wisconsin  
2007 - 2008 LEGISLATURE

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LRB-0341/7  
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AN ACT ...; relating to: conditions prior to disposition for a juvenile who is 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 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.

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

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

**SECTION 1.** 118.125 (2) (cm) of the statutes is amended to read:

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

**History:** 1973 c. 254; 1977 c. 418; 1979 c. 205; 1981 c. 20, 273; 1983 a. 189; 1985 a. 218; 1987 a. 27, 70, 206, 285, 337, 355; 1987 a. 399 s. 491r; 1987 a. 403 ss. 123, 124, 256; 1989 a. 31, 168; 1989 a. 201 s. 36; 1989 a. 336; 1991 a. 39, 189; 1993 a. 27, 172, 334, 377, 385, 399, 450, 491; 1995 a. 27 ss. 3939, 3940, 9126 (19), 9130 (4), 9145 (1); 1995 a. 77, 173, 225, 352; 1997 a. 3, 205, 237, 239; 1999 a. 9, 149; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265.

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

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

**History:** 1995 a. 77; 2001 a. 16; 2005 a. 344.

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

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

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

938.21 (4) (a) Place the juvenile with a parent, guardian, legal custodian, or other responsible person and may impose reasonable restrictions on the juvenile's travel, association with other persons, or places of abode during the period of placement or 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 return to other custody as requested; or subject the juvenile to the supervision of an agency agreeing to supervise the juvenile. Reasonable restrictions may be placed upon the conduct of the parent, guardian, legal custodian, or other responsible person which may be necessary to ensure the safety of the juvenile.

**History:** 1995 a. 77, 275; 1997 a. 35, 237, 296; 2001 a. 16, 61, 109; 2005 a. 344.

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

938.30 (7m) PREDISPOSITIONAL CONDITIONS ORDER. (a) In the case of a juvenile who is not being held in secure or nonsecure custody, if the court sets a date under sub. (6) (a) or (7) for the fact-finding or dispositional hearing, the 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 <sup>the</sup> 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. The court may also place reasonable restrictions on the conduct of the juvenile's parent, guardian, legal custodian, or any other person responsible for the welfare of the juvenile which may be necessary to ensure the safety of the juvenile.

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

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

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

938.31 (8) PREDISPOSITIONAL CONDITIONS ORDER. (a) In the case of a juvenile who is not being held in secure or nonsecure custody, if the court sets a date under sub. (7) (a) for the dispositional hearing, the 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 fact-finding and 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. The court may also place reasonable restrictions on the conduct of the juvenile's parent, guardian, legal custodian, or any other person responsible for the welfare of the juvenile which may be necessary to ensure the safety of the juvenile.

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

(c) An order under par. (a) may be amended at any time, with notice, so as to place the juvenile in custody for failure to conform to the conditions originally

imposed. A juvenile may be transferred to secure custody if he or she meets the criteria of s. 938.208. ✓

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

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

**History:** 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9, 32, 89; 2001 a. 95; 2003 a. 82, 292; 2005 a. 344; 2005 a. 443 s. 265; s. 13.93 (2) (c). ✓

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

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

**History:** 1997 a. 328; 2001 a. 61.

**SECTION 9. Initial applicability.**

(1) PREDISPOSITIONAL CONDITIONS ORDERS. ✓ This act first applies to hearings  
under section ✓938.21, ✓938.30, or 938.31 ✓ held on the effective date of this subsection. ✓

↙ of the statutes  
(END)



**Basford, Sarah**

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**From:** Waldrop, Joyce  
**Sent:** Thursday, November 30, 2006 1:24 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-0341/1 Topic: Predispositional conditions on juvenile not held in custody

Please Jacket LRB 07-0341/1 for the ASSEMBLY.

*Joyce*  
Chief of Staff/Committee Clerk  
jwaldrop@legis.state.wi.us

Office of Representative Sheryl Albers  
Ph. 608/266-8531  
Fax 608/282-3650