



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2019 Wisconsin Act 8
[2019 Assembly Bill 188]

Juvenile Correctional Facilities

2019 Wisconsin Act 8 relates to facilities for holding juveniles in secure custody, and is trailer legislation to 2017 Wisconsin Act 185.

BACKGROUND

2017 Wisconsin Act 185 made significant changes to juvenile corrections, including by requiring closure of the Lincoln Hills and Copper Lake Schools (collectively, “Lincoln Hills”) by January 1, 2021, establishment of new Department of Corrections (DOC) Type 1 juvenile correctional facilities (“Type 1 facilities”), and creation of a grant program allowing counties to apply for funds for design and construction of new secured residential care centers for children and youth (SRCCCYs). The act also created a 10-member Juvenile Corrections Grant Committee (“Grant Committee”) to administer the grant program and to submit a plan to the Joint Finance Committee (JFC) recommending the county grant applications to approve for funding.

2019 WISCONSIN ACT 8

Act 8 amends several items initially addressed in 2017 Wisconsin Act 185. Among other changes, Act 8 delays the deadlines for closing Lincoln Hills and for county SRCCCY grant applications; imposes requirements regarding DOC administrative rules governing SRCCCYs; makes clarifying changes regarding supervision of particular juveniles; and increases the authority of the Department of Health Services (DHS) over admission to and release from the Mendota Juvenile Treatment Center (MJTC).

Delaying Closure of Lincoln Hills and Opening of New DOC Facilities

Act 8 delays by six months the deadlines for closing Lincoln Hills and transferring juveniles out of the facility. 2017 Act 185 required DOC to close Lincoln Hills and to transfer the

This memo provides a brief description of the act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

juveniles held there to another Type 1 facility or a SRCCCY no later than January 1, 2021. The act also required DOC to establish one or more Type 1 facilities no later than January 1, 2021, subject to approval by JFC. Act 8 delays the deadlines for closure of Lincoln Hills, transfer of juveniles, and establishment of new Type 1 facilities from January 1, 2021 to **July 1, 2021**.

Temporary Transfer of Juveniles

Act 8 allows DOC to temporarily move juveniles out of Lincoln Hills to a juvenile detention facility prior to the opening of new Type 1 facilities. A juvenile detention facility is a locked facility operated by a county and approved by DOC for the secure, temporary holding of juveniles. Some juvenile detention facilities may receive longer-term placements of juveniles of up to 365 days, if the juvenile disposition was authorized by the county board. These dispositions to a juvenile detention facility authorized for longer-term placements are commonly referred to as “365/180 Programs.”

The act permits DOC to transfer a juvenile who is at Lincoln Hills to a juvenile detention facility with an existing “365/180 Program” for a period longer than 365 days. DOC must contract with the county for placement of these juveniles and must transfer them out of the juvenile detention facility by the July 1, 2021 deadline for opening new Type 1 facilities.

Delaying Deadlines for SRCCCY Grant Applications

Act 8 delays by three months deadlines relevant to county applications for SRCCCY grant funds, and delays by six months the termination of the Grant Committee. Under 2017 Act 185, counties had to submit grant applications to the Grant Committee by March 31, 2019, and the Grant Committee could work with counties to modify their applications from that date until June 30, 2019. The Grant Committee was required to submit a statewide plan of recommended grant approvals to JFC by July 1, 2019. The Grant Committee then terminated on either the date all grant-funded projects were completed, or January 1, 2021, whichever was earlier.

Act 8 delays the deadline for submitting grant applications from March 31, 2019 to **June 30, 2019**, and the deadline by which the Grant Committee must complete its work with grant applicants from June 30, 2019 to **September 30, 2019**. The act also delays the deadline for the Grant Committee to submit its statewide plan to JFC from July 1, 2019 to **October 1, 2019**. Finally, the act delays the deadline for termination of the Grant Committee from January 1, 2021 to **July 1, 2021**.

Funding Relating to Female Facilities

Act 8 allows counties to apply for SRCCCY grant funds and reimbursement for net operating losses related to female juveniles without requiring that the SRCCCY hold only females. 2017 Act 185 allowed a county to apply for a grant to pay 100% of the design and construction costs for a SRCCCY, or a portion of a SRCCCY, that is “only for female juveniles.” The act also created a DOC program and sum sufficient appropriation for reimbursing counties that operate a grant-funded SRCCCY that “holds only female juveniles” for any net annual operating loss it experiences.

Act 8 allows a county to apply for a grant to pay 100% of the design and construction costs for a SRCCCY or any portion that is “intended primarily” for the holding and treatment of female juveniles, rather than one that is only for female juveniles. The act also allows a county operating a grant-funded SRCCCY that “holds female juveniles” to be reimbursed for any net operating loss for the services and facilities offered to those females. The change allows a county to be reimbursed for SRCCCY operating losses related to serving female juveniles, even if the SRCCCY is not a female-only facility.

Youth Aids Bonus for Serving Out-of-County Juveniles

Act 8 makes counties that operate SRCCCYs serving youth from other counties eligible for the youth aids bonus. 2017 Act 185 allocated additional youth aids funding to a county that operates a joint SRCCCY funded by a grant recommended by the Grant Committee. Youth aids are state and federal funds provided by the Department of Children and Families to counties to pay for juvenile correctional and delinquency-related services. Each county receives a different allocation of youth aids based on application of various formulas. Under 2017 Act 185, a county that operated a joint SRCCCY received an additional allocation equal to either 15 percent of the county’s youth aids in the prior fiscal year, or equal to \$750,000, whichever is less.

Act 8 makes a county eligible for the additional youth aids funding if it operates its own SRCCCY that serves juveniles from more than one county, instead of being eligible only if the county operates a “joint” SRCCCY with other counties.

DOC Administrative Rules Governing SRCCCYs

Act 8 makes changes relating to DOC administrative rules governing the design and construction of SRCCCYs and services and programming provided within SRCCCYs. The act provides that DOC rules must allow SRCCCYs to use less restrictive physical security barriers than DOC Type 1 facilities, while still ensuring safety of the public, staff, and youth.

The act also requires DOC to grant a county-requested variance from the design and construction rules if all the following conditions are met:

- The Grant Committee determines the variance is necessary to either: (a) achieve a reasonable cost-saving measure that will not compromise the quality or type of evidence-based, trauma-informed care offered at the SRCCCY; or (b) incorporate new practices of evidence-based, trauma-informed care at the SRCCCY.
- The Grant Committee includes the variance in its recommendations to JFC.
- The proposed SRCCCY, including the proposed variance, is part of the plan approved by JFC and receives grant funding.
- The proposed SRCCCY meets the minimum requirements of the commercial building code.

Act 8 further provides that DOC rules must require implementation of trauma-informed principles and evidence-based practices at the facilities, and amends the statutory definition of a SRCCCY.

Grant Awards Without Prior DOC Approval of SRCCCY Plans

Act 8 eliminates the requirement for a county to obtain DOC approval of its SRCCCY designs before the Grant Committee can recommend awarding a grant to that county. 2017 Act 185 required the Grant Committee to submit a statewide plan to JFC of recommended grant approvals, but also provided that the committee could not recommend an application unless DOC approved the plans and specifications for the site and the design and construction of the proposed SRCCCY.

Act 8 deletes the prohibition against recommending a grant application unless DOC approves SRCCCY plans and specifications, which allows the Grant Committee to recommend a county's application without a prior approval of the county's SRCCCY plans by DOC.

Grandfathering Juvenile Detention Facilities to Allow Continued Long-Term Placements

Act 8 changes the criteria for grandfathering existing juvenile detention facilities to allow them to continue accepting juvenile placements of longer than 30 days. Prior to 2017 Act 185, certain juvenile detention facilities could receive juvenile placements of up to 365 days. 2017 Act 185 eliminated placements of more than 30 consecutive days in a juvenile detention facility, unless a facility becomes a SRCCCY. However, Act 185 also grandfathered juvenile detention facilities that meet certain criteria and allowed them to continue accepting juvenile placements longer than 30 days without becoming a SRCCCY. One criterion for a facility to be grandfathered was that the facility did not house a larger number of juveniles after January 1, 2021 than it did on that date.

Act 8 changes the criterion so that the limit is an average number of juveniles housed at the facility over three years, rather than the number housed on a specific date. A juvenile detention facility cannot house a larger number of juveniles after July 1, 2021, than the average daily population of juveniles between July 1, 2018 and June 30, 2021.

Supervision of Juveniles

Act 8 makes a number of changes relating to supervision of juveniles who are released from a Type 1 facility or from a SRCCCY. 2017 Act 185 transferred supervision of juveniles under correctional placement dispositions to counties (hereinafter, "county juvenile"), but kept supervision of juveniles with adult court sentences and those in the Serious Juvenile Offender Program with DOC. 2017 Act 185 also allowed a juvenile to be transferred to a Type 1 facility, and to have supervision of the juvenile transferred from the county to DOC, pursuant to a court order.

Act 8 makes counties presumptively responsible for supervision of county juveniles after release from a Type 1 facility but allows the option for DOC supervision. A court must designate either DOC or the county to provide supervision for a juvenile after release from a Type 1 facility. A county juvenile who is transferred to MJTC remains under the supervision of that county, and is under county supervision following discharge from MJTC. Further, the act allows DOC the option to place a juvenile placed with DOC on county aftercare supervision and gives counties the option to place a county juvenile in either a SRCCCY or immediately on aftercare supervision.

Requirements and Limitations Regarding DOC Type 1 Facilities

Act 8 imposes requirements and limitations on DOC related to new Type 1 facilities under 2017 Act 185, some of which apply prior to construction and others that apply on an on-going basis following construction. Under the act, DOC must do both of the following prior to construction of a new Type 1 facility: (1) hold a public listening session in the city, village, or town where the facility is proposed to be located; and (2) meet with the governing body of the city, village, or town to discuss potential impacts to the local community. DOC must provide public notice at least 168 hours prior to commencement of a meeting.

Act 8 prohibits DOC from expanding the capacity of, or substantially modifying the structure or physical security of, a new Type 1 facility without prior approval by the governing body of the city, village, or town where the facility is located, unless the Governor has declared a state of emergency. The act also requires DOC to meet with the governing body to discuss matters of local concern pertaining to the Type 1 facility, if requested.

Mendota Juvenile Treatment Center

Act 8 grants DHS more decision-making authority regarding when juveniles may be admitted to and released from MJTC. MJTC is a Type 1 facility, but is operated by DHS rather than DOC. 2017 Act 185 allowed transfer of a county juvenile from a SRCCCY to MJTC or another Type 1 facility after a court finding that the juvenile meets certain criteria and orders placement in a Type 1 facility after a hearing. Under 2017 Act 185, a court could place a juvenile who met the required criteria at MJTC upon the recommendation of DHS.

Act 8 provides that decisions about admission of a juvenile to MJTC, the treatment a juvenile receives at MJTC, release of the juvenile from MJTC, and return of the juvenile to county supervision are made by the director at Mendota Mental Health Institute, which is where MJTC is located. The act provides that DHS determines the date of actual transfer of the juvenile to MJTC, prohibits a transfer to MJTC without prior agreement of DHS to admit the juvenile, and specifically prohibits a court from ordering a placement at MJTC that DHS has not approved. Act 8 also removes the ability of a court to order transfer of a county juvenile to MJTC based on lack of space in a county's SRCCCY.

Court Order for Placement in a Particular SRCCCY

Act 8 clarifies a court's discretion in choosing a SRCCCY for a county juvenile and makes changes relating to the contents of a court's order imposing a disposition on a juvenile. A county must either establish a SRCCCY for its county juveniles, or must contract with another county to place its juveniles in that county's SRCCCY. The act specifies that a court must order placement of a county juvenile in the SRCCCY designated by that county, which prevents a court from ordering placement in any other county's SRCCCY.

Act 8 also creates separate requirements that apply to a court's order placing a juvenile with a correctional placement in a SRCCCY, versus those that apply to a court's order placing a juvenile in other outside-the-home dispositions (e.g. foster home or group home).

Referrals by Tribes

Act 8 clarifies that juveniles adjudicated by a tribal court may be placed in a SRCCCY. The act expressly allows an Indian tribe to contract with a county to hold juveniles adjudicated delinquent by a tribal court in that county's SRCCCY. Act 8 also provides that a tribal court may refer an adjudicated juvenile to a SRCCCY operated by a child welfare agency.

Eliminating Requirements Regarding County Juvenile Corrections Budgets

Act 8 eliminates prior law requirements imposed on county human services departments and DOC related to county budgets for "juvenile correctional services" and contracts between counties and DOC for the purchase of such services.

Effective date: June 30, 2019

Prepared by: Katie Bender-Olson, Senior Staff Attorney

July 11, 2019

KBO:mcm;ty