



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-0553/P1  
EHS:klm

DOA:.....Schmidt, BB0155 - Status offenses and risk to public safety in the use of juvenile detention facility as sanction

**FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION**

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

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*Analysis by the Legislative Reference Bureau*

**CORRECTIONAL SYSTEM**

**JUVENILE CORRECTIONAL SYSTEM**

Under current law, a juvenile adjudged delinquent or to have committed a civil law or municipal ordinance violation, including a habitual truancy violation, who violates a condition of his or her dispositional order is subject to various sanctions, including placement in a juvenile detention facility or a place of nonsecure custody for not more than 10 days. Also under current law, a juvenile adjudged delinquent who violates a condition of his or her delinquency order or aftercare supervision may, without a hearing, be placed in a juvenile detention facility or a place of nonsecure custody for not more than 72 hours (short-term detention) during an investigation of the violation and potential sanctions or as a consequence of that violation. This bill eliminates placement in a juvenile detention facility as a sanction or for short-term detention unless the juvenile court finds that the juvenile poses a threat to public safety and the underlying offense for which the juvenile court order was imposed is not a status offense. The bill defines a status offense as an offense committed by a juvenile that would not be an offense if committed by an adult (for example, truancy).

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.** 938.02 (17r) of the statutes is created to read:

938.02 (17r) "Status offense" means an offense committed by a juvenile that would not be an offense if committed by an adult.

**SECTION 2.** 938.06 (5) (a) 1. of the statutes is amended to read:

938.06 (5) (a) 1. Use placement in a juvenile detention facility or juvenile portion of the county jail as a disposition under s. 938.34 (3) (f), ~~as a sanction under s. 938.355 (6m) (a) 1g.,~~ or as a place of short-term detention under s. 938.355 (6d) (a) 1. or 2. or (b) 1. or 2. or 938.534 (1) (b) 1. or 2.

**SECTION 3.** 938.06 (5) (b) of the statutes is amended to read:

938.06 (5) (b) The use by the court of a disposition under s. 938.34 (3) (f) or (6) (am), ~~a sanction under s. 938.355 (6m) (a) 1g.,~~ or short-term detention under s. 938.355 (6d) (a) 1. or 2. or (b) 1. or 2. or 938.534 (1) (b) 1. or 2. is subject to any resolution adopted under par. (a).

**SECTION 4.** 938.355 (6) (a) 1. of the statutes is amended to read:

938.355 (6) (a) 1. Except as provided in ~~subd.~~ subds. 3. and 4., if a juvenile who has been adjudged delinquent or to have violated a civil law or ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition specified in sub. (2) (b) 7., the court may impose on the juvenile any of the sanctions specified in par. (d).

**SECTION 5.** 938.355 (6) (a) 4. of the statutes is created to read:

938.355 (6) (a) 4. The court may only place a juvenile in a juvenile detention facility or juvenile portion of a county jail under subd. 1. if all of the following apply:

a. The court finds that the juvenile poses a threat to public safety.

b. The underlying offense for which the juvenile court order was imposed is not a status offense.

**SECTION 6.** 938.355 (6) (d) 1. of the statutes is renumbered 938.355 (6) (d) 1. (intro.) and amended to read:

938.355 (6) (d) 1. (intro.) Placement of the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department of corrections by rule or in a place of nonsecure custody, for not more than 10 days and the provision of educational services consistent with his or her current course of study during the period of placement. The juvenile shall be given credit against the period of detention or nonsecure custody imposed under this subdivision for all time spent in secure detention in connection with the course of conduct for which the detention or nonsecure custody was imposed. If the court orders placement of the juvenile in a place of nonsecure custody under the supervision of the county department, the court shall order the juvenile into the placement and care responsibility of the county department as required under [42 USC 672](#) (a) (2) and shall assign the county department primary responsibility for providing services to the juvenile. A court may order placement of a juvenile in a juvenile detention facility or juvenile portion of a county jail under this subdivision only if all of the following apply:

**SECTION 7.** 938.355 (6) (d) 1. a. and b. of the statutes are created to read:

938.355 (6) (d) 1. a. The court finds that the juvenile poses a threat to public safety.

b. The underlying offense for which the dispositional order was imposed is not a status offense.

**SECTION 8.** 938.355 (6d) (a) 1. of the statutes is amended to read:

938.355 **(6d)** (a) 1. Notwithstanding ss. 938.19 to 938.21, but subject to subds. 2g., 2m., 2p., and 2r., if a juvenile who has been adjudged delinquent violates a condition specified in sub. (2) (b) 7., the juvenile's caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department of corrections by rule or in a place of nonsecure custody designated by that person for not more than 72 hours while the alleged violation and the appropriateness of a sanction under sub. (6) are being investigated.

**SECTION 9.** 938.355 (6d) (a) 2. of the statutes is amended to read:

938.355 **(6d)** (a) 2. Notwithstanding ss. 938.19 to 938.21, but subject to subds. 2g., 2m., 2p., and 2r., if a juvenile who has been adjudged delinquent violates a condition specified in sub. (2) (b) 7., the juvenile's caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department of corrections by rule or in a place of nonsecure custody designated by that person for not more than 72 hours as a consequence of that violation. A person who takes a juvenile into custody under this subdivision shall permit the juvenile to make a written or oral statement concerning the possible placement of the juvenile and the course of conduct for which

the juvenile was taken into custody. A person designated by the court or county department who is employed in a supervisory position by a person authorized to provide or providing intake or dispositional services under s. 938.067 or 938.069 shall review that statement and either approve the placement, modify the terms of the placement, or order the juvenile to be released from custody.

**SECTION 10.** 938.355 (6d) (a) 2p. of the statutes is created to read:

938.355 **(6d)** (a) 2p. A court may only order placement of a juvenile in a juvenile detention facility or juvenile portion of a county jail under under subd. 1. or 2. if all of the following apply:

- a. The court finds that the juvenile poses a threat to public safety.
- b. The underlying offense for which the delinquency order was imposed is not a status offense.

**SECTION 11.** 938.355 (6d) (b) 1. of the statutes is amended to read:

938.355 **(6d)** (b) 1. Notwithstanding ss. 938.19 to 938.21, but subject to subds. 2g., 2m., 2p., and 2r., if a juvenile who is on aftercare supervision violates a condition of that supervision, the juvenile's caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department of corrections by rule or in a place of nonsecure custody designated by that person for not more than 72 hours while the alleged violation and the appropriateness of revoking the juvenile's aftercare status are being investigated.

**SECTION 12.** 938.355 (6d) (b) 2. of the statutes is amended to read:

938.355 (6d) (b) 2. Notwithstanding ss. 938.19 to 938.21, but subject to subds. 2g., 2m., 2p. and 2r., if a juvenile who is on aftercare supervision violates a condition of that supervision, the juvenile's caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department of corrections by rule or in a place of nonsecure custody designated by that person for not more than 72 hours as a consequence of that violation. A person who takes a juvenile into custody under this subdivision shall permit the juvenile to make a written or oral statement concerning the possible placement of the juvenile and the course of conduct for which the juvenile was taken into custody. A person designated by the court or the county department who is employed in a supervisory position by a person authorized to provide or providing intake or dispositional services under s. 938.067 or 938.069 shall review that statement and either approve the placement of the juvenile, modify the terms of the placement, or order the juvenile to be released from custody.

**SECTION 13.** 938.355 (6d) (b) 2p. of the statutes is created to read:

938.355 (6d) (b) 2p. A court may only order placement of a juvenile in a juvenile detention facility or juvenile portion of a county jail under under subd. 1. or 2. if all of the following apply:

- a. The court finds that the juvenile poses a threat to public safety.
- b. The underlying offense for which the aftercare supervision was imposed is not a status offense.

**SECTION 14.** 938.355 (6m) (a) 1g. of the statutes is amended to read:

938.355 (6m) (a) 1g. Placement of the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department of corrections by rule or in a place of nonsecure custody, for not more than 10 days and the provision of educational services consistent with his or her current course of study during the period of placement. The juvenile shall be given credit against the period of ~~detention or nonsecure custody~~ imposed under this subdivision for all time spent in secure detention in connection with the course of conduct for which the ~~detention or nonsecure custody~~ was imposed. ~~The use of placement in a juvenile detention facility or in a juvenile portion of a county jail as a sanction under this subdivision is subject to the adoption of a resolution by the county board of supervisors under s. 938.06 (5) authorizing the use of those placements as a sanction.~~ If the court orders placement of the juvenile in a place of nonsecure custody under the supervision of the county department, the court shall order the juvenile into the placement and care responsibility of the county department as required under [42 USC 672](#) (a) (2) and shall assign the county department primary responsibility for providing services to the juvenile.

\*\*\*NOTE: In the second sentence, I was not sure whether to change the term “secure detention” in “...for all time spent in secure detention in connection with the course of conduct...” Under current law, credit against a period of nonsecure custody is given for time spent in “secure detention,” so I assumed that should remain even though we are removing references to periods of detention. Is that accurate, or should “secure detention” be changed to “nonsecure custody”?

### **SECTION 9308. Initial applicability; Corrections.**

(1) USE OF JUVENILE DETENTION AS A SANCTION. The treatment of ss. 938.02 (17r), 938.06 (5) (a) 1. and (b), and 938.355 (6) (a) 1. and 4., (6d) (a) 1., 2., and 2p. and (b) 1., 2., and 2p., and (6m) (a) 1g., the renumbering of 938.355 (6) (d) 1., and the creation

of 938.355 (6) (d) 1. a. and b. first apply to a violation of a dispositional order committed on the effective date of this subsection.

**(END)**