



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 185
[2017 Assembly Bill 953]

Juvenile Correctional Facilities

2017 Wisconsin Act 185 relates to juvenile correctional facilities, including closure of the Lincoln Hills and Copper Lakes Schools (hereinafter, collectively referred to as “Lincoln Hills”), establishment of new Department of Corrections (DOC) Type 1 juvenile correctional facilities and new county residential care centers for children and youth (SRCCCYs), and authorization of \$80 million in state bonding for constructing and expanding juvenile facilities.

BACKGROUND

A juvenile who violates the law may be adjudicated delinquent under ch. 938, Stats., *Juvenile Justice Code*, and receive a disposition, which is a consequence for violating the law imposed on a juvenile offender. Alternatively, a juvenile may be convicted under the adult Criminal Code and receive an adult sentence, if the juvenile commits certain serious offenses or meets other criteria.

A juvenile may be held in secure custody in a **Type 1 juvenile correctional facility** if the juvenile is adjudicated delinquent and receives certain dispositions. At the time Act 185 was enacted, the only Type 1 juvenile correctional facilities were Lincoln Hills, operated by DOC, and the Mendota Juvenile Treatment Center, operated by the Department of Health Services (DHS). A juvenile may be placed in a Type 1 juvenile correctional facility if a court gives the juvenile a Serious Juvenile Offender Program (SJOP) disposition or a correctional placement disposition. A juvenile may receive one of these dispositions only if the juvenile commits certain offenses and the court makes specific findings.

A juvenile may also be held in secure custody in a Type 1 juvenile correctional facility if the juvenile is convicted in adult court, is under the age of 18, and receives an adult sentence. Under prior law, juveniles convicted in adult court, juveniles in the SJOP, and juveniles with correctional placements were all under the supervision of DOC.

A juvenile may be held in secure custody in a **juvenile detention facility** if the juvenile is adjudicated delinquent and receives a disposition designating that facility for placement. Juvenile

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>.

detention facilities are locked facilities approved by DOC for the secure, temporary holding of juveniles and are operated by counties. Under prior law, placements in a juvenile detention facility could be for 365 days or less, if the county board authorized such a disposition (commonly referred to as “180/365 Programs”).

2017 WISCONSIN ACT 185

Act 185 makes changes relating to DOC Type 1 juvenile correctional facilities, including required closure of Lincoln Hills, authorization for DOC to operate Lincoln Hills as an adult institution, establishment of one or more new Type 1 juvenile facilities, and expansion of the Mendota Juvenile Treatment Center. The Act allows for establishment of SRCCCYs and creates a grant program to provide funding for these facilities, and makes changes related to juvenile placements in juvenile detention facilities.

The Act also creates two study committees to administer the SRCCCY grant program and to recommend rules governing programming and services in SRCCCYs and a location for a new DOC Type 1 juvenile correctional facility or facilities. Additionally, Act 185 makes changes to supervision of juveniles, transfers of juveniles between facilities, and youth aids funding for counties. Finally, the Act provides hiring preferences for employees currently working at Lincoln Hills.

Closure of Lincoln Hills and Transfer of Juveniles

Act 185 requires DOC to permanently close the Type 1 juvenile correctional facilities housed at Lincoln Hills and to transfer the juveniles held there to another Type 1 juvenile correctional facility or to an SRCCCY. The closure and transfer must occur no later than January 1, 2021. However, DOC may transfer juveniles in phases, as the SRCCCYs and Type 1 juvenile facilities are ready to accept them.

Former Lincoln Hills as Adult DOC Facility

Act 185 allows DOC to establish and operate an adult correctional institution at the location that was Lincoln Hills.

New DOC Juvenile Facilities

Act 185 requires DOC to establish one or more Type 1 juvenile correctional facilities no later than January 1, 2021, subject to approval by the Joint Finance Committee (JFC), and to consider recommendations of the Juvenile Corrections Study Committee (described in a later section) in establishing or constructing the new facility or facilities. The Act requires DOC to include the cost for staffing, operating, and maintaining the new Type 1 juvenile correctional facilities in its 2019-21 Biennial Budget request.

The Act also adds the Type 1 juvenile correctional facilities to the 2017-19 Authorized State Building Program and increases the general fund supported borrowing by **\$25 million** for the facilities.

Mendota Juvenile Treatment Center Expansion

Act 185 requires DHS to construct an expansion of the Mendota Juvenile Treatment Center, subject to the approval of JFC. The Mendota Juvenile Treatment Center is a 29-bed secure treatment

facility that is located at the Mendota Mental Health Institute in Dane County. The expansion must accommodate no fewer than 29 additional juveniles.

The Act also adds the Mendota Juvenile Treatment Center expansion to the 2017-19 Authorized State Building Program and increases the general fund supported borrowing by **\$15 million** for the project.

New County or Tribal SRCCCYs for Juveniles

Act 185 allows a county or American Indian tribe or band (“tribe”) to establish an SRCCCY for its juveniles. A county may establish an SRCCCY on its own, may establish an SRCCCY jointly with one or more other counties, may contract on its own or jointly with a child welfare agency to establish an SRCCCY, or may contract with another county to place juveniles in that county’s SRCCCY.

An SRCCCY may be located in a portion of a juvenile detention facility or a Type 1 juvenile correctional facility. These co-located SRCCCYs are subject to DOC requirements related to programming and services that must be provided to juveniles, as well as DOC standards and regulations for the design, construction, repair, and maintenance of SRCCCYs.

The Act also creates a DOC grant program to provide funding for design and construction of SRCCCYs. A county may apply to a juvenile corrections grant program (described in a later section) to cover 95% of the costs of designing and constructing an SRCCCY, 95% of the costs of designing and constructing a facility housing both an SRCCCY and a juvenile detention facility, or 100% of the costs of designing and constructing an SRCCCY or a portion of an SRCCCY that is only for female juveniles. The construction costs eligible for grant funding include costs of renovating an existing structure.

Act 185 provides that the State Building Commission may authorize up to **\$40 million** in general fund supported borrowing to assist counties in establishing or constructing SRCCCYs and attached juvenile detention facilities. The state funding commitment must be in the form of grants.

County Juvenile Detention Facilities

Act 185 prohibits a court from placing a juvenile in a juvenile detention facility for more than 30 consecutive days, unless it is an “eligible juvenile detention facility.” An “eligible juvenile detention facility” is a facility in which juvenile placements of more than 30 days were authorized as of January 1, 2018 (generally, county facilities with a “180/365 Program” at the start of 2018). An “eligible juvenile detention facility” may continue to receive juvenile placements of more than 30 consecutive days by receiving a grant under the competitive process established by Act 185 and becoming an SRCCCY as of January 1, 2021.

Additionally, certain juvenile detention facilities are grandfathered under the Act and may continue receiving juvenile placements of more than 30 consecutive days without becoming an SRCCCY. Specifically, an “eligible juvenile detention facility” may continue to receive these longer-term juvenile placements without becoming an SRCCCY by meeting all of the following criteria: (1) the juvenile detention facility is not awarded a grant under Act 185; (2) the facility does not house a larger number of juveniles after January 1, 2021 than it did on that date; and (3) the facility is not altered, added to, or repaired in excess of 50% of its assessed value. If the “eligible juvenile detention facility” violates these conditions, it is no longer authorized to accept juvenile placements for more

than 30 consecutive days and is subject to the same prohibition on receiving long-term placements as other juvenile detention facilities.

Juvenile Corrections Grant Committee

Act 185 creates a Juvenile Corrections Grant Committee (“Grant Committee”) in DOC to administer a grant program to provide 95% or 100% state funding for SRCCCY design and construction costs.

Grant Committee Membership

Act 185 creates a 10-member Grant Committee consisting of the following members: (1) the Governor, or his or her designee; (2) the DOC Secretary, or his or her designee; (3) the Department of Children and Families (DCF) Secretary, or his or her designee; (4) three State Senators, appointed by the Senate Majority Leader or the appointed Senator’s designee; (5) three State Representatives, appointed by the Assembly Speaker or the appointed Representative’s designee; and (6) a representative of a nonprofit that focuses on best practices for holding juveniles in secure custody, appointed by the Governor.

Grant Requirements

Act 185 creates a grant program to which counties may apply for funding costs of designing and constructing SRCCCYs. Multiple counties may coordinate to submit one grant application for an SRCCCY that will hold juveniles from all of the cooperating counties. A county may apply for a grant to pay 95% of design and construction costs, including costs of renovating an existing structure, for an SRCCCY or a facility that houses both an SRCCCY and a juvenile detention facility. A county may also apply for a grant to pay 100% of these costs for an SRCCCY, or a portion of an SRCCCY, that is only for female juveniles.

The Grant Committee oversees the grant program and must establish requirements, guidelines, and criteria for grant proposals and for awarding grants. Act 185 requires a county to do all of the following in developing its grant application: (1) consider best practices in designing and operating facilities that hold juveniles in secure custody; (2) consider the feasibility of developing an existing facility into an SRCCCY; and (3) solicit input from juvenile court judges. Act 185 also requires the Grant Committee to give preference to proposals that utilize existing facilities that consider proximity to the populations of juveniles the facility would serve, and to multi-county applications.

Grant Committee Timelines

Act 185 creates timelines for the submission and approval of grant applications. The deadline for counties to submit grant applications to the Grant Committee is March 31, 2019. The Grant Committee may then work with applicants to modify their applications.

The Grant Committee must submit a statewide plan of recommended grant approvals to JFC by July 1, 2019. The statewide plan recommends which grant applications to approve, and is created by the Grant Committee after consultation with DOC and DCF, and after DOC approval of any proposed SRCCCY site, design, and construction specifications. The plan must be approved by JFC before it can be implemented by the Grant Committee and DOC.

After approval by JFC, DOC must award grants under the statewide plan and the Grant Committee must monitor the progress of the grant-funded projects to ensure compliance with the program and timely completion. The Grant Committee terminates on either the date all grant-funded projects are completed, or January 1, 2021, whichever is earlier.

Juvenile Corrections Study Committee

Act 185 creates a Juvenile Corrections Study Committee (“Study Committee”) in DOC to recommend rules for governing what services and programming must be provided in SRCCCYs, and to recommend a location for new Type 1 juvenile correctional facilities.

Study Committee Membership

Act 185 creates a 25-member Study Committee consisting of the following members: (1) the DOC Secretary, or his or her designee; (2) the DCF Secretary, or his or her designee; (3) the DHS Secretary, or his or her designee; (4) the Superintendent of Public Instruction, or his or her designee; (5) the State Public Defender, or his or her designee; (6) three State Representatives, appointed by the Assembly Speaker or the appointed Representative’s designee; (7) three State Senators, appointed by the Senate Majority Leader or the appointed Senator’s designee; (8) two circuit court judges, appointed by the Governor; (9) two district attorneys, appointed by the Governor; (10) two representatives of law enforcement agencies in Wisconsin, appointed by the Governor; (11) one sheriff, or his or her designee, appointed by the Governor; (12) one representative of a national organization that focuses on eliminating race-based discrimination, appointed by the Governor; (13) one representative of a nonprofit that focuses on issues relating to juvenile justice, appointed by the Governor; (14) one representative of a nonprofit that focuses on best practices for holding juveniles in secured custody, appointed by the Governor; (15) one representative of the county department of social services or human services (“county human services department”) in the county with the highest percentage of juveniles under the supervision of DOC or a county department under ch. 938, Stats., appointed by the Governor; (16) one representative of a county human services department of a county that operates a regional juvenile detention facility that is also an “eligible juvenile detention facility,” appointed by the Governor; (17) one representative of a county human services department of a county other than those previously described, appointed by the Governor; and (18) a resident of the state who has been under DOC supervision under ch. 938, Stats., or has had a close family member under such supervision, appointed by the Governor.

The DOC and DCF Secretaries serve as co-chairpersons of the Study Committee and agencies with membership on the Study Committee must provide staff to support the committee functions.

Recommendations for Rules and Facility Locations

Act 185 requires the Study Committee to research and develop recommendations for administrative rules governing services and programming provided to juveniles in SRCCCYs. The Study Committee must also study and develop recommendations for the location of Type 1 juvenile correctional facilities. In creating its facility location recommendations, the Study Committee must consider space and security needs, cost, proximity to the populations of juveniles the facilities would serve, and best practices for holding juveniles in secure custody. The Study Committee must also conduct an inventory of existing state-owned facilities with capacity to be used as Type 1 juvenile correctional facilities, and must favor the use of existing facilities. In developing its services and programming and facility location recommendations, the Study Committee must consult with one

or more organizations that focus on developing best practices for holding juveniles in secure custody.

Study Committee Timelines

The Study Committee must submit its recommendations for rules regarding SRCCCY services and programming to DOC by September 1, 2018. The Study Committee must submit its recommendations for Type 1 juvenile correctional facility locations to DOC by November 1, 2018. The Study Committee terminates on January 1, 2021.

DOC Administrative Rules

Act 185 requires DOC to promulgate emergency administrative rules governing services and programming for juveniles in SRCCCYs. These rules must include uniform data reporting standards for counties or tribes that operate or contract with a child welfare agency to operate an SRCCCY. Act 185 also requires DOC to promulgate emergency administrative rules to establish standards for the approval, design, construction, repair, maintenance, and operation of SRCCCYs.

DOC must present a statement of scope of these rules for the Governor's approval by August 24, 2018. DOC must then submit the rules in final draft form to the Governor by December 17, 2018.

DOC Versus County Supervision and Care of Juveniles

Act 185 makes changes to the supervision of juveniles under correctional placements and to where such juveniles are placed in secure custody. Under Act 185, DOC maintains supervision over juveniles with adult court sentences and juveniles in the SJOP, but the supervision of juveniles under other correctional placements is transferred to the counties.

The Act also provides that, as of the date all juveniles are transferred from Lincoln Hills or January 1, 2021, whichever is earlier, a court may only make a correctional placement of a juvenile to an SRCCCY under the supervision of the county. This means that juveniles not serving adult sentences and who are not in the SJOP will be placed in SRCCCYs under the Act, rather than in a Type 1 juvenile correctional facility as under prior law. Act 185 does allow for a change of placement to transfer such a juvenile to a Type 1 juvenile correctional facility if certain criteria are met, as discussed below.

Change of Placement to Transfer Between Facilities

Act 185 generally requires that juveniles given a correctional placement under county supervision must be placed in an SRCCCY, and not in a Type 1 juvenile correctional facility, but provides for transfers between facilities.

Moving a County Juvenile From an SRCCCY to a Type 1 Juvenile Correctional Facility

The Act allows a juvenile to be transferred to a Type 1 juvenile correctional facility, and to have supervision of the juvenile transferred from the county to DOC, under certain circumstances. A juvenile with a correctional placement may be placed in a Type 1 juvenile correctional facility if either of the following criteria are met: (1) the juvenile is placed at an SRCCCY that is unable to meet the juvenile's treatment needs, the programming at the Type 1 juvenile correctional facility is able to meet his or her treatment needs, and no other SRCCCY is willing and able to meet the juvenile's treatment needs; or (2) the county's SRCCCY does not have space for the juvenile and no other

SRCCCY is willing and able to meet the juvenile's treatment needs. A juvenile with a correctional placement may only be transferred to the Mendota Juvenile Treatment Center upon a recommendation by DHS.

A hearing is required before a court changes a juvenile's placement from an SRCCCY to a Type 1 juvenile correctional facility, and DOC has an opportunity to object to the transfer. If a court orders a change of placement to a Type 1 juvenile correctional facility, then the county must pay DOC for the cost of the juvenile's care at the statutory daily rate.

Moving a County Juvenile From One SRCCCY to Another SRCCCY

Act 185 allows a juvenile with a correctional placement to be transferred from one SRCCCY to another, if the sending SRCCCY cannot meet the treatment needs of the juvenile, and if the receiving SRCCCY is able to meet the juvenile's treatment needs and offers more appropriate care and services. This transfer may be done without a court hearing if the receiving SRCCCY agrees. The county must contract with the receiving SRCCCY for care and services for the juvenile, who remains under the supervision of the sending county.

Moving a DOC Juvenile to an SRCCCY

The Act allows DOC to place a juvenile under its supervision in an SRCCCY, if the receiving SRCCCY agrees. DOC may also transfer a juvenile from one SRCCCY to another, if the first SRCCCY is unable to meet the juvenile's treatment needs and the second SRCCCY is consulted and is able to meet the juvenile's treatment needs. These placements and transfers may be done by DOC without a court hearing. DOC must contract with the receiving SRCCCY for the care and services provided to the juvenile, and the juvenile remains under DOC supervision.

State Funding for SRCCCY Operations

Youth Aids

Act 185 creates a bonus program based on youth aids to counties operating an SRCCCY and expands the uses for youth aids. Youth aids are state and federal funds provided by DCF to counties used to pay for juvenile correctional and delinquency-related services. Each county receives a different allocation of youth aids based on application of various formulas.

The Act creates a new program under DCF which will allocate additional funding to a county that operates a joint SRCCCY funded by a Grant Committee grant. These counties must receive an additional allocation equal to either 15% of the county's youth aids in the prior fiscal year, or equal to \$750,000, whichever is less.

Act 185 also allows a county to use its youth aids for basic care and supervision costs in SRCCCYs and juvenile detention facilities, which a county could not do under prior law.

Female SRCCCY Operating Loss Reimbursement

Act 185 creates a DOC program and sum sufficient appropriation for reimbursing counties that operate a female SRCCCY funded by a Grant Committee grant for any net operating loss it experiences. A county may seek reimbursement by submitting a request and supporting financial statements to DOC and the Legislative Audit Bureau ("Audit Bureau"). The Audit Bureau then conducts an audit of the county's net operating costs for an SRCCCY that holds only females to

determine the amount of net operating loss to be reimbursed. DOC must reimburse the county for the amount determined by the Audit Bureau. The new appropriation may also be used to pay for the costs of the audit.

Education Funding

Act 185 adds SRCCCYs to the eligible uses for the state tuition payment appropriation, which reimburses the school district in which an SRCCCY is located for educational services provided to the juveniles in the facility.

Hiring Preference for Current Lincoln Hills Employees

Act 185 creates preferences for Lincoln Hills employees in hiring processes for the new Type 1 juvenile facilities and SRCCCYs. A classified employee working at Lincoln Hills when DOC begins accepting applications for a new Type 1 juvenile correctional facility may apply to transfer to a position at the new facility. DOC may then transfer the employee to certain positions without competitive procedures. A DOC employee working at Lincoln Hills when an SRCCCY operated by a county begins accepting applications may be selected by the county without regard to county civil service requirements that would otherwise apply. In addition, a DOC employee working at Lincoln Hills when an SRCCCY operated by a child welfare agency begins accepting applications must be granted an initial interview.

Effective date: April 1, 2018. Provisions making changes to the supervision of juveniles under correctional placements and to where such juveniles are placed in secure custody take effect as of the date Lincoln Hills is closed or January 1, 2021, whichever is earlier.

Prepared by: Katie Bender-Olson, Senior Staff Attorney

April 12, 2018

KBO:mcm;jal