



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE SPECIAL COMMITTEE ON RECODIFICATION OF CH. 938,
THE JUVENILE JUSTICE CODE

FROM: Don Salm and Anne Sappenfield, Senior Staff Attorneys

RE: Introduction to the Recodification of Ch. 938, Stats., the Juvenile Justice Code

DATE: September 3, 2004

The Joint Legislative Council's Special Committee on Recodification of Ch. 938, the Juvenile Justice Code, is directed to recodify ch. 938, Stats., including possible reorganization of the chapter in a logical manner, renumbering and retitling certain sections and subsections, consolidating related provisions, modernizing language, resolving ambiguities in language, codifying court decisions, and making minor substantive changes.

This Memo:

- Provides brief background information on ch. 938, Stats.
- Discusses the recodification process and the general scope of questions for consideration in recodifying ch. 938, Stats.
- Sets forth, in an *Attachment*, the current table of contents of ch. 938, Stats.

CHAPTER 938, STATS.

Ch. 938, Stats., called "The Juvenile Justice Code," was created by 1995 Wisconsin Act 77, which took effect on July 1, 1996. The major provisions in the new ch. 938 were previously found in the Children's Code, ch. 48, Stats. The Act created the separate Juvenile Justice Code to govern juveniles who are alleged to have violated a criminal law, civil law, or municipal ordinance or who are alleged to be uncontrollable, dropouts, or habitually truant from home or school. Provisions of the statutes relating to children in need of protection or services (so-called "CHIPS", for example, children who have been abandoned, abused, or neglected) remain in ch. 48, Stats. The changes in 1995 Act 77 were the result, in major part, of the recommendations of the Juvenile Justice Study Committee

(established by 1993 Wisconsin Act 377). A copy of the Report of the Juvenile Justice Study Committee (January 1995) is available to committee members from the staff upon request.

Besides creating the separate Juvenile Justice Code, the key provisions in the new ch. 938 created by Act 77:

1. Specified that the intent of the Legislature in establishing the new Code was to deal with juvenile delinquency by: (a) protecting citizens; (b) holding juveniles accountable; and (c) developing competency in juveniles so that they may live productively and responsibly in the community.
2. Reduced the age at which: (a) a juvenile is subject to the delinquency jurisdiction of the juvenile court and may be placed in secure placement; (b) an adult court has original jurisdiction over a juvenile; and (c) a juvenile may be waived to an adult court.
3. Increased victims' access to court proceedings and information regarding delinquent juveniles.
4. Increased the ability of law enforcement agencies, schools, social services agencies, and courts to exchange information.
5. Expanded dispositional alternatives for delinquent and habitually truant juveniles.
6. Eliminated the right to a trial by jury in the Juvenile Justice Code for delinquent juveniles.

Since the enactment of the new Juvenile Justice Code chapter, the statutes have been revised through piecemeal amendments, which have made certain statutes increasingly more complicated to read and understand. In addition, there have been numerous court decisions interpreting various provisions in the chapter. Finally, the use of headings and subheadings in the statutory sections in this chapter, which help considerably in the clarity of the chapter, has been inconsistent, and a number of provisions contain anachronistic, unnecessary, and confusing language that needs to be modernized, clarified, or deleted.

The *Attachment* to this Memo contains the Table of Contents of ch. 938, Stats., from the unofficial text of the updated 2003-04 Wisconsin Statutes database, which includes 2003 session laws affecting the chapter.

RECODIFICATION PROCESS

Scope of Recodification

A statutory recodification can entail one or more of the following:

1. Reorganizing a body of law in a logical fashion by: (a) renumbering and retitling sections and section subunits; (b) grouping related parts of the body of law (e.g., using subchapters or creating new chapters); (c) consolidating related provisions; (d) incorporating appropriate statutes found elsewhere; (f) renumbering statutes more appropriately placed elsewhere.
2. Modernizing language to reflect current drafting style and word usage.

3. Resolving ambiguities in the language of the current law.
4. Reconciling conflicts in the current law.
5. Filling gaps in specific substantive areas where the law is silent.
6. Eliminating archaic, anachronistic, unnecessary, or unconstitutional provisions of the law.
7. Codifying relevant decisions of the supreme court and court of appeals and past Attorney General opinions interpreting the laws in question.
8. Making other substantive changes deemed necessary or desirable.

Depending on the scope of a particular recodification, one or more of the above tasks can be eliminated. A minimal recodification effort might entail reorganization (item 1., above) only. An example of a reorganization-only recodification is the reorganization of ch. 144, Stats. (water, sewage, refuse, mining, and air pollution), into several separate chapters as recommended by the Joint Legislative Council's Special Committee on Remediation of Environmental Contamination. [1995 Wisconsin Act 227.] Another example of a recent minimal recodification effort is the reorganization of ch. 59, Stats., counties (which, in addition to reorganizing ch. 59, Stats., made stylistic changes as well). [1995 Wisconsin Act 201.] The recent reorganization of ch. 66, Stats. (general municipal law) was primarily a reorganization, but also included modernizing language, rewriting selected provisions of the chapter, and minor substantive changes. [1999 Wisconsin Act 150.]

Two examples of more complete recodification efforts are:

- The recodification of ch. 60, Stats., relating to towns, by the Legislative Council's Special Committee on Revision of Town Laws [1983 Wisconsin Act 532]; and
- The recodification of ch. 74, Stats., relating to property tax collection, by the Legislative Council's Special Committee on Property Tax Collection Laws [1987 Wisconsin Act 378].

The latter two projects, while using the existing law as the basis for the recodified law, repealed and recreated the entire chapters involved and made extensive changes in the wording and substance of the chapters. It should be noted that chs. 60 and 74 dealt with relatively discreet subject areas.

The number and variety of provisions in ch. 938 and the substantial number of reported court cases involving some of the provisions, coupled with the Joint Legislative Council's directive that any substantive changes be "minor," suggest that consideration be given to focusing primarily on technical revisions to the chapter while giving a more complete recodification treatment to certain selected provisions. During the recodification process, substantive issues may be raised by committee members, outside sources, or by staff for discussion and decision. Additional research necessary to resolve individual questions will be undertaken on an as-needed basis. The time and resources the Special Committee has available to devote to the project also are relevant considerations in determining the project's scope.

Use of Explanatory Notes

An important component of a recodification process is the preparation of explanatory notes, which are incorporated into the body of draft legislation produced by the recodification project. The notes serve to provide the legislative history of the recodified law. The notes will, among other things:

- Identify the source of the recodified law (i.e., previous law, court decision, decision by the Special Committee) and, if previous law, the previous location of the provisions;
- Identify archaic and anachronistic or unconstitutional provisions of previous law which have been deleted; and
- Identify and articulate the basis for substantive changes.

The explanatory notes are prepared by committee staff as part of the redrafting process. The SECTION notes, as well as the recodified text of the law, are reviewed by the Special Committee.

GENERAL SCOPE OF QUESTIONS FOR CONSIDERATION IN RECODIFYING CH. 938

In considering the possible scope of the recodification of ch. 938, the following general questions might be considered:

1. What provisions in ch. 938 are in need of substantial rewriting that can be accomplished without substantial controversy. For example:
 - a. Rewriting complicated provisions to clarify the provisions to make them more easily readable and understandable;
 - b. Rewriting provisions to modernize the language to reflect current drafting style and word usage.
2. What provisions in ch. 938 should NOT be rewritten (e.g., either because they are: (a) too controversial amongst the various interest groups, such as prosecutors, defense attorneys, and advocacy groups; or (b) there is a lack of interest in modifying a certain provision because, for example, court decisions interpreting statutory language adequately deal with the issues raised and a codification of those decisions would be too complex and serve little purpose)?
3. What provisions in ch. 938 should be considered for repeal? For example, eliminating archaic, anachronistic, unnecessary, or unconstitutional provisions of the law.
4. What minor substantive changes in ch. 938 are desirable? These would include:
 - a. Making minor substantive changes to reflect a consensus as to what current practice is versus what is in the current statutory language.
 - b. Making minor substantive changes to codify “noncontroversial” appellate court decisions and Attorney General opinions interpreting certain provisions because of ambiguity, conflicts in the law, etc.

- c. Filling in gaps in specific noncontroversial substantive areas where the law is silent.
- d. Reconciling conflicts in the law (e.g., procedures or time limits in separate provisions that conflict).

5. To what extent does ch. 938 need to be reorganized? It does not appear that much, if any, reorganization of the subchapters is necessary (especially in light of the parallel numbering of comparable provisions in ch. 48, the Children's Code), but are there provisions in these subchapters that should be placed in other sections in ch. 938? Elsewhere in the statutes (i.e., outside of ch. 938)? Are there provisions that should be consolidated with related provisions?

It is not necessary to fully address or agree on responses to the above questions before the recodification process begins; many of the questions will be addressed as individual provisions of ch. 938 are considered during the recodification process.

DLS:AS:jal;ksm

Attachment