

1       **AN ACT** *to amend* 938.48 (1), 938.48 (3) and (4), 938.48 (4m) (d), (5) and (6), 938.48  
2       (14) and (16), 938.49, 938.50, 938.505 (2), 938.51 (1) (intro.), 938.51 (1m), 938.51  
3       (2), 938.51 (4) (intro.), 938.52 (1) (d), (2) and (4), 938.53, 938.533 (2), (3) and (3m),  
4       938.534 (1) (a), (b) 1., 2., 3. and 4., (c) and (d) and (2), 938.535, 938.538 (3) (a) 1.,  
5       1m., 1p. and 2., (4), (5) (b) and (c), (6) and (6m) (b), 938.539 and 938.539 (2) to (5);  
6       and *to create* 938.48 (2) (title), 938.48 (4m) (title), 938.48 (13) (title), 938.505 (1)  
7       (title), 938.51 (1d) (title) and (1g) (title), 938.51 (1r) (title), 938.51 (3) (title),  
8       938.539 (1) (title), 938.539 (6) (title) and 938.549 (1) (title), (2) (title) and (3) (title)  
9       of the statutes; **relating to:** authority of the department of corrections.

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This draft was prepared for the joint legislative council's special committee on recodification of ch. 938, the juvenile justice code. The draft proposes initial language for the recodification of subchapter XI, relating to the authority of the department of corrections.

10       **SECTION 1.** 938.48 (1) of the statutes is amended to read:

11       938.48 (1) ENFORCEMENT OF LAWS. Promote the enforcement of the laws relating to  
12       delinquent juveniles and juveniles in need of protection or services [and take the initiative in  
13       all matters involving the interests of such these juveniles where adequate provision therefor  
14       is not made]. This duty shall be discharged in cooperation with the courts, county departments  
15       and, licensed child welfare agencies and with, parents and other individuals interested in the  
16       welfare of juveniles.

**COMMENT:** In sub. (1), first sentence, the bracketed phrase "and take the initiative in all matters involving the interests of such juveniles where

adequate provision therefor is not made” **appears** to be superfluous.  
Should it be deleted?

1       **SECTION 2.** 938.48 (2) (title) of the statutes is created to read:

2       938.48 (2) (title) JUVENILE WELFARE SERVICES.

3       **SECTION 3.** 938.48 (3) and (4) of the statutes are amended to read:

4       938.48 (3) SUPERVISION AND SPECIAL TREATMENT. Accept supervision over juveniles  
5 transferred to it by the court under s. 938.183, 938.34 (4h), (4m), or (4n) or 938.357 (4), and  
6 provide special treatment or care to juveniles when directed by the court. Except as provided  
7 ~~in~~ under s. 938.505 (2), a court may not direct the department to administer psychotropic  
8 medications to juveniles who receive special treatment or care under this subsection.

9       (4) CARE, TRAINING, AND PLACEMENT. Provide appropriate care and training for juveniles  
10 under its supervision under s. 938.183, 938.34 (4h), (4m) or (4n) or 938.357 (4);~~u~~ including  
11 serving those juveniles in their own homes, placing them in licensed foster homes or licensed  
12 treatment foster homes in accordance with s. 48.63 or licensed group homes, contracting for  
13 their care by licensed child welfare agencies or replacing them in juvenile correctional  
14 institutions ~~or secured child-caring institutions~~ in accordance with rules promulgated under  
15 ch. 227, ~~except that the~~. The department may not purchase the educational component of  
16 private day treatment programs for juveniles a juvenile in its custody unless the department,  
17 the school board as defined in s. 115.001 (7),~~u~~ and the state superintendent of public instruction  
18 all determine that an appropriate public education program is not available for the juvenile.  
19 Disputes between the department and the school district shall be resolved by the state  
20 superintendent of public instruction.

**COMMENT:** In sub. (4), last sentence, what type of “disputes” are being referred to? Disputes about purchasing the educational component of private day treatment programs referred to in the preceding sentence? This should be clarified.

1       **SECTION 4.** 938.48 (4m) (title) of the statutes is created to read:

2       938.48 (**4m**) (title) CONTINUING CARE AND SERVICES.

3       **SECTION 5.** 938.48 (4m) (d), (5) and (6) of the statutes are amended to read:

4       938.48 (**4m**) (d) Is determined by the department to be in need of care and services  
5       designed to fit ~~such~~ the person for gainful employment and has requested and consented to  
6       receive ~~such aid~~ the care and services.

7       **(5) MORAL AND RELIGIOUS TRAINING.** Provide for the moral and religious training of a  
8       juvenile under its supervision under s. 938.183, 938.34 (4h), (4m) or (4n) or 938.357 (4)  
9       according to the religious ~~belief~~ beliefs of the juvenile or of the juvenile's parents.

10       **(6) EMERGENCY SURGERY.** Consent to emergency surgery under the direction of a  
11       licensed physician or surgeon for any juvenile under its supervision under s. 938.183, 938.34  
12       (4h), (4m), or (4n) or 938.357 (4) upon notification by a licensed physician or surgeon of the  
13       need for ~~such~~ the surgery and if reasonable effort, ~~compatible with the nature and time~~  
14       ~~limitation of the emergency~~, has been made to secure the consent of the juvenile's parent or  
15       guardian.

**COMMENT:** In sub. (6), the phrase “, compatible with the nature and time  
          limitation of the emergency” is deleted as unnecessary. Is there any  
          reason to retain this language? If it is retained, the language should be  
          clarified.

16       **SECTION 6.** 938.48 (13) (title) of the statutes is created to read:

17       938.48 (**13**) (title) ALLOWANCES AND CASH GRANTS.

18       **SECTION 7.** 938.48 (14) and (16) of the statutes are amended to read:

19       938.48 (**14**) SCHOOL-RELATED EXPENSES. Pay maintenance, tuition, and related expenses  
20       from the appropriation under s. 20.410 (3) (ho) for persons who, when they ~~reached~~ attained  
21       17 years of age, were students regularly attending a school, college, or university or regularly

1 attending a course of vocational or technical training designed to fit prepare them for gainful  
2 employment, and who ~~when reaching~~ upon attaining that age were under the supervision of  
3 the department under s. 938.183, 938.34 (4h), (4m), or (4n) or 938.357 (4) as a result of a  
4 judicial decision.

5 (16) STANDARDS FOR SERVICES. Establish and enforce standards for services provided  
6 under s. 938.183, 938.34, or 938.345.

7 **SECTION 8.** 938.49 of the statutes is amended to read:

8 **938.49 Notification by court of placement with department; information for**  
9 **department. (1) NOTICE TO DEPARTMENT OF PLACEMENT.** When the a court places a juvenile  
10 in a secured juvenile correctional facility or ~~secured child caring institution~~ under the  
11 supervision of the department, the court shall immediately notify the department of that  
12 action. The court shall, in accordance with procedures established by the department, provide  
13 transportation for the juvenile to a receiving center designated by the department or deliver  
14 the juvenile to department personnel of the department.

15 (2) TRANSFER OF REPORT UNDER S. 938.33. When the a court places a juvenile in a secured  
16 juvenile correctional facility or ~~a secured child caring institution~~ under the supervision of the  
17 department, the court and all other public agencies shall also immediately transfer do all of  
18 the following:

19 (a) Transfer to the department a copy of the report submitted to the court under s. 938.33  
20 or, if the report was presented orally, a transcript of the report and all other pertinent data in  
21 their possession and ~~shall immediately notify.~~

22 (b) Notify the juvenile's last school district in writing of its obligation under s. 118.125  
23 (4).

24 **SECTION 9.** 938.50 of the statutes is amended to read:

1           **938.50 Examination of juveniles under supervision of department.**

2           **(1) EXAMINATION OF JUVENILES FOR BEST PLACEMENT.** The department shall examine every  
3 juvenile who is placed under its supervision to determine the type of placement best suited to  
4 the juvenile and to the protection of the public. ~~This~~ The examination shall include an  
5 investigation of the personal and family history of the juvenile and his or her environment, any  
6 physical or mental examinations ~~considered~~ necessary to determine the type of placement ~~that~~  
7 ~~is necessary~~ appropriate for the juvenile, and the an evaluation under s. 938.533 (2) to  
8 determine whether the juvenile is eligible for corrective sanctions supervision or serious  
9 juvenile offender supervision. A juvenile who is examined under this subsection shall be  
10 screened to determine whether the juvenile is in need of special treatment or care because of  
11 alcohol or other drug abuse, mental illness, or severe emotional disturbance.

12           **(2) USE OF FACILITIES TO AID IN DETERMINATION.** In making ~~this~~ the examination the  
13 department may use any facilities, public or private, that offer ~~aid to it~~ assistance in the  
14 ~~determination of~~ the correct placement for the juvenile.

15           **SECTION 10.** 938.505 (1) (title) of the statutes is created to read:

16           938.505 (1) (title) RIGHTS AND DUTIES OF DEPARTMENT OR COUNTY DEPARTMENT.

17           **SECTION 11.** 938.505 (2) of the statutes is amended to read:

18           938.505 (2) **PSYCHOTROPIC MEDICATION.** (a) If a juvenile 14 years of age or ~~over who~~  
19 older is under the supervision of the department or a county department ~~as described in~~ under  
20 sub. (1) ~~and who~~, is not residing in his or her home and wishes to be administered psychotropic  
21 medication but a parent with legal custody or the guardian refuses to consent to the  
22 administration of psychotropic medication or cannot be found, or if there is no parent with  
23 legal custody, the department or county department acting on the juvenile's behalf may  
24 petition the court assigned to exercise jurisdiction under this chapter and ch. 48 in the county

1 in which the juvenile is located for permission to administer psychotropic medication to the  
2 juvenile. A copy of the petition and a notice of hearing shall be served upon the parent or  
3 guardian at his or her last-known address. If, after hearing, the court determines all of the  
4 following, the court shall grant permission for the department or county department to  
5 administer psychotropic medication to the juvenile without the parent's or guardian's consent:

6 1. ~~That the~~ The parent's or guardian's consent is unreasonably withheld or ~~that the~~  
7 parent or guardian cannot be found or ~~that there is no parent with legal custody, except that~~  
8 ~~the.~~ The court may not determine that a parent's or guardian's consent is unreasonably  
9 withheld solely because the parent or guardian relies on treatment by spiritual means through  
10 prayer for healing in accordance with his or her religious tradition.

11 2. ~~That the~~ The juvenile is 14 years of age or ~~over and older,~~ is competent to consent  
12 to the administration of psychotropic medication, ~~and that the juvenile voluntarily consents~~  
13 to the administration of psychotropic medication.

14 3. ~~Based~~ The juvenile, based on the recommendation of a physician, ~~that the juvenile~~  
15 is in need of psychotropic medication, ~~that and~~ and psychotropic medication is appropriate for the  
16 juvenile's needs and ~~that psychotropic medication is the least restrictive treatment consistent~~  
17 with the juvenile's those needs.

18 (b) The court may, at the request of the department or county department, temporarily  
19 approve the administration of psychotropic medication, for not more than 10 days after the  
20 date of the request, pending the hearing on the petition, ~~which.~~ The hearing shall be held  
21 within ~~those 10 days~~ that 10-day period.

22 **SECTION 12.** 938.51 (1) (intro.) of the statutes is amended to read:

23 938.51 (1) RELEASE FROM SECURED FACILITY OR SUPERVISION. (intro.) At least 15 days  
24 prior to the date of release from a secured juvenile correctional facility, ~~a secured child caring~~

1 ~~institution or a secured group home~~ of a juvenile who has been adjudicated delinquent and at  
2 least 15 days prior to the release from the supervision of the department or a county department  
3 of a juvenile who has been adjudicated delinquent, the department or county department  
4 having supervision over the juvenile shall make a reasonable attempt to do all of the following:

**COMMENT:** The department of corrections/division of juvenile services (DOC/DJS) has suggested the following clarification in sub. (1) (intro.):

**“Clarify whether the release from county “supervision” is limited to county aftercare supervision (i.e., of youth released from secured setting) or applies to all youth whose county probation supervision is terminated.”.**

5 **SECTION 13.** 938.51 (1d) (title) and (1g) (title) of the statutes are created to read:

6 938.51 **(1d)** (title) RELEASE FROM NONSECURED CENTER.

7 **(1g)** (title) RELEASE FROM INPATIENT FACILITY.

8 **SECTION 14.** 938.51 (1m) of the statutes is amended to read:

9 938.51 **(1m)** NOTIFICATION OF LOCAL AGENCIES. The department or county department  
10 having supervision over a juvenile described in sub. (1) shall determine the local agencies that  
11 it will notify under sub. (1) (a) based on the residence of the juvenile’s parents or on the  
12 juvenile’s intended residence specified in the juvenile’s aftercare supervision plan or, if those  
13 methods do not indicate the community in which the juvenile will reside following release  
14 from a secured juvenile correctional facility, ~~a secured child caring institution or a secured~~  
15 ~~group home~~ or from the supervision of the department or county department, the community  
16 in which the juvenile states that he or she intends to reside.

17 **SECTION 15.** 938.51 (1r) (title) of the statutes is created to read:

18 938.51 **(1r)** (title) CONTENTS OF NOTICE.

19 **SECTION 16.** 938.51 (2) of the statutes is amended to read:

1           938.51 (2) CARDS REQUESTING NOTIFICATION. The department shall design and prepare  
2 cards for any person specified in sub. (1) (b), (c), (cm)<sub>1</sub> or (d) to send to the department or  
3 county department having supervision over a juvenile described in sub. (1), (1d)<sub>1</sub> or (1g). The  
4 cards shall have space for ~~any such person to provide his or her~~ the person's name, telephone  
5 number and mailing address, the name of the applicable juvenile and any other information  
6 that the department determines is necessary. The cards shall ~~also~~ advise a victim who is under  
7 18 years of age that he or she may complete a card requesting notification under sub. (1) (b),  
8 (1d)<sub>1</sub> or (1g) if the notification occurs after the victim attains 18 years of age and advising the  
9 parent or guardian of a victim who is under 18 years of age that the parent or guardian may  
10 authorize on the card direct notification of the victim under sub. (1) (b), (1d)<sub>1</sub> or (1g) if the  
11 notification occurs after the victim attains 18 years of age. The department shall provide the  
12 cards, without charge, to district attorneys. District attorneys shall provide the cards, without  
13 charge, to persons specified in sub. (1) (b) to (d). These persons may send completed cards  
14 to the department or county department having supervision over the juvenile. ~~All department~~  
15 Department and county department records or portions of records that relate to telephone  
16 numbers and mailing addresses of these persons are not subject to inspection or copying under  
17 s. 19.35 (1).

18           **SECTION 17.** 938.51 (3) (title) of the statutes is created to read:

19           938.51 (3) (title) **RELEASE NOT AFFECTED BY FAILURE TO NOTIFY.**

20           **SECTION 18.** 938.51 (4) (intro.) of the statutes is amended to read:

21           938.51 (4) NOTIFICATION IF ESCAPE OR ABSENCE. If a juvenile described in sub. (1), (1d),  
22 or (1g) escapes from a ~~secured~~ juvenile correctional facility, residential care center for  
23 children and youth, ~~secured group home~~, inpatient facility, ~~secure~~ juvenile detention facility,  
24 or juvenile portion of a county jail, or from the custody of a peace officer or a guard of such



1 a facility, center, home, or jail, or has been allowed to leave a ~~secured~~ juvenile correctional  
2 facility, residential care center for children and youth, ~~secured group home~~, inpatient facility,  
3 ~~secure~~ juvenile detention facility, or juvenile portion of a county jail for a specified period of  
4 time and is absent from the facility, center, home, or jail for more than 12 hours after the  
5 expiration of the specified period, as soon as possible after the department or county  
6 department having supervision over the juvenile discovers ~~that the~~ escape or absence, ~~that the~~  
7 department or county department shall make a reasonable attempt to notify by telephone or  
8 other live audiovisual means all of the following persons:

9 **SECTION 19.** 938.52 (1) (d), (2) and (4) of the statutes are amended to read:

10 938.52 (1) (d) Institutions, facilities and services, including ~~without limitation~~ forestry  
11 or conservation camps, for the training and treatment of juveniles 10 years of age or older who  
12 have been adjudged delinquent.

13 (2) USE OF OTHER FACILITIES. (a) In addition to the facilities and services ~~described in~~  
14 under sub. (1), the department may use other facilities and services under its jurisdiction. The  
15 department may also contract for and pay for the use of other public facilities or private  
16 facilities for the care and treatment of juveniles in its care; ~~but placement.~~ Placement of  
17 juveniles in private or public facilities not under its the department's jurisdiction does not  
18 terminate the its supervision under s. 938.183, 938.34 (4h), (4m), or (4n) or 938.357 (4) ~~of the~~  
19 department. Placements in institutions for the mentally ill or developmentally disabled shall  
20 be made in accordance with ss. 48.14 (5), 48.63, and 938.34 (6) (am) and ch. 51.

21 (b) Public facilities ~~are required to~~ shall accept and care for persons placed with them  
22 by the department in the same manner as they would be required to do had the legal custody  
23 of these persons been transferred by a court of competent jurisdiction. Nothing in this  
24 subsection ~~shall be construed to require~~ requires any public facility to serve the department

1 ~~inconsistently in a manner that is inconsistent~~ with its the facility's functions or with the laws  
2 and regulations governing ~~their its~~ activities; ~~or to give~~ gives the department authority to use  
3 any private facility without its consent.

4 (c) The department shall have has the right to inspect all facilities any facility it is using  
5 and to examine and consult with persons under its supervision under s. 938.183, 938.34 (4h),  
6 (4m), or (4n) or 938.357 (4) who have been placed in ~~that~~ the facility.

7 (4) COEDUCATIONAL PROGRAMS AND INSTITUTIONS. The department may institute  
8 establish and maintain coeducational programs and institutions under this chapter.

9 **SECTION 20.** 938.53 of the statutes is amended to read:

10 **938.53 Duration of control of department over delinquents.** Except as provided  
11 under ss. 48.366 and 938.183, all juveniles a juvenile adjudged delinquent who have has been  
12 placed under the supervision of the department under s. 938.183, 938.34 (4h), (4m) or (4n)  
13 or 938.357 (4) shall be discharged as soon as the department determines that there is a  
14 reasonable probability that it is no longer necessary ~~either~~ for the department to retain  
15 supervision for the rehabilitation and treatment of the juvenile or for the protection of the  
16 public ~~that the department retain supervision.~~

17 **SECTION 21.** 938.533 (2), (3) and (3m) of the statutes are amended to read:

18 **938.533 Corrective sanctions. (2) CORRECTIVE SANCTIONS PROGRAM.** From the  
19 appropriation under s. 20.410 (3) (hr), the department shall provide a corrective sanctions  
20 program to serve an average daily population of 136 juveniles, ~~or an average daily population~~  
21 ~~of more than 136 juveniles if~~ unless the appropriation under s. 20.410 (3) (hr) is supplemented  
22 under s. 13.101 or 16.515 and the positions for the program are increased under s. 13.101 or  
23 16.505 (2) or if funding and positions to serve more than that average daily population are  
24 otherwise available, in ~~not less than~~ at least 3 counties, including Milwaukee County. The

1 ~~department's~~ office of juvenile offender review ~~in the department~~ shall evaluate and select for  
2 participation in the program juveniles who have been placed under the supervision of the  
3 department under s. 938.183, 938.34 (4h), or (4m), or 938.357 (4). The department shall place  
4 a program participant in the community, provide intensive surveillance of that participant, and  
5 provide an average of not more than \$3,000 per year per slot to purchase community-based  
6 treatment services for each participant. The department shall make the intensive surveillance  
7 ~~required under this subsection~~ available 24 hours a day, 7 days a week, and may purchase or  
8 provide electronic monitoring for the intensive surveillance of program participants. The  
9 department shall provide a report center in Milwaukee County to provide on-site  
10 programming after school and in the evening for juveniles from Milwaukee County who are  
11 placed in the corrective sanctions program. A contact worker providing services under the  
12 program shall have a case load of approximately 10 juveniles and, during the initial phase of  
13 placement in the community under the program of a juvenile who is assigned to that contact  
14 worker, shall have not less than one face-to-face contact per day with that juvenile. Case  
15 management services under the program shall be provided by a corrective sanctions agent who  
16 shall have a case load of approximately 15 juveniles. The department shall promulgate rules  
17 to implement the program.

18 (3) INSTITUTIONAL STATUS. (a) A participant in the corrective sanctions program  
19 ~~remains is~~ under the supervision of the department, ~~remains is~~ subject to the rules and  
20 discipline of ~~that~~ the department, and is considered to be in custody, as defined in s. 946.42  
21 (1) (a). Notwithstanding ss. 938.19 to 938.21, if a juvenile violates a condition of ~~that~~  
22 ~~juvenile's~~ his or her participation in the corrective sanctions program the department may,  
23 without a hearing, take the juvenile into custody and place the juvenile in a secured juvenile  
24 detention facility or return the juvenile to placement in a Type 1 secured juvenile correctional

1 facility ~~or a secured child-caring institution~~. This paragraph does not preclude a juvenile who  
2 has violated a condition of the juvenile's his or her participation in the corrective sanctions  
3 program from being taken into and held in custody under ss. 938.19 to 938.21.

4 (b) The department shall operate the corrective sanctions program as a Type 2 secured  
5 juvenile correctional facility. The secretary may allocate and reallocate existing and future  
6 facilities as part of the Type 2 secured juvenile correctional facility. The Type 2 secured  
7 juvenile correctional facility is subject to s. 301.02. Construction or establishment of a Type 2  
8 ~~secured~~ juvenile correctional facility shall be in compliance with all state laws except s. 32.035  
9 and ch. 91. In addition to the exemptions under s. 13.48 (13), construction or establishment  
10 of a Type 2 secured juvenile correctional facility is not subject to the ordinances or regulations  
11 relating to zoning, including zoning under ch. 91, of the county and city, village, or town in  
12 which the construction or establishment takes place and is exempt from the investigations  
13 permitted under s. 46.22 (1) (c) 1. b.

14 (3m) ESCAPE. If a juvenile runs away from the juvenile's his or her placement in the  
15 community while participating in the corrective sanctions program, ~~that~~ the juvenile is  
16 considered to have escaped in violation of s. 946.42 (3) (c).

17 **SECTION 22.** 938.534 (1) (a), (b) 1., 2., 3. and 4., (c) and (d) and (2) of the statutes are  
18 amended to read:

19 **938.534 Intensive supervision program. (1) PROGRAM REQUIREMENTS; VIOLATION**  
20 **OF CONDITION OF PARTICIPATION.** (a) A county department may provide an intensive  
21 supervision program for juveniles who have been adjudicated delinquent and ordered to  
22 participate in an intensive supervision program under s. 938.34 (2r). A county department that  
23 provides ~~an intensive supervision~~ a program shall purchase or provide intensive surveillance  
24 and community-based treatment services for participants in ~~that~~ the program and may

1 purchase or provide electronic monitoring for the intensive surveillance of program  
2 participants. A caseworker providing services under ~~an intensive supervision~~ a program may  
3 have a case load of no more than 10 juveniles and shall have not less than one face-to-face  
4 contact per day with each juvenile who is assigned to that caseworker.

**COMMENT:** The DOC/DJS raises the following issue with reference to sub. (1) (a):

**“Q: What is the requirement for face-to-face contact when a youth is placed in shelter care or a secure facility for a violation of Intensive Supervision Program rules for a 72-hour hold?**

**Or**

**When they are placed in non-secure custody for not more than 30 days as crisis intervention? 938.534 (1) (4) (c)**

**In practice, assigned caseworkers do not have daily contact with youth when they are receiving a “service” such as being held in detention or in shelter care.”.**

5 (b) 1. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies  
6 adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board  
7 relating to the taking into custody and placement of a juvenile under this subdivision, if a  
8 juvenile violates a condition of the juvenile’s his or her participation in the program, the  
9 juvenile’s caseworker or any other person authorized to provide or providing intake or  
10 dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take  
11 the juvenile into custody and place the juvenile in a ~~secure~~ juvenile detention facility or  
12 juvenile portion of a county jail that meets the standards promulgated by the department by  
13 rule or in a place of nonsecure custody designated by that person for not more than 72 hours  
14 while the alleged violation and the appropriateness of a sanction under s. 938.355 (6) or a  
15 change in the conditions of the juvenile’s participation in the program are being investigated.  
16 The sanction under this subdivision may be imposed only if at the dispositional hearing the

1 court explained those conditions to the juvenile and informed the juvenile of the possibility  
2 of that placement or if before the violation the juvenile has acknowledged in writing that he  
3 or she has read, or has had read to him or her, those conditions and that possible placement  
4 and that he or she understands those conditions and that possible placement.

**COMMENT:** The DOC/DJS raises the following issue, and suggests the following amendment, with reference to sub. (1) (b) 1.:

**“Q: When a youth is placed on a 72-hour hold in either a secure or non-secure facility for a violation of a condition of participation in an Intensive Supervision Program, does a person authorized to review a youth’s statement have the authority to modify the placement?”**

**Clarify last sentence to read.. “shall either approve or modify the placement or order the juvenile to be released from custody.”**

**In practice, supervisors do modify the placement downward from 72 hours or suggest that the caseworkers do so if appropriate.”.**

5 2. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies  
6 adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board  
7 relating to the taking into custody and placement of a juvenile under this subdivision, if a  
8 juvenile violates a condition of the juvenile’s participation in the program, the juvenile’s  
9 caseworker or any other person authorized to provide or providing intake or dispositional  
10 services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile  
11 into custody and place the juvenile in a ~~secure~~ juvenile detention facility or juvenile portion  
12 of a county jail that meets the standards promulgated by the department by rule or in a place  
13 of nonsecure custody designated by that person for not more than 72 hours as a consequence  
14 of that violation~~7.~~ The sanction under this subdivision may be imposed only if at the  
15 dispositional hearing the court explained those conditions to the juvenile and informed the  
16 juvenile of the possibility of that placement or if before the violation the juvenile has  
17 acknowledged in writing that he or she has read, or has had read to him or her, those conditions

1 and that possible placement and that he or she understands those conditions and that possible  
2 placement. A person who takes a juvenile into custody under this subdivision shall permit the  
3 juvenile to make a written or oral statement concerning the possible placement of the juvenile  
4 and the course of conduct for which the juvenile was taken into custody. A person designated  
5 by the court or the county department who is employed in a supervisory position by a person  
6 authorized to provide or providing intake or dispositional services under s. 938.067 or 938.069  
7 shall review that statement and shall either approve the placement or order the juvenile to be  
8 released from custody.

9 3. A juvenile may be taken into and held in custody under both subds. 1. and 2. in  
10 connection with the same course of conduct, ~~except that no.~~ No juvenile may be held in  
11 custody for more than a total of 72 hours under subds. 1. and 2. in connection with the same  
12 course of conduct unless the juvenile receives a hearing under par. (d).

13 4. The use of placement in a secure juvenile detention facility or in a juvenile portion  
14 of a county jail as a place of short-term detention under subd. 1. or 2. is subject to the adoption  
15 of a resolution by the county board of supervisors under s. 938.06 (5) authorizing the use of  
16 those placements as places of short-term detention under subd. 1. or 2.

17 (c) Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies  
18 adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board  
19 relating to the taking into custody and placement of a juvenile under this paragraph, the  
20 juvenile's caseworker may also, without a hearing, take the juvenile into custody and place  
21 the juvenile in a place of nonsecure custody for not more than 30 days as crisis intervention,  
22 if the juvenile is in need of crisis intervention ~~and, if.~~ This placement may be made only at  
23 the dispositional hearing the court informed the juvenile of the possibility of that placement  
24 or if before the violation the juvenile has acknowledged in writing that he or she has read, or

1 has had read to him or her, those conditions and that possible placement and that he or she  
2 understands those conditions and that possible placement.

3 (d) If the juvenile is held under par. (b) 1. or 2. in a ~~secure~~ juvenile detention facility,  
4 juvenile portion of a county jail or place of nonsecure custody for longer than 72 hours, the  
5 juvenile is entitled to a hearing under s. 938.21. The hearing shall be conducted in the manner  
6 provided in s. 938.21, except that the hearing shall be conducted within 72 hours, rather than  
7 24 hours, after the end of the day that the decision to hold the juvenile was made and a written  
8 statement of the reasons for continuing to hold the juvenile in custody may be filed rather than  
9 a petition under s. 938.25.

10 (2) RULES FOR INTENSIVE SUPERVISION PROGRAM. The department shall promulgate rules  
11 specifying the requirements for an intensive supervision program under this section. The rules  
12 shall include ~~rules that govern~~ provisions governing the use of placement in a ~~secure~~ juvenile  
13 detention facility, juvenile portion of a county jail, or place of nonsecure custody for not more  
14 than 72 hours under sub. (1) (b) and the use of placement in a place of nonsecure custody for  
15 not more than 30 days under sub. (1) (c).

16 **SECTION 23.** 938.535 of the statutes is amended to read:

17 **938.535 Early release and intensive supervision program; limits.** The department  
18 may establish a program for the early release and intensive supervision of juveniles who have  
19 been placed in a ~~secured~~ juvenile correctional facility ~~or a secured child caring institution~~  
20 under s. 938.183 or 938.34 (4m). The program may not include any juveniles who have been  
21 placed in a ~~secured~~ juvenile correctional facility or a secured child caring institution as a  
22 result of a delinquent act involving the commission of a violent crime as defined in s. 969.035,  
23 but not including the crime specified in s. 948.02 (1).



1           **SECTION 24.** 938.538 (3) (a) 1., 1m., 1p. and 2., (4), (5) (b) and (c), (6) and (6m) (b) of  
2 the statutes are amended to read:

3           938.538 **(3)** (a) 1. Subject to subd. 1m., placement in a Type 1 secured juvenile  
4 correctional facility, ~~a secured child-caring institution or, if the participant is 17 years of age~~  
5 ~~or over or 15 years of age or over and transferred under s. 938.357 (4) (d), a Type 1 prison,~~  
6 ~~as defined in s. 301.01 (5), for a period of not more than 3 years, unless that period is extended~~  
7 under sub. (4m) (a) 1. or 2., or both.

8           1m. If the participant has been adjudicated delinquent for committing an act that would  
9 be a Class A felony if committed by an adult, placement in a Type 1 secured juvenile  
10 correctional facility, ~~a secured child-caring institution or, if the participant is 17 years of age~~  
11 ~~or over or 15 years of age or over and transferred under s. 938.357 (4) (d), a Type 1 prison,~~  
12 ~~as defined in s. 301.01 (5), until the participant reaches 25 years of age, unless the participant~~  
13 ~~is released sooner, subject to a mandatory minimum period of confinement of not less than one~~  
14 ~~year.~~

15           1p. Alternate care, including placement in a foster home, treatment foster home, group  
16 home, or residential care center for children and youth, ~~or secured child-caring institution.~~

17           2. Intensive or other field supervision, including corrective sanctions supervision under  
18 s. 938.533, or aftercare supervision ~~or, if the participant is 17 years of age or over, intensive~~  
19 ~~sanctions supervision under s. 301.048.~~

20           **(4) INSTITUTIONAL STATUS.** (a) A participant in the serious juvenile offender program  
21 under this section is under the supervision and control of the department, is subject to the rules  
22 and discipline of the department and is considered to be in custody, as defined in s. 946.42 (1)  
23 (a). Notwithstanding ss. 938.19 to 938.21, if a participant violates a condition of his or her  
24 participation in the program under sub. (3) (a) 2. to 9. while placed in a Type 2 secured juvenile

1 correctional facility the department may, without a hearing, take the participant into custody  
2 and return him or her to placement in a Type 1 secured juvenile correctional facility, ~~a secured~~  
3 ~~child caring institution or, if the participant is 17 years of age or over, a Type 1 prison, as~~  
4 ~~defined in s. 301.01 (5). Any intentional failure of a participant to remain within the extended~~  
5 ~~limits of his or her placement while participating in the serious juvenile offender program or~~  
6 ~~to return within the time prescribed by the administrator of the division of intensive sanctions~~  
7 ~~in the department is considered an escape under s. 946.42 (3) (c). This paragraph does not~~  
8 ~~preclude a juvenile who has violated a condition of the juvenile's participation in the program~~  
9 ~~under sub. (3) (a) 2. to 9. from being taken into and held in custody under ss. 938.19 to 938.21.~~

10 (b) The department shall operate the component phases of the program specified in sub.  
11 (3) (a) 2. to 9. as a Type 2 secured juvenile correctional facility. The secretary of corrections  
12 may allocate and reallocate existing and future facilities as part of the Type 2 secured juvenile  
13 correctional facility. The Type 2 secured juvenile correctional facility is subject to s. 301.02.  
14 Construction or establishment of a Type 2 secured juvenile correctional facility shall be in  
15 compliance with all state laws except s. 32.035 and ch. 91. In addition to the exemptions under  
16 s. 13.48 (13), construction or establishment of a Type 2 secured juvenile correctional facility  
17 is not subject to the ordinances or regulations relating to zoning, including zoning under ch.  
18 91, of the county and city, village or town in which the construction or establishment takes  
19 place and is exempt from inspections required under s. 301.36.

20 (5) (b) The department may discharge a participant from participation in the serious  
21 juvenile offender program and from departmental supervision and control at any time after the  
22 participant he or she has completed 3 years of participation in the serious juvenile offender  
23 program.

1 (c) Sections 938.357 and 938.363 do not apply to changes of placement and revisions  
2 of orders for a juvenile who is a participant in the ~~serious juvenile offender~~ program, ~~except~~  
3 ~~that s. 938.357 (4) (d) applies to the transfer of a participant to the Racine youthful offender~~  
4 ~~correctional facility named in s. 302.01.~~

5 (6) PURCHASE OF SERVICES. The department of corrections may contract with the  
6 department of health and family services, a county department, or any public or private agency  
7 for the purchase of goods, care, and services for participants in the ~~serious juvenile offender~~  
8 ~~program~~ under this section. The department of corrections shall reimburse a person from  
9 whom it purchases goods, care, or services under this subsection from the appropriation under  
10 s. 20.410 (3) (cg) or, if the person for whom the goods, care or services are purchased is placed  
11 in a Type 1 prison, as defined s. 301.01 (5), or is under intensive sanctions supervision under  
12 s. 301.048, from the appropriate appropriation under s. 20.410 (1).

13 (6m) (b) In the selection of classified service employees for a secured juvenile  
14 correctional facility authorized under 1993 Wisconsin Act 377, section 9108 (1) (a), the  
15 appointing authority shall make every effort to use the expanded certification program under  
16 s. 230.25 (1n) or rules of the administrator of the division of merit recruitment and selection  
17 in the office of state employment relations to ensure that the percentage of employees who are  
18 minority group members approximates the percentage of the juveniles placed at that secured  
19 juvenile correctional facility who are minority group members. The administrator of the  
20 division of merit recruitment and selection in the office of state employment relations shall  
21 provide guidelines for the administration of this the selection procedure.

22 **SECTION 25.** 938.539 of the statutes is amended to read:

23 **938.539 Type 2 status.** (1) A juvenile who is placed in a Type 2 ~~child-caring~~  
24 ~~institution~~ residential care center for children and youth under s. 938.34 (4d) or who, having

1 been so placed, is replaced in a less restrictive placement under s. 938.357 (4) (c) is under the  
2 supervision and control of the county department, is subject to the rules and discipline of the  
3 county department and is considered to be in custody, as defined in s. 946.42 (1) (a).

4 **SECTION 26.** 938.539 (1) (title) of the statutes is created to read:

5 938.539 (1) (title) TYPE 2 CENTER; COUNTY DEPARTMENT CONTROL.

6 **SECTION 27.** 938.539 (2) to (5) of the statutes are amended to read:

7 938.539 (2) TYPE 2 JUVENILE CORRECTIONAL FACILITY; DEPARTMENT CONTROL. A juvenile  
8 who is placed in a Type 2 ~~secured~~ juvenile correctional facility under s. 938.357 (4) (a) or who,  
9 having been so placed, is replaced in a less restrictive placement under s. 938.357 (4) (c) is  
10 under the supervision and control of the department, is subject to the rules and discipline of  
11 the department, and is considered to be in custody, as defined in s. 946.42 (1) (a).

12 (3) IF VIOLATION OF CONDITION OF PLACEMENT. Notwithstanding ss. 938.19 to 938.21,  
13 if a juvenile placed in a Type 2 ~~child-caring institution~~ residential care center for children and  
14 youth under s. 938.34 (4d) or 938.357 (4) (c) or in a Type 2 ~~secured~~ juvenile correctional  
15 facility under s. 938.357 (4) (a) or (c) violates a condition of his or her placement in the ~~Type-2~~  
16 ~~child-caring institution~~ center or Type 2 ~~secured~~ correctional facility, the juvenile may be  
17 placed in a Type 1 ~~secured~~ juvenile correctional facility as provided in s. 938.357 (4) (b). This  
18 subsection does not preclude a juvenile who has violated a condition of the juvenile's  
19 placement in a Type 2 ~~secured~~ juvenile correctional facility or a Type 2 child caring institution  
20 from being taken into and held in custody under ss. 938.19 to 938.21.

21 (4) IF ESCAPE OR ABSENCE. ~~Any intentional failure of a~~ A juvenile placed in a Type 2  
22 ~~child-caring institution~~ residential care center for children and youth under s. 938.34 (4d) or  
23 938.357 (4) (c) or in a Type 2 ~~secured~~ juvenile correctional facility under s. 938.357 (4) (a)  
24 or (c) who intentionally fails to remain within the extended limits of his or her placement or

1 to return within the time prescribed by the administrator of the ~~Type 2 child-caring institution~~  
2 center or ~~Type 2 secured correctional facility~~ is considered an escape under s. 946.42 (3) (c).

3 (5) WHO OPERATES CENTER, INSTITUTION, OR FACILITY AFTER PLACEMENT. With respect to  
4 a juvenile who is placed in a residential care center for children and youth or a secured child  
5 caring institution under s. 938.34 (4d) or 938.357 (4) (a) or in a less restrictive placement under  
6 s. 938.357 (4) (c), the child welfare agency operating the ~~residential care center for children~~  
7 ~~and youth or secured child-caring institution~~ in which the juvenile is placed, and the person  
8 operating any less restrictive placement in which the juvenile is placed, shall operate that  
9 ~~residential care center for children and youth, secured child-caring institution, or less~~  
10 ~~restrictive placement as a Type 2 child-caring institution~~ residential care center for children  
11 and youth or a Type 2 secured juvenile correctional facility. This subsection does not preclude  
12 a child welfare agency or other person from placing in a residential care center for children  
13 and youth, ~~secured child-caring institution~~, or less restrictive placement in which a juvenile  
14 is placed under s. 938.34 (4d) or 938.357 (4) (a) or (c) a juvenile who is not placed under s.  
15 938.34 (4d) or 938.357 (4) (a) or (c).

16 **SECTION 28.** 938.539 (6) (title) of the statutes is created to read:

17 938.539 (6) (title) ~~RULE-MAKING.~~

18 **SECTION 29.** 938.549 (1) (title), (2) (title) and (3) (title) of the statutes are created to  
19 read:

20 938.549 (1) (title) ~~CLASSIFICATION SYSTEM; CONTENT.~~

21 (2) (title) ~~USES OF CLASSIFICATION SYSTEM.~~

22 (3) (title) ~~TRAINING IN USE OF SYSTEM.~~

23 (END)