



1997 ASSEMBLY BILL 486

August 26, 1997 - Introduced by Representatives FOTI, GUNDERSON, PORTER, MUSSER, STASKUNAS, GOETSCH, M. LEHMAN, GREEN, GARD, OWENS, ZIEGELBAUER, LADWIG, BOYLE, POWERS, SYKORA, HAHN, NASS, VRAKAS, LA FAVE, HASENOHRL, WARD, BRANDEMUEHL, LAZICH and GROTHMAN, cosponsored by Senators FITZGERALD, COWLES, HUELSMAN, ROESSLER, WELCH, DARLING and FARROW. Referred to Committee on Corrections Facilities.

1 **AN ACT to renumber** 938.209 (1); **to renumber and amend** 938.209 (intro.) and
2 938.209 (2); **to amend** 808.075 (4) (fn) 3., 938.205 (1) (intro.), 938.21 (1) (a),
3 938.21 (4) (b), 938.299 (5) and 938.38 (2) (a); and **to create** 938.209 (2m) of the
4 statutes; **relating to:** holding juveniles in municipal lockup facilities and
5 granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, as a condition for receiving funding under the federal Juvenile Justice and Delinquency Prevention Act, a juvenile may not be held in custody in a county jail or a municipal lockup facility unless the following conditions are met:

1. The juvenile is alleged to have committed a delinquent act and is awaiting his or her initial court appearance.
2. State law requires an initial court appearance within 24 hours, excluding weekends and holidays, after the juvenile is taken into custody.
3. The juvenile is being held in a county that is located outside of a federal standard metropolitan statistical area.
4. No acceptable alternative placement for the juvenile exists.
5. The county jail or municipal lockup facility provides for sight and sound separation of juveniles and adults who are held in that jail or facility.

This bill permits a juvenile who is alleged to have committed a delinquent act to be held in a municipal lockup facility if all of the following criteria are met:

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1. The department of corrections has approved the municipal lockup facility as a suitable place for holding juveniles in custody.

2. The juvenile is held in the municipal lockup facility for not more than 6 hours while awaiting his or her initial court appearance.

3. There is sight and sound separation between the juvenile and any adult who is being held in the municipal lockup facility.

4. The juvenile is held for investigative purposes only.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 808.075 (4) (fn) 3. of the statutes is amended to read:

2 808.075 (4) (fn) 3. Review of secure detention orders under s. 938.208 and
3 secure detention status reviews under s. 938.209 (1) ~~(e)~~ (a) 5.

4 **SECTION 2.** 938.205 (1) (intro.) of the statutes is amended to read:

5 938.205 (1) (intro.) A juvenile may be held under s. 938.207, 938.208 or
6 938.209 (1) if the intake worker determines that there is probable cause to believe
7 the juvenile is within the jurisdiction of the court and if probable cause exists to
8 believe one of the following:

9 **SECTION 3.** 938.209 (intro.) of the statutes is renumbered 938.209 (1) (intro.)
10 and amended to read:

11 **938.209** (title) **Criteria for holding a juvenile in a county jail or a**
12 **municipal lockup facility.** (1) (intro.) Subject to the provisions of s. 938.208, a
13 county jail may be used as a secure detention facility if the criteria under either sub-
14 ~~(1)~~ par. (a) or ~~(2)~~ (b) are met:

15 **SECTION 4.** 938.209 (1) of the statutes is renumbered 938.209 (1) (a).

16 **SECTION 5.** 938.209 (2) of the statutes is renumbered 938.209 (1) (b) and
17 amended to read:

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1 938.209 (1) (b) The juvenile presents a substantial risk of physical harm to
2 other persons in the secure detention facility, as evidenced by previous acts or
3 attempts, which can only be avoided by transfer to the jail. The provisions of sub-
4 ~~(1) (a) to (e)~~ conditions of par. (a) 1. to 5. shall be met. The juvenile shall be given a
5 hearing and transferred only upon order of the judge.

6 **SECTION 6.** 938.209 (2m) of the statutes is created to read:

7 938.209 (2m) (a) (intro.) A juvenile who is alleged to have committed a
8 delinquent act may be held in a municipal lockup facility if all of the following criteria
9 are met:

10 1. The department has approved the municipal lockup facility as a suitable
11 place for holding juveniles in custody.

12 2. The juvenile is held in the municipal lockup facility for not more than 6 hours
13 while awaiting his or her hearing under s. 938.21 (1) (a).

14 3. There is sight and sound separation between the juvenile and any adult who
15 is being held in the municipal lockup facility.

16 4. The juvenile is held for investigative purposes only.

17 (b) The department shall promulgate rules establishing minimum
18 requirements for the approval of a municipal lockup facility as a suitable place for
19 holding juveniles in custody and for the operation of such a facility. The rules shall
20 be designed to protect the health, safety and welfare of the juveniles held in those
21 facilities.

22 **SECTION 7.** 938.21 (1) (a) of the statutes is amended to read:

23 938.21 (1) (a) If a juvenile who has been taken into custody is not released
24 under s. 938.20, a hearing to determine whether the juvenile shall continue to be held
25 in custody under the criteria of ss. 938.205 to 938.209 (1) shall be conducted by the

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1 judge or juvenile court commissioner within 24 hours after the end of the day that
2 the decision to hold the juvenile was made, excluding Saturdays, Sundays and legal
3 holidays. By the time of the hearing a petition under s. 938.25 shall be filed, except
4 that no petition need be filed where a juvenile is taken into custody under s. 938.19
5 (1) (b) or (d) 2., 6. or 7. or where the juvenile is a runaway from another state, in which
6 case a written statement of the reasons for holding a juvenile in custody shall be
7 substituted if the petition is not filed. If no hearing has been held within 24 hours
8 or if no petition or statement has been filed at the time of the hearing, the juvenile
9 shall be released except as provided in par. (b). A parent not present at the hearing
10 shall be granted a rehearing upon request.

11 **SECTION 8.** 938.21 (4) (b) of the statutes is amended to read:

12 938.21 (4) (b) Order the juvenile held in an appropriate manner under s.
13 938.207, 938.208 or 938.209 (1).

14 **SECTION 9.** 938.299 (5) of the statutes is amended to read:

15 938.299 (5) On request of any party, unless good cause to the contrary is shown,
16 any hearing under s. 938.209 (1) ~~(e)~~ (a) 5. or 938.21 (1) may be held on the record by
17 telephone or live audio-visual means or testimony may be received by telephone or
18 live audio-visual means as prescribed in s. 807.13 (2). The request and the showing
19 of good cause for not conducting the hearing or admitting testimony by telephone or
20 live audio-visual means may be made by telephone.

21 **SECTION 10.** 938.38 (2) (a) of the statutes is amended to read:

22 938.38 (2) (a) The juvenile is being held in physical custody under s. 938.207,
23 938.208 or 938.209 (1).

24 **SECTION 9311. Initial applicability.**

