



**RECENT LAWS RELATING TO JUVENILE JUSTICE
AND JUVENILE SERVICES**

**(1987 WISCONSIN ACTS 27, 285 AND 339 AND
1989 WISCONSIN ACTS 31, 121, 122, 204 AND 336)**

124380

INFORMATION MEMORANDUM 90-11

124380

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Wisconsin Legislative
Council Staff

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

Wisconsin Legislative Council Staff
One East Main Street, Suite 401
Telephone: (608) 266-1304

May 11, 1990
Madison, Wisconsin

Information Memorandum 90-11

RECENT LAWS RELATING TO JUVENILE JUSTICE
AND JUVENILE SERVICES

(1987 WISCONSIN ACTS 27, 285 AND 339 AND
1989 WISCONSIN ACTS 31, 121, 122, 204 AND 336)

INTRODUCTION

This Information Memorandum describes laws relating to juvenile justice and juvenile services and programs which were enacted during the 1987-88 and 1989-90 Legislative Sessions. Many of these laws were enacted as part of larger, multi-issue acts, such as budget acts and omnibus drug and alcohol acts. This Information Memorandum describes only the juvenile justice-related provisions of those acts.

Copies of all acts referred to in this Information Memorandum may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, WI 53702; telephone: (608) 266-2400.

This Information Memorandum is organized as follows:

	<u>Page</u>
PART I - MAJOR JUVENILE JUSTICE LAWS ENACTED DURING THE 1987-88 LEGISLATIVE SESSION	3
A. 1987-88 Biennial Budget Act (1987 Wisconsin Act 27) . . .	3
1. Waiver of Children Into Adult Court	3
2. Extended Juvenile Court Jurisdiction	3
3. General Dispositional Provisions	4
4. Notification of Victims of Child's Acts	6
B. Dispositional Alternatives for Delinquent or Truant Children (1987 Wisconsin Act 285)	7
C. Juvenile Justice Provisions Relating to Alcohol and Other Drug Abuse (1987 Wisconsin Act 339)	9

	<u>Page</u>
PART II - MAJOR JUVENILE JUSTICE LAWS ENACTED DURING THE 1989-90 LEGISLATIVE SESSION	13
A. 1989-90 Biennial Budget Act (1989 Wisconsin Act 31) . . .	13
1. Integrated Service Plans for Children with Severe Disabilities	13
2. Combining Available Dispositions	14
3. Possession of Controlled Substances in Certain Cases	14
4. Offenses and Penalties Relating to Underage Drinking	14
5. Notification of Release of Child from Custody . . .	14
6. Departmental Authority Over Juvenile Corrections . .	15
B. Changes Relating to Alcohol and Controlled Substances Violations (1989 Wisconsin Acts 121 and 336)	15
1. Drug Paraphernalia	15
2. Use of Electronic Communication Devices on School Premises	16
3. Alcohol and Controlled Substances Violations Committed by Children	17
4. Juvenile Court Orders Applicable to Adults	20
C. Alcohol and Other Drug Prevention and Treatment Programs Relating to Juvenile Justice (1989 Wisconsin Act 122)	21
1. Youth Aids	21
2. Transitional Education for Delinquent Youths . . .	21
3. Intensive Juvenile Aftercare Pilot Program	21
4. Juvenile Early Intervention Program	22
5. Juvenile Correctional Programs	23

PART I

MAJOR JUVENILE JUSTICE LAWS
ENACTED DURING THE 1987-88 LEGISLATIVE SESSION

During the 1987-88 Legislative Session, the Legislature made a number of changes in the Children's Code [ch. 48, Stats.]. These changes affected: waiver of children into adult court; extended jurisdiction of juvenile courts over children who commit certain serious offenses; restitution and community services as dispositions for delinquent acts; notification of victims of a child's delinquent acts; and dispositions relating to truancy and use or abuse of alcohol or other drugs. These changes were included in 1987 Wisconsin Acts 27, 285 and 339, and are described in this part of the Information Memorandum.

A. 1987-88 BIENNIAL BUDGET ACT (1987 WISCONSIN ACT 27)

As part of the 1987-88 Biennial Budget Act (1987 Wisconsin Act 27), the following provisions related to juvenile justice were enacted:

1. Waiver of Children Into Adult Court

Act 27 lowered the allowable age at which children may be waived into adult court from 16 to 14, if the child is alleged to have violated first- or second-degree homicide. [NOTE: Current law refers to first-degree intentional homicide under s. 940.01, Stats., and first-degree reckless homicide under s. 940.02, Stats.] The Act specified that persons who are age 14 or 15 at the time of sentencing were required to be held at a juvenile correctional facility (i.e., Ethan Allen or Lincoln Hills) unless the Department of Corrections (DOC) found that placement at a state prison was appropriate. After age 16, the DOC was permitted to transfer these persons to a state prison. The state, rather than the county in which the child was sentenced, was responsible for the costs of the placement of a child in a juvenile correctional facility if the child was convicted as an adult subsequent to waiver [ss. 48.18, 53.18 and 973.013 (3m), 1987 Stats.].

2. Extended Juvenile Court Jurisdiction

Prior to Act 27, all juvenile court orders terminated one year from the time the order was entered, unless the judge specified a shorter period of time. A court could extend a dispositional order for a period of up to one year, except that no extension was permitted if the person

under the dispositional order was 18 years of age or older when the original dispositional order terminated.

Under Act 27, the jurisdiction of the juvenile court for all persons age 12 to 18 who commit first-degree homicide was extended until the person reaches age 25. The jurisdiction of the court for persons age 12 to 17 who have been found to have committed second-degree homicide, manslaughter, mayhem, child abuse and, with some exceptions, first-degree sexual assault was extended until the person reaches the age of 21. The person, or the department having legal custody of the person, could petition at any time during the court's extended jurisdiction to release the person on aftercare supervision or petition for the court to terminate its order and discharge the person from legal custody of the department. The person subject to the court's extended jurisdiction could file a petition to revise or discharge the court's jurisdiction not more often than once each year.

The Department of Health and Social Services (DHSS) was permitted to transfer a person subject to an extended jurisdiction order between juvenile correctional facilities and, after the person reaches the age of 18 years, transfer the person to or between state prisons without petitioning for revision of the order [s. 48.366, Stats.].

3. General Dispositional Provisions

a. Two-Year Orders

Act 27 authorized juvenile courts to make a dispositional order apply for up to two years for any child placed at a juvenile correctional facility. Prior to Act 27, all juvenile dispositional orders were in effect for one year, subject to one-year extensions if ordered by the court, as described under item 2, above [s. 48.355 (4) (b), Stats.].

b. Restitution Payments

Act 27 made changes in the ability of a court to issue orders for restitution for damage or injury caused by a delinquent child to another person or that person's property. Prior to Act 27, a court could order restitution, or order the child to repair damage to property, if the judge, after taking into consideration the well-being and needs of the victim, considered it beneficial to the well-being and behavior of the child. A judge was required to allow up to 10 months for the payment, if restitution was ordered.

Under Act 27, the judge was permitted, but not required, to allow an extended payment period; that period could be up to 12 months, rather than

10 months. Act 27 also created language specifying that a child who is 12 or 13 years of age who is participating in a restitution project could be employed or perform any duties under any circumstances in which a child 14 or 15 years of age is permitted to be employed under Wisconsin's child labor laws. Also, Act 27 specified that a court could not order a child who is 12 or 13 years of age to make more than \$250 in restitution [s. 48.34 (5), Stats.].

c. Community Service

Act 27 expanded upon already-existing authority of courts to order a delinquent child to participate in a supervised work program. The Act created new language permitting a court to order a child who is 12 or 13 years of age to participate in a community service project provided by a county. The Act permitted a 12- or 13-year old child performing community service work to be employed or perform any duties under any circumstances in which a child 14 or 15 years of age is permitted to be employed or perform duties under Wisconsin's child labor laws. The Act also specified that a court could not order a child who is 12 or 13 years of age to perform more than 40 total hours of community service work.

The Act 27 provision is subject to already-existing provisions permitting a court to order a child to participate in community service work as long as the program contained the following components: (1) did not conflict with the child's regular attendance at school; (2) the amount of work was reasonably related to the seriousness of the child's offense; and (3) the work program was appropriate to the age level and physical ability of the child [s. 48.34 (9) (c), Stats.].

d. Report of Educational Services

Before a court issues a dispositional order of a child adjudged to be delinquent or in need of protection or services, the court is required to designate an agency to submit a report containing information relating to the social history of the child, a recommended plan of rehabilitation or treatment and care, the identity of the agency or person responsible for providing services under the court order and a statement of the objectives of the plan, including any desired behavior changes and the academic, social and vocational skills needed by the child. This requirement was amended by Act 27 to also include a requirement that a plan be prepared for the provision of educational services to the child, after consultation with the staff of the school in which the child is enrolled or the last school in which the child was enrolled [s. 48.33 (1) (e), Stats.].

e. Sanctions for Contempt

Act 27 created new sanctions a court could impose if a child violates the provisions of a dispositional order. The sanctions included placement of a child in a juvenile correctional facility or juvenile portion of a county jail for not more than 10 days; the court could require the child to receive educational services consistent with his or her current course of study during the period of placement. The court could also: (1) suspend or limit the use of the child's driver's license for a period of not more than 90 days; (2) order detention in the child's home for a period of not more than 20 days under rules of supervision specified in the order; and (3) order not more than 25 hours of uncompensated community service work in a supervised work program. The court was required to hold a hearing before imposing any of these sanctions [s. 48.355 (6), Stats.; the provisions of this statute permitting a court to order secure detention in a juvenile correctional facility or a juvenile portion of a county jail have been found unconstitutional in at least two circuit court decisions].

4. Notification of Victims of Child's Acts

Act 27 consolidated existing provisions, and created new requirements, relating to providing notice to known victims of a child's delinquent act. Under these provisions, municipal judges were encouraged, to the extent possible, to provide victims of juvenile offenses with the same information given to victims in cases before the juvenile court. The new notification law also permitted victims, a member of the victim's family and a victim assistance support person, if requested, to attend juvenile fact-finding hearings. A judge was allowed to exclude these persons from those portions of the hearings dealing with sensitive personal matters which were unrelated to the act committed against the victim. A judge could also exclude these persons if they are to be called as witnesses.

Provisions of Act 27 also:

a. Clarified that the general rule against divulging the identity of a child involved in the juvenile proceeding, or the identity of his or her family, does not prohibit a victim of the child's act from bringing any civil action. Prior law stated that a victim could not be precluded from bringing a parental tort action.

b. Created new requirements relating to the notification of victims of juvenile acts. Information was required to be provided regarding: (1) the procedure for obtaining the identity of the child, the child's parents and the child's police records; (2) the potential civil liability of the

child's parents; (3) the general provisions of the disposition and specific details relating to restitution or repair of property damage or the procedure through which to obtain such information; and (4) the restrictions against divulging the information obtained by the victim and the penalties for violating these provisions. The Act required that a reasonable attempt be made to inform a victim if a case was terminated before an informal agreement, consent decree or dispositional order is issued. Under prior law, a victim was required to have filed or have intent to file a civil action in order to obtain a child's record. Under the Act, any victim of a child's act was permitted to request a disclosure of the child's record. The court was required to determine whether the information sought regarding a child's record was for good cause and, if so, the court could disclose any information necessary to meet the requester's need.

c. Repealed provisions which had restricted victims from seeking a civil action if the child had been ordered to pay restitution or make property damage repairs and the child was in compliance with the order for restitution or repairs [s. 48.346, Stats.].

B. DISPOSITIONAL ALTERNATIVES FOR DELINQUENT OR TRUANT CHILDREN (1987 WISCONSIN ACT 285)

A number of changes relating to dispositional alternatives for children adjudged delinquent or in need of protection or services for truant behavior were enacted under 1987 Wisconsin Act 285. The Act first applied to truancy from school occurring on or after July 1, 1988.

Act 285 created new dispositional alternatives to be used by juvenile courts and municipal courts for children found to be in need of protection or services based on "habitual truancy." Under the Act, all public school boards were required to develop a truancy plan, using local planning committees, for responding to the problems of truant children. The Act provided new procedures for notifying parents of habitually truant children and allowed counties, cities, villages and towns to enact ordinances prohibiting habitual truancy. The Act also gave municipal courts concurrent jurisdiction with juvenile courts over habitual truants.

For purposes of these new dispositional alternatives, "habitual truant" was defined as a pupil who is absent from school without an acceptable excuse for either: (1) part or all of five or more days out of 10 consecutive days on which school is held during the school semester; or (2) part or all of 10 or more days on which school is held during a school semester.

Parts of Act 285 specifically relate to proceedings in juvenile court under the Children's Code. Act 285 expanded the different dispositional alternatives available if a judge finds: (1) that a child is in need of protection or services based on habitual truancy; and (2) that the habitual truancy is a result of the child's intentional refusal to attend school, rather than the failure of any person having control of the child to cause a child to attend school regularly. The new dispositional alternatives were:

1. Suspension of the child's driver's license for not less than 30 nor more than 90 days.
2. An order for the child to participate in counseling, community service or a supervised work program.
3. An order for a child to remain at home, except during hours in which the child is attending religious worship or a school program (so-called "home detention").
4. An order for the child to attend a program made available by his or her school district for children at risk.
5. An order for a child to attend one of the educational programs described below.

Act 285 also added new educational service alternatives under the dispositional alternatives available for a child who is adjudged either: (1) delinquent (i.e., found to have violated a state or federal criminal law); or (2) in need of protection or services based on habitual truancy. These alternatives could not be used if the child has exceptional educational needs.

Under these provisions, a court was allowed to order a child to attend any of the following educational programs:

1. A nonresidential educational program, including a program for children at risk, provided by the school district in which the child resides.
2. Pursuant to a contractual agreement with the school district in which the child resides, a nonresidential education program provided by a licensed child welfare agency.
3. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a private, nonprofit, nonsectarian agency that is located in the school district in

which the child resides and that complies with 42 U.S.C. s. 2000d, relating to prohibiting discrimination.

4. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a vocational, technical and adult education (VTAE) district located in the school district in which the child resides.

The Act also required judges to order the school board to disclose the child's pupil records to the agency responsible for supervising the child, to the extent necessary to determine the child's compliance with the order. In addition, the Act directed the judge to order the county department or licensed child welfare agency responsible for supervising the child to disclose, to the educational agency which is providing an educational program, any records or information about the child as necessary to assure the provision of appropriate educational services [ss. 48.125, 48.17 (2), 48.34 (12), 48.345 (2) and 118.16 (1) (a), Stats.].

C. JUVENILE JUSTICE PROVISIONS RELATING TO ALCOHOL AND OTHER DRUG ABUSE (1987 WISCONSIN ACT 339)

1987 Wisconsin Act 339 (effective April 28, 1988) created several provisions relating to juvenile court jurisdiction and procedures involving alcohol and other drug abuse by children. The Act:

1. Created a juvenile alcohol and other drug abuse pilot program to develop juvenile intake and court procedures, described below, under which juvenile courts were permitted to screen and assess children for alcohol and drug abuse-related problems and order new dispositional alternatives for children with needs and problems related to alcohol and other drug abuse [s. 48.547, Stats.]. The Act directed the DHSS to select counties to participate in the pilot program in accordance with request for proposal procedures established by the DHSS. Pilot counties initially received funding from an appropriation of \$806,700 federal funds (FED) to offset the additional costs of implementing the pilot program. Nonpilot counties could elect to implement the new juvenile justice provisions on a pilot basis without receiving additional funding. [1989 Wisconsin Act 31 appropriated additional federal funds in the amount of \$1,088,600 for 1989-90 and \$1,340,000 for 1990-91 for this program. As of the date of this Information Memorandum, there are 11 counties participating in the program: Dane, Dunn, Eau Claire, Fond du Lac, Kenosha, Milwaukee, Outagamie, Portage and Forest-Oneida-Vilas as a unit.]

The Act also required the DHSS to issue a grant to an organization to study the effectiveness of the pilot program.

2. Required the DHSS to develop a multidisciplinary screening instrument to be used by juvenile court intake workers in participating counties to determine if a child is at risk of having needs or problems relating to alcoholism or developing a drug dependency [ss. 48.547 (3) and 48.548, Stats.]. The Act allocated \$10,000 FED to the DHSS in fiscal year (FY) 1988-89 for the purpose of developing the screen and for training juvenile court personnel in the use of the screen and other new juvenile court procedures.

3. Required juvenile court intake workers in participating counties to conduct a multidisciplinary screen of a child in any of the following circumstances:

a. The child is alleged to have committed a violation of the controlled substances laws under ch. 161, Stats.

b. The child is alleged to be delinquent or in need of protection or services and has had at least two adjudications under the state or local underage drinking laws.

c. The child is alleged to have committed any offense which appears to be motivated by the child's need to purchase or otherwise obtain alcohol or other drugs.

d. The child is 12 years of age or older and requests or consents to the screen or agrees to a screen requested by the child's parents.

e. The child is under 12 years of age and the child's parents request the screen.

Under the Act, no child could be compelled to participate in the multidisciplinary screen [s. 48.24 (2) and (2m), Stats.].

4. Created a new juvenile court jurisdictional provision. Under this provision, juvenile courts were given exclusive jurisdiction over a child who is alleged to be in need of protection or services if the child is suffering from an alcohol or other drug abuse impairment, exhibited to a severe degree, for which the child's parent or guardian is unwilling to provide treatment. This provision was applicable statewide, rather than only in participating counties [s. 48.13 (11m), Stats.].

5. Directed the DHSS to develop, by rule, uniform alcohol and other drug abuse assessment criteria to be used by certified treatment facilities in performing alcohol and other drug abuse assessments [s. 48.547 (4), Stats.].

6. Permitted juvenile court intake workers in participating counties to require, as a condition of an informal disposition, a child to obtain an alcohol and other drug abuse assessment if the screen identified the child as being at risk of having needs or problems related to alcohol or other drug abuse. The Act also permitted intake workers to require, as a condition of an informal disposition, a child to participate in an outpatient treatment program or education program if the assessment indicates need for treatment or education [s. 48.245 (2), Stats.].

7. Permitted juvenile courts in participating counties to order alcohol and other drug abuse assessments of children whom the screen identifies as being at risk of having needs and problems related to alcohol or other drug abuse [s. 48.295 (1), Stats.].

8. Permitted juvenile courts in participating counties to order an alcohol and other drug abuse assessment of a parent, guardian or legal custodian of a child whose ability to care for the child is at issue before the court [s. 48.295 (1), Stats.].

9. Permitted juvenile courts in participating counties, in cases where an alcohol and other drug abuse assessment of the child has been conducted, to order the child to obtain treatment, education, or both for needs and problems related to the use or abuse of alcohol beverages or controlled substances [s. 48.34 (12), Stats.].

10. Permitted juvenile courts in participating counties to order a child to participate in alcohol and other drug outpatient treatment or education as a prerequisite to entering into a consent decree, in lieu of an adjudication of delinquency or as an alternative to imposing a forfeiture against a child who has been adjudicated delinquent [s. 48.32 (1r), Stats.].

11. Authorized the juvenile court to order the payment for court-ordered alcohol or other drug abuse services by parents, insurers or other third-party payors or, in pilot counties, by the appropriate county department providing the services [s. 48.361, Stats.].

PART II

MAJOR JUVENILE JUSTICE LAWS
ENACTED DURING THE 1989-90 LEGISLATIVE SESSION

During the 1989-90 Legislative Session, legislation was enacted relating to dispositions available to juvenile courts, creation of new dispositions for offenses relating to alcohol and other drug use and abuse and offenses relating to controlled substances; types of services to be recommended and provided to children and their parents under court order; notification of certain persons upon release of the child from custody; and programs available to children while in juvenile correctional facilities and upon release from juvenile correctional facilities. These proposals were included in 1989 Wisconsin Acts 31, 121, 122 and 336, and are described in this part of the Information Memorandum.

A. 1989-90 BIENNIAL BUDGET ACT (1989 WISCONSIN ACT 31)

As part of the 1989-90 Biennial Budget Act (1989 Wisconsin Act 31), the following provisions related to juvenile justice were enacted:

1. Integrated Service Plans for Children with Severe Disabilities

Act 31 created a requirement that, before a court issues a final dispositional order for a child adjudged to be delinquent or in need of protection or services, a court was required to designate an agency to submit a report containing, among other things, a description of the specific services or continuum of services which the agency is recommending the court to order for the child or family. Under the Act, this description of services had to include a statement whether or not the child should receive an "integrated service plan." The Act defined "integrated service plan" as a plan for treatment, education and support services for an eligible child with severe disabilities and the child's family. These include children whose mental, physical, sensory, behavioral, emotional or developmental disabilities, or whose combination of multiple disabilities, is severe, persistent and causes substantial limitations in the child's ability to function. If the court report recommended that the child is in need of an integrated service plan, the judge was permitted to order that an integrated service plan be developed and implemented, if an integrated service program had been established in that county [ss. 48.33 (1) (c) and 48.34 (6m), Stats.].

2. Combining Available Dispositions

Under prior law, if a judge adjudicated a child delinquent and ordered a child to be placed in a juvenile correctional facility, the court could not also order other dispositional alternatives, such as restitution, placing the child under home or other supervision, restricting the child's motor vehicle operating privileges or placing a child in a supervised work program. Under Act 31, an order placing a child in a juvenile correctional facility could be combined with an order requiring the child to make restitution or repair damage to property [s. 48.34 (intro.), Stats.].

3. Possession of Controlled Substances in Certain Cases

Act 31 created new dispositional alternatives for courts if the court finds that the child is delinquent because the child possessed a controlled substance within 1,000 feet of a state, county, city, village or town park, a swimming pool, a youth center, a community center, any private or public school premises or a school bus. The Act required a judge, under any of these circumstances, to issue an order requiring the child to participate in 100 hours of a supervised work program or community service and revoke the child's driver's license for a period not less than six months nor more than two years [s. 48.34 (7m), Stats.].

4. Offenses and Penalties Relating to Underage Drinking

A number of changes were made by Act 31 to laws relating to underage drinking. Act 31 created a new penalty structure for offenses committed by children relating to underage drinking, as well as offenses committed by persons of legal drinking age relating to falsifying identification.

A number of subsequent changes were made to these provisions under 1989 Wisconsin Acts 121 and 336; therefore, the cumulative effects of these changes are described under Part II, B, 3, below.

5. Notification of Release of Child from Custody

Act 31 created a new requirement that the DHSS notify local agencies of the release of a child from a juvenile correctional facility or from an aftercare placement. Specifically, the DHSS was required to notify all of the following local agencies in the community in which the child would reside upon release, at least 15 days prior to the date of his or her release: (a) law enforcement agencies; (b) the school district; (c) county departments of social services; and (d) mental health and

developmental disabilities boards. The DHSS also was required to notify any known victim of an act for which the child had been found delinquent of the release, if the victim has requested notification. Act 31 also specified that failure of the DHSS to provide the required notification could not jeopardize the child's release from the juvenile correctional facility or from an aftercare placement [s. 48.51, Stats.].

6. Departmental Authority Over Juvenile Corrections

Act 31 created a new Department of Corrections (DOC) and transferred the juvenile correctional functions from the DHSS to the new DOC, effective January 1, 1990. However, the Legislature subsequently enacted Act 107, which transferred juvenile correctional-related positions back to DHSS from the new DOC. The only juvenile correctional function retained by the DOC was the provision of health-related services to persons in the juvenile correctional facilities.

In transferring juvenile-related functions back to DHSS, Act 107 also made some organizational changes within the DHSS. Act 107 created a new division within the DHSS to oversee juvenile-related duties and functions. The new Division of Youth Services was given oversight over juvenile correctional facilities and juvenile aftercare services, which were formerly administered by the DHSS's Division of Corrections. The new Division also was required to administer the Youth Aids program, formerly administered by the Division of Community Services. Finally, the Juvenile Offender Review Program, the administrative body which makes program planning and release decisions with respect to youths in secure corrections, was shifted from the Office of the Secretary of DHSS to the new Division of Youth Services.

B. CHANGES RELATING TO ALCOHOL AND CONTROLLED SUBSTANCES VIOLATIONS (1989 WISCONSIN ACTS 121 AND 336)

Act 121, relating to penalties for drug law violations, was enacted as part of the October 1989 Special Session of the Legislature. Some of the provisions of Act 121, relating to juvenile alcohol and controlled substances violations, were further amended by 1989 Wisconsin Act 336, the "budget modification" act. Act 121 made the following changes relating to juvenile justice, generally effective on January 31, 1990:

1. Drug Paraphernalia

Act 121 created new offenses relating to drug paraphernalia, based on the Model Drug Paraphernalia Act developed by the Drug Enforcement

Administration of the U.S. Department of Justice. Offenses created under Act 121 included the use of drug paraphernalia or possession with the sole intent to use paraphernalia illegally; the manufacture or delivery of drug paraphernalia knowing it will be solely used illegally; the delivery of drug paraphernalia to a child three or more years younger than the defendant; and advertising drug paraphernalia. Under the Act, children who commit these drug paraphernalia offenses were subjected to the citation and disposition system currently used for handling certain juvenile offenses related to alcohol beverages. Under the system, law enforcement officers were permitted to initiate a juvenile court proceeding for a violation of paraphernalia offenses by issuing citations similar to traffic citations. For disposition of these offenses, a judge was required to impose one or more penalties involving a monetary forfeiture, suspension of motor vehicle operating privileges or participation in a supervised work program.

Act 121 also authorized a city, village or town to enact a drug paraphernalia ordinance that prohibits the same conduct prohibited under the provisions in the Act relating to: (a) use, or possession with the sole intent to use, drug paraphernalia by a person under 18 years of age; (b) delivery, possession with intent to deliver, or manufacture with intent to deliver, drug paraphernalia by a person under 18 years of age; and (c) delivery of drug paraphernalia by a person over 18 years of age to a person under 18 years of age who is at least three years younger than the violator.

These provisions take effect on August 1, 1990 [ss. 161.571 to 161.577, Stats.].

2. Use of Electronic Communication Devices on School Premises

Act 121 created a new provision requiring school boards to adopt rules prohibiting pupils from using or possessing electronic communication devices (i.e., an electronic paging or two-way communication device) while on school premises. The school board's rules could provide exceptions for devices which the school board, or its designee, determines are used or possessed by a pupil for a medical, school, education, vocational or other legitimate use. The school board was required to: (a) distribute copies of the rules to students annually; and (b) submit a copy of the rules to the Department of Public Instruction (DPI) when it is first adopted and, thereafter, whenever any changes are made to the rules [s. 118.253, Stats.].

3. Alcohol and Controlled Substances Violations Committed by Children

a. Background

Under the law prior to the enactment of 1989 Wisconsin Act 121, as affected by 1989 Wisconsin Act 336, a juvenile court was required to order one or any combination of the following penalties when it found that a child possessed or consumed intoxicating liquor or beer in violation of the law:

(1) For a first violation, a forfeiture of not more than \$50, suspension of the child's operating privilege for 30 to 90 days or participation in a supervised work program.

(2) For a violation committed within 12 months of a previous violation, a forfeiture of not more than \$100, suspension of the child's operating privilege for one year or participation in a supervised work program.

(3) For a violation committed within 12 months of two previous violations, a forfeiture of not more than \$500, revocation of the child's operating privilege for two years or participation in a supervised work program.

The following penalties applied to children who illegally procured alcohol beverages, illegally entered premises licensed to sell alcohol beverages or falsely represented their age to obtain alcohol beverages:

(1) For a first violation, any one or combination of the following: a forfeiture of not less than \$250 nor more than \$500; suspension of the person's motor vehicle operating privilege for 30 to 90 days; or participation in a supervised work program.

(2) For a violation committed within 12 months of a previous violation, any one or combination of the following: a forfeiture of not less than \$300 nor more than \$500; suspension of the person's motor vehicle operating privilege for one year; or participation in a supervised work program.

(3) For a violation committed within 12 months of two or more previous violations, any one or combination of the following: a forfeiture of \$500; revocation of the person's motor vehicle operating privilege for two years; or participation in a supervised work program [ss. 48.344 (2b) and 125.07 (4) (bs), as created by 1989 Wisconsin Act 31].

With the agreement of the child, the court could stay the execution of the penalty order for a second or subsequent offense if the child: (1) submitted to an alcohol or other drug abuse assessment at an approved treatment facility; or (2) participated in an outpatient alcohol abuse treatment or program at an approved facility if the assessment recommends treatment; or (3) participated in a court-approved alcohol abuse education program.

b. Act 121

(1) Alcohol Beverages and Drug Paraphernalia Violations

Act 121:

(a) Revised the penalties for violations of alcohol beverages procurement and possession laws to:

(i) Delete the license suspension provision (30 to 90 days) for a first offense alcohol beverage possession or consumption offense by a child. However, this license sanction was restored in 1989 Wisconsin Act 336.

(ii) Change the license suspension option for an offense occurring within 12 months of a previous violation from one year to up to one year and to change the license revocation option for an offense occurring within 12 months of two or more previous violations from two years to up to two years.

(b) Applied the same sanctions (i.e., forfeitures, license suspensions or revocations and participation in supervised work programs) as are applicable to alcohol beverage possession or consumption to certain drug paraphernalia offenses committed by children (i.e., possession, manufacture or delivery, possession with intent to deliver or delivery of drug paraphernalia to a minor).

(c) As affected by 1989 Wisconsin Act 336, permitted the court to stay the execution of the penalty order for a first offense as well as a second or subsequent offense if the child submits to an alcohol or other drug abuse assessment; or participates in an alcohol or other drug abuse (underlined phrase added by Act 336) treatment or program; or participates in a court-approved alcohol or other drug abuse (underlined phrase added by Act 336) education program.

(2) Controlled Substances Violations

Act 121 specified that, in addition to the dispositions provided under current law for delinquency under ch. 48, Stats. (the Children's

Code), the court may impose forfeitures and, for certain offenses, license sanctions on children who violate controlled substances laws involving Schedule I or II controlled substances [e.g., narcotics, cocaine, crack, lysergic acid diethylamide (LSD), amphetamines, methamphetamines and tetra hydrocannabinols (THC, the active ingredient in marijuana)].

(a) Manufacture, delivery or possession with intent to deliver. Under the Act, in addition to other dispositions available for delinquency, illegal manufacture or delivery of any of these controlled substances, or possession of any of these controlled substances with intent to manufacture or deliver the substance, subjected a child to the following penalties:

(i) For a first violation, a forfeiture of not less than \$250 nor more than \$500. There is no provision for suspension of the child's operating privilege for this offense.

(ii) For a violation committed within 12 months of a previous violation, a forfeiture of not less than \$300 nor more than \$500 or suspension of the child's operating privilege for up to one year, or both.

(iii) For a violation committed within 12 months of two previous violations, a forfeiture of \$500 or revocation of the child's operating privilege for up to two years, or both.

(b) Possession. Under the Act, in addition to other dispositions available for delinquency, the illegal possession of any controlled substances subjected a child to the following penalties:

(i) For a first violation, a forfeiture of not more than \$50. There is no provision for suspension of the child's operating privilege for this offense.

(ii) For a violation committed within 12 months of a previous violation, a forfeiture of not more than \$100 or suspension of the child's operating privilege for up to one year, or both.

(iii) For a violation committed within 12 months of two previous violations, a forfeiture of not more than \$500 or revocation of the child's operating privilege for up to two years, or both.

The Act specified that any license suspension or revocation would have to run concurrently with any other license suspension or revocation imposed as a disposition under the Children's Code.

(c) Stay of order; assessment, education or treatment. Under the Act, the court was authorized, with the agreement of the child, to stay the execution of a dispositional order set forth in item (1) or (2), above, and enter an order requiring the child to do any of the following: (i) submit to an alcohol and other drug abuse assessment at an approved treatment facility; (ii) participate in an outpatient alcohol or other drug abuse treatment program, if the assessment recommends treatment; or (iii) participate in a court-approved alcohol or other drug abuse education program (underlined phrases added by 1989 Wisconsin Act 336). If the child elects not to obtain the assessment, education or treatment or does not comply with these options, the court must order the original disposition.

4. Juvenile Court Orders Applicable to Adults

a. Background

Under current law, a juvenile court may make orders with respect to the conduct of any adult if it appears that the adult has been guilty of contributing to, encouraging or tending to cause a child to be delinquent or in need of protection or services. These may include orders determining the ability of the person to provide for the maintenance or care of the child. The adult may not be subject to an order unless he or she has first been given an opportunity to be heard in court. Failure to comply with the court's order may subject the adult to proceedings for contempt of court [s. 48.45, Stats.].

b. Act 121

Act 121 granted new authority to juvenile courts to make orders applicable to adults. Under the Act, in any proceeding in which a child has been adjudicated delinquent or in need of protection or services for the use or abuse of a controlled substance or alcohol beverage and the court has ordered the child to participate in outpatient alcohol or drug treatment or education, the juvenile court judge was permitted to order the child's parent, guardian or legal custodian to do any of the following:

(1) Participate in an approved outpatient alcohol and other drug abuse treatment program; or

(2) Participate in a court-approved alcohol or drug education program.

The Act required the parent to be given an opportunity to be heard in court before the order is issued.

The Act specified that:

(1) Any person who failed to comply with the court order could be subject to contempt of court proceedings; and

(2) If a child accepted voluntary participation in a court-approved drug abuse education program as an alternative to immediate imposition of a penalty, the court could order the child's parent, guardian or legal custodian to also participate in a court-approved education program.

C. ALCOHOL AND OTHER DRUG PREVENTION AND TREATMENT PROGRAMS RELATING TO JUVENILE JUSTICE (1989 WISCONSIN ACT 122)

1989 Wisconsin Act 122 was also enacted as part of the October 1989 Special Session relating to drugs. Act 122 included the following provisions that specifically apply to juvenile justice programs:

1. Youth Aids

Act 122 provided \$1,000,000 general purpose revenue (GPR) in 1989-90 and \$2,000,000 GPR in 1990-91 to increase funding to counties, through the Youth Aids program, for alcohol and other drug abuse treatment programs.

2. Transitional Education for Delinquent Youths

Act 122 provided \$100,000 GPR in 1990-91 to the DPI to be provided to the Milwaukee Public Schools for counselors to provide services to delinquent youths returning to the school system from the juvenile correctional facilities or child caring institutions. The Act also required the State Superintendent to conduct an evaluation of the effectiveness of the program and to submit the evaluation to the Governor and the Legislature by January 1, 1992.

3. Intensive Juvenile Aftercare Pilot Program

Act 122 provided \$525,000 GPR in 1990-91 to DHSS to create, on a pilot basis, an intensive aftercare program for children released from the juvenile correctional facilities or child caring institutions.

Counties receiving funds under the program were required to provide the following services: (a) an aftercare case manager to act as a liaison between the program and the juvenile correctional facility or child caring institution, before the child participating in the pilot

program is released on aftercare; (b) an aftercare plan for each pilot program participant before the child is released on aftercare; and (c) at least one face-to-face contact, per day, per participant, for a period of not less than 90 days for each participant. Each grant recipient was required to specify the manner in which the county will ensure that services would be available to program participants, including school tutoring and other educational services, vocational training and counseling, alcohol and other drug abuse outpatient treatment and education, family counseling, employment services, recreational opportunities and assistance with independent living arrangements. The DHSS was required to conduct, or contract for, an evaluation of each pilot program, including a one-year follow-up period for each program participant. Also, a juvenile secure inpatient alcohol and other drug abuse treatment program (i.e., the Anchorage Program at Winnebago Mental Health Institute) would be eligible to receive funding under this program. Youths participating in an aftercare pilot program upon release from this program would not be required to be adjudicated delinquent.

4. Juvenile Early Intervention Program

Act 122 provided \$500,000 GPR in 1990-91 to DHSS to award grants to selected counties to provide early intervention programming for "high-risk youths." Under the Act, a "high-risk youth" was defined as a child, age 8 to 11, who:

a. Had been found to be in need of protection or services because the child committed an act which, if committed by an adult, would be punishable by a sentence of six months or more; and

b. Received a minimum score, as determined by DHSS, on a risk assessment instrument, directed at identifying those youths who are at high risk of later involvement in serious delinquent acts. Specific factors that had to be included in the risk assessment instrument include the youth's prior delinquent behavior, prior drug or alcohol abuse, family environment, school disciplinary problems, peer relationships and the presence of older siblings who are serious offenders. The county was required to ensure the confidentiality of a youth's risk assessment results, including ensuring that these results will not be disclosed to law enforcement officials.

Under the Act, a county participating in the program was required to use the funding to assess youths to determine whether they are high-risk youths eligible for new programming and provide participating high-risk youths with intensive school and school-related programming and structured afterschool, evening, weekend and summer activities, including counseling, recreation and tutoring. In providing these programs and services, the

county was required to give priority to those youths receiving the highest scores on the risk assessment instrument. The county was also required to specify how the program is to be coordinated with the children at risk program and specify how DHSS, counties, DPI and school districts are to coordinate services. The Act also included an evaluation component in the program.

5. Juvenile Correctional Programs

Act 122 provided \$203,400 GPR and \$203,400 program revenue (PR) and 4.0 PR positions in 1990-91 to do all of the following: (a) increase staff at one cottage at each juvenile correctional institution to provide services for youths with alcohol and other drug abuse problems; (b) provide drug testing of and treatment for children adjudged delinquent; and (c) provide staff training.

PR:ksm:kja:las;kja