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**MAJOR JUVENILE JUSTICE AND DELINQUENCY LEGISLATION,
ENACTED DURING THE SPRING 1994 LEGISLATIVE SESSION
(1993 WISCONSIN ACTS 228, 244, 318, 377 AND 385)**

Information Memorandum 94-9

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**U.S. Department of Justice
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*Information Memorandum 94-9**

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INTRODUCTION

This Information Memorandum describes *major* legislation relating to juvenile justice and juvenile delinquency, enacted into law during the Spring 1994 Legislative Session (i.e., 1993 Wisconsin Acts 228, 244, 318, 377 and 385).

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

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PART I

1993 WISCONSIN ACT 228, RELATING TO DISCLOSURE OF CERTAIN INFORMATION REGARDING A CHILD ADJUDICATED DELINQUENT FOR COMMITTING HOMICIDE, ARMED ROBBERY OR SEXUAL ASSAULT

This Part of the Memorandum analyzes 1993 Wisconsin Act 228, relating to disclosure of certain information regarding a child who has been adjudicated delinquent for committing homicide, armed robbery or sexual assault. *Act 228 took effect on April 23, 1994.*

A. BACKGROUND

Under current law, subject to certain exceptions, records of the juvenile court (i.e., the court assigned to exercise jurisdiction under ch. 48, Stats., the Children's Code) are *not open* to inspection and their contents may not be disclosed except by order of the juvenile court under s. 48.396 (2), Stats.

B. 1993 WISCONSIN ACT 228

1993 Wisconsin Act 228 specifies that, notwithstanding the current confidentiality provisions in s. 48.396 (2), Stats., *upon request*, a court is *required* to disclose to the requester: (1) the *name and age of a child* who has been adjudicated delinquent for committing one or more of the following violations; (2) the *nature of the violation* committed by that child; and (3) the *delinquency disposition* under s. 48.34, Stats., imposed on that child as a result of that violation:

1. First-degree intentional homicide [s. 940.01, Stats.].
2. First-degree reckless homicide [s. 940.02, Stats.].
3. Felony murder [s. 940.03, Stats.].
4. Second-degree intentional homicide [s. 940.05, Stats.].
5. Second-degree reckless homicide [s. 940.06, Stats.].
6. First- or second-degree sexual assault [s. 940.225 (1) and (2), Stats.].
7. Armed robbery [s. 943.32 (2), Stats.].

The Act specifies that the requester may *further disclose* the information *to anyone*.

The Act *first applies* to children who are adjudicated delinquent on the effective date of the Act (i.e., April 23, 1994).

PART II

1993 WISCONSIN ACT 244, RELATING TO JURISDICTION OVER A CHILD WHO IS ACCUSED OF VIOLATING A STATE CRIMINAL LAW AFTER THE JUVENILE COURT HAS WAIVED ITS JURISDICTION OVER THE CHILD FOR A PREVIOUS VIOLATION

This Part of the Memorandum analyzes 1993 Wisconsin Act 244, relating to jurisdiction over a child who is accused of violating a state criminal law after the juvenile court has waived its jurisdiction over the child for a previous violation. *Act 244 takes effect on January 1, 1995.*

A. BACKGROUND

Under current law (i.e., the law until January 1, 1995, the effective date of Act 244), a juvenile court may waive its jurisdiction over a child who is alleged to have committed first-degree intentional or first-degree reckless homicide on or after the child's 14th birthday or a child who is alleged to have violated any state criminal law on or after the child's 16th birthday, only after a hearing at which the judge finds:

1. "Prosecutive merit," that is, reasonable grounds to believe that the child has committed the offense charged; and
2. That it would be contrary to the best interests of the child or of the public to proceed in juvenile court based on such criteria as the personality and prior record of the child, the seriousness of the alleged offense and the adequacy of the treatment available for the child in the juvenile justice system [s. 48.18, Stats.].

B. 1993 WISCONSIN ACT 244

1993 Wisconsin Act 244 specifies that in the absence of evidence to the contrary, the juvenile court *must presume* that it would be contrary to the best interests of the child and of the public to hear the case in juvenile court if *both* of the following apply:

1. The child is alleged to have violated *any state criminal law* (i.e., any state felony or misdemeanor violation) on or after the child's *16th birthday*; and
2. The court has waived its jurisdiction over the child *for a previous violation*.

Act 244 specifies that the Act *first applies* to offenses allegedly committed on the effective date of the Act (January 1, 1995), but *does not preclude the counting* of a waiver of juvenile court jurisdiction under s. 48.18, Stats., granted *before the effective date* of the Act for the purpose of waiving juvenile court jurisdiction, as specified in the Act. In other words, if a child has been

waived to adult court for a state criminal law violation in 1992, that 1992 waiver would apply as a "previous waiver" for purposes of the new law.

PART III

1993 WISCONSIN ACT 318, RELATING TO ISSUING CHILD ABUSE AND HARASSMENT TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS AGAINST CHILDREN WHO PERPETRATE CHILD ABUSE OR HARASSMENT

This Part of the Memorandum analyzes 1993 Wisconsin Act 318, relating to child abuse and harassment temporary restraining orders and injunctions against children who perpetrate child abuse or harassment. *Act 318 took effect on April 30, 1994.*

A. BACKGROUND

1. Child Abuse Restraining Order and Injunction

Under current law, a *circuit court or a juvenile court must* issue a temporary restraining order (TRO) and may issue an injunction ordering a person to avoid the residence of a *child abuse victim* and to avoid contact with a child abuse victim if the court finds reasonable grounds to believe that the person has engaged in or, based on prior conduct, may engage in abuse of the child abuse victim. *Under the law prior to Act 318, a child abuse TRO and injunction could only have been issued against an adult.*

2. Harassment Restraining Order and Injunction

Under the law prior to Act 318, a *circuit court, but not a juvenile court*, was permitted to issue a TRO and injunction ordering a person to cease the *harassment* of another person if the court found reasonable grounds to believe that the person with intent to harass or intimidate had subjected, or threatened or attempted to subject, another person to physical contact or has engaged in a course of conduct to harass or intimidate another person without legitimate purpose.

B. WISCONSIN ACT 318

1993 Wisconsin Act 318:

1. *Child abuse restraining order and injunction.* Permits the *juvenile court* to issue a child abuse TRO and injunction *against a child.*
2. *Harassment restraining order and injunction.* Vests the *juvenile court* with jurisdiction to issue a *harassment* TRO and injunction *against a child.*

PART IV

1993 WISCONSIN ACT 377, RELATING TO CREATION OF A YOUTHFUL OFFENDER PROGRAM AND A YOUTH VILLAGE PROGRAM, MAKING VARIOUS OTHER JUVENILE JUSTICE CHANGES AND MAKING APPROPRIATIONS

This Part of the memorandum analyzes 1993 Wisconsin Act 377, relating to creation of a youthful offender program and a youth village program, making various other juvenile justice changes and making appropriations.

Unless otherwise specifically noted in the following analysis of Act 377, provisions in Act 377 take effect on December 1, 1995.

A. KEY PROVISIONS OF 1993 WISCONSIN ACT 377

The key provisions of 1993 Wisconsin Act 377 do the following:

1. Youthful offender program. Establish a youthful offender program in the Department of Corrections (DOC) and authorize DOC to construct or remodel 250 secure youthful offender beds for the program.
2. Youth village program. Provide funding for the planning and development of a youth village program to provide a residential alternative education program for certain pupils whose home or social environment seriously interferes with their educational progress.
3. Juvenile boot camp program. Provide funding and positions in the Department of Health and Social Services (DHSS) to plan and implement a juvenile boot camp program.
4. Early and intensive intervention services. Provide funding to distribute to counties for early and intensive intervention services for juvenile offenders.
5. Mental health beds for juveniles. Authorize the construction and remodeling of 35 secure mental health beds for juveniles at Merdota Mental Health Institute.
6. Department of Health and Social Services review of types of facilities and programs needed. Require DHSS to review what types of secured juvenile correctional facilities and programs are needed in the state.
7. Holdover rooms. Allow "holdover rooms" (as defined in the Act) to be located in a public building in which there is a jail or other facility for the detention of adults if certain criteria are met.

8. **Intensive residential aftercare pilot program.** Establish an intensive residential aftercare pilot program for certain children released from a secured juvenile correctional facility.

9. **Juvenile justice issues study committee.** Create a Governor's committee to study juvenile justice and delinquency issues under ch. 48, Stats., the Children's Code.

10. **Joint Legislative Council study.** Request the Joint Legislative Council to study the Children's Code and the resources available in the state to determine their effectiveness in addressing the needs of children in need of protection or services (CHIPS) and their families.

11. **Juvenile court orders applicable to parents.** Authorize a juvenile court to order a parent of a juvenile adjudicated delinquent or a child in need of protection or services to comply with any conditions determined by the court to be necessary for the child's welfare, including specified outpatient treatment or services.

12. **Basic skills instruction in jail and prison.** Provide funding for grants to vocational, technical and adult education (VTAE) district boards to provide basic skills instruction in jails and prisons.

13. **Law School prosecution intern program.** Provide funding for the University of Wisconsin (UW)-Madison Law School prosecution intern program.

14. **Truancy Abatement and Burglary Suppression Program.** Provide additional state funding for the Milwaukee Public Schools for the Truancy Abatement and Burglary Suppression (TABS) Program.

B. GENERAL BACKGROUND ON CURRENT LAW RELATING TO 1993 WISCONSIN ACT 377

Under current law, a juvenile court may waive its jurisdiction over a child alleged to have violated any state criminal law on or after the child's 16th birthday. In addition, a juvenile court may waive its jurisdiction over any child who is alleged to have committed, on or after the child's 14th birthday, any of the following offenses: (1) first-degree intentional homicide; (2) attempted first-degree homicide; (3) second-degree intentional homicide; (4) first-degree reckless homicide; (5) second-degree reckless homicide; (6) first-degree sexual assault; (7) kidnapping; (8) taking hostages; (9) drug manufacturing or delivery; (10) armed burglary; or (11) a felony offense committed at the request of, or for the benefit of, a criminal gang.

In 1993 Wisconsin Act 98 (the Omnibus Crime Act enacted in the Fall 1993 Legislative Session), an automatic waiver provision was established which specified that a child accused of committing aggravated assault or battery while placed in a secured juvenile correctional facility is subject to the original jurisdiction of the adult criminal court, rather than the jurisdiction of the juvenile court. The sentence for a child convicted of committing such a battery or aggravated assault is a presumptive minimum sentence of not less than three years or five years, respectively.

Children who are waived into adult court and sentenced to prison upon conviction but who are under age 16 at the time of sentencing must be held in a juvenile correctional facility, rather than a prison. However, the DHSS and the DOC may agree to place a child under 16 years of age in a prison based on the child's prior record or program needs.

If a child is waived to adult criminal court, the child is then guaranteed all of the procedural and due process requirements provided for criminal proceedings, including bail and the right to a jury trial [s. 48.18, Stats.].

C. DETAILED DESCRIPTION OF PROVISIONS OF 1993 WISCONSIN ACT 377

1. Youthful Offender Program

a. Background

Under current law, beginning on July 1, 1994, DHSS must administer a ***juvenile corrective sanctions program*** for children who have been adjudicated delinquent and placed in a secured juvenile correctional facility. Under the juvenile corrective sanctions program, DHSS places a participant in the community, provides intensive surveillance of the participant, purchases community-based treatment for the participant and may purchase or provide electronic monitoring for a participant.

Also under ***current law***, a juvenile court may order a child who has been adjudicated delinquent to participate in an ***intensive supervision program*** administered by a county department of human services or social services (county department). Under an intensive supervision program, a county department must purchase or provide intensive surveillance and community-based treatment services for program participants and may purchase or provide electronic monitoring for program participants.

Under both the corrective sanctions program and an intensive supervision program, a child who violates a condition of his or her participation in the program may be taken into secure custody and held for up to 72 hours, without a hearing, as a sanction for violating that condition. In addition, a child who runs from his or her placement under the corrective sanctions program is considered to have escaped from custody [ss. 48.533 and 48.534, Stats.].

b. 1993 Wisconsin Act 377

(1) **Creation and Funding of Program.** 1993 Wisconsin Act 377 creates a youthful offender program, ***beginning December 1, 1995***, administered by ***DOC*** which would provide a youthful offender facility and juvenile intensive sanction services to youthful offenders committed to the DOC by juvenile courts.

The Act provides \$24,275,000 in general obligation (GO) bonding for the construction of 250 secure beds in at least two facilities (with 200 beds in southeast Wisconsin) for participants in the youthful offender program.

(2) **Eligibility for Placement in Program.** Act 377 *permits* a juvenile court, as a delinquency disposition under s. 48.34, Stats., to transfer legal custody of a child so adjudicated to the DOC for participation in the youthful offender program, *but only if all of the following apply*:

(a) The child is **16 years of age or older** and meets both of the following conditions:

1. The child has been *adjudicated delinquent* for an offense that would be a **Class A, B, C or D felony** if committed by an adult (i.e., crimes punishable by a maximum imprisonment term of five years to life for adults); *and*

2. The child has been adjudicated delinquent or found to be in need of protection or services (CHIPS) *previously* for committing an act that would be a felony if committed by an adult.

(b) The child has been subject to *one or more previous dispositional orders* (either CHIPS or delinquency) and **\$30,000 or more** has been expended on providing services for the child under the previous dispositional orders *since the child attained the age of 12 years*;

(c) The judge finds that the only other disposition that would be appropriate for the child would be placement of the child at a secured juvenile correctional facility (e.g., Ethan Allen); *and*

(d) The DOC recommends placement of the child in the youthful offender program in a required written report. The Act specifies that if it appears that a child may be suitable for participation in the youthful offender program, a juvenile court must order DOC to submit, prior to the child's disposition, a *written report* analyzing the child's suitability for participation in the program and recommending whether the child should be placed in the program.

(3) **Program Administration and Design.** The DOC is required to provide supervision, care and rehabilitation for a child ordered by the juvenile court to participate in the youthful offender program *under a five-year commitment to DOC*. However, as noted in item (4), below, children who are committed to the program for an offense that would be a **Class A felony** if committed by an adult (i.e., a felony punishable by a maximum term of life imprisonment; e.g., first-degree intentional homicide; carjacking resulting in death, kidnapping or taking hostages under certain circumstances) are required to be placed in the program until they are **25 years old**.

The DOC must design the program to provide *all of the following*:

(a) Supervision, care and rehabilitation that is *less costly* than ordinary placement in a secured juvenile correctional facility and *more restrictive* than supervision in the community;

(b) *Component phases* that are *intensive* and *highly structured*; and

(c) A series of component phases for each participant that is based on public safety considerations and the participant's need for supervision, care and rehabilitation.

(4) *Component Phases of Program.* Under the youthful offender program, the DOC provides a series of intensive and highly structured component phases for each participant that is based on public safety considerations and the participant's need for supervision, care and rehabilitation.

Act 377 requires DOC to provide each participant with one or more of the following sanctions:

(a) Subject to item (b), below, placement in a secured juvenile correctional facility or, if the participant is *18 years of age or older*, a state adult correctional institution, for a period of *not more than three years*;

(b) If the participant has been adjudicated delinquent for committing an act that would be a Class A felony (i.e., a felony punishable by life imprisonment) if committed by an adult, placement in a secured juvenile correctional facility or, if the participant is *18 years of age or older*, a state adult correctional institution. The participant is required to remain in the facility or institution *until he or she reaches 25 years of age, unless* the participant is released sooner, subject to a *mandatory minimum period of confinement of not less than one year*;

(c) Intensive or other field supervision;

(d) Electronic monitoring;

(e) Alcohol and other drug abuse (AODA) outpatient treatment and services;

(f) Mental health treatment and services;

(g) Community services;

(h) Restitution;

(i) Transitional services for education and employment; and

(j) Other programs as prescribed by DOC.

The Act authorizes DOC to: (a) provide the sanctions in any order; (b) provide more than one sanction at a time; and (c) return a participant to a previously used sanction without a hearing. A participant is *not* entitled to a hearing regarding the DOC's exercise of authority under this new provision unless the DOC provides for a hearing by administrative rule.

(5) **Institutional Status.** Act 377 specifies that a participant in the youthful offender program:

(a) Is in the legal custody and under control of DOC for the entire three years of the juvenile court order, unless the participant has committed the equivalent of a Class A felony, in which case the order is extended until the participant is *25 years old*.

(b) Is subject to the rules and discipline of the DOC. If a youth in community placement (i.e., items (4) (c) to (j), above) violates conditions of participation in the program, DOC may, *without a hearing*, take the participant into custody and return him or her to the youthful offender facility or, if the participant is 18 years or older, to a state prison.

The Act provides that any intentional failure of a participant to remain within the extended limits of his or her placement while participating in the youthful offender program or to return within the time prescribed by the Administrator of the Division of Intensive Sanctions is considered a criminal escape under s. 946.42 (3) (c), Stats.

(6) **Parole, Discharge and Transfer.** The Parole Commission may grant a participant in the program *parole* [under s. 304.06, Stats.] *at any time* after the participant has completed *two years* of participation in the program. Parole supervision of the participant must be provided by DOC.

After three years, DOC may discharge the participant from the program *and from DOC custody and control*. Under the Act, DOC may be able to *administratively transfer* youthful offenders to adult programs, including adult correctional facilities (if the youth is age 18 or older), adult intensive sanctions and adult parole.

The Act specifies that the DOC may not transfer legal custody and control over a participant in the youthful offender program to DHSS.

Under *current law*, in general, once a juvenile court transfers custody of a child adjudicated delinquent to *DHSS* for a secured correctional placement, the Office of Juvenile Offender Review (OJOR) in *DHSS* is authorized to make all placement decisions with respect to the child, including release from secure custody. A joint planning and review committee, consisting of representatives from the juvenile correctional institution, the county and OJOR, makes planning, placement and release recommendations to OJOR for each youth. *Under the Act, placement and release decisions with respect to youthful offenders are made by DOC and the Parole Commission.*

(7) **Program Rules.** Act 377 requires DOC to promulgate administrative rules to implement the program.

(8) **Purchase of Services.** Act 377 authorizes DOC to contract with DHSS, a county or any public or private agency for the purchase of goods, care and services for participants in the program.

(9) **Minority Hiring.** Act 377 specifies that, in the selection of classified service employees for a secured correctional facility operated by DOC for the placement of Program participants, the appointing authority must make every effort to use the expanded certification program under s. 230.25 (1n), Stats., or rules of the Administrator of the Division of Merit Recruitment and Selection in the Department of Employment Relations (DER) to ensure that the percentage of employees who are minority group members approximates the percentage of the children placed at that secured correctional facility who are minority group members. The Administrator is required to provide guidelines for the administration of this selection procedure.

For purposes of this minority hiring provision, "minority group member" means a Black, a Hispanic or an American Indian, which are further defined in the Act as follows:

(a) "American Indian" means a person who is enrolled as a member of a federally recognized American Indian tribe or band or who possesses documentation of at least 1/4th American Indian ancestry or documentation of tribal recognition as an American Indian.

(b) "Black" means a person whose ancestors originated in any of the Black racial groups of Africa.

(c) "Hispanic" means a person of any race whose ancestors originated in Mexico, Puerto Rico, Cuba, Central America or South America or whose culture or origin is Spanish.

(10) **Modifications to Waiver Provisions; Written Report Required.** Act 377 modifies the criteria which a juvenile court must consider when deciding whether to waive a child into adult court to include *the suitability of the child for placement in the youthful offender program or in the adult intensive sanctions program*. Under the Act, if the child appears to be suitable for either the youthful offender program or the adult intensive sanctions program, a judge must order DOC to submit a written report analyzing the child's suitability for participation in those programs and recommending whether the child should be placed in either of the programs. [Under *current law*, in general, a juvenile court cannot request a written report regarding a child's suitability for adult intensive sanctions prior to deciding whether to waive the child into adult court.]

(11) **Change of Placement, Revision, Extension and Violation of Dispositional Orders for Youthful Offenders.** Act 377:

(a) Specifies that current provisions relating to the change in placement and revision of dispositional orders under the Children's Code [i.e., ss. 48.357 and 48.363, Stats.] *do not apply* to a participant in the program.

(b) Prohibits a juvenile court from extending a dispositional order to transfer legal custody of a child to DOC under the program if the child is 18 years or older when the original order terminates.

(c) Provides that if a youth in community placement violates conditions of participation, DOC may, *without a hearing*, take the participant into custody and return him or her to the youthful offender facility or, if the youth is 18 years or older, to a state prison.

(d) Prohibits DOC from transferring legal custody and control over a participant in the program to DHSS.

(12) *Effects of Program on Certain Federal Grants.* According to a recent Legislative Fiscal Bureau document:

The Juvenile Justice Delinquency Prevention Act (JJDPa) requires states, in order to receive federal formula grants for juvenile justice, to submit a state plan providing that juveniles found delinquent shall not: (a) be confined in any institution in which they have contact with adult persons incarcerated because they have committed a crime; and (b) have contact with the part-time or full-time security staff (including management) or direct-care staff of a jail or lockup for adults. The Office of Justice Assistance (OJA) indicates that administratively transferring youth to adult prison before they attain age 18 could violate the state plan and the provisions of the JJDPa. *However, OJA indicates that administratively transferring youthful offenders to adult prison after they attain age 18 would be permissible.* Wisconsin currently receives an estimated \$1,000,000 FED annually under the JJDPa. [Legislative Fiscal Bureau memorandum from Bob Lang, Director, to Members of Wisconsin Legislature, *Senate Substitute Amendment 1 to Senate Bill 810: Juvenile Justice Provisions*, dated March 24, 1994, at page 5; emphasis added.]

(13) *Initial Applicability.* The youthful offender program provisions in the Act *first apply* to delinquent acts committed on the effective date of the program.

2. Capacity Building Funds for Counties: Early Intervention and Intensive Community-Based Intervention Services

Act 377 provides \$2,500,000 general purpose revenue (GPR) in the first six months of 1995 in a new annual appropriation for DHSS to distribute to eligible counties for capacity building for early intervention services for first offenders and for intensive community-based intervention services for "seriously chronic offenders."

a. Eligibility Requirements

The Act requires a county, in order to be eligible for the capacity building funds, to submit a plan to DHSS that ensures that the county will:

- (1) Target the capacity building funding to appropriate programs; and
- (2) Maintain or increase its aggregate expenditures on juvenile delinquency-related services from sources other than the capacity building funding at or above the average level of those expenditures in the previous two years before the capacity building funding is provided to counties.

b. Distribution Formula

The Act requires DHSS to distribute the capacity building funds to eligible counties, as follows:

- (1) Thirty-three percent (33%) of the total funding based on each county's proportion of the number of children who are taken into custody statewide for alleged violations that are punishable as a Class A or B felony if committed by an adult (i.e., felonies punishable by life imprisonment or up to 40 years, respectively) during the most recent two-year period for which the information is available;
- (2) Thirty-three percent (33%) of the total funding based on each county's proportion of the number of children statewide placed in the juvenile correctional institutions during the most recent two-year period for which the information is available; and
- (3) Thirty-four percent (34%) of the total funding based on each county's proportion of the total number of Part I (serious) juvenile offenses reported statewide during the most recent two-year period for which the information is available.

Under the Act, the provisions concerning the county plan and the distribution of capacity building funds take effect on January 1, 1995.

3. Secure Mental Health Beds for Juveniles

Act 377 authorizes \$2,225,000 in GO bonding to construct and renovate 35 additional secure mental health beds at Mendota Mental Health Institute (MMHI) to serve mentally ill youth transferred from the juvenile correctional institutions. Of the total bonding, \$225,000 is authorized to remodel and establish one 15-bed secure unit in Goodland Hall at MMHI. The remaining \$2,000,000 in general obligation bonding is authorized to create an additional 20 secure beds in Lorenz Hall at MMHI.

4. Youth Village Pilot Program

Act 377 provides \$232,000 GPR in 1994-95 as a new annual appropriation to support a residential youth village pilot program. Under the Act, a *nonprofit* corporation is allowed to apply to the State Superintendent of Public Instruction for a grant to partially fund the costs of planning,

developing and operating the program. The program must comply with *all* of the following requirements:

- a. The program must be designed to begin operating by *July 1, 1996*.
- b. The program must be designed to provide an *alternative education experience* for pupils whose home or social environment seriously interferes with their educational progress and who: (1) are functioning below their grade level in basic academic skills; (2) are behind in academic credits for their grade level; *or* (3) have a record of poor grades or attendance problems.
- c. The program is designed to be *residential* and provide occupational training, academic instruction and personal support services to the pupils.
- d. The program is designed to be established in cooperation with a school board and a county department of social services or human services.
- e. Pupil participation in the program is *voluntary*. No pupil may be required to participate in the program without his or her approval, if the pupil is an adult, or the approval of his or her parents or legal guardian, if the pupil is a minor.

The Act requires that the grant award equal the amount appropriated. The grant recipient is allowed to use *up to \$150,000 annually* for the acquisition or renovation, or both, of a facility for the program if the grant recipient provides an equal amount for that purpose from other sources. Any school board may contract with the grant recipient for the participation of its pupils in the program. The State Superintendent would be required to award the 1994-95 grant *no later than September 1, 1994*.

The effective date of these provisions in the Act is July 1, 1994.

5. Program Planning and Review Position in DHSS

Act 377 provides \$8,300 GPR in 1993-94 and \$42,500 GPR in 1994-95 and 1.0 GPR project position, *beginning on May 1, 1994*, in the Division of Youth Services in DHSS to review what types of secured juvenile correctional facilities and programming are needed in the state. The project position *ends on May 31, 1996*.

6. Boot Camp Planning Staff

Act 377 provides \$87,100 GPR in fiscal year 1994-95 and 2.0 GPR positions, beginning in 1994-95, for DHSS to plan and implement a *juvenile boot camp program*.

Current law requires DHSS to submit to the Joint Committee on Finance, by August 31, 1994, a plan to establish a juvenile boot camp program operated by or contracted for by DHSS. In addition, current law requires DHSS to provide a juvenile boot camp program for juvenile

offenders beginning sometime in 1995 and provides \$3,000,000 in GO bonding and \$624,000 program revenue (PR) in 1994-95 for the construction, start-up and operating costs of the juvenile boot camp program.

7. Holdover Rooms

In December 1993, DHSS promulgated an emergency rule creating and defining a new type of shelter care facility called a "holdover room" and providing for the licensing and regulation of holdover rooms.

Act 377 includes a "holdover room" in the ch. 48 definition of "shelter care facility" which is defined to mean a nonsecure place of temporary care and physical custody for children, licensed by DHSS under s. 48.66, Stats. The Act allows a holdover room to be located in a public building in which there is a jail or other facility for the detention of adults if:

- a. DOC approves;
- b. The holdover room is so *physically segregated* from the jail or other facility that it may be entered without passing through areas in which adults are confined; and
- c. Children detained in the holdover room cannot communicate with or view adults confined in the jail or detention facility.

The Act specifies that a shelter care facility, other than a holdover room, may *not* be located in the same building as a facility for the detention of adults.

8. Intensive Residential Aftercare Pilot Program

Act 377 establishes an intensive residential aftercare pilot program for children released from DHSS secured juvenile correctional facilities.

The Act specifies that intensive residential aftercare provided under the program may include locked confinement. The Act also authorizes DHSS to license a child welfare agency to hold in secure custody children who have been adjudicated delinquent and referred to the child welfare agency by DHSS under the intensive aftercare pilot program.

Under *current law*, a child welfare agency may: (a) accept legal or physical custody of children transferred to it by the court; (b) provide for appropriate care and training for children under its custody; (c) contract with any parent or guardian or other person for the supervision, care and maintenance of any child; and (d) license foster homes, if the child welfare agency is licensed to do so. The law *prior to Act 377* did not permit a child welfare agency to hold a child under its legal or physical custody in secure custody.

The Act provides \$200,000 GPR in 1994-95 in the program supplements appropriation of the Joint Committee on Finance for the pilot program. The Act specifies that the \$200,000 GPR provided in the program supplements appropriation, plus any other moneys in the balance of that appropriation provided for juvenile justice purposes, up to a total of \$500,000 GPR in 1994-95, could be allocated for the amount by which the per person daily cost assessment under the pilot program exceeds the daily rate for care in a child caring institution or for expansion of the average daily population of the juvenile corrective sanctions program, as determined by the Joint Committee on Finance. The Act also requires DHSS to allocate any increase in program revenue expenditure authority in the residential aftercare appropriation provided by the Joint Committee on Finance for the pilot program in 1994-95 to provide payment for intensive residential aftercare services provided under the pilot program.

Under the Act, an average daily population of *not more than 40 youths* may be placed in the pilot program.

The provisions establishing the pilot program take effect on July 1, 1994.

9. Juvenile Court Orders Applicable to Parents

Act 377 authorizes a juvenile court to order a parent (including a guardian or legal custodian) of a juvenile adjudicated delinquent or a child found to be in need of protection or services to comply with any conditions determined by the court to be necessary for the child's welfare, including participation in outpatient mental health treatment, individual or family counseling, anger management or parent training and education. However, the Act specifies that a court *may not order a parent to participate in inpatient treatment*. All inpatient treatment commitments or admissions must be conducted in accordance with ch. 51, Stats. (the Mental Health Act).

The Act requires a parent subject to such a court order to make a *reasonable contribution, based on the ability to pay*, toward the cost of the court-ordered services.

As under current law for other juvenile court orders applicable to parents, the Act requires that the parent who may be subject to the order be given the opportunity to be heard on the subject of the contemplated order at a court hearing where the parent may be represented by counsel and may produce and cross-examine witnesses. In addition, as under current law, if a parent violates the court order, the Act specifies that the parent could be proceeded against for contempt of court.

10. Juvenile Justice Issues Study Committee

Act 377 creates a committee under DHSS to study juvenile justice issues. Under the Act, the committee is required to study *all* of the following:

- a. Chapter 48 of the Wisconsin Statutes (the Children's Code) and the resources of the state and counties in order to determine the *effectiveness of the Code* and those resources in providing

responses to delinquent behavior by children that promote public safety, accountability and rehabilitation;

b. Methods to increase the *stability of funding levels for community-based, nonresidential programs* for children adjudicated delinquent that provide *early intervention services* for first offenders and *intensive, highly structured intervention services and supervision* for repeat offenders; and

c. The role of *assessment and evaluation* in the placement of children who have been adjudicated delinquent.

The Act specifies that the Governor appoint the chairperson of the committee and that the committee consist of 14 members (three of whom are nonvoting) as follows:

a. *Four public members* who are nominated by the Governor and appointed with the advice and consent of the Senate, including a judge assigned to the juvenile court in Milwaukee County;

b. *Four legislative members*, one representing the majority and minority parties in each house;

c. The *Secretary of DHSS* or his or her designee (nonvoting member);

d. The *Secretary of DOC* or his or her designee (nonvoting member);

e. The *Attorney General* or his or her designee (nonvoting member); and

f. *Three additional members appointed by committee members under items a to e*, above, at the first meeting of the committee.

The DHSS is authorized to contract with a public or private entity or a person outside of DHSS to assist the committee in preparing the study.

The Committee is required to *report its findings and recommendations*, including recommended legislation and recommendations regarding the delivery and funding of services for delinquent children and their families, to the Speaker of the Assembly and the President of the Senate in the Legislature and to the Governor *by December 1, 1994*.

11. Joint Legislative Council Study of Issues Relating to Children in Need of Protection or Services

Act 377 requests the Joint Legislative Council to study:

- a. The Children's Code and the resources of the state and counties to determine the effectiveness of the Code and those resources in providing for the *needs of children in need of protection or services (CHIPS) and their families*;
- b. Methods to increase the stability of funding levels for community-based, nonresidential programs for CHIPS and their families; and
- c. The role of assessment and evaluation in the placement of CHIPS. If the study is established, the Joint Legislative Council is required to submit its findings, conclusions and recommendations to the Legislature and the Governor *by December 1, 1994*.

12. Other Provisions

Act 377 also:

- a. **Basic Skills Instructions in Jails in Prisons.** Directs the State Board of the Technical College System (i.e., the State VTAE Board) to award grants to VTAE district boards to provide basic skills instruction *in jails and prisons*. The Act provides \$100,000 GPR in fiscal year 1994-95 for these basic skills grants. *The effective date of this provision is July 1, 1994.*
- b. **UW-Madison Prosecution Program.** Provides \$40,000 GPR in 1994-95 for the prosecution program at the UW-Madison Law School. *The effective date of this provision is July 1, 1994.*
- c. **Truancy Abatement and Burglary Suppression (TABS) Program.** Provides an additional \$88,000 GPR in fiscal year 1994-95 for the Milwaukee Public Schools for the TABS Program which was created by 1993 Wisconsin Act 16, the 1993-95 Biennial Budget Act.

PART V

1993 WISCONSIN ACT 385, RELATING TO AFTERCARE SERVICES FOR YOUTH, PLACEMENT IN A SECURED JUVENILE CORRECTIONAL FACILITY WITHOUT TRANSFER OF LEGAL CUSTODY, AFTERCARE PLANS FOR CERTAIN JUVENILE OFFENDERS AND ADMINISTRATIVE PROCEDURES FOR REVOCATION OF AFTERCARE

This Part of the Memorandum analyzes 1993 Wisconsin Act 385, relating to aftercare services for youth, allowing placement in a secured juvenile correctional facility without transfer of legal custody to the DHSS, requiring aftercare plans for certain juvenile offenders released from secured correctional facilities, permitting county departments of human services or social services ("county departments") to use administrative procedures for revocation of aftercare and granting rule-making authority. *Act 385 takes effect on July 1, 1995.*

A. TRANSFER OF LEGAL CUSTODY

1. Background

Under current law, if a child is adjudicated delinquent, a court assigned to exercise jurisdiction under ch. 48, Stats. ("juvenile court"), has various dispositional options available to it under s. 48.34, Stats., including placement of the child in a secured juvenile correctional facility under certain circumstances [s. 48.34 (4m), Stats.]. If the juvenile court orders this disposition, the juvenile court also must transfer "legal custody" of the child to DHSS.

"Legal custody" is currently defined in s. 48.02 (12), Stats., as:

...a legal status created by the order of a court, which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any existing parental rights and responsibilities and the provisions of any court order [s. 48.02 (12), Stats.].¹

¹The definition of "legal custody" under s. 48.02 (12), Stats., was amended slightly by Act 385. Under current law, the various rights and duties of a person who has legal custody are subject to any *existing* parental rights. However, under Act 385, the rights and duties of a person who has legal custody are subject to any *residual* parental rights.

2. 1993 Wisconsin Act 385

Under Act 385, a juvenile court continues to have authority to place a child who has been adjudicated delinquent in a secured juvenile correctional facility as a dispositional option [s. 48.34 (4m), Stats.]. However, in contrast to current law, Act 385 does not provide for a transfer of legal custody to DHSS under these circumstances. Rather, the Act provides that a child placed in a secured juvenile correctional facility is *under the supervision of DHSS*.

Although Act 385 does not provide for a transfer of legal custody to DHSS when a child is placed in a secured juvenile correctional facility, the Act provides that DHSS has the right and duty to protect, train, discipline, treat and confine such a child and to provide food, shelter, legal services, education and ordinary medical and dental care for the child, subject to the rights, duties and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order [s. 48.505, Stats.]. Thus, the rights and duties of DHSS under s. 48.505, Stats., are identical to the rights and duties of a person who has legal custody of a child with two exceptions: the right and duty to "treat" a child and the right and duty to "confine" a child are not listed as rights and duties of a person with legal custody.

B. AFTERCARE PROVIDER

1. Background

"Aftercare" is a term used to describe the status of a child who is supervised following release from a secured juvenile correctional facility until the child's commitment term expires. A child on aftercare supervision must abide by any specified conditions of supervision, which often include requirements for school attendance or work, participation in treatment programs or other limitations on the child's conduct.

Under current law, aftercare supervision may be provided by DHSS or by a county department. If a county department provides aftercare supervision, DHSS may contract with that county department for aftercare supervision. Also, some counties will receive grants to provide an intensive aftercare supervision program under s. 48.536, Stats., as created by 1993 Wisconsin Act 98.

2. 1993 Wisconsin Act 385

If a child is adjudicated delinquent and the juvenile court orders placement of the child in a secured juvenile correctional facility under s. 48.34 (4m), Stats., Act 385 provides that, subject to any arrangement between DHSS and a county department, the juvenile court must designate one of the following to provide aftercare supervision following the child's release from a secured juvenile correctional facility: (a) DHSS; (b) the county department of the county of the court that placed the child in the secured correctional facility; or (c) the county department of the child's county of legal residence.

Neither current statutes nor Act 385 mandate that a county department provide aftercare supervision. Rather, s. 48.57 (4), Stats., as created by Act 385, provides that a county department *may* provide aftercare supervision. That section further provides that if a county department intends to change its policy regarding whether the county department or DHSS is to provide aftercare supervision, the county must notify DHSS of its intent before July 1 of the year preceding the year in which the policy change will take effect.

C. AFTERCARE PLANS

1. Background

Current law does not require that an aftercare plan be developed for a child who is not in an intensive aftercare program under s. 48.536, Stats.²

2. 1993 Wisconsin Act 385

Act 385 requires the aftercare provider designated by the court to develop an aftercare plan for a child who is placed in a secured juvenile correctional facility. If the court designates a county department as the aftercare provider, the county department must submit the aftercare plan to DHSS.

a. Required Elements of an Aftercare Plan

Under Act 385, an aftercare plan *must include all of the following elements*:

- (1) The minimum number of supervisory contacts per week.
- (2) The conditions, if any, under which the child's aftercare status may be revoked.
- (3) Services or programming to be provided while the child is on aftercare.
- (4) The estimated length of time that aftercare supervision and services will be provided.

²If a county department is selected to participate in the intensive aftercare program under s. 48.536, Stats., the case manager appointed to a case must develop a plan in consultation with representatives of the Division of Youth Services, DHSS, that specifies the following: (a) the number of contacts that the child will receive under the intensive aftercare program; (b) the programs and services to be provided to the child; (c) the planning and treatment goals of participation in the intensive aftercare program; and (d) the estimated length of time that the child will participate in the intensive aftercare program [s. 48.536 (5) (b), Stats.].

b. Timing of the Development of an Aftercare Plan

Act 385 provides that unless DHSS waives the time limit, an aftercare plan must be completed no later than the *earlier* of the following: (1) 120 days after the child is placed in a secured juvenile correctional facility; or (2) 30 days before the date the child is eligible for release to aftercare supervision.

The DHSS may *waive* the time limit in the following circumstances: (1) if DHSS anticipates that the child will not be released for more than eight months; (2) if the child is subject to the extended jurisdiction of the juvenile court under s. 48.366, Stats.; or (3) if the child is under corrective sanctions supervision under s. 48.533, Stats.

If DHSS waives the time limit and if there will be a reasonable period of time after release from the secured juvenile correctional facility or from corrective sanctions supervision during which the child may remain subject to the juvenile court's jurisdiction, then, if a county department has been designated as the aftercare provider, DHSS must notify that county department of the anticipated release date at least 60 days before the date on which the child will be eligible for release. The aftercare plan must be prepared by DHSS or by the county department providing aftercare supervision on or before the date the child becomes eligible for release. However, a child may be released from a secured juvenile correctional facility or from corrective sanctions supervision whether or not an aftercare plan has been prepared.

D. PROCEDURES FOR ADMINISTRATIVE REVOCATION OF AFTERCARE UPON VIOLATION OF A CONDITION OF AFTERCARE SUPERVISION

1. Background

a. If a County Department Is the Aftercare Provider

If a child is released from a secured juvenile correctional facility to an aftercare program provided by a county department and if the child's custody is transferred to the county department or the child's parents, current law provides that, in order to revoke the child's aftercare status for a violation of a condition of aftercare, the county department must petition the juvenile court for a change of placement [s. 48.357 (1) and (3), Stats.].³ If the child violates a condition of aftercare and the violation is itself a delinquent act, the county may file a new delinquency petition which may result in the child's placement in a secured juvenile correctional facility for up to a year, plus any extensions.

³For persons under extended juvenile court jurisdiction under s. 48.366, Stats., see s. 48.366 (5), Stats., regarding the procedure for petitioning the court for revocation of aftercare.

b. If DHSS Is the Aftercare Provider

With one exception,⁴ if DHSS is the aftercare provider and alleges that the child has violated a condition of aftercare supervision, DHSS does not need a court order to revoke the child's aftercare status and return the child to a secured juvenile correctional facility. Instead, under current law, an administrative hearing may be conducted by a hearing examiner in the Division of Hearings and Appeals, Department of Administration, to determine whether the child has violated a condition of aftercare supervision [s. 48.357 (5), Stats.]. If the hearing examiner determines that the child has done so, the hearing examiner may revoke the child's aftercare status and return the child to a secured juvenile correctional facility. However, the child may seek review of the revocation decision by the juvenile court that ordered placement of the child with DHSS [s. 48.357 (5), Stats.].

According to current s. HSS 343.11 (1), Wis. Adm. Code, the revocation hearing must take place within 30 days after the child is taken into custody for allegedly violating a condition of aftercare supervision unless: (1) the hearing is postponed because the child or the child's attorney, if any, requests or agrees to a delay of a specified number of days or for other good cause; or (2) the special circumstances enumerated in s. HSS 343.11 (1) (b), Wis. Adm. Code, apply.⁵ In the latter case, the revocation hearing must be held within 45 days after the date that DHSS decides to revoke aftercare unless the child or the child's attorney, if any, requests or agrees to a delay.

Under current law, a child is entitled to legal counsel at all stages of a revocation proceeding.

⁴If the person is under extended juvenile court jurisdiction under s. 48.366, Stats., DHSS must petition the court for revocation of aftercare. [See s. 48.366 (5), Stats.]

⁵Those special circumstances are as follows:

1. The youth has signed a written statement in which the youth admits to having committed the alleged violation;
2. There has been a finding of probable cause by a court on a felony charge or there has been a court order in a delinquency proceeding under s. 48.21(4), Stats., continuing the youth in physical custody under s. 48.205, Stats.;
3. There has been an adjudication of delinquency or conviction by a court for the same conduct that is alleged to be a violation of aftercare supervision; or
4. The youth is not being held in physical custody under s. 48.205, Stats., or in an institution pending the revocation proceedings [s. HSS 343.11 (1) (b) 1 to 4, Wis. Adm. Code].

2. 1993 Wisconsin Act 385

a. If a County Department Is the Aftercare Provider

Under Act 385, a county department that provides aftercare supervision may use the same administrative procedure that DHSS currently uses to revoke the aftercare status of a child and return the child to a secured juvenile correctional facility (i.e., an administrative hearing conducted by a hearing examiner in the Division of Hearings and Appeals, Department of Administration). As under current law, the child may seek review of the revocation decision by the juvenile court that ordered placement of the child in a secured correctional facility.

Act 385 provides that a revocation hearing must be held *within 30 days* after the child is taken into custody for allegedly violating a condition of aftercare supervision. However, the time limit may be *waived* upon agreement of the aftercare provider, the child and the child's counsel.

b. If DHSS Is the Aftercare Provider

Under Act 385, when DHSS is providing the aftercare supervision, DHSS may continue to use the same administrative procedure to revoke aftercare status as it uses under current law. However, the time period during which the revocation hearing must be held is slightly different than that currently provided in s. HSS 343.11, Wis. Adm. Code (see item 1, b, above). In contrast to s. HSS 343.11 (1) (b), Wis. Adm. Code, which allows an extension of the time limit under certain specified circumstances, Act 385 provides that the 30-day time limit may be waived *only* upon agreement of the aftercare provider, the child and the child's counsel.

c. Provisions of Act 385 Which Apply Regardless of Whether DHSS or a County Department is the Aftercare Provider

As under current law, under Act 385, a child is entitled to legal counsel at all stages of a revocation proceeding.

Act 385 provides that DHSS must promulgate administrative rules establishing standards to be used by the hearing examiner in determining whether a child's aftercare status should be revoked. These rules are to be submitted to the Legislative Council Rules Clearinghouse no later than July 1, 1995. The standards must specify that the burden is on DHSS or the county department seeking revocation to show by a preponderance of the evidence that the child violated a condition of aftercare supervision. If a violation is found, the hearing examiner must determine whether confinement in a secured juvenile correctional facility is necessary to protect the public or to provide for the child's rehabilitation.

The Act's provisions related to administrative revocation of aftercare *first apply* to children placed in a secured juvenile correctional facility under s. 48.34 (4m), Stats., who are released on aftercare on July 1, 1995, the effective date of the Act.

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