



**JUVENILE JUSTICE LEGISLATION ENACTED DURING  
THE 1997 LEGISLATIVE SESSION  
(1997 WISCONSIN ACTS 27, 80, 84, 95, 130, 181,  
182, 183, 205, 207, 237, 239, 272, 296 AND 328)**

***Information Memorandum 98-31***

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

***July 28, 1998***

*Information Memorandum 98-31\**

---

***JUVENILE JUSTICE LEGISLATION ENACTED DURING  
THE 1997 LEGISLATIVE SESSION  
(1997 WISCONSIN ACTS 27, 80, 84, 95, 130, 181,  
182, 183, 205, 207, 237, 239, 272, 296 AND 328)***

---

**INTRODUCTION**

This Information Memorandum describes major changes in the laws relating to juvenile justice enacted during the 1997-98 Legislative Session. Those changes were made by the following enactments:

1. 1997 Wisconsin Act 27, effective October 14, 1997.
2. 1997 Wisconsin Act 80, effective April 28, 1998.
3. 1997 Wisconsin Act 84, effective April 28, 1998.
4. 1997 Wisconsin Act 95, effective April 28, 1998.
5. 1997 Wisconsin Act 130, effective May 2, 1998.
6. 1997 Wisconsin Act 181, effective December 1, 1998.
7. 1997 Wisconsin Act 182, effective May 12, 1998.
8. 1997 Wisconsin Act 183, effective May 12, 1998.
9. 1997 Wisconsin Act 205, effective May 13, 1998.
10. 1997 Wisconsin Act 207, effective May 13, 1998.
11. 1997 Wisconsin Act 237, effective June 17, 1998.
12. 1997 Wisconsin Act 239, effective June 18, 1998.

---

\* This Information Memorandum was prepared by Anne Sappenfield, Staff Attorney, Legislative Council Staff.

13. 1997 Wisconsin Act 272, effective June 25, 1998.
14. 1997 Wisconsin Act 296, effective July 1, 1998.
15. 1997 Wisconsin Act 328, effective July 16, 1998.

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.

This Information Memorandum is divided into the following parts:

	<u>Page</u>
I. HOLDING JUVENILES IN SECURE CUSTODY .....	5
A. Contracting for Secure Detention Facilities .....	5
B. Racine Youthful Offender Correctional Facility .....	6
C. Holding Juveniles in Municipal Lock-Ups .....	8
D. Requirements for Holding a Juvenile in Custody Outside of the Home .....	9
II. ADULT COURT JURISDICTION AND PENALTIES .....	11
A. Offenses for Which the Adult Court Has Original Jurisdiction .....	11
B. Penalties .....	12
III. REQUEST TO FILE PETITIONS UNDER THE JUVENILE JUSTICE CODE ...	14
A. Background .....	14
B. Act 80 .....	14
IV. HEARING PROCEDURES .....	15
A. Physical Custodians: Notice and Opportunity to be Heard .....	15
B. Statements by Substitute Care Providers at Certain Hearings .....	16
C. Rules of Evidence .....	17
V. HIV AND SEXUALLY TRANSMITTED DISEASE TESTING .....	19

	<u>Page</u>
A. Background .....	19
B. Act 182 .....	20
VI. DISPOSITIONS .....	21
A. Sex Offender Registration .....	21
B. Suspension or Revocation of Operating Privilege .....	23
C. Restitution and Forfeitures .....	23
D. Teen Court Programs .....	24
E. Habitual Truants .....	26
F. Truancy Ordinance Violations .....	27
VII. DISPOSITIONAL ORDERS .....	29
A. Removal From Home: Juvenile’s Health and Safety; Reasonable Efforts ...	29
B. Permanency Plans .....	31
C. Extension of Dispositional Orders .....	35
VIII. VIOLATION OF A DISPOSITIONAL ORDER OR CONDITION OF AFTERCARE .....	37
A. Short-Term Detention for Violation of a Dispositional Order .....	37
B. Short-Term Detention for Violation of a Condition of Aftercare .....	38
C. Short-Term Detention to Investigate a Violation of a Condition of Participation in an Intensive Supervision Program .....	39
D. County Approval of Use of Secure Detention for Short-Term Detention ....	40
E. Sanctions for Habitual Truants and Dropouts .....	40
F. Suspension of Driver’s License .....	43
G. Suspension of Operating Privilege for Failure to Pay a Forfeiture .....	43
H. Contempt of Court .....	43

	<u>Page</u>
I. Violations of Nonsecure Custody Orders .....	44
IX. COMPULSORY SCHOOL ATTENDANCE EXCEPTION .....	45
A. Background .....	45
B. Act 205 .....	45
X. RIGHTS OF VICTIMS AND WITNESSES .....	46
A. Definition of “Victim” .....	46
B. Notices Related to Proceedings .....	46
C. Consultation With Victims .....	49
D. Statements to the Court .....	49
E. Waiting Area for Victims and Witnesses .....	50
F. Notification of a Juvenile’s Release or Escape .....	50
XI. CONFIDENTIALITY OF JUVENILE RECORDS .....	54
A. Disclosure of Law Enforcement Records to Schools .....	54
B. Disclosure to Schools of Termination of Proceedings .....	55
C. Juvenile Court Records .....	56
D. Pupil Records .....	57
E. Disclosure of Juvenile’s Identity to Victim .....	58
F. Agency Records .....	58
G. Information to Substitute Care Providers .....	58
XII. AUDIT REQUESTS .....	60
A. Audit of Secure Detention of Juveniles .....	60
B. Audit of the Effectiveness of Secure Detention in Deterring Habitual Truancy .....	60

# **I. HOLDING JUVENILES IN SECURE CUSTODY**

## **A. CONTRACTING FOR SECURE DETENTION FACILITIES**

### **1. Background**

Under current law, counties may establish secure detention facilities. A secure detention facility is a locked facility for the secure, temporary holding of juveniles (i.e., persons under 17 years of age).

### **2. Act 27**

Under Act 27, a private entity may establish a secure detention facility and contract with one or more county boards of supervisors for holding juveniles in the secure detention facility. A contract for holding juveniles in a private secure detention facility must require all of the following:

- a. That the private secure detention facility meet or exceed the minimum requirements for the approval and operation of a secure detention facility established by the Department of Corrections (DOC) by rule and that the private secure detention facility be approved by the DOC.
- b. That the private secure detention facility provide educational programming, health care and other care that is equivalent to that which a juvenile would receive if held in a public secure detention facility.

The Act also provides that such a contract must include all of the following:

- a. The rates to be paid by the county for holding a juvenile in the private secure detention facility and the charges to be paid by the county for any extraordinary medical and dental expenses and any programming provided for a juvenile who is held in the private secure detention facility.
- b. An agreement that the county retains jurisdiction over a juvenile who is held in the private secure detention facility.
- c. An agreement that the private secure detention facility is subject to investigation and inspection by the DOC.
- d. Any other matters that are necessary and appropriate concerning the obligations, responsibilities and rights of the contracting counties and the DOC.

The DOC's standards and regulations for public secure detention facilities also apply to private secure detention facilities. Under the Act, at least annually, the DOC must inspect each private secure detention facility with respect to safety, sanitation, adequacy and fitness; report to

the contracting county board and the private entity operating the private secure detention facility regarding any deficiency found; and order the necessary work to correct it. If within six months thereafter the work is not commenced, or is not completed within a reasonable period thereafter to the satisfaction of the DOC, the DOC must prohibit the use of the private secure detention facility until the order is complied with.

The Act also permits a county board of supervisors to contract with the DOC for the use of a state secured correctional facility (i.e., a juvenile correctional institution) as a secure detention facility. Such a contract must require all of the following:

a. That the county may use the secured correctional facility as a secure detention facility only if either of the following criteria are met:

(1) There is no county-operated secure detention facility approved by the DOC within 40 miles of the county seat of the county.

(2) There is no bed space available in a county-operated secure detention facility approved by the DOC within 40 miles of the county seat of the county.

b. That the county may use a secured correctional facility as a secure detention facility only if the DOC approves that use based on the availability of beds in the secured correctional facility and on the programming needs of the juvenile.

The Act also provides that such a contract with the DOC must include all of the following:

a. The per person daily rate to be paid by the county for holding a juvenile and the charges to be paid by the county for any extraordinary medical and dental expenses and any programming provided for the juvenile by the DOC.

b. Any other matters that are necessary and appropriate concerning the obligations, responsibilities and rights of the contracting county and the DOC.

The Act provides that a juvenile held in a secured correctional facility is under the supervision and control of the DOC and is subject to the rules and discipline of the DOC.

## **B. RACINE YOUTHFUL OFFENDER CORRECTIONAL FACILITY**

### **1. Background**

Under current law, a juvenile may be placed in a Type 1 secured correctional facility (i.e., Ethan Allan, Lincoln Hills or Southern Oaks) as a disposition following a delinquency adjudication or a criminal conviction. In addition, a juvenile may be transferred to a state prison upon attaining age 15 if the juvenile is waived to adult court, convicted and sentenced to state prison. However, if the juvenile has not attained the age of 16, the DOC must place the juvenile in a

secured correctional facility or a secured child caring institution (CCI), *unless* the DOC determines that placement in a state prison is appropriate based on the following:

- a. The juvenile's prior record of adjustment in a correctional setting, if any.
- b. The juvenile's present and potential vocational and educational needs, interests and abilities.
- c. The adequacy and suitability of available facilities.
- d. The services and procedures available for treatment of the juvenile within the various institutions.
- e. The protection of the public.
- f. Any other considerations promulgated by the DOC by rule.

In addition, if a person who has not attained the age of 16 years is sentenced to the Wisconsin state prisons (i.e., following a conviction in a case over which the adult court had original jurisdiction or a case waived to the adult court), the DOC must place the person at a secured correctional facility or a secured CCI, unless the DOC determines that placement in an adult correctional institution is appropriate based on the factors listed above.

## 2. Act 27

Act 27 requires the DOC to establish the Racine Youthful Offender Correctional Facility as a medium security correctional institution for persons 15 years of age or over, but not more than 21 years of age, who have been placed in a state prison.

Act 27 permitted the DOC to transfer a juvenile who is placed in a Type 1 secured correctional facility as a disposition to the Racine Youthful Offender Correctional Facility if the juvenile was 15 years of age or over and the Office of Juvenile Offender Review in the DOC determined that the conduct of the juvenile in the Type 1 secured correctional facility presented a serious problem to the juvenile and others. However, in *State v. Hezzie R.*, No. 97-0676, 1998 Wisc. LEXIS 79, at \*58 (1998), the Wisconsin Supreme Court invalidated this provision, holding that it is unconstitutional to place a person who does not have a right to a jury trial in an adult correctional institution. (Under current law, a juvenile does not have the right to a jury trial in a delinquency proceeding.)

## C. HOLDING JUVENILES IN MUNICIPAL LOCK-UPS

### 1. Background

Under current law, a juvenile who is believed to have committed a delinquent act may be taken into custody. Such a juvenile may be held in custody in a secure detention facility if the intake worker determines that one of the following conditions applies:

a. Probable cause exists to believe that the juvenile has committed a delinquent act and either presents a substantial risk of physical harm to another person or a substantial risk of running away so as to be unavailable for a court hearing or a revocation hearing for juveniles on aftercare supervision. For juveniles on aftercare supervision, the delinquent act referred to above may be the act for which the juvenile was adjudged delinquent.

b. Probable cause exists to believe that the juvenile is a fugitive from another state or has run away from a secured correctional facility and there has been no reasonable opportunity to return the juvenile.

c. The juvenile consents in writing to being held in order to protect himself or herself from an imminent physical threat from another and such secure custody is ordered by the juvenile court judge in a protective order.

d. Probable cause exists to believe that the juvenile, having been placed in nonsecure custody by an intake worker or by the juvenile court judge or juvenile court commissioner, has run away or committed a delinquent act and no other suitable alternative exists.

e. Probable cause exists to believe that the juvenile has been adjudged or alleged to be delinquent and has run away from another county and would run away from nonsecure custody.

A county jail may be used as a secure detention facility if either of the following criteria are met:

a. There is no other secure detention facility approved by the DOC or a county which is available and all of the following conditions are met:

- (1) The jail meets the standards for secure detention facilities established by the DOC.
- (2) The juvenile is held in a room separated and removed from incarcerated adults.
- (3) The juvenile is not held in a cell designated for the administrative or disciplinary segregation of adults.
- (4) Adequate supervision is provided.

(5) The judge reviews the status of the juvenile every three days.

b. The juvenile presents a substantial risk of physical harm to other persons in the secure detention facility as evidenced by previous acts or attempts, which can only be avoided by transfer to the jail. The provisions in item a. (1) to (5), above, must be met. Further, the juvenile must be given a hearing and transferred only upon order of the judge of the juvenile court (i.e., the court assigned to exercise jurisdiction under the Children's Code [ch. 48, Stats.] and the Juvenile Justice Code [ch. 938, Stats.]).

The restrictions described above do not apply to the use of jail for a juvenile who has been waived to adult court or who is under the original jurisdiction of an adult court.

## **2. Act 296**

Under Act 296, a juvenile who is alleged to have committed a delinquent act may be held in a municipal lockup facility if all of the following criteria are met:

a. The DOC has approved the municipal lockup facility as a suitable place for holding juveniles in custody.

b. The juvenile is held in the municipal lockup facility for not more than six hours while awaiting his or her custody hearing.

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

d. The juvenile is held for investigative purposes only.

The Act requires the DOC to promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles in custody and for the operation of such a facility. The rules must be designed to protect the health, safety and welfare of the juveniles held in those facilities.

## **D. REQUIREMENTS FOR HOLDING A JUVENILE IN CUSTODY OUTSIDE OF THE HOME**

### **1. Background**

Under prior law, an order to hold a juvenile in custody outside of his or her home was required to describe any efforts that were made to permit the juvenile to remain at home and the services that are needed to ensure the juvenile's well-being, to enable the juvenile to return to his or her home and to involve the parents in planning for the juvenile's placement or return home.

2. Act 237

Under Act 237, the order must describe any efforts that were made to permit the juvenile to *safely* return to his or her home.

## II. ADULT COURT JURISDICTION AND PENALTIES

### A. OFFENSES FOR WHICH THE ADULT COURT HAS ORIGINAL JURISDICTION

#### 1. Background

Under the Juvenile Justice Code, courts of criminal jurisdiction (adult courts) have exclusive original jurisdiction over certain juveniles. In such cases, the juvenile's case *begins* in the adult court. Specifically, the adult court has original jurisdiction over all of the following:

a. A juvenile who has been adjudicated delinquent and who is alleged to have committed battery or assault while placed in a secured correctional facility, a secure detention facility or a secured CCI or to have committed battery to a probation and parole agent or an aftercare agent.

b. A juvenile who is alleged to have attempted or committed first-degree intentional homicide or to have committed first-degree reckless homicide or second-degree intentional homicide on or after the juvenile's 10th birthday.

c. A juvenile who is alleged to have violated *any* state criminal law under any of the following circumstances: (1) the juvenile has been convicted of a previous violation in adult court following a waiver of juvenile court jurisdiction; (2) the juvenile court has waived its jurisdiction over the juvenile for a previous violation and criminal proceedings for that violation are still pending; (3) the juvenile has been convicted of a previous violation over which the adult court had original jurisdiction; or (4) proceedings for a violation over which the adult court has original jurisdiction are still pending. (These juveniles are commonly referred to as "once waived, always waived" juveniles.)

#### 2. Act 205

Act 205 provides that a juvenile who is under the original jurisdiction of the adult court under the conditions described in item a. or b., above, and who is alleged to have attempted or committed a violation of any state criminal law *in addition* to the crime charged in the adult court is under the adult court's original jurisdiction for all of the alleged violations if the alleged violations may be charged in the same complaint, or "joined," under s. 971.12 (1), Stats. Section 971.12 (1) provides that two or more crimes may be charged in the same complaint if the crimes charged are: (a) of the same or similar character; (b) based on the same act or transaction; or (c) based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

## **B. PENALTIES**

### **1. Background**

Under current law, subject to certain exceptions, a juvenile over whom the adult court has original jurisdiction is subject to adult criminal procedures and the criminal penalties provided for the crime committed.

Prior to Act 205, one exception provided that if the juvenile was convicted of a lesser offense, the adult court *was permitted* to impose either a criminal penalty or a juvenile disposition if one of the following applied:

a. The adult court convicted the juvenile of a lesser offense that was *not* attempted first-degree intentional homicide or second-degree intentional homicide or first-degree reckless homicide committed on or after the juvenile's 10th birthday but before the juvenile's 15th birthday or a lesser offense that was *not* an offense for which the juvenile court may waive its jurisdiction over the juvenile.

b. The adult court convicted the juvenile of a lesser offense that was: (1) attempted first-degree intentional homicide; (2) second-degree intentional homicide or first-degree reckless homicide; or (3) an offense for which the juvenile court may waive its jurisdiction over the juvenile and the adult court, after considering the criteria for waiver to adult court (e.g., personality and prior record, seriousness of offense and adequacy and suitability of adult facilities and services), determined by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to impose a juvenile disposition.

A juvenile who is alleged to have attempted or committed first-degree intentional homicide or to have committed first-degree reckless homicide or second-degree intentional homicide on or after the juvenile's 15th birthday is also subject to adult criminal procedures and criminal penalties *except* that, prior to Act 205, the court *was required* to impose a juvenile delinquency disposition if either of the following conditions applied:

a. The adult court convicted the juvenile of a lesser offense that was *not*: (1) attempted first-degree intentional homicide; (2) second-degree intentional homicide or first-degree reckless homicide; or (3) an offense for which the juvenile court may waive its jurisdiction over the juvenile.

b. The adult court convicted the juvenile of a lesser offense that was: (1) attempted first-degree intentional homicide; (2) second-degree intentional homicide or first-degree reckless homicide; or (3) an offense for which the juvenile court may waive its jurisdiction over the juvenile and the adult court, after considering the criteria for waiver to adult court, determined by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to impose a juvenile disposition.

## 2. Act 205

Under Act 205, if the juvenile is under original adult court jurisdiction for allegedly committing battery or assault in a specified facility or homicide and any joined crimes, as described above, and is found to have committed a lesser offense than the one alleged or a joined offense, the adult court *must*, in lieu of convicting the juvenile, *adjudge the juvenile to be delinquent* and impose a juvenile disposition, if any of the following conditions apply:

a. The adult court finds that the juvenile has committed a lesser offense that is *not*: (1) battery by a prisoner or to a probation or parole agent or assault by a prisoner while placed in a secured correctional facility, a secure detention facility or a secured CCI if the juvenile has previously been adjudicated delinquent; (2) attempted first-degree intentional homicide on or after the juvenile's 10th birthday but before the juvenile's 15th birthday; (3) first-degree reckless homicide or second-degree intentional homicide committed on or after the juvenile's 10th birthday but before the juvenile's 15th birthday; or (4) an offense for which the juvenile court may waive its jurisdiction.

b. The adult court finds that the juvenile has committed a lesser offense that *is* a violation described in item a., above, and the adult court, after considering the criteria for waiver to adult court, determines that the juvenile has proved by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to adjudge the juvenile delinquent and impose a juvenile disposition.

In addition, Act 205 provides that if a juvenile who is alleged to have committed a specified homicide offense, as described above, on or after the juvenile's 15th birthday, or homicide and any crimes joined in the complaint, is found to have committed a lesser offense that is not an offense over which the adult court has original jurisdiction, the adult court *must*, in lieu of convicting the juvenile, adjudge the juvenile to be delinquent and impose a juvenile disposition if, after considering the criteria for waiver to adult court, the court determines that the juvenile has proved by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to adjudge the juvenile to be delinquent and impose a juvenile disposition.

### **III. REQUEST TO FILE PETITIONS UNDER THE JUVENILE JUSTICE CODE**

#### **A. BACKGROUND**

Under prior law, an intake worker, or a judge acting as an intake worker, had the authority to *recommend* to the district attorney (DA) that a petition to commence a proceeding under the Juvenile Justice Code be filed.

#### **B. ACT 80**

Under Act 80, an intake worker, or a judge acting as an intake worker, may *request* that a petition be filed.

## **IV. HEARING PROCEDURES**

### **A. PHYSICAL CUSTODIANS: NOTICE AND OPPORTUNITY TO BE HEARD**

#### **1. Delinquency or Juvenile in Need of Protection or Services Proceedings**

##### **a. Background**

Under current law, the juvenile court must notify any foster parent, treatment foster parent or other physical custodian (i.e., a relative or guardian who provides care and maintenance for the juvenile) of the juvenile of all hearings relating to a juvenile's delinquency or juvenile in need of protection or services (JIPS) proceeding. The first such notice must be written and may have a copy of the petition attached to it. Thereafter, the notices may be given by telephone at least 72 hours before the time of the hearing.

Failure to give the above notice does not deprive the court of jurisdiction in the action or proceeding. Under the law prior to Act 237, if a foster parent, treatment foster parent or other physical custodian was not given notice of the hearing and if the court was required to permit that person to make a written or oral statement at the hearing or to submit a written statement prior to the hearing and that person did not make or submit such statement, that person was permitted to request a rehearing on the matter during the pendency of an order resulting from the hearing. If the request was made, the court was required to order a rehearing.

##### **b. Act 237**

Under Act 237, the court must give a foster parent, treatment foster parent or other physical custodian who is notified of a hearing an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent or physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. The Act specifies that a foster parent, treatment foster parent or physical custodian who receives a notice of a hearing and an opportunity to be heard does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

The Act also provides that if a foster parent, treatment foster parent or other physical custodian is not given notice of a hearing, that person may request a rehearing on the matter during the pendency of an order resulting from the hearing. If the request is made, the court must order a rehearing.

## **2. Interstate Compact Proceedings**

### **a. Background**

Under current law, when a proceeding is initiated under the Interstate Compact for Juveniles, all interested parties must receive notice and appropriate summons must be issued in a manner specified by the court, consistent with all applicable governing statutes.

### **b. Act 237**

Act 237 provides that, if the juvenile who is the subject of the proceeding is in the care of a foster parent, treatment foster parent or other physical custodian, the court must give the foster parent, treatment foster parent or other physical custodian notice and an opportunity to be heard.

## **B. STATEMENTS BY SUBSTITUTE CARE PROVIDERS AT CERTAIN HEARINGS**

### **1. Background**

Under current law, the person or agency primarily responsible for implementing a dispositional order under the Juvenile Justice Code or the DA may request a change in placement of the juvenile who is subject to the order. In addition, the juvenile, the parent, guardian or legal custodian of the juvenile or any person primarily bound by the dispositional order may request a change in placement. Under prior law, if a hearing relating to a change in placement which would remove the juvenile from a foster home, treatment foster home or other placement with a physical custodian was held, the juvenile court was required to permit the foster parent, treatment foster parent or other physical custodian to make a written or oral statement during the hearing or to submit a written statement prior to the hearing relating to the juvenile and the requested change in placement even though such a person is not a party to the action.

A juvenile, the juvenile's parent, guardian or legal custodian, any person or agency bound by a dispositional order or the DA or corporation counsel in the county in which a dispositional order was entered may request a revision in the order that does not involve a change in placement or may also request an extension of the order. Under prior law, if a hearing relating to a proposed revision or extension was held, the juvenile court was required to permit a foster parent, treatment foster parent or other physical custodian of the juvenile to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision or extension.

### **2. Act 80**

Act 80 eliminates the requirement that the juvenile court permit a foster parent, treatment foster parent or other physical custodian to make a written or oral statement during the hearing or to submit a written statement prior to the hearing relating to a change in placement that would remove the juvenile from a foster home, treatment foster home or other placement with a

physical custodian *if* the change in placement is requested by the juvenile, the parent, guardian or legal custodian of the juvenile or any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order.

Act 80 also requires that any other statement made at a hearing, as described above, be made under oath or affirmation.

### **3. Act 237**

Act 237 specifies that a foster parent, treatment foster parent or other physical custodian who receives notice of a hearing and an opportunity to be heard does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

## **C. RULES OF EVIDENCE**

### **1. Background**

The rules of evidence under chs. 901 to 911, Stats., govern the presentation of evidence at fact-finding hearings under the Juvenile Justice Code. Also, s. 972.11 (5), Stats., relating to introduction of DNA evidence applies at fact-finding hearings in all delinquency proceedings under the Juvenile Justice Code.

Under current law, except as provided in s. 901.05, Stats., relating to admissibility of human immunodeficiency virus (HIV) or other sexually transmitted disease test results, neither common law nor statutory rules of evidence are binding at: (a) a waiver hearing under s. 938.18, Stats.; (b) a hearing for a juvenile held in custody under s. 938.21, Stats.; (c) a hearing to determine whether to order HIV testing under s. 938.296 (4), Stats., for a juvenile who is alleged to have committed a sexual assault offense; (d) a dispositional hearing; or (e) a hearing about changes in placement, revision of dispositional orders or extension of dispositional orders. At those hearings, the following apply:

a. The court must admit all testimony having reasonable probative value, but must exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05, Stats., relating to admissibility of HIV or other sexually transmitted disease test results.

b. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness.

c. The court must give effect to the rules of privilege (i.e., the right to refuse to disclose certain confidential communications) recognized by law.

d. The court must apply the basic principles of relevancy, materiality and probative value to proof of all questions of fact.

e. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and must be noted in the record.

**2. Act 205**

Under Act 205, the rules of evidence are not binding at a sanction hearing in the municipal court for a juvenile who has violated a municipal ordinance and violates a condition of his or her dispositional order and, instead, the rules listed in items a. to e., above, apply.

In addition, the Act provides that the rules of evidence do not apply at *any* postdispositional hearing under the Juvenile Justice Code.

## **V. HIV AND SEXUALLY TRANSMITTED DISEASE TESTING**

### **A. BACKGROUND**

In a delinquency proceeding or a JIPS proceeding alleging that a juvenile has committed a delinquent act in which the juvenile is alleged to have committed sexual assault, sexual assault of a child, engaging in repeated acts of sexual assault of the same child, sexual exploitation of a child or incest with a child, the DA or corporation counsel is required to apply to the court for an order requiring the juvenile to submit to a test or a series of tests administered by a health care professional to detect the presence of HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease and to disclose the results of that test or series of tests as specified below, if all of the following apply:

1. The victim or alleged victim, if an adult, or the parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child, requests the DA or corporation counsel to apply for that order.
2. The DA or corporation counsel has probable cause to believe that the juvenile has significantly exposed the victim or alleged victim. (If the juvenile is adjudicated delinquent or JIPS, this requirement need not be met.)

The DA or corporation counsel may apply for an order for HIV and sexually transmitted disease testing at any of the following times:

1. At or after the plea hearing and before a dispositional order is entered.
2. At any time after the juvenile is adjudicated delinquent or JIPS.

On receipt of an application for an order for HIV and sexually transmitted disease testing, the court must set a time for a hearing on the application. If, after the hearing, the court finds probable cause to believe that the juvenile has significantly exposed the victim or alleged victim, the court must order the juvenile to submit to HIV and sexually transmitted disease testing. The court must require the health care professional who performs the test to disclose the results of the test to any of the following:

1. The parent, guardian or legal custodian of the juvenile.
2. The victim or alleged victim, if the victim or alleged victim is an adult.
3. The parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child.
4. The health care professional that provides care for the juvenile, upon request by the parent, guardian or legal custodian of the juvenile.

5. The health care professional that provides care for the victim or alleged victim, upon request by the victim or alleged victim or, if the victim or alleged victim is a child, upon request by the parent, guardian or legal custodian of the victim or alleged victim.

**B. ACT 182**

Act 182 also permits HIV or sexually transmitted disease testing of a juvenile who is found to be JIPS on the basis of being not responsible for a delinquent act by reason of mental disease or defect.

Under the Act, the DA or corporation counsel may apply for an order for HIV and sexually transmitted disease testing at the following times in addition to the times permitted under prior law:

1. At any time after the juvenile is found not responsible by reason of mental disease or defect.
2. If the court has determined that the juvenile is not competent to proceed and has suspended proceedings on the petition, at any time after the determination that the juvenile is not competent to proceed.

The Act provides that, if a juvenile has been found not competent to proceed, the court may hold a hearing on the issue of HIV and sexually transmitted disease testing only if the court first determines that the probable cause finding can be fairly made without the personal participation of the juvenile.

## VI. DISPOSITIONS

### A. SEX OFFENDER REGISTRATION

#### 1. Background

Under prior law, if a juvenile was adjudicated delinquent on the basis of a violation, or the solicitation, conspiracy or attempt to commit a violation of first-, second- or third-degree sexual assault; incest; first- or second-degree sexual assault of a child; engaging in repeated acts of sexual assault of the same child; sexual exploitation of a child; causing a child to view or listen to sexual activity; incest with a child; child enticement; soliciting a child for prostitution; exposing a child to harmful material; or abduction of another's child, false imprisonment or kidnapping if the victim was a minor and the juvenile was not the victim's parent, the juvenile court *was required* to order the juvenile to comply with the sex offender registration requirements under s. 301.45, Stats. In addition, if the juvenile was adjudicated delinquent on the basis of any violation, or the solicitation, conspiracy or attempt to commit any violation under ch. 940 (crimes against life and bodily security), 944 (crimes against sexual morality) or 948 (crimes against children) or ss. 943.01 to 943.15, Stats. (crimes relating to damage to property or trespass), the juvenile court *was permitted* to require the juvenile to comply with the sex offender reporting requirements if the court determined that the underlying conduct was sexually motivated and that it would be in the interest of the public to require the juvenile to comply with the reporting requirements.

#### 2. Act 130

Act 130 creates an exception to the provision under which the juvenile court was required to order a juvenile to comply with the sex offender registration requirements. Under the Act, the juvenile court *must* order the juvenile to comply with the reporting requirements *unless*, following a hearing, the court determines that the juvenile meets the criteria for the exception. Under Act 130, a juvenile court is not required to order a juvenile to comply with the reporting requirements if *all* of the following apply:

- a. The requirement for the juvenile to register is based on one of the following criteria:
  - (1) The juvenile was adjudicated delinquent on or after December 25, 1993, for violation of, or for the solicitation, conspiracy or attempt to commit first- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault of the same child.
  - (2) The juvenile is in prison, a secured correctional facility or a secured CCI, or on probation, parole, supervision or aftercare supervision on or after December 25, 1993, for violation of, or for the solicitation, conspiracy or attempt to commit first- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault of the same child.

- (3) The juvenile is in prison, a secured correctional facility, a secured CCI, or on probation, parole, supervision or aftercare supervision on or after December 25, 1993, for a violation of, or for the solicitation, conspiracy or attempt to commit a violation of a law of this state that is comparable to first- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault of the same child.
- (4) The juvenile is found not guilty or not responsible by reason of mental disease or defect on or after December 25, 1993, and committed under s. 51.20 or 971.17, Stats., for any violation of, or for the solicitation, conspiracy or attempt to commit first- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault of the same child.
- (5) The juvenile is in institutional care or on conditional transfer under s. 51.35 (1), Stats., or conditional release under s. 971.17, Stats., on or after December 25, 1993, for any violation of, or for the solicitation, conspiracy or attempt to commit first- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault of the same child.
- (6) The juvenile is in institutional care or on conditional transfer under s. 51.35 (1) or conditional release under s. 971.17 on or after December 25, 1993, for a violation of, or for the solicitation, conspiracy or attempt to commit a violation, of a law of this state that is comparable to first- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault of the same child.
- (7) The juvenile is on parole or probation in this state from another state under s. 304.13 or 304.135, Stats., on or after December 25, 1993, for a violation of, or for the solicitation, conspiracy or attempt to commit a violation, of the law of another state that is comparable to first- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault of the same child.

b. At the time of the violation, or of the solicitation, conspiracy or attempt to commit the violation of first- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault of the same child or of a law that is comparable to those offenses, the person had not attained the age of 19 years and was not more than four years older or not more than four years younger than the child.

c. It is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements.

Act 130 also specifies what the juvenile court may consider in determining whether it would be in the best interest of public protection to have a juvenile comply with the reporting requirements in cases in which the court is not required to order the juvenile to comply. Under the Act, the court may consider any of the following:

---

- a. The ages, at the time of the violation, of the juvenile and the victim of the violation.
- b. The relationship between the juvenile and the victim of the violation.
- c. Whether the violation resulted in bodily harm to the victim.
- d. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.
- e. The probability that the juvenile will commit other violations in the future.
- f. Any other factor that the court determines may be relevant to the particular case.

## **B. SUSPENSION OR REVOCATION OF OPERATING PRIVILEGE**

### **1. Background**

Under prior law, the juvenile court was authorized to suspend or revoke a juvenile's operating privilege as a disposition in a delinquency or JIPS proceeding.

### **2. Act 84**

Under Act 84, the juvenile court is authorized only to suspend a juvenile's operating privilege.

## **C. RESTITUTION AND FORFEITURES**

### **1. Background**

Under current law, a juvenile may be required to pay restitution if the juvenile's act has resulted in damage to the property of another or in actual physical injury to another, excluding pain and suffering. Such a requirement may be included in a deferred prosecution agreement, a consent decree or a dispositional order. In addition, a court may order a juvenile to pay a forfeiture for certain violations. Prior to Act 205, any agreement or order requiring a juvenile to pay restitution or a forfeiture was required to include a finding that the juvenile alone was financially able to pay.

If a juvenile fails to pay restitution or a forfeiture or if it appears likely that the juvenile will not pay, the juvenile court may order that the amount of restitution or the forfeiture unpaid by the juvenile be entered and docketed as a judgment against the juvenile and the parent with legal custody of the juvenile. Before entering such an order, the court must give the juvenile and the parent an opportunity to be heard and to present evidence. Such evidence may be related to the ability of the juvenile or the parent to pay. In considering the ability of the juvenile or the

parent to pay, the court may consider the assets, as well as the income, of the juvenile or the parent and the future ability of the juvenile or the parent to pay.

## 2. Act 183

Under Act 183, a juvenile may make restitution in the form of cash payments or by performing services for the victim, if the victim agrees. The Act specifies that a juvenile who is under 14 years of age may not be required to perform more than 40 hours of services for a victim as restitution.

## 3. Act 205

Under Act 205, any agreement or order to pay restitution or a forfeiture made or entered into must include a finding that the juvenile either alone ***or with the assistance of a parent with custody of the juvenile*** is financially able to pay. Specifically, the Act permits the court or juvenile court commissioner to order the juvenile to pay restitution or a forfeiture, as permitted under current law, and, ***in addition***, to order the parent who has custody of the juvenile to pay restitution or a forfeiture on behalf of the juvenile. Therefore, if a parent is found to be able to pay restitution or a forfeiture, there is a separate court order which applies only to the parent.

The Act provides that the amount ordered in the separate orders, combined, may not exceed the total restitution or forfeiture ordered. The Act also provides that the maximum amount of restitution, except for recovery of retail theft under s. 943.51, Stats. (for which the maximum recovery is \$300), which may be ordered for a parent, including a parent with custody of two or more juveniles found to have committed the same act, is the amount which may be recovered in small claims court. Currently, this amount is \$5,000.

Also, under the Act, any amount of restitution recovered under an order made by the juvenile court reduces the amount that may be recovered in a private civil action.

## D. TEEN COURT PROGRAMS

### 1. Background

Under current law, a juvenile who has been found to be a delinquent or to have violated a civil law or ordinance may be ordered to participate in a teen court program as a disposition. In order to participate in a teen court program, the following conditions must apply:

a. The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the judge or juvenile court commissioner determines that participation in the teen court program will likely benefit the juvenile and the community.

b. If the juvenile is alleged to have committed a delinquent act, the alleged act would be a misdemeanor if committed by an adult.

c. The juvenile admits or pleads no contest in open court, with the juvenile's parent, guardian or legal custodian present, to the allegations.

d. The juvenile has not successfully completed participation in a teen court program during the two years before the date of the alleged act.

In addition, a juvenile may agree to participate in such a program under a deferred prosecution agreement.

## 2. Act 205

Act 205 provides that a school attendance officer may also refer a juvenile to a teen court program if the activities required in order for the juvenile court to have jurisdiction over the juvenile as a habitual truant have been completed (i.e., evaluation of the juvenile and attempts to address issues which may be causing truancy), unless they were not required to be completed due to the juvenile's absence from school. In addition, all of the following conditions must apply:

a. The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and has authorized the school attendance officer to refer juveniles to the teen court program and the school attendance officer determines that participation in the teen court program will likely benefit the juvenile and the community.

b. The juvenile and the juvenile's parent, guardian and legal custodian consent to the juvenile's participation in the teen court program.

c. The juvenile has not successfully completed participation in a teen court program during the two years before the date on which the school attendance officer received evidence that the required activities have been completed or were not completed due to the juvenile's absence from school.

The Act also provides that:

a. If a juvenile who is referred to a teen court program, as described above, is not eligible for participation in the program or does not successfully complete participation in the program, the person administering the teen court program must file information with the juvenile court to begin a JIPS proceeding.

b. Filing the information does not preclude concurrent prosecution of the juvenile's parent or guardian for not requiring the juvenile to attend school.

## **E. HABITUAL TRUANTS**

### **1. Background**

Under prior law, “habitual truancy” was defined as absence from school without an acceptable excuse for either: (a) all or part of 5 days out of 10 consecutive days on which school is held during a school semester; or (b) 10 or more days on which school is held during a school semester.

Under prior law, if the court found that a *person under 18 years of age* had violated a municipal ordinance prohibiting habitual truancy enacted under s. 118.163 (2), Stats., the court was required to enter an order making one or more of the following dispositions if such disposition was authorized by the municipal ordinance:

- a. Suspend the person’s driver’s license for not less than 30 days nor more than 90 days.
- b. Order the person to participate in counseling, community service or a supervised work program.
- c. Order the person to remain at home except during hours in which the person is attending religious worship or a school program, including travel time required to get to and from the school program or place of worship. The order may also permit a person to leave his or her home if accompanied by a parent or guardian.
- d. Order the person to attend an educational program.
- e. Order the Department of Workforce Development to revoke the person’s work permit.
- f. Order the person to be placed in a teen court program.

These dispositions were also available to a juvenile court in a JIPS proceeding based on habitual truancy.

### **2. Act 239**

Under Act 239, “habitual truancy” is defined as absence from school without an acceptable excuse for part or all of five or more days on which school is held during the school semester.

Act 239 expands the dispositions that may be made available under a municipal habitual truancy ordinance, and which are available in a proceeding involving a juvenile alleged to be JIPS based on habitual truancy, to include the following new dispositions:

- a. An order for the juvenile to attend school.
- b. A forfeiture of not more than \$500 plus, if the juvenile is 14 years of age or older, costs. All or part of the forfeiture plus costs may be assessed against the juvenile, the juvenile's parents or guardian, or both.
- c. Any other reasonable conditions, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other juveniles or adults.
- d. An order placing the juvenile under formal or informal supervision of an agency, the DOC, if the DOC approves, or a suitable adult, under conditions prescribed by the court including reasonable rules for the juvenile's conduct, designed for the physical, mental or moral well-being and behavior of the juvenile.
- e. An order for the juvenile's parent, guardian or legal custodian to attend school with the juvenile.
- f. An order for the juvenile's parent, guardian or legal custodian to participate in counseling at his or her own expense. (This is authorized, under the Act, for a municipal court. A juvenile court that finds that a juvenile has violated a municipal habitual truancy ordinance or is in need of protection or services based on habitual truancy already had this authority.)

The Act also modifies available dispositions as follows:

- a. Extends the maximum period of suspension of the juvenile's operating privilege from 90 days to one year.
- b. Provides that the costs of any counseling, supervised work program or other community service work order by the court may be assessed against the juvenile, the juvenile's parents or guardian, or both.

## **F. TRUANCY ORDINANCE VIOLATIONS**

### **1. Background**

Prior to Act 239, the authority for municipalities to enact truancy ordinances was limited to "habitual truancy." Also, under current law, juvenile court jurisdiction over juveniles alleged to be JIPS based on truancy is limited to "habitual truancy."

### **2. Act 239**

Act 239 authorizes a county, city, village or town to enact an ordinance prohibiting a person under 18 years of age from being "truant." "Truant" is defined to mean a pupil who is absent from school without an acceptable excuse for part or all of any day in which school is held during a school semester.

Juvenile courts have concurrent jurisdiction with municipal courts over juveniles who violate municipal truancy ordinances, except that: (a) juvenile court jurisdiction is limited to juveniles who are under the age of 17 years; and (b) municipal court jurisdiction is limited to violations of truancy ordinances by juveniles age 12 years or older.

Under the Act, a municipal truancy ordinance must specify which of the following dispositions are available to the municipal or juvenile court:

a. An order to attend school.

b. A forfeiture of not more than \$50 for a first violation, or a forfeiture of not more than \$100 for any second or subsequent violation committed within 12 months of a previous violation (subject to a maximum cumulative forfeiture amount of not more than \$500 for all violations committed during a school semester). If the juvenile is 14 years of age or older, the court may also impose costs. All or part of the forfeiture plus costs may be assessed against the juvenile or the juvenile's parents or guardian, or both.

## VII. DISPOSITIONAL ORDERS

### A. REMOVAL FROM HOME: JUVENILE'S HEALTH AND SAFETY; REASONABLE EFFORTS

#### 1. Background

Under current law, if a juvenile is placed outside of the home under a dispositional order, the dispositional order must contain the court's finding as to whether the county department which provides social services or the agency primarily responsible for providing services under a court order has made reasonable efforts to prevent the removal of the juvenile from the home or, if applicable, that the agency primarily responsible for providing services under a court order has made reasonable efforts to make it possible for the juvenile to return to his or her home.

Prior to Act 237, when a court made a finding as to whether a county department or an agency had made reasonable efforts to prevent the removal of the juvenile from his or her home, the court's consideration of reasonable efforts was required to include, but was not limited to, whether:

- a. A comprehensive assessment of the family's situation was completed, including a determination of the likelihood of protecting the juvenile's welfare effectively in the home.
- b. Financial assistance, if applicable, was provided to the family.
- c. Services were offered or provided to the family, if applicable, and whether any assistance was provided to the family to enable the family to utilize the services.
- d. Monitoring of client progress and client participation in services was provided.
- e. A consideration of alternative ways of addressing the family's needs was provided, if services did not exist or existing services were not available to the family.

When a court makes a finding as to whether the agency primarily responsible for providing services to the juvenile under a court order has made reasonable efforts to make it possible for the juvenile to return to his or her home, the court's consideration of reasonable efforts must include, but not be limited to, the considerations listed in items a. to e., above, and whether visitation schedules between the juvenile and his or her parents were implemented, unless visitation was denied or limited by the court.

#### 2. Act 237

Under Act 237, as under current law, the court must find that the county department or other agency has made reasonable efforts to prevent the removal of the juvenile from the home, but must also *assure that the juvenile's health and safety are the paramount concerns*. In addition, if applicable, the court must find that the agency responsible for services under a court

order has made reasonable efforts to make it possible for the juvenile to return *safely* to his or her home.

Act 237 also requires the comprehensive assessment of the family's situation described in item a., above, to include a determination of the likelihood of protecting the juvenile's health and safety.

Act 237 also provides that a court is not required to include in a dispositional order a finding as to whether a county department which provides social services or the agency primarily responsible for providing services under a court order has made reasonable efforts with respect to a parent of a juvenile to prevent the removal of the juvenile from the home or to make it possible for the juvenile to return safely to his or her home, if the court finds, as evidenced by a final judgment of conviction, any of the following:

a. That the parent has subjected the juvenile to aggravated circumstances. "Aggravated circumstances" include abandonment in violation of s. 948.20, Stats., or in violation of the law of any other state or federal law if that violation would be a violation of s. 948.20, Stats., if committed in this state; torture; chronic abuse; or sexual abuse.

b. That the parent has committed, has aided or abetted the commission of, or has solicited, conspired or attempted to commit, first- or second-degree intentional homicide, first-degree reckless homicide or felony murder or a violation of the law of any other state or federal law, if that violation would be first- or second-degree intentional homicide, first-degree reckless homicide or felony murder if committed in this state, and that the victim of that violation is a child of the parent.

c. That the parent has committed substantial or aggravated battery, first- or second-degree sexual assault, first- or second-degree sexual assault of a child, repeated acts of sexual assault of the same child or intentionally or recklessly causing great bodily harm to a child or a violation of the law of any other state or federal law, if that violation would be a violation of one of the above offenses if committed in this state, and that the violation resulted in great bodily harm or in substantial bodily harm to the juvenile or another child of the parent.

d. That the parental rights of the parent to another child have been involuntarily terminated.

If the court makes a finding specified in items a. to d., above, the court must hold a hearing within 30 days after the date of that finding to determine the permanency plan for the juvenile. If a hearing is not held, the agency responsible for preparing the permanency plan must file the permanency plan with the court not less than five days before the date of the hearing.

## **B. PERMANENCY PLANS**

Under current law, generally, for each juvenile living in a foster home, treatment foster home, group home, CCI, secure detention facility or shelter care facility, the agency that placed the juvenile or arranged for the placement or the agency assigned primary responsibility for providing services to the juvenile under the dispositional order must prepare a written permanency plan, if certain conditions exist.

Generally, the agency must file the permanency plan with the court within 60 days after the date on which the juvenile was first held in physical custody or placed outside of his or her home under a court order.

### **1. Contents of the Plan**

#### **a. Background**

Prior to Act 237, a permanency plan was required to include a description of all of the following:

(1) The services offered and any service provided in an effort to prevent holding or placing the juvenile outside of his or her home, and to make it possible for the juvenile to return home.

(2) The basis for the decision to hold the juvenile in custody or to place the juvenile outside of his or her home.

(3) The availability of a placement with a relative of the juvenile and, if a decision is made not to place the juvenile with an available relative, why placement with the relative is not appropriate.

(4) The location and type of facility in which the juvenile is currently held or placed, and the location and type of facility in which the juvenile will be placed.

(5) If the juvenile is living more than 60 miles from his or her home, documentation that placement within 60 miles of the juvenile's home is unavailable or inappropriate.

(6) The appropriateness of the placement and of the services provided to meet the needs of the juvenile and family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the juvenile or, if available, why such services are not appropriate.

(7) The services that will be provided to the juvenile, the juvenile's family and the juvenile's foster parent, the juvenile's treatment foster parent or the operator of the facility where the juvenile is living to carry out the dispositional order, including services planned to accomplish all of the following:

- (a) Ensure proper care and treatment of the juvenile and promote stability in the placement.
- (b) Meet the juvenile's physical, emotional, social, educational and vocational needs.
- (c) Improve the conditions of the parents' home to facilitate the return of the juvenile to his or her home, or, if appropriate, obtain an alternative permanent placement for the juvenile.

(8) The conditions, if any, upon which the juvenile will be returned to his or her home, including any changes required in the parents' conduct, the juvenile's conduct or the nature of the home.

**b. Act 237**

The Act amends items (1), (3), (6) and (7) in Section 1. a., above, to provide that the permanency plan must include the following:

(1) The services offered and any service provided in an effort to prevent holding or placing the juvenile outside of his or her home, ***while assuring that the health and safety of the juvenile are the paramount concerns***, and to make it possible for the juvenile to return ***safely*** home, ***except that the permanency plan need not include a description of those services offered or provided with respect to a parent of the juvenile meets one of the conditions under which reasonable efforts are not required.***

(2) The availability of a ***safe and appropriate*** placement with a relative of the juvenile and, if a decision is made not to place the juvenile with an available relative, why placement with the relative is not ***safe*** or appropriate.

(3) The ***safety*** and appropriateness of the placement and of the services provided to meet the needs of the juvenile and family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the juvenile or, if available, why such services are not ***safe*** or appropriate.

(4) The services that will be provided to the juvenile, the juvenile's family and the juvenile's foster parent, the juvenile's treatment foster parent or the operator of the facility where the juvenile is living to carry out the dispositional order, including services planned to accomplish all of the following:

- (a) Ensure proper care and treatment of the juvenile and promote ***safety*** and stability in the placement.
- (b) Meet the juvenile's physical, emotional, social, educational and vocational needs.

- (c) Improve the conditions of the parents' home to facilitate the *safe* return of the juvenile to his or her home, or, if appropriate, obtain an alternative permanent placement for the juvenile.

The Act also creates a new item to be included in the permanency plan. Under the Act, if the permanency plan calls for placing the juvenile for adoption, with a guardian or in some other alternative permanent placement, the efforts made to place the juvenile for adoption, with a guardian or in some other alternative permanent placement must be included in the plan.

## **2. Review of the Plan**

### **a. Background**

Prior to the enactment of Act 237, the court or panel appointed to review the permanency plan must review the plan every six months from the date on which the juvenile was first held in physical custody and placed outside his or her home. In such a review, prior to Act 237, the court or panel was required to determine each of the following:

- (1) The continuing necessity for and the appropriateness of the placement.
- (2) The extent of compliance with the permanency plan by the agency and any other service providers, the juvenile's parents, the juvenile and the juvenile's guardian, if any.
- (3) The extent of any efforts to involve appropriate service providers in addition to the agency's staff in planning to meet the special needs of the juvenile and the juvenile's parents.
- (4) The progress toward eliminating the causes for the juvenile's placement outside of his or her home and toward returning the juvenile to his or her home or obtaining a permanent placement for the juvenile.
- (5) The date by which it is likely that the juvenile will be returned to his or her home, placed for adoption, placed under legal guardianship or otherwise permanently placed.
- (6) If the juvenile has been placed outside of his or her home for two years or more, the appropriateness of the permanency plan and the circumstances which prevent the juvenile from any of the following:
  - (a) Being returned to his or her home.
  - (b) Being placed in the home of a relative of the juvenile.
  - (c) Having a petition for the involuntary termination of parental rights (TPR) filed on behalf of the juvenile.
  - (d) Being placed for adoption.

(e) Being placed on sustaining care.

(7) Whether reasonable efforts were made by the agency to make it possible for the juvenile to return to his or her home.

**b. Act 237**

The Act amends items (1), (4), (6) and (7) in Section 2. a., above, to provide that the court or review panel must determine each of the following in its review:

(1) The continuing necessity for and the *safely* and appropriateness of the placement.

(2) The progress toward eliminating the causes for the juvenile's placement outside of his or her home and toward returning the juvenile *safely* to his or her home or obtaining a permanent placement for the juvenile.

(3) If the juvenile has been placed outside of his or her home for 15 of the most recent 22 months, the appropriateness of the permanency plan and the circumstances which prevent the juvenile from any of the following:

(a) Being returned *safely* to his or her home.

(b) Being placed in the home of a relative of the juvenile.

(c) Having a petition for the involuntary TPR filed on behalf of the juvenile.

(d) Being placed for adoption.

(e) Being placed on sustaining care.

(4) Whether reasonable efforts were made by the agency to make it possible for the juvenile to return *safely* to his or her home, *except that the court or panel need not determine whether those reasonable efforts were made with respect to a parent of the juvenile who meets one of the conditions under which reasonable efforts are not required.*

**3. Administrative Rules**

**a. Background**

Prior to Act 237, the Department of Health and Family Services was required to promulgate rules establishing standards for reasonable efforts to prevent placement of juveniles outside of their homes and to make it possible for juveniles to return to their homes if they have been placed outside of their homes.

**b. Act 237**

Under Act 237, the rules must establish standards for reasonable efforts to prevent placement of juveniles outside of their homes, *while assuring that their health and safety are the paramount concerns.*

**C. EXTENSION OF DISPOSITIONAL ORDERS**

**1. Contents of Written Report Relating to Extension Request**

**a. Background**

Under current law, no dispositional order may be extended without a hearing. At the hearing, the person or agency primarily responsible for providing services to the juvenile must file with the juvenile court a written report stating to what extent the dispositional order has been meeting the objectives of the plan for the juvenile's rehabilitation or care and treatment. Prior to Act 237, if the juvenile was placed outside of his or her home, the report was required to contain all of the following information:

(1) A copy of the report of the review panel appointed to review the juvenile's permanency plan, if any, and a response to the report from the agency primarily responsible for providing services to the juvenile.

(2) An evaluation of the juvenile's adjustment to the placement and of any progress the juvenile has made, suggestions for amendment of the permanency plan, a description of efforts to return the juvenile to his or her home, including efforts of the parents to remedy factors which contributed to the juvenile's placement and, if continued placement outside the juvenile's home is recommended, an explanation of why returning the juvenile to his or her home is not feasible.

(3) If the juvenile has been placed outside his or her home for two or more years, a statement of whether or not a recommendation has been made to terminate the parental rights of the parents of the juvenile.

Prior law defined "two or more years" as a period of time that begins with the first placement of the juvenile under a JIPS dispositional order, an extended order, a change in placement or a revised order and includes any period of time in which the juvenile returned home, unless the periods of time at home account for the majority of the time since the first placement.

**b. Act 237**

Under Act 237, a report for a hearing for an extension of the order of a juvenile who is placed outside his or her home must include an evaluation of the juvenile's adjustment to the placement and of any progress the juvenile has made, suggestions for amendment of the permanency plan, a description of efforts to return the juvenile *safely* to his or her home, including

efforts of the parents to remedy factors which contributed to the juvenile's placement and, if continued placement outside the juvenile's home is recommended, an explanation of why returning the juvenile to his or her home is not *safe* or feasible.

Act 237 also requires the report to include a statement of whether or not a recommendation has been made to terminate the parental rights of the parents of the juvenile if the juvenile has been placed outside of his or her home for *15 of the most recent 22 months*.

Under Act 237, a juvenile is considered to have been placed outside of his or her home on the date on which the juvenile was first placed outside of his or her home pursuant to a JIPS dispositional order, a change in placement or a revision of a dispositional order or on the date that is 60 days after the date on which the juvenile was removed from his or her home, whichever is earlier.

## 2. Required Court Findings

### a. Background

Prior to Act 237, at a hearing to extend a dispositional order, the court was required to make findings of fact and conclusions of law based on evidence, including a finding as to whether reasonable efforts were made by the agency primarily responsible for providing services to the juvenile to make it possible for the juvenile to return to his or her home.

### b. Act 237

Under the Act, a court is required to make a finding as to whether reasonable efforts were made to make it possible for the juvenile to return *safely* to his or her home. However, this finding is not required if reasonable efforts are not required, as described above.

## VIII. VIOLATION OF A DISPOSITIONAL ORDER OR CONDITION OF AFTERCARE

### A. SHORT-TERM DETENTION FOR VIOLATION OF A DISPOSITIONAL ORDER

#### 1. Background

Subject to any general policies adopted by the juvenile court under s. 938.06 (1) or (2), Stats., and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile, the Juvenile Justice Code permits the *caseworker* of a juvenile who has been *adjudged delinquent* and who has violated a condition of his or her dispositional order to take the juvenile into custody without a hearing and place the juvenile in a secure detention facility, juvenile portion of a county jail that meets the standards promulgated by the DOC by rule or place of nonsecure custody designated by the caseworker for *not more than 72 hours* while the alleged violation is being investigated.

The Code also permits the caseworker of a juvenile who has been found to be JIPS and who has violated a condition of his or her dispositional order to take the juvenile into custody without a hearing and place the juvenile in a place of *nonsecure custody* designated by the caseworker for *not more than 72 hours* while the alleged violation is being investigated.

#### 2. Act 205

Under Act 205, the juvenile's caseworker *or any person authorized to provide or providing intake or dispositional services for the court* may, without a hearing, take and hold a juvenile in custody while an alleged violation is being investigated *and while the appropriateness of a sanction is being investigated*.

The Act also provides that, subject to any written general policies adopted by the juvenile court and to any policies adopted by the county board relating to taking juveniles into custody and placing juveniles in secure detention, if a juvenile violates a condition of a delinquency dispositional order, the juvenile's caseworker, an intake worker or a disposition staff member, may take the juvenile into custody, without a hearing, and place the juvenile in a secure detention facility or the juvenile portion of a county jail or in a place of nonsecure custody designated by that person for not more than 72 hours *as a consequence for that violation*. However, with respect to a consequence for a JIPS dispositional order, the consequence may only be placement in a place of nonsecure custody for up to 72 hours.

A person who takes the juvenile into custody under this provision must permit the juvenile to make a written or oral statement concerning the possible placement and the course of conduct for which the juvenile is taken into custody. The person designated by the juvenile court or a county department who is employed in a supervisory position by an entity authorized to provide or providing intake or dispositional services must review that statement and must either approve the placement or order the juvenile to be released from custody.

It should be noted, however, that this provision applies *only if*, at the dispositional hearing, the juvenile court explained the conditions of the dispositional order to the juvenile and informed the juvenile of the possibility of this placement or if, before the violation, the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, the conditions of the dispositional order and this possible placement and that he or she understands those conditions and possible placement.

## **B. SHORT-TERM DETENTION FOR VIOLATION OF A CONDITION OF AFTERCARE**

### **1. Background**

Under current law, if a juvenile has been adjudicated delinquent, the juvenile court may designate the DOC or a county department of social or human services to provide aftercare supervision for the juvenile following the juvenile's release from a secured correctional facility or secure CCI.

Current law provides that a juvenile who has been placed on aftercare supervision may be taken into custody if a law enforcement officer believes on reasonable grounds that the juvenile has violated the terms of aftercare supervision. Under current law, the person who takes the juvenile into custody or the intake worker who interviews the juvenile may release the juvenile to the DOC or a county department, whichever has aftercare supervision. If a juvenile who has violated the terms of aftercare supervision is not released to the DOC or the county department and is held in custody, a detention hearing must be held within 24 hours after the end of the day that the decision to hold the juvenile is made, excluding Saturdays, Sundays and legal holidays.

### **2. Act 205**

Act 205 creates a provision relating to taking into custody and holding a juvenile who is on aftercare supervision and who violates a condition of that supervision that is parallel to the provisions relating to short-term detention of juveniles who are alleged to have violated a delinquency or JIPS dispositional order. Specifically, subject to any written general policies adopted by the juvenile court, a county department or the county board relating to the taking into custody and placement of a juvenile under this provision, if the juvenile who is on aftercare supervision administered by a county department violates a condition of that supervision, the Act permits the juvenile's aftercare caseworker or any intake worker or disposition staff member to take the juvenile into custody, without a hearing, and place the juvenile in a secure detention facility or the juvenile portion of a county jail or in a place of nonsecure custody designated by that person, for not more than 72 hours while the alleged violation and the appropriateness of revoking the juvenile's aftercare status is being investigated. If the juvenile is held longer than 72 hours, the juvenile is entitled to a hearing.

This provision applies *only if*, before the violation, the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, the conditions of aftercare

supervision administered by a county department and possible placement and that he or she understands those conditions and this possible placement.

The Act also creates a provision relating to imposing short-term detention as a consequence for violating a condition of aftercare supervision administered by a county department that is the same as the provision created related to imposing short-term detention as a consequence for juveniles who have violated a delinquency or JIPS dispositional order.

The above provisions do not apply to juveniles who are on aftercare supervision administered by DOC.

### **C. SHORT-TERM DETENTION TO INVESTIGATE A VIOLATION OF A CONDITION OF PARTICIPATION IN AN INTENSIVE SUPERVISION PROGRAM**

#### **1. Current Law**

Under current law, a county department may provide an intensive supervision program for juveniles who have been adjudicated delinquent and ordered by a juvenile court to participate in such a program. Current law provides that, subject to any general written policies adopted by the county board, if a juvenile violates a condition of his or her participation in the intensive supervision program, the juvenile's caseworker may, without a hearing, take the juvenile into custody and place the juvenile in a secure detention facility for not more than 72 hours while the alleged violation is being investigated. If the juvenile is held longer than 72 hours, the juvenile is entitled to a hearing.

This provision applies only if, at the dispositional hearing, the juvenile court explained the conditions of the juvenile's participation in the intensive supervision program to the juvenile and informed the juvenile of the possibility of this placement or if, before the violation, the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions of this possible placement and that he or she understands those conditions of this possible placement.

#### **2. Act 205**

Act 205 amends the above provisions so that they also parallel the provisions for juveniles who have violated a condition of a delinquency or JIPS dispositional order. Specifically, the Act provides that, subject to any general written policies adopted by the county board relating to taking into custody and placement of a juvenile participating in an intensive supervision program, if a juvenile violates a condition of his or her participation in such a program, the juvenile's caseworker or any intake worker or disposition staff member may, without a hearing, take the juvenile into custody and place the juvenile in a secure detention facility, the juvenile portion of a county jail or in a place of nonsecure custody designated by that person for not more than 72 hours while the alleged violation and the appropriateness of a sanction or a change in the conditions of the juvenile's participation are being investigated.

The Act also creates a provision relating to imposing short-term detention as a consequence for violating a condition of participation in an intensive supervision program that is parallel to the provision for short-term detention of a juvenile who has violated a dispositional order as a consequence for that violation.

#### **D. COUNTY APPROVAL OF USE OF SECURE DETENTION FOR SHORT-TERM DETENTION**

##### **1. Background**

Under current law, a juvenile court may not order placement in a secure detention facility or the juvenile portion of a county jail as a delinquency disposition unless the use of such disposition has been authorized by the county board of supervisors of the county by resolution.

##### **2. Act 205**

Act 205 requires county board authorization, as described above, for the use of placement in a secure detention facility or juvenile portion of a county jail as a place of short-term detention under the provisions described in Sections A., B. and C., above.

#### **E. SANCTIONS FOR HABITUAL TRUANTS AND DROPOUTS**

##### **1. Background**

Under current law, a juvenile who violates a condition of his or her dispositional order may be sanctioned by the court that issued the order. A motion for the *juvenile court* to impose a sanction on a juvenile who has been found to be JIPS based on habitual truancy may be brought by: (a) the person or agency primarily responsible for providing dispositional services to the juvenile; (b) the administrator of the school district in which the juvenile is enrolled or resides; (c) the DA; (d) the corporation counsel; or (e) the court that entered the dispositional order. A motion for the *municipal court* to impose a sanction may be brought by: (a) the person or agency primarily responsible for providing dispositional services to the juvenile; (b) the municipal attorney; or (c) the court that entered the dispositional order.

Under prior law, the municipal court was permitted to impose any of the following sanctions that are authorized by the municipality on a juvenile who has been found to have violated a municipal ordinance, including one prohibiting habitual truancy or dropping out of school and has violated a condition of his or her dispositional order:

- a. Suspension or limitation of the juvenile's driver's license or any hunting or fishing approval for a period of not more than three years.
- b. Detention in the juvenile's home or current residence for a period of not more than 30 days.

c. Not more than 25 hours of uncompensated participation in a supervised work program or other community service work.

The municipal court could also petition the juvenile court to impose the following sanctions that are authorized by the municipality:

a. Placement in a secure detention facility or juvenile portion of a county jail that meets the standards promulgated by the DOC by rule or in a place of nonsecure custody for not more than 10 days and the provision of educational services consistent with the juvenile's current course of study during the period of placement.

b. Home detention, with monitoring by an electronic monitoring system.

Current law also contains specific sanctions which the juvenile court may impose on juveniles found to be JIPS based on habitual truancy who have violated a condition of their dispositional order. Specifically, the juvenile court may order any of the following sanctions:

a. Suspension of the juvenile's driver's license for not more than one year.

b. Participation in counseling or a supervised work program or other community service work.

c. Home detention.

d. Attendance at an educational program.

e. Revocation of the juvenile's work permit.

f. Placement in a teen court program.

g. Participation of the juvenile's parent, guardian or legal custodian in counseling at the parent's, guardian's or legal custodian's own expense.

A juvenile who is found to have violated an ordinance prohibiting habitual truancy who is subsequently found to have violated a condition of his or her dispositional order may receive any sanction permitted for juveniles who have been adjudicated delinquent. Those sanction alternatives are as follows:

a. Placement of the juvenile in a secure detention facility or juvenile portion of a county jail or in a place of nonsecure custody, for not more than 10 days.

b. Suspension or limitation on the use of the juvenile's driver's license or driving privilege or any hunting or fishing approval for a period of not more than three years.

c. Detention in the juvenile's home or current residence for a period of not more than 30 days under rules of supervision specified in the order. Such an order may require the juvenile to be monitored by an electronic monitoring system.

d. Not more than 25 hours of uncompensated participation in a supervised work program or other community service work.

## **2. Act 205**

Under Act 205, a school district administrator may not bring a motion to impose a sanction.

The Act also modifies the sanctions for juveniles who have been found to be JIPS based on habitual truancy who subsequently violate a condition of their dispositional order. Specifically, under the Act, the sanctions available for a habitual truant who has violated a condition of his or her dispositional order are as follows:

a. Suspension or limitation on the use of the juvenile's driver's license or hunting or fishing approval for not more than one year.

b. Counseling or participation for not more than 25 hours in a supervised work program or other community service work.

c. Detention in the juvenile's home or current residence for not more than 30 days.

The Act also provides that a juvenile who has been found to have violated an ordinance prohibiting habitual truancy who subsequently violates a condition of his or her dispositional order may only be sanctioned as permitted for juveniles who have been found to be JIPS based on habitual truancy. However, this provision was subsequently amended by 1997 Wisconsin Act 239 which permits juveniles who have been found to have violated an ordinance prohibiting habitual truancy or who have been found to be JIPS based on habitual truancy to be held in a secure detention facility as a sanction.

## **3. Act 239**

Act 239 authorizes a juvenile court to use secure detention, for up to 10 days, for a juvenile found to have violated a municipal habitual truancy ordinance or found to be JIPS based on habitual truancy, who, subsequently, violates a condition of his or her dispositional order.

As under prior law, if a juvenile commits a second or subsequent violation of a condition specified in his or her dispositional order, the juvenile may be charged with contempt of court and secure detention may be imposed as a sanction for that contempt.

The Act also clarifies that before the court may impose placement in a secure detention facility or the juvenile portion of a county jail as a sanction for a dispositional order regarding

habitual truancy, the county board must adopt a resolution authorizing those placements as a sanction.

## **F. SUSPENSION OF DRIVER'S LICENSE**

### **1. Background**

Under current law, a juvenile or municipal court may suspend or limit the use of a juvenile's driver's license for a period of not more than three years as a sanction for violation of a condition of a dispositional order.

### **2. Act 205**

Act 205 provides that if the juvenile does not hold a valid driver's license, other than an instruction permit or a restricted license, on the date that a sanction suspending the license is ordered, the juvenile court may order the suspension to begin on the date that the driver's license would otherwise be reinstated or issued after the juvenile applies for and qualifies for issuance or two years after the date of the order, whichever is later.

## **G. SUSPENSION OF OPERATING PRIVILEGE FOR FAILURE TO PAY A FORFEITURE**

### **1. Background**

Prior to Act 84, if a juvenile failed to pay a forfeiture, as ordered by the juvenile court, the juvenile court was permitted to suspend the juvenile's operating privilege for not less than 30 days nor more than five years.

### **2. Act 84**

Under Act 84, if a juvenile fails to pay a forfeiture, as ordered by the juvenile court, the juvenile court may suspend the juvenile's operating privilege for not more than two years.

## **H. CONTEMPT OF COURT**

### **1. Background**

Under current law, if a juvenile upon whom the juvenile court has imposed a sanction commits a second or subsequent violation of a condition of his or her dispositional order, the DA may file a petition charging the juvenile with contempt of court.

## 2. Act 205

Act 205 specifies that the provisions of current law relating to the imposition of sanctions and finding juveniles to be in contempt of court do not preclude a person who is aggrieved by a juvenile's violation of a condition of a dispositional order from proceeding against the juvenile for contempt of court under ch. 785, Stats.

### I. VIOLATIONS OF NONSECURE CUSTODY ORDERS

#### 1. Background

Under current law, a juvenile who is in custody who intentionally escapes from custody is guilty of a Class A misdemeanor if the juvenile is in custody pursuant to a legal arrest for or lawfully charged with or convicted of a statutory traffic regulation, a statutory offense for which the penalty is a forfeiture or a municipal ordinance. A juvenile who is in custody who intentionally escapes from custody is guilty of a Class D felony if the juvenile is lawfully taken into custody under the Juvenile Justice Code for or lawfully alleged or adjudged under the Juvenile Justice Code to be delinquent on the basis of a violation of a crime or is subject to a disposition under the Juvenile Justice Code.

“Custody” includes, without limitation, actual custody of an institution, including a secured correctional facility, a secured CCI, a secure detention facility, a Type 2 CCI or a juvenile portion of a county jail, or actual custody of a peace officer or institution guard and constructive custody of juveniles subject to a dispositional order under the Juvenile Justice Code temporarily outside the institution whether for the purpose of work, school, medical care, a leave granted, a temporary leave or furlough granted to a juvenile or otherwise. “Escape” means to leave in any manner without lawful permission or authority.

## 2. Act 328

Act 328 creates an offense under which if a person has been placed in *nonsecure custody* (e.g., the home of a parent, guardian or relative, a foster home or group home) by an intake worker or by a judge or juvenile court commissioner and the person is alleged to have committed a delinquent act or has been taken into custody for committing an act that is a violation of a state or federal criminal law, the person is guilty of a Class A misdemeanor if he or she intentionally fails to comply with the conditions of his or her placement in nonsecure custody.

## **IX. COMPULSORY SCHOOL ATTENDANCE EXCEPTION**

### **A. BACKGROUND**

Under current law, subject to certain exceptions, any juvenile who is under 18 years of age is required to attend school and the school district in which a juvenile is residing must provide free public education to the juvenile. By contrast, when a juvenile is placed in a secure detention facility or the juvenile portion of a county jail, the school district in which the facility is located provides educational programming for that juvenile and the state reimburses the district for the costs of providing that programming.

One of the exceptions to compulsory school attendance under current law provides that, upon the juvenile's request and with the approval of the juvenile's parent or guardian, any juvenile who is 17 years of age or over must be excused by the school board from regular school attendance if the juvenile began a program leading to a high school equivalency diploma (HSED) in *a secured correctional facility or a secured CCI* and the juvenile and his or her parent or guardian agree that the juvenile will continue to participate in such a program. If the program the juvenile wishes to attend is provided by a technical college district, the technical college board must admit the juvenile. A technical college may not charge fees for a juvenile admitted under this provision.

### **B. ACT 205**

Act 205 broadens the above exception so that it also applies to 17-year olds who began a program leading to a HSED in a *secure detention facility or juvenile portion of a county jail* (i.e., those juveniles no longer must participate in educational programming provided by the local school district if they agree to continue to participate in a HSED program).

Act 205 also specifies what criteria must be met before a juvenile is considered to have begun a program leading to a HSED for purposes of this provision.

## **X. RIGHTS OF VICTIMS AND WITNESSES**

### **A. DEFINITION OF “VICTIM”**

#### **1. Background**

The current Juvenile Justice Code does not define “victim.”

#### **2. Act 181**

Under Act 181, “victim” means any of the following:

- a. A person against whom a delinquent act has been committed.
- b. If the person against whom a delinquent act has been committed is a child, a parent, guardian or legal custodian of the child.
- c. If the person against whom a delinquent act has been committed is physically or emotionally unable to exercise his or her rights as a victim, a person designated by the person against whom the delinquent act has been committed or a family member (i.e., spouse, child, sibling, parent or legal guardian) of the person.
- d. If the person against whom a delinquent act has been committed is deceased, any of the following:
  - (1) A family member of the person who is deceased.
  - (2) A person who resided with the person who is deceased.

The Act specifies that “victim” does not include a juvenile alleged to have committed the delinquent act.

### **B. NOTICES RELATED TO PROCEEDINGS**

#### **1. Background**

Under current law, each known victim of a juvenile’s act must receive timely notice of all of the following information:

- a. The procedure under s. 938.396 (1r), Stats., for obtaining the identity of the juvenile and the juvenile’s parents.
- b. The procedure under s. 938.396 (1r), Stats., for obtaining the juvenile’s police records.

- c. The potential liability of the juvenile's parents under s. 895.035, Stats.
- d. Either of the following:
  - (1) Information regarding any deferred prosecution agreement, any consent decree or any dispositional order.
  - (2) The procedure the victim may follow for obtaining information in item a., above.

e. The procedure under s. 938.296, Stats., under which the victim, if an adult, or the parent, guardian or legal custodian of the victim, if the victim is a child, may request an order requiring a juvenile who is alleged to have committed sexual assault, sexual assault of a child, engaging in repeated acts of sexual assault of the same child, sexual exploitation of a child or incest with a child to submit to HIV testing and to have the results of that testing disclosed.

f. The right to receive notice of the time and place of any hearing that the victim may attend.

g. The right to make a statement to the court as provided in ss. 938.32 (1) (b) and 938.335 (3m), Stats.

The intake worker must provide notice of the information specified in items a., b. and c., above, the information specified in item d., above, relating to a deferred prosecution agreement.

The DA or corporation counsel must provide notice of the information specified in items e., f. and g., above, the information specified in item d., above, relating to a consent decree or a dispositional order.

If an inquiry or proceeding is closed, dismissed or otherwise does not result in a deferred prosecution agreement, consent decree or dispositional order, a reasonable attempt must be made to inform each known victim of the juvenile's alleged act that the inquiry or proceeding has been terminated.

If the victim is a child, the notice must be given to the child's parent, guardian or legal custodian.

Chief judges of judicial administrative districts and circuit judges must establish by policy and rule the procedures for implementation of the above provisions. The policies and rules must specify when, how and by whom the notice must be provided to victims.

## **2. Act 181**

Act 181 requires that additional information be given to victims of a juvenile's act. Specifically, the Act requires victims to receive information regarding any decision by an intake worker to close a case in which a juvenile is alleged to have committed a delinquent act and

---

regarding any decision by a DA or corporation counsel not to file a petition for a case in which a juvenile is alleged to have committed a delinquent act.

Under Act 181, a victim also must receive timely notice of the right to confer, if requested, with an intake worker regarding deferred prosecution agreements or with a DA or corporation counsel regarding the possible outcomes of the proceedings and regarding consent decrees. In addition, a victim must receive information regarding all of the following:

- a. The right to a separate waiting area.
- b. The right to have his or her interest considered concerning continuances in the case.
- c. The right to have victim impact information included in a court report and to have the person preparing the court report attempt to contact the victim.
- d. The right to employer intercession services (i.e., services to ensure that employers of victims will cooperate with the juvenile justice process in order to minimize an employe's loss of pay and other benefits resulting from court appearances..
- e. The right to be accompanied by a service representative (i.e., an individual member of an organization or victim assistance program who provides counseling or support services to complainants or petitioners and charges no fee for services provided).
- f. The right to restitution.
- g. The right to compensation.
- h. The right to a speedy disposition of the case.
- i. The right to have personal property returned.
- j. The right to complain to the Department of Justice concerning the treatment of crime victims and to request review by the Crime Victims Rights Board of the complaint.

Under Act 181, the person who must provide notice of specified information to a victim, as described above, must ***make a reasonable attempt*** to provide such notice.

The Act provides that the policy and rule procedures established by the chief judges and circuit court judges must specify with whom victims may confer regarding deferred prosecution agreements, amendment of petitions, consent decrees and disposition recommendations.

## **C. CONSULTATION WITH VICTIMS**

### **1. Background**

Current law does not require the DA or corporation counsel to confer with victims regarding a case in which a juvenile is alleged to have committed a delinquent act.

### **2. Act 181**

Under Act 181, in a case in which a juvenile is alleged to have committed a delinquent act, the DA or corporation counsel must, as soon as practicable but in any event before the juvenile's plea hearing, offer all of the victims of the juvenile's alleged act who have requested the opportunity to confer with the DA or corporation counsel concerning the possible outcomes of the proceeding against the juvenile, including potential plea agreements and recommendations that the DA or corporation counsel may make concerning dispositions. The duty to confer under this provision does not limit the obligation of the DA or corporation counsel to exercise his or her discretion concerning the handling of the proceeding against the juvenile.

The Act also provides that, before accepting a plea in a proceeding in which a juvenile is alleged to have committed a delinquent act, the juvenile court must ask the DA or corporation counsel whether he or she has complied with the requirement to consult with the victims and to make a reasonable effort to contact any known victim or alleged victim to inform them of their right to receive notice of any hearing involving the juvenile; whether any of the known victims requested notice of the date, time and place of the plea hearing and, if so, whether the DA or corporation counsel provided notice of the date, time and place of the hearing.

The Act also requires the DA or corporation counsel, as soon as practicable but in any event before agreeing to a consent decree, to offer all of the victims of the juvenile's alleged act who have requested, the opportunity to confer with the DA or corporation counsel concerning the proposed consent decree. The court must ask the DA or corporation counsel whether he or she has met this requirement before entering into a consent decree.

## **D. STATEMENTS TO THE COURT**

### **1. Background**

Under current law, before the court enters into a consent decree or imposes a disposition on a juvenile alleged or found to have committed a delinquent act, the court must allow the victim to make a statement or to submit a written statement to be read to the court.

After a finding that a juvenile has committed a delinquent act, the DA or corporation counsel must attempt to notify any known victim to inform them that they may make a statement as described above. Any failure to comply with this requirement is not a ground for discharge

from fulfilling the terms and conditions of a consent decree or for appeal of a dispositional order or for any court to reverse or modify a dispositional order.

## 2. Act 181

As under current law, the Act provides that before entering into a consent decree imposing a disposition, the court must allow the victim to make or submit a statement to the court. The Act clarifies that the court must first determine whether the victim of the juvenile's act wants to make a statement to the court. As provided under current law, if a victim wants to make a statement, the court must allow the victim to make a statement in court or submit a written statement to be read to the court.

The Act requires the DA or corporation counsel to *make a reasonable attempt* to notify the victim of the opportunity to make a statement.

## E. WAITING AREA FOR VICTIMS AND WITNESSES

### 1. Background

Under current law, there are no requirements for a waiting area for victims and witnesses.

## 2. Act 181

Under the Act, if an area is available and use of the area is practical, a county must provide a waiting area for a victim or witness to use during hearings for proceedings under the Juvenile Justice Code that is separate from any area used by the juvenile, the juvenile's relatives and witnesses for the juvenile. If a separate waiting area is not available or its use is not practical, a county must provide other means to minimize the contact between the victim or witness and the juvenile, the juvenile's relatives and witnesses for the juvenile during hearings.

## F. NOTIFICATION OF A JUVENILE'S RELEASE OR ESCAPE

### 1. Background

Under prior law, at least 15 days prior to the date of release of a juvenile from a secured correctional facility or a secured CCI and at least 15 days prior to the release of a juvenile from the supervision of the DOC or a county department, the DOC or the county department having supervision over the juvenile must do *all* of the following:

a. Notify *all* of the following local agencies in the community in which the juvenile will reside of the juvenile's return to the community:

- (1) The law enforcement agencies.

- (2) The school district.
- (3) The county department of social or human services, the county department of community programs and the county department of developmental disabilities services.

b. Notify any known victim of an act for which the juvenile has been found delinquent of the juvenile's release if both of the following apply:

- (1) The victim can be found.
- (2) The victim has sent in a request card, as described below.

c. Notify, if the victim died as a result of the juvenile's delinquent act and if the criteria under item b., above, are met, an adult member of the victim's family or, if the victim is younger than 18 years of age and if the criteria under item b., above, are met, the victim's parent or legal guardian of the juvenile's release.

d. Notify any witness who testified against the juvenile in any court proceeding involving the delinquent act of the juvenile's release if both of the following apply:

- (1) The witness can be found.
- (2) The witness has sent in a request card, as described below.

The notification must include **only**: (a) the juvenile's name; (b) the date of the juvenile's release; and (c) the type of placement to which the juvenile is released.

The DOC must design and prepare cards for victims, victims' family members and witnesses to send to the DOC or the county department having supervision over the juvenile. The DOC must provide the cards, without charge, to DAs and DAs must provide the cards, without charge, to victims and witnesses. These persons may send completed cards to the DOC or county department having supervision over the juvenile.

Timely release of a juvenile may not be prejudiced by the fact that the DOC or county department having supervision over the juvenile did not notify the agencies and victims as specified above within the 15 days.

If a juvenile **escapes** from custody, as soon as possible after the DOC or county department having supervision over the juvenile discovers that escape, the DOC or county department must make a reasonable effort to notify by telephone **all** of the following persons:

a. Any known victim of the act for which the juvenile was found delinquent, if the conditions for notification, above, are met; an adult member of the victim's family, if the victim died as a result of the juvenile's delinquent act and if the conditions for notification, above, are

met; or the victim's parent or guardian, if the victim is younger than 18 years old and if the conditions for notification, above, are met.

b. Any witness who testified against the juvenile in any court proceeding involving the delinquent act, if the conditions for notification, above, are met.

## 2. Act 181

Under Act 181, the DOC or a county department having supervision over a juvenile must **make a reasonable attempt** to notify the persons specified above of a juvenile's release from secure custody or of a juvenile's escape.

The Act also specifies that all DOC and county department records or portions of records that relate to telephone numbers and mailing addresses of victims are not subject to inspection or copying under the Open Records Law.

## 3. Act 207

Act 207 provides that the above provisions relating to notification of a juvenile's release apply only to the release of juveniles who have been adjudicated delinquent.

The Act also requires notification of an adult relative of a victim who died as a result of the juvenile's delinquent act and of the parent of a victim who is under 18 **upon request**. Specifically, an adult relative of a victim must be notified of a juvenile's release if all of the following apply:

- a. The victim died as a result of the juveniles delinquent act.
- b. The adult relative can be found.
- c. The adult relative has sent in a request card.

The victim's parent or legal guardian must be notified of the juvenile's release if all of the following apply:

- a. The victim is younger than 18 years of age.
- b. The parent or legal guardian can be found.
- c. The parent or legal guardian has sent in a request card.

The Act also provides that once a victim who is a minor becomes 18, he or she must be notified of the juvenile's release if, when the victim was under 18 years of age, his or her parent or guardian sent in a request card and authorized on the the request card direct notification of the victim after the victim attains 18 years of age.

The Act also requires notification of a juvenile's release from *nonsecure* custody under certain circumstances. Specifically, the Act provides that the DOC or county department having supervision over the juvenile must notify: (a) any known victim of the act for which the juvenile was found delinquent or to be in need of protection or services, an adult relative of the victim or the victim's parent or guardian if the criteria which must be met prior to notification, described above, are met; *and* (b) any witness who testified against the juvenile in any court proceeding involving the act for which the juvenile was found delinquent or to be in need of protection or services if the witness can be found and sent in a request card as follows:

a. At least 15 days prior to the release of a juvenile who has either been adjudicated delinquent or been found to be in need of protection or services based upon having committed a delinquent act while under the age of 10 *and* who has been found to have committed a crime against life or bodily security under ch. 940, Stats., sexual assault of a child engaging in repeated acts of sexual assault of the same child or physical abuse of a child *from a nonsecured CCI*.

b. At least 15 days prior to the release of a juvenile who has been found to be in need of protection or services based upon having been determined to be not responsible for a delinquent act by reason of mental disease or defect or having been determined not competent to proceed *from a nonsecured CCI*.

c. At least 15 days prior to the release of a juvenile who has been found to be in need of protection or services based upon a determination that the juvenile is not responsible for a delinquent act by reason of mental disease or defect or that the juvenile is not competent to proceed *from an inpatient facility*.

The Act also requires notification of victims and witnesses if a juvenile *escapes* from a secured correctional facility, CCI, inpatient facility, secure detention facility or juvenile portion of a county jail, or from the custody of a peace officer or a guard of such a facility, institution or jail, or has been allowed to leave a secured correctional facility, CCI, inpatient facility, secure detention facility or juvenile portion of a county jail for a specified period of time and is absent from the facility, institution or jail for more than 12 hours after the expiration of the specified period.

## **XI. CONFIDENTIALITY OF JUVENILE RECORDS**

### **A. DISCLOSURE OF LAW ENFORCEMENT RECORDS TO SCHOOLS**

#### **1. Background**

Subject to certain exceptions, law enforcement records relating to a juvenile are confidential. Under current law, a law enforcement agency is permitted to provide to the school district administrator (i.e., the superintendent) any information in its records relating to any of the following:

- a. The use, possession or distribution of alcohol or a controlled substance or controlled substance analog by a juvenile enrolled in the public school district.
- b. The illegal possession by a juvenile of a dangerous weapon.
- c. The act for which a juvenile enrolled in the public school district was adjudged delinquent.

Under current law, upon receipt of information from a law enforcement agency, the school district administrator must notify any pupil named in the information, and the parent or guardian of any minor pupil named in the information, of the information.

Under current law, a school district is required to make information from law enforcement officers' records relating to possession of a dangerous weapon or to an act for which a juvenile was adjudicated delinquent available to persons employed by the school district which the pupil attends who are required by the Department of Public Instruction (DPI) to hold a license (e.g., teachers), to other school district officials who had been determined by the school board to have legitimate educational interests, including safety interests, in those records and to those employees of the school district who were designated by the school board to receive that information for the purpose of providing treatment programs.

Under current law, information relating to an act for which a juvenile was adjudicated delinquent must be used by a school district for legitimate educational purposes, including safety purposes, and for the purpose of providing treatment programs for pupils enrolled in the school district.

Information relating to possession or distribution of alcohol, a controlled substance or a controlled substance analog, possession of a dangerous weapon or an act for which a juvenile was adjudicated delinquent may be used as the sole basis for expelling or suspending a pupil.

## 2. Act 27

Act 27 permits the disclosure to law enforcement officers' records, as described above, *on the law enforcement agency's own initiative* or at the request of the school district administrator or the school district administrator's designee. In addition, under Act 27, a law enforcement agency, on its own initiative or on the request of the school district administrator of a public school or the administrator's designee, may, subject to official agency policy, provide to the school district administrator or designee any information in its records relating to an act for which a juvenile enrolled in the school district was taken into custody based on a law enforcement officer's belief that the juvenile was committing or had committed an act that is a serious juvenile offender violation (e.g., felony murder, first-degree sexual assault or armed robbery or burglary).

Act 27 also provides that a school district may not use law enforcement records obtained under the exceptions to the general confidentiality requirement, described above, as the sole basis for taking *any* disciplinary action, *including action under the school district's athletic code*, against a juvenile enrolled in the district.

## 3. Act 205

Act 205 expands current law relating to disclosure of law enforcement agency records to schools, to provide that *private* schools may obtain law enforcement agency records under the same conditions and with the same requirements as provided under current law for public schools.

In addition, the Act clarifies the provision of current law under which the confidentiality requirement for law enforcement officers' records of juveniles does not apply to the confidential exchange of information between the police and officials of the school attended by the juvenile or other law enforcement or social welfare agencies. Specifically, the Act provides that any of those officials or agencies which receive such information must keep the information confidential.

## **B. DISCLOSURE TO SCHOOLS OF TERMINATION OF PROCEEDINGS**

### 1. Background

Under current law, if a delinquency or JIPS petition is filed alleging that a juvenile has committed a delinquent act that would be a felony if committed by an adult or if a juvenile is adjudicated delinquent, the county clerk must notify the school board of the school district in which the juvenile is enrolled or the school board's designee of the fact that the petition has been filed or that the juvenile has been found delinquent, the nature of the delinquent act or alleged act and any disposition imposed.

## 2. Act 95

Under Act 95, if a school board is notified that a delinquency or JIPS petition has been filed, as described above, the clerk of court must also notify the school board that the proceeding has been terminated if the proceeding on the petition is later closed, dismissed or otherwise terminated without a finding that the juvenile has committed a delinquent act.

## C. JUVENILE COURT RECORDS

### 1. Background

Under current law, juvenile court records must be kept confidential, subject to specified exceptions.

### 2. Act 80

Under Act 80, the juvenile court must open for inspection or disclose records relating to the paternity of a juvenile upon request of: (a) a family court; (b) an attorney responsible for support enforcement under s. 59.53 (6) (a), Stats.; or (c) a party to a paternity proceeding under ss. 767.45 to 767.60, Stats., the party's attorney or the guardian ad litem (GAL) for the juvenile who is the subject of that proceeding, to review or be provided with information from the records for the purpose of determining the paternity of the juvenile or for the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41, Stats.

### 3. Act 205

Act 205 creates the following exceptions to the rule of confidentiality for juvenile court records:

a. Upon request to review court records for the purpose of preparing a presentence investigation, the juvenile court **must** open for inspection by any authorized representative of the DOC or any other person preparing a presentence investigation the records of the court relating to any juvenile who has been the subject of a proceeding under the Children's Code or the Juvenile Justice Code.

b. Upon request to review court records for the purpose of any proceeding in another juvenile court, the juvenile court **must** open for inspection by any authorized representative of any other juvenile court, a DA or corporation counsel the records of the court relating to any juvenile who has been the subject of a proceeding under the Children's Code or the Juvenile Justice Code.

c. Upon request to review court records for the purpose of considering the custody of a juvenile, the juvenile court **must** open for inspection by an authorized representative of the family court or of an attorney for a party or a GAL in an action affecting the family the records

relating to any juvenile who has been the subject of a proceeding under the Children's Code or Juvenile Justice Code.

d. Upon request to review court records for the purpose of intestate succession (i.e., distribution of an estate for which there is no will) when a juvenile is adjudicated delinquent for intentionally killing a decedent to whom the juvenile is an heir or beneficiary, the juvenile court *must* open for inspection by any authorized representative of the probate court, the Attorney General, the personal representative or special administrator of, or an attorney performing services for, the estate of a decedent in a proceeding under the Probate Code, a person interested (e.g., an heir or beneficiary) or an attorney, attorney-in-fact, GAL or guardian of the estate of a person interested, the records of the court relating to any juvenile who has been adjudged delinquent on the basis of unlawfully and intentionally killing a person.

The Act also creates an additional exception under which the court *must* open for inspection by authorized representatives of a fire investigator the records relating to any juvenile who has been adjudicated delinquent, or found to be JIPS due to a finding that the juvenile committed a delinquent act under the age of 10 or was not responsible for a delinquent act by reason of mental disease or defect or who is incompetent, for a violation of: (a) homicide or injury by negligent handling of a dangerous weapon, explosives or fire; (b) negligent handling of burning material; (c) unsafe burning of buildings; (d) damage to property; (e) criminal damage to religious and other property; (f) criminal damage to property of a judge; (g) arson of buildings or damage to property by explosives; (h) arson of property other than a building; (i) arson with intent to defraud; (j) placing of combustible materials in an attempt to set fire or blow up a property; (k) possession, manufacture, sale, gift or transfer of Molotov cocktails; or (l) attempt to commit any offense under items (a) to (l), above.

## **D. PUPIL RECORDS**

### **1. Background**

Under current law, subject to certain exceptions, pupil records must be kept confidential by public schools.

### **2. Act 205**

Under Act 205, the school district clerk or his or her designee must provide a fire investigator with a copy of a pupil's attendance record if the fire investigator certifies in writing that: (a) the pupil is under investigation; (b) the pupil's attendance record is necessary for the fire investigator to pursue his or her investigation; and (c) the fire investigator will use and further disclose the pupil's attendance record only for the purpose of pursuing that investigation.

## **E. DISCLOSURE OF JUVENILE'S IDENTITY TO VICTIM**

### **1. Current Law**

Under current law, a victim of a juvenile's act or alleged act may, with the approval of the court, obtain the names of the juvenile and the juvenile's parents.

### **2. Act 205**

Under Act 205, the victim-witness coordinator may disclose to a victim of a juvenile's act or alleged act the name and address of the juvenile and the juvenile's parents. Approval of the court is not required.

## **F. AGENCY RECORDS**

### **1. Current Law**

Current law provides that no agency (i.e., the DOC, a county department or licensed child welfare agency) may make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody, subject to specified exceptions. Current law also provides that this confidentiality requirement does not apply to the confidential exchange of information between an agency, another social welfare agency, a law enforcement agency, the victim-witness coordinator or a public school district regarding an individual in the care or legal custody of the agency.

### **2. Act 205**

Act 205 provides that the confidentiality requirement relating to agency records does not apply to the confidential exchange of information between an agency and a fire investigator or a private school. The Act also clarifies that individuals or agencies which receive information under this provision must keep the information confidential.

## **G. INFORMATION TO SUBSTITUTE CARE PROVIDERS**

### **1. Background**

Under current law, at the time of placement of a juvenile in a foster home, treatment foster home, group home, CCI or secured correctional facility or, if the information is not available at that time, as soon as possible after the date on which the court report or permanency plan has been submitted, but no more than seven days after that date, the agency responsible for preparing the permanency plan must provide to the foster parent, treatment foster parent or operator of the group home, CCI or secured correctional facility information contained in the juvenile's court report or permanency plan or relating to findings or opinions of the court or

agency relating to any mental, emotional, cognitive, developmental or behavioral disability of the juvenile.

Current law provides that the foster parent, treatment foster parent or operator of the group home, CCI or secured correctional facility receiving such information must keep the information confidential.

## 2. Act 272

1997 Wisconsin Act 272, effective June 25, 1998, requires the following additional information to be provided to a substitute care provider, as described above:

a. Information relating to any involvement of the juvenile in any criminal gang or in any other group in which any child was traumatized as a result of his or her association with that group.

b. Information relating to any involvement of the juvenile in any activities that are harmful to the juvenile's physical, mental or moral well-being.

c. Information relating to any involvement of the juvenile, whether as victim or perpetrator, in sexual intercourse or sexual contact in violation of statutes prohibiting sexual abuse, sexual abuse of a child or repeated acts of sexual abuse of the same child; prostitution; sexual exploitation of a child; or causing a child to view or listen to sexual activity, if the information is necessary for the care of the juvenile or for the protection of any person living in the foster home, treatment foster home, group home, CCI or secured correctional facility.

The Act provides that the foster parent, treatment foster parent or operator of the group home, CCI or secured correctional facility receiving such information must keep the information confidential.

## **XII. AUDIT REQUESTS**

### **A. AUDIT OF SECURE DETENTION OF JUVENILES**

Under Act 205, the Legislative Audit Bureau (LAB) is requested to perform a performance evaluation audit of the use by counties of placement of a juvenile in a secure detention facility as a disposition, as a sanction or as a place of short-term detention.

The audit must examine the primary reasons why a juvenile is placed in a secure detention facility as a disposition, as a sanction or as a place of short-term detention and the length of time that a juvenile is held in a secure detention facility as a disposition, as a sanction or as a place of short-term detention. The audit must also evaluate whether the length of time that a juvenile is held in a secure detention facility is related to any reduction in repeat offenses or repeat violations of dispositional orders, distributed according to the length of time that a juvenile is held in a secure detention facility.

If the LAB performs the audit, it must submit its report to the Legislature by December 31, 1998.

### **B. AUDIT OF THE EFFECTIVENESS OF SECURE DETENTION IN DETERRING HABITUAL TRUANCY**

Act 239 requests the Joint Legislative Audit Committee to direct the LAB to conduct a performance evaluation audit to evaluate all of the following:

1. The accuracy and uniformity of truancy statistics that are reported to the DPI by school boards.
2. The effectiveness of using placement of a juvenile in a secure detention facility or juvenile portion of a county jail as a sanction for a violation of a condition of a dispositional order based on habitual truancy from school in deterring truancy. The audit must compare the effectiveness of that sanction with the effectiveness of other sanctions and dispositions, including attendance at an educational program in deterring truancy.

The Act provides that if the LAB performs the audit, it must file its report with the Legislature by September 1, 1999.

AS:tlu:kjf:rv;jt;kjf