



State of Wisconsin  
2023 - 2024 LEGISLATURE

LRB-5738/1  
EHS:skw

## 2023 ASSEMBLY BILL 1084

February 12, 2024 - Introduced by Representatives DONOVAN, GUNDRUM, MAXEY, MICHALSKI, NOVAK, RETTINGER, TUSLER and WICHGERS, cosponsored by Senators HUTTON, BRADLEY, STROEBEL, JACQUE, JAMES and WANGGAARD. Referred to Committee on Corrections.

\*\*\*AUTHORS SUBJECT TO CHANGE\*\*\*

1     **AN ACT to amend** 938.067 (3), 938.19 (1) (d) 7., 938.20 (7) (b) and 938.205 (1)  
2           (intro.) of the statutes; **relating to:** determining whether to hold or release a  
3           juvenile from custody.

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### *Analysis by the Legislative Reference Bureau*

Under current law, when a juvenile who is possibly involved with a delinquent act is taken into custody and not released by the person who took the juvenile into custody, a court intake worker must interview the juvenile and determine whether to hold the juvenile temporarily in custody or release him or her. Current law requires the intake worker to base that decision on whether probable cause exists to believe that 1) the juvenile will commit injury to a person or property; 2) the parent, guardian, legal custodian, or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and that care and services to ensure the juvenile's safety and well-being are not available or would be inadequate; or 3) the juvenile will run away or be taken away so as to be unavailable for court proceedings or administrative proceedings relating to a violation of conditions of Department of Corrections supervision. Under current law, within 24 hours after the end of the day on which the intake worker makes this decision, the juvenile court must hold a hearing on whether to continue holding the juvenile in custody.

Instead of an intake worker determining whether to temporarily hold a juvenile in custody or release him or her, the bill requires a judge to make this determination. Under the bill, an intake worker must review the need to hold the juvenile in custody, make a recommendation to a judge, and request an order from that judge regarding

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whether or not to hold the juvenile in custody. Upon this request and recommendation by an intake worker, the bill requires the judge to issue a signed order stating whether the intake worker must hold or release the juvenile based on the same probable cause criteria as under current law. Under the bill, if the judge orders the juvenile to be released, the intake worker still determines to whom the juvenile is released. Under the bill, if the judge orders the juvenile to be held in custody, the intake worker still determines where a juvenile is placed and the juvenile court still holds a hearing on whether to continue holding the juvenile in custody within 24 hours after the end of the day on which the judge issues this order.

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

1           **SECTION 1.** 938.067 (3) of the statutes is amended to read:

2           938.067 (3) WHETHER JUVENILE SHOULD BE HELD. ~~Determine~~ Review whether or  
3 not the juvenile ~~shall~~ should be held in physical custody under s. 938.205 and policies  
4 promulgated under s. 938.06 (1) or (2) and make a recommendation to a judge and  
5 request an order from that judge on the basis of that review.

6           **SECTION 2.** 938.19 (1) (d) 7. of the statutes is amended to read:

7           938.19 (1) (d) 7. The juvenile has violated the conditions of an order under s.  
8 938.21 (4) or of an order for temporary physical custody issued by ~~an intake worker~~  
9 a judge under s. 938.20 (7) (b).

10          **SECTION 3.** 938.20 (7) (b) of the statutes is amended to read:

11          938.20 (7) (b) The intake worker shall review the need to hold the juvenile in  
12 custody and shall make a recommendation to a judge and request an order from that  
13 judge regarding whether or not to hold the juvenile in custody. The judge shall make  
14 every effort to release the juvenile from custody and, if the judge orders the juvenile  
15 to be released, the intake worker shall release the juvenile as provided in par. (c).  
16 The intake worker shall base his or her ~~decision~~ recommendation, and the judge shall  
17 base its decision, as to whether to release the juvenile or to continue to hold the

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1 juvenile in custody on the criteria under s. 938.205 and criteria established under s.  
2 938.06 (1) or (2). An intake worker shall include with his or her request to a judge  
3 the statement provided to the intake worker under s. 938.20 (3). A judge who  
4 receives a request under this paragraph shall issue to the intake worker an order  
5 signed by the judge directing the intake worker to release the juvenile or continue  
6 to hold the juvenile in custody.

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

8 938.205 (1) CRITERIA. (intro.) A juvenile may be held under s. 938.207, 938.208,  
9 or 938.209 (1) if ~~the intake worker~~ a judge to whom a request is issued under s. 938.20  
10 (7) (b) determines that there is probable cause to believe the juvenile is within the  
11 jurisdiction of the court and if probable cause exists to believe any of the following:

12

(END)