

WI Juvenile Court Intake Association Annual Conference

Legislative and Case Law Update

September 16, 2005

Madison, WI

Presented by:

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Thoughts for Reflection

"What we got here is a failure to communicate"

Cool Hand Luke (1967)

"Money won is twice as sweet as money earned"

The Color of Money (1986)

"You can't lie to a nun. We gotta go in and visit the penguin"

Blues Brothers (1980)

"Life is what happens to you when you're busy making other plans"

Mr. Holland's Opus (1995)

(John Lennon)

I. Time Limits

> In Interest of Michael S. – Wisconsin Supreme Court (June 2005)

A disposition order was to expire on October 23. A court scheduled and held the extension hearing on October 24.

Can the court, under §938.365(6) retroactively grant the 30-day temporary extension after the hearing was concluded?

> In Re the Termination of Parental Rights to Joshua S. – Wisconsin Supreme Court (June 2005)

Must a fact finding hearing be held within the time limits of §48.422(2)?
Can §48.315 be used to extend the time limit?

II. Waiver of Jurisdiction

> State v. Aufderhaar – Wisconsin Supreme Court (July 2005)

What is the remedy if the juvenile court does not follow statutory requirements for service of process?

> State v. Meyer – Court of Appeals (April 2005) (unpub)

What “new factor” is necessary for the criminal court to relinquish jurisdiction back to juvenile court after a waiver of jurisdiction?

III. Disposition

> Roper v. Simmons – U. S. Supreme Court (March 2005)

Do the 8th and 14th Amendments to the U. S. Constitution forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed?

> In Re Auston J. S. – Court of Appeals (February 2005) (unpub)

Are the delinquent acts of disorderly conduct and battery sufficient to justify an out of home placement under §938.355(2)(b)(6)?

IV. Criminal Law

> State v. McGee – Court of Appeals (April 2005)

Can an adult parent, in a prosecution for a violation of the compulsory school attendance law, argue that the child’s disobedience prevented her from complying with the law?

> State v. Jerrell C. J. – Wisconsin Supreme Court (July 2005)

The court held that all custodial interrogations of juveniles be electronically recorded where feasible and without exception when questioning occurs at a place of detention.

V. Privilege

> State v Denis L. R. – Wisconsin Supreme Court (July 2005)

In an adult court prosecution for sexual assault, is there a therapist-patient privilege that attaches to statements made by a 3-year-old victim to a counselor?

VI. Termination of Parental Rights

> In Re Chezron M. – Wisconsin Supreme Court (June 2005)

Child's father argued that he was not adjudicated the biological father of the child prior to the alleged periods of abandonment and, therefore, was not a "parent" as defined in §48.02(13).

Is the TPR order valid?

> In Re the Termination of Parental Rights to Diana P. – Wisconsin Supreme Court (March 2005)

Is §48.415(4) "continual denial of periods of physical placement or visitation," unconstitutional because it does not require a finding of unfitness?

VII. Legislation

> 2005 WI Act 5 – May 17, 2005 (copy attached)

Permits the release of information concerning individuals registered as sex offenders based on a delinquency adjudication and registered sex offenders who are children.

> 2005 WI Act 25 (budget bill) – July 26, 2005

Amends various sections of Ch. 48 and 938 to permit a person, other than a relative, to serve as a guardian under s.48.977.

> **Individuals with Disabilities Education Improvement Act of 2004 (Pub. L. No. 108-446) – July 1, 2005**

Federal government reauthorized the Individuals with Disabilities Education Act (IDEA). Congress made several changes to the law in the area of eligibility, discipline, the IEP and procedural safeguards.

Information is available at www.dpi.state.wi.us

- **A.B. 443 – proposal would make non substantive editorial changes, clarify ambiguous language and make minor substantive changes to the Juvenile Justice Code.**

VIII. Latest Developments

2005 Assembly Bill 99

Date of enactment: May 2, 2005
Date of publication*: May 16, 2005

2005 WISCONSIN ACT 5

AN ACT to amend 301.46 (2) (e), 301.46 (2m) (c), 301.46 (5) (b) (intro.) and 301.46 (5) (c) (intro.) of the statutes; relating to: individuals registered as sex offenders based upon a juvenile delinquency adjudication and registered sex offenders who are children.

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

SECTION 1. 301.46 (2) (e) of the statutes is amended to read:

301.46 (2) (e) A police chief or sheriff may provide any of the information to which he or she has access under this subsection, ~~other than information specified in subs. (4) (ag) and (5) (c),~~ to an entity in the police chief's community or the sheriff's county that is entitled to request information under sub. (4), to any person requesting information under sub. (5) or to members of the general public if, in the opinion of the police chief or sheriff, providing that information is necessary to protect the public.

SECTION 2. 301.46 (2m) (c) of the statutes is amended to read:

301.46 (2m) (c) A police chief or sheriff who receives a bulletin under this subsection may provide any of the information in the bulletin, ~~other than information~~

specified in subs. (4) (ag) and (5) (c), to an entity in the police chief's community or the sheriff's county that is entitled to request information under sub. (4), to any person requesting information under sub. (5) or to members of the general public if, in the opinion of the police chief or sheriff, providing that information is necessary to protect the public.

SECTION 4. 301.46 (5) (b) (intro.) of the statutes is amended to read:

301.46 (5) (b) (intro.) If the department or a police chief or sheriff provides information under par. (a), the department, ~~subject to par. (c), or the police chief or sheriff shall, subject to par. (c),~~ provide all of the following concerning the person specified in the request under par. (a) 2.:

SECTION 5m. 301.46 (5) (c) (intro.) of the statutes is amended to read:

301.46 (5) (c) (intro.) The department or a police chief or sheriff may not provide any of the following under par. (a):

* Section 991.11, WISCONSIN STATUTES 2003-04: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].