

Our Turn To Learn...About Working Together for Juveniles



WJCIA Legislative Update

Frank Crisafi

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1:00 pm

Legislative and Case Law Update

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Session will include the latest state and federal legislative changes and enactments as well as a review of national and state case law developments that affect juvenile justice professionals

Frank Crisafi is Assistant Legal Counsel for the Madison Metropolitan School District, intake trainer for the Wisconsin Juvenile Court Intake Association since 1991, and instructor for classes and seminars throughout Wisconsin on juvenile justice and children's court practice and procedure.

WJCIA / WJOA Joint Training Conference

Legislative and Case Law Update

September 28, 2006

Wisconsin Dells

Presented By:

Atty. Frank J. Crisafi

"In my opinion, this child does not need to have his head shrunk at all. Juvenile delinquency is purely a social disease."

"Krupke, we got troubles of our own! Gee Officer Krupke, we're down on our knees. 'Cause no one wants a fella with a social disease. Gee Officer Krupke, what are we to do?"

"Gee Officer Krupke"
West Side Story (1956)

Case Law

I. Time Limits

> *In Re the Termination of Parental Rights to Moriah K.* – Wisconsin Supreme Court (November 2005)

Do the court's calendar and lawyers' schedules constitute "good cause" under §48.315(2)? Does §48.315(2) apply in TPR cases?

II. Termination of Parental Rights

> *In Re the Termination of Parental Rights to Daniel R.S.* – Wisconsin Supreme Court (November 2005)

In a TPR trial, did the court err in excluding opinion testimony of parent's expert witness regarding the substantial likelihood that she is able to meet the conditions for return?

> *In Re the Termination of Parental Rights to Max G.W.* – Wisconsin Supreme Court (July 2006)

May a trial court find a parent unfit under §48.415(2)(a) based solely on the parent's failure to meet an impossible condition of return?

Does a parent's incarceration, in itself, demonstrate that the individual is an unfit parent?

III. Guardianship Proceedings

> *In the Matter of the Guardianship of James D.K.* – Wisconsin Supreme Court (June 2006)

What is the legal standard to be used in a guardianship proceeding brought by a non-parent when the parent objects?

** Holding in this case is affected by 2005 WI Act 387 **

IV. Disposition

> *In Interest of Sir S.M.L.* – Wisconsin Court of Appeals (unpublished) (September 2005)

Does a disposition under §938.34(15) requiring the juvenile to provide a DNA sample violate Equal Protection under the state and federal constitutions?

> *In Interest of Andrew J.K.* – Wisconsin Court of Appeals (May 2006)

Did the court order the juvenile to participate in the ACE Program (Alternatives to Corrections through Education)?

Can the court rely on a failure to complete the ACE Program as a reason to lift the stay to Corrections?

V. Legislation

> 2005 WI Act 232

1. §48.02(15) / §938.02(15) – New Definition of Relative (see attached)
2. §48.21(1)(b) – Extends the time for which a child may be held in custody when additional time is required to determine whether to file a petition
3. §48.981 – Modifies duties of law enforcement and county department in investigating cases of “non caregiver” abuse

> 2005 WI Act 113

Creates §48.02(1)(g) as an additional ground for abuse if methamphetamine is manufactured (1) with a child physically present during the manufacture (2) in a child’s home, on the premises of a child’s home, or in a motor vehicle located on the premises of a child’s home (3) under any other circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child.

> 2005 WI Act 277

Creates §948.085 – Sexual assault of a child placed in substitute care

> 2005 WI Act 274

Amends §948.095 – Sexual assault of a child by a school staff person or a person who works or volunteers with children.

>2005 WI Act 190

Grants exclusive jurisdiction to municipal courts when youth is age 12 or older for municipal traffic ordinance violations.

> 2005 WI Act 344 – Changes to the Juvenile Justice Code

- > Makes several language changes
- > Provides that a request for change in placement, revision of a disposition or extension order may be filed instead of a delinquency or JIPS petition at a temporary custody hearing.
- > Clarifies that the maximum amount of restitution applies to all of the damages or injuries resulting from the act(s) that are the basis for a DPA, a consent decree or disposition order.

- > Provides that a person adjudicated delinquent for an offense committed before July 1, 1996 may request expungement.
- > Clarifies, with specified exceptions the rule that agency records relating to a juvenile are confidential applies to the contents of any record kept or information received about an individual in agency's care or legal custody.
- > Changes the term "secured correctional facility" to "juvenile correctional facility." The same change was made to the defined terms of "secured detention facility," "Type 1 secured correctional facility," and "Type 2 secured correctional facility."
- > Eliminates the authority of DOC to transfer a juvenile, who has been adjudicated delinquent, to an adult prison, including the Intensive Sanctions program
- > Adds attempted armed robbery and second degree reckless homicide as SJO offenses.
- > Clarifies that a reasonable efforts finding need not be made when a juvenile is placed in a non-secure custody as a sanction if the finding has already been made in the dispositional order.
- > Permits the supervisor of a caseworker who has placed a juvenile in custody for not more than 72 hours as a consequence for a violation of a dispositional order to modify the terms of the placement.
- > Clarifies that a law enforcement agency must disclose to a victim-witness coordinator the name and address of a juvenile and the juvenile's parent upon request. The victim-witness coordinator may disclose this information to the victim of the juvenile's act.

> 2005 WI Act 406

Clarifies that an agency is "the Department of Health and Family Services, a county department, or a licensed child welfare agency" when referring to participants who may enter records or information in the state computer system.

> 2005 WI Act 258

Conforms Wisconsin special education law to the requirements of the Individuals with Disabilities Education Act of 2004. More information available at www.dpi.wi.gov

> 2005 WI Act 212

Creates several crimes against financial institutions including §943.87 "Robbery of a financial institution" a Class C felony and subjects a juvenile offender to a possible waiver of jurisdiction under §938.18 if the juvenile is 14 years of age or older.

>2005 WI Act 444

Modifies several provisions of s.51.13 et seq. relating to informed consent for minors for inpatient and outpatient treatment for mental illness and developmental disability.

VI. Latest Developments

VII. Conclusion

