

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



WJCIA Legislative Update

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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

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WJCIA / WJOA Joint Training Conference

Legislative and Case Law Update

September 28, 2006

Wisconsin Dells

Presented By:

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 *In Interest of Sir S.M.L.* – Wisconsin Court of Appeals (unpublished) (September 2005)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

48.02 CHILDREN'S CODE

(2e) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(2g) "County department" means a county department under s. 46.22 or 46.23, unless the context requires otherwise.

(2m) "Court", when used without further qualification, means the court assigned to exercise jurisdiction under this chapter and ch. 938.

(3) "Court intake worker" means any person designated to provide intake services under s. 48.067.

(4) "Department" means the department of health and family services.

(5) "Developmentally disabled" means having a developmental disability, as defined in s. 51.01 (5).

(5g) "Drug dependent" has the meaning given in s. 51.01 (8).

(5j) "Emotional damage" means harm to a child's psychological or intellectual functioning. "Emotional damage" shall be evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(5m) "Foreign jurisdiction" means a jurisdiction outside of the United States.

(6) "Foster home" means any facility that is operated by a person required to be licensed by s. 48.62 (1) (a) and that provides care and maintenance for no more than 4 children or, if necessary to enable a sibling group to remain together, for no more than 6 children or, if the department promulgates rules permitting a different number of children, for the number of children permitted under those rules.

(7) "Group home" means any facility operated by a person required to be licensed by the department under s. 48.625 for the care and maintenance of 5 to 8 children, as provided in s. 48.625 (1).

(8) "Guardian" means the person named by the court having the duty and authority of guardianship.

(9s) "Integrated service plan" has the meaning given in s. 46.56 (1) (g).

(10) "Judge", if used without further qualification, means the judge of the court assigned to exercise jurisdiction under this chapter and ch. 938.

(10r) "Juvenile detention facility" means a locked facility approved by the department of corrections under s. 301.36 for the secure, temporary holding in custody of children.

(11) "Legal custodian" means a person, other than a parent or guardian, or an agency to whom legal custody of the child has been transferred by a court, but does not include a person who has only physical custody of the child.

(12) "Legal custody" means a legal status created by the order of a court, which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order.

(12m) "Nonidentifying social history information" means information about a person's birth parent that may aid the person in establishing a sense of identity. "Nonidentifying social history information" may include, but is not limited to, the following information about a birth parent, but does not include any information that would disclose the name, location or identity of a birth parent:

- (a) Age at the time of the person's birth.
- (b) Nationality.
- (c) Race.
- (d) Education.
- (e) General physical appearance.

(f) Talents, hobbies and special interests.

(h) Reason for placing the child for adoption or for the termination of parental rights.

(i) Religion.

(k) Family history.

(m) Personality traits of each parent.

(13) "Parent" means either a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, "parent" includes a person acknowledged under s. 767.62 (1) or a substantially similar law of another state or adjudicated to be the biological father. "Parent" does not include any person whose parental rights have been terminated.

(14) "Physical custody" means actual custody of the person in the absence of a court order granting legal custody to the physical custodian.

(14g) "Physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm, as defined in s. 939.22 (14).

(15) "Relative" means a parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepuncle, steppaunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in this subsection, even if the marriage is terminated by death or divorce.

(15d) "Residential care center for children and youth" means a facility operated by a child welfare agency licensed under s. 48.60 for the care and maintenance of children residing in that facility.

(17) "Shelter care facility" means a nonsecure place of temporary care and physical custody for children, including a holdover room, licensed by the department under s. 48.66 (1) (a).

(17m) "Special treatment or care" means professional services which need to be provided to a child or his or her family to protect the well-being of the child, prevent placement of the child outside the home or meet the special needs of the child. "Special treatment or care" also means professional services which need to be provided to the expectant mother of an unborn child to protect the physical health of the unborn child and of the child when born from the harmful effects resulting from the habitual lack of self-control of the expectant mother in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree. This term includes, but is not limited to, medical, psychological or psychiatric treatment, alcohol or other drug abuse treatment or other services which the court finds to be necessary and appropriate.

(17q) "Treatment foster home" means any facility that is operated by a person required to be licensed under s. 48.62 (1) (b), that is operated under the supervision of the department, a county department or a licensed child welfare agency, and that provides to no more than 4 children care, maintenance and structured, professional treatment by trained individuals, including the treatment foster parents.

(18) "Trial" means a fact-finding hearing to determine jurisdiction.

(19) "Unborn child" means a human being from the time of fertilization to the time of birth.

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447, 449; 1979 c. 135, 300, 352; 1981 c. 81; 1983 a. 189, 447, 471; 1985 a. 176; 1987 a. 27, 285, 339; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 107; 1991 a. 39; 1993 a. 98, 375, 377, 385, 446, 491; 1995 a. 27 ss. 2423 to 2426p, 9126 (19), 9145 (1); 1995 a. 77, 275, 352, 448; 1997 a. 27, 104, 191, 292; 1999 a. 9; 2001 a. 18, 59, 69; 2005 a. 113, 232, 277, 344.

Cross-reference: See s. 46.011 for definitions applicable to chs. 46 to 51, 55 and 58.

Under sub. (13), a deceased parent continues to be parent; a deceased parent's parents continue to be grandparents. Grandparental Visitation of C.G.F. 168 Wis. 2d 62, N.W.2d 803 (1992).