

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



Records & Confidentiality - Back to Basics

Frank Crisafi

Thursday, September 28, 2006
3:00 pm

Records and Confidentiality Back to Basics

**Frank Crisafi, Assistant Legal Counsel Madison
Metropolitan School District**

The session will review state and federal laws on exchanges of records relevant to an intake worker. Exchanges of records with law enforcement, schools, the G.A.L. and defense counsel will be discussed. Other discussion points will be interagency agreements and the impact of recent information.

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

Records and Confidentiality

Back to Basics

September 28, 2006

Wisconsin Dells

Presented By:

Atty. Frank J. Crisafi

“You know that thing we did... That’s gonna go on our permanent record – everything I worked for – puff, up in smoke.”

Cosmo Kramer
(Seinfeld, 1990)

I. The Basics

> s. 48.78 / 938.78 – Agency Records – see attached

II. What’s New

> s. 48.78 / 938.78

> Act 344

> Act 406 - DHFS computer system- eWISACWIS – s.48.78 (2) (h)
s.938.78 (2) (h) (see attached)

III. Top Ten Questions About Agency Records and Confidentiality

> Why do I have to be concerned about this?

> What records can I share with the guardian ad litem and the defense counsel?

>What records can I share with the step parent ?

> Can family law lawyers subpoena the agency records? Do I have to go to a divorce hearing?

> What records can I share with school officials? Do I have to have a current open case before I can talk with school officials?

>Does law enforcement have access to agency records when Investigating criminal law violations ?

> I thought the interagency agreements were supposed to take care of these exchanges of records problems! Why haven't they?

> What are the limitations of re-release of provider records?

> Where does HIPPA fit into all this?

> Why are the presentations on this subject so boring?

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> Why do I have to be concerned about this?

> What records can I share with the guardian ad litem and the defense counsel?

IV. Interagency Agreement

> s. 938.396(1p)

> s. 938.78(2)(b)1m

> s. 118.125(2)(n)

V. Health and Safety Disclosure s. 118.125(2)(p) (see attached)

VI. Advice (Free to all those still here)

VII. Conclusion

938.57 JUVENILE JUSTICE CODE

2. Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma.

3. Received funding under s. 46.495 (1) (d) immediately prior to his or her 17th birthday.

4. Is living in a foster home, treatment foster home, group home, residential care center for children and youth, or subsidized guardianship home under s. 48.62 (5).

(b) The funding provided for the maintenance of a juvenile under par. (a) shall be in an amount equal to that to which the juvenile would receive under s. 46.495 (1) (d) if the juvenile were 16 years of age.

(4) **AFTERCARE SUPERVISION.** A county department may provide aftercare supervision under s. 938.34 (4n) for juveniles who are released from juvenile correctional facilities or secured residential care centers for children and youth. If a county department intends to change its policy regarding whether the county department or the department shall provide aftercare supervision for juveniles released from juvenile correctional facilities or secured residential care centers for children and youth the county executive or county administrator, or, if the county has no county executive or county administrator, the chairperson of the county board of supervisors, or, for multicounty departments, the chairpersons of the county boards of supervisors jointly, shall submit a letter to the department stating that intent before July 1 of the year preceding the year in which the policy change will take effect.

History: 1995 a. 77; 1997 a. 27, 35; 1999 a. 9; 2001 a. 38, 59; 2005 a. 25, 293, 344; s. 13.93 (2) (c).

938.59 Examination and records. (1) INVESTIGATION AND EXAMINATION. The county department shall investigate the personal and family history and environment of any juvenile transferred to its legal custody or placed under its supervision under s. 938.34 (4d) or (4n) and make any physical or mental examinations of the juvenile considered necessary to determine the type of care necessary for the juvenile. The county department shall screen a juvenile who is examined to determine whether the juvenile is in need of special treatment or care because of alcohol or other drug abuse, mental illness, or severe emotional disturbance. The county department shall keep a complete record of the information received from the court, the date of reception, all available data on the personal and family history of the juvenile, the results of all tests and examinations given the juvenile, and a complete history of all placements of the juvenile while in the legal custody or under the supervision of the county department.

(2) **REPORT TO THE DEPARTMENT.** At the department's request, the county department shall report to the department regarding juveniles in the legal custody or under the supervision of the county department.

History: 1995 a. 77, 352; 2005 a. 344.

938.595 Duration of control of county departments over delinquents. Except as provided in s. 48.366, a juvenile who has been adjudged delinquent and placed under the supervision of a county department under s. 938.34 (4d) or (4n) shall be discharged as soon as the county department determines that there is a reasonable probability that it is no longer necessary either for the rehabilitation and treatment of the juvenile or for the protection of the public that the county department retain supervision.

History: 1995 a. 77, 352.

SUBCHAPTER XVII

GENERAL PROVISIONS ON RECORDS

938.78 Confidentiality of records. (1) DEFINITION. In this section, unless otherwise qualified, "agency" means the department, a county department or a licensed child welfare agency.

(2) **CONFIDENTIALITY, EXCEPTIONS.** (a) No agency may make available for inspection or disclose the contents of any record kept

or information received about an individual who is or was in its care or legal custody, except as provided under sub. (3) or s. 938.371, 938.38 (5) (b) or (d) or (5m) (d), 938.51, or 938.57 (2m) or by order of the court.

NOTE: Par. (a) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).

(ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian, or legal custodian of the juvenile who is the subject of the record or upon the request of the juvenile, if 14 years of age or older, to the parent, guardian, legal custodian, or juvenile, unless the agency finds that inspection of the record by the juvenile, parent, guardian, or legal custodian would result in imminent danger to anyone.

(am) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of the juvenile who is the subject of the record or upon the written permission of the juvenile, if 14 years of age or older, to the person named in the permission if the parent, guardian, legal custodian, or juvenile specifically identifies the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(b) 1. Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, the victim-witness coordinator, a fire investigator under s. 165.55 (15), a public school district or a private school regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 48.78. A law enforcement agency that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396 (1) and 938.396 (1) (a). A public school that obtains information under this paragraph shall keep the information confidential as required under s. 118.125 and a private school that obtains information under this paragraph shall keep the information confidential in the same manner as is required of a public school under s. 118.125.

1m. An agency may enter into an interagency agreement with a school board, a private school, a law enforcement agency, or another social welfare agency providing for the routine disclosure of information under subd. 1. to the school board, private school, law enforcement agency, or other social welfare agency.

2. On petition of an agency to review pupil records, as defined in s. 118.125 (1) (d), other than pupil records that may be disclosed without court order under s. 118.125 (2) or (2m), for the purpose of providing treatment or care for an individual in the care or legal custody of the agency, the court may order the school board of the school district, or the governing body of the private school, in which an individual is enrolled to disclose to the agency the pupil records of the individual as necessary for the agency to provide that treatment or care. The agency may use the pupil records only for the purpose of providing treatment or care and may make the pupil records available only to employees of the agency who are providing treatment or care for the individual.

(d) Paragraph (a) does not prohibit the department of health and family services or a county department from disclosing information about an individual formerly in the legal custody or under the supervision of that department under s. 48.34 (4m), 1993 stats., or formerly under the supervision of that department or county department under s. 48.34 (4n), 1993 stats., or s. 938.34 (4d) or (4n) to the department of corrections, if the individual is at the time of disclosure any of the following:

1. The subject of a presentence investigation under s. 972.15.
2. Under sentence to the Wisconsin state prisons under s. 973.15.

