

**E-mailed to Venue Committee on 4/30/04
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The venue transfer statutes require the juvenile court to find that there is "good cause" before the court orders such a transfer. Why isn't this "good cause" finding addressed in the Inter-County Agreement?

The Inter-County Agreement is intended to guide the county departments. The Agreement does not, nor is it intended to, bind the juvenile courts. Sections 48.185(2) and 938.185(2), Stats., provide that the juvenile court may transfer venue upon motion and "for good cause shown". The Children's Code and the Juvenile Justice Code do not provide any guidance regarding what must be shown in order to satisfy this "good cause" requirement. Generally, venue is transferred from one court to another when the original court of venue determines that a transfer is "in the interests of justice", e.g., in order for a defendant to be given a fair trial when the media has given so much attention to a crime that it would be impossible to impanel an impartial jury. Venue may also be transferred if the court determines it would be more "convenient" for the parties and witnesses for all future court proceeding(s) to be held in a forum closer to the parties' or witnesses' homes or businesses. See ss. 971.22 and 801.52, Wis. Stats.

The Inter-County Agreement provides that before a *county department initiates* a request to transfer venue, in addition to the 6-month residency and intent to remain requirement incorporated into the definition of "home county", that the county consider the best interests of the child. The law requires that the "best interests of the child always be of paramount consideration" in every Chapter 48 juvenile court proceeding and, therefore, that determination will also be the most important part of the "good cause" finding made by the Chapter 48 court. The Chapter 938 court must consider the best interest of the juvenile but must also consider the protection of the public. These principles are incorporated into the Inter-County Agreement and are intended to inform *the county department's* decision to initiate a venue transfer.

What if two counties agree to a transfer of venue but the court refuses to enter an order for the transfer? Which county is then the "county of responsibility?"

The final decision regarding which county is the appropriate county of venue must always be addressed to and decided by the "trial" court. A court order transferring, or refusing to transfer, venue establishes the location/forum for all future court proceedings in a case and, in juvenile court cases, which county has supervisory responsibility under Chapters 48 and 938. However, when a juvenile court issues an order regarding venue, the court rarely, if ever, includes a

specific provision identifying which county will pay for the services/placement included in the current dispositional order. Unless the court order provides otherwise, it is generally assumed (unless private insurance picks up the cost) that the county of the court that issued *the current dispositional* order will pay the costs of the court ordered services.

The Inter-County Agreement defines the "county of responsibility" as the "county that is financially responsible for the placement and services provided to a child/juvenile/family, whether court ordered or voluntary. The county of responsibility will most often be the county of venue". However, when the county of venue and the child's "home county" are not the same and the juvenile court refuses to transfer venue to a child's "home county", under the terms of the Inter-County Agreement the county of venue and the "home" county may enter into a separate written agreement that will identify the "home" county as the "county of responsibility" even when there has not been a transfer of venue.

The Inter-County Agreement provides that the decisions of the Administrative Review Panel are not subject to appeal. Does this mean that a county who is a party to the Agreement gives up its right to appeal a juvenile court order granting or denying a motion to transfer venue?

Only the court has the authority to order a transfer of venue and the decisions of the juvenile court must be appealed through the court system. By signing the Inter-County Agreement, a county does not give up its right to appeal any order of the juvenile court, including court orders governing venue and payment responsibility. Orders of the juvenile court may not be appealed through the Administrative Review process and there can be no conflict between the decisions of the juvenile court and the Administrative Review Panel because the decision of the court will always preempt the decisions of the Panel.

One of the purposes of the Inter-County Agreement is to keep the parties out of court when there *is a disagreement between the counties* regarding the "county of responsibility", i.e., which county is financially responsible for the costs of court ordered services/placement. The parties pledge to resolve their differences regarding the "county of responsibility" through the Administrative Review Procedures described in Addendum B and to accept the peer review panel's decision as binding. As provided in a typical binding arbitration agreement, the parties agree that there will be no further appeal of the Panel's decision. Nevertheless, if, for example, a guardian ad litem moves the juvenile court for an order requiring a specifically named county to pay for a court ordered service, any appeal of that order must be to the court and not to the Administrative panel.

In conclusion, under the terms of the Inter-County Agreement, there will remain many situations where an "appeal" of a court order will be appropriate and

necessary. If a court orders a transfer of venue, that order may be appealed to the Court of Appeals or the "receiving" county may file an objection to the transfer in the "receiving" county's juvenile court and the receiving county's juvenile court may send the case back to the original county of venue. If the "sending" court also includes provisions in its order that create financial obligations for the "receiving" county, the receiving county may appeal that order to the Court of Appeals or the "receiving" county may file a petition or request for revision with its own court. It is only when the relevant court order is silent regarding the counties' financial obligations that the counties who are parties to the Inter-County Agreement are permitted to use the Peer Review Administrative Panel to resolve any dispute regarding which is the "county of responsibility". When the counties take their dispute to the Panel they also agree that the decision of the Panel will be binding and not subject to further appeal.