

## WJCIA Annual Training Conference

### Legislative and Case Law Update

September 28, 2007

Stevens Point

**Presented By:**

**Atty. Frank J. Crisafi**

“There are known knowns. These are things we know that we know. There are known unknowns. That is to say, there are things that we know we don’t know. But there are unknown unknowns. These are things we don’t know we don’t know.”

Donald Rumsfeld

### Case Law

#### **I. Delinquency**

> *State v. Ingli* – Wis. Ct. of Appeals (November 2006 unpublished)

**Did the state, including the Pierce County intake worker, unreasonably and intentionally manipulate the system to avoid juvenile court jurisdiction?**

> *In Interest of J. D.* – Wis. Ct. of Appeals (October 2006)

**Following a delinquency finding, the juvenile court imposed and stayed 30 days in secure detention with no credit for previous time spent in detention. Is s. 938.355 the exclusive statutory mechanism for violation of a dispositional order? Was the juvenile entitled to credit for time spent in secure detention?**

> *In Interest of Jesse K.* – Wis. Ct. of Appeals (November 2006 unpublished)

At a waiver of jurisdiction hearing, the county recommended the court not waive juvenile court jurisdiction on the charges of sexual assault of a child and two charges of fourth degree sexual assault. Did the court consider improper factors in granting the waiver?

> *In Interest of Brittney H.* – Wis. Ct. of Appeals (December 2006 unpublished)

Following a delinquency finding the juvenile court stayed a corrections placement. One week later, the Department sought to lift the stay, alleging the juvenile was absent without leave, threatened group home staff and possessed illegal drugs. Was hearsay evidence admissible at the hearing where the state sought to lift the stay?

> *In Interest of Michael L.* – Wis. Ct. of Appeals (May 2007 unpublished)

Circuit court ordered 15 year old Michael to pay \$6,000 in one year for restitution for criminal damage to property. Did the court consider the juvenile's ability to pay when making this order?

## II. Juvenile in Need of Protection and Services

> *In Interest of Jeremy L. L.* – Wis. Ct. of Appeals (December 2006 unpublished)

Was there sufficient evidence to find the juvenile habitually truant from school under s.938.13(6)? Did the school comply with s. 118.16(5)?

## III. Child Abuse

> *Michael C. v. Dana Gresbach et. al.* – U.S. District Court – E. D. Wis. – (March 2007)

Did the social worker violate children's rights to unreasonable search and seizure when she examined two children for evidence of abuse without parental permission while at a private elementary school? Was the worker entitled to qualified immunity?

#### IV. Sentence Credit

> State v. Johnson – Wis. Supreme Court (July 2007)

**Is a juvenile entitled to sentence credit for the time he spends in custody under a juvenile commitment or an extension of a juvenile commitment, pending his conviction and sentencing on an adult charge?**

#### V. Termination of Parental Rights

> State v. Bobby G. – Wis. Supreme Court (June 2007)

**Circuit Court held that Bobby G. failed to assume parental responsibility under s. 48.415(6), found him unfit and terminated his parental rights. Must a circuit court consider the biological father's efforts undertaken after he discovers he is the father but before the court hears the grounds for termination at a hearing?**

> State v. Shirley E. – Wis. Supreme Court (December 2006)

**Can a circuit court enter a default judgment against a parent at the fact-finding phase of a T.P.R. proceeding without conducting an evidentiary hearing as to whether or not there were grounds for the termination?**

#### Legislation

> 2005 WI Act 388 (effective 12/1/06)

This act creates “adult at risk” and includes “any adult who has a physical or mental condition that substantially impairs his/her ability to care for his/her needs who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation. s.55.01(1e)

Any person may report possible abuse, financial exploitation, or neglect if aware of facts or circumstances that would lead a reasonable person to suspect...

Certain professionals are required to report in limited circumstances.

**> 2007 SB 42**

This bill directs DPI to develop a model school policy on bullying by pupils. The model policy must define bullying, prohibit bullying, describe where and the circumstances in which the prohibition applies and provide penalties for bullying.

Under this bill, each school board must adopt a policy prohibiting bullying by pupils. Once each year, the school board must distribute the policy to all students enrolled in the school district and their parents.

**> 2007 AB 249**

This bill permits a court to impose conditions on a juvenile prior to disposition even if the juvenile is not being held in secure or non-secure custody.

**> 2007 AB 269**

This bill prohibits certain threats to cause bodily harm to a social services worker, a juvenile court intake worker or a child support worker. The conduct would be a Class A misdemeanor.

**> 2007 AB 271**

This bill would grant a right to a trial by jury under the Juvenile Justice Code if the person filing the delinquency petition reserves the right to recommend placement of the juvenile in the SJO program or in a juvenile correctional facility beyond the age of 17 years.

**> Latest Developments**