

WJCIA Annual Training Conference

Legislative and Case Law Update

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Madison

Presented By:

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I. Delinquency

> *State v. Tyler J.K.* – Wis. Ct. of Appeals (Jan. 2008 unpublished)

Does the constitutional right to a speedy trial apply in delinquency proceedings?

Does a delay of 959 days between the filing of the petition and the start of the trial violate the right to a speedy trial?

> *State v. Caprice S. I.* – Wis. Ct. of Appeals (April 2008 unpublished)

A padlock with a shoestring attached was found in a student's coat pocket that was hanging in a school locker. Is this conduct a violation of s.941.23-carrying a concealed weapon?

> *State v. Robert T.* – Wis. Ct. of Appeals (Jan. 2008)

Is s.947.015 (bomb scares) unconstitutional because it is overbroad?

Was the phone call a “true threat”?

> *State v. Arias* – Wis. Sup. Ct. (July 2008)

Under the Wisconsin constitution, is a dog sniff of the exterior of a stopped vehicle a “search”?

II. JIPS

> *Richland County HHS v. Brandon L.Y.* – Wis. Ct. of Appeals (April 2008)

Did the school provide sufficient evidence that it complied with s.118.16(5) to support a JIPS finding under s.938.13(6)?

Is the notice requirement of s.118.16(2)(cg) a requirement for schools before a JIPS petition under s.938.13(6) can be filed?

III. CHIPS

> *La Crosse County DHS v. David E.* – Wis. Ct. of Appeals (July 2008 unpublished)

A petition alleging s.48.13(10) and (10m) was filed. Mom admits and dad denies the allegations. Is dad entitled to a fact finding hearing?

> *State ex.rel Kenneth S. v Dane County Circuit Court* – Wis. Ct. of Appeals (June 2008)

The D.A. filed a CHIPS petition alleging s.48.13(3) and (10). All of the parties stipulated that the petition be dismissed. Is the court required to dismiss the petition or can the court order that the CHIPS case continue?

> *Michael C. v Gresbach* – 526 F. 3d 1008 (7th Cir. 2008)

As part of a child abuse investigation, a worker conducted under-the-clothes examinations of two children during separate interviews at their private school.

Is it a violation of a child's constitutional rights to conduct a search of a child at a private school without a warrant or probable cause, consent or exigent circumstances?

Can this case be distinguished from *Doe v. Heck* 327 F. 3d 492 (7th Cir. 2003)?

Is the worker entitled to qualified immunity?

IV. Disposition

> *State v. Aaryn C.* – Wis. Ct. of Appeals (April 2008 unpublished)

Petition alleged juvenile took two fire extinguishers. Juvenile admitted to the charge of theft. At the restitution hearing the judge ordered restitution for three extinguishers that were taken.

Can the juvenile be ordered to pay restitution for a crime for which he was never charged or adjudicated delinquent?

> *State v. Christena M.D.* – Wis. Ct. of Appeals (Feb. 2008 unpublished)

Did the county follow the proper statutory procedure in changing her placement from an in-home placement to an out-of-home placement?

> *State v. Logan R.C.* – Wis. Ct. of Appeals (Feb. 2008 unpublished)

A 13 year old admitted to a violation of s.948.02(1)(b) which involved incidents with a younger sibling. Is he required to register as a sex offender?

> *State v. Jeffrey T.M.* – Wis. Ct. of Appeals (Feb. 2008 unpublished)

A consensual boyfriend-girlfriend relationship resulted in Jeffrey being found delinquent. Was the order for sex offender registration error?

V. Termination of Parental Rights

> *In Re: the Termination of Parental Rights to Patrick L. B.* – Wis. Ct. of Appeals (June 2008 unpublished)

Dad was incarcerated in Pennsylvania. During the jury trial, dad appeared by telephone. The telephone system and sound system faded in and out. Did the sporadic inaudibility compromise dad's ability to meaningfully participate in the fact finding hearing?

> **In Re: the Termination of Parental Rights to Adrianna A. E.** – Wis. Ct. of Appeals (Dec. 2007)

Dad was deported and excluded from the U.S. for 10 years. The TPR trial was conducted with two separate webcam connections between the courtroom and a location in Mexico. English was not dad's first language.

Was dad denied a meaningful opportunity to participate in the proceedings?

VI. Records

> **State v. Straehler** – Wis. Ct. of Appeals (Dec. 2007)

If there is a release of confidential health information that violates HIPAA and Wis. Stats. 146.82, must the records be suppressed from use in evidence?

> **Watton v. Hegerty** – Wis. Sup. Ct. (July 2008)

Are statements of emergency detention kept by the City of Milwaukee Police Department subject to disclosure under the public records law?

VII. Legislation

> **2007 Wisconsin Act 53** – creates s.905.04(4)(e)2m

“There is no privilege for information contained in a report of child abuse or neglect that is provided under s.48.981(3).”

> **2007 Wisconsin Act 77** – creates s.48.13(4m)

“Whose guardian is unable or needs assistance to care for or provide necessary special treatment or care for the child, but is unwilling or unable to sign the petition requesting jurisdiction under this subsection.”

> **2007 Wisconsin Act 80** – amends several sections of s.948 (Crimes Against Children). Recreates s.948.02(1) – First Degree Sexual Assault (copy attached)

- > **2007 Wisconsin Act 116** – creates several sections relating to human trafficking including s.948.051 Trafficking of a child (copy attached)

- > **2007 Wisconsin Act 199** – amends several sections of Ch. 48 and 938 related to time periods, extensions of certain time periods and informal dispositions under Ch. 48. (copy attached)

VIII. Latest Developments