

Wisconsin State Public Defender Juvenile Certification Training

November 6, 2019



Warning/Disclaimer

- The contents of this training have been prepared to provide you with basic juvenile delinquency information only. Information provided does not constitute a substitute for your own investigation and research.
- If you have a questions about a juvenile delinquency case, especially a waiver or sexual assault case, you should read the relevant statutes, case law, and contact a practice coordinator.

Core Principles of Juvenile Defense Practice

Juvenile court is an adversarial forum and a juvenile court adjudication carries with it serious, direct, and long-term consequences. The Wisconsin State Public Defender has developed this set of best practice standards to inform and guide the ethical and professional performance of juvenile defense attorneys, and to ensure the delivery of quality legal services to young clients. The principles outline a framework for representation that is client-centered and anchored in the law, science, and professional codes of responsibility. These principles reflect a core commitment to the unique role of the juvenile defender, and recognize juvenile defense as a highly specialized area of practice. On a practical level, the principles provide a roadmap for counsel to navigate every stage of juvenile delinquency practice from detention through post-disposition.

Jurisdiction

- Delinquency – at least 10, under 17 at time petition is filed. (938.12)
- Traffic Offenses – under 16
 - 16 and older in a adult court, with 2 narrow exceptions (938.17)
- Reverse Waivers – original jurisdiction in a adult court with a ability to request that the case be transferred back to juvenile court(938.183)
- Venue - county of child's residence/ county where crime committed

Children are NOT little adults



In re Gault, 387 U.S. 1 (1967)

- Under our Constitution, the condition of being a boy does not justify a kangaroo court.
- Rights under 5th, 6th and 14th Amendments including right to notice of charges, right to counsel, right against self incrimination, right to confront accusers, transcript, and appellate review.

Children are NOT little adults

(The Lessons of *Roper*, *Graham*, *J.D.B.*, *Miller*....)

Roper v. Simmons(2005)

“Youth are immature and reckless, more susceptible to peer pressure, developing and therefore transient by nature.”

Graham v. Florida(2010)

“...because juveniles have less culpability they are less deserving of the most severe punishments.”

JDB v. North Carolina(2011)

Youth “...often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them...”

Miller v. Alabama(2012)

The penalty when imposed on a teenager, as compared to an older person, is therefore “...the same...in name only.”

Montgomery v. Louisiana(2016)

Sentencing court must consider juvenile’s “limited capacity for foresight, self discipline, judgment...and potential for rehabilitation.”

The language is different

Juvenile Code	Criminal Code
Petition	Criminal Complaint
Detention or Custody Hearing	Bond Hearing
Capias	Warrant
Admit or Deny	Guilty or Not Guilty
Consent Decree	Hold open
Delinquent	Guilty
Adjudication	Conviction
Court Report	Presentence Investigation Report
Dispositional Hearing	Sentencing
Detention/Corrections	Jail/Prison
Notice to Seek Postdispositon Relief	Notice to Seek Postconviction Relief

The Purpose is Different

Wis. Stat. § 938.01(2)

- Protect the community
- Hold juveniles accountable
- Equip offenders with competencies
- Provide due process
- Divert juveniles from juvenile justice
- Utilize the most effective dispositions
- Recognize needs of victims and witnesses

The Process is Different

See Handout

Reasonable Child Considerations

- Am I free to leave? Consent to search?
- Cognitive abilities are still developing
- Expected to behave deferential to a authority
- More likely to comply with requests by a authority
- More vulnerable to suggestion/coercion
- What kids see as voluntary is very different than an adult.
- Jerrell CJ, 283 Wis. 2d 145(2005)

Schools

- Students don't shed their constitutional rights at the school house gates.
- State action when public school officials conduct searches.
- Students have no expectation of privacy when a school or state regulation specifically allows for searches.
- Search may not be excessively intrusive
- Miranda warnings may be required when questioned at school and assessment should include consideration of juvenile's age.

Sources of Procedure

- Chapter 938
- Case law
- US Constitution
- WI Constitution
- Criminal Procedure/Adult Criminal Statutes
- Local Rules

Not

- ⦿ "That's the way it's done here."
- ⦿ "It's the way we have always done it."
- ⦿ "The court's calendar won't accommodate that."
- ⦿ "The DA doesn't think so."
- ⦿ "It's in her best interest."
- ⦿ "How does he know, he's just a kid?"
- ⦿ "Seems like he understands to me."

Now that you know the words and the rules

- ⦿ Remember proper child interview techniques
- ⦿ Remember adolescent brain development
- ⦿ Remember competency issues
- ⦿ Remember to advocate client's expressed wishes
- ⦿ Remember rehabilitation over punishment
- ⦿ REMEMBER THAT CHILDREN ARE NOT LITTLE ADULTS!!!!!!