



Detention Hearings: How to Get Your Client Out Right Away

Attorney Trisha Fritz

What is a detention hearing?

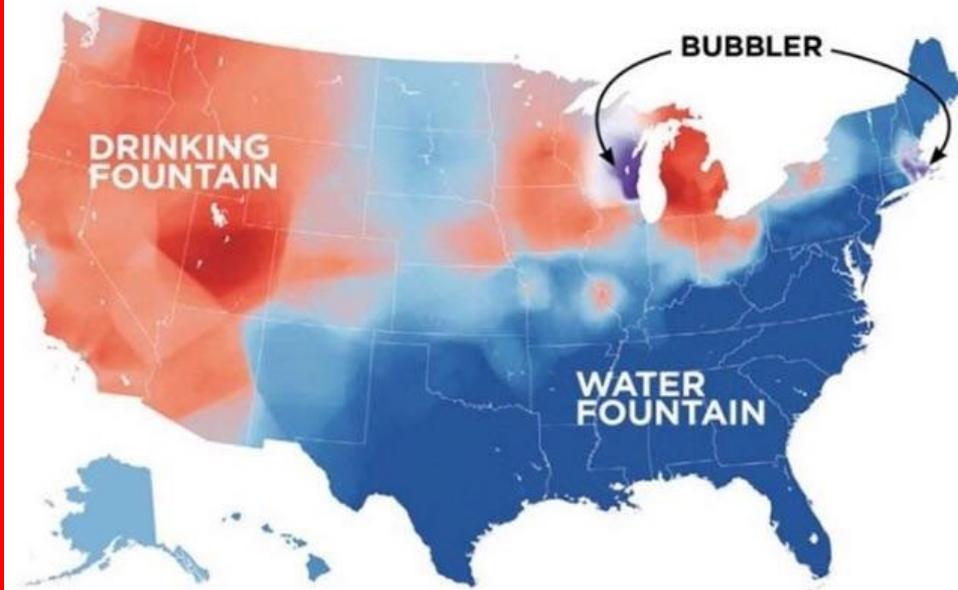
- Probable cause for a delinquency offense
- Placement of juvenile pending resolution



Drinking fountain/ Water fountain/ Bubblers

- Detention Hearing
- TPC- Temporary Physical Custody Hearing/Filing of Petition
- Judge / Commissioner
- ????? Any others ?????

What we drink from in public places



Criteria for holding juvenile in custody

§938.18

- **Most common**
 - **Capias**
 - **Runaway**
 - **Violation of court ordered supervision**
 - **Violation of nonsecure order**
 - **Truancy**
 - **LEO believes juvenile is committing or has committed an act which is a violation of state or federal criminal law**

MOST IMPORTANT SLIDE

- § 938.20: Every effort shall be made to release the juvenile immediately to the parent, guardian, or legal custodian



Criteria for Holding Juvenile in Physical Custody

- **§ 938.205**
- **Intake worker determines there is PC to believe juvenile is within the jurisdiction of court and PC to believe**
 - **Juvenile will commit injury to the person or property of another OR**
 - **Parent/guardian/legal custodian is neglecting, refusing, or is unable to provide adequate supervision and care OR**
 - **Juvenile will run away or be taken away so as to be unavailable for proceedings**

Nonsecure custody §938.207

- Home of parent or guardian
- Home of a relative
- Licensed foster home, group home, nonsecure facility, public shelter care, home of a nonrelative not to exceed 30 days, hospital, treatment facility



IN THE INTEREST OF

Temporary Physical Custody Request
(Chapter 938)

Name _____

Case No. _____

Date of Birth _____

Referring Agency Case Number		Intake Case Number	
Juvenile's Name (Last, First, Middle)		<input type="checkbox"/> African American <input type="checkbox"/> Asian or Pacific Islander <input type="checkbox"/> American Indian or Alaskan Native <input type="checkbox"/> Hispanic <input type="checkbox"/> Caucasian <input type="checkbox"/> Unknown <input type="checkbox"/> Other	
Date of Birth	<input type="checkbox"/> Male <input type="checkbox"/> Female		
Juvenile's Address		If American Indian or Alaskan Native, list tribe:	
Telephone Number	Why was juvenile taken into custody? (§ 938.19, Wis. Stats.)		
County of Residence	<input type="checkbox"/> Warrant/capias <input type="checkbox"/> Juvenile suffering from illness, injury or other danger <input type="checkbox"/> Order by judge <input type="checkbox"/> Violation of terms of court-ordered supervision <input type="checkbox"/> Criminal act <input type="checkbox"/> Violation of conditions of temporary custody order <input type="checkbox"/> Runaway <input type="checkbox"/> Violation of civil law or ordinance <input type="checkbox"/> Unexcused absence from school		
Parent 1's Name and Address		Date of Birth	Home Telephone Number
Legal Status: <input type="checkbox"/> Birth <input type="checkbox"/> Adjudicated/Adoptive <input type="checkbox"/> Presumed <input type="checkbox"/> Alleged <input type="checkbox"/> Unknown			Work Telephone Number
Parent 2's Name and Address		Date of Birth	Home Telephone Number
Legal Status: <input type="checkbox"/> Birth <input type="checkbox"/> Adjudicated/Adoptive <input type="checkbox"/> Presumed <input type="checkbox"/> Alleged <input type="checkbox"/> Unknown			Work Telephone Number
Legal Guardian's Name and Address		Date of Birth	Home Telephone Number
			Work Telephone Number
Date and Time Taken Into Custody		Taken Into Custody By	Agency
The parents notified by referring party? <input type="checkbox"/> Yes (Date and Time) <input type="checkbox"/> No			
Additional information on notice:			
Why was juvenile not released?			
Supporting facts of reason why juvenile was taken into physical custody (§938.20(3), Wis. Stats.): <input type="checkbox"/> See attachment			
Copy provided to juvenile, if age 10 or over: <input type="checkbox"/> Yes <input type="checkbox"/> No			
Was juvenile notified of right to counsel and right against self-incrimination? (§938.20(7)(a), Wis. Stats.)			
<input type="checkbox"/> Yes <input type="checkbox"/> No			
Were notice of custody decision and hearing rights provided? (§938.20(8), Wis. Stats.)		If no, what ongoing efforts have been made to notify?	
Juvenile: <input type="checkbox"/> Yes, Date and Time: _____ <input type="checkbox"/> No			
Parent 1: <input type="checkbox"/> Yes, Date and Time: _____ <input type="checkbox"/> No			
Parent 2: <input type="checkbox"/> Yes, Date and Time: _____ <input type="checkbox"/> No			

Name of Placement <input type="checkbox"/> Not disclosed to parent due to imminent danger	Address	Telephone Number	
Special precautions/information concerning juvenile/family			
Signature of Intake Worker	Date and Time Custody Authorized	Date and Time of Custody Hearing	Date and Time of Release

Criteria for holding juvenile in detention §938.208

- PC juvenile has committed a delinquent act AND
 - Presents substantial risk of physical harm to another person OR
 - Substantial risk of running away
- PC juvenile committed a delinquent act that would be a felony if committed by an adult
- Runaway from another state or secure custody
- Juvenile consent to be held
- Runaway or delinquent act when on nonsecure custody order AND no other suitable alternative exists
- Runaway from another county
- Under 15 and subject to adult court jurisdiction

Reasonable efforts language

- If juvenile is remaining out of home-
 - Court must make specific findings regarding reasonable efforts to prevent removal from home
AND
 - Reasonable efforts by intake worker to make it possible for juvenile to return home safely

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE INTEREST OF

Amended

Order for Temporary Physical Custody

Name _____

Secure

Date of Birth _____

Nonsecure

Case No. _____

A Hearing for Temporary Physical Custody was held on [Date] _____, which is the effective date of this Order.

THE COURT FINDS:

1. The child/juvenile is in the jurisdiction of this court under
 delinquency: [Statutes] _____ or
 JIPS: [Statutes] _____ or
 CHIPS: [Statutes] _____.
2. Probable cause exists to believe that the
 A. child/juvenile will commit injury to person or property of others.
 B. child/juvenile will cause injury to self. be subject to injury by others.
 C. parent(s), guardian, legal custodian or other responsible adult is
 neglecting refusing unable unavailable to provide adequate supervision and care.
 D. child/juvenile will run away or be taken away, making the child/juvenile unavailable for further court proceedings.
 E. parent(s) has relinquished custody of the child/juvenile.
3. Child/juvenile is not subject to or it is undetermined whether the child/juvenile is subject to the federal Indian Child Welfare Act. An inquiry has been made on the record to each participant in this proceeding as to whether the participant knows or has reason to know that the child/juvenile is an Indian child. *(If the child/juvenile is subject to the Indian Child Welfare Act, use the Indian Child Welfare Act version [IW-1711] of this order.)*

For secure custody, the court further finds that probable cause exists to believe:

1. The child/juvenile has committed a delinquent act and there is a substantial risk of
 physical harm to another. running away.
2. The child/juvenile is a fugitive from another state runaway from a juvenile correctional facility, and there was no reasonable opportunity to return the child/juvenile.
3. A protective order was issued and the child/juvenile consents in writing to the custody.

4. The child/juvenile ran away or committed a delinquent act while in nonsecure custody and no other suitable alternative exists.
5. The child/juvenile is alleged/adjudicated delinquent and is a runaway from another county and would run away from nonsecure custody.
6. The child/juvenile is subject to adult criminal court jurisdiction and is under 15 years of age.

For secure custody in a jail, the court further finds:

1. No other juvenile detention facility approved by DOC or the county is available.
2. The child/juvenile presents a substantial risk of physical harm to others in the juvenile detention facility.

For all custody outside of the home, the court further finds:

1. Continuation of residence in the home at this time is is not contrary to the child's/juvenile's welfare.

2. Reasonable efforts to prevent removal and return child/juvenile safely home were [Complete one of the following]

made by the department or agency responsible for providing services as follows: _____

made by the department or agency responsible for providing services, although an emergency situation resulted in immediate removal of the child/juvenile from the home as follows: _____

not required under §48.355(2d) and §938.355(2d), Wis. Stats.

required, but good cause was shown why sufficient information is not available to enable the court to make the necessary findings. This hearing is continued until [Date – Not to exceed 5 days] _____.

required, but the department or agency responsible for providing services failed to make reasonable efforts.

3. Reasonable efforts to place the child/juvenile in a placement that enables the sibling group to remain together were

made.

not required because the child/juvenile does not have siblings in out-of-home care.

not required because it would be contrary to the safety or well being of the child/juvenile or any of the siblings.

4. As to the department or agency recommendation:

A. The placement location recommended by the department or agency is adopted.

OR

B. After giving bona fide consideration to the recommendations of the department or agency and all parties, the placement location recommended is not adopted.

5. All parents present were asked to provide the names and other identifying information of three adult relatives of the child/juvenile or other adult individuals whose home the parent requests the court to consider as placements for the child/juvenile.

THE COURT ORDERS:

1. The child/juvenile is held in custody

A. In-home at _____

B. Out-of-home at _____

and into the placement and care responsibility of the department in the county where this order is issued, or the Division of Milwaukee Child Protective Services if this order is issued in Milwaukee County under Ch. 48, which has primary responsibility for providing services.

2. This is an out-of-home placement. The child/juvenile has one or more siblings in out-of-home care and the child/juvenile is not placed with all those siblings.
- The department or agency shall make reasonable efforts to provide frequent visitation or other ongoing interaction between the child/juvenile and any siblings.
- The department or agency is not required to provide for frequent visitation or other ongoing interaction because it would be contrary to the safety or well being of the child/juvenile or any siblings.
3. This is an out-of-home placement and the department or agency shall conduct a diligent search in order to locate and provide notice as required by §48.21(5)(e)2. or §938.21(5)(e)2., Wis. Stats., to all adult relatives of the child/juvenile, including the three adult relatives provided by the parents under §48.21(3)(f) or §938.21(3)(f), Wis. Stats., no later than 30 days from the date of the child's/juvenile's removal from the home, unless the search was previously conducted and notice provided.
4. While in a nonsecure placement above, the child/juvenile shall also be monitored by an electronic monitoring system.
5. Other conditions of custody: _____
6. If any party to this proceeding receives subsequent information that provides reason to know that the child/juvenile is an Indian child, they shall inform the court.
7. The parent(s)/guardian shall contribute toward the expenses of custody/services in the amount of
- \$ _____.
- to be determined by [Agency] _____.
8. Transportation to the placement and any return to court shall be provided by _____.
9. The next hearing is [Date] _____ at [Time] _____ a.m. p.m.
10. The request for temporary physical custody is denied.
11. Other: _____

Name and Address of Placement:

DISTRIBUTION:

1. Court
2. Placement Facility
3. Child/Juvenile/Parents/Attorneys
4. District Attorney/Corporation Counsel
5. Social Worker/Intake Worker

Timelines are IMPORTANT

- **Must hold Detention hearing within 24 hours of end of day in which decision to be held made**
- **Court can grant one 48 hour extension to file petition (PC exists to believe that juvenile is an imminent danger to self or others)**
- **Juv must be released from custody, when**
 - **Petition not filed by time of custody hearing, AND**
 - **Ct does not grant extension for filing petition, OR**
 - **Petition not filed within extension period**
 - **Hearing not held within custody time period**
- **Note: Failure to object to untimely filed petition waives any challenge to Ct's competency to act**

Filing of petition

- Copy of petition given to juvenile at or prior to hearing
- Prior notice of hearing shall be given to juvenile and juvenile's parent/guardian/legal custodian
- Must cite criminal statute + facts sufficient to establish PC that offense committed and juvenile named in petition committed the offense

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE INTEREST OF _____

Amended

Petition under Chapter 938

Name _____ Delinquency (under age 17)
Date of Birth _____ Protection or Services (under age 18)
 Civil Law/Ordinances (under age 16)

Case No. _____
D.A. Case No. _____

I STATE ON INFORMATION AND BELIEF THAT THE FOLLOWING IS TRUE:
[if unknown or cannot be ascertained, so state]

1. Juvenile's Name	Date of Birth	Sex <input type="checkbox"/> Female <input type="checkbox"/> Male	Race	Height	Weight	Hair Color	Eye Color
Juvenile's Street and City Address							
Juvenile has previously been adopted? <input type="checkbox"/> Yes <input type="checkbox"/> No							
Parent 1's Name and Address <input type="checkbox"/> See attached for additional parties				Parent 1's Date of Birth			
Legal Status: <input type="checkbox"/> Birth <input type="checkbox"/> Adjudicated/Adoptive <input type="checkbox"/> Presumed <input type="checkbox"/> Alleged <input type="checkbox"/> Unknown							
Parent 2's Name and Address <input type="checkbox"/> See attached for additional parties				Parent 2's Date of Birth			
Legal Status: <input type="checkbox"/> Birth <input type="checkbox"/> Adjudicated/Adoptive <input type="checkbox"/> Presumed <input type="checkbox"/> Alleged <input type="checkbox"/> Unknown							
<input type="checkbox"/> Guardian <input type="checkbox"/> Legal Custodian <input type="checkbox"/> Foster Parent <input type="checkbox"/> Spouse, if any, <input type="checkbox"/> If none of preceding, nearest relative.							
[Name] [Address]							
Juvenile in temporary custody? <input type="checkbox"/> No <input type="checkbox"/> Yes: Date _____ Time _____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.							
Where held _____ <input type="checkbox"/> Not disclosed—threat of imminent danger to juvenile/physical custodian.							

2. If petition alleges jurisdiction under §938.13(4), (6), (6m), or (7), Wis. Stats., answer the following:
Juvenile is subject to federal Indian Child Welfare Act? (25 USC §§1901-1983)
 No Undetermined (Explain: _____)
 The Indian juvenile is currently placed in-home; therefore, the federal Indian Child Welfare Act does not apply.
(For an Indian juvenile who is placed out-of-home, use the Indian Child Welfare Act version [IW-1721] of this petition.)
Name and Address of School Enrolled _____

3. Under section(s) _____, the juvenile is
 delinquent
 in need of protection or services, supervision, care or rehabilitation
 in violation of civil law and/or ordinances
because: _____ See attached

4. The juvenile is placed out-of-home.
A. Placement in the home at this time is is not contrary to the welfare of the juvenile and the community.

B. Reasonable efforts to prevent removal were (Complete one of the following)
 made by the department or agency responsible for providing services.

made by the department or agency responsible for providing services, although an emergency situation resulted in immediate removal of the child from the home.

not required under §938.355(2d), Wis. Stats. _____

5. The person who took this juvenile into custody and the intake worker have made reasonable efforts to return the juvenile home while assuring the juvenile's health and safety.

I request adjudication and entry of an appropriate dispositional order.

▶ _____
District Attorney/Corporation Counsel/Petitioner

Name of Petitioner Printed or Typed

Title

Date

Rights of Juvenile

- Court SHALL inform juvenile of:
 - Allegations that have been made
 - Nature and possible consequences
 - Possibility of waiver
 - Right to counsel
 - Right to remain silent
 - Right to confront and cross examine witnesses
 - Right to present own witnesses

Deferred Prosecution §938.21(7)

- If the court determines that the best interests of juvenile and public are served, court may enter a consent decree or dismiss petition and refer the matter back to the intake worker for deferred prosecution

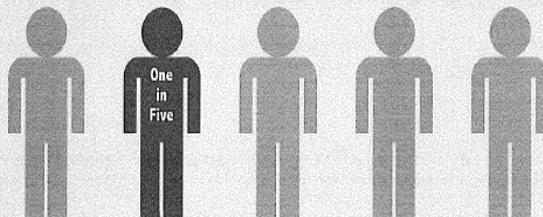
What's next?...

- De novo hearing? §757.69: any decision of commissioner shall be reviewed by judge upon motion of any party
- If juvenile in detention- plea hearing within 10 days
- If juvenile not in detention- plea hearing within 30 days
- §938.315: Failure to object to a time limit violation waives any challenge to the court's competency to proceed

The Harms of Juvenile Detention

Youth in detention are removed from settings that matter: their homes, schools, and communities. Without those supports, children develop higher rates of depression, anxiety, and other mental health conditions, and they lose access to educational opportunities. Once released, youth who spent time behind bars are more likely to disengage from school and become system-involved in the future.

More than 1 in 5 children awaiting adjudication spend time in pre-trial detention.¹



**Increased involvement
in the justice system**



8.5% more likely to be found guilty²

2x more likely to reoffend than non-detained youth³

**Lack of access
to education**



60% do not return to school or drop out within five months⁴

Less special education services
Fewer hours of instruction⁵

**Poor mental
health outcomes**



1 in 3

detained youth who are diagnosed with depression developed the condition after placement in detention⁶



Parents are often charged with detention fees, which can total over \$600 in some states⁷

DAYS
22

Average length of stay in pre-trial detention⁸

1.5x

Youth of color are detained 1.5 times more than white youth⁹

But what do I do?

- Be as well prepared as possible
- Give Commissioner information they don't get from Intake worker/DA
- Think outside the box for release/Have a plan!
 - House arrest/GPS monitor
 - Know your options (Shelter Care out of county)
 - Relative/non relative placement

But what do I do?

- Factors to consider:
 - Prior record (or lack thereof)
 - School
 - Attendance
 - Grades
 - IEP
 - Sports/clubs
 - Behavioral at home
 - Curfew
 - Rules
 - Parental and sibling relationships
 - Drug use (or lack thereof)
 - Other positive social factors that support release to community
 - Active in church
 - Job
- Have an honest conversation with your client

JUVENILE CASE INFORMATION

NAME _____ DOB _____

HOME ADDRESS: _____

TELEPHONE #'S: _____

MEMBERS OF HOUSEHOLD; PARENTS MARITAL STATUS/CONTACT WITH PARENT:

PENDING CASES/PRIOR JUVENILE COURT CONTACT/SOCIAL WORKER:

SCHOOL INFO/SPECIAL ED/TRUANCY ISSUES:

HEALTH CONDITION/MEDS:

AODA ISSUES:

MENTAL HEALTH/DISABILITY ISSUES:

SPECIAL NOTES/EXTRACURRICULARS/OTHER BACKGROUND INFO:

But what do I do?

Steps to take: TPC

- Review TPC request
 - Pay attention to dates
- Speak with client before hearing
 - Introductions
 - What this hearing is for
 - Options for placement
- Speak with others who support client
- At hearing- is there a challenge to PC
- Argue for what client wants for release plan

Steps to take: Filing of Petition

- Look over petition
 - Does it include charges/statutes
 - Is there PC for charge
 - Is there PC your client did it
- Go through allegations with client
- Explain possible outcomes
- Explain rights
- At hearing- enter plea if possible especially if discussion of waiver
- Be aware of time limits for plea hearing

CHARLES JONES-let's bust him out!

***Assume you are at detention hearing for Charles.**

***Assume State/CW is asking for him to remain at Secure**

***Assume add'l information is known**

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