

Juvenile Jurisdiction and Procedure

Presented by

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Chapter 48 vs. Chapter 938

- Children's Code vs. Juvenile Justice Code
- Parent conduct vs. Juvenile conduct
- Jury trial vs. bench trial
- Best interests vs. Community protection

Types of Cases

- Chips
- Jips
- Delinquency

Types of Orders

- Temporary Orders
(i.e. custody)
- Dispositional Orders
- Post Dispositional
Orders

Juvenile Jurisdiction

- Delinquency – ages 10-17

Jurisdiction = commencement

Commencement = filing, not commission

- Traffic – ages under 16

Adult Court Jurisdiction

- Waiver of Juvenile Jurisdiction
 - Age 15 at time of commission for all offenses
 - Age 14 at time of commission for serious felonies

- Traffic – offenses age 16 and older
Except where death and injury occur
for OWI and HR

Jurisdictional Checklist

- Complete jurisdictional time line
- Date offense occurred
- Age of juvenile at time of commission
- Age of juvenile at time of filing
- Is waiver possible?
- Could this be an original jurisdiction case?
- Applicable statutes

Reverse Waiver Proceedings

How Can I Get Back Into
Juvenile Court?

Original Adult Court Jurisdiction – 938.183

- Battery or assault by a juvenile in a secured facility
- Previously adjudicated juvenile commits battery to agent
- 10 years or older and committed Homicide or attempted homicide
- Once waived, always waived
- Previous conviction or pending original jurisdiction case

Reverse Waiver Procedure - 970.032

1. Preliminary Hearing held for original jurisdiction offenses
 - a. If no probable cause finding, charges could be brought under 938
 - b. If probable cause found, then court shall determine to retain jurisdiction or transfer to juvenile court

Reverse Waiver Procedure - 970.032

2. The Court Shall Retain Jurisdiction Unless It Finds All The Following:

- a. If convicted the child could not receive adequate treatment in the adult system
- b. Transferring jurisdiction would not depreciate the seriousness of offense
- c. Retaining is not necessary to deter the child and other children from committing the offense

Preparing for the Reverse Waiver Hearing

1. Bail – Where to Keep the child?
 - a. If under 15, must be kept in juvenile facility or separate area
 - b. Child is eligible for bail pursuant to 969
 - c. Counsel should seek protective orders to address the child's special needs

Preparing for the Reverse Waiver Hearing

2. Pre-Charging Agreements

- a. Counsel can propose pretrial settlements that avoid adult court
- b. The choice of offense can determine place of jurisdiction
- c. Counsel need to be familiar with juvenile dispositions to effectively negotiate

Preparing for the Reverse Waiver Hearing

3. Controlling Pretrial Publicity

- a. Confidentiality is still important

4. Discovery

- a. Discovery does not apply prior to hearing

- b. However, due process clause may form basis for some disclosure

- Police reports, juvenile records, Human services and DOC records, medical/psy records

Preparing for the Reverse Waiver Hearing

5. Investigation

- a. School Records
- b. Juvenile Court Records
- c. Department of Human Services Records
- d. DOC records and files

Preparing for the Reverse Waiver Hearing

6. Procedure

- a. Burden of proof is on the child
- b. Preponderance of the Evidence
- c. Rules of evidence may apply
- d. Use expert witnesses
- e. Use lay witnesses – family, DOC staff, agents

Disposition

- Court must impose a juvenile disposition in some cases
- If a juvenile disposition is imposed, juvenile is not convicted of a crime, but adjudged delinquent.

Taking a Juvenile into Custody and Detention Hearings

Grounds For Taking a Juvenile into Custody

- Warrant
- Capias
- Order of judge removing from custody
- Reasonable grounds by law enforcement

Procedure For Law Enforcement

- Every effort must be made to release
- Contact parents
- Juveniles not released must be taken to intake worker
- 938.195 requires an audio recording of any custodial interrogation of a juvenile in a place of detention (a) or any other place (b).

Juvenile Intake

- Inform juvenile of right to counsel and silence
- Make every effort to release
- Contact parents and notify:
 1. Location of juvenile
 2. Time and place of hearing
 3. Possible consequences
 4. Right to present and cross examine witnesses

Criteria For Custody 938.205

- Juvenile will commit injury to person or property of another
- Parent or guardian is neglecting, refusing or unable to provide adequate supervision
- Juvenile would run away so as to be unavailable for court

Places of Non Secure Custody

- Home
- Home of relative
- Foster home
- Group home
- Shelter care
- Home of non-relative for 30 days

Criteria for placement in Secure Detention 938.208

- Probable cause the juvenile committed a delinquent act AND
- Presents substantial risk of physical harm (which may be presumed with certain offenses and with weapons)
- Presents substantial risk of running away so as to be unavailable for court

938.208 cont.

- Fugitive from another state
- The juvenile consents in writing
- Run away from non secure custody and no suitable alternative exists
- Subject to original jurisdiction and under 15

Detention hearings

- ❑ Must be held within 24 hours
- ❑ Petition must be filed at the hearing
- ❑ One exception for 48 hours in emergency*
- ❑ Court must inform the juvenile of notice of allegations and rights
- ❑ Court is bound by the criteria for custody in 938.205 and 938.208
- ❑ Court commissioner is reviewed de novo

Detention Hearing Checklist

- Review the intake report
- Meet with the client
- Consult family
- Consult resource providers
- Review petition for PC
- Make placement arguments
- Schedule case consistent with time limits

Petitions and Time Limits

In Custody v. Non Custody
Petitions

Intake Conference

- Must occur within 40 days
- Intake may recommend petition to DA or
- Enter Deferred Prosecution agreement
- Juvenile has right to counsel and right to remain silent
- Should juvenile attend intake interview?

Filing a Petition

- District attorney has 20 days to file petition
- Case can be referred back to law enforcement for investigation which has to be completed within 20 days
- DA has 20 days after receiving new referral
- Late petition must be accompanied by statement of delay

Plea Hearing 938.30

- Must occur within 30/10 days
- May be done at the detention hearing
- Possible pleas:
 - Admit
 - Deny
 - No contest with permission
 - NGI

Substitution of Judge 938.29

- Only the juvenile may request substitution
- Must be filed before or during plea hearing
- Only one request per proceeding
- Only one request per lifetime
- Barred if juvenile judge has entered disposition involving same juvenile

Are Juvenile Hearings Confidential?

- 938.299(1) allows parties, counsel, witnesses, media, parents and other interested persons
- Victims can attend
- Court can exclude for sensitive personal issues (medical, AODA or psychological)
- Public can attend if petition alleges felony AND juvenile has prior adjudication
- Public can attend if petition alleges serious juvenile offender charge

Discovery in Juvenile Proceedings 938.293

- Broad rules require release of copies of all reports *before the plea hearing*
- All records shall be open to inspection
- Criminal rules of discovery under 971.23 apply in delinquency cases
- Discovery of audio recordings of juvenile custodial interrogations

Reciprocal Discovery Requires Upon Demand:

- Witness statements (but what is a statement?)
- Witness list (when is a person a witness?)
- Expert witness report or summary (what about bad results?)
- Disclosure of physical evidence (will it be used at trial?)
- Exculpatory evidence (Does it apply to defense?)

Discovery Checklist

- File discovery demand
- Is a motion needed to compel discovery?
- Respond to DA demand if required
- Review DHS file and records
- Obtain records from outside providers
- Conduct defense investigation
- Demand in camera inspection if needed

Motion practice

- Some motions must be filed within 10 days from the date of plea hearing:
- Motions to dismiss based upon defects in proceedings (time limits)
- Lack of probable cause
- Invalidity of statute

Motions That Can Be Filed Anytime Before Trial

- Motions to suppress statements
- Motions to suppress evidence of search or seizure
- Motion to challenge out of court identification
- Motions to sever charges/juveniles
- Discovery motions
- Admissibility of evidence

Motions to Exclude Statements at Trial For Failure to Record Under Sec. 938.31, Wis. Stats.

- 938.31 (3) (b) provides that custodial statement of juvenile is not admissible unless recording made and is available.
- Exceptions under (3) (c)
 - Juvenile refused to respond or cooperate
 - Statement was part of routine processing
 - Equipment failure if good faith can be shown
 - Spontaneous statement of juvenile
 - Exigent public safety circumstances
- Lack of consent to record does not affect admissibility under (3) (d)

Time Limits Motions 938.315

- 938.315 controls all delays, continuances or extensions
- Failure to object waives a time limit violation
- Violations do not result in loss of court jurisdiction
- Remedies include dismissal with or without prejudice, release from custody or other appropriate relief

Juvenile Bench Trials

- ❑ You need to try cases to win cases
- ❑ Client decision making
- ❑ Ethical considerations when advising client
- ❑ Messages to client about your advice
- ❑ Careful preparation involves thorough understanding of all relevant facts

Effectiveness Checklist for Juvenile Bench Trials

- Superior preparation wins cases
- Professionalism in the courtroom
- Make opening and closing remarks
- Organize around a theory of defense
- Use demonstrative evidence
- Prepare for cross examination
- Make good decision about putting the juvenile on the stand

QUESTIONS??