

DISPOSITIONS

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Kids Are Different

- Consider the wisdom of *In Re Gault* and the guiding principles of the Wisconsin Juvenile Justice Code under 938.01, including subsections (e) and (f):
 - (e) To divert juveniles from the juvenile justice system through early intervention as warranted, when consistent with the protection of the public.
 - (f) To respond to a juvenile offender's needs for care and treatment, consistent with the prevention of delinquency, each juvenile's best interest and protection of the public, by allowing the court to utilize the most effective dispositional option.

Dispositions and “Sentencing”

- Dispositions are the juvenile court version of “sentencing.” However, even if you or your judges(!) may explain dispositions in this way to your client and their families, dispositions are different because we are representing *children*.
- One of the first questions you might get: What’s going to happen to me? Can I get this all over with? Am I going to go to jail? What does *supervision* mean?
- For example, Charles is saying: **My dad just wants me to plead guilty and that’s what I’m going to do.**

Principle of Juvenile Defense Practice

- A juvenile defense attorney must be familiar with all dispositional options under the law and with the resources available in the jurisdiction handling the case. An attorney should seek the *least restrictive option* available for each client, consistent with the child's *expressed interest*.

Dispositions: Always Go To Chapter 938

- Subsection VI in the Juvenile Justice Code
- Where should you start? The statute governing the type of case your client has entered a plea to or has been adjudicated for, including:
 - 938.34 Disposition of juvenile adjudged delinquent
 - 938.341 Restriction on firearm restriction
 - 938.345 Disposition of juvenile adjudged in need of protection or services
- Dispositional hearings are not governed by the rules of evidence like fact finding hearings. Instead, “any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.” (938.335(3)).

But First! Always Consider Non-Adjudication Alternatives!

- Disposition statutes apply once your client has either entered a plea or has been adjudicated after a fact-finding hearing/court trial. Consider whether an adjudication on a lower level charge may be better than a *court* trial on a more serious charge.
- However, services and supervision can still be provided by the Department under alternatives to formal disposition:
 - DPAs (938.21(7) motions to dismiss and refer back)
 - Can be ordered without DA approval
 - Can be cancelled by the Department without hearing
 - Consent decrees (938.32)
 - Generally post-plea
 - Arguably require hearing to revoke
 - Can vary in length, but statute provides for one year
 - JIPS or CHIPS adjudications rather than delinquency

Preparing for Disposition

- Know the alternatives available.
- Review the report(s) from the Department.
- Interview and *know your client and his/her/their position*.
- Consider getting your own evaluation or expert.
- Consider presenting your own court report/plan.
- Prepare your argument and go over it with your client and, perhaps, their family.



Time Limits

- Under sec. 938.31, dispositional hearings should be occurring within 30 days if under non-secure order or within 10 days if under secure order.
- Consider a good cause finding if you need more time to adequately argue for alternatives (i.e. to get a plan in place, to organize further evaluation, etc.), but this should be balanced with time in detention.



Preparing for Disposition: Reviewing the Court Report

- The Department prepares a court report under 938.33.
 - Social history
 - Recommended treatment plan
 - Description of services to be provided
 - Objectives of plan
 - Behavior changes
 - Academic, social, vocational skills
 - Plan for education
 - Counseling and *funding source* for counseling and treatment
- Specific reports also needed for correctional placements, SJO placements, and out of home placements
- May include risk assessment tools like the YASI

Delinquency ≠ JIPS

- Always review the statute for what is and is not permitted.
- JIPS orders **cannot** include:
 - SJO correctional facility or secured residential care center
 - Forfeitures or surcharges
 - Secure detention

Preparing for Disposition: Know the Alternatives Available

- Counsel and close
- Supervision
- Teen court
- Placement
- Electronic monitoring
- Transfer of legal custody
- Secure detention
- Type 2 placements
- SJO program
- Correctional placement
- Restitution
- Supervised work program
- Community service program
- Victim offender mediation
- Special treatment or care (ch. 51)
- AODA treatment or education
- Education
- Youth report center
- Day treatment
- Vocational training
- Forfeiture (fines/fees)

Specific Offenses May Have Additional Consequences

- Felonies: Firearm restriction, body armor restriction
- Sex offender registry
- DNA requirements
- School zone violations
- Hate violations
- Violations involving motor vehicles
- Computer violations
- Bomb scares and firearms
- Drug offenses
- There are also specific provisions for drug offenses, which may be more advantageous for your client depending on their circumstances (forfeiture of \$50 rather than supervision).

Supervision

- Supervision (probation) is the most common disposition in juvenile court, in Wisconsin and nationwide.
- Even if social workers and judges may view supervision as a way to “help” our clients, “unwieldy conditions of probation can lead to technical violations and cause lasting harm in the lives of children, including removal from their communities and incarceration.”
- Probation orders are often boilerplate, overwhelming, and not tailored to your client.
- “Overly broad and unclear orders that are not tailored to the strengths, interests, and challenges of an individual youth can result in significant numbers failing on probation, ultimately leading to costly and unnecessary out of home placement.”

Stays of Orders

- Courts have a special power in juvenile court for dispositions: staying the order.
 - Under sub(16), “After ordering a disposition under this section, enter an additional order staying the execution of the dispositional order contingent on the juvenile’s satisfactory compliance with any conditions that are specified in the dispositional order and explained to the juvenile by the court.”
 - This includes any disposition, but can often be used for sex offender registration and correctional placements.
 - Specifically review *State v. Cesar G.*, 2004 WI 61, for the appropriate factors in reviewing a stay of sex offender registration.

Corrections

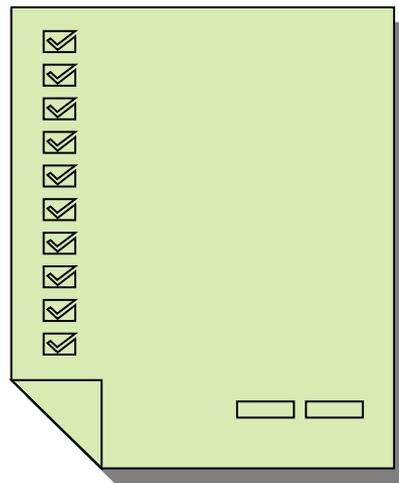
- *In Re Gault*: “The fact of the matter is that, however, euphemistic the title, a ‘receiving home’ or an ‘industrial school’ for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes ‘a building with whitewashed walls, regimented routine and institutional hours...’ Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and ‘delinquents’ confined with him for anything from waywardness to rape and homicide.”
- Only for certain adjudications (legally allowed)—but try to avoid putting kids in prison!
- Danger to public and in need of restrictive custodial placement

Lincoln Hills/Copper Lake “Schools”



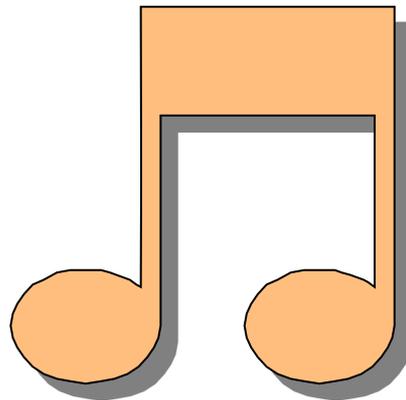
Length of Orders

- Counsel and close: None
- Supervision: Generally one year, but can be extended
- Corrections: 2 years
- SJO: 5 years
- Don't forget about expungement! (4m)



Adolescent Development and Positive Youth Development

- Instead of a laundry list of what your client is expected to do, or a checklist of their mistakes, remember that we are dealing with children, who all have their own strengths and positive skills to build upon, even if you can't always find them right away.
- Include this in your disposition argument.
- Also make sure to couch your argument within what we know about kids and their brain, physical, and emotional development.



Dispositions in Practice: Charles' Position?

- Now, let's take a look at Charles' case. What are some of the ideas you have for possible dispositions?
 - 1) What are Charles' skills and strengths? What are his express wishes? (You may have to imagine what a further conversation with him may have gathered).
 - 2) What would you be concerned about in possible plea offers?
 - 3) What would your placement ideas be?
 - 4) What options would you have other than supervision?
 - 5) If supervision is ordered, what conditions would or wouldn't be appropriate?
 - 6) What are some of the other concerns you might bring up to the judge, to your client, to his family?

Resources

- Juvenile practice coordinators, or any of the presenters today.
- NJDC Resources
 - Promoting Positive Development: The Critical Need to Reform Youth Probation Orders
 - The Cost of Juvenile Probation: A Critical Look into Juvenile Supervision Fees
 - Juvenile Defense Attorneys and Family Engagement: Same Team, Different Roles
 - Navigating the Dual Status Terrain: Tips for Juvenile Defenders
 - Tips on Youth Trauma For Juvenile Defenders
 - Juvenile Facilities Checklist for Defenders