

# The Foundation of Juvenile Practice

## Part II:

### Parlance, Process and Procedure

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# Some Common Words

(not found in adult criminal world 😊)

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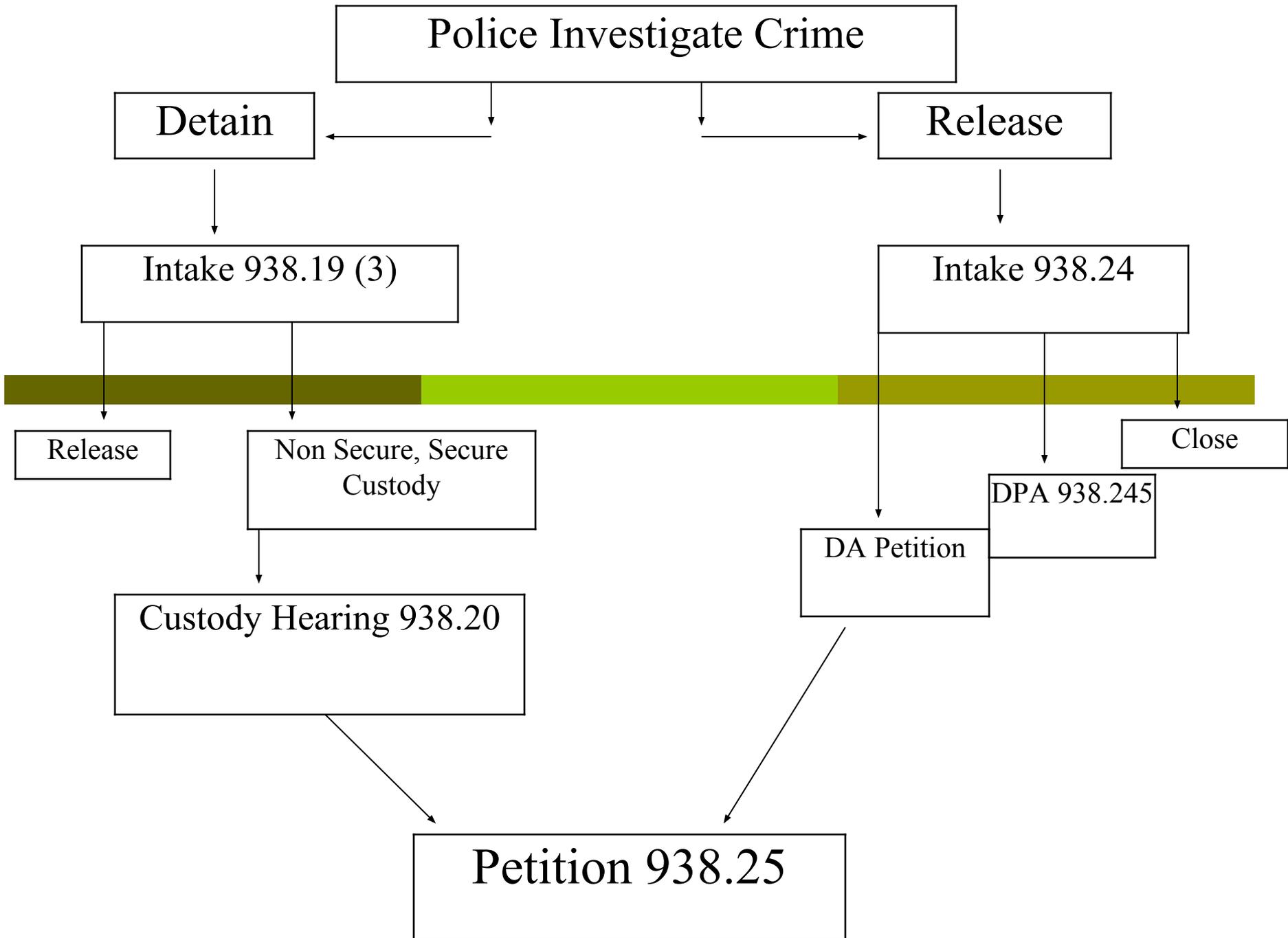
- charging document (complaint)
  - Petition
- criminal conduct/ kid who commits a criminal act
  - Delinquency/Delinquent
- Temporary Physical Custody (like a bond hearing—deciding temporary placement of a child),
  - TPC also called a detention hearing
- Beyond a Reasonable Doubt hearing. (remember no juries in juvie)
  - Fact-Finding Hearing = Court Trial
- how kids plead guilty
  - Admission
- how kids plead not guilty
  - Denial
- finding of guilt
  - Adjudication
- Sentence (or consequences for the criminal behavior)
  - Disposition
- PSI for Kids (drafted by the Department)
  - Pre-Dispositional Report/ Social Study
- Social Services and Social Workers (POs for Kids)
  - Department/ Bureau
- probation for kids
  - Supervision
- Juvie Prison
  - Lincoln Hills/Copper Lake
- Temporary group home run by the county. Usually the stay is for 30 days or less
  - Shelter Care
- Juvie Jail (yes, they wear jumpsuits, etc.) Can stay up to 180 days.
  - Secure Detention. Most are located at the adult jail on a different floor. Many rural counties contract together, so secure detention might be a ways away.
- Transfer from Juvie world jurisdiction to adult jurisdiction
  - Waiver

# Principles at Work

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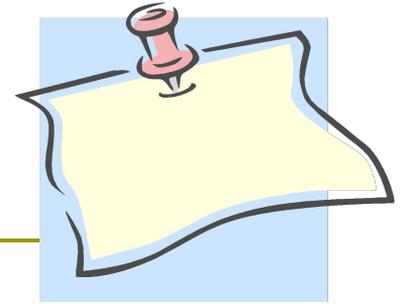
1. Juvenile defense is a specialized practice area that requires working knowledge of the Wisconsin Juvenile Justice Code, principles of adolescent development, relevant case law, local resources and rules, and basic proficiency in criminal defense.
6. A juvenile defense attorney cannot skip the basic duties of effective criminal defense practice which include: Interviewing all prospective witnesses, investigating legal and factual defenses, litigating legal motions and issues before trial that are consistent with the theory of defense, and preparing for contested trials and dispositional hearings.
7. A juvenile defense attorney must consider all possible alternatives to a delinquency adjudication.

*With a few notes on 5 (competence) and 8 (waiver).*



# A Note on Jurisdiction

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- Delinquency – at least 10, under 17
  - At time petition is filed. (938.12)
- Traffic Offenses – ages under 16
  - 16 and older in Adult court, with 2 narrow exceptions (938.17)
- Reverse Waivers – when adult court has original jurisdiction, and you ask for jurisdiction to be transferred back to juvie court. (938.183)
- Venue = county of child's residence (dispo) / county where crime committed.

# Waiver to Adult Court: 938.18

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- Age 15 at time offense was committed
- Age 14 at time a listed “serious felony” was committed.
- 5 Criteria for Court to Consider
  - Personality
    - Mental Illness
    - Mental and physical maturity
    - Pattern of living
    - Prior treatment history
    - Apparent potential for responding to future treatment
  - Prior Record
    - Motives/attitudes
    - Serious bodily injury
  - Type and Seriousness of Offense
    - Person v. property
    - Violent, aggressive, premeditated or willful
  - Adequacy and Suitability of facilities
    - Mental health system
    - Protection of public
    - SJO (serious juvenile offender) vs. adult intensive sanctions
  - Adult Co-Defendants
- In the Interest of J.G.- Court must find prosecutive merit—juvie reliability of confession case.
- Waiver is a good place to use brain-science research, juvenile development research—CSS requests, etc.

# Competence – “reason to doubt”

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- Wis. Stat. § 938.30(5)(a): if probable cause exists that the juvenile committed the alleged offense and “there is **reason to doubt** the juvenile’s competency to proceed” the court shall order a competency evaluation
- Wis. Stat. § 971.13: “person who lacks substantial mental capacity to understand the proceedings or assist in his or her own defense”
- “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him.” *Drope v. Missouri*, 420 U.S. 171 (1975); *Dusky v. U.S.*, 363 U.S. 388 (1960).

Petition

Dismiss and Refer Back:

Wis. Stat.938.21(7)

Waiver Petition 938.18

Discovery 938.293/  
Investigation

Substitute Judge 938.29

Plea Hearing 938.30

Deny 938.30(4) (b)

NGI, Not Competent

Admit/No Contest

Exam

Hearing

# Plea Hearing

Deny

Discovery

Psych Exam 938.295

Pre Trial Motions 938.297

Consent Decree 938.32

Special Considerations for Juvie Sex  
Offenses—collateral consequences  
can last long into adulthood.

Fact Finding Hearing 938.31

# Investigation and Discovery

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- Lawyers must conduct investigations into the charges, make recommendations based on the strength of the State's case and the applicable law, and take care to fully explain the pros and cons of accepting a plea offer to a client.
  - *Lafler v. Cooper, U.S. Supreme Ct. (2012)*
  - *Missouri v. Frye, U.S. Supreme Ct. (2012) &2*
- Discovery is not a substitution for investigation.
- Consider alternative sources.
  - Subpoenas, Public Records, FOIA, Facebook

# Motion Issues: Kids are Different

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- “Events that would leave a man cold and unimpressed can overawe and overwhelm a teen”
- “The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them”

*JDB v. North Carolina, 131 S. Ct. 2394 (2011)*

# Reasonable Child Considerations:

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## Am I free to leave? Consent to search?

- Cognitive capacities and abilities to regulate their emotions and behavior are still developing
- Expected to behave in a deferential manner to authority figures
- More likely to comply with or feel compelled by requests when confronted by authority figures
- More vulnerable to suggestion and coercion
- What a kid sees as “voluntary” is very likely different than an adult. (see. *In re Jerrell C.J.*, 283 Wis. 2d 145 (2005))

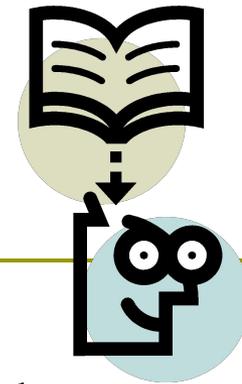
# Schools: Is there state action and an expectation of privacy?

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- Public School officials who conduct searches.
  - New Jersey v. T.L.O., 469 U.S. 325 (1985)
- Students have no expectation of privacy when a school or state regulation specifically allows for searches
  - In re Isiah B., 176 Wis. 2d 639 (1993)
- Is the search excessively intrusive?
  - Safford Unified School Dist. No. 1 v. Redding, 557 U.S. 364 (2009)  
*(suspicion of distributing pain pill does not justify search of bra and underwear)*

# Sources of Procedure

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- Chapter 938
- “It is a chapter of carefully spelled out definitions and enumerated powers. . . . and legislative guidelines are carefully drawn to circumscribe judicial and administrative action.”
- The chapter reflects the legislature's desire to specifically define the authority of appropriate officers. Where there is evidence of such enumeration, it is in accordance with accepted principles of statutory construction to apply the maxim, *expressio unius est exclusio alterius*; in short, if the legislature did not specifically confer a power, it is evidence of legislative intent not to permit the exercise of the power.”
- *State ex rel. Harris v. Larson*, 64 Wis. 2d 521, 527, 219 N.W.2d 335, 339 (1974)
- Two Important Cases Interpreting Statutes
  - *State v. Lindsey A.F.*, 2002 WI App 223, 257 Wis. 2d 200. (court can refer back for DP and there isn't a damn thing the prosecutor can do about it)
  - *State v. Cesar G.*, 2004 WI 61, 272 Wis. 2d 22. (stay part of dispo order)

# Sources

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- **United States Constitution**

- “Under our Constitution, the condition of being a boy does not justify a kangaroo court.” Fundamental due process applies.  
*Application of Gault*, 387 U.S. 1, 28, 87 S. Ct. 1428, 1444 (1967)

- **But not jury trials:**

*McKeiver v. Pennsylvania*, 403 U.S. 528, 91 S. Ct. 18976 (1971)

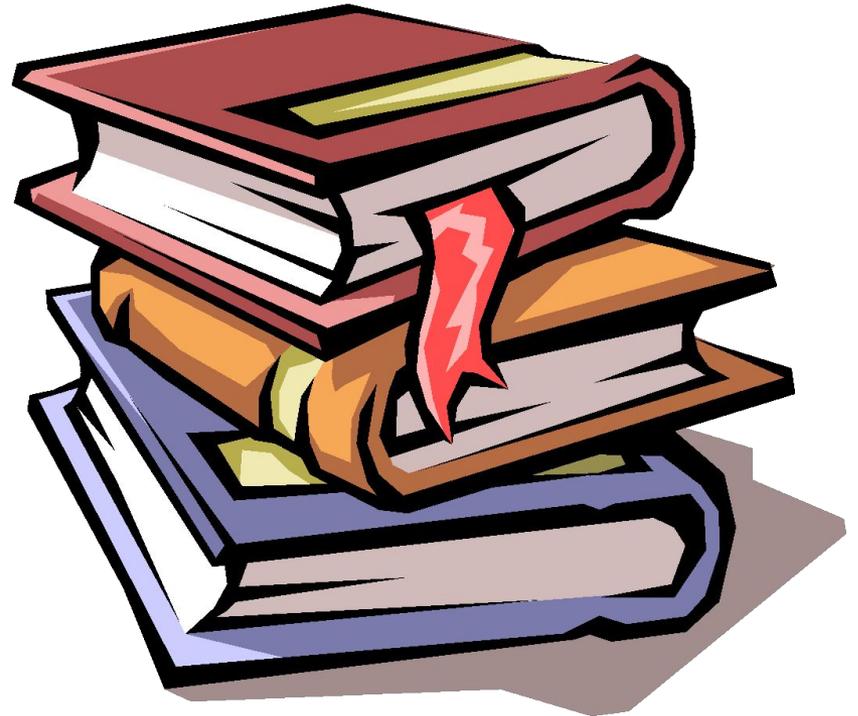
*In re Hezzie R.*, 220 Wis. 2d 360, 219 Wis. 2d 248 (1998).

- **938.01(d):** “To provide due process through which each juvenile offender . . . Are assured fair hearings, during which constitutional and other legal rights are recognized and enforced.”
- **Three Important Cases Interpreting the Constitution: MUST READS**
  - *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183 (2005)
  - *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011).
  - *In re Jerrell C.J.*, 283 Wis. 2d 145 (2005).

# Sources

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- Criminal Procedure
  - Can Fill in Gaps in Juvenile Justice Code
    - With a grain of salt
- Local Rules



# Not:

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- It's The Way It's Done Here.
- It's The Way We've Always Done It.



Never be afraid to Challenge the Status Quo  
(It's what makes Juvie World fun for lawyers!)

# Due for Due Process

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- “They gave me a piece of paper that had blank, like, where people’s names go and stuff, and they told, asked me, did I have a lawyer representing me today? And I said no. And they said sign here. And I did. Well that was the paper that said I don’t want a lawyer.”
- “the appearance as well as the actuality of fairness, impartiality and orderliness -- in short, the essentials of due process -- may be a more impressive and more therapeutic attitude so far as the juvenile is concerned. “ (*In Re Gault*, 407 P.2d 760, if you handle juvenile cases and you haven’t read this case, you gotta!)
- Juveniles are some of the most vulnerable clients we represent, and therefore deserving of our most zealous of zealous advocacy.

# Now that you know the words and the rules....

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- Remember not to talk like a lawyer to the kids you represent!
- Remember that kids don't behave like adults—therefore they are less culpable, as a rule, than adults.
- Remember that the purpose of Juvenile Justice is to conform to the concept of “therapeutic justice,” aka rehabilitation over punishment.
- Great Resource is the National Juvenile Defender Center (NJDC) <http://njdc.info>

