

Trempealeau County Circuit Court Rules

(Seventh Judicial District)

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These rules take effect 7/1/2000

Rule 1. Publication and Adoption of Circuit Rules

Rules shall be adopted by the circuit court judge subject to approval of the chief judge of the district.

Upon adoption, rules shall be filed in accordance with SCR 753.35.

Rule 2. Civil Practice

I. All civil cases will be reviewed for service and answer 90 days after filing. If case has not reached issue, a dismissal order or default proceeding may be initiated by the court.

II. No continuance will be granted unless there is good cause shown. To avoid scheduling conflicts, attorneys shall be prepared to immediately tell the court of such conflicts when the court sets dates from the bench or in conference. Stipulated requests for continuance of trial date must have the consent of the parties in writing or on the record and must be for good cause. Non-stipulated requests for continuance must be on motion and hearing and for good cause.

III. Telephone conferencing for scheduling and for motions not involving evidence is encouraged.

IV. In all pretrial matters, attorneys must have authority to negotiate in the absence of their clients or, if authority is not granted, immediate telephone access to clients.

V. A motion for summary judgment shall comply with Wisconsin Statutes Sec. 802.08. Procedures are contained in Rule 7.

Rule 3. Small Claims Procedures

All contested small claims actions shall undergo mediation before being scheduled for trial. A mediation representative will be available in the courtroom at the time of the return date. Trial will be scheduled with the judge or court commissioner if mediation is unsuccessful.

Mail service of small claims pleadings has long been an accepted and approved procedure in Trempealeau County. This will affirm the procedures as provided by small claims statutory authority and specifically allow service by mail pursuant to section 799.12(2)&(3) Wisconsin Statutes.

Rule 4. Family Law Practice

I. A. Dissolution of Marriage – Divorce/Legal Separation/Married People Living Apart:

In order that parents in marital dissolution (divorce) cases have the best opportunity to protect themselves and their children, the Court orders as follows:

- (1) In any dissolution of marriage proceeding where the spouses have one or more minor children together, within 60 days of filing of a petition for dissolution, the parents shall each complete the work on the www.UpToParents.org. Both English and Spanish versions are available from that webpage.
- (2) Within 60 days of the filing of a petition for dissolution, parents with one or more minor children shall file with the Court a copy of the “Certificate of Completion.” Upon completion of the course, this certificate is available on the conclusion page.

B. Paternity Cases – Paternity Actions/Voluntary Acknowledgement of Paternity:

In order that parents in these cases have the best opportunity to protect themselves and their children, the Court orders as follows:

- (1) Within 60 days of the finding of paternity, the parents shall each complete the work on the www.ProudToParent.org. Both English and Spanish versions are available from that webpage.
- (2) Within 60 days of the finding of paternity, parents with one or more minor children shall file with the Court a copy of the “Certificate of Completion.” Upon completion of the course, this certificate is available on the conclusion page.

II. Mediation shall be ordered in all contested matters involving child custody and periods of physical placement.

III. No fees will be charged for the initial custody/physical placement mediation session.

The fees for mediation are payable directly to the Clerk of Courts, Trempealeau County Courthouse, P.O. Box 67, 36245 Main St., Whitehall, Wisconsin 54773. The court shall reduce the fees in accordance with the parties’ ability to pay. If a party is unable to pay, the court shall grant a separate judgment for the amount of the fees in favor of the county and against the party or parties responsible for the fees.

IV. Mediation shall be conducted in accordance with the policies established by the Trempealeau County Family Court Commissioner.

Rule 5. Criminal Law Practice

I. Stipulated requests for continuance of trial date require the consent of the parties in writing or on the record and must be for good cause. Non-stipulated requests for continuance must be on motion and for good cause. All requests for continuance are subject to approval of the court.

II. All motions must state grounds "with particularity." Wis. Stat. Sec. 971.30. Failure to comply with this requirement shall be grounds for dismissal of the motion.

III. A party filing a motion shall be responsible for securing a hearing date. Failure to secure a date shall constitute waiver of the motion.

IV. Arraignments shall ordinarily be conducted immediately upon completion of the preliminary hearing. At the request of either party, the arraignment may be scheduled later.

V. There shall be a pretrial conference within a reasonable time after the initial appearance in misdemeanor matters and after arraignment in felony matters. Attorneys and defendant must appear at the pretrial conference, if the case is not resolved at pretrial, a status/scheduling conference will be set.

VI. There shall be a status conference for all matters not resolved at pretrial. The purpose of the conference is to determine whether the case is settled or whether it will be tried. If there are any contested motions, the parties must notify the court at the status conference so that time may be set aside. Attorneys and defendants must be present at the status conference.

A. All plea negotiations must be completed by the status conference. No plea agreement will be accepted after the status conference.

B. Settled cases. If a plea agreement has been reached, the defendant must be present at the status conference. The plea will be taken then.

C. Trial cases. If a plea agreement has not been reached, the attorneys will inform the judge at the status conference. The case will then be tried on the date scheduled.

Rule 6. Forfeiture Cases

I. In contested forfeiture matters, the prosecuting attorney shall be responsible for conducting a pretrial conference. The prosecuting attorney shall inform the Court of the results of the pretrial.

II. Requests for a jury trial shall be filed, along with the payment of the jury fee, with Clerk of Court, no later than 10 days from the initial appearance.

Rule 7. Procedures on Motion for Summary Judgment

The Court has adopted certain procedures to be followed in filing and responding to Motions for Summary Judgment which are intended to supplement the statutory guidelines of Section 802.08 Wis. Stats. and to facilitate the methodology imposed upon the trial court by the appellate courts in reviewing motions for summary judgment.

A copy of the procedure to be followed on Motions for Summary Judgment in the Circuit Court for Trempealeau County, Wisconsin, may be obtained from the Clerk of Court for Trempealeau County.

Failure to comply with this order shall be considered cause for imposing sanctions which may include dismissal, contempt, costs, or such other and further sanctions as the Court may deem appropriate under the circumstances.

Procedure to be Followed on Motions for Summary Judgment

1. A motion for summary judgment made pursuant to Section 802.08 Wis. Stats. shall be served and filed in the following form:

A. The motion itself, together with such materials permitted by Sec. 802.08 Wis. Stats. as the movant may elect to serve and file; and

B. Either (1) a stipulation of facts between or among all the parties to the action, or (2) a statement of the findings of fact proposed by movant, or (3) a combination of (1) and (2).

1. Whether a movant elects a stipulation or a statement of proposed findings, or both, it is movant's obligation to present no more and no less than the set of factual propositions which movant considers necessary to judgment in movant's favor, and as to which movant considers there is no genuine issue. [Footnote 1]
2. Such factual propositions shall be set forth in numbered paragraphs, the contents of each of which shall be limited as far as practicable to the statement of a single factual proposition.
3. At the close of each numbered paragraph shall be set forth one or more references to the PLEADINGS, DEPOSITION TRANSCRIPTS, ANSWERS TO INTERROGATORIES, ADMISSIONS on file or AFFIDAVITS [Footnote 2] supporting movant's contention there is no genuine issue as to that factual proposition.
4. References to the record shall include:
 - a. In the case of a pleading, the numbered paragraph of that pleading;
 - b. In the case of a deposition transcript, the name of the witness and the page of the transcript;
 - c. In the case of an answer to an interrogatory, the number of that interrogatory and the identity of the party to whom it was directed;
 - d. In the case of an admission in response to, or resulting from a failure to respond to, a request for admission made pursuant to sec. 804.11, Wis. Stats., the number of the requested admission and the identity of the party to whom it was directed;
 - e. In the case of an admission on file which is not in response to, or resulting from a failure to respond to, a request for admission made pursuant to sec. 804.11 Wis. Stats., the form such admission takes and the page or paragraph of the document in which that admission is made. Admissions made solely for the purpose of the motion for summary judgment should be so designated.

- C. A statement of the conclusions of law proposed by movant, in numbered paragraphs;
- D. A motion for summary judgment in the form required by I., above, shall be served and filed together with a supporting brief.

II. When a motion and support brief have been served and filed in compliance with I. above, the Court shall issue a schedule for the procedures described in III. and IV. below, unless a briefing schedule has already been established by the Court.

III. Response. On or before the date specified in the schedule issued by the Court, any party who elects to oppose the motion for summary judgment shall serve and file the following:

A. Such materials permitted by Sec. 802.08 Stats, which said party may elect to serve and file in opposition to said motion.

B. A response to the movant's statement of proposed findings of fact.

1. With respect to each numbered paragraph of the movant's proposed findings of fact, the said response shall state clearly whether there is a genuine issue as to the whole or a part of the said factual proposition; if it is contended that there is a genuine issue only as to a part of the said factual proposition, the response shall identify precisely the said part of the numbered paragraph.
2. With respect to any paragraph or part of a paragraph of the movant's proposed findings of facts as to which it is contended that a genuine issue exists, the response shall refer to the PLEADINGS, DEPOSITION TRANSCRIPTS, ANSWERS TO INTERROGATORIES, ADMISSION on file, or AFFIDAVITS complying with sec. 802.08 Stats., which respondent believes give rise to said genuine issue.
3. The said references to the record shall be made with that specificity required by I.(B.)(4.) above.
4. If an opposing party believes the motion for summary judgment must fail because of material facts not stated by the movant and as to which it is considered there is no genuine issue, the said opposing party may present such other factual propositions either by means of:
 - a. A stipulation of facts between or among all of the parties to the action;
 - or
 - b. A statement of the findings of fact proposed by said opposing party; or
 - c. A combination of "a" and "b".
5. With respect to such presentation of factual propositions not stated by the movant, the said opposing party shall comply with the requirements set forth in I.(B)., above.

C. A response to the movant's statement of proposed conclusions of law.

1. With respect to each such numbered proposed conclusions the said response shall state clearly whether the said conclusion is agreed to or disputed in whole or in part; if the dispute is partial, the response shall state precisely which portion of the proposed conclusion is disputed.
2. If an opposing party believes the motion for summary judgment must fail because of conclusions of law not stated by movant, that party may state such other conclusions of law.

D. The response in the form required by Ill., above, shall be served and filed together with a brief in opposition to the motion for summary judgment.

IV. Reply. On or before the date specified in the schedule issued by the Court, the movant may, but is not required to, serve and file in rebuttal any or all of the following items:

A. Such materials permitted by Sec. 802.08 Stats., which movant may elect to serve and file in rebuttal.

B. A statement in rebuttal to the response or responses to any numbered paragraph of movant's initially proposed findings of fact, and a statement in rebuttal to any numbered paragraph of findings of fact initially proposed in the response or responses. To the extent that said statement in rebuttal requires record references not earlier made by movant, the said references shall be made with that specificity required by I.(B).(4.), above.

C. A statement in rebuttal to the response or responses to any numbered conclusion of law initially proposed by the movant, and a statement of rebuttal to any numbered conclusion of law initially proposed in the response or responses.

D. A statement in rebuttal to the response or responses with respect to the form of judgment.

E. With the rebuttal described in IV. above, the movant may, but is not required to, serve and file a rebuttal brief.

V. In deciding the motion for summary judgment:

A. The Court will conclude that there is no genuine issue as to any proposed finding of fact initially proposed by the movant, except to the extent an opposing party's response asserts that a genuine issue exists; and

B. The Court will conclude there is no genuine issue as to any finding of fact initially proposed in a response, except to the extent that movant's rebuttal asserts a genuine issue exists.

C. As to any finding of fact, whether initially proposed by the movant or in a response, as to which it is asserted a genuine issue exists, the Court will make a determination as to the existence or non-existence of such genuine issue.

D. The Court is not required to give any weight to a piece of evidence unless it is set forth in the manner described.

E. The Court does not consider it is under any obligation to search the record for factual matters that might support either the grant or the denial of the motion. It is the duty of the parties to bring to the Court's attention by specific reference to the record as outlined in paragraphs I.(B)., II.(B)., and IV.(B)., all factual and legal matters material to the resolution of the issues in dispute.

VI. All motions for summary judgment shall be considered as submitted for ruling without oral argument, unless the Court directs otherwise.

Footnotes

1. The factual propositions should include all of the "basic" facts necessary to a decision on the motion, including those going to jurisdiction, to the identity of the parties, and to the background of the dispute.

2. Affidavits must be made on personal knowledge setting forth such facts as would be admissible in evidence, and showing affirmatively the affiant is competent to testify to the matters stated therein.

Rule 8. Juvenile Court Procedure

This local court rule establishes the policies and procedures of the juvenile and children's court of Trempealeau County. It shall supersede all previous statements of the policies and procedures of the Trempealeau County Circuit Court concerning proceedings under chs. 48 and ch. 938 in whatever form or format promulgated.

Definitions.

Child: Refers to a person under the age of 18 involved in a chapter 48 CHIPS proceeding.

CHIPS: CHild In need of Protection or Services; a ch. 48 proceeding concerning a child who is within the jurisdictional requirements of § 48.13, Wisconsin Statutes, generally involving orphaned, abandoned, abused, neglected, special treatment children, and children with alcohol or other drug abuse impairments.

Court: When used without further qualification, means the court assigned to exercise jurisdiction under chapters 48 or 938, Wisconsin Statutes.

Court Intake: The process of submitting to the juvenile intake worker written referrals from agencies or departments authorized in chapters 48 or 938 to refer a child/juvenile to the court.

Custody Intake: The process by which a person is taken into custody under §§ 48.19 and 938.19, Wisconsin Statutes, and delivered to the juvenile intake worker for a custody determination.

JIPS: Juvenile In need of Protection or Services; a ch. 938 proceeding concerning a juvenile who is within the jurisdictional requirements of § 938.13, Wisconsin Statutes, generally involving uncontrollable juveniles, habitual truants, school dropouts, under 10 who commits a delinquent act, not responsible because of mental disease or defect, or not competent to proceed.

Juvenile: Refers to a person under the age of 17 involved in a delinquency proceeding or a person under the age of 18 involved in a JIPS proceeding.

I. General policies.

A. It is the express policy of the court to implement the legislative purposes expressed in §§ 48.01 and 938.01, Wisconsin Statutes. Statutorily-mandated procedures are the law and do not constitute policies. Statutory mandates are to be explicitly followed in the performance of all matters involving chapters 48 and 938. This rule is intended to set forth the philosophical role of the circuit court in matters concerning chapters 48 and 938 and to establish procedures that are discretionary with the court.

Rationale: The statutes are the law. They must be followed. Policies and procedures are intended to fill the gaps in the law and set forth the philosophical and procedural requirements for handling matters involving chs. 48 and 938.

B. The court will not routinely waive time limits.

Rationale: It was the intent of the legislature to expedite court proceedings. This intent is based, in part, on the philosophy that delays:

- In Delinquency and JIPS matters, remove the "cause and effect" relationship between juvenile behavior and court-ordered consequences in delinquency matters, and
- In CHIPS matters, place the child and parents in a limbo status concerning the various needs, rights, and responsibilities of the parties.

II. Custody Intake

A. The intake/disposition/supervision function shall be in the Trempealeau County Social Services agency.

B. Custody intake shall be done by professionally-trained intake workers.

Rationale: The statutes mandate training for all intake workers. The powers of the intake worker are similar to those of a judge.

C. Backup custody intake shall be on-call workers.

Rationale: It is fiscally impossible for a county the size of Trempealeau to have fulltime back-up workers. Utilizing a list of on-call back-up workers is efficient and fiscally responsible.

D. Backup custody intake workers shall be trained at county expense.

Rationale: Intake workers are required to have a certain number of hours of training (currently 30 hours for intake workers, 12 hours for holdover room attendants). Requiring backup workers to obtain training at their own expense would effectively eliminate the county's ability to obtain such workers.

E. Referrals for custody intake shall first be made to the full-time intake worker; if the full-time intake worker is not available, the backup workers shall be contacted in the order provided by the Social Services Agency.

Rationale: Custody intake should first be conducted by the person who is most experienced and generally familiar with the statutes, juveniles, and court processes: the full-time intake worker. If that worker is not available, referrals should be made to the backup workers in the order listed by Social Services Agency so that there is uniformity in intake decisions.

F. A Juvenile Court Commissioner shall not be used for custody intake purposes unless no other full-time or backup worker is available.

Rationale: A Juvenile Court Commissioner is the only court official (other than the Circuit Judge) who can conduct Custody Hearings under §§ 48.21 or 938.21, Wisconsin Statutes. If a Juvenile Court Commissioner makes the initial custody decision, only another court commissioner with juvenile court powers or the Circuit Judge can conduct a custody hearing. If the Circuit Judge is not available, an out-of-county judge would be required.

G. The Circuit Judge shall be used for custody intake only if no other qualified individual is available.

Rationale: Trempealeau County is a single-judge county. If the judge is used for intake purposes, the statutes mandate that the judge cannot act further in that case. This would require out-of-county judges being required to handle all matters after intake. Given the time limitations on juvenile court proceedings, and the difficulty of calendaring out of county judges for "emergency" work in Trempealeau County, using the Circuit Judge for intake purposes on other than a "last-resort" basis would adversely affect the progress of juvenile court proceedings.

III. Custody intake "decision guidelines"

A. All custody intake referrals shall be made through law enforcement or Social Services personnel.

Rationale: The decision to refer a person to custody intake is best made by professionals familiar with the law and resources available to the county.

B. Intake shall not be contacted until the referring agency has made a reasonable, articulable decision that a person should be held. The referral agency shall be required to complete the custody intake referral form before intake is notified.

Any law enforcement officer or court intake worker taking a juvenile into custody shall make every effort to immediately release the juvenile as soon as the situation permits.

Law enforcement officers can release a juvenile in the following ways:

- a) Release to parents, guardian, legal custodian.
- b) If parents are neglecting, refusing, unable or unavailable to provide supervision, may release to responsible adult.
- c) If the child is 15 years of age or older, may release the child without immediate supervision.

If the case is an after hours case, the law enforcement agency can make the release to the above mentioned alternatives and there will be no need for the intake worker to become involved.

If the child is not to be immediately released, the intake worker must be notified.

A request for temporary physical custody form must be completed by law enforcement in all cases where they are requesting that a child be detained. (JD1710)

Rationale: Intake should only be contacted after the referring agency has made a decision that the person should be held. The agency must be able to justify that decision in writing. Requiring the agency to complete the referral form before intake is called forces the referral person to justify the request for a hold.

C. Intake shall first determine whether the court has jurisdiction over the person.

In delinquency matters, the referring agency shall attempt to establish if the person is subject to original adult court jurisdiction or the juvenile court. If the person is subject to original adult court jurisdiction, the procedures specified in section 1706 of this rule and chs. 967 to 979, Wisconsin Statutes, shall apply.

In the event an immediate determination cannot be made whether the juvenile is subject to original adult court or juvenile court jurisdiction, any person age 16 or under shall be presumed to be subject to juvenile court jurisdiction until juvenile intake or the court is satisfied otherwise. The juvenile intake worker shall decline to make a custody determination in a case if the intake worker knows of his or her own knowledge that the person is not subject to juvenile court jurisdiction.

If the person is not subject to original adult court jurisdiction, intake shall determine what jurisdictional basis exists for the requested hold under chs. 48 or 938.

D. If there is jurisdiction, intake shall then consider whether and where the person should be held in custody.

1. Chapter 48 presumptions:

a) A child shall be removed from the home if the best interests of that child so dictate.

Rationale: In construing chapter 48, the paramount consideration is the "best interests of the child."

b) The best interests of the child require removal, lower levels of restriction must always be considered and rejected before considering a higher level of restriction. Intake shall consider placement in the following ascending order of restriction (only if statutory criteria are met):

1. Home placement with conditions;
2. Home placement under home detention rules;
3. Placement in the home of a relative;
4. Holdover room;
5. Placement in the home of a person not a relative;
6. A licensed foster home;
7. Shelter care, such as LaCrosse or Eau Claire County Shelter Care.

2. Chapter 938 delinquency/JIPS presumptions:

A juvenile shall be removed from the home and placed in custody if doing so is necessary to protect citizens from juvenile crime.

Rationale: In construing chapter 938, protecting citizens from crime is one of eight equal purposes of the juvenile code.

b) If removal from the home is not necessary to protect citizens from juvenile crime, intake shall consider whether any of the following conditions on home placement are warranted:

- Home placement with conditions;
- Home placement under home detention rules.

c) If protection of the public requires removal, lower levels of restriction must always be considered and rejected before considering a higher level of restriction, except in the case of those crimes statutorily presumptive of secure detention. Intake shall consider placement in the following ascending order of restriction (only if statutory criteria are met):

- Placement in the home of a relative;
- Holdover room;
- Placement in the home of a person not a relative;
- A licensed foster home;
- Shelter care (such as La Crosse or Eau Claire County Shelter Care);
- In delinquency matters, secure detention in:
 - Secure detention facility (such as Eau Claire or La Crosse Secure Detention).
 - The juvenile portion of an adult jail meeting the requirement of DOC 346.

Rationale: Increasing levels of custody should be considered commensurate with the level of custody needed for the protection of the public. Secure custody should be imposed only when the secure setting is necessary and the statutory criteria have been met.

d). If the juvenile is charged with or it appears reasonable to believe the juvenile will be charged with a crime which establishes a presumption of secure custody under § 938.208(1), that juvenile shall always be placed in secure custody unless the intake worker is satisfied that such custody is not necessary to protect the public. For illustrative purposes only, the presumptive secure custody crimes as of the date of promulgation of this rule are:

1. 1st degree intentional homicide, 940.01
2. 1st degree reckless homicide, 940.02
3. Felony murder, 940.03
4. 2nd degree intentional homicide, 940.05
5. Class C, D & E felony Battery, 940.19 (2) to (6)
6. Mayhem, 940.21
7. 1st degree sexual assault, 940.225(1)
8. Kidnapping, 940.31
9. Discharging firearm from automobile or in parking lot under certain conditions, 941.20(3)
10. Arson to building, 943.02(1)
11. Car jacking while possessing a dangerous weapon, 943.23(lg)
12. Car jacking while possessing a dangerous weapon and causing great bodily harm, 943.23(lm)
13. Car jacking while possessing a dangerous weapon and causing death, 943.23(lr)
14. Armed robbery, 943.32(2)
15. 2d or subsequent offense of Harassment with threat of death/great bodily harm, 947.013(lt)
16. Harassment with threat of death/great bodily harm based on information obtained electronically, 947.013(lv)
17. 2d or subsequent offense of harassment based on information obtained electronically, 947.013(lx)

18. 1st or 2nd degree sexual assault of child, or repeated acts of sexual assault to same child, 948.02(1) or (2)
19. Physical abuse of child, 948.03
20. Use of handgun, short-barreled rifle/shotgun while committing a felony under ch. 940
21. Possession of a short-barreled rifle/shotgun, § 941.28
22. Going armed with a handgun in violation of § 948.60

Future legislative changes that either add to or subtract from this list shall be considered incorporated into this rule without further revision of this rule.

e) If the intake worker believes secure custody is not necessary in a presumptive secure custody situation, the intake worker shall consider less restrictive placements as listed in paragraph 3 of this section of this rule in a descending order of restriction, rather than an ascending order of restriction.

f) The referral agencies' recommendation concerning either the necessity of a hold or the proper placement is not binding on the intake decision and should be considered only with caution.

Rationale: Intake must make a reasoned, independent decision on both the holding of a child and the proper placement. Referral agencies have different constituencies and interests from intake. Intake's responsibility is to the court, not the referral agency.

g) The "holdover room" is to be used as a temporary housing of the child only in the following circumstances:

When the court will be able to conduct a custody hearing within 24 hours; or,
As a temporary placement pending the opening of a different placement, such as a foster home, shelter care facility, or other similar placement.

Rationale: When a person is taken into custody at a time when a court custody hearing will be held within 24 hours, it is illogical to transport that person to a holding facility only to be required to almost immediately pick up and return the person for a court hearing. The holdover room allows for a temporary and safe placement for such individuals on those occasions when a court custody hearing is only a few hours away.

h) The "holdover room" is a non-secure placement. It shall be located in a non-secure portion of the Trempealeau County Courthouse. All persons placed in the "holdover room" must be advised that

1. The holdover room is a non-secure placement;
2. He or she is free to leave and where the available exits are located;
3. A juvenile who leaves the holdover room is considered a "runaway" from a non-secure placement; and,
4. As a runaway from a non-secure placement, Wisconsin law allows the juvenile to be placed in a secure placement facility.

Rationale: Since the holdover room is considered to be a non-secure placement, the facility must be located outside the locked portion of the jail. The person is entitled to understand the nature of the placement and the consequences of leaving the placement.

i) All persons placed in the holdover room shall be monitored by a trained holdover room attendant. The Trempealeau County Sheriff's office and the Trempealeau County Social Services agency, may establish guidelines and policies for the holdover room.

Rationale: Individuals who monitor people held in the holdover room are not required to be law enforcement officers or social workers. The holdover room attendant may be a lay person who has been given appropriate training in their role. The Trempealeau County Sheriff's office is primarily responsible for the operation of the holdover room.

j) Intake staff shall consider the following criteria when appropriate in making a custody decision and the appropriate level of placement:

1) In delinquency situations whether the present offense is a presumptive secure custodial placement crime listed in § 938.208(1)(a) (b), or (c), Wisconsin Statutes.

2) In delinquency matters which are not presumptive secure custodial placement crimes, the severity of present alleged offense:

- Whether the present offense involves bodily injury or property damage
- The degree of injury to the victim
- Any special vulnerability of victim (elderly, very young, handicapped, etc.)
- Whether a weapon was used and type of weapon
- Extent of premeditation on the part of juvenile
- Whether act represents "random, senseless act of violence"
- The number of co-actors involved
- The attitude of the juvenile toward offense
- Whether offense included any "gang" involvement
- Other circumstances relevant to the offense

3) In delinquency matters, the prior CHIPS, JIPS, and/or delinquency record of juvenile:

- Number, nature and consequences of prior court adjudications
- Age of initial law enforcement/court involvement compared to present age
- Whether the activity indicates an escalation in severity of dangerousness
- Whether the activity indicates an increasing lack of respect for or inclination to adhere to rules
- Other factors concerning the prior record of the juvenile

4) Risk of Flight:

- Is the person presently a runaway from a court-ordered placement
- Has this person previously run away from a court-ordered placement
- Attitude of the person toward remaining in custody
- Record of obeying home curfews and rules
- Ability of care giver to control the person
- School attendance record
- Likelihood of the person to be successful at running from placement based on:
 - Age
 - Apparent maturity

- Availability of other associates that would assist running away
- "Gang" relationships that would foster runaway status
- Level of consequences child/juvenile now faces for immediate behavior
- Other facts that appear relevant to level of risk of flight

5) Current legal status:

- Is person currently subject to a dispositional order
- Are other court actions involving the person currently pending
- What is person's present level of custody
- Are there prior adjudications of a similar nature
- Have other dispositional alternatives been tried in past
- Other factors relating to the person's present legal status

6) Protection needs:

- Is person subject to abuse or neglect in home
- Have there been verbal threats against this person
- Has this person exhibited potential harm to self by recent behavior or threats
- Is the present care giver able to adequately protect this person
- Is this person vulnerable to revenge acts by others, including co-actors, victims, or others
- Other factors relating to the need to protect the person

k) Deadline for petitions if no custody hearing is requested

1) If a child/juvenile has been taken into custody and placed in a secure or non-secure placement outside the home, but no request for a hearing on the custody has been requested, the custody order shall automatically terminate and the person released from the custody order unless a written referral to intake pursuant to §§ 48.24 or 938.24, Wisconsin Statutes, has been filed within five (5) days of the date of the custody order.

Rationale: Persons who are taken into custody must not be left in a "limbo" status. Intake inquiries must be promptly filed in order to initiate the formal court process. Five days is an appropriate maximum amount of time for the requesting agency to file the intake referral.

2) This rule does not apply to defendants age 14 or under charged with an original adult court jurisdiction matter who are being held in secure custody.

Rationale: Defendants in an original adult court jurisdiction matter who are being held in secure custody are under the procedures of the adult court, not the juvenile court. There are no "referrals" to intake for such matters. The defendant is held until bail/bond conditions have been met.

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Rule 8. Juvenile Court Procedure

IV. Original adult court criminal defendants--secure custody

1. Defendants age 15 or over:

A defendant involved in an adult court jurisdiction matter who is age 15 or over at the time a custody decision is being made shall be held in the county jail.

Rationale: A defendant age 14 or under can only be held in secure custody in a juvenile secure detention facility. Since the legislature specifically limited such placements to defendants 14 or under, defendants 15 or over are subject to all adult court procedures, including custody in the county jail pending meeting bail/bond conditions or further court proceedings.

B. Defendants age 14 or under:

1. Initial arrest: If law enforcement arrests a defendant age 14 or under for an adult court jurisdiction matter and law enforcement intends to hold the defendant in custody pending a bail/bond hearing, the defendant must be held in a juvenile secure detention facility.

- A defendant arrested without a warrant and held under this rule is entitled to a probable-cause determination within 48 hours of the arrest.
- A defendant arrested and held under this rule is entitled to a bail/bond hearing under ch. 969.
- A defendant arrested and held under this rule is not entitled to a juvenile court custody hearing under § 938.20.

Rationale: A defendant in an original adult court jurisdiction matter is subject to all of the procedures in chs. 967 to 979 except that any secure custody placement must be in a juvenile detention facility. In all other adult court matters law enforcement makes a decision to hold or release the defendant. The same should be true in the case of defendants who are involved in an original adult court proceeding. Such defendants are also entitled to the adult court procedures of a Riverside/McLaughlin hearing, bail/bond hearing, etc. But since these defendants are not in juvenile court, they are not entitled to juvenile court § 938.20 custody hearings.

2. Failure to post bond: If a defendant age 14 or under charged with an adult court jurisdiction matter appears for a bail/bond hearing before a judge or court commissioner and is unable to meet the conditions of bail/bond in order to be released, the defendant must be held in a juvenile secure detention facility. The juvenile shall be immediately released from such detention upon meeting the conditions of bail/bond.

Rationale: Although a defendant is held in secure custody in a juvenile facility, the hold is only because the defendant has not met the conditions of bail/bond established by the court. When the bond conditions have been met--such as payment of a cash bond--the defendant should be released the same as a defendant age 15 or over would be released.

C. In the event an immediate determination cannot be made whether the juvenile is subject to original adult court or juvenile court jurisdiction, any person age 16 or under shall be presumed to be subject to juvenile court jurisdiction until juvenile intake or the court is satisfied otherwise. The juvenile intake worker shall decline to make a custody determination in a case if the intake worker knows of his or her own knowledge that the person is not subject to juvenile court jurisdiction.

D. Any defendant who meets all of the following criteria shall immediately be transferred to the county jail upon his or her 15th birthday:

- The person is subject to original adult court jurisdiction, and,
- The person had been placed in juvenile secure custody because the person was age 14 or under at the time the custody decision was made.

No further court order is needed to effectuate such a transfer. Law enforcement shall be responsible for transporting the juvenile from the secure custodial placement to the county jail.

IV. Custody hearings and petitions

A. Custody hearings, whether under s.48.21 or s.938.21, shall be conducted within 24 hours after the end of the day that the decision to hold was made, excluding weekends and holidays. Custody hearings under s.48.21 shall be conducted within 48 hours after the end of the day that the decision to hold was made, excluding weekends and holidays.

Rationale: Section 48.21 requires a custody hearing to be held within 48 hours of the time the decision to hold the child was made, excluding Saturdays, Sundays and legal holidays. Section 938.21 requires a custody hearing to be held within 24 hours after the end of the day that the decision to hold the juvenile was made, excluding Saturdays, Sundays and legal holidays.

B. If court scheduling or congestion makes it impossible to conduct a custody hearing within the time period, the custody hearing shall be conducted as soon as is reasonably practical. No juvenile shall be automatically released from custody if a custody hearing is not held in a timely fashion if the reason for the inability to hold the custody hearing is because of court congestion or scheduling difficulties under § 938.315(l)(dm).

C. If a petition under either ch. 48 or ch. 938 has not been filed by the time of the custody hearing and the statutory grounds exist for an extension of time to file a petition, a petition must be filed within:

1. Ch. 938 matters: 48 hours from the time of the hearing.
2. Ch. 48 matters: 72 hours from the time of the hearing, excluding Saturdays, Sundays and legal holidays.

D. No custody hearing under chs. 48 or 938 is to be held for a defendant age 14 or under involved in an original adult court jurisdiction matter who is being held in secure custody.

V. Court Intake

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A. All intake referrals under §§ 48.24(1) or 938.24(1), Wisconsin Statutes, are to be submitted in writing on the appropriate forms, either the Court Referral--Juvenile, Law Enforcement form or the Court Referral--Juvenile, Non-law enforcement form. The referral should include:

1. An incident report prepared by the officer describing all of the relevant details of the case.
2. Any statements made by the juvenile as well as statements by any witnesses or victims.
3. If there is property damage or loss, an accounting of the estimated damages. This includes a list of items stolen or damaged, along with an approximate value of these items.
4. Any personal observations or recommendations which the officer may have in regard to circumstances or disposition.
5. A signed waiver of Miranda rights form, when these rights are knowingly and voluntarily waived by the child/juvenile as required under the law.

Rationale: All referrals must contain specific information. Using a state-wide approved form provides a consistent format for presenting and reviewing each referral.

B. All intake referrals under §§ 48.24(1) or 938.24(1), Wisconsin Statutes, shall be conducted by the full-time intake worker.

Rationale: Consistency in the handling of the referral process is necessary to assure that children are handled similarly. Coordinating all intake inquiries in the full-time intake worker assures such consistency. Because the time limits for conducting an intake inquiry are sufficiently flexible, the fulltime intake worker can accommodate all intake referrals in spite of temporary absences, vacations, or other duties.

C. All parties making a referral may make a recommendation for disposition, but that recommendation is not binding on the intake worker.

Rationale: Often the party making the referral has special insight into the facts or needs of each case which should be communicated to the intake worker who must make the ultimate recommendation. Recommendations, however, are merely recommendations.

D. Intake referrals under §§ 48.24(1) or 938.24(1), Wisconsin Statutes, are not required if all of the following have occurred:

1. A custody intake decision was made pursuant to §§ 48.19 or 938.19, Wisconsin Statutes;
2. A hearing on the custody has been held pursuant to §§ 48.21 or 938.21, Wisconsin Statutes;
3. The person has been continued in custody (secure or non-secure); and,
4. A petition was filed with the court at or prior to the custody hearing or the court has authorized an extension of time to file a petition.

Rationale: The purpose of the intake referral is to allow the Juvenile Intake Worker to review the facts, meet with the child and parents, and make a decision whether the matter should be referred for a Petition to be filed, whether the matter should be resolved through an Informal Disposition or Deferred Prosecution Agreement, or whether the matter should be dismissed. Chapters 48 and 938 require that a petition be filed at or prior to a custody hearing or allows a 48-hour extension of time to file such a petition. Because of the expedited nature of the process when a child is taken into custody, the purpose of an intake inquiry has been accomplished. It is impossible to reconcile the statutory

guidelines for an intake inquiry with the statutory guidelines for processing a petition. It was the apparent intent of the legislature to circumvent the intake inquiry procedure when the intrusive step of a child being taken into custody has occurred.

E. Intake referrals under §§ 48.24(1) or 938.24(1), are not required if the juvenile has been transferred to juvenile court by an adult court pursuant to a "reverse waiver" under §§ 970.032(2) or 971.31(13).

Rationale: The juvenile has already been in adult court under an original adult court jurisdiction crime because of the serious nature of the crime committed or the juvenile's past record. The district attorney will already have prepared charging documents concerning the juvenile in adult court and is in the best position to make a determination of whether a delinquency petition should be filed and the charge(s) to be included in the petition.

F. Except as set forth elsewhere in this rule, the intake worker shall always consider the possibility of an informal disposition agreement under ch. 48 or a deferred prosecution agreement under ch. 938 when doing so would not unduly depreciate the seriousness of the matter referred in the eyes of the juvenile, parents, victims, and the public.

Rationale: Diversion of children from the formal court system is one of the goals of both chapter 48 and 938. An Informal Disposition Agreement (IDA) or Deferred Prosecution Agreement (DPA) may allow the intake worker to structure a plan with the agreement of the child/juvenile and parents that will accomplish all of the goals of chapter 48 and 938. However, an IDA or DPA can be counter-productive if its effect is to reduce the child's or parents' responsibility, or the IDA/DPA would depreciate the seriousness of the offense, or such an action would be viewed as doing so by other interested persons.

G. The intake worker shall consider the following factors in screening intake referrals:

1. Seriousness of the allegations
2. Intent
3. Severity of personal injury
4. Severity of property damage
5. Prior allegations of similar activity
6. Attitude of the public
7. Attitude of the victim
8. Previous contacts with law enforcement, social services, or juvenile intake
9. Age and maturity
10. Attitude of the person and/or parents
11. Degree of apparent incorrigibility/uncontrollability
12. School attendance and behavior patterns
13. Involvement in gang-related activity
14. Other social factors
15. Resources available to the family and community to provide adequate care
16. Criteria in § 938.18(5), Wisconsin Statutes, concerning waiver to adult court
17. Any other facts or circumstances available to the intake worker that impact on the referral decision consistent with the welfare and safety of the person and the protection of the public, including those factors provided in Rule 1705, concerning custody decision-making.

Rationale: The intake decision should not be hamstrung by artificial barriers to the free flow of information. Just as the circuit judge may consider all its "relevant" factors in making a disposition, without regard to the rules of evidence, the intake worker should also be able to use all information available to make a decision on the future of that particular referral.

G. The intake worker shall **not** enter into a deferred prosecution agreement in a ch. 938 matter in the following situations unless the district attorney has referred the matter back to the intake worker with such a recommendation.

Rationale: The legislature, on behalf of the society it represents, has categorized crimes in terms of seriousness by creating a classification system. It is the duty of the executive branch, acting through the elected District Attorney, to determine the extent to which these crimes should be prosecuted. For those crimes society considers most serious, the intake worker--a non-elected member of the judicial branch--should not make informal disposition recommendations in those cases which would appear to unduly depreciate the seriousness of the allegations. Certain criminal activity is so serious that an informal disposition should only be considered when the District Attorney has made that choice as the proper prosecutorial decision. The intake worker should conduct an intake conference and may recommend to the district attorney a juvenile court deferred prosecution agreement or an adult criminal court deferred prosecution agreement. If the district attorney has reviewed the matter and concludes that a juvenile court deferred prosecution agreement is appropriate, the district attorney will refer the matter back to intake for such a procedure. If the district attorney believes an adult criminal court deferred prosecution agreement is appropriate, the district attorney will prepare the paperwork in adult court.

1. If the intake worker is satisfied there is probable cause to believe the juvenile committed a Class A or B Felony

Rationale: Although intake will seldom see a juvenile who is charged with a Class A or B Felony (most of these are original adult court jurisdiction matters), there are occasions when it might occur. These matters are so serious that an IDA or DPA is never a practical consideration.

2. If the intake worker is satisfied there is probable cause to believe the child committed a felony and has been previously adjudicated delinquent.

Rationale: A prior adjudication for delinquency followed by a new felony referral for delinquency is sufficiently serious to require that the initial decision on filing a formal petition should always be made by the District Attorney.

3. The juvenile and at least one of the parents does not appear at an intake conference.

Rationale: For a deferred prosecution agreement to work, the parties must reach an agreement. Juveniles or parents who do not attend the intake conference exhibit a noncooperative attitude that would make an informal disposition unworkable.

4. The juvenile or the family deny the allegations of the referral.

Rationale: The deferred prosecution agreement is not to be used as a bargaining tool or hammer to avoid litigation. For a DPA to work, the parties must show a willingness to admit that there is a problem and to work voluntarily to resolve it.

5. When the child has been the subject of an informal disposition agreement concerning delinquency under ch. 48 or a deferred prosecution agreement under ch. 938 entered into within the last two years.

Rationale: A juvenile who has been the recent subject of an informal disposition agreement is not appropriately considered for informal disposition again.

H. The juvenile intake worker may consider recommending an informal disposition agreement or deferred prosecution agreement in the following circumstances:

When an informal disposition would not violate rule 7 above.

In delinquency/JIPS matters when:

- a) The juvenile admits the allegations.
- b) The juvenile exhibits remorse for the acts.
- c) The juvenile's parents appear cooperative with the court.
- d) The juvenile has not previously been formally adjudicated delinquent.

In CHIPS matters when:

- 1) The custodial parent(s) agree that the child is in need of protection and services.
2. The child has not previously been adjudicated CHIPS.
3. The child is not the victim of sexual or physical abuse resulting in actual injury inflicted by an adult person currently residing in the child's home.

Rationale: One of the statutory goals is to divert children out of the court system. An informal disposition agreement should be the first consideration in all cases that are not automatically excluded from such disposition by these rules. Only when an informal disposition is considered inappropriate should the intake worker discard the possibility of an informal disposition.

I. Deferred prosecution agreements involving Youth Village Placements

1. Any deferred prosecution agreement that includes placement in a Youth Village as described in § 118.42, intake shall provide written notice of that agreement or extension of that agreement to the circuit judge or juvenile court commissioner along with a proposed order for the court official to sign requiring compliance with that agreement.

Rationale: Although deferred prosecution agreements take place outside the juvenile court process and generally prior to the juvenile court having any files or documentation concerning the juvenile, § 938.245(3) requires the court to be given written notice of a DPA involving a youth village placement. The court is also required to order the parties to comply with the agreement. The statutes do not give the court the authority to reject the DPA.

2. Upon signing of the order, intake shall provide written copies of the agreement and order to:

- the juvenile;
- the parent, guardian, or legal custodian;
- the agency providing services under the agreement; and,
- the juvenile court clerk.

3. The juvenile court clerk shall file the court copy of the deferred prosecution agreement and order in a group file.

J. The intake worker may dispense with holding an intake conference in those cases in which the intake worker is satisfied that the best interests of the child or the interests of society require an immediate decision. In such cases the intake worker may notify the child and parents of their rights under chs 48 and 938 in writing.

Rationale: In some cases a referral and recommendation are apparent on the basis of the referral documents. CHIPS cases involving danger or risk to the child, or Delinquency matters involving serious crimes, may require a greater immediacy of action than the usual intake process would allow. The intake worker should be free to make the decision whether an intake conference would be beneficial to the intake decision or would merely be postponing necessary action.

K. When a matter has been presented to the intake worker by the Juvenile Court Clerk under section 1717 of this local court rule, the intake worker may:

1. Refer the matter to the appropriate agency for investigation and review. That agency shall then make a determination whether an intake referral should be made, or,
2. Conduct an intake inquiry based on the petition presented to the juvenile court clerk for filing.

Rationale: Section 48.25(1), Wisconsin Statutes, permits the filing of a petition under §§ 48.13 or 48.14 by counsel or guardian ad litem for a parent, relative, guardian or child. Presumably a parent, relative, guardian or child could also file such a petition pro se. Section 1716 of these local court rules prohibits the Juvenile Court Clerk from accepting for filing such a petition unless an intake inquiry has been conducted. When the Juvenile Court Clerk makes such a referral to intake, the intake worker must have the ability to refer the matter to law enforcement or social services for investigation and determination whether a petition should be filed. Alternatively, the intake worker may determine that an intake inquiry should be conducted based on the materials submitted by the petitioning party.

VI. Notice to victims of children's acts

A. The victim-witness coordinator shall be responsible for notifying each known victim who sustained personal injury or property damage of:

1. The policies and procedures of the court concerning their rights. The district attorney may establish policies and procedures for the victim-witness coordinator.
2. Notices of scheduled proceedings in delinquency matters.
3. A copy of all notices must be filed in court file.

VII. Notices of rights, obligations, and possible disclosures to child/juvenile and parent(s)

A. If a custody hearing is held:

1. At the commencement of the custody hearing, the court shall advise the child/juvenile and parent(s) of their rights, obligations and possible disclosures. The court may do so by providing the child/juvenile and parent(s) who attend with the printed form JD-1716. Notice is considered properly given whether or not the recipients sign the signature block on the form.
2. If a parent does not attend the custody hearing, the juvenile court clerk shall send a copy of the written form JD-1716 to the non-attending parent if the address is known immediately at the conclusion of the hearing.
3. If signed, the signed copy of JD-1716 shall be filed in the court file. If the child/juvenile or parent(s) did not sign, the juvenile court clerk shall file a copy of the form with a notation as to the person(s) and date(s) on which the notice was provided.

B. At an intake inquiry:

1. At the commencement of the intake inquiry, the juvenile intake worker shall advise the child/juvenile and parents of their rights, obligations and possible disclosures. The juvenile intake worker may do so by providing the child/juvenile and parent(s) who attend with the printed form JD-1716. Notice is considered properly given whether or not the recipients sign the signature block on the form.
2. If signed, the signed copy of JD-1716 shall be filed in juvenile intake worker's file. If the child/juvenile or parent(s) did not sign, the juvenile intake worker shall file a copy of the form with a notation as to the person(s) and date(s) on which the notice was provided.

Rationale: Chapters 48 and 938 require the child/juvenile and parents be given various notices at different stages of the court proceedings. The Wisconsin Records Management Committee has created a printed form (JD-1716) intended to accomplish the various notice requirements.

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VIII. Plea negotiations

A. The court will not accept any plea negotiations that are entered into after the date set by the court for motions in the case, or if no motions are filed, within one working day of the fact-finding hearing.

Rationale: Last-minute resolutions of cases are extremely disruptive to the court calendar. Time on the court calendar will have been set aside for this case to the exclusion of other cases. Witnesses and jurors who have been subpoenaed may have made alternative arrangements for their personal affairs. In order to avoid this disruption, the parties to a case must make all necessary efforts to resolve the matter as much before the fact-finding hearing as possible.

B. After a plea negotiation deadline has passed, the only resolutions the court will accept to pending delinquency, JIPS, or CHIPS matters is an admission to the petition by all

parties, a dismissal of the entire petition by the petitioner, or a fact finding trial on the original petition.

C. If a plea negotiation involves a Consent Decree, the consent decree must be reduced to writing, completely signed by all parties, and presented to the court prior to the deadline for plea negotiations.

Rationale: Since fact-finding hearings are typically scheduled for a date close to the statutory deadline, waiting until the last minute to complete the consent decree is especially disruptive to the court calendar.

IX. Dispositional activities

A. Court reports that have been ordered by the court shall be completed and filed with the court not less than four working days before the scheduled dispositional hearing. The agency completing the court report shall transmit copies of the report to the attorneys involved in the matter. In the case of parents who are not represented by counsel, a copy of the report shall be transmitted directly to them by the agency.

Rationale: The court report may be the single most important document prepared on behalf of a child/juvenile and a family. In order for the child/juvenile/attorney and family to have the opportunity to consider the report and any recommendations made in the report, it is imperative that they have access to the report before the dispositional hearing. Receiving and reviewing the report on the day or even at the time of the hearing does not allow a reasonable amount of time to consider the report.

B. Trempealeau County Social Services shall be the agency primarily responsible for implementing court dispositional orders involving supervision.

C. Dispositions involving persons who are not residents of Trempealeau County shall be coordinated through the Trempealeau County Social Services agency.

Rationale: In order for the court to ensure that its orders are enforced, the court must have jurisdiction over the agency that is implementing the order. Requiring the local Social Services agency to coordinate the services provides the court with the leverage needed to ensure compliance.

D. If a matter has been transferred from another county to this county for a dispositional hearing, the dispositional hearing shall be set within 30 days of the receipt of the transfer documents from the other county. If the agency preparing the court report has not had any prior experience with the juvenile, the agency may request an extension for preparation of the court report.

X. Extensions of dispositional orders

A. The agency primarily responsible for implementation of a dispositional order shall notify the court at least thirty days prior to the termination of an order as to whether the agency will seek to extend the dispositional order or allow it to terminate. The agency shall ensure that copies of the communication to the court (whether Petition or letter) shall be sent to all parties entitled to notice.

Rationale: Notwithstanding relaxation of some time limits in ch. 938, matters, the court loses jurisdiction in either a ch. 48 or 938 case if the extension hearing isn't held before the order terminates. At least thirty days' notice of an intent to seek an extension is necessary in order to schedule and conduct a hearing. Requiring the agency to give notice at least thirty days in advance as to whether it will or will not seek an extension will insure that all cases are considered and eliminate the possibility of any one case slipping "through the cracks."

B. The agency may revise its decision after giving such notice if it determines that the original decision was incorrect based on a reconsideration or new factors.

Rationale: Sometimes the agency may reconsider its decision based on new factors or merely a re-review of the situation. The agency must be given the opportunity to change its mind.

C. A request to extend a dispositional order received during the thirty day period immediately prior to the termination of the order shall be accompanied by a request for a temporary thirty-day extension under §§ 48.365(6) or 938.365(6), Wisconsin Statutes, in order to schedule a hearing.

Rationale: It may be difficult for the court to schedule an extension hearing prior to the original termination date depending on when the request for an extension is filed. Requiring all extension requests filed within the last thirty days of the dispositional order to be accompanied by a request for a thirty-day extension provides the court with the flexibility of granting a temporary extension when needed to accommodate court scheduling.

D. The court shall schedule an extension hearing in all cases where a request for an extension is filed. If the extension request is filed during the thirty-day period immediately prior to the termination of the order, the court shall attempt to schedule the case before the termination date. If the court cannot schedule the matter before the termination date, the court will grant the request for a temporary thirty-day extension under §§ 48.365(6) or 938.365(6), Wisconsin Statutes.

Rationale: As part of the court's philosophy that juvenile proceedings must be expedited, it is appropriate to attempt to scheduled extension hearings within the original time period set for termination of an order. Only if the hearing cannot be set within that time period should the court consider a temporary extension.

E. All extensions of a dispositional order shall take effect at the termination date of the dispositional order being extended regardless of the date of the hearing on the extension, except that in the case of a disposition that has been temporarily extended for up to thirty days under § 48.365(6), Wisconsin Statutes, any extension shall take effect at the termination of the extended date.

Rationale: It is appropriate that there be uniformity in determining when an extended disposition is to take effect. Since chs. 48 & 983 do not specifically address this issue, dispositional orders in the past have sometimes used the hearing date as the date from which the extension is calculated rather than the date the dispositional order was to expire. Since an extension is merely a continuation of the old order, it is logical that the

extended period is simply added to the existing order. It is illogical to consider the extension to be a new order which can overlap the old dispositional order.

XI. Requests by victims or the insurance companies of victims for disclosure of juvenile identity and police records

A. Local Court Rule 12, effective November 1, 1991, is repealed effective July 1, 1996.

B. All requests by victims or the insurance companies of victims for disclosure of the juvenile's identity and police records shall be referred to the law enforcement agency responsible for the investigation.

C. The insurance company of a victim shall be entitled to know the amount of restitution a court has ordered paid on behalf of the victim if a request to the juvenile court clerk is made pursuant to § 938.396(2)(fm).

XII. Requests to review court files involving juveniles

A. All requests for review of court records involving a juvenile shall be in writing.

B. The juvenile court clerk shall make available upon request the appropriate forms (such as JD-1738) for requesting such information.

C. If a request is made by a juvenile, parent, guardian or legal custodian under §§ 938.396(2)(ag) or (am), before release of any information requested the juvenile court clerk shall review the file and make an initial determination whether release of that information might result in imminent danger to anyone. If the juvenile court clerk believes such a result might occur, the juvenile court clerk shall either:

1. Refer the matter to the judge assigned to that case for a determination as to whether a hearing shall be held on the release, or,
2. Prepare a version of the information requested with the potentially dangerous information blocked out. The requester may bring a motion to the court if the requester believes the information should not have been blocked.

D. Requests pursuant to § 938.396(2m)(a): If a request is for access to juvenile court records made by any person under § 938.396(2m)(a) for juveniles alleged to have committed an offense enumerated in § 938.34(4h)(a) (Serious Juvenile Offender crimes), the juvenile court clerk shall before releasing the file for inspection:

1. Determine if the juvenile is alleged to have committed a crime specified in § 938.34(4h)(a), and, if so,
2. Remove from the file all reports under § 938.295 (physical, mental, psychological, or developmental examination reports) or § 938.33 (court dispositional reports) or other records that deal with sensitive personal information of the juvenile and the juvenile's family. If the juvenile court clerk has questions concerning the appropriateness of releasing any information, the matter shall be referred to the judge assigned to the that case for a determination.

E. Requests pursuant to § 938.396(2m)(b): If a request is for access to juvenile court records of a juvenile alleged to be delinquent for committing a felony after a prior delinquency adjudication, the juvenile clerk shall:

1. First, make all of the following determinations:
 - That the juvenile is currently charged with a felony,
 - That the juvenile was adjudicated delinquent for any crime at any time before the commencement of the felony proceeding,
 - That the previous adjudication remains of record and has not been reversed.
2. Second, if all of the above have been found to exist, the juvenile clerk before releasing the file for inspection shall remove from the file all reports under § 938.295 (physical, mental, psychological, or developmental examination reports) or § 938.33 (court dispositional reports) or other records that deal with sensitive personal information of the juvenile and the juvenile's family. If the juvenile court clerk has questions concerning the appropriateness of releasing any information, the matter shall be referred to the judge assigned to the that case for a determination.

F. No copies of any court records shall be made or provided to any person requesting access to the records of a juvenile.

G. All requests for access to court records shall be responded to, in writing, within 48 hours of the request.

H. Intake files retained by the juvenile intake worker are not considered court files for the purposes of this rule.

XIII. Expunction of the record of a delinquency adjudication

A. All petitions for expunction of a juvenile adjudication shall be scheduled for a hearing.

B. If the court grants the petition for expunction of the juvenile adjudication, the juvenile clerk shall:

1. Follow standard CCAP procedures for removal of the adjudication from the computerized record;
2. Seal inside the court file all documents referring to the adjudication, including but not limited to:
 - the dispositional order,
 - the dispositional court report,
 - all motions and orders concerning extensions, revisions, or changes of placement,
 - all petitions and orders for sanctions,
 - all minute sheets referring to the adjudication or other post-adjudication proceedings,
 - transcripts of court proceedings referring to the adjudication or other post-adjudication proceedings,
 - the petition and order for expunction.

3. The exterior of the sealed material shall simply state "Sealed: not to be opened except upon express order of the court. " No reference shall be made that the contents are "expunged" materials.

C. If a proper request is made for information concerning the juvenile's adjudication, court personnel shall merely state that there is no record of a delinquency adjudication, although the remainder of the court file is open to inspection if it otherwise meets the criteria for opening records under § 938.396.

XIV. Delinquency proceedings commenced by a reverse waiver

A. All delinquency proceedings following a reverse waiver from an adult court with original jurisdiction shall be commenced by filing a Petition for determination of status-delinquency.

B. No intake inquiry is necessary for such proceedings.

C. Custody placements of juveniles who have been reverse waived shall be as follows:

- Any juvenile who was being held in an adult jail for failure to post bond shall be immediately transferred to a juvenile secure custody facility.
- Any juvenile (age 14 or under) who was being held in juvenile secure detention shall remain in that placement.
- Any juvenile who had been released on bond under conditions shall be deemed held in non-secure placement under the same bond conditions until a custody hearing is held pursuant to § 938.21.

D. The following may request a custody hearing under §938.21 to review or revise this custody:

- Any person otherwise authorized to request custody under ch. 938,
- The juvenile, juvenile's parent, legal guardian, or custodian.

XV. Duties of the Juvenile Court Clerk in handling CHIPS petitions filed by the counsel or guardian ad litem for a parent, relative, guardian, or child, or directly by such a person acting without an attorney.

A. The Juvenile Court Clerk shall not accept for filing any petition under §§ 48.13 or 48.14, Wisconsin Statutes, presented by the counsel or guardian ad litem for a parent, relative, guardian or child, or directly by such a person acting without an attorney, unless that petition has been first referred to juvenile intake for an intake inquiry under § 48.24, Wisconsin Statutes.

Rationale: Section 48.24, Wisconsin Statutes, requires that information indicating that a child should be referred to the court shall first be referred to the intake worker. However, § 48.25, Wisconsin Statutes, authorizes the counsel or guardian ad litem for a parent, relative, guardian or child to file a petition. In most cases, such petitions will not have been referred first to juvenile intake for an inquiry whether the court should be involved. It is important that intake be provided the opportunity to make inquiry first to ensure that there is a proper basis for the filing of a petition.

B. Upon receipt of any such petition the Juvenile Court Clerk shall refer the matter to the juvenile intake worker for an intake inquiry.

C. Any petition filed contrary to this rule may be dismissed without prejudice pending the intake inquiry.

Rationale: Once a petition has been filed, the time limits for conducting a plea hearing and other proceedings take effect. Those time limits are inconsistent with the periods allowed juvenile intake to complete an intake inquiry. It is the court's policy to require an intake inquiry for matters brought directly to the court by counsel or guardian ad litem for a parent, relative, guardian, or child, or by such a person directly without an attorney. Therefore, to avoid the redundancy of having a court proceeding and an intake inquiry proceeding at the same time, with conflicting time limitations, the court can only control such petitions by dismissing without prejudice those that don't go through intake.

XVI. Reimbursement/payment for attorney fees, placement costs, and/or services

A. Attorneys appointed by the county or state to represent a child/juvenile

1. Unless the court has directed otherwise, at the conclusion of any proceeding under ch. 48 or 938 in which the juvenile was represented by an attorney appointed by the county or the state, the juvenile court clerk shall complete JD-1762 and mail it to the parent(s).
2. The standard repayment schedule shall be:
 - If there are two parent(s) residing together, not less than \$50 per month.
 - If there is only a single parent or the two parents are residing separately, not less than \$50 per month from each.
3. All payments on reimbursement for attorney fees shall be made to the Clerk of Court, and are enforceable under ch. 985, Wisconsin Statutes, for contempt of court.

B. Attorneys appointed by the court for parents in CHIPS matters

1. If the court has ordered an attorney be appointed at county expense on behalf of a parent of a child involved in a CHIPS proceeding, the court shall order the parent(s) to reimburse the county for all or part of the cost of such attorney fees.
2. The court may order reimbursement to begin as of the date of the appointment. The standard repayment schedule shall be:
 - If there are two parent(s) residing together, not less than \$50 per month.
 - If there is only a single parent or the two parents are residing separately, not less than \$50 per month from each.
3. Reimbursement under this section shall be paid to the Clerk of Court and are enforceable under ch. 985, Wisconsin Statutes, for contempt of court.

C. Costs of custody/placement

1. If the child/juvenile is placed outside the home and the court orders the parent(s) to reimburse the county or state for the costs of such placement, the court shall either:
 - Establish the amount of reimbursement on the record in court at the time the placement order is made, or,

- Refer the matter to Trempealeau County Child Support Agency for a determination of the amount the parent(s) are able to pay. Trempealeau County Child Support Agency shall establish a payment schedule for reimbursement.
2. All payments on reimbursement for costs of custody/placement shall be made through the Trempealeau County Child Support Agency.

D. Costs of services

1. If the court has ordered services to be provided on behalf of a child/juvenile and has ordered the parent(s) to reimburse the county or state for such services, the court shall either:
 - Establish the amount of reimbursement on the record in court at the time the placement order is made, or,
 - Refer the matter to Trempealeau County Social Services for a determination of the amount the parent(s) are able to pay. Trempealeau County Social Services shall establish a payment schedule for reimbursement.
2. All payments on reimbursement for services shall be made to Trempealeau County Social Services.

E. When a parent(s) has been ordered to reimburse the county or state for custody/placement/or services, the court may require the parent(s) to complete a financial disclosure of assets.

F. A parent may seek review of any of the orders for reimbursement by petitioning the court for a review.

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