

**Appendix A**

**JUDICIAL POLICIES FOR COURT INTAKE**

**UNDER CHAPTERS 48 AND 938**

Circuit Court  
Dunn County, Wisconsin

**Adopted this 18th day of June, 2007**

By The Court:

Rod W. Smeltzer  
Judge Rod W. Smeltzer

William C. Stewart Jr.  
Judge Wm. C. Stewart, Jr.

**Approved this 21st day of June, 2007**

Benjamin Proctor  
Chief Judge, 10<sup>th</sup> Judicial District

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# **CHAPTER ONE**

## **POWERS AND DUTIES**

48.01, 938.01

### **1. PURPOSE OF INTAKE**

#### **A. To define the boundaries of Court intervention**

#### **B. To divert children/juveniles from formal proceedings, provided diversion is consistent with**

- 1) Protection of children under Ch 48, or
- 2) Protection of the public under 938.

48.01(1) (dm)

983.01(e)

### **Policy**

#### **Practice Considerations**

Intake is a critical stage in the children's/juvenile's Court process. A custody Intake decision temporarily placing a child/juvenile out of home significantly affects the child/juvenile and the family. Intake screening decisions, while subject to review and in delinquency cases possible over-ruling by the district attorney, determine the nature and extent of state intervention.

- The following policies will guide the Intake Worker's decisions:
- Preservation of the family unit when possible
- Actions will be oriented toward protecting the community, holding the juvenile accountable, treatment and rehabilitation under Chapter 938.

### **2. AUTHORIZED CHILDREN'S/JUVENILE COURT INTAKE WORKERS**

#### **A. Authorized to provide Intake services**

- 1) Intake Worker employed by the Dept. of Human Services
- 2) Back-up Intake services provided by the Dept. of Human Services
- 3) Judge may act as Intake Worker

48.06(2)  
938.06(2)

48.10, 938.10

48.06(2)(b)(1)  
938.06(2)(b)(1)

**B. Qualifications**

- 1) As required to perform entry level social work in a county Dept. of Human Services

48.06(2)(b)(2)  
938.06(2)(b)(2)

**C. Training requirements for Intake Workers**

- 1) Must successfully complete 30 hours of Intake training approved or provided by the State within first 6 months of employment in position

48.06(2) (c)

- 2) If Intake Worker to provide investigation or treatment of abuse and neglect, additional training required

**3. POWERS AND DUTIES OF INTAKE WORKERS**

48.067  
938.067  
48.067(1)  
48.067(2)

**A. Provide custody Intake 24 hours a day and 7 days a week for child/juvenile taken into custody and not released**

**Policy**

**Practice Considerations**

Anyone performing custody Intake functions is bound by the judicial policies promulgated by the Court.

Chapter Two, "Jurisdiction," and Chapter Three, "Custody Intake," are of particular importance to Intake Workers performing custody Intake functions.

48.067(2)  
938.067(2)

**B. Interview, unless impossible, child/juvenile taken into physical custody and not released**

48.067(3)  
938.67(3)

**C. Determine if child/juvenile to be held in physical custody**

48.067(4)  
938.067(4)

**D. Determine where child/juvenile to be held, if not released**

48.067(5)  
938.067(5)

**E. Provide crisis counseling during Intake, if necessary**

**Policy**

**Practice Consideration**

The involvement of a child/juvenile and family in the initial stages of Court involvement is critical. This is recognized as a

very stressful time. Intake Workers must be skilled at dealing with families in crisis. The Intake Worker may need to request other supportive services for the family while proceeding with custody Intake or Court Intake screening decision making.

48.067(6)  
938.067(6)

#### **F. Receive Referral Information**

- 1) Conduct Intake inquiries
- 2) Make recommendations about filing of petition
- 3) Enter into informal dispositions/ deferred prosecution agreements

#### **Policy**

#### **Practice Considerations**

It is the general philosophy of The Children's Code, The Juvenile Justice Code and the Court that professional Court Intake screening and informal services are effective mechanisms for handling many children/juveniles alleged to be delinquent, in need of protection or services, or to have violated a civil law or ordinance. Intake services further the legislative purposes of the Codes by reducing the high demand on limited Court resources, diverting juveniles from the formal judicial process, and allowing the Court to concentrate on cases involving legal questions, serious allegations, and those children/juveniles in need of dispositions only available through Court order.

48.067(7)  
938.067(7)

#### **G. Refer Cases to Other Agencies as Needed**

#### **Practice Considerations**

#### **Policy**

Limited Intake and Court resources should be reserved for those cases where intervention appears necessary. The appropriateness of voluntary referral services are to be considered in every case. Referrals may also be desirable in conjunction with informal disposition/deferred prosecution agreements or formal Court petitions.

48.067(7m)

#### **H. At request of minor who claims to be pregnant, assist minor in preparing petition for waiver of parental consent 48.375(7) and file with Clerk of Court**

48.067(8)  
938.067(8)

#### **I. Make interim recommendations to Court concerning child/juvenile awaiting disposition**



**Policy**

**Practice Considerations**

This duty is important for children/juveniles in Court-ordered temporary physical custody while further proceedings are pending. For example, if at any time it is recommended to Intake that the child/juvenile be moved to another nonsecure setting, a rehearing of the custody order is required. The Intake Worker's opinion may be requested regarding interim recommendations.

48.067(9)  
938.067(9)

**J. Perform any other functions ordered by Court and assist Court in developing policies or carrying out its other duties as requested**

**Policy**

**Practice Considerations**

Other functions specified by the Dunn County Circuit Court are:

- Attend Juvenile Court hearings, as determined appropriate
- May be the supervising Worker for informal disposition/deferred prosecution agreements, consent decrees, and disposition orders
- In any case where a petition is not filed and an act resulted in personal injury or damage to or loss of property, notify known victim(s) in writing of
  - Procedures for obtaining identity of juvenile and parent(s)
  - Procedures for obtaining police records
  - Potential liability of parent(s)
  - Applicable provisions of the agreement relating to restitution or repair
  - If appropriate, that the case has been terminated
  - Maintain Intake data regarding children held in temporary physical custody and/or referred to Intake for an Intake inquiry.
  - Review of the judicial policies for Intake with recommendations made to the Judge regarding changes.

## CHAPTER TWO

### PART I – VENUE AND JURISDICTION – CHILDREN’S CODE PART II – VENUE AND JURISDICTION – JUVENILE JUSTICE CODE

#### PART I – CHILDREN’S CODE

48.185 I. VENUE FOR CHILDREN’S CODE

48.185(1)

#### A. Original Actions

48.13

1) Venue may be had in any of the following:

a) County where child or expectant mother resides, or

48.375(6)

48.16

b) County where child or expectant mother is present

48.185(1),

48.14(10)

2) Venue for waiver of parental consent for abortion is in “any Court”

3) Venue for a child abuse/harassment TRO/injunction in county in which cause of action arose or where petitioner or respondent resides

#### Policy

#### Practice Considerations

Venue designates the particular county(ies) in which a Court with jurisdiction may hear and determine the case. Venue is commonly referred to as the place where the hearing is held.

Generally, the county where the child resides is the most appropriate place for a case to be handled. That county is more likely to have previous and/or ongoing contact with the child and family. It will usually be in the interest of the child and family to refer the case to the Intake Office of the county of residence.

- Referrals to other jurisdictions should be made through the Intake office after consultation with the referral source and the prosecutor, as appropriate.

However, in some cases it will be appropriate for jurisdiction to remain in the county where the child is present. Intake Worker should consult with the prosecutor regarding venue when a child’s residence is in another county, particularly cases where:

- The child is present in this county and, based on the alleged jurisdiction, may be placed in danger if returned to the county of residence; or
- The case may be appropriate for an informal disposition agreement and the child is likely to remain in this county during the time of the agreement; or
- The case is most appropriately heard in this county and the county of residence agrees to pay for ordered dispositional services.

**2. EXCLUSIVE JURISDICTION OF CH 48 COURT**

**Policy**

**Practice Considerations**

Jurisdiction designates the subject matter that the Court can hear and defines when the Court has authority to act. The Children’s Code limits the circumstances when the Court can intervene in a family’s life.

Intake Workers are required by statute to make probable cause or prima facie determinations regarding jurisdiction. Jurisdiction is required in all cases before temporary custody may be ordered, an informal disposition agreement entered, or a referral made to the prosecutor requesting the filing of a petition.

Jurisdiction does not limit the provision of voluntary services to families.

**A. Children in Need of Protection or Services (CHIPS) Jurisdiction**

48.13  
In Int of Courtney  
E  
184 W2d 592  
(1994)

- 1) The Court has exclusive original jurisdiction IF there is an allegation of need for protection or service that the Court can order. A petition that fails to allege protection or services that can be ordered by the Court to address child’s needs is insufficient.

**Policy**

**Practice Considerations**

The ability of the Court to order a protection or service that the child needs is a jurisdictional requirement.

When the Intake Worker evaluates whether the child is in need of protection or services which the Court can order, the following factors should be considered:

- The child’s safety from further harm, and
- The child’s need for remedial treatment, including physical, emotional, social and educational.

Example: The referral to Intake alleges that the child needs an inpatient placement at a drug treatment center, which is not licensed as a foster home, group home or child-caring institution. The Court is unable to order such a placement as a disposition under Chapter 48. Therefore, jurisdiction cannot exist. However, consideration of voluntary services or involuntary services under Chapter 51 may be appropriate.

2) Any of the following exists with 1) above

48.13(1)

a) Child is without parent(s) or guardian.

**Policy**

**Practice Considerations**

Evidence must exist that no adult person holds the legal rights and duties of a guardian to the child. A legal custodian, physical custodian or guardian ad litem is not sufficient.

Normally, a guardian should be appointed for the child pursuant to Chapter 54. A petition may be recommended whenever the child's situation indicates the need for Court protection or services pending the appointment of a temporary or long-term guardian pursuant to Chapter 54. In limited situations, a long-term guardian under Chapter 54 and ongoing Chapter 48 involvement may be necessary if placement cannot be made with the guardian or a relative.

Example: A child's parent(s) are killed in an automobile accident. While efforts are made to locate a relative, the child stays with a neighbor. A petition may be recommended so that a legal custodian can be named and placement can be ordered pending arrangements to have a legal guardian appointed under Chapter 54.

48.13(2)

b) Child has been abandoned.

**Policy**

**Practice Considerations**

Abandonment is conduct which shows that the parent has decided to relinquish parental responsibilities and rights to the child.

To determine whether the parent has abandoned the child, Intake Workers should consider:

- The circumstances in which the child was left (with a relative or neighbor or on the steps of a hospital)
- Statements made by the parent(s) or guardian about their intentions
- The length of time the parent has been absent
- Attempts or lack of attempts to see the child

- Whether clothing, money, etc., was left with the caregiver to provide for the child

The Intake Worker should also consider whether the caregiver can continue to provide care.

Failure to visit the child must be willful. Evidence that a parent was institutionalized or hospitalized or that the child's custodian actively discouraged attempts to visit may rebut a charge of abandonment.

The best interests of children require that they be afforded the protection of the State when their parent(s) or guardian relinquish their responsibilities to care and provide for them to others with the intent to avoid such duties for an undetermined length of time.

When a child meets the criteria of both CHIPS abandonment and involuntary termination of parental rights abandonment, the Intake Worker may recommend the filing of a CHIPS petition if temporary services and/or placement are needed pending the termination proceedings.

Appointment of a temporary or long-term guardian under Chapter 54 may be appropriate depending on the child's needs. A CHIPS petition may also be necessary to meet the child's needs for services and/or placement.

48.13(2m)  
48.195(1)

d) Parent has relinquished custody of the child

- Newborn is believed to be 72 hours old or younger
- Parent relinquished newborn to law enforcement, EMT, or hospital staff or calls 911 or an emergency medical service provider
- Parent does not express intent to return for the child

48.13(3)

e) Child is victim of sexual or physical abuse, including

- Self-inflicted injuries
- Non-accidental injuries inflicted by another

## Policy

### Practice Considerations

The child must have been sexually or physically abused rather than at risk of abuse, except under 48.13(3m). Abuse for jurisdictional considerations can be different than abuse under the mandatory reporting and investigation requirements of 48.981.

Sexual abuse may include (guidance has been taken from the Chapter 48 definitions and the Criminal Sexual Assault Statute):

- Sexual contact or intercourse between the child of any age and a member of the child's family.
- Sexual contact or intercourse between the child and any unrelated person living with, closely involved with, and/or acting as a parent to the child.
- Sexual contact or intercourse with a child in violation of state statutes 940.225, 948.02, 948.025.
- Causes a child to expose, or exposes to a child, genitals or pubic area 948.10.
- Causing a child to view or listen to sexual activity, 948.055.
- Sexual assault of a student by a school instructional staff person, 948.095.
- Exploitation of the child for pornographic materials of any kind, 948.05.
- Permitting, allowing, or encouraging a child to violate the prostitution statute, 944.30.

Physical abuse includes but is not limited to:

- Lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm, 48.02(14).
- Self-inflicted injury.
- Non-accidental injury. The maltreater is responsible for the result of his/her action which harms the child regardless of the intent of the action.

Example: Shaking a young child out of frustration results in permanent neck injury and/or brain damage. This may be considered to be a non-accidental injury.

The maltreater may be a parent, relative, caregiver or any other person. Identifying a specific maltreater is not a jurisdictional requirement.

A child's statement that he or she has been physically and/or sexually abused should be prima facie evidence in the absence of clear facts supporting or disputing his or her statements.

Children, including adolescents, with injuries resulting from disciplinary actions may be within the Court's jurisdiction. In cases where injuries result from disciplinary action, the following factors should be taken into consideration by Intake Workers:

- The extent of injury, e.g., bruising, welts, or more serious injury.
- The frequency or pattern of injury, e.g., primary method of discipline, varying degrees of injury;
- The method of discipline or object used to inflict punishment, e.g., belts, rods, whips, enemas or burns;
- The reason for discipline, e.g., relatively insignificant behavior or failure to meet an unreasonable standard compared with the harshness of the punishment.

48.13(3m)

- f) Child is at substantial risk of becoming the victim of physical or sexual abuse, including injury that is self-inflicted or inflicted by another.
  - Based upon reliable and credible information that another child in the home has been the victim of physical or sexual abuse.

**Policy**

**Practice Considerations**

See the previous Practice Considerations for sexual and physical abuse.

48.13(4)

- g) Parent(s) or guardian signs petition stating that s/he is unable or needs assistance to:
  - Care for the child, or
  - Provide necessary special care or treatment for the child.

**Policy**

**Practice Considerations**

Parent(s) or guardian requests Court jurisdiction and is willing to sign a petition.

Parent(s) or guardian must present facts supporting their belief that the child is in need of care or necessary special care or special treatment which they cannot or need assistance to provide. Such facts may include special circumstances of the parent(s), such as physical or psychological handicaps, which interfere with or limit their capacity to fulfill parental roles. Facts may also include behavioral, social, emotional, or physical problems of the child.

Court intervention is reserved for those children for whom informal or voluntary services have failed or are inappropriate. The Juvenile Court should not be seen as a forum through which parents may be relieved of the pressures or problems of raising children.

An evaluation by a professional supporting the need for care or special care or treatment – see definition 48.02 (17m) may be sufficient evidence to support a prima facie case of need for such care and treatment. If a professional evaluation has not been completed, the Intake Worker may attempt to arrange for such an evaluation on a voluntary basis. If an evaluation cannot be arranged, the Worker should actively seek information about the need for such care or treatment through the child's own statements, the parent(s)' statements, and statements of those who know the child, such as social Workers, school teachers, relatives, and neighbors.

However, special effort must be made to balance the family's right to privacy with the best interests of the child.

48.13(5)

h) Child was placed for care or adoption in violation of law.

## Policy

### Practice Considerations

The following are among the placement options allowed under Wisconsin law:

- The child's parent(s), guardian, relative, or licensed care, 48.62.
- Only parent(s), guardian, the department, a county agency performing child welfare services, or a licensed child welfare agency may place a child for care.
- Voluntary placement agreements are limited to foster care for up to six (6) months and group care for not more than fifteen (15) days, 48.63.

Children twelve (12) years of age or older must consent (and continue to consent) to voluntary placement agreements.



- Placement of children in unlicensed non-secure custody by an Intake Worker for 30 days, and may be extended for an additional 30 days, 48.207(f), 938.207(f).
- Placements in residential care centers must be made pursuant to a Court dispositional order.
- Placements of children for adoption must be in compliance with the adoption statutes.

Whenever a child has been placed for care or adoption in violation of law, the primary concern should be the child's need for protection or services. The following factors may be considered to determine if jurisdiction exists:

- Age of the child;
- Whether the child's health or safety is endangered;
- The adequacy of the care being provided;
- Problems or special needs of the child;
- Problems or special needs of the parent(s);
- The length of time the child is anticipated to remain in such care;
- The circumstances under which s/he was placed for care;
- The caregiver's commitment to the child.

It is in the best interests of children when:

- Parent(s) and caregivers in unlawful placement situations are made aware of their rights, responsibilities, and liabilities.
- That children, whenever appropriate, have an opportunity to participate in decisions made about their care.

Attempts should have been made to bring the child's care into compliance with the law, when possible. When a caregiver is providing care in violation of the law, the parent(s) and caregiver should be given notice of the specific concerns and appropriate methods to achieve compliance.

NOTE: In some cases, the caregiver may wish to pursue temporary or long-term guardianship procedures under Chapter 54.

Whenever a child twelve (12) years of age or over is in placement under a voluntary agreement and there is evidence that he or she does not consent to that placement, the child must be returned home or Court jurisdiction may be assessed. The Worker may consider as evidence of nonconsensual placements the statements of the child and/or behavior such as running away or other conduct which suggests that the child does not wish to remain in placement.

48.13(8)

- i) Child is receiving inadequate care during time parent is
  - o missing, or
  - o incarcerated, or
  - o hospitalized, or
  - o institutionalized

## Policy

### Practice Considerations

The child's parent(s) must be unable to provide care for the child because of one of the four listed conditions. The status of the parent(s) and an explanation of the specific condition must be determined.

The arrangement for care in the parent(s)' absence must be alleged to be inadequate. The allegation of inadequate care may be made by the parent(s) or by other persons or professionals. If the referral is made by someone other than the parent(s), and the parent is informed of and approves the type of temporary care the child is receiving, the meaning of "inadequate care" is that which would endanger the child's physical or emotional health. If the referral is made by the parent(s), who is unable to make other arrangements for the care of the child, efforts may be made to assist with such arrangements. When the child is determined to be in need of protection, actions should be taken to provide the child with safe and adequate care.

When a parent arranges care for his or her child during a period of absence, there is a presumption that the decision is an extension of the parent's rights and responsibilities. Accordingly, efforts should be made to resolve conflicts in opinions regarding the adequacy of care, taking into account both the parents' and child's perspectives and the length of absence. Intervention should be based upon the child's need for protection.

- o Temporary or long-term guardianship procedures under Chapter 54 may be appropriate.

The following factors may be considered to determine if jurisdiction exists:

- o Age of the child;
- o Whether the child's health or safety is endangered;

- The adequacy of the care being provided;
- Problems or special needs of the child;
- Problems or special needs of the parent(s);
- The length of time the child is anticipated to remain in such care;
- The circumstances under which he or she was placed for care;
- The caregiver's commitment to the child.

48.13(9)

j) Child signs petition stating that s/he is

- At least age 12;
- In need of special treatment or care, and
- Parent(s), guardian, or legal custodian is unwilling, neglecting, unable, or needs assistance to provide

**Policy**

**Practice Considerations**

Child requests Court intervention and is willing to sign petition. The child must be in need of special care or treatment , which may include medical care, psychological or psychiatric counseling, alcohol or other drug abuse treatment, or other services which the Court finds to be necessary and appropriate 48.02(17m).

The parent(s), guardian, or legal custodian must be unwilling, neglecting, unable, or is in need of assistance to provide needed care or treatment as evidenced by statements or actions.

If the only available sources of information about the parent(s)', guardian's, or legal custodian's willingness or ability to provide care or treatment is the child's statements, that may be sufficient to establish jurisdiction initially. Information from a doctor, counselor, social Worker, psychologist, or other adult who has knowledge of the child's condition and needs and/or the parent(s)' willingness or ability to provide for those needs may be sufficient to establish jurisdiction.

A recent evaluation by a professional supporting the need for special care and treatment may be sufficient evidence to support the need for special care and treatment. If a professional evaluation has not been completed, the Intake Worker seeks information about the need for special care and treatment during an inquiry through the child's own statements, the parent(s)', guardian's, legal custodian's statements, and statements of others who know the family, such as relatives, neighbors, and school teachers.

**Example:** A 16-year-old comes to Intake with a request to petition the Court because her parent(s) refuse to allow her to date a certain young man. She wants to have the Court emancipate her or place her in a foster home. Petition not recommended; parent(s) and child referred to counseling program.

48.13(10)  
In Int of AE  
163 W2d 270 (CA 1991)

- k) Child's physical health is seriously endangered, and
  - o Parent(s), guardian, or legal custodian neglects, refuses, or is unable to provide necessary care, food, clothing, shelter, or medical or dental care, and
  - o Neglect, refusal, or inability to provide is for reasons other than poverty.

## Policy

### Practice Considerations

Evidence must exist that care is inadequate in one of the care categories defined by law. The definitions of each category of care are to be liberally construed for purposes of evaluating evidence of jurisdiction. Some of the categories are clearer in meaning, such as food or shelter. The category of "necessary care" is less clear and the following definitions are provided:

"Necessary care" may include the following situations:

- o A child is not supervised to the degree required by his or her capacity to make decisions and consistent with his or her own welfare and well-being. The Intake Worker should consider such factors as:
  - The length of time without supervision;
  - Chronological age;
  - Mental and physical capacity;
  - Maturity;
  - Behavioral history;
  - Dangers presented by child's environment; and
  - Arrangements made in case of emergencies

- A child is not provided adequate emotional or social interaction appropriate to his or her age or developmental stage. This category includes “failure-to-thrive” in infants, “psychosocial dwarfism” in older children, and any case in which there is satisfactory evidence that a child’s size, weight, or general physical health is seriously affected by a lack of emotional or social interaction between child and parent(s), guardian, or legal custodian.
- A child’s physical health and well-being is seriously endangered by direct threats of physical harm which are made by the parent(s), guardian, or legal custodian or from which the parent (et.al.) fails to protect the child. There must be reason to believe that such threats are likely to be acted upon or the nature of the threat itself presents a risk of serious harm due to the high opportunity for accidental injury (such as when dangerous weapons are used to threaten the child).

Evidence must show that the deficiency in care is not due to poverty alone. When there is evidence that the inadequate care provided to a child is caused primarily by the parent(s), guardian, or legal custodian’s inability to financially afford an adequate level of care, the Intake Worker should presume that the Court does not have jurisdiction and that administrative or financial remedies are appropriate. When administrative or financial remedies are offered to the family but the child’s physical health continues to be endangered due to the refusal, neglect, or inability of parent(s) to remedy the inadequacy of care, jurisdiction may be found.

- Example: A young child is referred to Intake because the parent(s) refuse to have the child’s cleft lip and palate surgically repaired. Upon further inquiry, it is discovered that the parent(s) are financially unable to pay for the surgery and arrangements are made for them to apply for Medical Assistance.
- Example: A 5-year-old child is referred to Intake because she is left alone at home unsupervised for several hours in the evening on a regular basis because her mother is at the local bar with her friends. It is discovered that the mother’s only means of support is child support, which barely meets monthly expenses. The mother refuses to provide more supervision of the child. The mother’s lack of financial resources is not responsible for her refusal to provide adequate care. Initial jurisdiction may be found.

Evidence that the child’s physical health is seriously endangered.

- Endangerment means potential harm to the child. Actual physical injury need not occur. It is sufficient that such harm could happen except for the intervention of others.

Endangerment encompasses past conduct but also situations where conduct can be anticipated that will bring a child into peril.

- “Seriousness” should be based on an assessment of the extent to which a danger deviates from a condition of minimal physical well-being.

- The following factors may be considered to determine seriousness:

How long-lasting the condition is likely to be;

The amount of pain and suffering caused (or likely to be caused) to the child;

The degree to which the child is (or is likely to be) restricted from normal functioning; and

The long-range effects on the child’s social, emotional, or physical development.

- Dangers to physical health, which involve conditions which represent a substantial risk of pain and suffering, impairment of bodily functions, disfigurement, or death will be presumed to meet jurisdictional requirements.

- Dangers which cause or are likely to cause serious future restrictions on physical functioning or have serious ramifications for the child’s future physical development may support jurisdiction but should be evaluated by a medical expert. In cases where consent is not given, the evaluation can be requested after the petition is filed (48.295).

Example: Refusal of a parent(s) to agree to corrective ear surgery, which may result in future hearing problems for the child may indicate jurisdiction.

- Predictions of physical endangerment should be supported by evidence of a direct relationship between a likely harm and a type of care. The prediction of danger may be based on a reasonable interpretation of commonly understood conditions. The prediction may be based on the diagnosis of a medical expert. The prediction may also be based on changes in the child’s health and development when the child is removed from or returned to the care of the parent(s).

- Whenever a predicted harm is not clear to a lay- person, is likely to emerge subtly over time, or is the result of a mixture of conditions which are not readily identifiable, a consultation from a qualified professional should be sought.

Jurisdiction may not exist if there is a reason to believe the family of the child is willing and able to improve the care they provide. However, a pattern of behavior or failure to follow through and improve the care may establish jurisdiction.

Jurisdiction based on a parent(s)' inability to provide adequate care, for such reasons as mental capacity or emotional or psychological conditions, should be assessed at Intake.

- Consideration should be given to the nature of the incapacity and whether it is expected to continue over time.
- Consideration should also be given to whether the parent(s)' problem has been adequately addressed prior to the Court referral and whether services to the parent(s) may afford the child adequate protection.

Example: A parent has recently experienced a depression. During this period, he repeatedly did not adequately supervise his three-year-old at play outdoors. The case record shows no indication that services were offered to address the father's depression. It is possible that, with such help or support services, the father could adequately care for his child.

48.13(10m)

- l) Child's parent is at substantial risk of neglecting, refusing, or being unable, for reasons other than poverty, to provide necessary care, food, clothing, shelter, medical or dental care so as to seriously endanger physical health of the child.
  - Based on reliable and credible information that the child's parent has neglected, refused, or been unable, for reasons other than poverty, to provide necessary care, food, clothing, shelter, medical or dental care so as to seriously endanger physical health of another child in the home.

**Policy**

**Practice Considerations**

See the previous Practice Consideration for neglect, refusal, or inability to provide.

48.13(11)

- m) Child is suffering emotional damage, and:
  - Parent or guardian has neglected, refused, or been unable to obtain necessary treatment or to take necessary steps to ameliorate the symptoms

48.02(5j)

○

- Emotional damage is harm to a child's psychological or intellectual functioning
- Emotional damage is evidenced to a severe degree by anxiety, depression, withdrawal, outwardly aggressive behavior, or substantial and observable change in behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development.

## Policy

### Practice Considerations

This is the only CHIPS jurisdiction for which a separate statute requires a psychological or psychiatric evaluation and testimony prior to adjudication by the Court, 48.31(4). However, this requirement does not mean that an evaluation must exist prior to the Intake decision. Intake can assess these conditions and focus on the child's access to treatment rather than on clinical evaluations.

Intake must review the facts to determine if there is evidence of one of the statutory emotional damage characteristics: anxiety, withdrawal, outward aggression, depression, substantial and observable change in behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development. Intake then decides whether the child's psychological or intellectual functioning has been harmed.

For the purpose of Intake determinations, the following characteristics are defined (based on common usage and Webster's New Collegiate Dictionary):

- Anxiety: An abnormal and overwhelming sense of apprehension and fear often marked by physiological signs (such as sweating, tension, and increased pulse), by doubt concerning the reality and nature of the threat, and by self-doubt about one's capacity to cope with it.  
  
Anxiety may be manifested in physiological ways or by effects including those on concentration or energy levels, eating, patterns of thought and behavior, and interpersonal relationships.
- Depression: A state of feeling sad; dejection: a psychoneurotic or psychotic disorder marked by sadness, inactivity, difficulty in thinking and concentration, and feelings of dejection.



Depression, for Intake purposes, is more than “sadness” – more profound and pervasive, generally affecting several areas of functioning. It may be seen as a morbid sadness that is inappropriate in extent or longevity relative to the precipitating situation.

Depression may be a manifestation of an emotional problem. The term is reflected in a decreased capacity, which may affect a number of life areas, including: interest in external events, people, food, basic hygiene, sleep disturbances, lethargy, and hypersensitivity.

- Withdrawal: Social or emotional detachment; a pathological retreat from objective reality.

Withdrawal may be manifested by a preoccupation with internal thoughts and lack of responsiveness to external stimuli. Withdrawal includes a failure to participate in or avoidance of social interactions, object stimulation or activity, or flight from reality (as in delusions or hallucinations).

- Outward Aggressive Behavior: Hostile, injurious, or destructive behavior.

Outward aggression may be manifested by forceful physical or verbal attacks directed at self, persons, property, or animals.

A determination of emotional damage without a psychological/psychiatric evaluation may include:

- Observations of the child's behavior. These must be of such frequency and credibility as to provide reliable, thorough information about the child's condition.
- The observed behavioral manifestations should be reviewed in terms of their relationship to the alleged emotional damage. The following guidelines may be considered:

Whether the behavior is inappropriate to broad norms for the child's age;

Whether the behavior forms a pattern or is persistent, including whether the behavior can be explained by external events or circumstances which have been or will soon be changed;

Whether the behavior occurs in combination with other behaviors;

Whether the behavior usually causes harm to the child, others, or property;

Whether there is evidence of an atypical pattern of behavior for the individual child;

Whether the behavior occurs in a number of different situations or in varying external conditions.

A written, recent psychological or psychiatric evaluation of the child may assist in establishing prima facie jurisdiction.

If an evaluation is provided to Intake, which conflicts with or raises doubts about the alleged presence or severity of emotional damage, Intake may recommend the filing of a petition. This may be particularly appropriate where the behavioral observations presented by the referral source are more recent, specific, long-term, or otherwise contradict the observations of the evaluator.

Example: A child is referred to Court by a local school alleging that the child is severely withdrawn and depressed and that the parents are unwilling to obtain services or cooperate with school support staff. The parents provide Intake with an evaluation they obtained from a psychiatrist in private practice.

Upon review, the Intake Worker finds a lengthy and specific record of behavior observations and opinions provided by the school which seem to support the allegation. The evaluator had seen the child once for two hours and believed the child to be mildly depressed with no need for professional services. Intake recommends a petition and requests further evaluation.

Emotional damage is manifested to a severe degree. The severity of a child's condition should be considered in terms of its consequences for the child. Intake should evaluate observations and statements for indications of one or more of the following consequences for the child:

- Physical, social, or emotional suffering. Statements made by the child and/or person(s) observing the child support a reasonable belief that the child is experiencing pain or suffering as a result of the condition.
- Restrictions on functioning. Child's ability to participate in social, educational, or familial activities is restricted as a result of the condition.
- Interference with social, emotional, cognitive, or physical development. Child's developmental gains are substantially inferior or deviant from what could reasonably be expected.

Evidence exists that parent(s) or guardian has neglected, refused or been unable to obtain necessary treatment or to take necessary steps to ameliorate the symptoms.

- Evidence should include verbal statements and actions or inaction during a reasonable period of time. Reasonable period of time must be evaluated in terms of the child's needs. The more severe the consequences of a delay are for the child, the shorter the time period.
- Agreement must be given to a form of treatment that is reasonably likely to be effective in improving the child's condition.
- Parent(s) or guardian(s) who agree to provide treatment but fail to do so in a reasonable period of time may be considered to display neglect, refusal or inability.
- Intake should evaluate the facts to determine whether treatment was not provided primarily because of barriers to treatment such as transportation, denial of services, or financial difficulties.
- There should be evidence that substantial effort was made to gain the parent(s)' or guardian(s)' consent and participation in treatment for their child.
- Evidence must exist that efforts to control behavior have been attempted in good faith prior to a Court referral. Efforts should include the involvement of a third party who could reasonably be expected to help the family. The refusal by an petitioning party to cooperate in services may be considered by Intake as an obstacle to jurisdiction.
- Out-of-control behavior may be one of a number of possible manifestations of family problems rather than simply a reflection of the problems of an individual juvenile. These guidelines require the existence of serious problems before Court intervention is warranted.
- Out-of-control behavior itself is not presumed to be a quasi-delinquency act, which elicits only accountability or punitive consequences. Problem solving efforts are expected with intervention aimed at remedying any family dynamics that contribute to the out-of-control behavior.
- Refusal to agree to one particular kind of treatment, when an alternative effective treatment is available, is not sufficient to provide jurisdiction.

48.13(11m)

m) Child is suffering from alcohol or other drug abuse impairment, and

- o Impairment is exhibited to a severe degree, and
- o Parent(s) or guardian is neglecting, refusing, or unable to provide treatment.

## Policy

### Practice Considerations

Intake must review the facts to determine if there is evidence of alcohol or other drug abuse impairment. As defined by Chapter 48, this impairment “means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcohol beverages or controlled substances or controlled substances analogues to the extent that the person’s health is substantially affected or endangered or the person’s social or economic functioning is substantially disrupted,” per 48.02(1e).

Impairment is exhibited to a severe degree. The severity of a child’s condition should be considered in terms of its consequences for the child. Intake should evaluate observations and statements for indications of one or more of the following consequences for the child:

- o Physical, social, or emotional suffering. Statements made by the child and/or person(s) observing the child support a reasonable belief that the child is experiencing pain or suffering as a result of the condition.
- o Restrictions on functioning. Child’s ability to participate in social, educational, or familial activities is restricted as a result of the condition.
- o Interference with social, emotional, cognitive, or physical development. Child’s developmental gains are substantially inferior or deviant from what could reasonably be expected.

Evidence exists that parent(s) or guardian is neglecting, refusing, or unable to provide treatment.

- o Evidence should include verbal statements and actions or inaction during a reasonable period of time. Reasonable period of time must be evaluated in terms of the child’s needs. The more severe the consequences of a delay are for the child, the shorter the time period.
- o Agreement must be given to a form of treatment that is reasonably likely to be effective in improving the child’s condition.
- o Parent(s) or guardian(s) who agree to provide treatment but fail to do so in a reasonable period of time may be considered to display neglect, refusal or inability.

- Intake should evaluate the facts to determine whether treatment was not provided primarily because of barriers to treatment such as transportation, denial of services, or financial difficulties.
- There should be evidence that substantial effort was made to gain the parent(s)' or guardian(s)' consent and participation in treatment for their child.
- Evidence must exist that efforts to control behavior have been attempted in good faith prior to a Court referral. Efforts should include the involvement of a third party who could reasonably be expected to help the family. The refusal by an petitioning party to cooperate in services may be considered by Intake as an obstacle to jurisdiction.
- Out-of-control behavior may be one of a number of possible manifestations of family problems rather than simply a reflection of the problems of an individual juvenile. These guidelines require the existence of serious problems before Court intervention is warranted.
- Out-of-control behavior itself is not presumed to be a quasi-delinquency act, which elicits only accountability or punitive consequences. Problem solving efforts are expected with intervention aimed at remedying any family dynamics that contribute to the out-of-control behavior.
- Refusal to agree to one particular kind of treatment, when an alternative effective treatment is available, is not sufficient to provide jurisdiction.

48.13(13)  
254.04

n) Child has not been immunized as required,  
and

- Not exempted for reasons of health, religion, or personal conviction.

**Policy**

**Practice Considerations**

This jurisdictional category was placed by the legislature under CHIPS to give the juvenile Court jurisdiction over immunization cases. Potential procedural conflicts are created between Chapter 48 and 254.04 (which directs that the school must notify the district attorney when immunization or waiver requirements are not met and that the district attorney must petition the Court under Chapter 48). If Intake receives a referral from the school under 48.13(13), it should be discussed with the district attorney.

48.133

**B. The Court has exclusive original jurisdiction over unborn children in need of protection or services and their expectant mothers.**

- Expectant mother habitually lacks self-control in the use of alcohol or controlled substances exhibited to a severe degree
- Substantial risk that the physical health of the unborn child and the child when born will be seriously affected or endangered unless mother receives prompt and adequate treatment

48.14  
48.16

**C. The Court has exclusive original jurisdiction over a number of other matters related to children, such as, but not limited to:**

- Termination of parental rights
- Guardianships of children
- Adoption
- Proceedings under Chapter 51 (mental health) and Chapter 55 (protective placement), which apply to minors and under Chapter 51, which apply to adult expectant mothers of unborn children, if she appears to be drug dependant or to suffer from alcoholism
- Consent to marry
- Parental appeals of school board decisions on special education
- Runaway children in limited circumstances
- Donation of bone marrow by child
- Child abuse and harassment Temporary Restraining Orders
- Waiver of parental consent to minor's abortion.

## PART II – JUVENILE JUSTICE CODE

938.185

### I. VENUE FOR JUVENILE JUSTICE CODE

#### A. Original Actions

- 1) Venue may be had in any of the following:
  - a) County where juvenile resides, or
  - b) County where juvenile is present, or
  - c) County where violation of state law or ordinance occurred
    - o Court of county in which violation occurred may, after delinquency adjudication, transfer proceeding to county of residence for disposition if Court of county of residence agrees to transfer.

Comment

- o The Wisconsin Judicial Benchbook Committee believes this means that both Courts agree on transfer, not that both Courts agree on the particular disposition to be imposed.

938.195(3), 301.45

- 2) Venue for violation of sexual offender registration requirement is in county of juvenile's residence at time petition filed or, if no county of residence, any county where juvenile resided during period subject to registration requirement or county where juvenile was found to be a sexually violent person.

Policy

#### Practice Considerations

Venue designates the particular count(ies) in which a Court with jurisdiction may hear and determine the case. Venue is commonly referred to as the place where the hearing is held.

Generally, the county where the juvenile resides is the most appropriate place for a case to be handled. That county is more likely to have previous and/or ongoing contact with the child and family. It will usually be in the interest of the juvenile and family to refer the case to the juvenile Court Intake office of the county of residence.

- o Referrals to other jurisdictions should be made through the Intake office after consultation with the referral source and the prosecutor as appropriate.

However, in some cases it will be appropriate for jurisdiction to remain in the county where the juvenile is present or where a violation of state law or ordinance occurred. The Intake Worker should consult with the prosecutor regarding venue when a juvenile's residence is in another county, particularly in cases where:

- The juvenile is present in this county and, based on the alleged jurisdiction, may be placed in danger if returned to the county of residence; or
- The juvenile is alleged to have committed a delinquent act which would be a felony if committed by an adult; or
- The case may be appropriate for a deferred prosecution agreement and the juvenile is likely to remain in this county during the time of the agreement; or
- The case is most appropriately heard in this county and the county of residence agrees to pay for the ordered dispositional services.

## 2. EXCLUSIVE JURISDICTION

### Policy

#### Practice Considerations

Jurisdiction designates the subject matter that the Court can hear and defines when the Court has authority to act. The Juvenile Code limits the circumstances when the Court can intervene in a family's life.

Intake Workers are required by statute to make probably cause or prima facie determinations regarding jurisdiction. Jurisdiction is required in all cases before temporary custody may be ordered, a deferred prosecution agreement entered, or a referral made to the prosecutor requesting the filing of a petition. Jurisdiction does not limit the provision of voluntary services to families.

#### A. Delinquent Juvenile

938.12(1), 938.183

Wis Judicial Benchbook  
Vol. IV, Appendix 5  
Original Adult Court  
Jurisdiction

St v Avery  
80 W2d 305 (1977)  
In matter of DV  
100 W2d 363 (CA 1981)

- 1) Exclusive jurisdiction over juvenile age 10 or older alleged to be delinquent.
  - a) Exceptions include 938.17, 938.18 and 938.183.
  - b) Juvenile's age determined at time petition filed.



St v Annala  
168 W2d 453 (1992)  
St v LeQue  
150 W2d 256 (CA 1989)

- o Age at date action filed determines whether adult Court has jurisdiction over criminal proceeding.

62 OAG 229, 70 OAG 143

- c) Includes violations of criminal laws in other states.

938.125, 938.17

- d) Does not include traffic, boating, civil law and ordinance violations.

938.18(1)  
Appendix 6  
Waiver

- e) Juvenile Court may waive its exclusive jurisdiction in favor of adult Court if:
  - o Juvenile was age 15 or older at time offense allegedly committed.
  - o Juvenile was age 14 or older at time offense allegedly committed and charge is as enumerated by statute.
  - o Juvenile's age at time of offense determines juvenile Court's authority to waive its exclusive jurisdiction.

St v LeQue  
150 W2d 256 (CA 1989)

- f) Includes jurisdiction over Indian juvenile alleged to have committed delinquent acts off reservation.

In Int of MLS  
157 W2d 26 (CA 1990)

- 2) Court retains jurisdiction if Court proceedings started before juvenile is 17 and before facts admitted at plea hearing or adjudicated at fact-finding.

938.12(2)  
Miller Quatsoe  
348 FS 764 (ED Wis  
1972)  
St v Avery  
80 W2d 305 (1977)

St v Becker  
74 W2d 675 (1976)  
In Int. of KAP  
159 W2d 384 (CA 1990)

In Int of DWB  
158 W2d 398 (1990)

- a) Proceedings are started with filing of delinquency petition.

St v Becker  
74 W2d 674 (1976)  
St v Montgomery  
148 W2d 593 (1989)

- b) State may not intentionally delay charging child to avoid juvenile Court jurisdiction.

**Practice Considerations**

The Intake Worker must make an initial determination of jurisdiction when there is an allegation that the child violated a state or federal criminal law.

The Intake Worker will need to be able to determine jurisdiction by using criminal statutes, e.g., the “Criminal Code.”

All Intake Workers who make decisions regarding temporary custody or Court screening in delinquency must have access to current statute books or annotated statutes. Questions regarding jurisdictional sufficiency should be discussed with the prosecutor. Law enforcement input is desirable and important.

**B. Juveniles in Need of Protection or Services (JIPS)**

938.13  
In Int of Courtney E  
184 W2d 592 (1994)

- 1) The Court has exclusive original jurisdiction over juveniles alleged to be in need of protection or service that Court can order. A petition that fails to allege protection or services that can be ordered by Court to address juvenile’s needs is insufficient.

**Policy**

**Practice Considerations**

The ability of the Court to order a protection or service that the child needs is a jurisdictional requirement. Consideration of voluntary services or involuntary services under Chapter 51 may be appropriate.

938.13(4)

- 2) Any of the following exists with #1 above:
  - a. Parent(s) or guardian signs petition requesting jurisdiction and states that s/he is unable or needs assistance to control juvenile.

**Policy**

**Practice Considerations**

Parent(s) (or guardian) requests Court intervention and is willing to sign a petition.

Parent(s) (or guardian) must present facts supporting their belief that the juvenile is in need of control, which they cannot, or need assistance to, provide. Facts may include special circumstances of the parent(s), such as physical or psychological handicaps, which interfere with or limit their capacity to fulfill parental roles. Facts may also include behavioral, social, emotional, or physical problems of the child.

Court intervention is reserved for juveniles for whom informal or voluntary services have failed or are inappropriate. The Juvenile Court should not be seen as a forum through which parent(s) may be relieved of the pressures or problems of raising children.

To demonstrate an inability to control a juvenile, the parent(s) (or guardian) must show:

- Their inability to control a chronic problem. An isolated incident of misconduct is insufficient.
- The conduct parents cannot control is serious enough that it may lead to serious social, emotional, or physical harm to the child or others.
- The problem is multi-faceted.
- Example: If the only behavior of the child is running away, jurisdiction under the “truant from home” category should be considered. However, a combination of running away, skipping school, and drinking may be sufficient for this petition.

Evidence must exist that efforts to control the behavior(s) have been attempted in good faith prior to a Court referral. Efforts should include the involvement of a third party who could be reasonably expected to help the family.

The refusal by any petitioning party to cooperate in services may be considered by Intake as an obstacle to jurisdiction.

Out-of-control behavior may be one of a number of possible manifestations of family problems rather than simply a reflection of the problems of an individual juvenile. These guidelines require the existence of serious problems before Court intervention is warranted.

Out-of-control behavior itself is not presumed to be a quasi-delinquent act, which elicits only accountability or punitive consequences. Problem-solving efforts are expected with intervention aimed at remedying any family dynamics that contribute to the out-of-control behavior.

When a parent(s)' own problem(s) contributes to his or her inability to control, the parent(s) should have attempted to remedy the problem(s).

Juveniles will not be petitioned to Court on the basis of a parent's belief that the child's conduct is immoral. Sexual activity of the juveniles or noncompliance with behavioral codes established by religious beliefs of parent(s) will not be considered, per se, as a demonstration of the parent(s)' inability to control the juvenile.

938.13(6)

- b. Juvenile is habitually truant from school, and
  - o Required school attendance activities under 118.16(5) completed or were not completed due to the child's absence from school.

**Policy**

**Practice Considerations**

A juvenile is habitually truant from school when s/he missed part or all of 5 or more days on which school is held during a semester, 118.16(1)(a).

Intake must review each referral to determine whether the family had been offered services designed to meet the juvenile's and family's individual needs and which could reasonably have been acted upon by the juvenile and family.

Communication between the referring school and Intake should promote decisions which benefit the juvenile. Such communications should include the following:

- o School referrals should be submitted on the Dunn County Truancy Referral form.
- o Intake communication to schools should include the results of the Intake Inquiry and a description of and rationale for the Intake decision.
- o Intake may also discuss the appropriateness of a referral to the district attorney regarding prosecution of the parent(s), 118.15(5).

Court intervention is reserved for those juveniles for whom there is reason to believe that there are needed services or resources which can be ordered by the Court. This can sometimes be a problem in truancy cases because the Court lacks jurisdiction to order the school to provide modified programming.

938.13(6m)

- c. Juvenile is a school dropout under 118.153(1)(b).

**Policy**

**Practice Considerations**

A juvenile is a dropout when s/he ceases to attend, does not attend a public, private, or technical college district school or home-based private educational program on a full-time basis, has not graduated from high school and does not have an acceptable excuse under 188.15(1)(b) to (d) or (3), 118.153(1)(b).

See Practice Considerations above regarding truancy.

938.13(7)

- d. Juvenile is habitually truant from home, and
  - o Juvenile, parent(s), guardian, or relative where juvenile resides signs petition, and
  - o Reconciliation efforts have been attempted and failed.

## Policy

### Practice Considerations

A juvenile may be considered to be “truant from home” when s/he has been absent from the parents’, relatives’, or guardians’ home without the permission of the adult(s) responsible for providing care for the child.

For the purpose of Intake determinations, a juvenile may be considered to be habitually truant from home when there is evidence that s/he has:

- o Run away from home and remained away overnight three times or more within a period of one year, or
- o Run away from home and remained away overnight at least twice within a period of one year and stayed away at least one week on one occasion.

Evidence must exist that reconciliation efforts have been attempted in good faith prior to the Court referral. Reconciliation efforts should include the involvement of a third party who could be reasonably expected to help the family, or attempts by the person who is requesting Court jurisdiction to involve such a third party.

A parent (guardian or relative) who is requesting Court jurisdiction is assumed to have the duty and ability to contact a third party, who is skilled at resolving such problems, regardless of whether the juvenile was willing to participate or cooperate.

A juvenile who is requesting Court jurisdiction is assumed to be less able to attempt reconciliation efforts on behalf of his or her family. However, there must be a demonstration that the juvenile has made reasonable efforts, under the circumstances (e.g., juvenile’s ability to receive services without parent(s)’ consent, juvenile’s awareness of services, transportation or other barriers to juvenile receiving services), to seek assistance for reducing or coping with family problems.

Evidence must exist that the reconciliation attempts have “failed.” Such failure may be demonstrated by continuing runaway incidents or by the continuation of family problems. The refusal by any party to cooperate in the reconciliation efforts, or other information as to why these efforts failed, should be included in the referral.

Running away is one of a number of possible manifestations of family problems, rather than simply a reflection of the problems of an individual juvenile. These guidelines require the existence of serious problems before Court intervention is warranted. The act of running away itself should not be presumed to be an antisocial, quasi-delinquent act which should elicit only accountability or punitive consequences. Problem-solving response efforts are expected with intervention aimed at remedying any family dynamics that contribute to runaway behavior.

The definition of “truant from home” will not enable parent(s) (guardian or relatives) who have explicitly or implicitly caused a juvenile to leave home (by directing the juvenile to leave or by causing or threatening harm to the juvenile) to petition the Court.

Whenever a juvenile who has left home but whose situation does not support intervention based on the Court’s guidelines is referred. Intake should inform the juvenile and parent(s) of services available to them in the community, including the availability of runaway programs and shelters, and assist in helping them receive such services.

938.13(12)

- e. Juvenile under 10 years old committed a delinquent act.

**Policy**

**Practice Considerations**

The legislature chose to place juveniles under age 10 who commit delinquent acts in the jurisdictional category of protection or services, not in delinquency. The delinquent act should be viewed as an indicator that the juvenile and/or family may be in need of services.

The Intake Worker must make an initial determination of jurisdiction when there is an allegation that the child violated a state or federal criminal law. The Intake Worker will need to be able to determine jurisdiction by using criminal statutes, e.g., the “Criminal Code.”

All Intake Workers who may make decisions regarding temporary custody or Court screening in delinquency must have access to current statutes books or annotated statutes. Questions regarding jurisdictional sufficiency should be discussed with the prosecutor. Law enforcement input is desirable and important.

938.13(14)

- f. Juvenile has been determined to be not responsible for delinquent act by reason of mental disease or defect or has been determined not competent to proceed in a delinquency action.

**Policy**

**Practice Considerations**

Not responsible by reason of mental disease or defect or competency to proceed is not an Intake determination.

- |                 |   |
|-----------------|---|
| 938.17(1)       | <b>C. The Court has exclusive original jurisdiction over certain civil law and ordinance violators.</b>   |
| 342.06(2)       | 1) Juveniles of any age alleged to have: <ul style="list-style-type: none"> <li>a. Made false statement in application for certificate of title for vehicle subject to registration.</li> </ul> |
| 344.48(1)       | <ul style="list-style-type: none"> <li>b. Forged proof of financial responsibility regarding automobile liability policy or bond.</li> </ul>  |
| 30.67(1)        | <ul style="list-style-type: none"> <li>c. Violated duty when involved in a boating accident in which death or injury occurs.</li> </ul>   |
| 346.67          | <ul style="list-style-type: none"> <li>d. Violated duty upon striking person or attended or occupied vehicle when death or injury occurs.</li> </ul>  |
| 938.17, 938.125 | 2) Juvenile any age alleged to have violated a law punishable by a civil forfeiture, except where municipal Court has concurrent jurisdiction.  |
|                 | 3) Juvenile age 11 or younger alleged to have violated an ordinance.  |
|                 | 4) Juvenile age 12 or older alleged to have violated an ordinance where there is no Municipal Court.  |

**Policy**

**Practice Considerations**

Ordinances are generally non-criminal statutes or rules passed by the state or local governments (such as cities or counties). A local government may pass an ordinance to give it control over a certain circumstance and/or to retain a portion (or all) of the revenue generated by violations.

Ordinances commonly govern zoning, building, safety, etc., matters. Some state statutes can be adopted as ordinances by local units of governments. For example, a number of traffic statutes may be adopted by a city or county as ordinances.

Statutes related to civil laws or ordinances may refer to Municipal Courts, which are generally operated by local units of government. A Circuit Court can operate like a Municipal Court in some circumstances when a juvenile receives a citation for violating an ordinance, such as traffic, curfew, tobacco, etc.

In most traffic, boating, snowmobile, or all terrain vehicle violations, juveniles age 16 and older are treated as adults. However, 16 years old can only be held in secure custody by law enforcement in a secure detention facility. This is NOT an Intake Worker decision and does NOT require a temporary physical custody hold. Seventeen (17)-year-olds are adults by definition, see s.938.02(1), for crimes or civil law and ordinance violations.

**D. Mental commitments under Chapter 51 and protective placements under Chapter 55.**

- 938.135(1) 1) If juvenile in delinquency or JIPS proceeding appears to be developmentally disabled, mentally ill, alcoholic or drug dependent, Court may proceed under Chapter 51 or 55.
- 938.135(2) 2) Chapters 51 and 55 govern admissions, placements, or commitments to an inpatient facility. However, Court may order juvenile placed in inpatient treatment facility pursuant to delinquency or JIPS finding under conditions established at 938.34(6)(am).



# **CHAPTER THREE**

## **CUSTODY INTAKE**

### **1. TAKING CHILD/JUVENILE INTO CUSTODY**

48.19, 48.195,  
938.19  
48.981(3), 48.28,  
938.28  
48.21(4),  
938.21(4)  
938.20(2),  
48.08, 938.08

**A. Child/Juvenile may be taken into custody under a number of circumstances detailed in Ch 48 and 938**

**B. Child/Juvenile may be taken into custody by a number of different people detailed in Chapters 48 and 938.**

#### **C. Notification of Parents**

48.19, 938.19,  
48.195  
48.08, 938.08,  
48.981(3) (c)2,  
118.16(2m)(a)

1) Person taking child/juvenile into custody must immediately attempt to notify parent, guardian, and legal custodian by most practical means and continue until

a. Notification made, or

b. Child/juvenile delivered to Intake Worker

48.19(2),  
938.19(2)

2) When child/juvenile delivered to Intake Worker, Worker or designee must continue attempts to notify parent, guardian, or legal custodian until successful.

48.19(2),  
938.19(2)

#### **Policy**

#### **Practice Considerations**

Taking children/juveniles into custody will primarily be the responsibility of law enforcement officers. Circumstances requiring that a child/juvenile be involuntarily taken into custody because of illness, injury, or danger are recognized as potentially difficult and explosive. Law enforcement officers are trained and equipped to deal with these situations. Only when absolutely necessary should Intake, protective services, or dispositional Workers exercise their authority to take children/juveniles into custody.

In most situations, a child/juvenile will be taken into custody prior to a delivery to the Intake Worker for a temporary custody request. However, it is possible that a child/juvenile may voluntarily come to the Intake Worker or may be brought to the Intake Worker or a place for temporary holding by a parent, friend, or other person. In such a case, a formal taking into custody is not required before the Intake Worker makes decisions regarding temporary custody.

A temporary physical custody order by an Intake Worker is insufficient to authorize entry into the home. The statutory authority to take into custody does not necessarily give permission to enter the home of a child/juvenile or parent(s). In alleged delinquency cases, criminal investigation and entry procedures must be used. In alleged protective services cases, the child's home or living quarters can only be entered with the permission of the child's parent(s), guardian, or legal custodian or after obtaining a Court order. In certain emergency situations, where exigent circumstances exist, law enforcement and/or a social Worker may enter a house to assess a child's well-being without a Court order. This may occur when:

- They are motivated by a perceived need to render aid or assistance, and
- A reasonable person would have believed, under the circumstances, that there was an immediate need to provide aid due to an actual or threatened physical injury, and that immediate entry into the home was necessary to provide that aid.

### Release From Custody

48.20(2)(ag),  
938.20(2)(ag),  
48.203

- 1) A person taking a child/juvenile into custody must make every effort to release the child/juvenile immediately to parent, guardian, legal custody (there are separate statutory provisions for the release of adult expectant mothers). Statutory preference is for child/juvenile to be released from custody as soon as reasonably possible.

48.20(2) (ag),  
938.20(2) (ag)  
48.20(2) (b),  
938.20(2) (b)

- 2) When release to parent(s), guardian or legal custodian is not possible, may release to
  - a. If parent(s), guardian, or legal custodian unavailable, unwilling or unable to provide supervision for child/juvenile, then child/juvenile may be released to responsible adult with appropriate counseling or warnings

48.20(2) (c),  
938.20(2) (c)

- b. Self, if 15 years or older, with appropriate counseling and warnings

48.20(2) (d),  
938.20(2) (d)

- c. Runaway home, if child/juvenile is a runaway

938.20(2), (e), (f),  
(g)

- d. In truancy cases, release to
  - Responsible adult as provided above, or
  - School administrator or designee, or
  - Self, after appropriate counseling or warnings

938.20(2)  
(cm)

o

e. Aftercare provider if juvenile has violated terms of aftercare supervision

48.20(3),  
938.20(3)

3) Person who took child/juvenile into custody must immediately notify parent(s), guardian, legal custodian of

a. Time and circumstances of release

b. Person, if any, to whom child/juvenile released

**D. Child/juvenile/adult expectant mother not released from custody**

48.20(3),  
938.20(3)

1) Person taking child/juvenile/adult expectant mother into custody must

a. Arrange for child/juvenile/adult expectant mother to be interviewed by Intake Worker

b. Make written statement with supporting facts as to why child/juvenile/adult expectant mother taken into custody

o Under Chapter 48, age 12 or older and adult expectant mother get copies

o Statement may be read to Intake Worker if face-to-face interview not required

**Policy**

**Practice Considerations**

Children/juveniles taken into custody and referred to the Intake Worker for possible temporary custody will be delivered to the Intake Worker's office or another place as directed by the Intake Worker. After hours interviews with children/juveniles will take place at the location specified by the Intake Worker.

Intake should be contacted after the referring agency has made a decision that the child/juvenile/adult expectant mother should be held in custody. The Temporary Physical Custody form and written statement with supporting facts should be completed before Intake is notified.

**E. Special custodial circumstances**

48.20(4),  
938.20(4)

1) Child/juvenile/adult expectant mother suffering from serious physical condition requiring prompt diagnosis or treatment must be delivered to hospital or physician's office

48.373.  
938.373

The Court may authorize medical services/ treatment for child/juvenile/adult expectant mother

48.20(5),  
938.20(5)

2) Child/juvenile/adult expectant mother believed to be mentally ill, drug dependent or developmentally disabled, AND

a. Exhibiting conduct that constitutes a substantial probability of physical harm to self or others, or

b. A very substantial probability of physical impairment or injury to child/juvenile/adult expectant mother exists due to child/juvenile/adult expectant mother's impaired judgment, and

51.15

c. Standards for Chapter 51 emergency detention are met

d. Procedures and places for emergency detention must be used

48.20(6),  
938.20(6)

3) Child/juvenile/adult expectant mother is believed to be intoxicated, AND

a. Has threatened, attempted, or inflicted physical harm on self or another and is likely to inflict such physical harm unless committed, or

b. Is incapacitated by alcohol

c. Then, procedures and places for emergency detention under Chapter 51 must be used

## **2. CUSTODY INTAKE DECISION TO HOLD OR RELEASE**

### **A. Custody Intake decision may be made by**

48.067, 938.067

1) Intake Worker

48.10, 938.10  
48.19(1) (c),  
938.19(1) (c)

2) Judge (however, the Judge is disqualified from participating in further proceeding)

### **B. Release from custody by Intake Worker**

48.20(7) (b),  
938.20(7) (b)

1) Must make every effort to release

2) Release may be to

48.20(7) (c),  
938.20(7) (c)

- a. Parent(s), guardian, or legal custodian if available, willing, and able to provide supervision
  - b. Responsible adult with appropriate counseling and warnings
  - c. Self, if 15 years or older with appropriate counseling and warnings
  - d. Runaway home, if child/juvenile is a runaway
  - e. Aftercare provider if juvenile has violated terms of aftercare supervision
  - f. There are separate statutory provisions for the release of adult expectant mothers
- 48.20(7) (c) 2,  
938.20(7) (c)2
- 938.20(7) (c) 1m
- 48.203
- 48.20(7) (d),  
938.20(7) (d)
- 3) Intake Worker must immediately notify parent, guardian, and legal custodian of
    - a. Time and circumstances of release
    - b. Person, if any, to whom child/juvenile was released

**Policy**

**Practice Considerations**

The appropriateness of each release option should be assessed. The above options may require supportive services in order to be successful.

Referrals to other agencies may be appropriate and necessary at the time of release or to provide services during temporary custody.

**C. Custody Intake procedures**

- 48.067(1),  
938.067(1)
- 1) Custody Intake screening must be available 24 hours a day, 7 days a week

**Policy**

**Practice Considerations**

The authority to hold a child/juvenile/adult expectant mother in temporary custody is viewed by the Court as a very important responsibility. The power to keep a child/juvenile/adult expectant mother from his/her family and to deprive a child/ juvenile/adult expectant mother of his/her liberty is not to be taken lightly.

Specialized knowledge of statutes and policy along with an ability to make decisions during a crisis with limited time and access to information is required. Therefore, the 24-hour a day Intake screening will be assigned to Workers who must complete the required 30 hours of Intake training.

48.067(2),  
938.067(2)

- 2) Intake Worker must interview, unless impossible, child/juvenile/adult expectant mother into physical custody and not released
  - a. Face-to-face interview required before child may be placed in secure custody except if Intake Worker is at distant place or the hour is unreasonable
    - o After consulting with law enforcement officer who took child/juvenile into custody, may authorize secure custody by telephone while en route to interview or until next 8:00 a.m.
    - o Statutory criteria for holding in secure custody must be met

## Policy

### Practice Considerations

Distance and/or unreasonableness of the hour do not excuse the Intake Worker from the duty to have a face-to-face interview with the child who will be held in secure custody. Distance and the time of day may cause the interview to be delayed for a period of time but this period should be no longer than it takes the Worker to reach the place of the interview.

Decisions regarding secure custody via telephone will be used by Intake in only very limited circumstances. The Intake Worker must receive enough information during the telephone conversation to satisfy statutory criteria and policy considerations. On most occasions, the child/juvenile does not need to be placed in a secure setting prior to the Intake interview. Law enforcement will need time to complete at least preliminary reports and the Temporary Physical Custody Request form, which can be done while the Intake Worker is en route.

The Intake Worker should inform the requesting agency that a face-to-face interview will take place as soon as possible and give an approximate length of time. The delay in time between initial detention and the face-to-face interview should be documented on the signed temporary custody form or attached paperwork.

- b. If it is impossible to interview child/juvenile who may be placed in non-secure custody, Intake Worker must consult with parent(s) or a responsible adult
- c. If it is impossible to interview an adult expectant mother who may be placed in nonsecure custody, Intake Worker must consult an adult relative or friend

- d. Other appropriate concerned parties may be interviewed

**Policy**

**Practice Considerations**

Statutes mandate face-to-face interviews when making decisions regarding secure custody. Children/juveniles/adult expectant mothers must be interviewed face-to-face if any of the following apply:

- The child/juvenile/adult expectant mother is uncooperative.
- The juvenile has allegedly committed a serious offense.
- The child/juvenile/adult expectant mother is objecting to the proposed placement.
- The child/juvenile has run away from another jurisdiction and foster care is being requested.
- The child/juvenile is being placed into foster care.

Telephone interviews may be conducted if none of the above apply and:

- The child/juvenile/adult expectant mother is known to the Intake Worker and the Intake Worker has sufficient information to make a reasoned custody decision, or
- Arrangements were made by the Intake Worker or another Social Worker ahead of time to have the child/juvenile/adult expectant mother taken into custody and held, or
- The proposed placement is with a relative known to the child/juvenile/adult expectant mother and all are in agreement with the placement.

938.20(7) (a)

- 3) Intake Worker required to advise of rights
  - a. Alleged delinquent informed of right against self-incrimination and right to counsel at all stages of the proceedings

48.20(7) (a)

- b. Alleged CHIPS child age 12 or older, alleged JIPS, or adult expectant mother informed of right to counsel

48.20(8),  
938.20(8)

- 4) If child/juvenile held in custody, Intake Worker must notify
  - a. Parent(s), guardian, and legal custody of
    - Reasons for holding in custody

- o Child/juvenile's whereabouts unless reason to believe it would present an imminent danger to the child/juvenile
  - o Time, place, nature of, and possible consequences of custody hearing
  - o Right to present and cross examine witnesses at the custody hearing
- b. Any alleged delinquent, JIPS or CHIPS age 12 or older, or adult expectant mother of
- o Time, place, nature of, and possible consequences of custody hearing
  - o Right to counsel and to present and cross examine witnesses at the custody hearing
- c. A juvenile's aftercare supervisor of
- o Reasons for holding in custody
  - o Juvenile's whereabouts
  - o Time and place of the custody hearing

**Policy**

**Practice Considerations**

See Chapter 4 Court Intake for guidance regarding advisement of rights

**D. Criteria for holding child/juvenile/adult expectant mother in physical custody**

48.205(1),  
938.205(1)  
48.205(lm)

- 1) Probable cause exists to believe that
- a. Child/juvenile/adult expectant mother is within Court's jurisdiction, and

48.205(1) (a)

- b. In Ch 48 actions, child will commit injury to self or be subject to injury by others or

48.205(1) (am)

- c. In Ch 48 actions, if child not held, he/she will be subject to injury by others, based on a determination under b. above, or finding under 48.21(4) that if another child in home is not held, that child will be subject to injury by others

938.205(1) (a)

- d. In Ch 938 actions, juvenile will commit injury to person or property of another, or



48.205(1) (c),  
938.25(1) (c)

e. Child/juvenile will run away or be taken away and would be unavailable for proceedings of Court or its officers, or DOA for revocation of aftercare, corrective sanctions, or SJO supervision

48.205(1) (b),  
938.205(1) (b)

f. Parent(s), guardian, legal custodian, or other responsible adult is neglecting, refusing, unavailable, or unable to provide adequate supervision and care and services to ensure child/juvenile's safety and well-being not available or would be inadequate

48.205(1) (bm)

g. In Ch 48 actions, another child in the home meets the criteria in f. above

48.205(1) (d),  
48.205(1m)

h. In Ch 48 actions, if adult expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or analogs, exhibited to a severe degree, and that the expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her

## Policy

### Practice Considerations

The referral agency's recommendation concerning either the necessity of a hold or the proper placement is not binding on the Intake decision. Intake must make a reasoned, independent decision regarding both the holding of a child/ juvenile/adult expectant mother and the proper placement. Referral agencies may have different considerations and interests than Intake. Intake's responsibility is to the statutes, policies, and the Dept. of Human Services, not to the referral agency.

A determination that **probable cause** exists to believe that the Court has **jurisdiction** is required before a decision to hold in temporary custody. This includes all places for holding in custody from home detention to secure detention. Jurisdiction is discussed in Chapter 2 of these policies.

- Probable cause is a standard of proof, which may be understood as a reasonable belief in the existence of certain facts or circumstances. The Intake Worker may consider the following in assessing jurisdiction for custody cases: Is the person reporting the information a reliable, credible person? Is there any corroborating information? Is it more likely than not that the facts and circumstances supporting jurisdiction exists?
- The Intake Worker should evaluate the information at hand at the time of the request for temporary custody. Taking all of the facts and circumstances into consideration, is it reasonable to believe that jurisdiction exists?
- The Intake Worker makes an initial decision of probably cause, which is reviewed by the prosecutor prior to the filing of a petition and later by the Court at the custody hearing or plea hearing. The Intake Worker's determination is less than the burden of proof needed for an adjudication by the Court.
- In delinquency matters, the referring agency must attempt to establish if the person is subject to original adult Court jurisdiction or juvenile Court jurisdiction. 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 will be presumed to be subject to Juvenile Court jurisdiction until Intake or the Court is satisfied otherwise. The Intake Worker must decline to make a custody determination in a case if the Intake Worker knows that the person is not subject to Juvenile Court jurisdiction. If the person is not subject to adult Court jurisdiction, Intake will determine what jurisdictional basis exists for the requested hold under Chs. 48 or 938.

Intake will consider whether the following apply when making a custody decision and determining the appropriate level of placement:

- 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
- 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, disabled, etc.)

- Whether a weapon was used and type of weapon
  - Extent of premeditation on the part of the juvenile
  - The attitude of the juvenile toward the offense
  - Whether offense included any “gang” involvement
  - Other circumstances relevant to the offense
- o The prior CHIPS, JIPS, and/or delinquency record of the 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 or dangerousness
  - Whether the activity indicates an increasing lack of adherence to rules
  - Other factors concerning the prior record of the juvenile
- o Risk of flight
  - Is the juvenile presently a runaway from Court-ordered placement
  - Has the juvenile previously run away from a Court-ordered placement
  - Attitude of the juvenile toward remaining in custody
  - Record of obeying home curfews and rules
  - Ability of caregiver to control the person
  - School attendance record
  - Likelihood of the juvenile to be successful at running from placement based on:
    - Age
    - Apparent maturity
    - Availability of other associates who would assist in running away
    - Level of consequences juvenile now faces for immediate behavior
    - Other facts that appear relevant to level of risk of flight

- o Current legal status:
        - Is child/juvenile currently subject to a dispositional order
        - Are other Court actions involving the child/juvenile currently pending
        - What is child/juvenile’s present level of custody
        - Are there prior adjudications of a similar nature
        - Have other alternatives been tried in the past
        - Other factors relating to the child/juvenile’s present legal status
      - o Protection needs
        - Is the child/juvenile subject to abuse or neglect at home
        - Have there been threats against the child/juvenile
        - Has the child/juvenile exhibited potential harm to self by recent behavior or threats
        - Is present caregiver able to adequately protect the child/juvenile
        - Is the child/juvenile vulnerable to revenge acts by others, including co-actors, victims, or others
        - Other factors relating to the need to protect the child/juvenile
- When the neglect, refusal, availability, or ability of the caregiver to provide supervision and care is questioned, the availability and adequacy of services may be evaluated by considering the following factors:
- o Efforts to develop or mediate supportive services provided by the family’s natural support system (relatives, friends, clergy, etc.) or lay helpers such as parent aides, homemakers, or volunteers
  - o Quality of services provided, e.g. the frequency of supervisory visits, the coordination of services with other professionals or helping resources
  - o The range of services considered and the rationale for rejecting them as alternatives
- The following characteristics may be indicative of a caregiver’s ability to care for or protect the child:

- Maturity and/or emotional strength seriously deficient
- Behavior and attitudes characterized by rigidity
- Intelligence so limited as to influence ability to problem solve or to access services
- Extreme stress
- Pattern(s) of denying or blaming others, impulsivity, or explosive temper
- Retardation, depression, or mental illness suspected and parent refuses evaluation or treatment
- Aggression toward or over-compliance with authorities raises concern over ability to provide necessary protection
- Child is so extremely alienated from parent(s) that he or she is at risk of causing physical harm, being harmed by parent during conflict, or of self-harm due to depression or drug or alcohol abuse
- Family is so isolated physically and/or emotionally from its relatives or neighbors
- Family's support systems are seriously limited

The degree of threat to the child's safety and well-being may be assessed in part by considering

- The seriousness of the problem(s)
- The number and interaction of the problem
- Any exacerbating circumstances
- The history of this particular set of problems or prior problems
- The possibility of temporarily or permanently removing the person who is a threat to the child
- Child's developmental status may be substantially below social, emotional, cognitive, or physical norms for his/her age group
- Child may exhibit serious, observable symptoms or behaviors indicating the effects of family problems

The family's disorganization may be affecting its ability to provide care for the child, e.g., family members are coming and going, thereby, providing limited stability, inappropriate roles of parent or child, marital or relationship problems with which the parent is unable or unwilling to deal.

Parent(s) should not be allowed to request placement of their child so that they can be relieved of the responsibility to provide care or deal with their family's problems. If the child is placed, parental involvement should be stressed through visitations, involvement in counseling and other services, and financial contribution.

48.207,  
938.207

**E. Places where a child/juvenile may be held in nonsecure custody (there are separate statutory provisions for expectant mothers)**

- 1) Home of parent(s), guardian, or relative
- 2) Licensed foster, treatment foster, or group home, provided placement does not violate conditions of license
- 3) Nonsecure facility operated by licensed child welfare agency
- 4) Licensed private or public shelter care facility
- 5) Home of person not a relative provided placement does not exceed 30 days
  - a. Can be extended for additional 30 days by Court if person has not had foster or treatment foster home license refused, revoked, or suspended with last two years.
- 6) Hospital or physician's office if held because child/juvenile requires prompt diagnosis or treatment for serious physical condition
- 7) Facility for emergency detention under Chapter 51 if held because
  - a. Mentally ill, drug dependent, or developmentally disabled, AND
  - b. Substantial probability of physical harm to self or others, or
  - c. Very substantial probability of physical impairment or injury to self because of impaired judgment
- 8) Approved public treatment facility under Chapter 51 for emergency alcohol treatment if child/juvenile is

- a. Intoxicated and has threatened, attempted, or inflicted harm on self or others and is likely to inflict harm, or
  - b. Incapacitated by alcohol
- 48.207(3),  
48.981
- 9) In Chapter 48 actions, abused or neglected child may be held in
- a. Hospital
  - b. Foster home or treatment foster home
  - c. Relative's home
  - d. Other appropriate medical or child welfare facility not primarily used for detention of delinquent child/juvenile

**F. Additional criteria for holding child/juvenile in secure custody**

- 48.208,  
938.208
- 938.208(1)
- 1) In Ch 938 actions, probable cause exists to believe that juvenile has committed delinquent act and presents substantial risk of physical harm to another person or of running away
- a. A substantial risk of physical harm to others is shown when there is probable cause to believe juvenile committed an offense, that
    - o Would be a felony for an adult (see statute for list), or
    - o Would be a felony for an adult, while possessing, using, or threatening to use a handgun, short-barreled rifle, short-barreled shotgun, or
    - o Juvenile has possessed or gone armed with a handgun, short-barreled rifle, or short-barreled shotgun
  - b. A substantial risk of running away so as to be unavailable for Court hearing or hearing for revocation proceedings
    - o Must be evidenced by previous act or attempt

## Policy

### Practice Considerations

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 will 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 are:

- a. 1<sup>st</sup> degree intentional homicide, 940.01
- b. 1<sup>st</sup> degree reckless homicide, 940.02
- c. Felony murder, 940.03
- d. 2<sup>nd</sup> degree intentional homicide, 940.05
- e. Felony battery, 940.19(2) to (6)
- f. Mayhem, 940.21
- g. 1<sup>st</sup> degree sexual assault, 940.225(1)
- h. Kidnapping, 940.31
- i. Discharging firearm from automobile or in parking lot under certain conditions, 941.20(3)
- j. Arson to building, 943.02(1)
- k. Car jacking while possessing a dangerous weapon, 943.23(1g)
- l. Armed robbery, 943.32(2)
- m. 2<sup>nd</sup> or subsequent offense of harassment with threat of death/great bodily harm, 947.013(1t)
- n. Harassment with threat of death/great bodily harm based on information obtained electronically, 947.013(1v)
- o. 2<sup>nd</sup> or subsequent offense of harassment based on information obtained electronically, 947.013(1x)
- p. 1<sup>st</sup> or 2<sup>nd</sup> degree sexual assault of child, or repeated acts of sexual assault to same child, 948.02(1) or (2)
- q. Physical abuse of child, 948.03
- r. Use of handgun, short-barreled rifle/shotgun while committing felony under Ch. 940
- s. Possession of short-barreled rifle/shotgun, 941.28
- t. Possession of dangerous weapon by a person under 18 in violation of 948.60
- u. Repeated Acts of Sexual Assault of the Same Child in violation of 948.025

Future legislative changes may add to or subtract from this list.

Substantial risk of physical harm is manifested by the statutory crimes as listed above and may also include:

- Eluding an officer in a vehicle at high speeds
- Entry into home, building, or vehicle where persons were present during the commission of the delinquent acts or the juvenile should reasonably have believed persons were present



- o Current behavior and/or statements that indicate disregard for the safety of others

Note that the criteria does not include risk to property or to the juvenile personally.

In assessing a juvenile’s probability of running away, the Intake Worker should consider the specific direction given by the statute. The issue is the juvenile’s availability for proceedings.

938.208(2)

- 2) In Ch 938 actions, probable cause to believe juvenile is fugitive from another state or has run away from secure correctional facility or secured child caring institution and no reasonable opportunity to return juvenile

Jackson vs  
 Froehlich  
 77 W2d 299 (1977)

“Fugitive status attaches to anyone who has committed a crime within a state and, when sought to be subjected to its criminal process to answer for his offense, has left its jurisdiction and is found in another jurisdiction.”

**Policy**

**Practice Considerations**

Intake Workers should be aware that behaviors that Wisconsin recognizes as JIPS or CHIPS jurisdiction may be considered crimes in other states. It appears that by case law, Wisconsin law does not provide the authority to securely detain non-delinquent runaways from other states.

48.208(3),  
 938.208(3)

- 3) In Ch 48 and Ch 938 actions, child/juvenile consents in writing to be held for protection from imminent physical threat and protective order issued by Judge

**Policy**

**Practice Considerations**

Parent(s) (and other caregivers) should be involved in this decision whenever appropriate. In most cases the child/juvenile can be held in nonsecure custody with an order not to release the name or address of the place.

48.208(4),  
 938.208(4)

- 4) In Ch 48 and Ch 938 actions, probable cause to believe child/juvenile placed in nonsecure custody has run away or committed delinquent act and no other suitable alternative exits

**Policy**

**Practice Considerations**

This is not an automatic placement in secure custody. Another nonsecure temporary custody should be considered in light of potential problems with the previous place. Reasonable alternatives must be considered. Secure detention is not to be used to punish the running away or delinquent act.

This criteria does not allow placement in secure custody for rules violations. The Intake Worker can change the place of temporary placement if appropriate. Documentation of temporary custody rules successes and violations may be important in determining the necessity to proceed with further Court action or at the time of formal disposition.

938.208(5)

- 5) In Ch 938 actions, probable cause to believe juvenile is delinquent, has run away from another county, and would run away from nonsecure custody pending return

Policy

- a. May be held for not more than 24 hours except for one extension of 24 hours for good cause

**Practice Considerations**

The Intake Worker must make an assessment that the juvenile would run away from nonsecure custody. The following should be considered:

938.208(6)

- The particular crime(s) alleged
- The juvenile's reason for leaving the other county
- Evidence of a pattern of running away
- Location of relatives, friends, or contacts in this area
- Length of time the juvenile has been a fugitive

- 6) In Ch 938 actions, probable cause to believe juvenile is subject to criminal Court jurisdiction under 938.183(1) and is under 15 years of age

Policy

**Practice Consideration**

48.208,938.208

This statute references original adult Court jurisdiction.

**G. Place where a child/juvenile may be held in secure custody**

48.208, 938.208

- 1) Secure detention facility

48.208, 938.209

- 2) Juvenile portion of county jail (there are specific statutory provisions and licensing rules regarding the use of county jails for juveniles)

**Policy**

**Practice Considerations**

In construing Chapter 48, the paramount consideration is the “best interests of the child.” If the best interests of the child require removal, lower levels of restriction must be considered and rejected before considering high levels of restriction.

In construing Chapter 938, protecting citizens from crime is one of eight purposes of the juvenile code. If removal from the home is not necessary to protect citizens from juvenile crime, Intake may want to consider whether any of the following conditions of home placement under Temporary Physical Custody are warranted:

- Home placement with conditions; and/or
- Home placement with electronic monitoring

If protection of the public requires removal, lower levels of restriction should be considered and rejected before considering a higher level of restriction, except in the case of those crimes where secure detention is statutorily presumed.

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.

48.21(1),  
938.21(1)

**3) CUSTODY HEARING**

**A. Purpose**

- 1) To determine whether child/juvenile will continue to be held in custody

48.21(1)

**B. Time Limits**

- 1) In Ch 48 actions, hearing must be held within 48 hours of time decision to hold child was made, excluding Saturdays, Sundays, and legal holidays

938.21(1)

- 2) In Ch 938 actions, hearing must be held within 24 hours after end of day decision to hold juvenile was made, excluding Saturdays, Sundays, and legal holidays

938.21(2) (am)

**C. Waiver of Participation in Custody Hearing**

- 1) Juvenile in secure custody may NOT waive participation in hearing

NOTE: Chapter 48 appears to allow waiver whether secure or nonsecure custody

2) Alleged delinquent or runaway juvenile or alleged JIPS under 938.13(7) or (12) held in nonsecure custody may waive participation in hearing, in writing

- a. Hearing granted upon request of juvenile or any other interested party for good cause shown
- b. Hearing required if juvenile transferred to secure custody

48.21(3) (am),  
938.21(3) (am)

3) Parent(s), guardian, or legal custodian of alleged CHIPS or JIPS (non-runaway) held in nonsecure custody may waive participation in hearing, in writing

- a. Written agreement of child/juvenile required if age 12 or older
- b. Hearing granted upon request of any interested party for good cause shown

In Int of GH

150 Wis.2d  
408(1989)

4) Lack of counsel does not affect a parent(s), guardian or legal custodian's ability to waive a custody or detention hearing

48.23(2), (3)

- a. Parent(s) of CHIPS child no longer have right to appointed counsel in CHIPS proceedings

Policy

#### **Practice Considerations**

For a child/juvenile held in nonsecure custody, waiving the right to participate in a custody hearing is a major decision. Child/juvenile's families must not be pressured to waive their participation in the hearing. Both the child/juvenile and family should be able to articulate and explain the reason they have for requesting the waiver.

Waiving participation in the custody hearing may be appropriate if the child/juvenile and family need additional time to consult with their attorney or others. Additional time may also be appropriate for families to explore less restrictive temporary placements and to provide further information to Intake.

Children/juveniles and families who waive their right to participate in the custody hearing must be told that they can request the hearing for good cause prior to the plea hearing. The custody hearing should then be held as soon as reasonably possible.

While a case is proceeding toward disposition, a different place of temporary custody may be necessary and emergent in nature. The Intake Worker continues to have the authority to change a child's/juvenile's place of temporary custody. A new Temporary Physical Custody Request must be made, the form signed, and all interested persons notified as in the initial decision. This is considered a new temporary custody. The child/juvenile and family must be advised of their right to participate in a custody hearing, which must be held within the timelines required.

A child/juvenile may only be transferred to secure custody if statutory criteria are met. A custody hearing and the child's participation is required as if this was a new Intake decision.

**D. Order continuing child in out-of-home temporary custody must include the following in writing:**

48.21(5) (b), (c)

938.21(5) (b), (c)

- 1) A finding that continued placement of the child in his/her home would be contrary to the welfare of the child
- 2) A finding that the person who took the child into custody and the Intake Worker have made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns – NOTE: There are very limited specific statutory exceptions when this finding is not necessary in 48.355(2d) (b) 1-5
- 3) A finding as to whether the person who took the child into custody and the Intake Worker have made reasonable efforts to make it possible for the child to return safely home, OR
- 4) If for good cause shown sufficient information is not available to make a finding as to whether those reasonable efforts were made to prevent the removal of the child from the home, a finding as to whether those reasonable efforts were made to make it possible for the child to return safely home and an order for the county department to file with the Court sufficient information to make a finding as to whether those reasonable efforts were made to prevent the removal of the child from the home by no later than 5 days after the date of the order
- 5) A statement that the Court approves the placement recommended by the Intake Worker or has given bona fide consideration to the recommendations made by the Intake Worker and all parties relating to the placement of the child

- 6) Case information documenting or referencing the specific circumstances on which the Court's findings are based

**Practice Considerations**

Permanency planning designed to serve the child/juvenile and family appropriately begins at this early stage of the proceedings. These written findings give guidance before disposition and satisfy Federal permanency planning legislation

48.213

**E. There are separate statutory provisions for adult expectant mothers**

## **CHAPTER FOUR**

### **COURT INTAKE SCREENING**

#### **4. COURT INTAKE DECISION – REFER TO COURT OR DIVERT**

48.067(6)-(9)  
938.067(6)-(9)

**A. Screen referral information in order to recommend that petition be filed, or informal disposition agreement in CHIPS cases or deferred prosecution agreement in JIPS or delinquent cases be entered, or case be closed.**

48.24(1), 938.24(1)

**B. Intake Worker to receive all information indicating that child/juvenile should be referred to Court as**

48.12, 938.12

1) Delinquent, or

48.13, 938.13

2) In need of protection or services (CHIPS or JIPS), or

938.17(2)

3) A civil law or ordinance violator when citation not issued

**C. Does NOT apply where citation issued for ordinance violation**

#### **5. INTAKE INQUIRY**

48.24(1), 938.24(1)

**A. Information indicating that a child/juvenile should be referred to Court must be referred to Intake Worker who must conduct Intake Inquiry on behalf of the Court**

48.24(7), 938.24(7)

1) If citation issued, not subject to Intake Inquiry

48.24(5), 938.24(5)

2) Recommendations by law enforcement must be included in information forwarded to the D.A.

### **Policy**

#### **Practice Considerations**

Statutes require that anyone who wants to refer a child/juvenile/adult expectant mother to Court must provide the referral information to Intake. Intake is crucial to the implementation of Court policies, particularly in defining the boundaries of Court intervention

It is also preferred practice that a CHIPS/JIPS petition filed by counsel or GAL for a child/juvenile, parent, relative, or guardian be screened by Intake prior to being filed. The purposes and mandates of the statutes and these policies are better served by a consistent application and screening by intake. However, if a CHIPS/JIPS referral is screened by Intake and a petition is not recommended, counsel or GAL may file the CHIPS/JIPS petition, as allowed by statute.

48.24(1), 938.24(1)

## B. Purpose

- 1) To determine whether facts available to establish Court's prima facie jurisdiction
- 3) To determine best interests child/juvenile and public with regard to any action taken

## Policy

### Practice Considerations

See Chapter 2, "Jurisdiction," for an explanation of jurisdictional grounds.

The CHIPS/JIPS jurisdictional categories may need to be considered together or in the alternative (one or the other of two things; giving an option or choice). Although an Intake referral may be received under a specific category, a resulting informal disposition/deferred prosecution agreement or petition to Court should reflect the most appropriate jurisdictional category(ies).

Example: A young child with severe head injuries is referred to Court Intake. Because of questions raised by parental statements, a petition is recommended alleging abuse 48.13(3) or, in the alternative, neglect 48.13(10).

The Intake Worker must determine that prima facie jurisdiction exists. Prima facie means on the face of the information given. The facts or elements needed to establish jurisdiction must be stated with sufficient supporting information. Proof of those facts or a resolution of disputed facts is an issue for the Court at later proceedings. Intake is not expected to be the Judge or jury and proof to the degree of clear and convincing evidence or beyond a reasonable doubt is not required.

If there is a conflict between the referral information provided by the child/juvenile and/or family, Intake may choose to accept the version on the referral to assess jurisdiction and to make an Intake determination. Intake may also request further information if it will be helpful in assessing the case for the Intake Inquiry.

If Intake has questions regarding jurisdiction, a consultation with the prosecutor is recommended.

Assessing the **best interest of the child and public** does not require an in-depth social history, such as the Court report. However, the following factors may be considered:

- o Seriousness of the alleged offense or situation including:
  - Intent;
  - Severity of personal injury;
  - Value of property taken – whether or not recovered;
  - Whether the situation is repetitive or isolated



- Impact of the allegation on any individual or the community
- Child's/juvenile's and family's previous and current contacts with services and Intake including:
  - The nature and outcome of these contacts
  - Whether a chronic, serious family problem continues to exist after efforts to improve the condition
- Age and maturity of the child/juvenile including:
  - Was the violation committed because of an immature impulse or was it premeditated?
  - What is the child/juvenile's degree of awareness regarding the severity of the violation?
  - Does the alleged condition or conduct involve a threat to the physical or mental condition of the child/juvenile?
  - Child/juvenile's willingness to take responsibility
- Attitude of the child/juvenile and family regarding the situation including:
  - Is the alleged condition or conduct in dispute?
- Attitude of the parents toward the child/juvenile's responsibility and their responsibility regarding the allegations and toward discipline of the child/juvenile including:
  - Lack of parental control or concern may be reflected by the time of day an offense occurred
  - Parental response to the presenting problem(s)
- Nature of the parent's control over the child/juvenile including:
  - Does the child/juvenile normally obey reasonable guidelines set by parent(s)?
- Child/juvenile's involvement with others in the act
- School attendance and behavior problems
- Strengths of the family and willingness to resolve problems
- Resources available to the family and community to provide appropriate care, treatment, and rehabilitation on a voluntary basis

- Child's/juvenile's and parent(s)'s willingness to receive services voluntarily
- Whether the alleged condition or conduct itself is not serious but:
  - Child/juvenile has problems at home, at school, or in the community
  - Child/juvenile and/or family is already under court-ordered supervision
- Recommendation of the referral source
- Whether any other referrals are pending
- Any other circumstances which indicate that settling the matter at Intake would be consistent with the welfare and safety of the child/juvenile and the protection of the public

**C. Time limits for Intake decision and filing petition**

48.24(5), 938.24(5)

- 1) Within 40 days of receipt of referral information Intake Worker must recommend that a petition be filed, enter into an information disposition/deferred prosecution agreement, or close case

In Int of JLW  
143 Wis. 2d 126  
(CA 1988)

- a. If Intake Worker refers case to another county, Intake Worker in new county has 40 days to complete Intake decision from date of receipt of referral

48.24(5)

- b. CHIPS cases may include information received more than 40 days before filing petition

**Policy**

**Practice Considerations**

All referrals to Intake will be dated upon receipt.

A referral to Intake at the conclusion of a CHIPS/JIPS assessment/ investigation must be clearly documented using the Non-Law Enforcement Referral form. The 40 days for the Intake Inquiry starts upon receipt of the Referral form.

While 40 days are available, the best interests of the child/juvenile and public suggest that the Intake decision be made as soon as possible.

48.24(5)

- 2) Judge may dismiss Chapter 48 case with or without prejudice where petition was not referred or filed within time limits, if extension was not granted by Judge

48.315  
938.24(5)  
938.24(3)

3) Judge must grant appropriate relief in Chapter 938 case

a. Where petition was not referred or filed within time limits

b. Failure to object waives that time limit

48.315, 938.315

4) Certain time periods are excluded in computing time requirements in Chapters 48 and 938

48.315(2), 938.315(2)

5) Continuance will be granted by Court only upon showing of good cause in open Court, or during a telephone conference on the record for only as long as is necessary, taking into account

a. Request or consent of prosecutor or parties

b. Interest of public in prompt disposition of cases

## Policy

### Practice Considerations

If additional time is needed beyond the 40 days allowed for an Intake Inquiry:

- Time must be scheduled with the Court for a hearing on the request before the 40 days expire.
- The appropriate prosecutor, the referral source, and the family should be informed of the request and the date and time of the hearing. This is not required by statute but allows others the opportunity to speak to the issue of good cause.
- The requesting Intake Worker must appear before the Court or by telephone conference to explain the request and answer any questions.
- A specific number of days or a certain date must be requested.
- The hearing will be on the record.
- Copies of the signed judicial authorization must be provided to the prosecutor and the family

### D. Intake interview or conference

48.24(2), 938.24(2)

1) Intake Worker may interview child/juvenile and parents face-to-face as part of Intake Inquiry

a. Interview is not mandatory

b. Intake Worker cannot compel

- Appearance of child/juvenile or any other person
- Participation in a multidisciplinary screen
- Production of any papers
- Visitation of any place

48.24(lm), 938.24(lm)

c. Must inform child/juvenile, parent(s), guardian, legal custodian that they may request counseling from dispositional services agency

**Policy**

**Practice Considerations**

An Intake Conference is not required prior to the Intake recommendation. A “paper review” of the provided referral information will be sufficient in some cases.

Example: A law enforcement referral is received alleging that a 12-year-old shoplifted a \$5.00 item from a local store. The referral states that when the parent was informed by the officer about the incident, the parent returned to the store with the juvenile. The juvenile apologized to the store manager and paid for the item out of his allowance. The juvenile has been restricted from the downtown area by the parents unless accompanied by one of them. This was the juvenile’s and family’s first contact with law enforcement and first Intake referral. Intake decision: case closed and letter sent to family informing them of the decision and the availability of a referral to voluntary services, if requested.

Example: A law enforcement referral is received alleging two counts of burglary by a 15-year-old juvenile. This juvenile was previously on a deferred prosecution for numerous counts of criminal damage and currently has a dispositional hearing scheduled as a result of another burglary incident. Prima facie jurisdiction on the new burglaries exists in the officer’s reports. Intake decision: case referred to the District Attorney recommending the filing of a delinquency petition.

An Intake interview with the family should be conducted whenever the Intake Worker believes there is potential for agreement or whenever there is reason to question any aspect of the family’s and referring agency’s prior relationship.

- 2) May be conducted only upon notice to child/juvenile, parent(s), guardian, and legal custodian

**Policy**

**Practice Considerations**

If a child/juvenile’s parents reside in another county but the child/juvenile is living in this county, the parent(s) may not be available to attend an Intake conference. They, along with the supervising agency and the current placement, must still receive notice of the conference. The parent(s) must receive a copy of an informal disposition/deferred prosecution agreement or a letter regarding a decision to close the case or refer to the District Attorney for the filing of a petition.

An informal disposition/deferred prosecution agreement is not automatically ruled out because of the child’s/juvenile’s current placement status.

48.243(1), 938.243(1)

- 3) Before conferring with child/juvenile and parents, Intake Worker must inform them of specified rights

48.243(3), 938.243(3)

- a. If temporary physical custody hearing or Intake conference not held, Intake Worker must advise of rights orally and in writing prior to plea hearing

**Policy**

**Practice Considerations**

The advisement of rights should be used as an opportunity to help the child/juvenile/adult expectant mother and family better understand the Court process. Intake should advise the child/juvenile/adult expectant mother and parent(s) of their rights in words that they can comprehend. It is preferable that children/juveniles, and adults as necessary, be asked to explain the concepts involved so that Intake can assess their understanding. The Notice of Rights form details the rights to be reviewed.

Example: You have a right to be represented by an attorney. Please tell me what you think an attorney’s job might be in Court?

The child’s/juvenile’s right to counsel at public expense begins at the custody hearing in all cases where secure custody is recommended or the plea hearing in all other cases and not at the Intake stage.

If a child/juvenile or parent(s) feels they cannot proceed with the Intake Conference without counsel, the Intake Worker may reschedule the Intake Conference allowing time for the child and parent(s) to consult an attorney. The parties should be informed that it will be difficult to recommend informal handling without the opportunity to discuss the referral and assess the child’s/juvenile’s and the family’s situation. If the family appears at Intake with an attorney, that attorney should be included in the conference. In all situations, the parties should be informed that the Intake Conference is not a Court proceeding, that the formal rules of evidence do not apply, and that the conference will be conducted by the Intake Worker.

If a waiver to Adult Court may be petitioned by the District Attorney, the advisement of rights should include an explanation of the possible adult criminal consequences. This is not meant to be a threat to the juvenile or parent(s) or an attempt to force them to accept an agreement. However, the explanation should enhance the juvenile's and parent's understanding of what could happen.

### 3. INTAKE OPTIONS

48.24(5), 938.24(5)

#### A. After conducting Intake Inquiry, Intake Worker has three options

- 1) Close the case (see B)
- 2) Enter into an informal disposition/deferred prosecution agreement (see C)
- 3) Recommend filing of petition (see D)

### Policy

#### Practice Considerations

A primary consideration for Intake is the degree of State intrusion necessary to protect the child or the community.

Before a petition is recommended, the following steps should have been taken, unless they are inappropriate because of a serious and imminent threat of harm to the child or community.

- The parent(s), guardian, or legal custodian were clearly apprised of the State's concern regarding their child/juvenile.
- The family was offered needed assistance in a manner in which they could reasonably be expected to comply. The manner in which child's/juvenile's and parent(s)' abilities and personalities and still be consistent with the child's/juvenile's welfare. Whenever there is a question about whether the child/juvenile and parent(s) might accept services, if offered in a different manner, the Intake Worker should make efforts to interview them as part of the Intake Inquiry.
- The Intake Worker should consider the appropriateness of other statutory remedies available to affect the status of child/juvenile, e.g. 48.373 Medical Authorization, Chapter 48 – Subchapter VIII – Termination of Parental Rights, Chapter 54 – Guardianship, Chapter 767 – Actions Affecting the Family.
- Referral sources should be encouraged to include a recommendation and justification if they feel a particular Intake option may be desirable. Intake should consider such recommendations but is not bound by them. By statute, law enforcement recommendations must be forwarded to the District Attorney along with the Intake decision.

- Intake decisions should not be based solely on the availability or cost of a specific dispositional alternative. While a decision to refer to Court may be based on a worker's determination that the services necessary cannot be provided without Court intervention, it would be premature for the Intake Worker to determine the availability or cost of specific disposition.
- Whenever a child/juvenile, parent, relative, or guardian seeks Court intervention and the Intake Worker decides not to refer the case to the prosecutor for a petition, the Worker should notify the party seeking Court intervention that he/she may petition the Court through his/her own attorney.

48.24(4), 938.24(4)

**B. Intake Worker may close case**

1) Availability

48.24(4), 938.24(4)

a. Intake Worker may close case, provided

48.24(1), 938.24(1)

- Available facts do not establish Court's prima facie jurisdiction, or

48.24(1), 938.24(1)

- Best interests of child and/or public do not require any further actions

48.24(4), 938.24(4)

b. Intake Worker may not close case where petition is already filed, unless petition is withdrawn by prosecutor

48.24(6), 938.24(6)

2) Must send written notice of determination to close case to prosecutor, which includes any recommendation from law enforcement

3) Prosecutor may initiate delinquency petition with 20 days of notice regardless of Intake Worker's decision to close case

4) Must send notice to notify victims that the case is being closed

**Policy**

**Practice Considerations**

Limited Intake and Court resources are best used for cases requiring an informal disposition/deferred prosecution agreement or formal petitioning. Intake conferences and/or further action is not required in all cases.

See Chapter 2, "Jurisdiction," for guidance regarding the required determination of prima facie jurisdiction. If jurisdiction does not exist, the case must be closed.

In assessing a case for potential closing, Intake should consider the factors listed previously in this chapter. Consideration should also be given to the following:

- Whether the referral is of a minor nature;
- Whether the child/juvenile and/or family has had little or no prior Court or law enforcement contact;
- Whether there are service needs contributing to the child/juvenile's and/or family's current situation;
- Whether the referral itself seems to be a deterrent;
- Whether the family has taken effective remedial steps;
- Whether a referral for voluntary services without ongoing Intake or Court involvement is appropriate.

48.24(4), 938.24(4)

**C. Intake Worker may enter informal disposition/deferred prosecution agreement**

1) Availability

a. Intake Worker may enter into a written agreement provided

48.245(1), 938.245(1)

- Intake Worker, child/juvenile, parent, guardian, and legal custodian agree

48.24(1), 938.24(1)

- Prima facie facts establish jurisdiction of Court

48.245(1), 938.245(1)

- Neither interests of child nor public require filing of petition

b. Intake Worker may not enter into a written agreement where

48.24(4), 938.24(4)

- Petition has already been filed, unless petition is withdrawn by prosecutor

48.24(1), 938.24(1)

- Prima facie facts for jurisdiction do not exist
- Child/juvenile, parent, guardian, or legal custodian object



## Policy

## Practice Considerations

See Chapter 2, "Jurisdiction," for guidance regarding the required determination of prima facie jurisdiction.

If jurisdiction does not exist, the case must be closed. However, Intake may still assist the family by making referrals for voluntary services in appropriate situations.

In assessing a case for possible informal disposition/deferred prosecution, Intake should consider the factors listed previously.

If the alleged criminal law violation is for sexual assault or exploitation under 940.225, 948.02, 948.025, 948.05 or 948.06, the victim may want an order requiring the referred juvenile to submit to HIV testing. The Court can only order such testing if a delinquency petition is filed. In this situation, a recommendation for the filing of a petition must be made to the District Attorney with a notification that the victim has requested HIV testing.

### 2) Procedure

- |                                 |  |
|---------------------------------|--|
| 938.245(1m)                     | a. Before entering a deferred prosecution agreement, Intake Worker must offer victims an opportunity to confer with the Worker concerning the proposed agreement   |
| 48.245(3), 938.245(3)           | b. Informal disposition/deferred prosecution agreement must include written obligations imposed on parties and effective date.   |
| 48.245(2)(b), 48.245(r)         | c. Limitations <ul style="list-style-type: none"><li>○ May not exceed <u>6 months</u> for Chapter 48 with a 6-month extension</li><li>○ May not exceed <u>one year</u> for Chapter 938</li><li>○ May not include any form of placement</li></ul> |
| 938.245(2)(b),<br>938.245(2)(a) |  |
| 48.245(2)(b), 938.24(2)(b)      |  |
| 48.245(3), 938.245(3)           | d. Intake Worker must distribute copies of written agreement <ul style="list-style-type: none"><li>○ To child/juvenile, parent(s), guardian, and legal custodian</li><li>○ To any agency providing services under the agreement</li></ul>        |

## Policy

## Practice Considerations

Obligations imposed under an agreement should be reasonable and appropriate given the referred situation, conduct, or offense. The obligations should be tailored to the particular child's/juvenile's and family's needs and strengths. The child/juvenile and family should be consulted as to their assessment of the situation and appropriate obligations.

Agreement obligations should include any action(s) for which the Intake Worker or another agency/provider agrees to be responsible, e.g., referral to a counseling agency, contact with the agreed-upon supervisor.

A shorter period of time than the allowed maximums may be appropriate for the completion of the agreed-upon obligations.

The Intake Worker should inform the child/juvenile and parents that the District Attorney has 20 days to review the agreement and has the authority to over-ride the agreement by filing a petition.

48.245(4), 938.245(4)

- e. Intake Worker must inform, in writing, child/juvenile, parent(s), guardian, and legal custodian of right to object to the agreement at any time
  - o May object generally or to any term of the agreement
  - o Intake Worker may respond by altering terms of agreement or recommend that a petition be filed

48.24(5), 938.24(5)

- f. Intake Worker must send written notice to prosecutor
  - o In a delinquency case, notice must include summary of facts surrounding the allegation and list of prior Intake referrals and dispositions
  - o Must include any recommendation from law enforcement
  - o Prosecutor may file petition within 20 days of notice regardless of agreement entered by Intake Worker

48.245(5m)  
938.24(5)  
938.245(6)  
938.24(2)(b)

- 4) Termination of informal dispositions/deferred prosecution agreement
- 48.245(5), 938.245(5) a. Upon request of child/juvenile, parent(s), guardian, or legal custodian
  - 48.245(5m), 938.245(6)  
48.25(2), 938.25(2)(b) b. Upon filing of petition by District Attorney within 20 days after receipt of notice of an agreement, statements made to Intake Worker are inadmissible
  - 48.245(7), 938.245(7) c. If Intake Worker determines that obligations imposed under agreement are not being met, Intake Worker may cancel informal disposition/deferred prosecution
    - o Must notify prosecutor of cancellation within 10 days
    - o Must recommend if petition should be filed or not
    - o In Chapter 938, Intake Worker may recommend filing of petition for parent(s), guardian, or legal custodian to show good cause for not meeting obligations which may result in \$1000 forfeiture
  - 938.245(7)(b)

**Policy**

**Practice Considerations**

If the child/juvenile or family does not meet a particular obligation of the agreement, the appropriateness of the obligation and/or altering the terms of the agreement should be considered. An automatic referral to the prosecutor should not be presumed.

- 48.245(8), 938.245(8) d. If obligations imposed under informal disposition/deferred prosecution agreement are met at expiration of effective date
  - o Intake Worker must inform child/juvenile, parent(s), guardian, and legal custodian in writing
  - o No delinquency petition may be filed or citation issued on allegations that brought about agreement/deferred prosecution
  - o Allegations that brought about informal disposition/deferred prosecution may not be sole basis for any CHIPS/JIPS petition

## Policy

## Practice Considerations

Statutes provide protection against self-incrimination when children/ juveniles and families enter agreements with Intake only in the situation where the District Attorney over-rides that agreement by filing a petition within the allowed 20 days. Statements made to the Intake Worker are inadmissible as evidence in those cases.

In CHIPS or JIPS cases or in delinquency cases, when an agreement is not entered or is terminated by Intake or the child, a similar protection does not exist by statute. This underscores the importance of informing a child/juvenile and parent(s) of the right to remain silent.

If an agreement is entered, the family must be informed that the District Attorney has a statutory opportunity to over-ride the agreement by filing a petition with 20 days.

If Intake is concerned that the District Attorney may file a petition after a particular agreement is filed, the Worker should meet with the District Attorney as soon as possible to discuss the underlying reasons for the decisions.

### D. Intake Worker may refer case to Court

48.24(3), 938.24(3)  
48.09, 938.09

In Int of Antonio MC  
182 Wis. 2d 301  
(CA 1994)

48.5(3), 938.25(3)

48.25(2)(b), 938.25(2)(b)

48.25(2)(a), 938.25(2)(a)

- 1) Intake Worker requests filing of petition by prosecutor
  - a. Intake Worker need not specifically request filing of petition. Referral from Intake to District Attorney requesting that s/he "review and advise" is adequate
  - b. If prosecutor refuses to file petition
    - o Judge may order filing on request of any person or on own motion
    - o Judge must hold hearing on request
    - o Judge who orders filing may not hear matter
  - c. If Intake Worker refuses to recommend petition, prosecutor has 20 days after receipt of notice of case closure or deferred prosecution cases to file petition
- 2) Prosecutor must within 20 days
  - a. File petition, or
  - b. Close case, or

- c. Refer case back to Intake Worker
- d. With notice to Intake, refer back to law enforcement agency investigating the case

3) Cases referred back to Intake Worker

- a. If prosecutor declines to file petition, Intake Worker has 20 days
  - o To close case, or
  - o To enter into an informal disposition/deferred prosecution agreement
- b. If prosecutor determines further investigation is necessary, appropriate agency or person has 20 days to complete investigation
- c. 20-day time limit may be extended

48.315, 938.315

- o Only by Judge
- o Upon showing of good cause

48.25(2)(a), 938.25(2)(a)

- d. Where further investigation is completed
  - o Case may again be referred for petition
  - o Case must be considered by prosecutor as a new referral for a decision within 20 days

**Policy**

**Practice Considerations**

See Chapter 2, "Jurisdiction," for guidance regarding the required determination or prima facie jurisdiction.

In assessing a case for the possible filing of a petition, Intake should consider the factors listed previously.

The Children's and Juvenile Justice Codes do not require the filing of a petition for particular offenses or circumstances. CHIPS, JIPS, and delinquency cases require an Intake Inquiry addressing the sufficiency of jurisdiction and the best interest of the child and the public.

There is a presumption that certain cases will be referred to the prosecutor for the filing of a petition. This presumption may be mitigated by special circumstances and the consideration of the factors listed previously.

There is a presumption that the following types of cases will be referred for the filing of a petition:

- Acts of aggression toward people including:
  - Homicide
  - First, Second, and Third degree sexual assault
  - Robbery
  - Felony battery
  - Arson
  - Bomb scares
  - A crime involving the use of a dangerous weapon
- New delinquency referrals when a juvenile is already subject to Court delinquency jurisdiction or when a delinquency petition is pending adjudication or disposition.
- Circumstances where the child is at risk from his/her surroundings and voluntary intervention or services are considered inadequate to protect the child.
- Circumstances where the protection or service needed by the child/juvenile can only be provided pursuant to a Court order.

Example: A child and her family have been voluntarily cooperating in counseling, evaluations, and specialized school programming directed at child's aggressive acting out behaviors. After 6 months of intensive services, the school, psychologist, social worker, and family have all come to the conclusion that a more structure, specialized treatment group home is needed. Intake decision: referral to the prosecutor requesting a JIPS petition which the parent(s) are willing to sign.

A petition request, with attached copies of referral information, should be brief, factual, and contain:

Identification of child/juvenile and appropriate family, guardian, legal custodian, etc., and addresses;

Current allegation including statutory references;

Listing of previous referrals and dispositions;

Possible services or protections the Court could order;

Appropriateness of considering consent decree;

Appropriateness of waiver to adult Court and potential reasons;

Reasons for recommendations.