JUVENILE OFFENDER DISPOSITIONS AND WAIVER OF JUVENILE COURT JURISDICTION UNDER THE WISCONSIN CHILDREN'S CODE

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INTRODUCTION

This Research Bulletin was prepared for the Legislative Council's Special Committee on Juvenile Justice Issues. The Special Committee was established by the Legislative Council by a May 25, 1988 mail ballot. The Legislative Council directed the Special Committee to study: (1) the cost-effectiveness of current and alternative dispositions of juveniles; and (2) judicial and administrative procedures utilized in delinquency proceedings, including the authority and procedures for pretrial detention.

This Research Bulletin provides general background information on the Children's Code [ch. 48, Stats.] and the dispositional alternatives authorized under the Code. [This Bulletin updates RB 84-1 (August 20, 1984).] This Research Bulletin also discusses the authority and procedure under the Children's Code for: (1) extended jurisdiction of the juvenile court over persons who commit certain serious offenses; and (2) waiver of juveniles into adult court.

This Bulletin is divided into the following parts: Part I summarizes the Children's Code; Part II describes juvenile dispositions for law violations; Part III discusses dispositional procedures; Part IV discusses post-dispositional procedures; Part V describes provisions permitting extended jurisdiction of the juvenile court over persons who commit certain serious offenses; and Part VI sets forth the authority and procedure for waiving juvenile jurisdiction.

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PART I

SUMMARY OF CHILDREN'S CODE PROVISIONS

A. PURPOSE OF THE CHILDREN'S CODE

Current ch. 48, Stats. (the Children's Code), was created by Ch. 354, Laws of 1977. That Act not only established more due process protections for children in the judicial system, but also created a wide range of dispositional alternatives for use by the juvenile court.

Express legislative purposes of the Code, as set forth in s. 48.01, Stats., include:

1. To provide judicial and other procedures through which children and all other interested parties are assured fair hearings and their constitutional and other legal rights are recognized and enforced, while protecting the public safety.

2. Consistent with the protection of the public interest, to remove from children committing delinquent acts the consequences of criminal behavior and to substitute therefore a program of supervision, care and rehabilitation.

3. To divert children from the juvenile justice system to the extent this is consistent with protection of children and the public safety.

4. To respond to children's needs for care and treatment through community-based programs and to keep children in their homes whenever possible.

Current law specifies that, under the Code, the best interests of the child must always be of "paramount consideration," but that the court must also consider the interests of the parents or guardian of the child and the "interests of the public" [s. 48.01 (2), Stats.].

B. JURISDICTION OF JUVENILE COURT

The Children's Code specifies the circumstances in which the juvenile court has jurisdiction. Jurisdiction is a term which defines whether a court has authority to act in a case. If a case does not fall within the circumstances described in the Code, the juvenile court is not permitted to act in that case.

The juvenile court has jurisdiction over various types of cases involving juveniles, such as neglected children, adoptions, termination of parental rights cases and so forth. However, the court's jurisdiction over actions based on violations of law are most pertinent to the subject of juvenile dispositions. The Code gives juvenile courts the five general areas of jurisdiction over law violations described below.

1. Delinquency

The juvenile court has "exclusive jurisdiction" over children who are at least 12 years of age but less than 18 and who are alleged to be delinquent -- i.e., to have violated any federal or state criminal law. "Exclusive jurisdiction" means that the juvenile court is the only court which has authority to hear this type of case. The only exceptions to this exclusive jurisdiction are: (a) cases involving certain motor vehicle and boating laws (discussed in item 4, below); and (b) cases in which the juvenile court has "waived" its jurisdiction, thereby transferring the case to adult court. [See Part VI of the Research Bulletin.]

Jurisdiction of the juvenile court may be extended beyond 18 years of age for children who are adjudged delinquent based on having committed certain serious offenses (e.g., first-degree murder). [See Part V of the Research Bulletin.]

2. Civil Laws or Ordinances

Except for "safety at sporting events" violations and violations discussed in items 3 and 4, below, the juvenile courts have concurrent jurisdiction with municipal courts in proceedings against a child aged 14 or older for violations of county, town or other municipal ordinances. "Concurrent jurisdiction" means that both the juvenile court and the municipal court have authority to handle a case. With reference to "safety at sporting events" violations under s. 167.32, Stats. (e.g., body passing) or a local ordinance strictly conforming to that statute, courts of criminal or civil jurisdiction have exclusive jurisdiction in proceedings against children for such violations.

It should be noted that there is a special statute covering a person under 18 years of age but within three months of his or her 18th birthday, who is alleged to have committed a violation of various child-related alcohol beverage laws in ch. 125, Stats. (e.g., underage drinking). In these cases, the juvenile court may dismiss the citation and refer the matter to the district attorney for prosecution of the person as an adult. The purpose of this statute is to avoid a situation in which, due to a crowded calendar, the juvenile court is not able to hear the case before the person's 18th birthday, the age at which the juvenile court loses

jurisdiction over the person. Current law specifies that the person is entitled to a hearing in juvenile court only on the issue of age [s. 48.344 (3), Stats.].

3. Truancy Ordinance Violations

Current law authorizes counties, cities, villages or towns to enact ordinances prohibiting a child from being an "habitual truant." "Habitual truant" means a pupil who is absent from school without an acceptable excuse for either:

a. Part or all of five or more days out of 10 consecutive days on which school is held during a school semester; or

b. Part or all of 10 or more days on which school is held during a school semester [ss. 48.02 (9m) and 118.16 (1) (a), Stats., created by 1987 Wisconsin Act 285].

The juvenile courts have concurrent jurisdiction with municipal courts in proceedings against a child for a violation of such an ordinance. However, before either a juvenile court or a municipal court may exercise jurisdiction over a child alleged to have violated a municipal truancy ordinance, evidence must be provided by the school attendance officer that certain actions set forth in s. 118.16 (5), Stats., have been completed. One such required action is that, during the school year in which the truancy occurred, school personnel have met with the child's parent or guardian to discuss the child's truancy or have attempted to meet with such person and been refused [s. 48.17 (2) (a) (intro.), Stats., as affected by 1987 Wisconsin Act 285].

4. Traffic and Boating Violations

With three statutory exceptions, the adult criminal and civil courts have exclusive jurisdiction in proceedings against a child 16 or older for violations of traffic, snowmobile and boating laws, whether brought under state statute or conforming local ordinances. The three violations covered by the exceptions, in which the juvenile court has exclusive jurisdiction to act, are:

a. When the charge relates to false statements in an application for a certificate of title for a motor vehicle [s. 342.06 (2), Stats.].

b. When the charge is that proof relating to the motor vehicle financial responsibility laws was forged [s. 344.48 (1), Stats.].

c. When the charge is failure to perform required duties of a driver who strikes a person or vehicle and death or injury occurs [s. 346.67, Stats.].

Current law confers jurisdiction on the juvenile court for these three violations "because they are punishable as felonies in the adult [criminal] system and are to be treated as any other serious delinquent act" [Wisconsin Juvenile Court Practice, Youth Policy and Law Center, p. 7 (1978)].

A child convicted of a traffic or boating offense in adult criminal or civil court is treated as an adult for sentencing purposes, except that the court may disregard any minimum period of incarceration specified for the offense [s. 48.17 (1), Stats.].

5. Children Under Age 12 Who Commit Delinquent Acts; Status Offenders

The juvenile court has exclusive jurisdiction over a child under the age of 12 who is alleged to be in need of protection or services because he or she has committed a delinquent act (i.e., a violation of a state or federal criminal law). Treatment of these children as children in need of protection or services, rather than as delinquents, apparently reflects a legislative judgment that children under 12 are too young to accept responsibility for their delinquent acts.

"Status offenders" are also treated as children in need of protection or services under the Code. "Status offenses" are acts committed by children (e.g., truancy from school; running away from home) which would not be considered offenses if committed by adults, but which subject children to the jurisdiction of the juvenile court. In general, status offenders are subject to the exclusive jurisdiction of the juvenile court. However, if a municipal truancy ordinance is involved, a municipal court has concurrent jurisdiction with the juvenile court in proceedings against a child for violation of the ordinance (see item 3, above) [ss. 48.13 (6) and (12) and 48.17 (2) (a) (intro.), Stats., as affected by 1987 Wisconsin Act 285].

C. COMMENCEMENT AND CONTINUATION OF JUVENILE PROCEEDINGS

In order to commence proceedings for a child in juvenile court, the child must be under the age of 18 at the commencement of proceedings. If a child commits a violation of criminal law before age 18, but a petition in juvenile court is not filed until he or she reaches age 18, the child must be prosecuted in adult criminal court. However, a prosecutor cannot delay proceeding against a child, either intentionally or negligently, for

the purpose of avoiding juvenile court jurisdiction [State v. Avery, 80 Wis. 2d 305 (1977)].

Jurisdiction of the juvenile court ends when the child becomes 18, even if court proceedings are pending. The only exceptions are:

1. Dispositional orders entered before the child becomes 18 may be extended up to one year from the date of entry of the order. [Extension of dispositional orders is discussed in detail in Part IV, C, of the Research Bulletin.] If a delinquency proceeding against a child is still pending (i.e., has not been adjudicated) when the child becomes 18, the juvenile court retains jurisdiction to: (a) dismiss the case with prejudice (i.e., the case is at an end and a new case cannot be commenced based on the same act); (b) waive its jurisdiction to adult criminal court; or (c) enter a consent decree placing the child under supervision.

2. If a child commits certain specified crimes, is adjudged delinquent on that basis and legal custody of the child is transferred to the Department of Health and Social Services (DHSS), jurisdiction of the juvenile court may be extended to a maximum of age 21 or age 25, depending on the offense committed. [Extended court jurisdiction is discussed in detail in Part V of the Research Bulletin.]

D. STAGES IN THE JUVENILE JUSTICE PROCESS

The processing of a child, who has committed a law violation, through the juvenile justice system involves three major stages: intake, adjudication and disposition. The following description of these three stages is based, in part, on Wisconsin Juvenile Court Practice, supra, pp. 12-14 (1978).

1. Intake

"Intake" refers to the screening stage in the juvenile justice process. Based on information received about the child and the child's offense, a court intake worker determines whether jurisdiction for the case exists under the Children's Code. If jurisdiction does not exist, no further action may be taken, other than to dismiss the case. If jurisdiction does exist, the court intake worker, weighing a variety of factors (e.g., age, severity of offense and family situation) determines the course of action that is in the best interests of the child and the public.

The intake worker may take one of two basic courses of action when jurisdiction exists:

a. Initiate an informal disposition procedure which may consist, for example, of counseling and release or referral to another agency.

b. Recommend that a petition be filed by the district attorney or corporation counsel for formal adjudication and disposition in the juvenile court.

2. Adjudication

The adjudication stage begins after referral of a child for formal processing in the juvenile court system. In this stage, a petition is filed by the district attorney or corporation counsel, formal hearings are held and a determination is made as to whether the child is delinquent or is in need of protection and services.

Adjudication procedures in juvenile court in delinquency cases are similar to those followed in the criminal court system. The primary distinctions between the delinquency adjudication process and a criminal trial are that in a delinquency process:

a. A petition is filed, instead of a complaint or an information.

b. The child does not plead guilty or not guilty, but instead admits or denies the allegations of the petition.

c. The court may divert the delinquency action, without a formal adjudication, by accepting a consent decree filed by the child and the state, in which the child agrees to abide by certain conditions.

d. No hearing is held at an early stage to determine if there is probable cause to believe the child committed the act, unless the child is to be held in detention during the delinquency adjudication process.

e. The child obtains a jury trial only by requesting one; it is not automatic as it is in a criminal case.

f. An adjudication of delinquency for a particular charge is not tied to a particular range of dispositions; such an adjudication merely indicates a formal finding that it is necessary for the state to intervene in the child's life.

3. Disposition

In the disposition stage of the juvenile justice process: (a) the needs of the child are evaluated and a particular course of treatment is recommended; (b) a hearing is held on the recommendation; and (c) the disposition chosen at the hearing is carried out.

The court has continuing jurisdiction to modify and review the implementation of the disposition order. Also, the person or agency receiving custody of the child has an opportunity to return to court to have the dispositional order modified or extended. The disposition process is discussed in detail in Parts II to V of this Research Bulletin.

PART II

DISPOSITION OF JUVENILES FOR LAW VIOLATIONS

A. JUVENILE DISPOSITIONAL ALTERNATIVES

1. Meaning of "Disposition"

"Disposition" is the term used in the juvenile justice system to describe the process by which the court determines what "treatment" a child is to receive. Adult criminals are sentenced; children adjudged to be delinquent or in need of protection or services are subject to a dispositional order. This concept is discussed in Wisconsin Juvenile Court Practice, supra, at p. 191, as follows:

> In the criminal justice system, each crime has a legislatively determined sentence within which the judge must exercise his sentencing discretion. In the juvenile justice system this is not the case. Once a juvenile has been adjudicated delinquent for any act, the court may select one or more dispositional alternatives listed in the statute for juveniles adjudged delinquent. Theoretically, each juvenile's problems are to be treated individually with the legislatively determined seriousness of the crime only one of the factors to be considered. A juvenile found to have committed armed robbery may receive the same disposition as one found to have operated a motor vehicle without the owner's consent. Furthermore, in the juvenile justice system the statutory structure attempts to provide a wide variety of possibilities for disposition.

2. Limits on Juvenile Dispositions

The Children's Code contains the following two provisions which limit interference with the family relationship by a juvenile court disposition:

First, there is a presumption against removal from the family. This presumption is derived from several statutory provisions. In s. 48.01 (1) (e), Stats., one of the stated legislative purposes of the Children's Code is to "keep children in their homes whenever possible." In addition, s. 48.355 (1), Stats., provides, in part, that:

> Wherever possible the family unit shall be preserved and there shall be a policy of transferring custody from the parent only where there is no less drastic alternative.

Second, the least restrictive disposition requirement is also set forth in s. 48.355 (1), Stats., as affected by 1987 Wisconsin Act 27. That provision states:

> The disposition shall employ those means necessary to maintain and protect the child's well-being which are the least restrictive of the rights of the parent or child and which assure the care, treatment or rehabilitation of the child and the family, consistent with the protection of the public. [Underlined language inserted by Act 27.]

3. Dispositional Alternatives

Under the Children's Code, an informal disposition of the juvenile may occur at the intake level or the parties may enter into a consent decree suspending the proceedings. If neither of these actions occur, there are four alternative sets of formal dispositions available:

a. For children adjudged delinquent.

b. For children adjudged to be "habitual truants."

c. For children adjudged to be in need of protection or services (so-called "CHIPS" cases).

d. For children adjudged to have violated civil laws and ordinances.

B. INFORMAL DISPOSITION DURING INTAKE

1. Intake Worker Review

The initial review of a matter referred to juvenile court is undertaken as part of the intake process. Current law provides that a child must first be referred to an intake worker, if information indicates that a child should be referred to juvenile court as delinquent, is in need of protection or services or is in violation of a civil law or municipal ordinance.

The intake worker must conduct an intake inquiry on behalf of the court to determine: (a) whether the facts of the case establish prima

facie juvenile court jurisdiction; and (b) what will be in the best interests of the child and of the public with regard to any action taken [s. 48.24 (1), Stats.].

It should be noted that 1987 Wisconsin Act 339 affects the intake process and the informal dispositions available during intake, as follows:

a. The Act creates a juvenile alcohol and other drug abuse pilot program to develop juvenile intake and court procedures. Under these procedures, juvenile courts may screen and assess minors for alcohol and drug abuse-related problems and order new dispositional alternatives for minors with needs and problems related to alcohol and other drug abuse. The Act directs the DHSS to select those counties which will participate in the pilot program, in accordance with request for proposal procedures established by the DHSS.

b. The Act requires the DHSS to develop a multidisciplinary screening instrument, to be used by juvenile court intake workers in the participating pilot counties, to determine if a child is at risk of having needs or problems relating to alcoholism or to developing a drug dependency.

c. The Act requires juvenile court intake workers in participating pilot counties to conduct a multidisciplinary screen of a child in any of the following circumstances:

> (i) The child is alleged to have committed a violation of the controlled substances laws under ch. 161, Stats.
>
> (ii) The child is alleged to be delinquent or in need of protection and services and has had at least two adjudications under the state or local under age drinking laws.
>
> (iii) The child is alleged to have committed any offense which appears to be motivated by the child's need to purchase or otherwise obtain alcohol or other drugs.
>
> (iv) The child is 12 years of age or older and requests or consents to the screen or agrees to a screen requested by the child's parents.
>
> (v) The child is under 12 years of age and the child's parents request the screen.

Under the Act, no child may be compelled to participate in the multidisciplinary screen [ss. 48.24 (2) (a) and (2m) (a) and 48.547, Stats., created by 1987 Wisconsin Act 339].

2. Written Agreement

The intake worker is permitted to enter into a written agreement, with all the parties, which imposes an informal disposition if:

a. The intake worker has determined that neither the interests of the child nor the public require that a petition be filed in juvenile court;

b. The facts persuade the intake worker that the jurisdiction of the court, if sought, would exist; and

c. The child and the child's parent, guardian or legal custodian consent to the informal disposition.

An informal disposition may provide for any of the following:

a. That the child appear with a parent, guardian or legal custodian for counseling and advice.

b. That the child and the parent, guardian or legal custodian "abide by such obligations as will tend to ensure the child's rehabilitation, protection or care" (e.g., attending school on a regular basis).

c. That in counties participating in the pilot program, the child submit to an alcohol and other drug abuse assessment that conforms to statutory criteria and that is conducted by an approved treatment facility. The purpose of the assessment is to examine the child's use of alcohol beverages or controlled substances and any medical, personal, family or social effects caused by such use. The assessment is done only if a multidisciplinary screen of the child, conducted as part of the intake process, shows that the child is at risk of having needs and problems related to the use of alcohol beverages or controlled substances and its medical, personal, family or social effects.

d. That, in counties participating in the pilot program, the child participate in an alcohol and other drug abuse outpatient treatment program or an education program relating to the abuse of alcohol beverages or controlled substances, if an assessment conducted under item c, above, recommends outpatient treatment or education.

An informal disposition may not include any form of residential treatment and, with one exception, may not exceed six months. If the

informal disposition is based on allegations that the child is habitually truant and that the child is in need of protection or services, the informal disposition may not exceed one year.

If the obligations imposed under the informal disposition are met, the intake worker must so inform the child and the child's parent, guardian or legal custodian in writing. Under these circumstances, no petition may be filed or citation issued on the charges that brought about the informal disposition [s. 48.245, Stats., as affected by 1987 Wisconsin Acts 27, 285 and 339].

3. Termination of Agreement

An informal disposition may be terminated in one of the following ways before its terms are completed:

a. The child or the parents may object to the terms of the agreement at any time. In that case, the intake worker may either alter the agreement to meet the objection or recommend to the district attorney or corporation counsel that a petition be filed.

b. The child or the child's parent, guardian or legal custodian may request that the informal disposition be terminated at any time.

c. When the intake worker notifies the district attorney of the informal disposition in an alleged delinquency case, the district attorney is permitted to file a petition within 20 days which terminates the informal disposition.

d. The intake worker may cancel the informal disposition, if he or she determines that the obligations imposed under it are not being met, and may request that the prosecutor file a petition [s. 48.245 (4) to (7), Stats., as affected by 1987 Wisconsin Act 339].

4. Diversion of Cases

In referring to informal-type dispositions, mention should also be made of the diversion of juvenile cases by law enforcement officers. As noted in Wisconsin Juvenile Court Practice, supra, p. 32:

> Even if an officer files a written report on an incident or takes the juvenile into custody, the juvenile need not be referred to the juvenile court. The incident may be disposed of by a station adjustment, which is usually a counseling of or warning to the juvenile in the presence of the parents, or by diverting the case to a

non-court community resource such as a youth service bureau, counseling service, or community recreation program.

C. CONSENT DECREE

1. Nature of the Decree

At any time after the filing of a delinquency or a CHIPS petition and before the entry of judgment, the judge or juvenile court commissioner may suspend the proceedings and place the child under supervision in the child's own home or present placement. The court may establish terms and conditions applicable to the child and to the parent, guardian or legal custodian. The court's order is known as a consent decree and must be agreed to by: (a) the child if 12 years of age or older; (b) the parent, guardian or legal custodian; and (c) the district attorney or other person filing the petition. All parties must receive written copies of the decree.

In counties participating in the juvenile alcohol and other drug abuse pilot program, described in Section B, 1, above, if the petition alleges that the child committed a violation specified under ch. 161, Stats. (the Controlled Substances Act), and if the multidisciplinary screen shows that the child is at risk of having needs and problems related to the use of alcohol beverages or controlled substances, then the court may establish any of the following as a condition of the consent decree:

a. That the child participate in outpatient treatment from an approved treatment facility for alcohol and other drug abuse, if an alcohol and other drug abuse assessment has been completed in accordance with statutory criteria.

b. That the child participate in a court-approved education program that is related to alcohol and other drug abuse.

2. Duration of the Initial Consent Decree

The initial duration of the decree may be set by the court for up to six months, except that if the child is alleged to be "habitually truant" the decree may be set for up to one year. If the child satisfactorily completes the period of supervision, the consent decree expires and the original petition must be dismissed "with prejudice." That is, the child then may not be proceeded against in any court for the offense alleged in the petition or for an offense based on the same conduct. However, the expiration of the consent decree and dismissal of the petition do not

preclude a civil suit against the child or the parent for damages arising from the child's conduct.

3. Extension of the Decree

Upon the motion of the court or the application of the child, parent, guardian, legal custodian, intake worker or any agency supervising the child under the consent decree, the court may, after giving notice to any parties to the consent decree and their counsel, extend the decree for up to an additional six months in the absence of objection to extension by the parties to the initial consent decree. If the parent, guardian or legal custodian objects to the extension, the judge must schedule a hearing and make a determination on the issue of extension.

4. Termination of the Decree

Prior to discharge by the court or the expiration of the consent decree, the court may terminate the decree if it finds:

a. That the child or the parent, guardian or legal custodian has failed to fulfill the express terms and conditions of the consent decree; or

b. That the child objects to the continuation of the consent decree.

If the court terminates the consent decree, the formal juvenile court proceedings relating to the child are continued as if the consent decree had never been entered [s. 48.32, Stats., as affected by 1987 Wisconsin Acts 27, 285 and 339].

D. FORMAL DISPOSITIONS OF CHILD ADJUDGED DELINQUENT

If the court adjudges a child delinquent, the court must enter an order prescribing the dispositions of the case under a care and treatment plan. The dispositions available to the court for a child adjudged delinquent, as set forth in s. 48.34, Stats., as affected by 1987 Wisconsin Acts 27, 285, 339 and 403, are discussed below.

The dispositions which provide for placement in a correctional facility (item 6) and a forfeiture (item 11) are exclusive and may not be combined with any other disposition. However, either of these dispositions may be combined with the disposition placing restrictions on the child's use of computers (item 7).

In addition to the court-ordered dispositions discussed in this Section, the Governor may become involved when a child is a foreigner. If

a treaty is in effect between the United States and a foreign country, which allows a child adjudged delinquent who is a citizen or national of the foreign country to transfer to the foreign country, the Governor may commence a proceeding to transfer the child to the foreign country at the request of the child and the child's parent, guardian, legal custodian or the juvenile court.

1. Counseling

The court may require that the child or the parent, guardian or legal custodian seek counseling. This disposition usually is limited to cases where serious law violations are not involved or where the child is already engaged in a voluntary program of counseling [Wisconsin Juvenile Court Practice, supra, p. 213].

2. Supervision

The court may place the child under supervision of (a) an "agency" (e.g., the county social services department); (b) the DHSS if the DHSS approves; or (c) a suitable adult, including a friend of the child. The supervision is under conditions prescribed by the judge. The judge may prescribe reasonable rules, both for the child's conduct and the conduct of the child's parent, guardian or legal custodian, "designed for the physical, mental and moral well-being and behavior of the child."

> Supervision usually means that the juvenile is required to report to a probation officer monthly, generally at the office of the probation officer. Changes in school, jobs, or residence must be reported. A wide variety of conditions may be imposed, ranging from a requirement that juveniles stay out of trouble or obey their parents to making restitution or obtaining psychiatric treatment.... The usual source of probation services is a county agency, either the county social services agency or staff attached to the juvenile court or a combination of these agencies [Wisconsin Juvenile Court Practice, supra, pp. 194-95].

3. Supervision at Home

The court may place the child in his or her home under the supervision of an agency. Agency includes the DHSS, a county department of social services or human services or a licensed child welfare agency. The court may order the agency to provide specified services to the child and the child's family. The services may include, but are not limited to,

individual or group counseling, homemaker or parent aide services, housing assistance, day care or parent skills training.

4. Placement Outside the Home

The court may designate one of the following five placements for the child:

a. The home of a relative of the child; "relative" is defined as a parent, grandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle or aunt by either blood or marriage.

b. A nonrelative home which need not be licensed as a foster home, if placement is for less than 30 days.

c. A licensed foster home, which is defined as a facility operated by a person who provides care and maintenance for no more than four children unless all the children are brothers and sisters.

d. A licensed group home, which is defined as a facility operated by a person required to be licensed by the DHSS for the care and maintenance of five to eight children.

e. A residential treatment center licensed under s. 48.60, Stats., which requires a person providing care and maintenance for 75 days in any consecutive 12-month period for four or more children at any one time to obtain a license from the DHSS to operate a child welfare agency.

5. Transfer Legal Custody to Relative or Agency

If it is shown that the rehabilitation or the treatment and care of the child cannot be accomplished by means of "voluntary consent" of the parent or guardian, the court may order the transfer of "legal custody" to (a) a relative of the child; (b) a county department of social services or human services; or (c) a licensed child welfare agency.

"Legal custody" is defined in the Code to mean a legal status created by the order of a court which confers the right and duty to protect, train and discipline the child and to provide food, shelter, legal services, education and ordinary medical and dental care. These duties are limited by the rights of the guardian for the child and any court order [s. 48.02 (12), Stats.].

The "voluntary consent" provision "was designed to significantly limit transfers of legal custody to cases where either the parent or guardian will not cooperate or the court finds that the rehabilitation or

treatment and care of the juvenile require transfer of legal custody" [Wisconsin Juvenile Court Practice, supra, p. 196].

6. Placement in Correctional Facility

The court may transfer legal custody to the Division of Corrections (hereafter, "the DOC") for placement in a "secured correctional facility," but only if the following criteria are met:

a. The child has been found to be delinquent for the commission of an act which if committed by an adult would be punishable by a sentence of six months or more. Under the Criminal Code [chs. 939 to 948, Stats.], felonies and Class A misdemeanors are punishable by a sentence of six months or more.

b. The child has been found to be a danger to the public and to be in need of restrictive custodial treatment [s. 48.34 (4m), Stats.].

In 1981, the Wisconsin Supreme Court clarified the meaning of the criterion "a danger to the public" in In Interest of B.M., 101 Wis. 2d 12, 303 N.W. 2d 601 (1981). The Court concluded that:

a. The phrase "danger to the public" refers to a child who exposes the public to harm, injury, pain or loss; and

b. A child who presents a threat to property, as well as a child who presents a threat of physical harm to others, may be found to be a "danger to the public" and in need of restrictive custodial treatment.

Children whose custody has been transferred to the DHSS are placed in either of two juvenile reception centers administered by the DHSS's Bureau of Juvenile Services: the Ethan Allen School at Wales or the Lincoln Hills School near Merrill. Generally, the geographic location of the county of commitment determines placement. However, all girls are sent to the Lincoln Hills School.

7. Restrictions on Use of Computers

If the child committed a computer crime (e.g., destroying computer programs) under s. 943.70, Stats., the court may place restrictions on the child's use of computers.

8. Restitution

If the child is found to have committed a delinquent act which has resulted in damage to the property of another or actual physical injury to another, excluding pain and suffering, the court may order the child to: (a) repair damage to property; or (b) make reasonable restitution for the damage or injury.

These dispositions are available only if the judge, after taking into consideration the well-being and needs of the victim, "considers it beneficial to the well-being and behavior of the child." A restitution order must include a finding that the child is financially able to pay and may allow up to 12 months for the payment. If the child objects to the amounts of damages claimed, he or she is entitled to a hearing on the question of damages before the amount of restitution is ordered.

In addition to any other employment or duties permitted under the Child Labor Laws [ch. 103, Stats.], a child 12 or 13 years of age who is participating in a restitution project provided by the county may, for the purpose of making restitution, be employed or perform any duties under any circumstances in which a child 14 or 15 years of age is permitted to be employed or perform duties under the Child Labor Laws. However, a court may not order a child who is 12 or 13 years of age to make more than $250 in restitution.

9. Special Treatment or Care

If the child is in need of special treatment and care, the court may order the child's parent, guardian or legal custodian to provide such care. If the parent, guardian or legal custodian fails or is financially unable to provide the care, the court may order the care provided by an appropriate agency, whether or not legal custody has been taken from the parents. However, the court may not order treatment for mental health or alcohol or drug abuse needs on an inpatient basis, unless the court follows procedures specified under ch. 51, Stats.

10. Restricted Driving Privileges

A court may restrict, suspend or revoke the driving privileges of a child who is adjudged delinquent for a violation of any law in which a motor vehicle is involved.

11. Forfeiture

The court may impose a maximum forfeiture of $50 on the child, if the court finds: (a) no other court services or alternative services are needed or appropriate; and (b) the forfeiture disposition is in the best interest of the child and is an aid to rehabilitation. The court may raise the maximum ceiling on the amount of the child's forfeiture by $50 for each subsequent adjudication of delinquency.

A forfeiture must include a finding by the court that the child alone is financially able to pay the forfeiture and must allow up to 12 months for payment. Current law specifies various penalties the court may impose if the child fails to pay the forfeiture, including: (a) vacating the forfeiture and imposing other dispositions; and (b) suspending the child's driving privileges.

12. Supervised Work Program

The court may order participation in a supervised work program. The court is required to set standards for the program within the budgetary limits established by the county board of supervisors. The work program: (a) may provide the child reasonable compensation reflecting a reasonable market value of the work performed; or (b) may consist of uncompensated community service work. The program is to be administered by the county department of public welfare or a community agency approved by the judge.

Current law specifies that the supervised work program:

a. Must be of a constructive nature designed to promote the rehabilitation of the child;

b. Must be appropriate to the age level and physical ability of the child; and

c. Must be combined with counseling from a member of the staff of the county department or agency or other qualified person.

The program may not conflict with the child's regular attendance at school; and the amount of work required must be reasonably related to the seriousness of the child's offense.

In addition to any other employment or duties permitted under the Child Labor Laws [ch. 103, Stats.], a child who is 12 or 13 years of age who is participating in a community service project provided by the county may, for purposes of performing community service work, be employed or perform any duties under any circumstances in which a child 14 or 15 years of age is permitted to be employed or perform duties under the Child Labor

Laws. However, a court may not order a child who is 12 or 13 years of age to perform more than 40 total hours of community service work.

13. Supervised Independent Living

The court may order that a child 17 or more years of age be allowed to live independently, either alone or with friends, under such supervision as the court deems appropriate. If the plan for independent living cannot be accomplished with the consent of the parent or guardian, the court may transfer custody of the child to a relative or agency as provided in item 5, above.

The court may order independent living as a dispositional alternative only: (a) upon a showing that the child is of "sufficient maturity and judgment to live independently"; and (b) upon proof of a reasonable plan for supervision by an appropriate person or agency.

14. Alcohol or Drug Treatment or Education

If the predisposition court report prepared under s. 48.33, Stats., recommends, based on an alcohol and drug abuse assessment, that the child is in need of treatment for the use or abuse of alcohol beverages or controlled substances and its medical, personal, family or social effects, the court may order the child to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility.

If, based on the assessment, the court report recommends that the child is in need of education relating to the use of alcohol beverages or controlled substances, the court may order the child to participate in an alcohol or other drug abuse education program approved by the court.

15. Educational Program

The court may order a child to attend any of the following:

a. A nonresidential educational program, including a program for children at risk, provided by the school district in which the child resides.

b. Pursuant to a contractual agreement with the school district in which the child resides, a nonresidential educational program provided by a licensed child welfare agency.

c. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a private,

nonprofit, nonsectarian agency that is located in the school district in which the child resides and that complies with 42 U.S.C. s. 2000d, relating to prohibiting discrimination.

d. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a vocational, technical and adult education district located in the school district in which the child resides.

School boards must: (a) coordinate and provide for continuity of educational programming for pupils receiving educational services as the result of the court order; and (b) provide a written report to the court and to the agency which is required, by the court, to submit an educational plan for the child. The report must describe the child's educational status and make recommendations regarding educational programming for the child. The report must be provided to the court and the agency at least three days before the date of the child's dispositional hearing.

The educational program alternatives may not be used if the child has exceptional educational needs.

E. FORMAL DISPOSITION OF CHILD ADJUDGED TO HAVE VIOLATED TRUANCY ORDINANCE

Under s. 118.163, Stats., as created by 1987 Wisconsin Act 285, a county, city, village or town may enact an ordinance prohibiting a child from being a habitual truant.

Under s. 48.342, Stats., created by 1987 Wisconsin Act 285, the juvenile court may order one or more of the following dispositions, if the court finds that the child violated a municipal truancy ordinance and if such a disposition is authorized by the ordinance:

1. Suspension of the child's operating privilege for not less than 30 nor more than 90 days.

2. Participation in counseling, community service or a supervised work program.

3. Home detention, except during hours in which the child is attending religious worship or a school program. The order may permit a child to leave his or her home if the child is accompanied by a parent or guardian.

4. Attendance at a program for children at risk made available by his or her school district.

5. Attendance at one of the educational programs described under Part D, 15, above.

F. FORMAL DISPOSITIONS OF A CHILD UNDER AGE 12 WHO COMMITS "DELINQUENT" ACT

Under ch. 48, Stats., a child under 12 years of age who commits a delinquent act is considered a "child in need of protection or services" and not a delinquent. If the court finds that a child is in need of protection or services, it must enter an order making one or more delinquency dispositions under a care and treatment plan.

Under s. 48.345, Stats., only the following six dispositions, discussed in Section D, above, are available to the court for a law violator under the age of 12, who is found to be in need of protection or services:

1. Counseling;

2. Supervision of an agency or a suitable adult;

3. Supervision at home;

4. Placement outside the home;

5. Transfer of legal custody of the child to a relative or child welfare agency; and

6. Special treatment or care.

In addition, if there is no applicable municipal truancy ordinance and the court finds that a child (i.e., not just a child under age 12) is in need of protection or services based on habitual truancy, the court may order any of the truancy dispositions listed in Part E, page 22, above.

The care and treatment plan may not include any of the following dispositions:

1. Transferring the custody of the child to the DOC in DHSS;

2. Ordering restitution;

3. Ordering payment of a forfeiture;

4. Restricting, suspending or revoking the driving privileges of the child;

5. Placing any child not specifically found under chs. 46, 49, 51, 115 and 880, Stats., to be developmentally disabled, mentally ill or to have exceptional educational needs in facilities which exclusively treat those categories of children; or

6. Ordering the child to participate in a supervised work program.

Also, the "supervised independent living" disposition in delinquency cases is not available, since it applies only to children 17 or more years of age.

G. FORMAL DISPOSITIONS OF CHILD ADJUDGED TO HAVE VIOLATED CIVIL LAW OR ORDINANCE

1. Civil Laws or Ordinances in General

Except as provided in item 2, below, if the court finds that the child violated a civil law or an ordinance, it must enter an order making one or more of the following dispositions:

a. Counsel the child or the parent or guardian of the child.

b. Impose a forfeiture not to exceed $25.

c. Order the child to participate in a supervised work program.

d. Order the child to repair damage to property or make restitution.

e. Order the child to attend a boating safety course under s. 30.74 (1), Stats., if the violation is related to unsafe use of a boat.

f. Suspend the license or licenses of the child issued under ch. 29, Stats., for not more than one year or until the child is 18 years of age, whichever occurs first, if the violation is of ch. 29, Stats. (fish and game).

g. Order the child to attend a course under the hunter education and firearm safety program in s. 29.225, Stats., if the violation is related to the unsafe use of firearms.

h. Order the child to attend a snowmobile safety course under s. 350.055, Stats., if the violation is one under ch. 350, Stats., concerning the use of snowmobiles.

i. Order the child to enroll and participate in an all-terrain vehicle (ATV) safety course if the violation is one under s. 23.33, Stats., as affected by 1987 Wisconsin Act 399, concerning the use of ATV's, or an ordinance enacted in conformity with that section.

j. In counties participating in the juvenile alcohol and other drug abuse pilot program, the violation is related to the use or abuse of alcohol beverages or controlled substances. Order the child to do any of the following:

(i) Submit to an alcohol and other drug abuse assessment conducted by an approved treatment facility.

(ii) Participate in an outpatient alcohol and other drug abuse treatment program if an assessment recommends treatment.

(iii) Participate in an alcohol or other drug abuse education program [s. 48.343, Stats., as affected by 1987 Wisconsin Acts 27, 200, 285 and 339].

2. Intoxicating Liquor and Beer Violations

If the court finds a child committed a violation of various child-related provisions in ch. 125, Stats., relating to alcohol beverages (e.g., underage drinking), it may impose one or more of the following penalties for each violation:

PENALTIES FOR ALCOHOL BEVERAGE VIOLATIONS COMMITTED BY CHILDREN

VIOLATION	FORFEITURE	MOTOR VEHICLE OPERATING PRIVILEGE	SUPERVISED WORK PROGRAM
First offense	Maximum $50	Suspension for 30 to 90 days	Participation
Second offense within 12 months of first violation	Maximum $100	Suspension for one year	Participation
Third or subsequent offense within 12 months of two or more violations	Maximum $500	Revocation for two years	Participation

SOURCE: Section 48.344 (2), Stats.

In counties participating in the juvenile alcohol and other drug abuse pilot program after ordering a penalty, the court, with the agreement of the child, may enter an additional order staying the execution of the penalty order and suspending or modifying the penalty imposed. The order must require the child to do any of the following:

a. Submit to an alcohol and other drug abuse assessment conducted by an approved treatment facility. The order must designate an approved treatment facility to conduct the alcohol and other drug abuse assessment and specify the date by which the assessment must be completed.

b. Participate in an outpatient alcohol abuse treatment program at an approved treatment facility, if an alcohol or other drug abuse assessment recommends treatment.

c. Participate in a court-approved alcohol abuse education program [s. 48.344 (2g), Stats., created by 1987 Wisconsin Act 339].

PART III

DISPOSITIONAL PROCEDURES

This Part of the Research Bulletin discusses juvenile court procedures relating to disposition of a child who is adjudged: (a) to be delinquent; (b) to be in need of protection or services (e.g., a child under age 12 who commits a delinquent act); or (c) to have violated a civil law or ordinance, including a truancy ordinance.

A. COURT REPORT AND REHABILITATION PLAN

1. Report Contents

Before the disposition of a child adjudged to be delinquent or in need of protection or services, the court must designate an agency to submit a report to the court containing all of the following information:

a. The social history of the child.

b. A recommended plan of rehabilitation or treatment and care for the child which: (i) is based on the investigation conducted by the agency and any report resulting from an alcohol or other drug abuse examinations or assessment under s. 48.295, Stats., created by 1987 Wisconsin Act 339; and (ii) employs the least restrictive means available to accomplish the objectives of the plan.

c. A description of the specific services or continuum of services which the agency is recommending that the court order for the child or family; the persons or agencies that would be primarily responsible for providing those services; and the identity of the person or agency that would provide case management or coordination of services, if any.

d. A statement of the objectives of the plan, including any desired behavior changes and the academic, social and vocational skills needed by the child.

e. A plan for the provision of educational services to the child, prepared after consultation with the staff of the school in which the child is enrolled or the last school in which the child was enrolled.

Depending on the disposition that is recommended, current law specifies other requirements for the report. Among these are:

a. If a report recommends transfer of the child's custody to the DHSS for placement in a secured correctional facility, the report must include a description of any less restrictive alternatives that are available and that have been considered and a description of why these alternatives have been determined to be inappropriate.

b. If a report recommends placement in a foster home, group home or child caring institution, the report must include a permanency plan [s. 48.33, Stats., as affected by 1987 Wisconsin Acts 27 and 339].

2. Permanency Plan

The permanency plan must be designed to ensure that a child is reunified with his or her family whenever possible or that the child quickly attains a placement or home providing long-term stability. The permanency plan must include a description of all of the following:

a. The services offered and any service provided in an effort to prevent holding or placing the child outside of his or her home, and to make it possible for the child to return home.

b. The basis for the decision to hold the child in custody or to place the child outside of his or her home.

c. The location and type of facility in which the child is currently held or placed, and the location and type of facility in which the child will be placed.

d. If the child is living more than 60 miles from his or her home, documentation that placement within 60 miles of the child's home is either unavailable or inappropriate.

e. The appropriateness of the placement and of the services provided to meet the needs of the child and family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child or, if available, why such services are not appropriate.

f. The services that will be provided to the child, the child's family and the child's foster parent or operator of the facility where the child is living to carry out the dispositional order, including services planned to accomplish all of the following: (i) ensure proper care and treatment of the child and promote stability in the placement; (ii) meet the child's physical, emotional, social, educational and vocational needs; and (iii) improve the conditions of the parents' home to facilitate the return of the child to his or her home, or, if appropriate, obtain an alternative permanent placement for the child.

g. The conditions, if any, upon which the child will be returned to his or her home, including any changes required in the parents' conduct, the child's conduct or nature of the home [s. 48.38 (4), Stats.].

Other provisions relating to permanency plans: (a) require periodic review of the plan by the court or a three-person permanency plan review panel to determine, among other things, the continuing necessity for and the appropriateness of the placement; and (b) require the DHSS to promulgate rules establishing, among others, procedures for plan reviews and standards and guidelines for decisions regarding the placement of children [s. 48.38, Stats., as affected by 1987 Wisconsin Act 383].

B. DISPOSITIONAL HEARING

Under the Children's Code, a separate hearing must be conducted to determine the appropriate disposition of a case in which a child is adjudged to be delinquent, to be in need of protection or services or to have violated a civil law or ordinance. In general, the hearing must be held by a judge. However, in the case of a civil law or ordinance violation, a juvenile court commissioner may conduct the hearing, if authorized to do so by the judge.

At the dispositional hearing, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make recommendations for alternative dispositions. The court is required to make the dispositional order in the case "at the conclusion of the hearing" [s. 48.335, Stats., as affected by Supreme Court Order (January 1, 1988)].

C. DISPOSITIONAL ORDER

1. Placement and Treatment Findings

The provisions relating to dispositional orders are set forth in s. 48.355, Stats., as affected by 1987 Wisconsin Acts 27, 339 and 383. In any dispositional order where a child is adjudged to be delinquent or in need of protection or services, the court makes a placement and treatment finding based on evidence submitted to the court. Current law provides that:

> The disposition shall employ those means necessary to maintain and protect the child's well-being which are the least restrictive of the rights of the parent or child and which assure the care, treatment or rehabilitation of the child and the

> family, consistent with the protection of the public. Wherever possible the family unit shall be preserved and there shall be a policy of transferring custody from the parent only where there is no less drastic alternative [s. 48.355 (1), Stats., as affected by 1987 Wisconsin Act 27; underlined language added by Act 27].

If information on the effect of the delinquent act on the victim has been submitted to the court, the court must consider that information when making its placement and treatment finding.

2. Findings of Fact and Conclusions of Law

In addition to making the dispositional order, the court must make written findings of fact and conclusions of law based on the evidence presented to the court to support the disposition, including findings as to the child's condition and need for special treatment or care if an alcohol or other drug abuse examination or assessment was conducted. If the child is placed outside the home, the findings of fact must include a finding: (a) that reasonable efforts have been made to prevent the removal of the child from his or her home; or (b) if applicable, that reasonable efforts have been made to make it possible for the child to return to his or her home.

3. Parental Visitation

If, after notice to the child's parent or guardian and a hearing on the issue of visitation, the judge finds that it would be in the best interest of the child, the judge may set reasonable rules for visitation by the parent or guardian.

4. Termination of Orders

In general, a dispositional order terminates at the end of one year unless the judge specifies a shorter period of time. With respect to a dispositional order placing a delinquent child in a secured correctional facility [i.e., under s. 48.34 (4m), Stats.], the judge may make the order apply for up to two years or until the child's 19th birthday, whichever is earlier.

Extensions or revisions of the order must terminate at the end of one year unless the judge specifies a shorter period of time. No extension of an original dispositional order may be granted for a child whose legal custody has been transferred to the DOC, if the child is 18 years of age or older when the original dispositional order terminates. Any order made before the child reaches 18 years of age is effective for a time up to one

year after its entry, unless the judge specifies a shorter period of time [s. 48.355 (4), Stats., as affected by 1987 Wisconsin Act 27].

D. EFFECT OF JUDGMENT AND DISPOSITION

The judge must enter a judgment setting forth his or her findings and disposition in the proceeding. The effect of the judgment and disposition are prescribed in s. 48.35, Stats., as affected by 1987 Wisconsin Act 222, as follows:

1. A judgment is not a conviction of a crime, does not impose any of the civil disabilities (e.g., loss of right to vote) ordinarily resulting from the conviction of a crime and does not operate to disqualify the child in any civil service application or appointment.

2. The disposition of a child, and any record of evidence given in a hearing in juvenile court, is not admissible as evidence against the child in any case or proceeding in any other court except:

a. In sentencing proceedings after conviction of a felony or misdemeanor, and then only for the purpose of a presentence study and report;

b. In a proceeding in any state juvenile court; or

c. In a court of civil or criminal jurisdiction while it is exercising the jurisdiction of a family court and is considering the custody of children.

3. In addition to item 2, the fact that a child has been adjudged delinquent on the basis of unlawfully and intentionally killing a person is admissible for the purpose of s. 852.01 (2m) (bg), Stats., created by 1987 Wisconsin Act 222, which, in general, prohibits such a child from inheriting or receiving property from the person he or she killed.

4. Disposition by the court of any allegation of delinquency bars any future proceeding on the same matter in criminal court when the child reaches the age of 18. This provision does not affect proceedings in which the child has been waived to adult court. [Waiver is discussed in Part VI of the Research Bulletin.]

E. APPEAL

Under current law, any person aggrieved by a final judgment or final order (e.g., a disposition) of a juvenile court may appeal to the

Wisconsin Court of Appeals, in accordance with the time limits and procedures set forth in the statutes [ss. 808.03 and 808.04 (3) and (4), Stats., as affected by Supreme Court Order (July 1, 1987)].

F. SANCTIONS FOR VIOLATION OF ORDER

If a child who has been adjudged delinquent violates a condition specified in his or her dispositional order, the court may impose on the child any one of the following sanctions:

1. Placement of the child in a secure detention facility or juvenile portion of a county jail that meets the standards promulgated by the DHSS, by rule, for not more than 10 days. The court may require educational services consistent with his or her current course of study during the period of placement.

2. Suspension of or limitation on the use of the child's motor vehicle operating privilege, or of any approval issued under ch. 29, Stats. (e.g., fishing or hunting permit), for a period of not more than 90 days.

3. Detention in the child's home or current residence for a period of not more than 20 days under rules of supervision specified in the order.

4. Not more than 25 hours of uncompensated community service work in a supervised work program authorized under s. 48.34 (9), Stats., as affected by 1987 Wisconsin Act 27.

These sanctions may be imposed only if, at the dispositional hearing, the judge explained the conditions to the child and informed the child of the possible sanctions for a violation.

A motion for imposition of a sanction may be brought by: (1) the person or agency primarily responsible for the provision of dispositional services; (2) the district attorney; or (3) the judge who entered the dispositional order.

If the judge initiates the motion, that judge is disqualified from holding a hearing on the motion. Notice of the motion must be given to the child, guardian ad litem, counsel, parent, guardian, legal custodian and all parties present at the original dispositional hearing. Before imposing any sanction, the court must hold a hearing, at which the child is entitled to be represented by legal counsel and to present evidence [s. 48.355 (6), Stats., as created by 1987 Wisconsin Act 27].

PART IV

POST-DISPOSITIONAL PROCEDURES

This Part of the Research Bulletin discusses various aspects of the post-dispositional treatment of children, including the authority of the juvenile court to modify its dispositional orders and the authority of the DHSS over children whose legal custody has been transferred to the DHSS.

A. JUVENILE COURT AUTHORITY TO MODIFY DISPOSITIONS

Unlike criminal courts which have limited power to reduce sentences, juvenile courts have broad statutory power over dispositional orders after they have been entered. Juvenile courts may exercise four different types of control over disposition after the entry of the initial order:

1. They may revise a dispositional order.

2. They may extend a dispositional order.

3. On request, they may hold a hearing on a change in placement which they have ordered.

4. On request, they may hold a hearing on an emergency change of placement.

Following is a discussion of each of these post-dispositional powers of juvenile courts.

1. Revision of Dispositional Orders

A child, the child's parent, guardian or legal custodian, any person or agency bound by a dispositional order or the district attorney or corporation counsel in the county in which the order was entered, may request a revision in the order which does not involve a change in placement. In addition, the court may, on its own motion, propose such a revision. The request or court proposal must set forth in detail the nature of the proposed revision and what new information is available which affects the advisability of the court's initial disposition.

If the request or court proposal indicates that new information is available which affects the advisability of the court's initial dispositional order, the court must hold a hearing on the matter. However, a hearing is not required, if written waivers of objections to the revision are signed by all parties entitled to receive notice of the

hearing (i.e., the parent, child, guardian or legal custodian) and the court approves.

As to the duration of a revised order:

a. Under s. 48.363, Stats., the revised order may not extend the effective period of the original order. That is, the duration of a revised order is calculated by taking the length of the original order minus the period of time the order was in effect prior to the order of revision. For example, if the period of the original order was 11 months and the original order was in effect for five months when the court ordered the revision, the maximum period of the revised order is six months.

b. Under s. 48.355 (4), Stats., as affected by 1987 Wisconsin Act 27, a revised order must "terminate at the end of one year unless the judge specifies a shorter period of time" (emphasis added).

In commenting on the possible confusion that results from trying to fully reconcile these two provisions, the Wisconsin Juvenile Court Practice, supra, at p. 232, notes:

> To eliminate any problems of how these provisions relate to each other when there is reason to have the revised order extend beyond the termination of the original order, a petition for revision should be combined with a petition for extension of the order.... Such a combined hearing will have to meet the requirements...for extension of orders which are more stringent than those for revision.

2. Extension of Dispositional Orders

As noted above, initial dispositional orders are limited to a maximum of one year, unless the court specifies a shorter period of time. However, dispositional orders may be extended for a specified length of time not to exceed one year. That is, the court can extend an original dispositional order, whether one year or less, for a period not to exceed an additional one year from the date the extension order is issued. Current law specifies that the court determines which dispositions it will consider for extensions.

An extension of a dispositional order may be requested by the parent, child, guardian, legal custodian, any person or agency bound by the dispositional order, the district attorney or corporation counsel in the county in which the order was entered or by the court on its own motion. The request must be submitted to the court which entered the order.

No order may be extended without a hearing. At the hearing, the person or agency primarily responsible for providing services to the child must file with the court a written report stating to what extent the dispositional order has been meeting the objectives of the plan for the child's rehabilitation and treatment.

If the child is in a placement outside of his or her home, the written report must include both of the following:

a. A copy of the report of the permanency planning review panel (see Part III, A, of the Research Bulletin), if any, and a response to the report from the agency primarily responsible for providing services to the child; and

b. An evaluation of the child's adjustment to the placement and of any progress the child has made; suggestions or amendment of the permanency plan; a description of efforts to return the child to his or her home, including efforts of the parents to remedy factors which contributed to the child's placement; and, if continued placement outside of the child's home is recommended, an explanation of why returning the child to his or her home is not feasible.

In cases where the child has not been placed outside the home, the written report must contain:

a. A description of efforts that have been made by all parties concerned toward meeting the objectives of treatment, care or rehabilitation;

b. An explanation of why these efforts have not yet succeeded in meeting the objective; and

c. Anticipated future planning for the child.

At the hearing on extending the order, any party may present relevant evidence on the issue of the extension. The judge must then make findings of fact and conclusions of law and issue a dispositional order relating to the extension [s. 48.365, Stats., as affected by 1987 Wisconsin Act 383].

The Wisconsin Court of Appeals has commented on the purpose and requirements of extensions of dispositional orders. In In Interest of R.E.H., 101 Wis. 2d 647, 305 N.W. 2d 162 (Wis. App. 1981), a delinquent child who was committed to a secured juvenile facility had his commitment extended for an additional year upon the petition of a social worker at the facility. The child contended that the extension order was void because the state failed to show that at the time of the extension hearing the child was dangerous to himself or others. Under s. 48.34 (4m),

Stats., a finding of dangerousness was required for the child's initial commitment. The Court of Appeals concluded at pp. 652 and 653 of the opinion:

> While a determination of delinquency or dangerousness is required at the time of the original dispositional hearing, the legislature has expressed a different purpose in the extension provisions. If the placement has not met the objectives of the treatment, care or rehabilitation as specified in the original dispositional order, or the child's adjustment has not reached the point where the court can terminate control or provide less restrictive control, the dispositional order may be extended. Since the child has already been adjudged delinquent or dangerous, a rehearing on these matters would be redundant. Rather, the purpose of the hearing to extend the dispositional order is to evaluate the child's progress and to determine whether continued control is necessary. The decision to extend the order is within the discretion of the court and is to be based upon the evidence presented.

3. Change in Placement

As discussed below, a change in placement may be requested by: (a) the person or agency primarily responsible for implementing the dispositional order; (b) the child or the child's parent, guardian or legal custodian; or (c) the court.

a. By person or agency primarily responsible for implementing order: The person or agency primarily responsible for implementing the dispositional order may request a change in the placement of the child, whether or not the change requested is authorized in the dispositional order. The person or agency must give written notice of the proposed change to the child or the child's attorney and the child's parent or guardian. The notice must contain the name and address of the new placement; the reasons for the proposed change; a statement why the new placement is preferable to the current placement; and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court.

Any party receiving the notice may obtain a hearing on the matter by filing an objection with the court within 10 days of receipt of the notice. Placements may not be changed until 10 days after the notice is sent to the court unless the parent, guardian or legal custodian and the

child, if 12 or more years of age, sign written waivers of objection. However, placement changes which were authorized in the dispositional order may be made immediately, if notice to the parties is given. A hearing is not required for placement changes authorized in the dispositional order, except where an objection filed by a party who received notice alleges that new information is available which affects the advisability of the court's dispositional order [s. 48.357 (1), Stats.].

b. By child, parent or other agency or by the court: The child, parent, guardian, legal custodian or any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order, may request a change in placement. The request must contain the name and address of the place of the new placement requested and state what new information is available which affects the advisability of the current placement. In addition, the court may propose a change in placement on its own motion.

The court must hold a hearing on the request or the court proposal prior to ordering the change in placement, if the request or proposal states that new information is available which affects the advisability of the current placement. However, a hearing is not required if written waivers of objection to the proposed change in placement are signed by all parties entitled to receive notice and the court approves [s. 48.357 (2m), Stats.].

c. Change involving placement with corrections: If the proposed change in placement would involve placing the child with the DOC in the DHSS, prior written notice must be given to the child or the child's attorney and the child's parent or guardian. Unless waived by the child, parent, guardian or legal custodian, a hearing must be held before the judge makes a decision on the request. The child is entitled to counsel at the hearing and any party opposing or favoring the proposed new placement may present relevant evidence and cross-examine witnesses.

The proposed new placement may be approved only if the judge finds, on the record, that (i) the child has committed a delinquent act which would be punishable by a jail sentence of six months or more if committed by an adult and (ii) the child is a danger to the public and in need of restrictive treatment [s. 48.357 (3), Stats.]. [These are the same findings that are required for an initial disposition transferring legal custody of a child to the DOC.]

4. Emergency Change in Placement

If emergency conditions necessitate an immediate change in the placement of a child placed outside the home, the person or agency

primarily responsible for implementing the dispositional order may remove the child to a new placement, whether or not authorized by the existing dispositional order, without prior written notice to the child or the child's attorney and the child's parent or guardian. However, notice must be sent within 48 hours after the emergency change in placement. Any party receiving notice of an emergency change in placement may demand a hearing.

In emergency situations, the child may be placed in a licensed public or private shelter care facility as a transitional placement for not more than 20 days, as well as in any other authorized placement [s. 48.357 (2), Stats.].

B. CORRECTIONAL PLACEMENTS

Following is a discussion of the post-dispositional procedure applicable to a child whose legal custody has been transferred to the DOC in the DHSS.

1. Duty of the Court Ordering Transfer of Custody

When a court transfers legal custody of a child to the DOC, it must (a) immediately notify the DOC of that action and (b) provide transportation for the child to a receiving center designated by the DOC (e.g., Ethan Allen or Lincoln Hills School) or deliver the child to DOC personnel [s. 48.49 (1), Stats.].

2. Duty of the DOC Upon Receiving the Child

Upon receiving the child, the DOC must examine the child to determine the type of placement best suited to the child and to the protection of the public. This examination must include an investigation of the personal and family history of the child and his or her environment and any physical or mental examinations considered necessary [s. 48.50, Stats.].

Following the examination, the DOC may place the child in a secured correctional facility (i.e., Ethan Allen or Lincoln Hills School) or place the child on "aftercare" (discussed below). The DOC must send written notice of the placement decision to the parent, guardian, legal custodian and committing court. The DOC is directed to try to release a child on aftercare within 30 days after the date the DOC determines the child is eligible for release [s. 48.357 (4) and (4m), Stats., as affected by 1987 Wisconsin Act 27].

3. Aftercare Placement

"Aftercare" is the nonsecure placement of a child whose legal custody has been transferred to the DOC. It is similar to the concept of parole in the adult correctional system. Current law permits the DOC to use aftercare placement either: (a) immediately following the examination conducted at the reception center when the child is first transferred after entry of the dispositional order; or (b) after a period of placement in a secured correctional facility [s. 48.357 (4), Stats.].

Release on aftercare may be to a variety of placements. Usually the release is to the child's own home or to a foster home, but it also may be to a group home or even to a treatment center. The child on aftercare supervision must abide by conditions of supervision. These conditions may include requirements for school attendance or work, participation in treatment programs or other limitations on the child's conduct.

4. Revocation of Aftercare

If a child placed with the DOC has been released on aftercare, his or her aftercare may be revoked for violation of the terms of aftercare supervision. The revocation does not require prior notice to the child or his or her parent or guardian. Aftercare may be revoked only after an administrative hearing by an independent officer of the DHSS [s. 48.357 (5), Stats.].

5. Discharge from Legal Custody of DOC

When legal custody of a child is transferred to the DOC, the DOC has legal custody for one year unless the court specifies a shorter period of time. However, s. 48.53, Stats., as affected by 1987 Wisconsin Act 27, requires the DOC to discharge a child from its legal custody prior to the expiration of the court's order as soon as the DOC:

> ...determines that there is a reasonable probability that it is no longer necessary either for the rehabilitation and treatment of the child or for the protection of the public that the department retain legal custody.

This provision does not apply to a person subject to extended jurisdiction of the juvenile court, as described in Part V of this Research Bulletin.

6. Early Release and Intensive Supervision Program

The DHSS may establish a program for the early release and intensive supervision of children whose legal custody has been transferred to the DOC. The program may not include any children who have been placed in a secured correctional facility as a result of a delinquent act involving the commission of a "violent" crime as defined in s. 969.035, relating to pretrial detention [s. 46.267, Stats., created by 1987 Wisconsin Act 27].

PART V

EXTENDED COURT JURISDICTION

This Part of the Research Bulletin discusses the requirement for extended juvenile court jurisdiction over juvenile offenders who commit certain statutorily-specified serious crimes.

A. APPLICABILITY

If a person committed first-degree murder [s. 940.01, Stats.], second-degree murder [s. 940.02, Stats.], manslaughter [s. 940.05, Stats.], child abuse [s. 940.01, Stats.], mayhem [s. 940.21, Stats.] or first-degree sexual assault [s. 940.225 (1) (a) to (c), Stats.], and the person is adjudged delinquent on that basis and has his or her legal custody transferred to the DOC, the court is required to enter an order extending its jurisdiction as follows:

1. If the act for which the person was adjudged delinquent was a violation of s. 940.01, Stats. (first-degree murder), the order must remain in effect until the person reaches 25 years of age or until the termination of the order under Section C, below, whichever occurs earlier.

2. If the act for which the person was adjudged delinquent was any other violation specified above, the order must remain in effect until the person reaches 21 years of age or until the termination of the order under Section C, below, whichever occurs earlier.

B. REVISION OF ORDER

Any of the following may petition the court for a revision of an order for extended jurisdiction:

1. The person subject to the order.

2. The DHSS or county department of social services or human services having legal custody of the person.

The DHSS or county department may, at any time, file a petition proposing either: (1) release of a person subject to an order to aftercare supervision; or (2) revocation of the person's aftercare supervision. The petition has to set forth in detail: (1) the proposed treatment and supervision plan and proposed institutional placement, if

any; and (2) any available information that is relevant to the advisability of revising the order.

The person subject to an extended jurisdiction order may, no more often than once each year, file a petition proposing his or her release to aftercare supervision. The petition has to set forth in detail: (1) the proposed conditions of aftercare supervision; and (2) any available information that is relevant to the advisability of revising the order.

In making a revision determination, the court is required to balance the needs of the person with the protection of the public.

C. PETITION FOR DISCHARGE; HEARINGS

Any of the following may petition the court that entered an extended jurisdiction order to terminate the order and to discharge the person, who is subject to the order, from supervision:

1. The person subject to the order.

2. The DHSS or the county department having legal custody of the person.

The petition must state the factual basis for the petitioner's belief that discharge will not pose a threat of bodily harm to other persons. The DHSS or county department may file a petition at any time. The person subject to the order may file a petition not more often than once a year.

If the court denies the petition, the person must remain under the jurisdiction of the court until the expiration of the order or until a subsequent petition for discharge is granted, whichever is sooner.

D. TRANSFER TO OR BETWEEN FACILITIES

The DHSS may transfer a person subject to an extended jurisdiction order between secured correctional facilities and, after the person attains the age of 18 years, transfer the person to or between state prisons without petitioning for revision of the order under Section B, above [s. 48.366, Stats., as created by 1987 Wisconsin Act 27].

PART VI

WAIVER OF JUVENILE COURT JURISDICTION

This Part of the Research Bulletin discusses the power of a juvenile court to waive its jurisdiction over a juvenile offender and to transfer the juvenile to the adult criminal court system.

A. CHARACTERISTICS OF WAIVER

1. Definition of Waiver

"Waiver of jurisdiction" by a juvenile court is the process whereby the juvenile court relinquishes its jurisdiction over a child and transfers the child's case to a court of criminal jurisdiction. The waiver changes the status of the child to that of an adult, for purposes of prosecution of the particular case.

After the waiver is ordered, the district attorney has the right to begin a regular criminal prosecution by filing a complaint against the child in criminal court. The child is then subject to all the same rights and penalties of any adult who is charged with a similar crime.

2. Effect of Kent Decision on Waiver

In Kent v. United States, 383 U.S. 541 (1966), the U.S. Supreme Court laid down protections for children in waiver situations. The Kent case arose in the District of Columbia. The petitioner in Kent challenged the validity of the juvenile court's decision to waive jurisdiction over him, on the ground that the procedure by which the juvenile court reached its decision constituted a denial of due process. A provision of the District of Columbia Code permitted a juvenile court to waive jurisdiction "after a full investigation." In nullifying the juvenile court's decision to waive jurisdiction, the Supreme Court held that waiver of jurisdiction was a "critically important" stage in the juvenile process and must be attended by minimum requirements of due process and fair treatment required by the 14th Amendment to the U.S. Constitution.

Specifically, the Court set forth four basic due process safeguards required for waiver proceedings:

a. The child is entitled to a hearing on the question of waiver, if the juvenile court is considering waiving jurisdiction.

b. The child is entitled to representation by counsel at the **hearing.**

c. The child's attorney must be given access to the child's social **records** on request.

d. The child is entitled to a statement of reasons in support of the **waiver** ordered, if jurisdiction is waived.

As an appendix to its decision in Kent, the Supreme Court suggested the following criteria which could be used in determining whether to waive jurisdiction over a child and transfer him or her to criminal court:

> (1) The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
>
> (2) Whether the alleged offense was committed in an aggressive, violent, premeditated or wilful manner.
>
> (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.
>
> (4) The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment....
>
> (5) The desirability of trial and disposition of the entire offense in one court when the juvenile's associations in the alleged offense are adults who will be charged with a crime in the [criminal court].
>
> (6) The sophistication and maturity of the juvenile as determined by consideration of his home, environment situation, emotional attitude and pattern of living.
>
> (7) The record and previous history of the juvenile....
>
> (8) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to

have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court [Kent, supra, pp. 566-67].

Since the Kent case, these criteria have been incorporated into the juvenile waiver laws of many states, including Wisconsin.

B. WISCONSIN STATUTE ON WAIVER

1. Application for Waiver

The current Wisconsin law relating to waiver of juvenile offenders to adult court is found in s. 48.18, Stats., as affected by 1987 Wisconsin Act 27. Under current law, a child or district attorney may apply to the juvenile court to waive its jurisdiction: (a) if the child is alleged to have violated s. 940.01, Stats. (first-degree murder), or 940.02, Stats. (second-degree murder), on or after his or her 14th birthday; or (b) if a child is alleged to have violated any state criminal law on or after his or her 16th birthday. The judge may initiate a petition for waiver, if the judge disqualifies himself or herself from any future proceedings in the case.

A request for waiver by a child is an infrequent event. However, it may occur, for example, where: (a) the sentence in criminal court for the child's offense is substantially less than the disposition the child would receive in juvenile court; or (b) the criminal court is a more favorable forum than the juvenile court (i.e., a particular juvenile judge considers minor infractions to be more serious than the criminal court judge) [Wisconsin Juvenile Court Practice, supra, p. 138].

2. Waiver Hearing

The waiver hearing is initiated by the filing of a petition for waiver of jurisdiction. Current law requires that a petition alleging delinquency be filed with the waiver petition. The waiver petition must contain a brief statement of the facts supporting the request for waiver. The contents of the delinquency petition are set forth in s. 48.255 (1), Stats., and include a statement of facts sufficient to establish probable cause that an offense has been committed and that the child named in the petition committed the offense.

The waiver petition must be filed "prior to the plea hearing"; that is, prior to the hearing to determine the child's plea to the delinquency petition.

The child's legal rights in a waiver hearing include:

a. A written notice of the time, place and purpose of the hearing must be given to the child, any parent, guardian or legal custodian and the child's counsel, at least three days prior to the hearing.

b. The child must be represented by counsel at the hearing. Counsel for the child must have access to any social records and reports such as witnesses' statements and police reports.

c. The child has the right to present testimony on his or her own behalf, including expert testimony, and has the right to cross-examine witnesses at the hearing. [The child does not have the right to a jury at the hearing.]

At the waiver hearing, neither common law nor statutory rules of evidence are binding. The court must admit "all testimony having reasonable probative value," but must exclude "immaterial, irrelevant or unduly repetitious testimony" [s. 48.299 (4) (b), Stats.]. As the Court of Appeals noted in In Interest of D.E.D., 101 Wis. 2d 193, 200-201, 304 N.W. 2d 133, 137 (1981), "the only requirement to support...a decision to waive jurisdiction is that the evidence be reliable."

The Wisconsin Supreme Court has held that even where a child does not contest the waiver, the district attorney is required to present, and the juvenile court to take, testimony and consider relevant evidence regarding waiver In Interest of T.R.B., 109 Wis. 2d 179, 325 N.W. 2d 329, 337 (1982). The Supreme Court noted:

> The legislature...has required that the juvenile court hold a waiver hearing at which testimony and evidence is presented regardless of who petitions for waiver and regardless of whether a party contests the waiver. The juvenile court must ensure that the child and the public receive the full benefits that the juvenile and the criminal codes provide. The waiver hearing is part of the juvenile court's function of protecting the child and the public. Rather than deferring to the district attorney's or to the juvenile's request to waive the juvenile court's jurisdiction or to either party's acquiescence in the other party's request, the juvenile court must independently determine whether waiver is appropriate. The type of evidence presented to the court at the waiver hearing affects the juvenile court's ability to make this independent determination.

3. Determination of "Prosecutive Merit"

The judge must first determine whether the matter involving the child has "prosecutive merit" before proceeding to determine whether it should waive its jurisdiction. The judge must take relevant testimony presented by the district attorney and consider other relevant evidence before determining there is prosecutive merit [s. 48.18 (4) and (5), Stats.].

In Interest of T.R.B., the Wisconsin Supreme Court stated that the determination of "prosecutive merit" is analogous to the determination of probable cause in a criminal proceeding. The Court held that a finding of prosecutive merit must be based on a showing that there is a reasonable probability that the alleged violation of the criminal law has been committed and that the juvenile has probably committed it. This is the same degree of probable cause required to bind over an adult for criminal trial. The Court also concluded that if waiver is not contested by the juvenile:

> ...the legislature did not intend to require the juvenile court to take testimony or consider other evidence, other than the petition, to determine whether the matter has prosecutive merit...[A] finding of prosecutive merit based on the petitions is proper in those cases in which [a] the district attorney does not seek to submit relevant testimony or relevant evidence, [b] the petitions contain detailed information concerning the juvenile's alleged violation of state criminal law and have demonstrable circumstantial guarantees of trustworthiness, and [c] the issue of prosecutive merit is not contested [In Interest of T.R.B., supra, pp. 196-197].

The Supreme Court did not decide the question of whether the state must submit relevant testimony or relevant evidence other than the petitions if the issue of prosecutive merit is contested. In a subsequent case, In Interest of J.G., 114 Wis. 2d 217, 338 N.W. 2d 508 (Wis. App. 1983), the Court of Appeals held that where a juvenile does contest the issue of prosecutive merit and contends that "demonstrable circumstantial guarantees of trustworthiness" may not exist, the juvenile court must hold a hearing to determine the reliability of the allegations in the petition before the issue of prosecutive merit is determined.

4. Criteria for Determining Waiver

If prosecutive merit is found, the juvenile court must base its decision on whether to waive jurisdiction on the criteria set forth in s.

48.18 (5), Stats. These criteria are derived from the criteria set forth in the Kent case, supra, and in In re D.H., 76 Wis. 2d 286, 251 N.W. 2d 196 (1977). The judge must consider:

a. The personality and prior record of the child, including whether the child is mentally ill or developmentally disabled; whether the child has been previously found delinquent; whether such delinquency involved the infliction of serious bodily injury; the child's motives and attitudes; the child's physical and mental maturity; the child's pattern of living and prior offenses; and the child's prior treatment history and apparent potential for responding to future treatment.

b. The type and seriousness of the offense, including whether it was against persons or property; the extent to which it was committed in a violent, aggressive, premeditated or wilful manner; and its prosecutive merit.

c. The adequacy and suitability of facilities, services and procedures available for treatment of the child and protection of the public within the juvenile justice system and, where applicable, the mental health system.

d. The desirability of a trial and disposition of the entire offense in one court, if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in adult criminal court.

5. Waiver Order

After considering the waiver jurisdiction criteria, the judge must state on the record his or her finding with respect to the criteria. If the judge determines on the record that it is established by "clear and convincing evidence" that it would be contrary to the best interests of the child or of the public to hear the case in juvenile court, the judge must enter an order waiving jurisdiction and referring the matter to the district attorney for appropriate criminal proceedings in the circuit court. The circuit court then has exclusive jurisdiction over the case [s. 48.18 (6), Stats.].

If waiver is granted, the alleged crime, which served as the basis for the waiver, does not restrict the authority of the district attorney to charge the offense he or she deems appropriate and does not restrict the authority of any court or jury to convict the child in regard to any offense [s. 48.18 (9), Stats., as created by 1987 Wisconsin Act 29].

6. Transfer of Child

When waiver is granted, the child, if held in secure custody, must be transferred to an appropriate officer or adult facility. The child is then eligible for bail in accordance with chs. 968 and 969, Stats. [s. 48.18 (8), Stats.].

7. Appeal of Order

An order waiving a child to adult criminal court may be appealed to the Wisconsin Court of Appeals. In In State ex rel. A.E. v. Cir. Ct. for Green Lake Cty., 94 Wis. 2d 98, 288 N.W. 2d 125 (1980), the state argued that a juvenile waiver order could not be appealed as a matter of right because it is not a final order. The Wisconsin Supreme Court rejected this argument and noted that:

> In [a prior decision], this court held that an order may be appealable as of right under sec. 808.03 (1), Stats., if it satisfies three criteria: the order finally and completely determines a claim of right; the claim is separable from collateral to and independent of the principal issue at trial; and the claim asserted is too important to be denied review.
>
> An order waiving juvenile court jurisdiction fulfills these three criteria. The juvenile court's order disposes of the question of a ch. 48 disposition finally at the trial court level; the issue of waiver is separable from the main issue of a criminal trial in circuit court, namely that of the guilt of the accused of the crime charged; and if review of the waiver issue must await review of a final judgment of conviction or is resolved by an acquittal, the confidentiality associated with juvenile proceedings has been irreparably lost....
>
> We recognize that interlocutory appeals are undesirable, especially in criminal prosecutions, because they cause delays which are inimical to an effective criminal justice system. At the same time, we recognize that granting a juvenile immediate review of a waiver order fulfills the public policy expressed by the legislature in chapter 48 [Green Lake Cty., supra, pp. 101-102].

8. Correctional Placement of Prisoner Under 16 Years of Age

Except under specified circumstances, the DHSS is required to keep all prisoners under 16 years of age (i.e., juveniles under 16 who are waived to adult court, convicted and sentenced to a state prison) in secured juvenile correctional facilities (e.g., Ethan Allen). The DHSS may transfer such prisoners to adult correctional institutions after they attain age 16.

The DHSS may place a prisoner under age 16 in an adult correctional institution, if it determines that placement in such an institution is appropriate based on:

a. The person's prior record of adjustment in a correctional setting, if any;

b. The person's present and potential vocational and educational needs, interests and abilities;

c. The adequacy and suitability of available facilities;

d. The services and procedures available for treatment of the person within the various institutions;

e. The protection of the public; and

f. Any other considerations promulgated by the DHSS by rule [ss. 53.18 (7) and 973.013 (3m), Stats., as created by 1987 Wisconsin Act 29].

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