

2020 Wisconsin Juvenile Court Clerks Association Conference Buzz Questions

For any questions or clarification regarding these questions and responses, please contact Justin Wolff, Legal Advisor, Children's Court Improvement Program at: justin.wolff@wicourts.gov or (608) 266-1557

- Q1: When a child subject to guardianship turns 18, what order is prepared to terminate the guardianship?
- A1: Entry of a request and order on the termination of a juvenile guardianship due to the child turning 18 is a matter of county preference and practice. An order terminating the guardianship is not required to end the guardianship since the juvenile guardianship terminates once the child has reached 18 (unless an earlier date is required, specified or the matter is terminated by the court before that date). If your county requires documentation of termination under these circumstances, use the following forms and indicate that the term of the guardianship order has expired:
- For § 48.977 cases:
 - Petition to Terminate Guardianship (JG-1628)
 - Order on Petition for Termination of Guardianship (JG-1629)
 - For § 48.9795 cases:
 - Request to Terminate Guardianship (JN-1540)
 - Order on Request to Terminate Guardianship (JN-1548)
- Q2: Who is to draft the "Family Court Order" (FA-614) for a Case Closure Order?
- A2: Per the Form Summary for FA-614, in keeping with the guidance provided for other family court forms, this form is to be prepared by the court hearing the juvenile matter under Ch. 48 or Ch. 938. However, it should be noted that this is not a statutory requirement and the court may direct another party in the juvenile court case to draft the order for judicial review and approval. The court in the family court case should not be preparing this order, unless it is the same court official.
- Note that in preparing this form, only the case number in the family court proceeding should be referenced in the caption or anywhere else on the form. The Case Closure Order (JD-1815) is transmitted along with FA-614 for inclusion in the family court file. While the Case Closure Order is a sealed document in the family court case, it will connect FA-614 to the juvenile case. See the Case Closure Order section of the Ch. 48 and Ch. 938 Model Record Keeping Procedures for additional information.
- Q3: When is the Consent to Act as Guardian ad Litem or Attorney (JD-1798B) required and when is it not required?
- A3: Use of this form is dictated by local practice and application in your jurisdiction may vary. The information included in this form and the filing thereof is not a statutorily dictated practice, but rather it is a way to confirm the attorney's consent to represent the party in the case and monitor compliance with the Guardian ad Litem training requirements under Supreme Court Rule Chapter 35.01.

Q4: In regard to all juvenile case types, when is the appointment of a Guardian ad Litem or adversary counsel required?

A4: The court always has discretion to appoint GAL, adversary counsel, or both for a child. However, appointment is required under certain circumstances. Below is an outline of instances where appointment of counsel or GAL is required. Please note that there may be additional circumstances under which appointment is not required, but may regularly occur or be advisable.

Chapter 48

- GAL is required for:
 - CHIPS if out-of-home placement is ordered, requested, or recommended.
 - Alleged abused or neglected children under 12, if adversary counsel is not appointed.
 - Unborn child alleged or adjudicated UCHIPS.
 - Guardianships under Ch. 48.
 - All TPR cases.
 - Contested adoptions.
- Adversary counsel is required for:
 - CHIPS if out-of-home placement is ordered, requested, or recommended and the child is 12 or older, otherwise GAL is sufficient.
 - Alleged abused or neglected children 12 or older, otherwise GAL is sufficient.
 - Underage expectant mother in UCHIPS.
 - Underage parent of a child subject to a TPR proceeding.

Chapter 938

- GAL is required for:
 - JIPS if out-of-home placement is ordered, requested, or recommended.
- Adversary counsel is required for:
 - Any juvenile alleged to be delinquent.
 - Any juvenile placed in a juvenile detention facility, including for TPC even if it is being requested that he or she be returned to their home.
 - JIPS if out-of-home placement: If petition is contested, at the fact-finding hearing and subsequent proceedings. If petition is not contested, at the hearing placing the juvenile out of the home.
 - A juvenile under 12 alleged to be delinquent and court has determined that a GAL should be appointed instead of adversary counsel.

Waiver of Counsel

- A child/juvenile 15 or older may waive any required counsel in a Ch. 48 or 938 proceeding if the court is satisfied that the waiver is knowingly and intelligently made and accepts the waiver.
- Except that the court cannot place a child/juvenile outside of his or her home unless the child/juvenile is represented by counsel:
 - At fact-finding and subsequent hearings, for contested matters.
 - At the hearing placing the child/juvenile outside of the home for uncontested matters.

- Except that, for delinquency proceedings, the court may not place a juvenile in a correctional setting, secure residential care center, transfer custody to DOC (serious juvenile offender program), or waive to adult court unless the juvenile is represented by counsel.

Miscellaneous

- Adversary counsel is required to be appointed for children subject to Ch. 51 civil commitment or Ch. 55 protective placement proceedings.

Q5: Can notice be published for a child abuse restraining order hearing, if personal service has been attempted and failed?

A5: There is no provision in Ch. 813 that allows a child abuse Temporary Restraining Order (TRO) to be published when personal service cannot be accomplished. Service by publication is only available for domestic abuse and harassment TROs.

See: Wis. Stats. 813.12(2)(a) and 813.125(2)(a).

Q6: Can the court order attorney fee reimbursement even where a Consent Decree has been entered and the juvenile has not been adjudicated delinquent?

A6: Yes. Pursuant to § 938.275(2), Wis. Stats., the court “*shall* order the juvenile’s parent to reimburse the state or county” for legal counsel provided to the juvenile by the state or county in a delinquency or JIPS proceeding. Under sub. 2.(am), the court may not order the reimbursement until the proceeding is completed or the state or county is no longer providing legal services. The completion of the proceeding for a Consent Decree would be when the term of the agreement has expired and the case dismissed or, if the Consent Decree is withdrawn, the conclusion of the proceeding via adjudication or dismissal.

Exceptions to reimbursement (§ 938.275(2)1.-2.):

- A parent of the juvenile is the complaining or petitioning party.
- The interest of the parent and the juvenile are “substantially and directly adverse” and reimbursement would be unfair to the parent.

The parent may request an indigency determination from the State Public Defender’s Office for attorney services provided by the state or to the court for any county-appointed legal counsel. The parent may further request a hearing to review any finding of indigency, amount ordered, or for application of one of the exceptions.

See § 938.275(2)2.(b-cg).

Q7: When should the Confidential Foster Parent Information form (JD-1820) be used? Does this form replace the Motion to Seal, Confidential Disclosure of Information, and Order on Motion to Seal or Redact forms?

A7: Form JD-1820 is to be used when, after a request is made, the court finds that disclosure of the identity of the foster parent would result in imminent danger to the child/juvenile or foster parent and orders the name and/or address of the foster parent is to be withheld from the parent or guardian. Form JD-1820 is filed with the court only and is to be sealed to prevent disclosure. The purpose of the form is to document the finding and provide the court with the foster parent’s name and/or address for notice purposes. It should not be distributed to any other party, including the one making the request. All additional forms and

filings should state confidential foster parent or confidential address in lieu of the foster parent name and/or address.

Form JD-1820 is not designed to replace any of the other forms for the sealing of records or providing of confidential information, but is to be used in lieu of any of those general forms when it comes to the specific issue of preventing disclosure of foster parent information in a juvenile case.

Q8: To whom should the Notice to School Board form (JD-1725) be sent, if the juvenile is homeschooled?

A8: Under § 938.396(2g)(m), Wis. Stats., required notices are to be provided “the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled.” If the juvenile is not enrolled in a school, such as being homeschooled, the statute does not require a notice to be sent to parents or anyone else.

Note: if the juvenile is “homeschooled” through enrollment in a virtual learning program through a school district, notice is to be provided to the board in that district.

Q9: If the juvenile becomes enrolled in a different school district following the sending of the Notice to School Board (JD-1725), when should a subsequent notice be sent to the board in the new district?

A9: § 938.396(2g)(m), Wis. Stats., generally governs the circumstance under which notices are to be provided to a school board. The notice is to be provided to the school board of the district in which the juvenile is enrolled at the time that the event occurs that triggers the notice, except in those circumstances where the juvenile is to be enrolled in a different school district as a result of a Dispositional Order for delinquency (checkbox #5 on JD-1725). If the juvenile changes school districts following the sending of the initial notice of felony delinquency petition, any notice of adjudication or the case being closed, dismissed, or terminated would be sent to the board in the new (current) school district. If the Dispositional Order results in the juvenile changing districts, the notice is to be provided to the board for the new school district. The statutes are silent as to the initial notice being re-sent should the juvenile change districts, including any notice related to compulsory school attendance; therefore, clerks should defer to local practice or judicial discretion in re-sending these notices.

Note: Care should be taken when transmitting any notice to the school board given the confidential and sensitive nature of juvenile cases. Under no circumstances should a copy of the court report ever be transmitted to a school board. If transmitting information regarding prior delinquency adjudications as required by § 938.396(2g)(m)5., such information should be limited to Ch. 938 delinquency adjudications by that court only. No Ch. 48 adjudication information should be sent nor should any delinquency matters adjudicated by another court be reported, even if the present delinquency case contains information on the prior adjudications.

Q10: When a juvenile is alleged to have committed a delinquency that would require a Notice to School Board (JD-1725) and the juvenile is subsequently found not competent or not responsible, what notice is to be provided to the school board and when?

A10: If the juvenile is found to be not responsible due to mental disease or defect pursuant to § 938.30(5)(c), Wis. Stats., the court is required to dismiss the petition and direct the filing of a civil commitment under § 51.20(1) or a JIPS proceeding under § 938.13(14), whichever is appropriate. Since the matter is dismissed, then the Notice to School Board is to be sent to the school board of the district in which the juvenile is enrolled and indicating that the case has been dismissed (checkbox #2).

If the juvenile is found to not be competent to proceed, the case is suspended pursuant to § 938.30(5)(d) and the court is to direct the filing of a civil commitment under § 51.20(1) or a JIPS proceeding under § 938.13(14), whichever is appropriate. At this time, no notice requirement is triggered since the proceedings are merely suspended, not dismissed. The juvenile may be committed or subject to a JIPS order for 12 months or a time equal to the maximum adult sentence for the most serious delinquent act alleged, whichever is *shorter*. The juvenile is periodically re-evaluated for competency during this time.

If competency is achieved during the period of commitment or while subject to a JIPS order, the delinquency case proceeds and notices are then provided when the juvenile is ultimately adjudicated delinquent or the case being closed, dismissed, or terminated. This includes if there are multiple instances of the juvenile being found not competent.

If competency is not achieved during the period of commitment or while subject to a JIPS order, then the delinquency matter is closed and should be noted as such in the Notice to School Board.

Q11: What needs to be done to close a Consent Decree?

A11: If a Consent Decree is not extended or withdrawn and the delinquency proceedings reinstated prior to the expiration date, then the Consent Decree expires. No further action is required for the clerk to dismiss the case in CCAP. That being said, practice varies by jurisdiction; with some counties requiring additional activity to trigger the closing of the case in CCAP. This may be done by memo from the caseworker indicating that the terms of the stipulation have been met and/or that the term of the Consent Decree has expired, while others may require the filing of a formal motion and court approval of an Order to Terminate Consent Decree (JD-1775).

Q12: What is the appropriate procedure clerks should follow when receiving and responding to requests from Crime Information Bureau (CIB)/Department of Justice (DOJ) regarding verification of firearms restriction?

A12: Per § 938.396(2g)(n), Wis. Stats., if “a juvenile is adjudged delinquent for an act that would be a felony if committed by an adult, the court clerk shall notify the department of justice of that fact. No other information from the juvenile’s court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose any information provided under this subsection only as part of a firearms restrictions record search under § 175.35(2g)(c) or a background check under § 175.60(9g)(a).”

Clerks notify the Department of Justice of felony adjudications by completing and sending the Adjudication and Prohibited Possession of Firearms and Day Care License Restriction Report (GF-220). If you receive a subsequent request from DOJ regarding the firearms prohibition, clerks can disclose that the juvenile was adjudicated delinquent of a felony act, but cannot

disclose any other information. In other words, clerks should not send the entire dispositional report.

Q13: How are clerks to handle e-mail requests that come in? We know that we cannot accept documents for filing via e-mail, but what about requests for confirmation of dates, times, etc.? Should the e-mail(s) be printed out and scanned into the case?

A13: Clerks should review Informational Bulletin 19-02 Limited Use of Email to Transmit Certain Documents on CourtNet (<http://courtnet.wicourts.gov/bulletins/docs/ib1902.pdf>). On page 3, the memo addresses accepting email requests and recommends scanning them into the court file.