

DETENTION/CUSTODY HEARINGS

- I. Taking a juvenile into custody. 938.19
 - A. Grounds for taking a juvenile into custody
 1. Warrant
 2. Capias
 3. Order of judge requiring removal of a juvenile from present custody.
 4. When a law enforcement officer has reasonable grounds that any of the following exist:
 - a. A capias, warrant or the juvenile is a fugitive
 - b. Capias in another state
 - c. The juvenile is committing or has committed an act that is a violation of law.
 - d. Juvenile is a runaway
 - e. Juvenile is in immediate danger and requires removal from surroundings.
 - f. Juvenile has violated court ordered rules of supervision
 - g. Juvenile has violated order for temporary custody.
 - h. Violation of any civil law
 - i. Absence from school without excuse
 - B. The person taking a juvenile into custody must immediately attempt to notify the parents. 938.19(2)
 - C. Taking a juvenile into custody is not an arrest except for determining whether the taking into custody is lawful and the legality of obtaining evidence. 938.19(3)
- II. Release from custody. 938.20(2)
 - A. Release by law enforcement

1. Every effort shall be made to release to parent, guardian or legal custodian.
 2. Juvenile may be released to responsible adult.
 3. A juvenile 15 or older may be released on his/her own recognizance.
 4. If juvenile has violated conditions of aftercare may be released to the department.
 5. May release to runaway home
 6. May release truant to youth service center.
- B. Juveniles not released by law enforcement. 938.20(3)
1. Juveniles not released must be taken to an intake worker accompanied by a written statement of the reasons for custody.
 2. Juveniles may be diverted to Ch. 51 proceedings if they exhibit conduct, which constitutes substantial probability of physical impairment or injury.
 3. Juvenile may be diverted to detox.
 4. Duties of intake worker for juvenile not released.
 - a. Inform juvenile of right to counsel and right to remain silent.
 - b. Make every effort to release juvenile from custody. Decision must be based on criteria in 938.205 and written judicial guidelines.
 - c. Notify the parents and juvenile of the following:
 - 1) Location of the juvenile
 - 2) Time and place of hearing required under 938.21
 - 3) Possible consequences of hearing
 - 4) Right to present witnesses and cross examine witnesses

- III. Criteria for holding a juvenile in custody. 938.205
 - A. 938.205 governs the decisions of all persons responsible for determining the appropriateness of holding a juvenile in custody. A juvenile may be held in custody if there is probable cause to believe that the juvenile is within the jurisdiction of the court and one of the following exists:
 - 1. If the juvenile is not held he/she will commit injury to person or property of others.
 - 2. Parent, guardian or legal custodian is neglecting, refusing, or unable to provide adequate supervision and services to ensure safety are not available.
 - 3. Juvenile would run away so as to be unavailable for court.
- IV. Places where a juvenile may be held in non-secure custody. 938.207
 - A. Home of parent (including in-home detention).
 - B. Home of relative
 - C. Licensed foster home
 - D. Licensed group home
 - E. Non-secure child welfare facility
 - F. Shelter care facility
 - G. Home of non-relative for 30 days, which can be extended for 30 days.
- V. Criteria for placement in secure detention facility. 938.208. A juvenile *may* be held in secure custody if the following exist:
 - A. Probable cause exists that the juvenile committed a delinquent act and
 - 1. presents a substantial risk of physical harm to another, or
 - 2. presents a substantial risk of running away so as to be unavailable for court
 - 3. Substantial risk of physical harm is presumed when:
 - a. The juvenile has committed one of several enumerated violent felonies.

- b. The juvenile possessed, used or threatened a handgun or short-barrel weapon while committing a delinquent act that is a felony.
 - c. Possession or going armed with a handgun or short-barreled weapon.
 - B. Probable cause that the juvenile is a fugitive from another state or secure facility.
 - C. The juvenile consents in writing to being held in secure custody.
 - D. The juvenile has been placed in non-secure custody and has run away or committed a delinquent act and no suitable alternative exists.
 - E. The juvenile has been adjudged or alleged delinquent in another county and has run away and is unlikely to remain in non-secure pending return.
 - F. A juvenile is subject to original adult court jurisdiction and is under 15.
- VI. Detention hearings. 938.21(1)
 - A. Must be held within 24 hours excluding Saturdays, Sundays and legal holidays.
 - B. A petition must be filed at the time of the hearing except when the juvenile is in custody for a capias, violation of court supervision or violation of a temporary placement order.
 - C. Juvenile must be released if no petition at hearing.
 - 1. 48 hour extension can be granted once if the court finds that there is probable cause that he juvenile is in imminent danger or that parents neglect, refuse, are unavailable or unable to provide adequate supervision. 938.21(1) (b)
 - D. If a juvenile is held without counsel a rehearing may be held upon request.
 - E. The court is required to provide notice to the juvenile of the allegations, right to counsel, right to remain silent and to confront and cross-examine witnesses.
 - F. Court orders for detention.
 - 1. Can include placement with parents under reasonable restrictions at home.

2. Can authorize electronic monitoring.
 3. Can place a juvenile in custody in secure or non-secure custody in accordance with statutory criteria.
 4. ASFA findings are required for a juvenile held outside of his or her home to wit:
 - a. That continued placement in home would be contrary to the welfare of the juvenile, AND
 - b. Whether the person taking into custody made reasonable efforts to prevent removal from the home.
- G. Deferred prosecution. 938.21(7). The court may enter into a consent decree or order the petition dismissed and refer the juvenile to intake for a deferred prosecution agreement if the court finds that the best interests of the juvenile and the public are served.

VII. Preparing for a detention hearing.

- A. Review the intake report
- B. Meet with the client
 1. Obtain social history
 2. Discuss police reports/intake reports
 3. Develop release options – what is optimal and practical?
- C. Contact resource providers
 1. Parents
 2. Social workers
 3. Intake specialists/probation officers
 4. Relatives, i.e. siblings, grandparents, aunts, etc.
 5. Non-relatives, i.e. family friends
- D. Prepare client and parents for hearing
 1. Courtroom procedures

2. Courtroom demeanor
 3. Judicial idiosyncrasies
 4. Appropriate/inappropriate curfews
 5. Meaning of court orders
- E. Probable cause challenges
- 938.255 Petition form and content
 - 938.185 Venue
1. Read petition carefully
 2. Assess four corners of petition for probable cause
 3. Determine who, what, where, when, how
 4. Review jury instructions for charged offense
- F. Placement arguments
1. Family stability
 2. Prior record or lack of record
 3. Family availability/willingness to cooperate with supervision
 4. School program success and needs
 5. Community ties and activities