TEENS IN THE LAW: A Parent's Resource

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I. Introduction

Like all states, Wisconsin has many laws to regulate conduct. State law defines the conduct that is against the law and the possible penalties and other consequences. Penalties range from serving a sentence of life imprisonment, for first-degree murder, to paying a ticket, for many noncriminal violations. Other consequences for violating certain laws may include expulsion from school or loss of driving privileges.

This handbook provides parents with basic information about the laws that have the greatest impact on families. Specific topics include criminal law, juvenile court proceedings, general parental rights and responsibilities, laws regarding school attendance, and laws regarding marriage and pregnancy.

This handbook is intended as a starting point for parents facing a potential legal issue. While the handbook summarizes the relevant law, it does not attempt to describe fully all the sources of law that may apply in a specific situation. Thus, the handbook does not substitute for consulting with an attorney familiar with the applicable area of the law.

The handbook provides sources of additional information, such as Web sites for detailed information about driver's licenses (Department of Transportation) and educational issues (Department of Public Instruction).

II. Arrests, Charges, and Tickets: When is Bad Behavior a Crime?

The teenage years are generally a time of great physical and emotional development. Teenagers face many challenges. Although most teenagers navigate this challenging period without being charged with criminal offenses, many in this age group do become involved with the justice system.

This section explains the difference between criminal and noncriminal offenses and the difference between felony crimes and misdemeanor crimes. This section also explains when children can be charged with a crime in adult court.

Depending on the child's age and the nature of the alleged offense, a charge may be brought in adult court or juvenile court. Thus, section III (Juvenile Court Process) applies to many charges brought against children. Another related topic is in section V (Police/Child Encounters), which sets forth basic rights that apply to police investigations.

A. What is the difference between a crime and forfeiture?

Any offense that carries a possible sentence of jail or prison is a crime. For example, the maximum penalty for retail theft (shoplifting) includes a jail sentence of nine months. Therefore, retail theft is a crime. Even if a person receives a sentence of probation or a fine (and never goes to jail), the person will have a criminal record if found guilty of a crime.

A forfeiture is a monetary penalty (an order by the court to pay a certain

amount of money). An offense punishable by a forfeiture is not a crime. The term "fine" in Wisconsin law describes a monetary penalty in a criminal case; therefore, the term "forfeiture" is used to describe other offenses. Example: Speeding is a forfeiture offense, not a crime.

B. Can I be arrested or taken to jail for a forfeiture violation?

Yes. Although a court cannot impose a jail sentence for a forfeiture offense, the police can place a person under arrest. The person can even be taken to jail until he or she is released on bond or released by decision of the local sheriff. A common example of this process is that the police hold suspects in jail following an arrest for operating while under the influence of alcohol (OWI), which is a forfeiture offense for suspects without any previous OWI convictions. This process allows the police to administer a chemical test for intoxication and ensures that the suspect is sober when released.

C. When can a child be charged as an adult?

Once a child has attained age 17, the child will face charges in adult court for any alleged criminal offenses. For most criminal offenses committed before age 17, charges (called delinquency proceedings) are brought in juvenile court (see section III. However, the next paragraph describes two circumstances when the charges may be in adult court even though the child is younger than 17.

The law allows immediate prosecution of children in adult court (original jurisdiction) for certain serious offenses. These offenses include assaults against guards in a detention center and intentional homicides. The child may ask the court to transfer the case to juvenile court, but the court may decide that the nature of the offense requires that the child face adult penalties. Also, for any offense committed by a child age 15 or above (14 for some serious offenses), the prosecutor may ask the juvenile court to transfer the case to adult court. The proceeding to decide the transfer request is called a waiver hearing.

D. What is the difference between a felony and a misdemeanor?

Felonies and misdemeanors are both types of crimes. Felonies are the most serious crimes. They carry possible punishment in state prison. Felonies in Wisconsin are classified by letter, ranging from Class A (most serious, sentence of life imprisonment) to Class I (least serious, maximum sentence of three years imprisonment). In addition to carrying long sentences of imprisonment, felony convictions result in the loss of certain privileges. These privileges include the right to vote (until the sentence is completed) and the right to possess a firearm (permanent ban, unless the right is restored in a separate proceeding).

Misdemeanors in Wisconsin are offenses punishable by a sentence in the county jail, which cannot exceed one year. If a person is under age 21 when he or she commits a misdemeanor offense, the court can order the record of conviction expunged (erased) after successful completion of the sentence.

This option can help a young person avoid a permanent criminal record, although the arrest record will remain.

Like most statements about the law, the rules about misdemeanors have exceptions. If a person is charged as a repeat offender, a misdemeanor can carry a prison sentence. Also, there are a small number of misdemeanors that are punishable by a fine only, rather than by possible incarceration.

III. Juvenile Court: Delinquency Cases

Delinquency cases are juvenile court cases in which a child is charged with an act that would be a crime if committed by an adult. A child found delinquent faces serious potential consequences, including incarceration in a locked institution. However, there are other types of important cases heard in juvenile court, including cases in which the government claims that a child needs court-ordered protection and services. These cases are described below in section IV, CHIPS & JIPS Cases.

A. What is the role of the juvenile court intake worker?

The intake worker plays an important role by screening court referrals and by recommending whether formal court proceedings should occur. The worker may decide to resolve a possible criminal charge informally, working with the child and family to address the child's behavior and to reduce the likelihood of further misconduct.

As part of deciding whether to refer a matter to court, the intake worker generally invites the child and parents for an interview (intake conference). This conference can assist in resolving the matter informally. However, if the matter proceeds to court, statements made to the intake worker can be used against the child in court. Therefore, the child and parents should be aware of both the potential benefits and potential risks of discussing the matter with the intake worker.

B. What is a detention or custody hearing?

Children, like adults, can be physically detained after being arrested. However, the juvenile code provides a right to a prompt hearing to decide whether to release the child. Generally, the hearing is held the next work day after the child is taken into custody. The court's options at a detention hearing include releasing the child to his or her parent, placing the child in a nonsecure out-of-home placement (for example, a foster home), or confining the child in a locked detention facility. The issue of physical custody can be reviewed several times while the case is pending.

In adult court, a bail hearing is similar to a detention hearing. The court may set conditions for the defendant's release and may require that the defendant post an amount of cash bail before being released.

C. What is a juvenile court petition?

A petition is a court document that starts formal juvenile court proceedings. For example, the prosecutor files a delinquency petition in juvenile court to start a proceeding that accuses a child of criminal misconduct. The petition lists the criminal charge(s) and states the basic alleged facts supporting the charge(s). If the child is not in custody, the petition is attached to a summons, which informs the child of the date, time, and place of the first court hearing.

In adult court, a criminal complaint is similar to a delinquency petition.

D. What happens at a plea hearing?

A plea hearing is a court hearing at which the parties to the case state whether they disagree with the petition. The court also tells the parties about important rights that they have in the proceeding, such as the right to an attorney, the right to present evidence, and the right to cross-examine witnesses who testify against them.

In a delinquency hearing, the child admits or denies the alleged charge(s) in the petition. An admission is similar to a guilty plea in an adult criminal case. A child who admits the charge(s) gives up the right to a trial and allows the court to impose the full range of consequences allowed by law. A denial preserves the right to trial without giving up the option of deciding to admit the charge(s) at a later hearing.

E. Why did the lawyer tell my child to deny the charges in court?

This question is commonly asked by parents who are confused and frustrated at the plea hearing. Their child may have already admitted the crime to the police, the intake worker, and the parents. They may have already punished their child, and they want their child to accept responsibility in court. They do not want to take their child out of school and miss another day of work to attend court.

However, the legal advice to deny the charge(s) usually makes sense. First, the attorney often has not had the opportunity to discuss the case fully with the child or to investigate possible mitigating factors. Second, the attorney often has not had the opportunity to find out the likely recommendations from the prosecutor and the social services worker. Similar to a plea of not guilty at the outset of a criminal case, a denial allows the child's attorney to investigate the case and to negotiate for an acceptable recommended disposition (see next section).

In adult court, the initial appearance is similar to the plea hearing. However, in felony cases, the defendant does not enter a plea until a later hearing, called the arraignment.

F. What items are possible subjects of negotiations in a juvenile case?

Many important aspects of a juvenile case are possible subjects for negotiation. In a delinquency case, for example, the number and the nature of the charges are open to negotiations. In exchange for the child's admission, the prosecutor might agree to dismiss or amend one or more charges. The other major topic for negotiations is the recommended disposition in the case.

In adult court, negotiations to resolve cases also are common. They often are called plea agreements or plea bargains. As in adult cases, the juvenile court is not required to follow the disposition recommended by the parties. However, the parties often can present reasons to persuade the court that the agreed recommendation is a fair way to resolve the case.

G. What is a consent decree?

A consent decree is an agreement among all parties, and approved by the court, to dismiss a juvenile case if the child (and/or parents) satisfy certain conditions. For example, a delinquency case of retail theft might be dismissed if the child obeys the law, attends school regularly, and apologizes to the merchant. A typical consent decree calls for dismissal after six months if no violations occur. A violation of the consent decree may result in a formal court order that is in effect for a longer time.

Other options exist to divert cases from the juvenile court system without a formal court order directed at the child or parents. The options vary by county, but they all require the agreement of the parties (see previous section on negotiations).

In adult court, similar diversion options exist, which vary among counties and which require the agreement of the parties. Common forms of diversion in the adult system are the deferred prosecutions agreement and the deferred entry of judgment.

H. What are motion hearings and other hearings before trial?

The parties to a juvenile case often file motions that ask the court to decide certain issues before trial. For example, a child's attorney might file a motion challenging a confession that the police obtained from the child. If there is an issue regarding the child's ability to understand the court proceedings, the court may order a psychological evaluation and then hold a hearing to decide if the child is mentally competent to stand trial.

Motion hearings and other pretrial hearings also are common in adult cases to resolve issues before the scheduled trial date.

I. What is a fact finding hearing?

A fact finding hearing is the juvenile court equivalent of a trial. All parties have the right to present witnesses and to cross-examine the witnesses called by the other parties. In juvenile delinquency cases, a judge decides the issues at the end of the hearing (the issues are the allegations contained in the petition, see section III C, that started the case). In some juvenile court proceedings, such as petitions for termination of parental rights, the right exists to trial by either a jury or a judge.

J. What is a dispositional order?

A dispositional order is the court order in which the judge states the rules that the parties must follow. For example, a dispositional order for a very serious delinquency case might require confinement in a secure detention facility. For a less serious offense, a common disposition is a period of supervision,

during which the child must obey certain conditions and meet regularly with a social worker. Common conditions in dispositional orders include restitution, community service, school attendance, and counseling.

Before the court enters a dispositional order, it holds a hearing at which all parties may recommend possible dispositions. The court also may ask the county department of social services to prepare a report before the hearing. This court report generally includes a summary of the court case, a family history, and a recommended disposition. If the parties have reached a negotiated settlement (see section III F), they may have a joint recommendation for the court to consider. If the parties do not agree about disposition, they may present different recommendations to the court.

A child or parent who violates the rules of a dispositional order may face sanctions (see section III L) in a further court proceeding.

A juvenile dispositional hearing is similar to sentencing in an adult criminal case.

K. What options are available to object to a dispositional order?

A party may ask the court of appeals to overturn the decision in a juvenile case. However, an appeal generally takes a few months. Also, before the court of appeals will overturn a case, it must decide that there was a significant error in the juvenile court. The appealing party may not present new evidence in the court of appeals. Instead, the court of appeals reviews the record of the proceeding from the juvenile court and the written arguments (briefs) of the parties. The court of appeals will not overturn any factual finding of the juvenile court that is reasonably supported by the evidence.

Because of the complex nature of appellate cases, the assistance of an attorney is extremely important for a successful appeal.

Appeal procedures are generally similar in juvenile and adult cases.

L. What happens if the child violates a condition of the dispositional order?

If a child does not follow the conditions of the dispositional order, the child can be brought back to court for a "sanction." The various sanctions that the court may order include (1) up to 10 days in secure detention (juvenile jail) or nonsecure (out-of-home) placement; (2) suspension of the child's driver's license or hunting or fishing license; (3) home detention, possibly with an electronic monitor system; (4) community service; and (5) participation in a youth report center.

In addition, the child's social worker may place the child in secure detention or a nonsecure placement for up to 72 hours while the social worker investigates the child's alleged violation of the dispositional order. The 72-hour secure detention or nonsecure placement may even be imposed upon the child by the social worker as a *consequence* of the child's failure to follow the conditions of the dispositional order. This 72-hour placement can be done without any hearing.

IV. CHIPS, JIPS, and Other Juvenile Proceedings

A. What is a CHIPS case?

In the Wisconsin Children's Code, the court is given jurisdiction over children under age 18 who are in need of protection or services (CHIPS) that can be ordered by the court. Jurisdiction means that a proper legal reason exists for the court to make decisions about a family and to authorize others (such as social workers) to take actions affecting the lives of the family members.

Thus, a CHIPS case starts with a petition in juvenile court alleging facts that would (if proven) give the court jurisdiction over the child and family. CHIPS petitions may allege a need for protection or services because the child:

- is without a parent or guardian;
- has been abandoned or neglected;
- has been abused or is at substantial risk of being abused;
- needs special treatment that the parent(s) request(s) help to provide;
- has been placed for care or adoption in violation of the law; or
- is receiving inadequate care while the parent is missing, incarcerated, hospitalized, or institutionalized.

The above list is not complete, but gives an idea of the type of problems that give the court jurisdiction in CHIPS cases.

Most CHIPS proceedings start when a referral is made to the prosecutor's office by a social services agency, but a parent, guardian, or child also may start a CHIPS proceeding by filing a petition with the juvenile court. The prosecutor's office is either the county's corporation counsel's or district attorney's office.

The party filing the petition has to prove the facts that are the basis for asking for court involvement. The party must be prepared to present its proof to a judge or a six-person jury at a fact-finding hearing (trial). The judge or jury would have to be convinced that the facts alleged in the petition have been proven.

B. What is a dispositional order in a CHIPS case?

If the essential facts have been proven (thus giving the court jurisdiction), the court has the right to enter a disposition. The disposition is the court's order to address the problems in the child's life that were the basis for the petition. (Dispositional orders are entered in other types of juvenile cases, such as delinquency, see section III J, and JIPS, see section IV F) The following are some options that the law allows the court to include in a CHIPS dispositional order:

- counsel the child or parent, guardian, or legal custodian;
- place the child under supervision under conditions set by the court;
- place the child under supervision and order services;
- order a Court Appointed Special Advocate (CASA) for the child;
- designate a placement for the child, such as the home of the parent or relative, the home of a nonrelative for less than 30 days, a foster or treatment foster home, a group home, or a residential treatment center;
- transfer legal custody of the child to a relative of the child, a county department, or a licensed child welfare agency;
- order supervised independent living for a child who is age 17, allowing the child to live either alone or with friends

under supervision deemed appropriate by the court;

• order the child to attend a nonresidential educational program;

• order the child to enter an outpatient alcohol and other drug abuse treatment program.

An order entered by the judge before the child reaches age 18 lasts for up to a year unless the judge orders a shorter period.

C. What if the facts of the case change after the order is entered?

The terms of the dispositional order can be changed if new information arises that affects the advisability of the court's disposition. A petition to change (revise) the dispositional order can be filed by the child; the parent, guardian, or legal custodian; any person or agency bound by the dispositional order; or the prosecutor. The court shall conduct a hearing at which any party may present relevant evidence.

D. What options exist if the placement ordered by the court does not work out?

The law allows the child; the parent, guardian, or legal custodian; the person or agency primarily responsible for implementing the dispositional order; or the prosecutor to request a change in placement. A petition can be filed seeking the change in placement, stating the name and address of the new placement; the reasons for the change; a statement why the new placement is preferable to the present placement; and how the new placement satisfies the objectives of the treatment plan.

Sometimes, because of an emergency situation, changes in placement occur before a court hearing takes place. In other situations, a change of placement may be planned by the agency responsible for the placement of the child. Parties then receive a notice of the change and are given the opportunity to request a court hearing, at which any party may object to the change in placement.

E. Can the dispositional order be extended?

A similar procedure to the one for change of placement (see section IV D) allows an interested party to petition for an extension of an order. All the parties present when the original dispositional order was entered shall be provided notice regarding the proposed extension. Orders continuing an out-of-home placement can be extended until the child reaches age 18; for one year after the date of entry of the order; or until the child reaches age 19 if the child is a full-time student at a secondary school and is reasonably expected to complete the program before reaching age 19.

F. What is a JIPS case and how is it different from a CHIPS case?

JIPS (juveniles who need the protection and services of the court) is used to describe children (younger than age 18) who come before the court because of a court petition alleging any of the following circumstances:

• the parent indicates he or she needs help to control the child;

• the child is habitually truant from school;

• the child is a school dropout;

• the child is habitually truant from home and reconciliation efforts have been tried and have failed;

• the child is under age 10 and has committed a delinquent act;

• the child has been determined not responsible for a delinquent act by reason of mental disease or defect or has been determined to be not competent to proceed.

Unlike CHIPS children, who need protection or services because someone else has not appropriately performed his or her responsibilities, JIPS children need protection or services because they committed the acts or omitted to do acts themselves.

The trial of a JIPS petition shall be before the judge, and the judge decides whether the prosecutor has presented strong enough evidence of the facts alleged in the petition.

If the court finds that the allegations have been proven and that the child is in need of protection or services, the court may order many of the same services as in a delinquency disposition (see section III). The court may not, however, place the child in a secure facility or order payment of a forfeiture.

G. Can a JIPS child be "sanctioned" like a delinquent child?

Yes. Just like a delinquent child can be sanctioned for violating a condition of his or her dispositional order (see section III L), a JIPS child can be sanctioned for violating a condition of the dispositional order. The sanctions for a JIPS child include (1) up to 10 days in a nonsecure (out-of-home) placement; (2) suspension of the child's driver's license or hunting or fishing license; (3) home detention, possibly with an electronic monitor system; (4) community service; and (5) participation in a youth report center.

The law contains special sanctions related to children who have been found to be JIPS based on truancy from school. Specifically, these JIPS children can be put in secure detention (juvenile jail) for up to 10 days if they violate a condition of the dispositional order. In addition, many other sanctions can be imposed on a JIPS truant, including (1) up to 10 days in a nonsecure (out-of-home) placement; (2) suspension of the child's driver's license or hunting or fishing license; (3) home detention; (4) community service; (5) participation in a youth report center; (6) attendance at an education program; (7) revocation of the child's work permit; (8) payment of a forfeiture; and (9) imposition of a curfew.

In addition, the child's social worker may place a JIPS child in a nonsecure placement (outside of the juvenile's home) for up to 72 hours while the social worker investigates the child's alleged violation of the dispositional order. The 72-hour nonsecure placement may even be imposed on the child by the social worker as a *consequence* of the child's failure to follow the conditions of the dispositional order. This 72-hour placement can be done without any hearing.

H. When does court involvement in an out-of-home placement begin?

When a child is removed from the

home, a custody hearing takes place before the court within 48 hours (excluding Saturdays, Sundays, and legal holidays) for CHIPS children or within 24 hours for JIPS children. The court may continue to keep the child out of his or her home if certain criteria are met. The court also may impose restrictions on the child's travel, impose other restrictions on the child's activities, and order that a social service agency supervise the child.

The court also can place reasonable restrictions on the conduct of the parent, guardian, legal custodian, or other responsible person that may be necessary to ensure the safety of the child.

All orders to hold a child in custody shall be in writing and shall list the reasons and criteria forming the basis of the decision.

I. What is a permanency plan?

Whenever a child is removed from the home, both Wisconsin and federal law require that the agency or department responsible for providing services and supervising the placement make plans for returning the child to the home or placing the child in a different permanent home. A written report of the permanency plan must be filed with the court within 60 days after the child was first removed from the home.

The permanency plan describes the services provided to try to prevent the removal of the child from the home, the reasons for holding the child or removing the child from the home, and the goals of the plan. The plan also describes the services to be provided to carry out the dispositional order.

The court must regularly review the permanency plan and the efforts of parties to finalize it. Either the court or an appointed panel must review the permanency plan every six months.

The Adoption and Safe Families Act (ASFA) is a federal law that guides the courts in implementing the permanency plans. To shorten the length of time that children are in out-of-home placements, ASFA requires that courts take specific steps to implement permanency plans if a child has been placed outside the parental home for 15 of the most recent 22 months.

Under Wisconsin and federal law, courts are to look to the relatives of the child and to potential adoptive homes if the parents are not able to correct the reasons that led to the removal of the child from the home in a timely manner to allow the child to be safely returned to the home.

J. What happens if the parent does not meet the court conditions?

The primary aim of the permanency planning process is to be sure children have a permanent home and are not moving from foster home to foster home for several years. If court-imposed conditions are not met in a timely fashion, any party or the court may begin one of several procedures to identify a different home for the child.

A termination of parental rights is the process by which a court will end the legal relationship between the child and a biological or birth parent and make the child available for adoption. When a parent's rights are terminated, all rights,

powers, privileges, immunities, duties, and obligations existing between the parent and the child are permanently ended. Wisconsin law recognizes that a parent may voluntarily agree to have his or her rights terminated (Wis. Stat. section 48.41) and circumstances may arise under which the court can order a termination over the objection of the parent.

K. Why would a parent agree to have rights terminated?

There are times when a parent realizes that he or she will not be able to provide adequately for a child and therefore decides that the child should be placed in a different home. One example is a parent incarcerated for a substantial period who has no relatives with whom the child could safely reside.

L. When can the parent have relatives care for the child?

Another disposition available to the court involves a guardianship transfer. Every minor must have someone who is responsible for the care, custody, and physical control of the child and for the management of any property that the child owns. A court can transfer the responsibility for exercising those powers to an appropriate adult. The law includes provisions for appointing relatives to act as the guardian of the child until the child reaches age 18. In addition, there are provisions for designating nonrelatives as guardians for certain minors.

Recent events have provided examples of circumstances in which parents have wished to designate parties to act as guardians of children in the parent's absence. If a parent is in the military and not in the position to give immediate approval for medical treatment, make decisions about the educational training, or manage the financial affairs of a child, the guardianship transfer gives the parent the opportunity to designate the person who will act in that capacity.

Wisconsin statutes and federal law also recognize that there will be times in which a child can be placed with a relative without the need for any legal change in the relationship between the child and the parent or the relative. Placement with a "fit and willing relative" is one of the exceptions the ASFA recognizes as not requiring court intervention when a child has been placed outside the home for an extended period.

M. What does the court do if the child is not in control of his or her behavior?

There are times in which a child may appear in court and, although the child is alleged to be in need of protection or services, the court may believe the child is developmentally disabled, mentally ill, drug dependent, or suffering from alcoholism. The laws related to mental health and protective services allow courts to determine appropriate needs and services for the child.

N. Can the court get involved to protect an unborn child?

Yes. A UCHIPS (unborn child in need of protection or services) case is a proceeding involving an expectant mother (even a minor expectant mother) who is using drugs or alcohol to the

point of harming the physical health of her baby. In a UCHIPS case, an expectant mother can be taken into custody and ordered to stay at the home of a relative or friend, a hospital, or a treatment facility. The court procedures of a UCHIPS case are similar to those of a CHIPS case (see section IV B). Similar to a parent in a CHIPS case, an expectant mother in a UCHIPS case can be ordered to do certain things such as receive counseling, work with a social worker, and participate in drug or alcohol counseling, in order to protect her unborn baby. Also similar to a CHIPS case, a disposition in a UCHIPS case can be revised or extended, and the placement of the expectant mother can be changed if circumstances change while the dispositional order is in effect.

V. Procedural Rights in Juvenile Court

A. What information must be provided in advance about the case?

The parties in a juvenile case have a right to advance notice of the alleged facts and the possible results of a court proceeding. The intake worker (see section III A) provides this information to children and parents. If a formal court petition (see section III C) is filed, the petition must provide a summary of the alleged facts.

B. When do children or parents have the right to an attorney?

Court proceedings are complicated. An attorney can be extremely helpful in explaining court proceedings and in presenting relevant information to the court. Many participants in court proceedings do not have sufficient funds to hire an attorney. However, in some juvenile court proceedings, children and parents are eligible to have an attorney appointed on their behalf.

In delinquency cases, which are prosecutions in juvenile court for alleged criminal acts, children are automatically eligible for representation by the State Public Defender (SPD). For the address and telephone number of the SPD office serving your county, you may call (608) 266-0087 or consult the agency directory online at wisspd.gov. Neither the child nor the parent has to pay in advance for representation, although the court often orders the parents to reimburse the government for the cost of the representation. If the parents believe that they are unable to pay, they may request that the SPD complete a financial evaluation at the end of the case.

Children also are eligible for SPD representation in other types of juvenile proceedings, including cases in which a petition alleges that the child is truant, a runaway, or uncontrollable.

When an attorney represents a child, sometimes the parents do not understand why the attorney will not share all information about the case with them. Parents should realize that the attorney's duty is to the child, not to the parents (even if the parents are paying the attorney fees). As with the representation of any client, the attorney has a duty to keep information

confidential, unless the client agrees to share it with others.

Parents have a right to SPD representation in juvenile cases in which the court is asked to terminate their parental rights. Parents must complete a financial evaluation to determine whether they qualify for a public defender.

Courts also have the authority to appoint private attorneys for parents in juvenile cases. The courts generally require a financial form showing that it would create a substantial hardship for the parents to hire an attorney. Court appointments are at county expense, although the court may order the parents to reimburse the county.

C. What is the role of a guardian ad litem?

A guardian ad litem is an attorney appointed to represent the best interests of a child in juvenile court. The role of a guardian ad litem differs from that of an attorney hired or appointed to advocate for a child (see previous section). An advocate argues in court for the legal outcome that the client wants. A guardian ad litem, however, serves the court rather than the client. Thus, the guardian ad litem makes an independent assessment of the disposition that is best for the child. The guardian ad litem recommends that disposition to the court.

Generally, the courts prefer to appoint a guardian ad litem rather than an attorney-advocate for small children.

Because the guardian ad litem's duty is to report fully to the court, his or her conversations with the child and parents are not protected by attorney-client confidentiality.

D. When are court-ordered evaluations used?

Often a juvenile court case involves possible issues of mental health or substance abuse (dependency on alcohol or on illegal drugs). If the court believes that evaluation of a child, parent, or guardian is appropriate, the court may appoint a qualified professional to complete an evaluation and report the findings. The court may rely on information in the report in determining the appropriate disposition of the case.

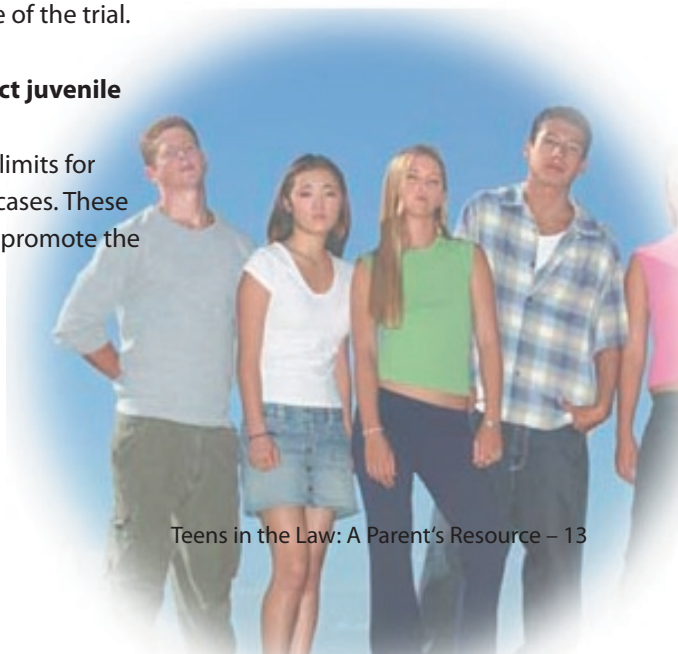
E. Is there a right to a jury trial in juvenile court?

Children, parents, and guardians have the right to a trial (fact-finding hearing) by jury in some, but not all, juvenile court proceedings. This right exists in cases in which the termination of parental rights is in question. The right to a jury trial also applies in certain cases of children alleged to be in need of protection or services (see section IV A). To have a jury trial, the party must make a request before or during the plea hearing (see section III D).

The right to a jury trial does not apply in delinquency cases. In these cases and in others in which there is no jury, the judge decides the outcome of the trial.

F. How do time limits affect juvenile cases?

State law provides time limits for various actions in juvenile cases. These time limits are intended to promote the



best interests of children by ensuring that their cases are heard and decided promptly. Thus, courts try to schedule juvenile hearings as early as they can find time on their calendar. Some time limits are flexible, and the court can extend them if valid reasons exist to allow the parties and the court additional time.

G. Are juvenile court records confidential?

Most adult court hearings and adult court records are open to the public. For example, the public may review adult court records in a computer database. However, juvenile court hearings and records are generally confidential. Only the parties, court personnel, witnesses, and others with an interest in the case may attend a juvenile court hearing. Similarly, only parties to a juvenile case and their representatives may inspect or obtain copies of juvenile court records.

Confidentiality rules, however, are not absolute. There are many exceptions to confidentiality that permit the courts to disclose records in limited circumstances. For example, the general public may attend court hearings if the child is charged with a felony crime (see section II D). Likewise, the court must notify the child's school whenever a child is charged with a felony crime. Other organizations and individuals, such as law enforcement agencies and alleged crime victims, may obtain juvenile court records or police records under some circumstances.

VI. Police-Child Encounters

Parents often have questions about the permissible conduct of either law enforcement or school authorities in the investigation of suspected misconduct. This section looks at the general standards for investigations of children.

A. What is the scope of police authority in general?

Law enforcement agencies have broad, but not unlimited, authority in the investigation of suspected crime and other misconduct. This authority includes discretion to decide to focus on certain suspects, locations, and types of misconduct. Police also may use informants and undercover operations to trick suspects.

In general, police may use similar techniques in their investigations of children and adults. However, the age and maturity of a child are factors that courts may consider in reviewing the legality of certain types of police conduct.

The next two subsections describe two rights guaranteed by the U.S. Constitution that serve as limits on law enforcement authority.

B. What is the rule against unreasonable searches and seizures?

The United States and Wisconsin constitutions prohibit unreasonable

searches and seizures. An example of a prohibited action is a police entry into a home without a warrant to conduct a search. Like most rules in this complex area, this example has exceptions: in an emergency situation, the police are not required to seek a warrant.

A seizure of a person occurs when the police detain a person in a way that would communicate to a reasonable person that he or she is not free to leave. To seize a person, the police must have some objective basis (called "reasonable suspicion" in the law) to believe that the person is or has been involved in misconduct. A higher level of suspicion (called "probable cause" in the law) is required for a formal arrest or for prolonged forcible detention similar to arrest.

The police do not need any degree of suspicion to approach a person in a public place and ask questions. Unless the person (child or adult) has been seized, the person is free to go about his or her business. Often, however, it is unclear whether the police are seizing the person or merely asking for voluntary cooperation. For example, if an officer approaches a child on the street and says, "May I have a word with you," the child may be unsure whether the officer is making a request or a command. Thus, the line between a "voluntary encounter" and a seizure can be unclear.

C. When may the police search children's property?

Many of the same rules about searches apply to both children and adults. The police usually need probable cause to search personal property. Exceptions exist, however, and a major exception is that the police may ask for permission (consent) to search. Police are trained to ask in a way that makes the suspect likely to agree to the search. The police are not required to tell the suspect about the right to refuse consent.

Restrictions on searches differ depending on the location searched. For example, a greater privacy right applies in one's home than in one's car. Thus, the courts enforce a stricter standard against searches of homes than against searches of cars. A location of special interest to children is their school.

The courts recognize that children have a right to privacy at school, but that the right needs to be balanced with the rights and responsibilities of school authorities to protect all students from criminal activity. Thus, some searches are allowed in schools that would not be permissible in other locations (for example, locker searches).

D. Are children required to cooperate with police questioning?

No. The United States and Wisconsin constitutions provide a right to remain silent in the face of police questioning. Thus, the police may not force anyone, adult or child, to answer questions. However, the courts also recognize that the police need to rely on cooperation from persons with information about criminal activity. Also, the police may be able to solve serious crimes by obtaining confessions from the guilty parties. Thus, the police have a range of permissible tactics to try to convince suspects to answer questions truthfully.

The next two subsections look at major limitations on police techniques of questioning suspects.

E. When do the police need to read the *Miranda ri*ghts?

One of the most famous cases ever decided by the U.S. Supreme Court is *Miranda v. Arizona*, in which the Court required the police to tell suspects about certain constitutional rights. Anyone who watches police dramas on television is familiar with these rights: the right to remain silent, the right to an attorney, and the right to have an attorney appointed "if you cannot afford" one (the "rights" also contain the warning that "anything you say can and will be used against you").

Less widely known than the rights are the circumstances under which the police must recite them. The rights are required when two conditions exist: custody and police interrogation. Custody, for purposes of *Miranda* warnings, is roughly equivalent to being under arrest. Thus, questioning on the street, in a suspect's home or office, and even at the police station does not necessarily require the *Miranda* warnings.

Interrogation, for purposes of *Miranda* warnings, means direct questioning or similar techniques that the police should know are likely to provoke a suspect to confess.

Once the police read the *Miranda* rights, they usually ask (or even encourage) the suspect to give up (waive) these rights. The police typically ask the suspect to sign a standard form saying that he or she understands the rights and chooses to give them up. Then the police can proceed to question the suspect.

The *Miranda* rules apply to adults and children. Depending on the age, experience, and maturity of a child, there may be a question as to the child's ability to understand the *Miranda* rights and the consequences of giving them up. However, there is no minimum age that a child must attain before the police may seek a waiver of *Miranda* rights.

F. Are there other restrictions on questioning besides the *Miranda* warnings?

Yes. Statements must be voluntary to be allowed as evidence in court. Police are prohibited from coercing statements from suspects. They may not use physical force or threats of force to compel a suspect to confess. However, the boundary between permissible and illegal tactics blurs in the area of psychological methods of persuading a suspect to confess. Because few suspects walk into a police station and blurt out a confession, the courts allow a great deal of flexibility in persuasive techniques to convince suspects to admit their crimes.

Depending on their age and other characteristics, children often are more susceptible than adults to police questioning. Nonetheless, to have a confession thrown out of court, a child must show that improper police tactics (coercion of some type) caused the child to confess.

G. Do parents need to be present for questioning?

Wisconsin law requires the juvenile

court intake worker (see section III A) to notify parents soon after their child is taken into custody. This law, however, does not prohibit police questioning of a child without either parent present. If the child asks to call his or her parents, the police do not necessarily have to stop questioning. However, by refusing to allow a call to parents, the police risk having a court conclude that the child's decision to answer questions was the result of coercion (see previous subsection).

The police do not need parental permission to question a child, although in many cases they may decide to seek permission.

VII. Parental Rights and Responsibilities

A. What are the general rights of a parent or guardian?

A parent, in the absence of a court order changing the status, is considered to have legal custody and guardianship of the child. Legal custody gives the parent the right and duty to protect, train, and discipline the child. Legal custody also carries with it the duty to provide food, shelter, legal services, education, and ordinary medical and dental care for the child.

The guardian has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child. The guardian must be concerned about the child's general welfare and can consent to marriage, enlistment in the armed forces, obtaining a motor vehicle operator's license, and major medical and surgical treatment (Wis. Stat. section 48.023).

B. Does a child have to attend school?

Yes. The law requires that any person having the control of a child between the ages of 6 and 18 have the child in school regularly during the full period and hours the school the child is to attend is in session. While there are exceptions that include children in approved home-schooling programs, parents must be sure children are in an approved educational program. For more information about school attendance and alternative education, see section VIII (Parental Rights and Responsibilities Regarding School).

C. Does a parent have an absolute right to choose the form of discipline to use with his or her child?

No. Parents have an obligation to exercise control over a child and to help the child conform to behavioral expectations. The law does, however, impose limits on the type of force that can be used in disciplining a child. To protect children and ensure their safety, the law forbids lacerations, fractured bones, burns, internal injuries, severe or frequent bruising, or great bodily harm to a child. All of these types of injuries are considered child abuse, which is a criminal offense.

D. Does child abuse just include physical injury?

No. A parent also has an obligation to protect a child from emotional damage. Emotional damage includes harm to a child's psychological or intellectual functioning. A parent is expected to obtain the necessary treatment or to take steps to treat the symptoms.

Abuse also is defined in Wisconsin law as including sexual intercourse or contact and permitting, allowing, or encouraging a child to participate in prostitution.

E. Is a parent liable for the acts of a child?

Yes, under some circumstances. A parent with custody of a child is liable for the willful, wanton, or malicious act of the child. Also, when a juvenile court has ordered that a child pay restitution, a request can be made later to have the unpaid amount ordered as a judgment against the custodial parent.

VIII. Parental Rights and Responsibilities Regarding School Attendance

A. When does the law require children to attend school?

Your child has a constitutional right to attend a public school in the school district in which you live. As a parent, you have a responsibility to make sure your child attends school. All students are required to attend school for the entire school day, every day school is held, until the student graduates from high school or until the end of the school semester that he or she reaches age 18. You could face legal problems if your child skips school. For example, your child could be charged with truancy, and the court could order you to participate in various programs or counseling. If you prevent your child or any other child from attending school, you could face criminal charges. For more information, see www.dpi.state.wi.us/dpi/dlsea/sspw/pdf/attendqa2.pdf.

B. What educational alternatives exist besides traditional schools?

There can be many alternative education options available through your resident school district. The most common alternatives are described below.

1. Charter Schools

Some school districts offer charter schools. These are public schools that may use a different method of teaching or school administration. You must contact your school district to learn if there is a charter school in your district and what type of charter school it is. School districts usually have an application period during which you can apply to attend the charter school. For more information, see www.dpi.state.wi.us/dpi/dfm/sms/csindex.htm.

2. Child at Risk

If your child is identified as a child at risk, you also may develop an alternative education program. A child can be identified as a child at risk if he or she is in grades 5-12 and is at risk of not graduating from high school. The law provides specific and detailed guidelines for classifying a child as a child at risk.

Some school districts receive grants to develop alternative education programs. If you are interested in an alternative education program, you should contact your school district to learn more about the ones offered in your school district. For more information, see www.dpi.state.wi.us/dpi/dlsis/let/alted.html.

3. Technical College/University

Under some circumstances, your older child may be able to attend a technical college or university. If your child is over age 16 and has been identified as a child at risk, you could ask the district to send your child to the local technical college to take classes leading to high school graduation. If your child qualifies and you make the request, the district is required to honor your request. If your child is over age 16 but not identified as a child at risk, you may ask the district to send your child to the technical college to take classes leading to high school graduation. However, the school district is not required to honor this request.

If your child is age 17 and started work toward a high school equivalency diploma (HSED) while he or she was incarcerated, you may request that he or she be allowed to complete the program at the local technical college. The district and the technical college are required to grant this request. If your child is age 17 but did not start an HSED program while incarcerated, you may request the district to allow your child to attend a technical college to take classes leading to graduation or an HSED. However, the district is not required to grant this request. For more information, see www.dpi.state.wi.us/dpi/dlsis/let/alted.html.

If your child is in high school, he or she may be eligible to take classes at a university, college, or technical college under the Youth Options program. The school district must allow this option when a comparable class is not available at the high school. The class must be eligible for credit toward high school graduation. For the most up-to-date status of the program, you can contact your school district or the Wisconsin Department of Public Instruction (DPI). For more information, see www.dpi.state.wi.us/dpi/dlsis/let/alted-tc-contract.pdf.

4. Public School Open Enrollment

There are alternatives to attending the regular public school in your neighborhood. Under the public school choice program you may apply for your child to attend a public school in a different district. You can only apply for this program in February for the following school year. Your school district can provide you information about this option, or you can find the information online at www.dpi.state.wi.us/dpi/schldist.html.

5. Private School

You may choose to enroll your child

in private school. The private school must be recognized by the State Superintendent of Public Instruction to qualify. Many state laws and protections do not apply to your child if he or she attends a private school. Under most circumstances, you are responsible for payment of tuition to the private school. If you live in the city of Milwaukee, you may qualify for a voucher for your child to attend some private schools. You must meet certain residency, age, and income requirements to receive a voucher. To see if you qualify for the voucher program, you can contact the private school you are interested in or see www.dpi.state.wi.us/dpi/dfm/sms/choice.html.

6. Home School

You also may choose to home school your child. To do so, you must submit a form to the DPI that certifies you are providing educational instruction to your child for at least 875 hours each school year. For more information, see www.dpi.state.wi.us/dpi/dfm/sms/homeb.html.

7. GED and HSED

The general education development test (GED) is an alternative to obtaining a high school diploma. Children must be at least age 18-and-six-months to take the GED tests, or the class with which they entered grade 9 must have graduated from high school. Under Wisconsin's Compulsory School Attendance law, 17-year-olds may be permitted to enroll in a program that leads to an HSED (see the subsection on Technical College/University) and to begin taking the GED tests. A student may be eligible for the HSED program either at a technical college or university or at his or her high school. For more information, see www.dpi.state.wi.us/dpi/dlsis/let/gedhsed.html.

C. Is education available for children while they are incarcerated?

The Wisconsin Constitution guarantees a free education for all children ages 4 through 20 who have not graduated from high school, even if they are incarcerated. Each secure facility delivers education. Some have schools within the facility; others provide teachers or tutors to provide basic education. For more information, see www.dpi.state.wi.us/dpi/dlsis/let/jail-basedq&a.html.

D. What rights apply when the district seeks to expel a student?

If your child is facing expulsion from a public school, you have the right to attend an expulsion hearing. At the hearing, you may present witnesses and question the witnesses presented by the school district. After the expulsion hearing, the school board will make a decision. If the school board expels your child, you may appeal the expulsion to the State Superintendent of Public Instruction. The State Superintendent will only review whether proper procedures were used. The State Superintendent will not reduce the length of the expulsion.

If your child is expelled, he or she is still required to be enrolled in an educational program. You may contact private schools and even other public schools;

however, other schools are not required to enroll your child during the term of the expulsion. If you cannot find a school in which to enroll your child, you must provide home-based instruction and file the appropriate form with the DPI. There are several correspondence schools that may be able to assist you in developing a home-based education program. For more information about expulsion procedures and alternatives following expulsion, see http://www.dpi.state.wi.us/dpi/dlsea/sspw/postexpul.html.

E. Who is responsible for transportation to and from school?

Your child is entitled to transportation to school if you live more than two miles from the public school. Some districts provide transportation to all children. You should contact your local school district with any questions concerning transportation. You also may be entitled to transportation to a private school. Private school transportation may be provided by the school district, by the private school, or through a parent contract to reimburse some transportation expenses. You may contact your public school district to learn how it provides transportation to private school students. For more information about transportation, see http://www.dpi.state.wi.us/dpi/dfm/sms/transhpg.html.

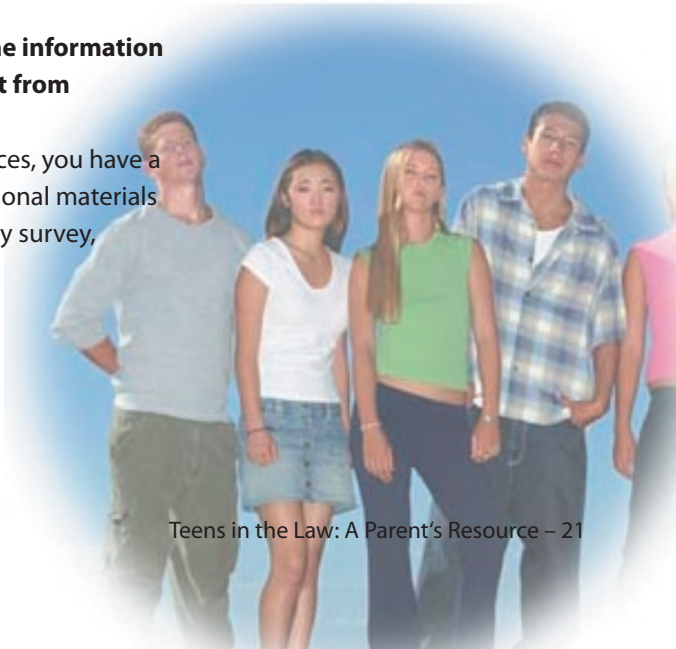
F. Who has access to school records about students?

As a parent of a public school child, you have a right to inspect your child's school records. (Federal law also protects your rights to inspect your child's school records if he or she attends a private school that receives federal education funds.) Your child's school records are generally kept confidential by the school district. However, sometimes the school gets requests for information that it can release, such as your child's name, date of birth, telephone number, address, participation in sports, awards, dates of attendance, and other information called "directory data." You should receive a copy of the school's confidentiality policy at the beginning of the school year. This policy will tell you what information the school district is willing to release. If you do not want the information released, you must give the school a written letter stating that you do not want the information released to anyone. Some school districts may have a specific form to fill out and return instead of using a letter.

Regardless of whether you agree or object to the release of some information, sometimes the school district is required to release information to law enforcement agencies, to the fire investigator, or pursuant to a court order. If you think that your child's confidentiality rights have been violated, you may contact the Family Policy Compliance Office, U.S. Department of Education, 600 Independence Ave. SW, Washington, DC 20202-4605.

G. Does the law restrict the information that the school can collect from students?

Yes. In some circumstances, you have a right to review the instructional materials used in connection with any survey,



analysis, or evaluation of your child. In addition, a school that receives federal education funds (all public schools and many private schools) must obtain your consent before surveying your child about certain family activities and beliefs generally considered private topics. These topics include family income, mental health, political philosophy, and religious beliefs.

You should review your school district policies every year to learn about your rights regarding access to records, confidentiality, and collection of private information. If you have questions about the policy, you should ask the principal, school guidance counselor, or other administrator at your school.

H. What rights do parents have when their children are evaluated for special education?

Special education law provides many parental rights. This subsection describes a few of the basic rights related to special education. However, every time your child is referred for a special education evaluation (or re-evaluation) or when an individual education plan is being developed or revised, the district must provide you a list of your rights. You should read these carefully and ask questions about anything that you do not understand.

Before starting or changing your child's identification as a child with a disability, the school district must notify you. If your child is referred for an evaluation to determine whether he or she has special education needs, the district must ask for your consent. If you do not respond to the request for consent, the district may conduct the evaluation. Therefore, it is very important that you tell the district whether you give your consent or not. If you do not consent to the evaluation, the school district may ask the DPI to "mediate" the disagreement with a trained mediator, or the district may ask for a due process hearing to test your child without your consent.

If your child has been identified by the school district as a child with a disability, he or she has a right to have an individualized education plan (IEP). You have a right to receive a copy of your child's evaluation report. In the process of developing this individual education plan, you have the right to attend meetings and provide input. If you do not agree with certain decisions made by the team of people developing the IEP, you may have a right to appeal the decision through the "due process" hearing. The school must tell you about decisions related to your child's special education, including actions already taken, plans for future actions, and requested actions that they have decided not to take. If your child is receiving special education services and you disagree with what the school is doing, you may ask the DPI for mediation. If mediation cannot be used, or if it was used and did not resolve the dispute, you may ask for a due process hearing. You must do so within one year of disputed action or inaction. Your request must be in writing and sent to the DPI.

For more information about special education, see http://www.dpi.state.wi.us/dpi/dlsea/een/hmtopics.html.

IX. Marriage, Pregnancy, and Adoption

A. What constitutes a valid marriage?

Marriage is a civil contract in Wisconsin. Any person age 18 or older can marry without the consent of a parent. A person between ages 16 and 18 may marry if they have the written consent of the child's parents, guardian, or legal custodian.

A person entering into a marriage must be legally competent. If a person is under the influence of alcohol or drugs or has been declared mentally incompetent, the marriage can be annulled. If a person's divorce became final within the six months before the marriage, the marriage is not valid. Thus, a person needs to wait at least six months from the date of divorce before remarrying.

To enter into a marriage, the couple must obtain a marriage certificate from the clerk of courts in the county in which the parties intend to marry or in a county in which at least one party has lived for at least 30 days. There is typically a five-day waiting period for the marriage certificate. The couple must present their certified birth certificates at the time of application, and if there has been a previous marriage, they also must present the judgment of divorce or the former spouse's death certificate.

Once a child is married, he or she becomes emancipated, and the parents are no longer guardians of the child.

B. What happens to my children if I get a divorce?

There are two major issues affecting children in a divorce proceeding: legal custody and physical placement. Legal custody is the legal right to make major decisions concerning your children. Physical placement is the time that the children are with you (or in your care), during which you have the right to make the routine daily decisions regarding the child's care.

If there is a dispute between parents regarding the physical placement and legal custody of their children, the court will likely appoint a guardian ad litem. A guardian ad litem is an attorney appointed by the court to make a study and then submit a recommendation about the type of custody and placement arrangement. The guardian ad litem's role is to advocate for the child's best interest.

A guardian ad litem may negotiate settlements, investigate relevant facts, hire experts such as counselors, interview witnesses, and participate in all court proceedings. The guardian ad litem typically meets with both parents and may meet with the child(ren). Often, the guardian ad litem asks the parents to furnish references who can provide information about that parent's time spent with the child(ren).

Parents should recognize that the guardian ad litem is acting on the court's behalf. Therefore, parents generally are wise to cooperate with the guardian ad litem's requests. In most cases, the court will follow most if not all of the guardian ad litem's recommendation.

C. Are there laws that require doctors and other professionals to report to the police that a child has been sexually active?

The mandatory reporter laws do require doctors and other professionals

to report cases of suspected child neglect or abuse, including sexual abuse, to the police or a child welfare department. The other professionals covered by this law include social workers, school teachers, counselors, and day care providers.

However, the law contains an exception for doctors and nurses who are providing health care services to a child who is or may become pregnant or who is being treated for a sexually transmitted disease. Specifically, a doctor or nurse is not required to report sexual contact involving a child unless (1) the sexual contact involved a caregiver; (2) the child is mentally ill; (3) the child, because of age or immaturity, is not able to understand the nature or consequences of sexual contact; (4) the child was unconscious or physically unable to communicate at the time of the sexual contact; (5) the other participant in the sexual contact was exploiting the child; or (6) the child may not have voluntarily participated in the sexual contact. The purpose of this exception for doctors and nurses is to allow children to obtain confidential health care services.

D. Who is responsible for prenatal care when a child is pregnant?

If a child becomes pregnant, the parent of that child is responsible for the health and well-being of that child. This responsibility includes obtaining adequate medical care for the child (birth mother) and prenatal care for the baby. If the parents fail to obtain adequate medical care for the child, they may be subject to prosecution or a CHIPS proceeding for child neglect (see section IV A). Moreover, if the pregnant child is using alcohol or drugs to the point of potentially harming the physical health of her unborn baby, the court can become involved to protect the baby (see section IV N).

If a child is covered as a dependent on a parent's health insurance, that insurance ordinarily covers prenatal and birthing expenses. However, insurance coverage varies widely, so it is important to check coverage directly with the insurance company or health plan representative.

E. Are there counseling resources for pregnant children?

There are many resources available for counseling pregnant children. Counseling can be valuable in helping teens understand the consequences of having a child and the importance of obtaining both prenatal and postnatal care. Many counseling organizations offer free services or sliding-scale fees for their services. It is important that the parents and the child are comfortable with the counseling service and that they trust the advice and information provided.

Some counseling services offer many different options, including referrals for adoption and abortion. Some limit the services and options offered. Parents should take the time to review with the child the counseling services being offered before choosing a counselor or clinic.

Counseling services can be found through the guidance counselor at school, churches, telephone yellow pages (look under Family Counseling, Social

Services Agencies, or Adoption), referrals from friends, and listings on the Internet.

F. Can my pregnant child place her baby for adoption?

If a child wishes to make her baby available for adoption, she may work with an adoption agency, with a couple interested in adopting the baby, or with a trusted family member. In any event, the parties are well advised to consult with an attorney to make certain all legal rights are established.

In the case of teen pregnancy, often the birth parents are not married. Nonetheless, the birth father has the opportunity to establish his parental rights. Thus, it is important to include the father and consider his wishes before attempting to place the baby for adoption.

For most adoptions, the birth parents voluntarily terminate their parental rights before the adoption occurs. This voluntary termination is a court proceeding (see sections IV I-J) in which the parents attest either in writing or before a judge that they are knowingly and voluntarily giving up their parental rights. If the court is satisfied that the termination is both knowing (the parents are aware of the rights they are giving up) and voluntary (not the result of improper outside pressure), the court then orders that the parents' rights are terminated. The court can then consider the adoption proceeding to establish the parental rights of the adoptive parents.

Closed adoptions are those in which the birth parents are removed from the birth certificate and the birth parents' identities are not disclosed after the adoption. Open adoptions occur when a birth parent wishes to remain known and are typically governed by a contract explaining rights between the birth parents and the adoptive parents.

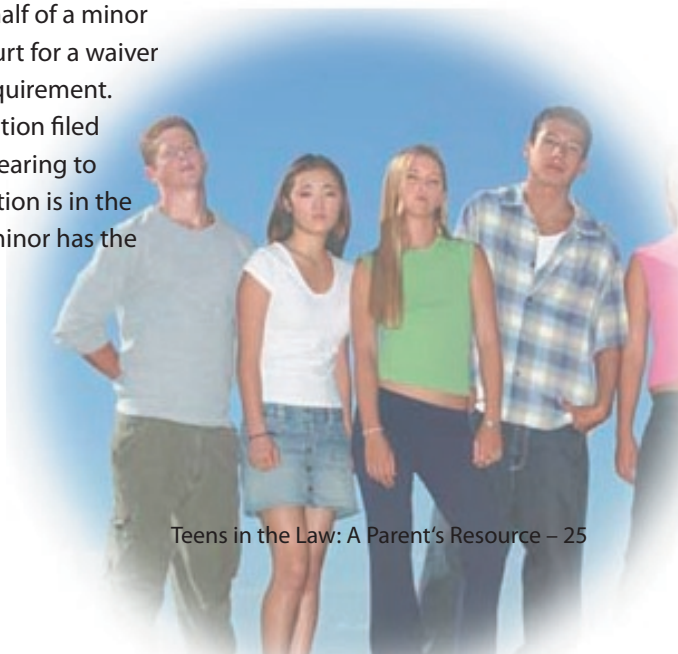
G. Can my pregnant child place her baby with a relative?

Frequently a relative will care for a child while the birth parent remains in the parent's home or while the birth parent cannot care for the child because of poverty. A power-of-attorney document may grant the relative certain rights relating to the care of the child. This option is a low-cost method of ensuring the child is protected in the event of a medical emergency or for school issues.

If the relationship is going to be long term, the relative may wish to obtain an order for child support or a guardianship of the child. This option requires a more complicated initial process involving a court hearing, but provides some broader options including the ability to claim the child as a dependent on the relative's insurance.

H. Can my pregnant child obtain an abortion?

Generally, written parental consent is required before a minor may receive an abortion in Wisconsin. However, a minor or a clergy member on behalf of a minor may petition the circuit court for a waiver of the parental-consent requirement. This process involves a petition filed by the minor and a court hearing to demonstrate that the abortion is in the minor's best interest. The minor has the



right to legal representation through the State Public Defender (see section V B). Court records regarding this type of court proceeding are strictly confidential; the minor's parents do not receive notice of the court hearing and are not allowed access to the court records.

If the court has not granted a waiver of the requirement for parental consent, a physician generally may not perform an abortion without the written consent of one parent, an adult family member, a legal guardian or custodian, or a foster parent. A physician may also perform an abortion when a medical emergency exists requiring an abortion, when the minor swears under oath the pregnancy is the result of a sexual assault, when a psychiatrist or licensed psychologist states that failure to grant an abortion would result in suicide of the mother, or when there is a written statement by the birth mother stating that the pregnancy is the result of sexual intercourse with a caregiver or abuse by a legal guardian or parent.

I. What financial support is available for my teenager's baby?

Parents generally have the financial obligation to support their children. When a baby is born out of wedlock, the mother often must obtain a court order before the father is legally obligated to pay support. If the father files with the state registrar an official signed statement acknowledging that he is the father, a court may rely on that document to order child support. If the mother seeks benefits under Wisconsin's W2 (Welfare to Work) program, she must cooperate with the Wisconsin Department of Workforce Development in obtaining this type of court order.

Courts may require a minor parent who is unemployed, younger than age 20, and financially unable to pay child support to take one of the following actions:

1) register for work at a public employment office;

2) apply for jobs;

3) participate in a job training program;

4) pursue or continue pursuing a course of education leading to a high school diploma or its equivalent.

A. Does Wisconsin require all toddlers to sit in car seats?

Yes. The law provides that "no person may transport a child under the age of 4 in a motor vehicle unless the child is properly restrained in a child safety restraint system" – also known as a "car seat" – that is approved by the Wisconsin Department of Transportation.

The penalty for violating this law is a forfeiture of $30 to $75 (plus court costs, which the court is required to add to the base amount of any fine or forfeiture). However, if you prove that you have bought and installed a child safety seat within 30 days of the violation, there is no forfeiture. The purpose of the law, in other words, is to encourage parents to secure small children in car seats where they will be safe. (There are several organizations that will lend you a car seat if you can't afford one. For further information, call (800) 261-9467.)

If you have an accident in which a toddler is injured, the fact that you did not have the child in a child safety seat is admissible as evidence of negligence.

Information about the proper use of car seats depending on the size and age of your child is available at the Wisconsin Department of Transportation Web page, www.dot.wisconsin.gov/safety/vehicle/index.htm. You also can contact the Wisconsin Child Passenger Safety Association through its Web page, at www.wcpsa.com.

B. Does Wisconsin always require seat belts for older children?

Yes. Studies show that approximately 1,800 children ages 14 and younger are killed in car accidents in the United States every year, and more than 280,000 are injured. Thus, Wisconsin law provides that no person "may transport a child who is at least 4 years old but less than 8 years old in a motor vehicle unless the child is properly restrained in a child safety restraint system approved by the department ... or in a safety belt." The law also prohibits a driver from operating a motor vehicle in Wisconsin "unless he or she reasonably believes that each passenger who is at least 4 years old and not more than 15 years old ... is properly restrained." Notably, like the Wisconsin restrictions on car seats, the requirements that older children wear seat belts apply to your own children and to any other children who ride with you.

For a violation involving a child age 4 to 8, the penalty is a forfeiture of $10 to $25 for the first offense. For a second offense within three years, the penalty is a forfeiture of $25 to $200. For children between the ages of 8 and 15, the penalty for not having them wear seat belts is a forfeiture of $10 (the same forfeiture for the driver's failure to wear a seat belt).

Similar to the law on car seats, if you have an accident in which a child is injured, the fact that you did not have the child wear a seat belt is admissible as evidence of negligence.

The Wisconsin Department of Transportation provides a great deal of helpful information about driving safety, including information about seat belts and air bags, and their relation to child safety, at its Web page, at www.dot.wisconsin.gov/safety.

X. Traffic Laws and Procedures

C. How does my teenager get a Wisconsin driver's license?

Wisconsin has a three-phase process for getting an operator's license, known as the Wisconsin "graduated driver license" (GDL) law.

First, teenagers who are at least age 15 years-and-six-months are eligible for an instruction permit. To get the instruction permit, your teen must pass the required knowledge and vision tests and be enrolled in an approved driver's education program. When driving with an instruction permit, your teenager must be accompanied by a qualified instructor, by you (the parent or guardian), or by another person over age 21; in all cases, the experienced driver accompanying the teen must have a valid driver's license and at least two years of driving experience. Also, the teenager's application for an instruction permit must be "sponsored" by an adult, usually a parent or guardian.

Second, after six months with an instruction permit, a Wisconsin teenager who is at least age 16 can apply for a probationary license. With a probationary license, your teenager can drive alone, subject to restrictions discussed in the following subsection. A probationary license will be granted if the teen has completed 30 hours of driving experience (shown on a "driving log"), has completed a driver's education course, and has passed a road test. The probationary license will not be granted, however, if the teenager has had moving violations during the previous six months. Again, the teenager must have an adult sponsor, usually a parent or guardian.

Finally, when your teenager turns age 18, he or she is eligible to get a regular driver's license.

The Wisconsin Motorist's Handbook, the "study guide" for Wisconsin drivers, is available online from the Wisconsin Department of Transportation (DOT), at www.dot.state.wi.us/drivers/drivers/driver-forms.htm. The "Driving Log" (that teenagers and their parents must fill out to show completion of 30 hours of driving experience under an instruction permit) is available at the same online location, as is a useful "Parent Packet." These materials also can be ordered from the DOT.

D. What restrictions apply to teenagers driving under a probationary license?

A teenager with a probationary license cannot at any time have more than one passenger in the car other than immediate family members, a qualified instructor, or a person over age 21 who has a valid driver's license and two years of driving experience. Also, a teenager with a probationary license cannot drive alone between midnight and 5 a.m. except to and from home, school, and work. These restrictions are extended six months if the teenager gets a moving violation.

The GDL0 law was designed to address the problem of teenagers and their passengers being involved in a high percentage of accidents, including fatal accidents. The GDL thus puts these significant restrictions on how and when teenage drivers can drive.

E. Does the Wisconsin demerit point system apply to teenagers?

Yes. In fact, for teenagers driving with a probationary license, Wisconsin's demerit point system for tracking moving violations is significantly harsher. If your teenager is convicted of two or more moving violations – speeding, failure to obey a sign, failure to yield the right of way, and so on – his or her demerit points are doubled for each violation. Moreover, if your teenager accumulates 12 or more demerit points in a 12-month period, his or her probationary license will be suspended for six months, while a regular license holder's length of suspension would only be two months. Thus, for example, if your teenager has one ticket for speeding 1-10 miles per hour over a speed limit, with three demerit points assessed, a subsequent ticket for speeding 20 mph over a posted speed limit – normally a 6-point offense – will result in 12 points being assessed against your teenager's license, and an automatic suspension. The law is designed to provide significant incentives for teenagers to drive safely.

A summary of Wisconsin's point system can be downloaded from www.dot.wisconsin.gov/drivers/drivers/points/index.htm.

F. What does it mean to be my teenager's "sponsor" for his or her driver's license?

As mentioned above, almost all teenagers under age 18 must be "sponsored" when applying for an instruction permit or probationary license. Persons who can act as a sponsor are parents, including foster parents; the sponsoring family parent of a foreign student; legal guardians; and, if the teenager is not living with a parent or legal guardian, another approved adult such as a grandparent, aunt, or uncle. The only exceptions to this rule are teenagers who do not have a living parent, are married, or do not live with their parents and are employed full time or are full-time students. If a teenager meets any of these criteria, he or she can file a Proof of Insurance instead of having a sponsor.

Sponsorship means that you accept legal responsibility for any and all driving actions of the teenager.

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