Wisconsin Department of Justice

The Juvenile Justice and Delinquency Prevention Act (JJDPA) in Wisconsin

8/15/24

https://www.doj.state.wi.us/

Introductions

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Wisconsin Department of Justice

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Housekeeping

PowerPoint & Materials

- https://wicciptraining.com/Resources
- Under Training Materials - Webinars

Webinar Format

- Everyone's microphone and video is turned off.
- Please use Chat to ask questions.

Continuing Education

Judicial Officers: .33 credits

- List will be sent to Office of Judicial Education
- Must attend entire webinar for credit
- Certificate of Attendance not required unless watching recording

Attorneys: 1 credit

- Applied for CLE credits
- Search under "Live Webcast" for location

Social Workers: 1 hour

- Continuing education hours may be claimed by the individual participant by entering them as an external training in PDS Online

JJDPA Overview

- Passed in 1974 to address inconsistencies across states and highlight best practices in the youth justice field
- Reauthorized in 2018 to strengthen core protections and better address racial and ethnic disparities
- Creates a federal-state partnership for the administration of youth justice and delinquency prevention
- Sets forth federal standards to ensure a minimum level of safety and equitable treatment for youth who interact with the justice system
- Establishes the Office of Juvenile Justice and Delinquency Prevention (OJJDP) as the federal partner with all participating states

Roles within the JJDPA

- Wisconsin Department of Justice (WI DOJ) is the Designated State Agency (DSA) under the JJDPA
- WI DOJ and the Wisconsin Department of Corrections (WI DOC) have a Memorandum of Understanding (MOU)
- WI DOJ and the Wisconsin Department of Children and Families (DCF) collaborate on various initiatives and data share
- Each state is required to designate a State Advisory Group (SAG) responsible for advising the Governor and legislature on youth justice issues, attending conferences and training opportunities, networking and outreach, collaborating with WI DOJ in developing juvenile justice plans, reviewing grants, and setting programmatic goals
- The JJDPA also requires that each state demonstrate compliance with core requirements

The Wisconsin GJJC

- In Wisconsin, the State Advisory Group (SAG) is also known as the Governor's Juvenile Justice Commission (GJJC), created by Executive Order #43
- The Commission consists of not less than 15 but not more than 33 members, with all members and the chairperson appointed by the Governor
- The JJDPA and Executive Order specify membership requirements, certain groups must be represented, and certain ratios met (government, nongovernment, youth, nonprofit, victim advocacy, law enforcement, lived experience, tribal, etc..)

The Wisconsin GJJC (cont.)

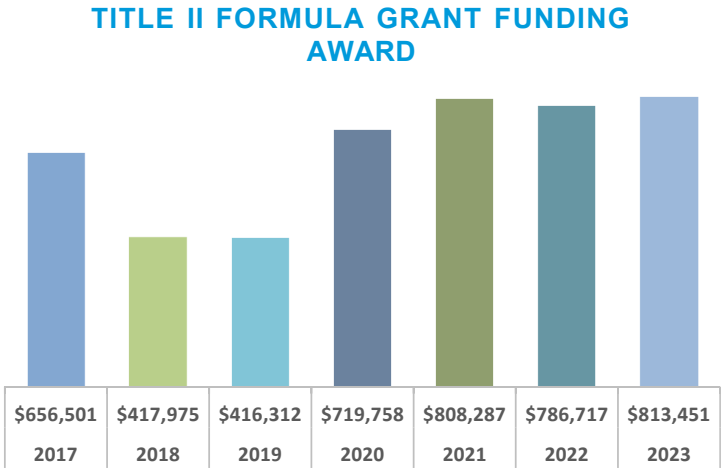
- The GJJC consists of a variety of subcommittees and a Youth Voice Commission, aimed at getting youth input on juvenile justice topics and increasing GJJC member recruitment

- GJJC meetings are scheduled quarterly, with subcommittee meetings occurring more frequently throughout the year

https://gjjc.widoj.gov/

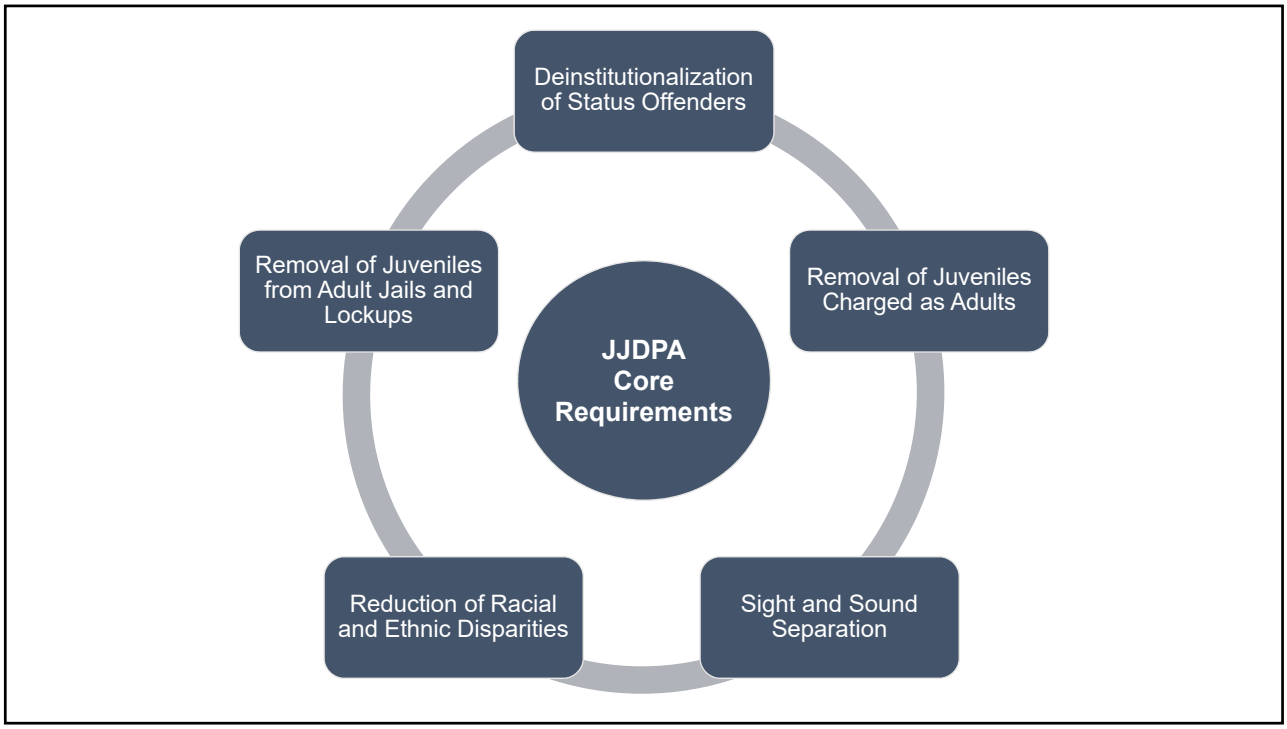
Compliance - Numbers and Impact

To receive full Title II formula grant funding, WI DOJ needs to certify to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) that Wisconsin remains in compliance with the requirements of the JJDPA



Subgrant Examples

- Training and tools (evidence-based intervention strategies, the adolescent brain, etc..)
- Mentoring
- Restorative justice programming
- Racial and Ethnic Disparity (R/ED) initiatives
- Program evaluation
- Family centered treatment
- Truancy prevention
- Deflection / diversion planning and implementation



Core Requirements of the JJDPA

The Core Requirements apply **only** to facilities designated as secure under the JJDPA

*Deinstitutionalization of Status Offenders (DSO)

*Removing Juveniles Charged as Adults (Interest of Justice, 223(a)(11)(B))

*Sight and Sound Separation of Juveniles from Adult Inmates (S&S)

Removal of Juveniles from Adult Jails and Lockups (JR)

Reduction of Racial and Ethnic Disparities (R/ED) (incorporated into 3-year plan, subgrants, and other areas)

Deinstitutionalization of Status Offenders

- 34 U.S.C. 11133 (a)(11)(A) - status offenders, unauthorized immigrants, or non-offenders shall not be **placed** in secure detention facilities or secure correctional facilities

- WI in Federal Fiscal Year 2023 – 6 violations

Deinstitutionalization of Status Offenders

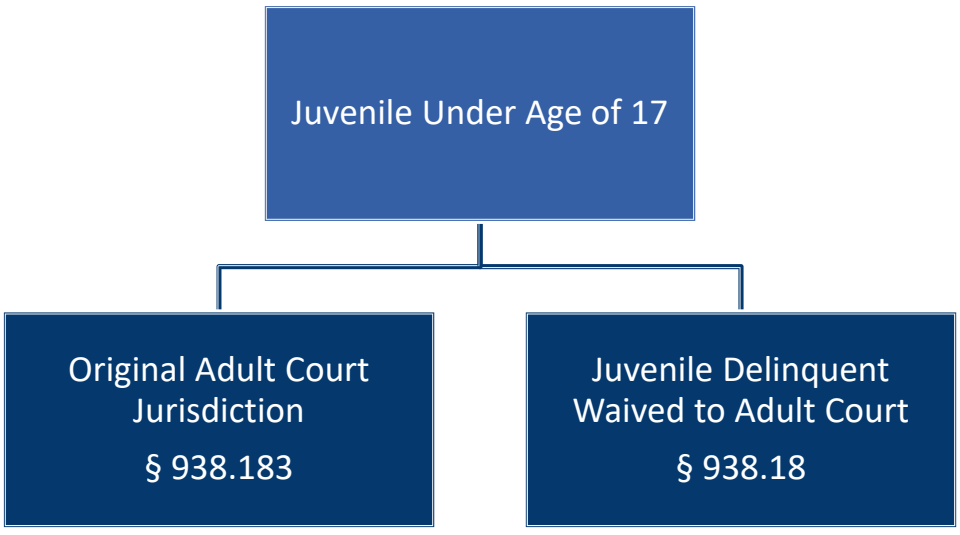
- Applies to juvenile detention and correctional facilities (secure holding of status and non-offenders at law enforcement facilities constitutes a jail removal violation)
- Accused status offenders are not “placed” until 24 hours after custody, 24 hours after hearing, or after 24 hours for investigation (not counting weekends and holidays)
- Youth Handgun Safety Act Exception
- Interstate Compact Exception
- Valid Court Order Exception (VCO)

Deinstitutionalization of Status Offenders – Valid Court Orders Exception

- Restricts use of secure juvenile detention to no more than 7 days for youth in CHIPS, JIPS, and ordinance cases
  - Temporary physical custody: youth is under a non-secure Temporary Physical Custody Order and runs away & no suitable alternative exists – ss. 48.208(4) & 938.208(4)
  - Sanctions: limited to 7 days for violation of a dispositional order regardless of the number of violations or "incidents"
    - Additional days in detention are only permitted when a juvenile violates a court order after imposition of the original sanction order
  - Contempt proceedings for status offenders

DOJ staff are always available to answer situation specific questions and troubleshoot individual cases

Juveniles Charged as an Adult – Applicability



Removing Juveniles Charged as Adults
(Interest of Justice, 223(a)(11)(B))

- 34 U.S.C. 11133 Sec. 223(a)(11)(B) - a juvenile who is charged as an adult cannot be detained or confined in an adult jail or lockup or have sight or sound contact with adult inmates in a secure adult facility, unless a court determines, after a hearing, and in writing that it is in the interest of justice to permit the juvenile to be in a jail or lockup
- This core requirement applies to anyone under the age of 17 (age of full criminal responsibility in Wisconsin) charged as an adult and detained or confined in an adult jail or lockup
- WI in Federal Fiscal Year 2023 – 47 violations

Juveniles Charged as Adults: Rule

- Rule: Anyone under the age of 17 charged as an adult, court must make 223(a)(11)(B) findings within 6 hours of juvenile defendant being detained or confined in an adult jail or lockup
  - For facilities with a Wisconsin DOJ approved Rural Exception, the hearing must be held within 48 hours, excluding weekends and legal holidays
  - These findings must be reviewed at a hearing every 30 days
  - Use circuit court form CR-219
- Detention in a jail or lockup for adults is limited to 180 days unless the court finds good cause for an extension, or the juvenile waives the limitation (included on CR-219)

Juveniles Charged as Adults: Rural Exception

- Criteria:
  1. Located outside a metropolitan statistical area as defined by the federal Office of Management and Budget, and
  2. No viable options for housing juveniles under 17 at an existing facility in the area
  3. The jail or holding facility must have staffing and physical layout that allows for sight and sound separation
- Contact Matt Allord at DOJ to request exception
  - allordmj@doj.state.wi.us or (608) 419-5847
- Counties with an exception: Forest, Vilas, and Iowa

Juveniles Charged as Adults: Findings

It is in the interest of justice to confine the juvenile based on the following:

1. Age of the juvenile
2. Juvenile's physical and mental maturity
3. The present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to self
4. The nature and circumstances of the alleged offense
5. History of prior delinquent acts
6. The relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile, but also to protect the safety of the public as well as other detained youth
7. Other relevant factors

Juveniles Charged as Adults: Additional Considerations

- Hearings can be held virtually
- Hearings can be held if the defendant/juvenile fails to appear
- **This requirement does not apply to youth housed at a juvenile detention facility**
- This provision does not apply to youth convicted in adult court or who turn 17 while in custody
- Any individual under the age of 17 charged as an adult and detained or confined in a jail or lockup for adults must be sight and sound separated from adult inmates during the time preceding the hearing

Juveniles Charged as Adults: Who makes the findings?

Judge

- At time findings are required, juvenile would be under criminal jurisdiction (not juvenile court jurisdiction)

Court Commissioner

Federal Law: Allowed

Wisconsin Law: Given commissioners have the authority to set bail and make certain custody decisions, case law may suggest that they have authority to make the JJDPA findings

- While the powers and duties of court commissioners are set forth in § 757.69, there is the ability to **make other logical decisions not set forth in the statute**. While the power to perform a specific act cannot be predicated upon a mere inference or implication, the statute will not be construed to prohibit additional acts merely because they are not particularized. See *State v. Evans*, 187 Wis. 2d 66 (1994) & *Perry v. Wolke*, 71 Wis. 2d 100 (1976).
- Each county will need to decide whether to permit this or not

Juveniles Charged as Adults: Is a hearing required?

A hearing on the record is not required

- Court could conduct a paper review (similar to Riverside Hearing) and make required findings

Written findings are required (CR-219)

- Form recently modified to clarify hearing not required & include order section

Juveniles Charged as Adults: Marsy's Law

- Assuming an individual under 17 was arrested for an adult jurisdiction offense and immediately taken to the jail and booked, the initial hearing held within 6 hours (or 48 hours) would not trigger Marsy's Law
- Due to the fact that the hearing only determines the location of secure confinement and does not involve a release decision, the requirements of Marsy's Law would not apply

Sight & Sound Separation

- When juvenile placed in an adult facility, sight and sound contact with adults is prohibited unless court finds it is in the "interest of justice"
  - Finding addressed on circuit court form CR-219
- Other statutes and administrative codes may apply and require sight and sound separation, even when the JJDPA does not, for example:
  - When jail used as a juvenile detention facility under s. 938.209
  - If the facility observes Prison Rape Elimination Act (PREA) restrictions, then may still require separation to meet those standards

Sight & Sound Separation

- "Sight and sound" includes all of the following:
  - housed next to adult cells
  - shared dining halls
  - recreation areas
  - medical areas
  - any other common spaces
  - any physical, clear visual, or verbal contact that is not brief and inadvertent

Circuit Court Form CR-219

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

State of Wisconsin, Plaintiff
-vs-
_____
Defendant's Name
_____
Date of Birth

Order on Confinement of Juvenile Defendant Charged as an Adult

Case No. _____

THE COURT FINDS:

1. The above named defendant is under the age of 17 years old.

2. The court addressed the issue of the juvenile defendant's confinement on _____ at _____ ☐ a.m. ☐ p.m.
   - ☐ a. It was the first time the court addressed this issue and it ☐ did ☐ did not take place within six hours of the decision to detain or confine the juvenile defendant in an adult jail or lockup.
   - ☐ b. It was the first time the court addressed this issue in a county with an approved Rural Exception and it ☐ did ☐ did not take place within 48 hours (excluding weekends and legal holidays) of the decision to detain or confine the juvenile defendant in an adult jail or lockup.
   - ☐ c. It was not the first time the court addressed this issue and it ☐ did ☐ did not take place within 30 days of the most recent confinement determination.

Adult facility →

3. It ☐ is ☐ is not in the interest of justice to confine the juvenile defendant in an adult jail or lockup.

Sight and sound →

4. It ☐ is ☐ is not in the interest of justice to keep the juvenile defendant separated from adult inmates.

Factors for determining "interest of justice" findings →

5. In making these findings, the court has considered each of the following factors:
   - a. The age of the juvenile.
   - b. The physical and mental maturity of the juvenile.
   - c. The present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile.
   - d. The nature and circumstances of the alleged offense.
   - e. The juvenile's history of prior delinquent acts.
   - f. The relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth
   - g. Other relevant factors: _____.

Circuit Court Form CR-219

(In addition, complete #6 if the juvenile defendant will be detained in an adult facility for more than 180 days.)

Only complete if juvenile in adult facility 180 days →

☐ 6. Pursuant to the provisions of the Juvenile Justice and Delinquency Prevention Act (JJDPA), a juvenile charged as an adult may not be held in an adult jail or lockup or without separation from adult inmates for more than 180 days unless the court makes certain written findings. The juvenile in this matter has now been held in an adult facility/without separation from adult inmates for 180 days. Continued confinement is appropriate based upon the following:

- ☐ The juvenile has expressly waived the 180-day limit, or
- ☐ There is good cause for the continued confinement: _____

THE COURT ORDERS:

Order indicating where juvenile will be placed →

☐ 1. The juvenile defendant is authorized to be confined in an adult facility.
   - ☐ a. The juvenile defendant shall be kept separated from adult inmates.
   - b. Pursuant to the Juvenile Justice and Delinquency Prevention Act (JJDPA) at 34 U.S.C. § 11133(a)(11)(B), the court must hold a hearing and review this confinement order at least every 30 days. This matter shall come before the court for review of this confinement determination on:

     _____ ← 30-day review due date

☐ 2. The juvenile defendant shall be placed at a juvenile detention facility: _____.

☐ 3. Other: _____.

DISTRIBUTION:
1. Juvenile Defendant and Counsel
2. Prosecutor
3. Victim
4. Adult Jail/Detention Center

WI DOJ Juvenile Justice Programs Staff

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Questions?

Thank you!

Please complete a short evaluation:

www.surveymonkey.com/r/JJDPAwebinar

(Link is also in Chat.)

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

State of Wisconsin, Plaintiff
-vs-

_____
Defendant's Name

_____
Date of Birth

Order on Confinement of Juvenile Defendant Charged as an Adult

Case No. _____

THE COURT FINDS:

1. The above named defendant is under the age of 17 years old.

2. The court addressed the issue of the juvenile defendant's confinement on _____ at _____ ☐ a.m. ☐ p.m.
   - ☐ a. It was the first time the court addressed this issue and it ☐ did ☐ did not take place within six hours of the decision to detain or confine the juvenile defendant in an adult jail or lockup.
   - ☐ b. It was the first time the court addressed this issue in a county with an approved Rural Exception and it ☐ did ☐ did not take place within 48 hours (excluding weekends and legal holidays) of the decision to detain or confine the juvenile defendant in an adult jail or lockup.
   - ☐ c. It was not the first time the court addressed this issue and it ☐ did ☐ did not take place within 30 days of the most recent confinement determination.

3. It ☐ is ☐ is not in the interest of justice to confine the juvenile defendant in an adult jail or lockup.

4. It ☐ is ☐ is not in the interest of justice to keep the juvenile defendant separated from adult inmates.

5. In making these findings, the court has considered each of the following factors:
   a. The age of the juvenile.
   b. The physical and mental maturity of the juvenile.
   c. The present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile.
   d. The nature and circumstances of the alleged offense.
   e. The juvenile's history of prior delinquent acts.
   f. The relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth.
   g. Other relevant factor(s): _____.

(In addition, complete #6 if the juvenile defendant will be detained in an adult facility for more than 180 days.)

☐ 6. Pursuant to the provisions of the Juvenile Justice and Delinquency Prevention Act (JJDPA), a juvenile charged as an adult may not be held in an adult jail or lockup or without separation from adult inmates for more than 180 days unless the court makes certain written findings. The juvenile in this matter has now been held in an adult facility/without separation from adult inmates for 180 days.
Continued confinement is appropriate based upon the following:

☐ The juvenile has expressly waived the 180-day limit, or
☐ There is good cause for the continued confinement: _____

THE COURT ORDERS:

☐ 1. The juvenile defendant is authorized to be confined in an adult facility.
- ☐ a. The juvenile defendant shall be kept separated from adult inmates.
- b. Pursuant to the Juvenile Justice and Delinquency Prevention Act (JJDPA) at 34 U.S.C. § 11133(a)(11)(B), the court must hold a hearing and review this confinement order at least every 30 days. This matter shall come before the court for review of this confinement determination on: _____.

☐ 2. The juvenile defendant shall be placed at a juvenile detention facility: _____.

☐ 3. Other: _____.

DISTRIBUTION:
1. Juvenile Defendant and Counsel
2. Prosecutor
3. Victim
4. Adult Jail/Detention Center

STATE OF WISCONSIN – DEPARTMENT OF JUSTICE
DIVISION OF LAW ENFORCMENT SERVICES

Steve Wagner, Division Administrator
Mark Rather, Deputy Division Administrator

Date: 1/8/2024

To: Sheriffs and Jail Administrators
Juvenile Detention Centers
Judges, District Attorneys, Public Defenders
Department of Corrections
Department of Children and Families
Juvenile Justice Stakeholders

From: Wisconsin Department of Justice - Juvenile Justice Programs Unit

Subject: Juvenile Justice and Delinquency Prevention Act Core Requirement Update - 223(a)(11)(B), Removing Juveniles Charged as Adults

The Juvenile Justice and Delinquency Prevention Act in Wisconsin:

The Wisconsin Department of Justice (DOJ) is the designated state agency for ensuring compliance with the core requirements of the federal Juvenile Justice and Delinquency Prevention Act (JJDPA). WI DOJ administers federal grant funds from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to units of local government and nonprofit organizations to improve the state's juvenile justice system. Wisconsin's eligibility to receive federal grant funds is dependent on demonstrating statewide compliance with the statutorily defined core requirements.

One such core requirement is **223(a)(11)(B), Removing Juveniles Charged as Adults. OJJDP has recently changed the guidance associated with this core requirement. The information below supersedes all previous DOJ memos referencing this core requirement.**

Updated Requirement:

Per Section 223(a)(11)(B) of 34 U.S.C. § 11133, a juvenile who is charged as an adult cannot be detained or confined in an adult jail or lockup or have sight or sound contact with adult inmates in a secure adult facility unless a court determines, after a hearing, and in writing, that it is in the interest of justice to permit a juvenile to be detained or confined in a jail or lockup for adults or have sight or sound contact with adult inmates in a secure facility.

OJJDP has revised its guidance and informed Wisconsin DOJ that this core requirement applies to **all** individuals under the age of 17 (the age of full criminal responsibility in Wisconsin) charged as adults. **Anyone under the age of 17 charged as an adult must have a 223(a)(11)(B) hearing prior to or within 6 hours of being detained or confined in an adult jail or lockup (48 hours, excluding weekends and legal holidays, for facilities with a Wisconsin DOJ approved Rural Exception)**. This includes youth waived into adult court **and** individuals under the age of 17 charged under original adult jurisdiction statutes.

Any individual under the age of 17 charged as an adult and detained or confined in a jail or lockup for adults **must** be sight and sound separated from adult inmates during the time preceding the 223(a)(11)(B) hearing.

Additional Details:

- The required 223(a)(11)(B) judicial findings are listed on Wisconsin Court System Form CR-219.
- After the initial hearing, a judge must hold a review hearing every 30 days (45 days for facilities with a Wisconsin DOJ approved Rural Exception) and make updated 223(a)(11)(B) findings, using the CR-219.
- The maximum amount of time someone under the age of 17 charged as an adult may be detained in a jail or adult lockup is 180 days, unless the court determines, in writing, that there is good cause for an extension, or the defendant waives this time limit.
- If an individual under the age of 17 charged as an adult is housed in a juvenile detention facility, no 223(a)(11)(B) hearings are required.
- Once an individual charged as an adult turns 17, they have reached the age of full criminal responsibility in Wisconsin. 223(a)(11(B) hearings are no longer required.
- Once an individual is convicted of an adult offense, 223(a)(11)(B) hearings are no longer required.
- 223(a)(11)(B) hearings may be held virtually.
- The core requirements of the JJDPA are separate from PREA standards.
- If a facility would like more information regarding approval for a Rural Exception, please contact Matt Allord (information below).

Procedural Considerations:

As noted above, if an individual under the age of 17 is charged as an adult and detained or confined in an adult jail or lockup, a 223(a)(11)(B) hearing and form CR-219 must be completed prior to transfer or within 6 hours (48 hours, excluding weekends and legal holidays, for facilities with a Wisconsin DOJ approved Rural Exception). **Wisconsin DOJ requests that any adult jail or lockup that detains or confines an individual under the age of 17 charged as an adult immediately notifies the DOJ Juvenile Justice Programs Unit Supervisor using the contact information below. If an individual under the age of 17 charged as an adult is booked and released or immediately transported to a juvenile detention facility, no notification is necessary.**

An individual under the age of 17 charged as an adult may be housed in a juvenile detention facility for the duration of the pending case or until a 223(a)(11)(B) hearing and CR-219 are completed.

The DOJ - Juvenile Justice Programs Unit appreciates the collaboration and partnership with juvenile justice stakeholders in adhering to these core requirements to continue to receive federal funding for youth programs throughout the state. Please do not hesitate to reach out with any requests for additional training/technical assistance, questions, or concerns.

Matt Allord
Juvenile Justice Programs Unit Supervisor
608-419-5847
allordmj@doj.state.wi.us

JJDPA Webinar
August 15, 2024

Biographies

Matt Allord grew up in Madison and graduated from the University of Wisconsin – Madison with a degree in Elementary Education and a minor in Sociology. He graduated from the Florida State University College of Law in Tallahassee, with an academic focus on juvenile justice and a practicum focus on applications for executive clemency and pardons for adults placed in Florida prisons as youth. He has worked for the Dane County Court Appointed Special Advocates Program and in various positions with the Department of Corrections for 10 years prior to joining the Wisconsin Department of Justice as the Juvenile Justice Programs Supervisor in November of 2022.

Bridget Mauerman is the Director of the Children's Court Improvement Program (CCIP) in the Wisconsin Director of State Courts Office. She is responsible for administering CCIP, a program designed to improve the handling of child welfare, termination of parental rights, and adoption proceedings. As director, she works closely with stakeholders in the court and child welfare systems to develop and implement training, legislation, policies, best practices, and other quality improvement projects.

She has worked for CCIP for 16 years. Prior to that, she worked as an Assistant Public Defender for four years, where she represented children and juveniles in child welfare and delinquency proceedings. She holds a Bachelor's Degree in Psychology and Political Science, and a Juris Doctorate from the University of Wisconsin.