

CHAPTERS 48 & 938



This job aid gives a foundational overview of the statutes that permit Temporary Physical Custody (TPC).

Legislative Purpose

There is a clear family preservation philosophy in the purpose of Chapters 48 and 938. The idea is to keep families together, when it is safe and appropriate to do so, while still holding the maltreater or youth accountable. This means the Intake Worker, the person authorized to take a child into custody, must assess the situation and divert families from formal processing whenever it is safe and appropriate to do so.

Powers and Duties of Intake Workers

Powers and Duties of Intake Workers – 48.067

- (1) Provide intake services 24 hours a day, 7 days a week for purpose of screening
- (2) interview, any child or expectant mother, taken into custody and not released, if the child cannot be interviewed, shall consult, no child may be placed in a juvenile detention facility unless the child has been interviewed in person by an intake worker, or the hour is unreasonable, after consulting by telephone, may authorized, while the intake worker is en route, or until 8 am
- (3) determine, shall be held under 48.205
- (4) determine where
- (5) provide crisis counseling
- (6) & (6m) receive referral, conduct intake inquiries, request petition be filed, informal dispositions, conduct the multidisciplinary screen
- (7) & (7m) make referrals to other agencies, assist the minor in a proceeding under 48.375(7)
- (8) make interim recommendations
- (9) perform any other functions ordered by the court

Person Providing Services to the Court – 48.08

(2) any person authorized to provide intake services for the court has the power of police officers... only for the purpose of taking a child into physical custody if:

- The child comes voluntarily,
- Is suffering from illness or injury, or
- Is in immediate danger from his/her surroundings... and removal is necessary.

Whenever possible, best practice is to have law enforcement present at the time of removal.

Jurisdiction

Jurisdiction over CHIPS - 48.13:

- (1) without parent or guardian
- (2) abandoned
- (2m) relinquished
- (3) victim of abuse
- (3m) child in home at substantial risk of abuse based on reliable info that another child in the home has been abused
- (4) parent/guardian unable or needs assistance in providing special treatment/care, signs the petition
- (4m) parent/guardian unable or needs assistance in providing special treatment/care, unwilling or unable to sign the petition
- (5) placed for care or adoption in violation of law
- (8) parent is missing, incarcerated, hospitalized or institutionalized
- (9) 12+ yrs old, signs the petition, parent/guardian/legal custodian unwilling, neglecting, unable or needs assistance to provide
- (10) Parent/guardian/legal custodian neglects/refuses/unable to provide care; seriously endanger the physical health
- (10m) child in home at substantial risk of neglect based on reliable info that another child in the home has been neglected
- (11) emotional damage
- (11m) alcohol/other drug abuse, to severe degree, parent neglecting/refusing/unable to provide treatment
- (13) has not been immunized
- (14) residential family-based treatment facility

*Prior to conferring with parent or child 12+, Acknowledgement of Notice of Rights and Obligations form (JD-1704) must be completed and signed. *Often the intake worker does this in the field because it is best practice to inform families of their rights at the earliest opportunity.*

Taking a Child into Custody

Taking a Child into Custody – 48.19

(1) May be taken into custody under any of the following:

- (a) Warrant
- (b) Capias
- (c) & (cm) Order by judge
- (d) Circumstances in which law enforcement believes on reasonable grounds any of the following:
 1. Capias or warrant in this state
 2. Capias or warrant in another state
 4. Child is a runaway
 5. Child is suffering from illness/injury, or is in immediate danger from surroundings and removal is necessary
 7. Child violated conditions of a custody order, conditions of order for TPC by intake worker
 8. Child is expectant mother, substantial risk that physical health of unborn child will be seriously affected or endangered due to habitual lack of self-control in use of alcohol/controlled substances/analogs

48.20: Release or Delivery of Child from Custody – If release, per this section, is not possible due to safety of child, then you must determine that the criteria to hold the child are met.

48.205: Criteria to Hold in Physical Custody

- (1) determined there is jurisdiction of the court and probable cause exists to believe any of the following:
 - (a) Child will cause injury to self or be subject to injury by others
 - (am) Child will be harmed by others due to another child in home being subject to harm

- (b) Parent/guardian/legal custodian is neglecting/refusing/unable to provide adequate supervision & care
- (bm) Child will be neglected due to another child in home being neglected
- (c) Child will run away or be taken away, and unavailable for court proceedings
- (d) Child is expectant mother & substantial risk to physical health of unborn child by mother's habitual lack of self-control in use of alcohol/controlled substances/analogs & mother has refused services offered or is not participating in services offered

*Decisions to hold shall be documented in eWISACWIS. Child may be held in Temporary Physical Custody in non-secure (48.207) or secure (48.208) settings. A Temporary Physical Custody Request form (JC-1608) must be completed.

CHAPTER 938: The Juvenile Justice Code

Powers and Duties of Intake Workers

Powers and Duties of Intake Workers – 938.067

- (1) Provide intake services 24 hours a day, 7 days a week for purpose of screening
- (2) interview any juvenile taken into custody and not released, if the juvenile cannot be interviewed, shall consult, no juvenile may be placed in a juvenile detention facility unless the juvenile has been interviewed in person by an intake worker, a place which is distant, or the hour is unreasonable, after consulting by telephone, may authorized, while the intake worker is en route, or until 8am
- (3) determine, shall be held under 938.205
- (4) determine where
- (5) provide any necessary crisis counseling
- (6) & (6g) & (6m) receive referral, conduct intake inquiries, request petition be filed, enter into deferred prosecution agreements, confer with victims, conduct the multidisciplinary screen
- (7) make referrals to other agencies
- (8) & (8m) make interim recommendations, take juveniles into custody
- (9) perform any other functions ordered by the court

Person Providing Services to the Court – 938.08

(2) any person authorized to provide intake services for the court has the power of police officers... only for the purpose of taking a juvenile into physical custody if:

- The juvenile comes voluntarily,
- Is suffering from illness or injury, or
- Is in immediate danger from his/her surroundings... and removal is necessary.

Whenever possible, best practice is to have law enforcement present at the time of removal.

Jurisdiction

Jurisdiction over Juvenile Alleged to be Delinquent - 938.12(1) - 10+ and alleged to be delinquent

Jurisdiction over Juvenile In Need of Protection and Services (JIPS) 938.13 -

- (4) parent or guardian signs, unable or needs assistance to control the juvenile
- (6) habitually truant from school
- (6m) school dropout
- (7) habitually truant from home, juvenile/parent/guardian/relative in whose home juvenile resides signs petition,

- reconciliation efforts have been attempted and have failed
- (12) the juvenile is under 10 years of age and has committed a delinquent act
 - (14) not responsible for delinquent act by reason of mental disease or defect or determined not competent to proceed

938.125 – Civil Law and Ordinance Violations

938.17 – Traffic Violations

*Prior to conferring with parent or youth 10+, *Acknowledgement of Notice of Rights and Obligations* form (JD-1704) must be completed and signed. *Often the intake worker does this in the field because it is best practice to inform families of their rights at the earliest opportunity.*

Taking a Juvenile into Custody

Taking a Juvenile into Custody – 938.19

- (1) May be taken into custody under any of the following:
 - (a) Warrant
 - (b) Capias
 - (c) Court order by judge
 - (d) Circumstances in which law enforcement believes on reasonable grounds any of the following:
 - 1. Capias or warrant in this state
 - 2. Capias or warrant in another state
 - 3. Juvenile is or has committed a crime
 - 4. Juvenile is a runaway
 - 5. Juvenile is suffering from illness/injury, is in immediate danger from surroundings and removal is necessary
 - 7. Juvenile violated conditions of an order, conditions of order for TPC by intake worker
 - 8. Juvenile violated civil law or local ordinance
 - 10. Juvenile is absent from school

938.20: Release or Delivery from Custody – If release from custody is not possible, due to the safety of the youth or the community, you must determine that the criteria to hold the juvenile are met.

938.205: Criteria to Hold in Physical Custody

- (1) determined there is jurisdiction of the court and probable cause exists to believe any of the following:
 - (a) Juvenile will commit injury to the person or property of others
 - (b) Parent/guardian/legal custodian is neglecting/refusing/unable to provide adequate supervision & care
 - (c) Juvenile will run away or be taken away, and unavailable for court proceedings

*Decisions to hold shall be documented in eWiSACWIS. Juvenile may be held in Temporary Physical Custody in non-secure (938.207) or secure (938.208) settings. A *Temporary Physical Custody Request* form (JD-1710) must be completed.