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January 4, 2023

VIA EMAIL

John Bauman

Juvenile Court Administrator

Juvenile Court Program

City-County Building

210 Martin Luther King Jr., Blvd, Room 200

Madison, WI 53703

Re: *Opinion On Whether Juveniles Can Be Placed At the Detention Center To Participate in A Voluntary Program*

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Dear Mr. Bauman:

You asked whether juveniles can be placed at the Dane County Juvenile Detention Center (“Center”) to participate in a voluntary program that would run for up to 120 days prior to their disposition in a delinquency case. You further asked whether a court can grant a continuance to any future proceedings in order to facilitate the juvenile’s participation in such a program. It is my opinion that a juvenile can be placed at the Center for such a purpose and for longer than thirty (30) days as long as they are not placed as a result of a dispositional order under Wis. Stat. § 938.34(3)(f). It is further my opinion that a court has the discretion to grant a continuance for good cause so that a juvenile can participate in a voluntary program if certain statutory considerations are taken into account.

Your questions involve statutory interpretation which starts with the language of the statute at issue. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. “Statutory language [will be] given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *Id.* The statutory language will be “interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.* ¶ 46. If this textual analysis “yields a plain, clear statutory meaning, then there is no ambiguity,” and the statute should be applied according to that plain meaning. *Id.* (quoting *Bruno v. Milwaukee County*, 2003 WI 28, ¶ 20, 260 Wis. 2d 633, 660 N.W.2d 656).

I. Placing Juveniles at a Juvenile Detention Center to Attend a Program

Under Wisconsin’s Juvenile Justice Code, a juvenile who violates the law may be adjudicated delinquent and then receive a consequence for violating the law, otherwise known as a disposition. *See generally*, Wis. Stat. ch. 938. One such disposition is the placement of the juvenile in a juvenile detention facility. In order for the court to place a juvenile at a juvenile detention facility, a county

board must first pass a resolution authorizing the use of the facility as a dispositional placement option. Wis. Stat. § 938.06(5). Once the county board authorizes its use, a juvenile detention facility can serve as a placement for a limited time. Wis. Stat. § 938.34(3)(f)1. If a county board authorized the use of the juvenile detention facility as a placement option prior to January 1, 2018 and the county did not receive a grant to design and construct a secure residential care center for children and youth (“SRCCCY”) under 2017 Wis. Act 185, then a court can place juveniles at the facility for no longer than 365 days¹. Wis. Stat. § 938.22(2)(d). Otherwise, placement at a juvenile detention facility is limited to no more than thirty (30) consecutive days. Wis. Stat. § 938.34(3)(f)1.

The plain language of Wis. Stat. § 938.34(3)(f) demonstrates that the limitations on the length of time that a juvenile detention center can serve as a placement option for juveniles only apply if the placement is the result of a dispositional order. *See* Wis. Stat. § 938.34(3)(f). There are no similar limitations that apply in other circumstances, absent those that generally apply whenever a juvenile is placed out of the home in a secure setting. *See e.g.*, Wis. Stat. § 938.21. Therefore, as long as a juvenile was not placed in a juvenile detention center because a court issued a dispositional order requiring it, the time limitations set forth in Wis. Stat. § 938.22(2)(d) and Wis. Stat. § 938.34(3)(f) are not applicable. Further, courts have recognized the distinction between placement as a result of a dispositional order and otherwise. *See e.g.*, *In re Andrew J.K.*, 2006 WI App 126 ¶¶ 19-20 (noting that a juvenile’s voluntary participation in a residential treatment program located in a juvenile detention center cannot be equated with a court ordered placement under Wis. Stat. § 938.34 when there was no such order.)

II. Participation in a Voluntary Program as the Basis For Granting a Continuance

The next question posed is whether a court can grant a continuance to any future ch. 938 proceedings so that a juvenile can participate in a voluntary program. The court’s authority to grant a continuance is set forth in statute. Under Wis. Stat. § 938.315(2), a court can grant a continuance to most chapter 938 proceedings only “upon a showing of good cause,” in open court or in a telephone conference on the record. Continuances are to last “only for so long as necessary” and granted only after the court considers the request or consent of the representative of the public (i.e. the district attorney’s office), the parties, the interests of the victims and the interest of the public in the prompt disposition of cases. Wis. Stat. § 938.315(2).

The statutory language evinces that the court has authority to grant a continuance if there is a sufficient showing of “good cause.” The term “good cause” is not defined, but courts have interpreted the term broadly, including finding “good cause” in circumstances similar to the hypothetical you have proposed. In that example, the trial court placed a juvenile in a juvenile corrections facility as part of a dispositional order, but stayed the placement to give the juvenile a chance to comply with several conditions. *In re Andrew J.K.*, 2006 WI App 126 ¶ 3. The juvenile was not able to comply, and the State sought to have the stay lifted so that the juvenile could either stipulate to participating in an education and treatment program or if he refused, be placed in a correctional facility pursuant to his dispositional order. *Id.* ¶¶ 7-8. The juvenile ultimately agreed to participate in the program, but was later terminated from it. *Id.* ¶ 10. The State then sought to impose the placement set forth in the dispositional order, but the juvenile challenged the State’s request on a number of grounds. *Id.* ¶¶ 14-27. In determining that the

¹ The number of juveniles that may be housed at a juvenile detention facility under this provision is limited. *See* Wis. Stat. § 938.22(d)(2)

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juvenile’s placement in a voluntary program was lawful, the court of appeals noted that there was “nothing amiss” with the trial court finding “good cause” on the basis that the juvenile had agreed to be placed in the program. *Id.* ¶ 18. Furthermore, the court noted that Wisconsin’s Juvenile Justice Code did “not expressly prohibit stipulations relating to a juvenile’s voluntary entry into an alternative program or prohibit a court from finding good cause for an adjournment on the basis of the juvenile’s entry into such a program.” *Id.* ¶ 20, n.4 (citing *State v. Kendell G.*, 2001 WI App 95, 243 Wis. 2d 67, 625 N.W.2d 918.)

Accordingly, it is my opinion that if a juvenile wished to participate in a voluntary program, and the other statutory considerations are considered (i.e. consent of the parties, interest of the victims, etc.), a trial court could find “good cause” and grant a continuance to any further proceedings so that the juvenile could complete the program.

III. Conclusion

As explained above, it is my opinion that a juvenile can be placed at the Center longer than thirty (30) days in order to participate in a voluntary program as long as they are not placed there as a result of a dispositional order under Wis. Stat. § 938.34(3)(f), and that a trial court can facilitate such a placement by granting a continuance. Please note, however, there remains a number of questions surrounding how a voluntary program would be structured and implemented in Dane County, as well as the other stakeholders’ interest. The details of the program may trigger the need for further legal analyses, including that of relevant department of corrections’ administrative regulations such as Wis. Admin Code ch. DOC 346. I would advise that once the details of the program are determined, further discussions take place among the various stakeholders, the Department of Corrections and our office before the program is implemented.

If you have any questions, please do not hesitate to ask.

Sincerely,

Carlos A. Pabellón

Carlos A. Pabellón
Deputy Corporation Counsel