

Extensions: Wis. Stat. §938.365

- For procedure for all post-dispositional hearings, see Wis. Stat. §938.299(4)(b)
 - Wis. Stat. §938.365(2m)(a)1: “Any party may present evidence relevant to the issue of extension. If the juvenile is placed outside of his or her home, the person or agency primarily responsible for providing services to the juvenile shall present as evidence specific information showing that the person or agency has made reasonable efforts to achieve the permanency goal of the juvenile’s permanency plan, including, if appropriate, through an out-of-state placement.”
 - Wis. Stat. §938.365(2m)(a)1m: “The court shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the person or agency primarily responsible for providing services to the juvenile”
 - Wis. Stat. §938.365(3): “The appearance of any juvenile may be waived by consent of the juvenile, counsel or guardian ad litem.”
 - Wis. Stat. §938.365(5)(a): “An order under this section that continues the placement of a juvenile in his or her home or that extends an order under s. 938.34(4d), (4h), (4m), or (4n) shall be for a specified length of time not to exceed one year after the date on which the order is granted.”
 - Wis. Stat. §938.365(5)(b): “An order under this section that continues the placement of a juvenile in a foster home, group home, or residential care center for children and youth, in the home or a relative other than a parent, or in a supervised independent living arrangement shall be for a specified length of time not to exceed the latest of the following dates:
 - The date on which the juvenile attains 18 years of age.
 - The date that is one year after the date on which the change-in-placement order is granted.
 - The date on which the juvenile is granted a high school or high school equivalency diploma or the date on which the juvenile attains 19 years of age, whichever occurs first, if the juvenile is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before attaining 19 years of age.
 - The date on which the juvenile is granted a high school or high school equivalency diploma or the date on which the juvenile attains 21 years of age, which occurs first, if the juvenile is a full-time student at a secondary school or its vocational or technical equivalent and if an individualized education program under s. 116.787 is in effect for the juvenile.”

- Wis. Stat. §938.365(6): “If a request to extend a dispositional order is made prior to the termination of the order, but the court is unable to conduct a hearing on the request prior to the termination date, the court may extend the order for a period of not more than 30 days, not including any period of delay resulting from any of the circumstances under s. 938.315(1).”

CASE LAW:

- Extensions:
 - *In the Interest of Michael S.*, 282 Wis.2d 1, 698 N.W.2d 673, 2005 WI 82 (temporary extension under sub (6) must occur prior to the original expiration date; termination date of a dispositional order is not a time limit that can be waived).

EXTENSIONS:

- May be filed by (Wis. Stat. §938.365(1m)):
 - Parent;
 - Juvenile (by counsel);
 - Guardian;
 - Legal custodian;

 - Any person or agency “bound by the dispositional order”;
 - The district attorney or corporation counsel from the county in which the dispositional order was entered;
 - The court on its own motion.
- The request must be filed with the court that entered the order.
- Dispositional orders which are not eligible for extensions:
 - Those that placed a juvenile in detention.
 - Those that placed a juvenile in nonsecure custody.
 - Those that placed a juvenile in inpatient treatment.
 - See also Wis. Stat. §938.355(4)(b)), making ineligible for extension those that expired after a juvenile turned 17 and placed the juvenile in a Type 2 Residential Care Center, SJO, Corrections or DOC Aftercare.

- There must be a hearing (Wis. Stat. §938.365(2)).
- Notice must be provided to:
 - The juvenile;
 - The juvenile’s parent, guardian and legal custodian;
 - All parties present at the original dispositional hearing;
 - Foster parent or other physical custodian;
 - District attorney or corporation counsel from the county in which the dispositional order was entered;
- By the time of the hearing, the person or agency primarily responsible for providing services to the juvenile must file a written report which states “to what extent the dispositional order has been meeting the objectives of the plan for the juvenile’s rehabilitation or care and treatment.” (Wis. Stat. §938.365(2g)(a)).
- If the extension hearing is for a juvenile placed outside of the home, the report must also include (Wis. Stat. §938.365(2g)(b)):
 - A copy of the report of the Permanency Plan Review panel under s. 938.38(5);
 - An evaluation of the juvenile’s adjustment to the placement;
 - An evaluation of any progress the juvenile has made;
 - Suggestions for any amendments to the permanency plan;
 - Specific information showing the efforts that have been made to achieve the permanency goal, including any efforts the parents have made to remedy the factors that contributed to the juvenile’s placement.
- A statement of whether or not a recommendation for a termination of parental rights has been made if the juvenile has been outside of the home for 15 of the most recent 22 months, with corresponding statutory requirements based upon whether it has or has not (Wis. Stat. §938.365(2g)(b)3).
- If the extension hearing is for a juvenile not placed outside the home, the report must include (Wis. Stat. §938.365(2g)(c)):
 - A description of efforts that have been made by all parties concerned toward meeting the objectives of treatment, care or rehabilitation;
 - An explanation of why these efforts have not yet succeeded in meeting the objective;
 - Anticipated future planning for the juvenile.

- At the hearing, any party may present evidence relevant to the issue of extension (Wis. Stat. §938.365(2m)(a)1).
- A juvenile's presence at the hearing may be waived by consent of the juvenile, juvenile's counsel or guardian ad litem (Wis. Stat. §938.365(3)).
- If the juvenile is placed outside of the home, the person or agency primarily responsible for providing services to the juvenile must present, as evidence, specific information:
 - Showing that the person/agency has made reasonable efforts to achieve the permanency goal.
 - Showing that the agency (if the juvenile has one or more siblings also placed outside the home) has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together or, if that's contrary to the juvenile or siblings' safety, that the agency has made reasonable efforts to provide for "frequent visitation or other ongoing interaction" (Wis. Stat. §938.365(2m)(a)1r.a. and (2m)(a)1r.b).
- A foster parent or other physical custodian must be given an opportunity to make a written or oral statement at the hearing, or to submit a written statement prior to the hearing, on the issue of extension (Wis. Stat. §938.365(2m)(ag)).
- At the conclusion of the hearing, the Court must make specific findings of fact which include whether reasonable efforts were made by the person/agency to achieve the permanency goal (Wis. Stat. §938.365(2m)(a)1m.) and shall state on the record the reason for the extension, if granted (Wis. Stat. §938.365(2m)(b)).
- The court must determine which dispositions to consider for extension (Wis. Stat. §938.365(4)).
- If the extension is of a disposition for placement at home or at a Type 2 placement, SJO placement, Corrections placement or DOC Aftercare placement, the extension must be not more than a year from the date that the extension is granted (Wis. Stat. §938.365(5)(a)).
- If the extension is of a disposition for placement outside the home, the extension must be for a specified length of time not to exceed the latest of (Wis. Stat. §938.365(5)(b)):
 - The date on which the juvenile attains 18 years of age.
 - The date that is one year after the date on which the change-in-placement order is granted.
 - The date on which the juvenile is granted a high school or high school equivalency diploma or the date on which the juvenile attains 19 years of age, whichever occurs first, if the juvenile is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before attaining 19 years of age.

- The date on which the juvenile is granted a high school or high school equivalency diploma or the date on which the juvenile attains 21 years of age, which occurs first, if the juvenile is a full-time student at a secondary school or its vocational or technical equivalent and if an individualized education program under s. 116.787 is in effect for the juvenile
- If the request to extend the order is made prior to its expiration, but the court is unable to hold a hearing prior to the expiration, the court may extend the order up to 30 days to accommodate the hearing being scheduled (Wis. Stat. §938.365(6)).

Practice Pointers:

- There are times, though rare, where your client wants the extension (i.e., might be appreciating certain services, may want to maintain an out of home placement), so be prepared to advise your client about this possibility and file the request yourself.
- Upon receipt of the request/notice, check to see:
 - Is this an order for which an extension is legally permissible?
 - Does supervision actually end prior to the date of the hearing?
 - If so, has a 30 day extension order been entered?
 - If not, does your client want such an order?
- Obtain the extension report as soon as possible and review it carefully:
 - Does it contain all that is statutorily required?
 - Are there any inaccuracies?
- Prepping for the hearing:
 - Does your client want to come, or want their appearance waived?
 - If the client wishes to contest, it's probably best that they appear.
 - What is the evidence that weighs in favor of an extension?
 - If out-of-home, what progress toward reunification has been made? What can realistically still be accomplished with further court involvement? Has the agency, in fact, made reasonable efforts to get your client home?
 - If in-home, why haven't these efforts succeeded in reaching the objectives of the treatment plan? What is the treatment plan? Is it likely to be accomplished with a longer period of "lawyers, judges and social workers" injecting themselves into the life of this family?
- The hearing itself:

- The rules of evidence are not applicable (see Wis. Stat. §938.299(4)(b)).
- Section provides no information about an applicable burden of proof or any standard for the court to determine whether to grant the request.
 - Usually, if things are going well, there is not much need for an extension, so, assuming things are not going well, this should not automatically mean an extension is warranted.
 - Is the system's involvement actually helping?
 - Has the system's involvement led to any appreciable progress?
 - If neither the client nor the parents want the extension, what are the chances of the system's continued involvement being *effective*??
- If the extension is granted, be sure that a set period of time is ordered, especially for continued out-of-home placements, and remind the court that it is not mandatory that it be longest permissible period.