

## FREQUENTLY ASKED QUESTIONS

### **Under the Inter-County Agreement, how will issues of restitution and victim notification issues be handled between counties in delinquency cases?**

Both restitution and victim notification are functions of court supervision. While the court of venue orders restitution, if the county of residence is providing courtesy supervision, it would seem to be appropriate for that county to monitor and help facilitate payment of restitution to victims through the county of venue.

The county that is the petitioner in a case is responsible for victim notification, regardless of where the youth is present.

### **When Children are placed in substitute care by a county, and that county, owing to relocation of the parent who establishes new home county status, transfers venue, does the receiving county take on the cost of care for that placement. Does the “you place, you pay” concept apply to this agreement?**

It is our understanding that the “you place, you pay” practice is as follows: If county A places a child in substitute care (or County A’s juvenile court orders any other service for a family for which the county will be required to pay) and subsequently County A’s juvenile court transfers venue to County B’s juvenile court, County A will continue financially responsible for the costs of the placement/services ordered by County A’s juvenile court until there is a revision, extension or “permanency” order issued by County B’s court. Once County B’s court issues its own order, County B will be financially responsible for the placement/services ordered by its court.

The Statewide Inter-County Agreement continues the past practice of “you place, you pay” however, under the terms of this agreement, in most out-of-home placement cases, the time period during which the “sending” county (County A) will remain financially responsible for its order may be shortened depending on how the “sending” county proceeds. Under the terms of the agreement, the “sending” county will retain financial responsibility until one of the following occur:

1. There is a written agreement between the directors of the involved counties whereby the “receiving” county agrees to assume financial responsibility for the costs of the placement/services that were ordered by the “sending” county’s juvenile court.
2. A decision is issued by the Peer Review Panel after an administrative review by the Panel. See Addendum B.
3. The “receiving” county’s juvenile court issues its own order after a “permanency” hearing (i.e., a court hearing, not an administrative review panel) or the “receiving” county’s juvenile court either revises the current order, or extends the order.
4. 60 days after the venue transfer order is issued if the “sending” county has complied with sections III.A.2. of the Agreement (request for courtesy supervision), section III.B. (timely and adequate notice of the motion to transfer venue provided to the “receiving” county) and III.C. ( the “receiving” county has been given an opportunity to participate in the dispositional/permanency planning hearing/review held by the “sending” county).

It is the intent of the Statewide Inter-County Agreement that counties are encouraged to communicate and cooperate with one another when there is a plan to transfer venue. Therefore, the Agreement incorporates a financial “incentive” to encourage advance planning, communication and cooperation in venue transfer cases and to discourage “dumping”. If a “sending” county fails to provide a “receiving” county with the prior notice and opportunity to be heard as the Agreement calls for, the “sending” county will be prohibited from transferring its financial responsibility for a case until an order is issued by the “receiving” county’s juvenile court (or until otherwise agreed to, in writing, by the involved directors of otherwise ordered by the review panel).

To summarize the above: If a family, whose child is in out of home care, moves to another county, the placing county retains financial responsibility for that placement. Once the family attains new “home county” status (residing in the new county for at least 6 months **with the intent of making it a permanent residence**) the placing county may file for a motion to transfer venue to the new “home county”. The transfer of venue does not automatically transfer financial responsibility. Financial responsibility would transfer 60 days after the transfer of venue **IF** the placing county made a request for courtesy supervision as soon as possible after learning the family is planning to, or has moved (this alerts the receiving county to the situation and potential for future transfer of financial responsibility early on so alternative planning can begin), **AND** the new “home county” received adequate notice of the motion to transfer venue. These requirements are incorporated into the agreement as safeguards against “dumping” cases. If the placing county fails to meet these requirements, the placing county retains financial responsibility for the duration of the placement. If these requirements are met, the placing county would retain financial responsibility for the placement for at least 8 months after the family moves to the new county of residence.

**Does the Agreement consider “good cause” as a criterion for transfer of venue in chips, jips and delinquency cases.**

Section III of the Agreement, Transfer of Venue, specifies “A decision to initiate a venue transfer shall be guided by the best interest of the child/juvenile...”

Venue is transferred from court to court. Ch’s 48.185 and 938.185 Wisconsin Statutes define venue and under what circumstances a court may transfer venue to another county. 48.185 (2) and 938.185 (2) specify, in part, that “ the court may, upon a motion and for good cause shown, transfer the case...” Wisconsin Children’s Code and Juvenile Justice Code are clear that the determination of “good cause shown” is a judicial determination. The Statewide Inter-County Agreement has no authority over judicial decisions, but instead, is intended to assist counties with the court process in shared cases.

**What if two counties agree to a transfer of venue, but the court refuses to enter an order for the transfer? Which county is then the “county of responsibility?”**

The issue of which county is the appropriate venue must always be decided by the “trial” court and the decision of the trial court may be appealed only through the court system. A court order transferring, or refusing to transfer, venue establishes the location/forum where any future court proceedings in a case will take place and, in juvenile court cases, which county has supervisory responsibility under Chs. 48 and 938. When a juvenile court issues an order for

services/placement, **the court generally does not include** a specific provision in the order identifying which county will pay for the services/placement. Unless the court order provides otherwise, it is generally assumed (unless private insurance picks up the cost) that the county of the court that issued the order will pay the costs of the court ordered services. However, when that would not be fair under the terms of the Inter-County Agreement (i.e. when the county of venue is not the “home county” of the child/juvenile), the county of venue and the “home county” may enter into a separate written agreement that will identify the “home” county as the “county of responsibility” even when there has not been a transfer of venue.

**The Inter-County Agreement provides that the decisions of the Administrative Review Panel are not subject to appeal. Does this mean that a county who is a party to the Agreement gives up its right to appeal a juvenile court order granting or denying a motion to transfer venue?**

**Only the court has the authority to order transfer of venue** and the decision of the juvenile court must be appealed through the court system. By signing the Inter-County Agreement, a county **does not** give up its right to appeal any order of the juvenile court, including a decision of the court regarding venue and payment responsibility. Orders of the juvenile court may not be appealed through the Administrative review process and there can be no conflict between the decisions of the juvenile court and the Administrative Review Panel because the decision of the court will always preempt the decisions of the Panel.

One of the purposes of the Inter-County Agreement is to keep the parties out of court when there is a disagreement between the counties regarding the “county of responsibility”, (i.e. which county is responsible for the costs of court ordered service/placement). The parties agree to resolve their differences regarding the “county of responsibility” through the Administrative Review Process described in Addendum B and to accept the review panel’s decision as binding. As provided in a typical binding arbitration agreement, the parties agree that there will be no further appeal of the Panel’s decision. Nevertheless, if, for example, a guardian ad litem moves the juvenile court for an order requiring a specifically named county to pay for a court ordered service, any appeal of that order must be to the court and not the Administrative Panel.

In conclusion, under the terms of the Inter-County Agreement, there will remain many situations where an “appeal” of a court order will be appropriate and necessary. If a court orders a transfer of venue, that order may be appealed to the Court of Appeals or the “receiving” county may file an objection to the transfer in the “receiving” county’s juvenile court, and the receiving county’s juvenile court may send the case back to the original county of venue. If the “sending” court also includes provisions in its order that create financial obligations for the “receiving” county, the receiving county may appeal that order with the Court of Appeals or the “receiving” county may file a petition or request for revision with its own court. It is only when the relevant court order is silent regarding the counties’ financial obligations that the counties, who are parties to the Inter-County agreement, are permitted to use the Peer Review Administrative Panel to resolve their dispute regarding which is the “county of responsibility”. When the counties take their dispute to the Panel they also agree that the decision of the Panel will be binding and not subject to further appeal.

**The venue transfer statutes require the juvenile court to find that there is “good cause” before the court orders such a transfer. Why isn’t this “good cause” finding addressed in the Inter-County Agreement?**

The Inter-County Agreement is intended to guide the county departments. The Agreement does not, nor is it intended to, bind the juvenile courts. Sections 48.185(2) and 938.185(2), Stats., provide that the juvenile court may transfer venue upon motion and “for good cause shown”. The Children’s Code and the Juvenile Justice Code do not provide any guidance to either the juvenile court or regarding what must be shown in order to satisfy this “good cause” requirement. Generally, venue is transferred from one court to another when the original court of venue determines that a transfer is “in the interests of justice”, e.g., in order for a defendant to be given a fair trial when the media has given so much attention to a crime that it would be impossible to impanel an impartial jury. Venue may also be transferred if the court determines it would be more “convenient” for the parties and witnesses if any future court proceeding(s) are held, for example, in a forum closer to the parties’/witnesses’ homes or businesses. See ss. 971.22 and 801.52, Stats.

The Inter-County Agreement provides that before a *county department initiates* a request to transfer venue, in addition to the 6-month residency and intent to remain requirement incorporated into the definition of “home county”, that the county consider the best interests of the child. The law requires that the “best interests of the child always be of paramount consideration” in every Chapter 48 juvenile court proceeding and, therefore, that determination will also be the most important part of the “good cause” finding made by the Chapter 48 court. The Chapter 938 court must consider the best interest of the juvenile but must also consider the protection of the public. These principles are incorporated into the Inter-County Agreement and are intended to guide *the county department’s* decision to initiate a venue transfer.

**What if two counties agree to a transfer of venue but the court refuses to enter an order for the transfer? Which county is then the “county of responsibility?”**

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