

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 20, 2010**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2009AP1975**

**Cir. Ct. No. 2007JV23**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN THE INTEREST OF ROBERT H., A PERSON UNDER THE AGE OF 17:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**ROBERT H.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Brown County:  
TIMOTHY A. HINKFUSS, Judge. *Reversed and cause remanded with directions.*

¶1 PETERSON, J.<sup>1</sup> Robert H. appeals an order finding him delinquent. Robert argues the circuit court incorrectly concluded the State complied with the time limits for requesting and filing a delinquency petition. As a result, he argues the court was required to dismiss the petition. We agree with Robert that the State did not comply with the time limits, but we do not agree this obligated the court to dismiss his petition. Therefore, we reverse and remand for the circuit court to determine the proper remedy for the State's failure to timely request and file a delinquency petition.

### BACKGROUND

¶2 In September 2006, Robert, a juvenile, punched another student in the face at school while holding a combination lock in his hand. On November 8, 2006, the Green Bay Police Department referred the incident to a county juvenile intake worker. On December 15, the intake worker signed a referral requesting the district attorney file a delinquency petition. It is unclear what happened to the referral next, but it was date-stamped as received by the Brown County district attorney's office on January 3, 2007. The district attorney filed a delinquency petition charging Robert with battery on January 22.

¶3 At a hearing on June 12, 2007, Robert argued the petition should be dismissed because either the intake worker or the district attorney failed to comply with the statutory time limits. An intake worker must request a delinquency petition within forty days after receiving the referral; and the district attorney must file the petition within twenty days of that request. Robert contended that if the

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

date of request was January 3—the day it was received in the district attorney’s office—the intake worker did not request the petition within forty days of receiving the referral. But if the date of request was the day it was signed, December 15, the petition filed on January 22 was beyond the twenty-day filing period.

¶4 The circuit court agreed the State failed to comply with the necessary time limits and granted Robert’s motion to dismiss. The State moved for reconsideration, arguing Robert had erroneously represented that there cannot be a gap between the date an intake worker requests a delinquency petition and the date the request is filed with the district attorney. Thus, the State contended the court had incorrectly concluded the time between December 15 and January 3 counted toward the statutory time limits. The court agreed with the State and vacated its order dismissing the petition.

## DISCUSSION

¶5 The issue in this appeal is whether the State complied with the statutory time limits for requesting and filing a delinquency petition. This is a question of statutory interpretation and therefore subject to our independent review. *See State v. Long*, 2009 WI 36, ¶20, 317 Wis. 2d 92, 765 N.W.2d 557.

¶6 The statutory process to find a juvenile delinquent begins with a referral to an intake worker. WIS. STAT. § 938.24(1). The intake worker must “request that a petition be filed, enter into a deferred prosecution agreement, or close the case within 40 days after receipt of referral information.” WIS. STAT. § 938.24(5). If the intake worker requests a delinquency petition be filed, “[t]he district attorney, corporation counsel, or other appropriate official shall file the

petition ... within 20 days after the date that the intake worker’s request was filed.” WIS. STAT. § 938.25(2)(a).

¶7 Robert argues that it would be contrary to the purpose of these statutes to interpret them as permitting a gap between the date on which an intake worker requests a petition and the date the request is filed with the district attorney. We agree.

¶8 Our supreme court identified the legislature’s purpose in imposing a deadline for filing delinquency petitions in *C.A.K. v. State*, 154 Wis. 2d 612, 453 N.W.2d 897 (1990). Discussing the predecessor statute to WIS. STAT. § 938.25—then in WIS. STAT. ch. 48—the court observed:

The drafting records ... indicate that the statutory time limitation was added to sec. 48.25 because “the intake process [tended] to bog down when it [got] to the district attorney ....”

....

Thus, in creating sec. 48.25(2)(a), the legislature sought to alleviate the accumulation of juvenile cases at the district attorney’s office in order to ensure the prompt disposition of cases involving children.

*C.A.K.*, 154 Wis. 2d at 622-23.

¶9 In light of the intent “to ensure the prompt disposition of cases involving children,” it would be unreasonable to interpret WIS. STAT. §§ 938.24(5) and 938.25(2)(a) to permit a gap between the time a petition is requested and the time the request is filed with the district attorney. Such an interpretation would permit significant delays in filing petitions such as occurred here. Rather, the only sensible interpretation of these statutes is that the date that stops the forty-day time limit and begins the twenty-day limit are the same. This is the date the intake

officer files a petition request with the district attorney: “the district attorney shall file the petition ... within 20 days after the date that the intake worker’s request was filed.” WIS. STAT. § 938.25(2)(a).

¶10 Generally, filing means “delivery to the proper officer.” *Hoffman v. Rankin*, 2002 WI App 189, ¶15, 256 Wis. 2d 678, 649 N.W.2d 350. Here, although the petition request was stamped as received on January 3, 2007, the court made no findings about whether this was the date it was delivered to the proper officer. But no matter what date is used, the State did not both refer the request to the district attorney within forty days and file the delinquency petition within twenty. Therefore, it did not comply with the time limits set forth in WIS. STAT. §§ 938.24(5) and 938.25(2)(a).

¶11 In spite of the State’s failure to comply with these time limits, the court was not obligated to dismiss the petition as it apparently assumed in its initial order. Rather, both WIS. STAT. §§ 938.24(5) and 938.25(2)(a) provide that “[t]he court shall grant relief as provided in s. 938.315(3) with respect to any petition that is not filed within the time period specified in this paragraph.” Under § 938.315(3), the court “may grant a continuance ..., dismiss the petition with or without prejudice, release the juvenile from ... custody or from the terms of a custody order, or grant any other relief that the court considers appropriate.” Therefore, on remand the court is directed to determine the proper remedy for the State’s failure to timely request and file the delinquency petition.

*By the Court.*—Order reversed and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

