

Juvenile Practice County By County (Delinquency)

In an effort to provide both a “cheat” sheet of sorts for lawyers who are new to juvenile practice in your county and with the hope that we might all get new ideas for ways to improve juvenile practice throughout the state, I came up with these questions regarding juvenile proceedings. My plan is to gather answers from each of the counties and include this information on the Juvenile Practice website for staff attorneys to use as a resource, and have handouts of the information at trainings. This information should provide a good overview of juvenile practice for staff attorneys and private bar attorneys new to juvenile law.

Brown County

Submitted by: Eric Heywood

The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - The prosecutor and social workers do not include defense counsel in the intake process. When a kid is in a custodial setting, the charging decision is made quickly, apparently without a thorough investigative intake process. When a kid remains at home, defense counsel is not involved in the pre-charging investigation about whether to offer a deferred prosecution agreement. The first involvement of defense counsel is either the filing of a petition or revocation of a DPA based on a violation.

- ❖ Do you use the term probation officer or social worker or something else to describe the county representative from human services?
 - Social worker (SW).

- ❖ Is there a specific social worker/probation officer or group of social workers/probation officers who conduct the intake inquiry?
 - No, the SW(s) assigned is usually the on-duty SW when the incident happened, a SW that is familiar with the client or family, or a randomly assigned SW.

- ❖ Do the District Attorneys in your county tend to agree with the social worker/probation officer's decision regarding whether or not to charge, whether or not to offer a Deferred Prosecution Agreement, etc.?
 - Yes, there is one ADA that handles most of the JV cases, and that ADA is typically agreeable to DPAs and the recommendations of SWs unless the ADA thinks there are significant competing interests against a DPA.

- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
 - DPAs are sometimes used for first offenses, especially when adequate counseling can be provided in the community and the offense is non-violent.

- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - Defense attorneys are not involved with negotiating DPAs prior to filing a petition because an attorney is not assigned until the petition is filed.

❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?

- Yes, this can happen especially if the client makes progress during the case with objectives such as counseling. It helps if the SW will agree to a DPA.

Temporary Physical Custody Hearings

❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?

- Clients always appear in person at TPC hearings. The client appears in custody if originally placed in Secure Detention. The client is transported by Shelter Care if the client was originally placed there. If the client is in a different non-secure placement such as home, the court requires the client to appear in person.

❖ Are your custody hearings before a court commissioner or a judge?

- Court commissioner.

❖ Is a petition normally filed by the time of/at the hearing?

- No, the ADA typically asks for 48 hours to file a petition, and a plea hearing is scheduled 2 days later.

❖ Is there ever sworn testimony taken at custody hearings?

- No, usually the SW, ADA, or occasionally a police officer for serious cases will offer a summary of the offense to establish PC. The defense attorney can ask questions, similar to a preliminary hearing, to attack or clarify PC. However, the testimony is not sworn.

❖ Does your jurisdiction have a “temporary release from secure custody”, furlough, or something whereby secure custody findings are made but the client is allowed to be outside of secure detention?

- Yes, the court handles this by ordering a secure placement, and then allowing a furlough, typically for a trial-run with placement with other family or a foster home. If the client is successful with the alternative placement, the secure custody order is changed to non-secure at that placement. If the alternative placement is not successful, the client is returned to custody.

❖ What is the process for “appealing” the initial custody determination?

- The initial custody determination is reviewed again by the court commissioner 2 days later when the petition is filed. The placement can be reviewed again once the case is in front of the assigned judge.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - Yes, the SW may request a change in placement if the SW has a non-secure placement plan.
- ❖ What is the average length of stay in detention?
 - The average stay in secure detention is usually very short or very long. For very short stays, the client is released from SD at the TPC hearing or the plea hearing. Otherwise, unless the judge changes the court commissioner's placement of the client, placement in SD is usually long for clients likely to go to a correctional or other secure facility.
- ❖ Where is the detention facility for your county?
 - Secure Detention is a wing of the Brown County Jail, about 15 minutes away from the courthouse.
- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - Other than SD, a client can be placed at Shelter Care, home, home with electronic monitoring, or with other family.
- ❖ If your client is in secure custody or in a county facility group home, what needs to happen for the custody status to be reviewed?
 - The client's custody status can be reviewed at each court hearing at the request of defense counsel; a written motion is not necessary.
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - Yes, the client can be placed on electronic monitoring at home. Whether or not the client is on electronic monitoring, the SW will visit the client at home and talk with the client's family to determine whether the client is following the court orders.

Competency to Stand Trial

- ❖ How is the question of competency raised in your jurisdiction

- Typically, defense counsel will ask the court commissioner or judge to order a competency evaluation when competency is at issue.
- ❖ Is it common for someone other than defense counsel to raise competency?
 - No, the client's family may point out possible competency issues to defense counsel, but the issue is raised to the court by defense counsel.
- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
 - The court may ask for a short offer of proof, such as any past mental health diagnoses, but typically the competency issues may be apparent based on the client's responses in court and the information in the petition.
- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?
 - The ADA will almost always agree with the evaluator's findings of competency and the likelihood of regaining competency. However, when defense counsel disagrees with the court appointed evaluator's conclusion, the court allows defense counsel to hire its own evaluator and/or contest the evaluation.
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
 - Yes, after a finding of not competent but likely to regain competency, the court will set dates to review the progress on attaining competency.
- ❖ What competency training is provided in your county?
 - The SW will usually meet with the client multiple times to review competency information. Also, the SW may arrange for other mental health workers to meet with the client regarding competency.

Waiver to Adult Court

- ❖ Do the District Attorneys in your county file waiver frequently?
 - Yes, waivers are often filed for 16 year old clients or younger clients with serious offenses.
- ❖ Do the judges in your county often waive kids into adult court?

- No, typically waiver is resolved by negotiations. Even if waiver remains contested after negotiations, the judges are hesitant to waive a kid into adult court unless the offense is very serious and the kid is close to 17 years old.
- ❖ When the State files the waiver request, are they truly seeking waiver, or is it used as a bargaining chip for some sort of juvenile disposition?
 - Almost always waiver is used as a bargaining chip for a juvenile disposition.
- ❖ How often are waivers contested?
 - Waivers are usually resolved through negotiation. When waivers are set to be contested, the ADA will come with an offer to hold open the waiver or dismiss it. Waivers rarely reach the contested phase.
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
 - The ADA assigned to juvenile cases typically files lengthy petitions, and relies almost entirely on the petition for prosecutive merit.
- ❖ What sort of witnesses does the State typically call in support of waiver?
 - The ADA typically calls the current SW, any past SWs, and police officers.
- ❖ What sort of witnesses does the defense usually call?
 - Client services worker, family, and information about the client from school or other community groups and contacts.
- ❖ Is it at all common for a juvenile to initiate waiver proceedings?
 - No, I am not aware of this occurring.
- ❖ Are you aware of any instances in your jurisdiction of the Court initiating proceedings?
 - No, I am not aware of this occurring.

Disposition

- ❖ How closely are the social worker's recommendations followed?
 - The SW prepares recommendations based on the negotiations between the ADA and defense counsel, where the SW is also usually present. Generally,

the SW recommendations are usually agreed upon between the parties, with the main exception usually being the length of any additional custodial time.

- ❖ Are cases in your county frequently resolved by consent decrees? Who drafts the consent decrees? Do the district attorneys require a plea for consent decrees?
 - Yes, the ADA often will offer consent decrees. Depending on the seriousness and whether there are citizen witnesses or just officers, the ADA may or may not require a plea for consent decrees. Whether a plea is required can be part of negotiations. The consent decree is drafted by the ADA.
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - Yes, there are standard conditions in almost all dispositions that cover staying out of trouble, following home rules, complying with the SW and signing releases, and attending school.
- ❖ Does the State typically agree with the Department's recommendations?
 - The SW usually makes the recommendations after being present for negotiations between the ADA and defense counsel, so the SW usually makes the same recommendations that the ADA would want.
- ❖ Does your jurisdiction have an intensive supervision program?
 - There is not a generalized intensive supervision program; supervision is handled by the SW on a case by case basis.
- ❖ Does your jurisdiction have a specialized "wraparound" program?
 - No, the SW determines the necessary programming on a case by case basis.
- ❖ Does your jurisdiction have a community service/restitution program?
 - Not specifically, the SW will set up ways the client can perform community service or make money to pay restitution.
- ❖ Which Residential Treatment Centers are used by your county?
 - Brown County uses several treatment centers, including Ethan House, Northwest Passage, Homme Home, Macht Village Program, and Rawhide Boys Ranch.
- ❖ Does your county allow for a dispositional 365 day placement in detention?

- Yes, however the majority of this time is typically imposed and stayed. Although there are some AODA programs offered in detention, defense counsel can, and typically does, argue that the client does not have significant AODA needs to justify the extended placement, especially if the offense is not drug related.
- ❖ Do you feel your judges tend to keep kids in their homes whenever possible or are they quick to remove them to foster homes, group homes, RCCs, etc?
 - The judges are more likely to try to keep kids at home than the SWs. When the SW provides significant information about how a family is not functioning well or the kid is not adjusting well at home, then the judge will look at other options. Otherwise, the judges are not quick to remove kids from their homes.
- ❖ Are kids often sent to corrections? Is it used as a last resort? Do you think your county sends kids to corrections that should not be sent? Why do you think that happens and what is the motivation? Is it financially driven?
 - Dispositional recommendations for serious offenses by the SW are often based on what the kid “deserves” instead of what is most appropriate for the kid. The SW seems to focus more on punishment for the offense than the specific needs of the kid. The ADA will often offer a “deal” for a kid of the alternative protocol or other shorter confinement alternative to corrections, saying it is better than what the kid actually “deserves.” For serious offenses or for kids with a prior record, a correctional placement is often the first recommendation, not a last resort. Because of this, I think kids are sent to corrections even when it is not in their best interest.
- ❖ Do your judges generally stay sex offender registration for juveniles? When do they make the decision to stay registration? Immediately or do they defer the decision?
 - Based on negotiations, sex offender registration will usually be stayed for juveniles. That decision will be made immediately at the time of disposition.

Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
 - Kids are usually offered programming through Family Services, Innovative Counseling, Libertas, or, if applicable, Oneida Health Center and Social Services.
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?

- Yes, Day Treatment is usually provided by Family Services Day Treatment or Green Bay Day Treatment.
- ❖ What treatment is available in your county for sex offenders? Is there a specific program or a specific therapist that is often/usually used for treatment of sex offenders in your county?
 - Yes, usually Family Services is used for sex offender treatment.
- ❖ What programs do you have in your county that are gender-specific?
 - Most programs are not gender specific, but most group sessions are separated by gender.

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - When there is not a significant factual dispute about the basis for sanctions, kids will often stipulate. However, sometimes the basis is contested when the kid does not agree with the statements from a parent, SW, or school.
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - The ADA will call the parent, SW, or school records for testimony.
- ❖ What sanctions are most often imposed in your county?
 - Judges often sanction kids to SD or SC, either for a straight 10 days for more serious violations or just for a weekend to give the kid a wake-up call.
- ❖ Does your county utilize stayed days in detention as a sanction?
 - Yes, in addition to immediately imposing time in SD, the judges will also stay days to be used at the discretion of the SW.
- ❖ Has a particular sanction worked well for your clients in your opinion?
 - No, the typical sanction is SD, which either scares or angers kids instead of encouraging progress and treatment, or worse will acclimate them to SD and makes them less concerned about consequences for future violations.

Miscellaneous

- ❖ What are common acronyms and their meanings in your county?
 - ADA – Assistant District Attorney
 - SW – social worker
 - TPC – temporary physical custody
 - SD – secure detention
 - SC – shelter care
 - PTC – pre-trial conference
 - EM – electronic monitoring
 - AODA – alcohol / other drug abuse

- ❖ Who are experts you have used in juvenile cases and would you recommend them?
 - We frequently use and recommend psychologist expert Dr. Kevin Miller.