

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 in the hopes 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 hope 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.

Dane County

Submitted by: Eileen Fredericks

The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - Dane County recently started a new process, and has a Court diversion unit. The Court Diversion Unit has a group of social workers and the assigned worker takes the 40 days to learn about a kid and his or her family and decides whether or not to offer a deferred prosecution agreement or recommend that the DA's office file a formal petition. Generally, only first offenders go to the Court Diversion unit. If a kid is already on supervision, his or her current social worker makes the recommendation to the DA about whether any new offense should be charged. If a kid is held in custody, then a social work does a quick assessment and intake, but normally the DA's office chooses to file a petition and the social worker agrees with that decision.
- ❖ Do you use the term probation officer or social worker or something else to describe the county representative from human services?
 - Social worker
- ❖ Is there a specific social worker/probation officer or group of social workers/probation officers who conduct the intake inquiry?
 - As noted above, Dane County Human Services does have a Court Diversion Unit, which was created to more fully explore the intake inquiry. However, all the social workers conduct some sort of intake inquiry with current clients upon receipt of a new referral.
- ❖ 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.?
 - Some of the DAs are more open to DPAs than others. Generally, the social worker can make a case for the DPA and the DA will listen and may or may not be convinced.
- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
 - DPAs are pretty common in Dane County for first offenses. They seem to be even more common since the Court Diversion Unit was created.
- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - Kids are not assigned a lawyer until a petition is filed so normally defense lawyers are not involved in negotiating DPAs. However, sometimes if a kid or family does not participate in the intake process, because they do not know about the meeting or for some reason choose not to participate, a DPA can

still be an option even if a petition is filed. In these cases, a petition is filed and a lawyer is appointed. The lawyer can help facilitate a meeting between the client and social worker. Often the social worker is still open to a DPA, and after having the court report from the social worker, the DAs will often be open to a DPA if the social worker feels one is appropriate.

- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - In Dane County, if the intake social worker has not met with the family earlier, then often both the social worker and the DA are willing to consider a DPA if the kid seems pretty well adjusted and the charge is not super serious. Sometimes the intake social workers will recommend a DPA, and the DA will decide to charge anyway, and in those cases, the DA may still consider a DPA, but with specific conditions that the intake social worker may not have included. Except in cases of very serious charges, if a kid has not been in trouble before, and seems like they can do what the need to do to be successful going forward, it is definitely worth asking for a DPA.

Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
 - In Dane County, our clients appear in person for custody hearings. Our attorneys normally will see and talk to the clients in the morning at the detention center if they are in secure custody and will also have a chance to follow up with parents or other placement options. If kids are placed at the shelter home or another placement, our attorneys can usually reach kids by phone prior to the hearing or will have an opportunity to meet with the kids before their court hearings.
- ❖ Are your custody hearings before a court commissioner or a judge?
 - Our custody hearings are before a court commissioner.
- ❖ Is a petition normally filed by the time of/at the hearing?
 - The petition is almost always, if not always filed at the time of the hearing.
- ❖ Is there every sworn testimony taken at custody hearings?
 - On a very rare occasion and in the case of only certain DAs will sworn testimony be taken. Generally, the DA, social worker, detention representative or person from our temporary shelter (if kid is placed there), parents, and defense attorneys speak directly to the court about what their recommendation is regarding custody.
- ❖ 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?

- In Dane County, we do have a custody status called a “temporary release from secure custody” or a TR/SC. Most kids that are released to their homes, a relatives home or our shelter home placement are released on a nonsecure custody order or NSC. However, in order to decrease the number of kids in detention, this TR/SC status which is not in the statutes was created so that kids with more serious offenses can have a chance to return to the community with a very short leash. When kids are on a TR/SC, secure custody findings of either dangerousness or runaway behavior so as not to be available for court are made, and if the kid has any violations of the conditions of their release, they can be brought immediately back to detention.

- ❖ What is the process for “appealing” the initial custody determination?
 - If the commissioner makes a custody decision that we wish to appeal, we can request de novo review before the client’s judge. One option is to have the judge listen to the tape of the hearing before the commissioner or the other option, which is usually preferable, is to have a new hearing before the judge. If the client’s judge is not available, the hearing can be before another juvenile judge or the duty judge for that week.

- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - In Dane County, generally defense counsel will make the request for a custody review if the kid is in detention. However, in some cases, the social worker may come up with a plan for release and may request the review. In Dane County, a request for review of the custody order must be made in writing and notice must be given 24 hours before the time of the hearing. Defense counsel cannot walk into a plea hearing or other hearing and be heard on the custody issue unless the request for review was filed appropriately and timely. When kids are in nonsecure custody, defense counsel will often file reviews to have kids returned home from the shelter, but it also happens sometimes that social workers or home detention workers or shelter staff will file reviews if there are problems with the kid’s compliance with the conditions of release. Our home detention program does curfew and school checks, and talks to parents. If kids are not following the rules, the home detention worker will let the court know.

- ❖ What is the average length of stay in detention?
 - It is hard to give an average. Generally, if kids are going to have a community plan at disposition, they are not held very long in detention. Social workers, judges and DAs all want to see how they will do while on a custody order in the community. However, if kids are likely to go to corrections, residential treatment centers or other placements, it can sometimes take a while to resolve the case and a kid could spend several weeks or more in the detention facility.

- ❖ Where is the detention facility for your county?

- The Dane County detention center is in the City/County Building in downtown Madison, just a couple of blocks from the SPD office. This makes it very easy for our attorneys to see our clients frequently while they are in custody.

- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - In Dane County, kids can often return home with the Home Detention Program monitoring them. They can also be placed at the Dane County Shelter home, which is a temporary group home on the Eastside of Madison. In addition, our commissioners/judges will consider other family and potentially even friends, but it is rare for a kid to be placed with a relative or other responsible adult at the first hearing. Usually, the commissioners want to give the Department of Human Services time to do background checks and assess whether the relative or other responsible adult is appropriate. There may be exceptions, particularly, when a kid has already been living with the relative or other adult, but generally, at the original custody hearing, unless a social worker has worked with a kid and the family before, the commissioners are reluctant to place kids any place other than home, the shelter or detention.

- ❖ 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?
 - As mentioned above, in Dane County, a request for review of the custody order must be made in writing and notice must be given 24 hours before the time of the hearing. Defense counsel cannot walk into a plea hearing or other hearing and be heard on custody unless the request for review was filed appropriately and timely. On rare occasions, the judge may change the custody status even if a request was not made, but only if everyone is in agreement.

- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - As mentioned above, Dane County has a Home Detention Program (HDP). The HDP workers monitor curfew, behavior at home, and school attendance and behavior. Generally, the HDP workers come to the kids hearings and report on their behavior. They also will request custody reviews if kids are not complying with the rules of HDP or any other conditions specifically set by the court, such as no contact orders. If a kid is on a TR/SC (as discussed above), the HDP worker can tell the kid to report to the detention facility and revoke the TR/SC. The kid will then have a hearing the next day where the commissioner will decide whether or not to reinstate the TR/SC or continue the kid in detention.

Competency to Stand Trial

- ❖ How is the question of competency raised in your jurisdiction?
 - Normally, defense counsel will raise competency and request an evaluation at the first hearing for the client when defense counsel suspects that the client is not competent. Defense counsel can also raise competency in writing and request an evaluation prior to a hearing.

- ❖ Is it common for someone other than defense counsel to raise competency?
 - It is not common for someone else to raise competency. However, social workers will sometimes talk to defense counsel about concerns related to competency, and sometimes detention staff or shelter home staff will talk to defense counsel about concerns related to competency for particular kids.

- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
 - Generally, the court commissioners and judges in Dane County will order a competency evaluation with very little information as to the concerns related to competency, which keeps defense counsel from having to divulge information that may be confidential.

- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?
 - In most cases, the DAs stipulate to the evaluator's finding on present competency. However, there are times when either the DA or defense counsel may ask for another evaluation if there is some reason to be concerned with the original evaluation. Generally, I believe that defense counsel will challenge a finding of competent by an evaluator if after several meetings there are still concerns about a client's understanding and ability to assist in his/her defense. Also, I believe that the parties usually stipulate to the finding that the client may attain competency at least after the initial evaluation. The judges are likely to want to try competency education if the evaluator believes it could be helpful. That may not be the case though if the client still has not become competent after receiving education, and the evaluator continues to believe that competency may be attained. There are times when the DAs believe a kid is competent and will challenge an evaluator's finding of incompetence at a contested hearing, but this is not very common.

- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
 - Dane County has put policies in place to be better about reevaluating clients who have been found to be likely to attain competency. However, some judges have been better about following this policy than others. In one branch, the reevaluations happen every three months regardless of if competency education has been completed when the first 3 month period has lapsed. In other branches, it is much less regular and there seems to be a lack of follow through, which generally is a good thing for our clients.

- ❖ What competency training is provided in your county?
 - Some of the intake workers at the juvenile reception center (JRC) provide competency training using two workbooks. They usually go to the kid's home or school about 5 or 6 times and review information with the kids. The juvenile reception center is part of the detention facility in Dane County. It is where kids are brought when taken into custody and where the initial custody decision is made.

Waiver to Adult Court

- ❖ Do the District Attorneys in your county file waiver frequently?
 - Waiver is not very frequent in Dane County. It is usually reserved for very serious offenses and for kids who are very close to 17 years old.
- ❖ Do the judges in your county often waive kids into adult court?
 - No, this is likely because the state does not often file waiver petitions so it is hard to know if the judges would be quick to waive kids if there were more waiver hearings.
- ❖ 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?
 - Often, the DAs are hoping a kid will stipulate to corrections in exchange for the waiver withdrawal. However, there are times when the DAs are serious about waiving a kid into adult court. This is usually in the case of very serious offenses, kids who are very close to 17 and have a fairly serious charge, and kids who have already been to corrections.
- ❖ How often are waivers contested?
 - Contested waivers are rare, because the cases can often be resolved with some sort of deal in juvenile court and/or unfortunately, kids will choose not to contest a waiver on a misdemeanor charge if he or she believe that they may go to corrections or be placed out of county in the juvenile system and could instead opt for probation in the adult system. However, there are times when it is necessary to contest waiver, and these are very involved hearings.
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
 - Almost invariably, the state simply relies on the petition to prove prosecutive merit. On relatively few occasions, however, the State has called witnesses, similar to an "old school" prelim.
- ❖ What sort of witnesses does the State typically call in support of waiver?
 - The State always calls the social worker, even if the worker doesn't support waiver. They will also call cops, especially if there are gang overtones.

- ❖ What sort of witnesses does the defense usually call?
 - We almost always call a parent. If we have client services do work for us, we may call her, especially if the social worker is not friendly to our position. We also sometimes call intensive supervision workers who know the kid. If evaluations have been done, the Court usually allows the report to speak for itself. Also, the Court routinely allows us to file letters of support from teachers, coaches, ministers, etc..., and relies on those without need for the “authors” to appear and formally testify.

- ❖ Is it at all common for a juvenile to initiate waiver proceedings?
 - It is definitely not common. They only times we know of it coming up is when a kid has decided not to contest a waiver petition (usually to avoid corrections and in the hopes of getting probation in the adult system), and the state withdraws the petition. Then our attorneys have felt that they need to go forward with the waiver.

- ❖ Are you aware of any instances in your jurisdiction of the Court initiating proceedings?
 - It is not common, but it has happened. The one situation I’m aware of was when the state had originally filed the waiver petition and then had moved to withdraw the petition.

Disposition

- ❖ How closely are the social worker's recommendations followed?
 - In our county, generally the social worker’s recommendations are adopted with some tweaking. We have a lot of standard conditions of supervision that go into pretty much all of our orders. Here are the conditions that are likely to be in a standard order:

Community Protection

- a) Obey the reasonable rules of the parents, school and social worker.
- b) Commit no further law violations.
- c) Neither use nor possess any alcohol, or illegal or synthetic drugs.
- d) Cooperate with UA’s as requested by the parent or social worker.
- e) Not to use or possess any weapons.
- f) Engage in no acts or threats of violence.
- g) Advise the social worker immediately of any police contacts.
- h) Participate in and successfully complete NIP/CAP community supervision and the Home Detention Program as a bridge to NIP/CAP supervision.
- i) Successfully complete the NIP Weekend Report Center as required by the social worker.
- j) Cooperate with electronic monitoring as required by the social worker or NIP staff.

k) Respite in a group home, not to exceed 15 consecutive days, is authorized if agreed upon by child and parent(s). Notice that respite has been used will be given to all parties within 2 business days.

Competency Development

l) Attend school regularly with no unexcused absences.

m) Successfully complete counseling to address issues of anger management as recommended by the social worker.

n) Successfully complete family therapy as requested by the social worker.

o) Complete an AODA evaluation (already ordered).

p) Successfully complete AODA treatment as recommended by the social worker or as recommended by an AODA

evaluation.

q) Successfully complete any additional services as recommended by the DCDHS social worker subject to review by the

Court at the request of any party.

3. The parents shall comply with the following conditions:

a) Participate in services as requested by the social worker or service providers.

b) Advise the social worker immediately of any changes in residence or telephone number.

c) Cooperate with the Collections Unit of the Dane County Department of Human Services making payment of fees assessed for service.

d) Assist your child in fulfilling the terms of the court order.

- ❖ 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?
 - Consent decrees are used to resolve cases frequently. Usually, the defense attorneys draft the consent decree. Sometimes the clerk in the commissioner center will draft them when they are determined to be appropriate at the plea hearing. It is best to try to have them drafted ahead of time when possible. The State requires pleas for consent decree in Dane County.
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - Yes, see above.
- ❖ Does the State typically agree with the Department's recommendations?
 - For less serious offenses, generally, the DA goes along with the social workers recommendations. They may want a longer period of time or some no contact that wasn't recommended, but usually, they agree with what the social worker suggests. For more serious offenses, the DA will sometimes ask for a more restrictive placement than the department is recommending, but also frequently accept the recommendation of the department.
- ❖ Does your jurisdiction have an intensive supervision program?
 - Yes, we have two intensive supervision programs that are essentially interchangeable. One is the Neighborhood Intervention Program (NIP) and

the other is intensive supervision through Briarpatch. The intensive supervision programs provide curfew checks and school checks. They also meet with the kid and parents on a regular basis to monitor how the kid is doing with the rules of supervision. These programs also run competency groups for kids.

- ❖ Does your jurisdiction have a specialized "wraparound" program?
 - Yes, Community Partnerships provides wraparound services to coordinate services for kids through the program Children Come First (CCF). Also, the Dane County Department of Human Services has the Achieving Reunification Through Teamwork (ARTT) program, which usually helps transition kids back to the community from residential treatment centers and helps coordinate services back in the community.

- ❖ Does your jurisdiction have a community service/restitution program?
 - Yes, Dane County has the Youth Restitution Program (YRP) that provides opportunities for kids to do their court ordered community service and in some cases provides subsidized work to help kids pay restitution. The program also tracks community service for kids who find their own opportunities and reports to the court when community service is complete.

- ❖ Which Residential Treatment Centers are used by your county?
 - We use a lot of different facilities. We often send boys to Northwest Passage II, Lad Lake, Norris Adolescent Center, Homme Home, and Eau Claire Academy,. We often send girls to Northwest Passage III, Homme Home, Eau Claire Academy, Milwaukee Academy, the Family and Children Center and St. Rose Youth and Family Center. We also sometimes use Genesee Lake School (formerly ODTC (Oconomowoc Development Training Center)) for both boys and girls.

- ❖ Does your county allow for a dispositional 365 day placement in detention?
 - No, we do not use detention post-disposition, except for sanctions. We do not have an AODA program or any other treatment in our detention facility and our county board has not approved use of detention this way.

- ❖ 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?
 - It depends on the judge, but generally, I would say that if kids are really struggling at home, the judges do not hesitate to remove them when there are resources available for group homes or foster homes. Lately, there has been a shortage of placement options, which can be good for kids who want second and third chances to turn things around at home, but can be bad when home really is not an option.

- ❖ 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?
 - Luckily, our current judges tend to use corrections sparingly. They are open to trying other alternatives that are more focused on treatment rather than rushing to send kids to corrections. Some of our judges do talk about how expensive it is to send our kids to residential programs, but I would not say that any of the judges look to pass the buck to the state.
- ❖ 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?
 - The trend is for the judges to withhold making a decision about whether a kid should register until the end of the kid's supervision, and hopefully, after the kid has completed sex offender treatment. Generally, if the kid successfully completes treatment, the judge will stay registration.

Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
 - We have an anger management program called Alternatives to Aggression (ATA) that is often used. There is a shorter program called the Behavioral Intervention Group (B.I.G.), which also addresses anger management, but is less intensive. For AODA issues, kids usually do AODA assessments through UW-AADAIP (the University of Wisconsin – Adolescent Alcohol/Drug Assessment Intervention Program). This program also can provide treatment, including multidimensional family therapy (MDFT) and treatment through the program called Gateway Recovery. Another AODA treatment provider is NewStart, which is Meriter Hospital's rehabilitation program for substance use disorders.
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - There are day treatment programs in Dane County. They are sometimes difficult for our clients to access. They include Northstar and Steps to Success, which are both in Madison. We also sometimes utilize Crossroads in Sun Prairie, and I have even had a kid go to Crossroads in Janesville. The Madison Metropolitan School District also runs an alternative program called NEON (New Educational Options and Networking), which is similar to 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?

- SOPORT is the treatment program that treats the majority of our sex offender clients who remain in the community as well as those returning from corrections or treatment centers. Lorrie Roller of the Juvenile Assessment and Treatment Center is also used.
- ❖ What programs do you have in your county that are gender-specific?
 - The Neighborhood Intervention Program (NIP) provides separate programming for girls and boys.

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - It is common for kids to stipulate to the basis for the request for sanctions. This is especially the case when the basis is due to attendance issues, which can easily be proven by attendance records, and or curfew violations where parents are ready and willing to testify to the issues.
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - The state will often call the social worker to testify and/or the parents.
- ❖ What sanctions are most often imposed in your county?
 - Usually, kids are sanctioned to detention or the Dane County Shelter home. The judges usually do not use the full ten days right off the bat, but just give kids a taste of detention. Shelter home is often used if a change of placement is being considered and the judge wants to see how the kid will do with the structure of the shelter home.
- ❖ Does your county utilize stayed days in detention as a sanction?
 - Dane County utilizes stayed days frequently. This is where the judge imposes and stays several days in detention, and then social workers can put the kid in detention if the kid violates the court order again.
- ❖ Has a particular sanction worked well for your clients in your opinion?
 - Stayed days can sometimes be effective, but generally, specific treatment for the problem is really the most effective. If the kid has positive UAs, generally time in detention is not going to help. The kid needs AODA treatment. If the kid is not going to school, sometimes the kid needs help reintegrating and getting back on track at school or needs assistance to explore alternative programs.

Miscellaneous

- ❖ What are common acronyms and their meanings in your county?

- I already mentioned a lot of them above throughout the answers so will just recap and then add a few additions.
 - JRC – Juvenile Reception Center
 - NIP – Neighborhood Intervention Program
 - CCF – Children Come First
 - ATA – Alternatives to Aggression
 - BIG – Behavioral Intervention Program
 - ARTT – Achieving Reunification through Teamwork
 - HDP – Home Detention Program
 - YRP – Youth Restitution Program
 - MDFT – Multidimensional Family Therapy
 - FIT – Families in Transition (which is a family therapy program)
 - NWP- Northwest Passage
 - TR/SC – temporary release from secure custody
 - NSC – non-secure custody

- ❖ Who are experts you have used in juvenile cases and would you recommend them?
 - Dr. Michael Caldwell from the University of Wisconsin. He is highly recommended.