

# **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.

# Dunn County

Submitted by Donna Burger

## The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
  - Dunn County Human Services 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 get diversions. If a juvenile 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 juvenile is held in custody, then the DA files a petition. More often than not on most cases made known to the PD's office, there is a petition filed.
  
- ❖ 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?
  - yes
  
- ❖ 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
  
- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
  - yes
  
- ❖ 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?
  - 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?
  - personally
- ❖ Are your custody hearings before a court commissioner or a judge?
  - judge
- ❖ Is a petition normally filed by the time of/at the hearing?
  - no
- ❖ Is there ever sworn testimony taken at custody hearings?
  - yes
- ❖ 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
- ❖ What is the process for “appealing” the initial custody determination? Req at next hrg
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
  - The kid if s/he represents self
- ❖ What is the average length of stay in detention?
  - Don't know
- ❖ Where is the detention facility for your county?
  - Secure detention is in the next county, ½ hr away from Dunn courthouse, and more than hour away from SPD office
- ❖ At a custody hearing, besides detention what placement options are available for kids?
  - Foster care, relatives' homes, group homes, or own home.

- ❖ 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?
  - Petition the court.
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
  - The social worker, electronic monitoring if judge ordered it

### **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?
  - no
- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
  - I don't think so
- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?
  - Probably, we really don't run into this often
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
  - I think so
- ❖ What competency training is provided in your county?
  - I don't know

### **Waiver to Adult Court**

- ❖ Do the District Attorneys in your county file waiver frequently?
  - no
- ❖ Do the judges in your county often waive kids into adult court?
  - No

- ❖ 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?
  - n/a
- ❖ How often are waivers contested?
  - n/a
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
  - n/a
- ❖ What sort of witnesses does the State typically call in support of waiver?
  - n/a
- ❖ What sort of witnesses does the defense usually call?
  - n/a
- ❖ Is it at all common for a juvenile to initiate waiver proceedings?
  - No!
- ❖ Are you aware of any instances in your jurisdiction of the Court initiating proceedings?
  - no

### **Disposition**

- ❖ How closely are the social worker's recommendations followed?
  - Very closely
- ❖ 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?
  - Sometimes, social workers draft them, they like to have pleas so they don't have to do a fact-finding later if the CD doesn't work out
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
  - yes
- ❖ Does the State typically agree with the Department's recommendations?
  - yes
- ❖ Does your jurisdiction have an intensive supervision program?
  - I don't think so
- ❖ Does your jurisdiction have a specialized "wraparound" program?
  - no
- ❖ Does your jurisdiction have a community service/restitution program?

- no
- ❖ Which Residential Treatment Centers are used by your county?
  - We use a few facilities. They have sent boys to Northwest Passage II, Homme Home, and Eau Claire Academy. They have sent girls to Northwest Passage III, Homme Home, and Eau Claire Academy.
- ❖ Does your county allow for a dispositional 365 day placement in detention?
  - no
- ❖ 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?
  - try to keep them in 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?
  - 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?
  - IDK
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
  - Yes, I don't know what it is called
- ❖ 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?
  - IDK

- ❖ What programs do you have in your county that are gender-specific?
  - There is a girls' group, but don't know what it is called

### **Sanctions**

- ❖ How often is there a stipulation as to the basis for sanctions?
  - half the time
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
  - Testimony by social worker
- ❖ What sanctions are most often imposed in your county?
  - 10 days or less in secure, non-secure placement, ankle bracelet
- ❖ Does your county utilize stayed days in detention as a sanction?
  - no
- ❖ Has a particular sanction worked well for your clients in your opinion?
  - no

### **Miscellaneous**

- ❖ What are common acronyms and their meanings in your county?
- ❖ Who are experts you have used in juvenile cases and would you recommend them?