

# 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.

**Fond du Lac County**  
**Submitted by: Jeffrey Haase**

The Intake Process

❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?

The jail roster is emailed to the SPD office early in the morning. The juvenile list includes new juveniles in custody (Fond du Lac has its own juvenile detention facility that is upstairs-but separate- from the jail) or juveniles in custody that have court appearances. By a little after 9:00 on weekday mornings the call reports for juvenile detention hearings (1:30 MWF, 11:30 TTh) are dropped off at the SPD office. A staff attorney sees those in custody and those out of custody are usually brought to the SPD office to meet with the staff attorney a half hour before the detention hearings. Cases are appointed once the petition is available. For juveniles new in custody who have their cases already assigned to an attorney, the staff attorney notifies the attorney who has been appointed so they then appear with their client at the detention hearing.

The juvenile intake social workers screen all of the others at an intake interview and if they are offered a deferred prosecution agreement and accept it, the case is not charged and no paperwork comes in to the SPD office. If they are referred to court the SPD office gets a copy of the petition, does the intake paperwork and automatically appoints an attorney with the goal that the attorney can be in place before the first court appearance. This sometimes means that there is missing information on the opening (often the phone number of the juvenile) that the attorney then has to get from the juvenile intake unit.

There is one ADA assigned to do juvenile court Monday-Thursday and a fill in on Friday. Other than the daily detention hearings, Juvenile court is always on Wednesdays, with initial pleas at 8:30 and change of pleas and dispositions scheduled for the same date) following in the calendar, to all be completed by 11:00. Afternoons are for contested juvenile hearings, sanctions and the like. Court trials are scheduled for Thursday mornings.

If private bar attorneys are not available on Wednesdays, they should decline to take a juvenile case in Fond du Lac County. It is only a very rare occasions

that any juvenile matter will be scheduled on another day of the week. The only exception to that would be the pre-trial conferences which are always scheduled for late Monday afternoons and with prior arrangements can be done by phone or email.

- ❖ 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?

There are currently two social workers assigned to do juvenile intake. They do the intake inquiry (there is seldom a request to have an attorney at the intake inquiry) and usually keep the case until it is assigned to the "ongoing social worker." When possible, the ongoing worker is assigned by the pre-trial conference and makes the recommendation for resolution and rules. The social workers are generally open to calls to discuss the client, recommendations and the rules.

- ❖ 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.?

Since there is one primary ADA assigned to do juvenile court, there is a close working relationship between the ADA and the social workers. While they do not always agree, the social workers do not hesitate to advocate for their position with the ADA.

- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?

Fond du Lac County has an active Teen Court program that is very much supported by the judges, so a lot of the first time juveniles are screened into Teen Court and the SPD never hears anything about them unless whatever result there is revoked and they are referred to court. After the juvenile intake inquiry, a number of DPAs are offered and accepted without a referral to court. There are some DPAs (also referred to here as Consent Decrees) that are offered at disposition in lieu of formal adjudication. There are also diversion agreements in the schools that are agreed on between the liaison officer and the juvenile. When those agreements are revoked, they are then referred to juvenile intake for an inquiry and then usually to court.

- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?

Generally not

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

With so many of the juveniles screened out (see above) there are relatively fewer that are appropriate after the petition is filed. So there are some and it often worth having the discussion with the social worker.

### Temporary Physical Custody Hearings

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

Juveniles appear in person before the intake judge at the times listed above. The intake judge changes every four weeks as they rotate through the five judges. There are rather substantial difference between the judges, so an attorney not familiar with the local judges is advised to consult with a local attorney if at all possible.

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

Judge

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

A petition is seldom filed before the TPC and there is always a request for 48 or 72 hours to file.

- ❖ Is there ever sworn testimony taken at custody hearings?

No. Everyone is generally allowed to have their say within reasonable bounds.

- ❖ 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?

Seldom, because they have the required school programming in the facility. However if the juvenile has a long term job or special medical appointment, the facility would prefer to have the family transport.

- ❖ What is the process for "appealing" the initial custody determination?

The defense can contact the juvenile court and request a review, after getting a proposed date from the clerk and notifying all parties of the date and time. It often works better to request the review in open court (after one has had an unfortunate decision) and have the court set the date of the review.

- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?

Yes, the social workers make the requests on a routine basis, both to have the juveniles put into secure custody, as well as to have them released. There is also a local procedure where the judge will allow them to be released if everyone agrees to it. The social worker will then drop off or come by with a stipulation for the attorney to sign and when all the signatures have been gathered the juvenile will be released to the agreed upon place.

- ❖ What is the average length of stay in detention?

In serious cases (and for runners), until the matter is resolved. For all others usually only until the juvenile's attitude and behavior come back into some sort of "normal" range.

- ❖ Where is the detention facility for your county?

The secure detention facility is attached to (but separate from) the jail, which is itself attached to the court house. The entrance to the secure detention facility is on the second floor of the court house, across from the entrance to the office of the juvenile social workers. This is down a short hallway from the court rooms. The entrance from the court house is closed after hours, but there is a street entrance open from near the sheriff's administrative office.

- ❖ At a custody hearing, besides detention what placement options are available for kids?

Fond du Lac County has its own shelter care facility about 6 blocks from the court house. They can also be placed with a relative, in foster care or at home with or without electronic monitoring. If it is not possible to place a child at home, relatives are often favored by the judges.

- ❖ 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?

Follow the procedure listed above. Custody is almost always open for review at any hearing - initial plea, change of plea or disposition without any prior notice or filing a request.

- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?

The electronic monitoring bracelet.

## **Competency to Stand Trial**

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

By defense counsel at any point where it becomes appropriate

- ❖ Is it common for someone other than defense counsel to raise competency?

No, anyone with concerns in that regard will talk with and alert the defense attorney to them.

- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, or other evidence before ordering an evaluation?

There is one judge who will ask for a bit more information when the request is made, but it doesn't go past generalities (this particular judge is a former SPD attorney). The judges know most all the attorneys and have experience with them. If there is a new attorney, or someone that doesn't practice often in this county, who starts to raise it more frequently than is usual among the local attorneys or it seems to be a routine request, they will draw more questions and sometimes the request for an evaluation will be denied.

- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?

There are not enough of them that a "generally" statement is possible. The courts here use the Forensic Unit out of Milwaukee for their evaluations. The quality of the evaluations varies substantially between the different evaluators. A very thorough evaluation by one of the better evaluators gets a lot more stipulations from both sides on all issues. The cursory evaluations are more problematic unless the juvenile is very obviously one or the other.

- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?

The Forensic Unit does the reevaluations at the required intervals.

- ❖ What competency training is provided in your county?

There are very few of these and often they are inpatient, in which case the staff at Winnebago (usually they are there on the juvenile stuff) provide the training.

## **Waiver to Adult Court**

- ❖ Do the District Attorneys in your county file waiver frequently?

No, only in the most serious cases, or if there is no choice by statute—as in attempted homicide. In a rare case where the ADA wants to avoid an expected waiver it will be handled in an early representation situation to negotiate the charges.

- ❖ Do the judges in your county often waive kids into adult court?

In the circumstance where the judge initiates the waiver and then disqualifies themselves from further proceedings:

We have one judge who is known to do this when he feels the ADA should be seeking a waiver and they are not. If the defense would fight a waiver, then the negotiation is around the timing, entry of the initial appearance, etc, which in our county determines which judge will get the case. All efforts first go into not getting the judge that is likely to initiate the waiver.

In the few circumstances where the state wants the waiver: it depends on the information presented at the hearing.

- ❖ 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? .

They are seeking the waiver.

- ❖ How often are waivers contested?

Since they are usually only serious cases, most of the time they are contested, unless there is some much more advantageous outcome possible in adult court, which is only occasionally the case.

- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?

There are not enough of them for a general/typical answer.

- ❖ What sort of witnesses does the State typically call in support of waiver?

Usually the social worker, and again not enough for any typical others.

- ❖ What sort of witnesses does the defense usually call?

Other than the parent(s), not enough to have a "usual."

- ❖ 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?

Yes, as outlined above, we have one judge who does this under certain circumstances.

### **Disposition**

- ❖ How closely are the social worker's recommendations followed?

Since the final recommendations are usually the result of negotiations and they are being jointly recommended, the judges usually go along with them. Sometimes we argue a specific provision if most of the rules are agreed on and then it can go either way depending on the circumstances. For major disagreements as to the recommendations we have a contested disposition and that can go either way as well. There are some judges who are a bit hostile to the whole social worker ethos, sometimes to our benefit, other times not.

- ❖ 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?

There are some consent decrees (see previous answers). They are usually drafted by the state and in most cases require a plea.

- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?

Yes, but subject to some negotiation.

- ❖ Does the State typically agree with the Department's recommendations?

Since there is the close working relationship between the juvenile ADA and the social workers (previously mentioned), yes.

- ❖ Does your jurisdiction have an intensive supervision program?

There is one, but I believe it has a couple of variations.

- 3 Does your jurisdiction have a specialized "wraparound" program?

They do have something that they call by that name.

- ❖ Does your jurisdiction have a community service/restitution program?

Yes, a rather well developed one.

- ❖ Which Residential Treatment Centers are used by your county?

The nearest one that is an appropriate for the treatment needs and has an opening.

- ❖ Does your county allow for a dispositional 365 day placement in detention?

No, but small amounts of secure detention are sometimes the disposition if the juvenile would prefer that or they are close to 17 and they just want them to sit the time and be done.

- ❖ 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?

They prefer to keep them at home or with relatives and will sometimes go after the parents that aren't taking care of business.

- ❖ 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?

There are relatively few juveniles that are sent to correction and they have to do something to earn their way there, the judges do not make the decision lightly. They may occasionally send one that should not be sent, but they are fiscal conservatives for the most part and worry about costs to the state as well.

- ❖ 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?

I don't know that there are enough for a "generally."

## Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?

Both of those, corrective thought programs and others that vary in availability over time—it is always best to contact the social worker to see what is available at a given time

- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?

It doesn't sound familiar.

- ❖ 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?

The county runs its own groups with a social worker that is trained to run them.

- ❖ What programs do you have in your county that are gender-specific?

There are some provided by the non-profits or the school or the Boys and Girls club.

## Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?

Frequently, but far from always. Although this county used to go crazy filing sanctions, that is no longer the case and there are not all that many sanction petitions any more.

- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?

Social Worker, school or law enforcement witnesses.

- ❖ What sanctions are most often imposed in your county?

Secure detention

- ❖ Does your county utilize stayed days in detention as a sanction?

Yes, frequently if the juvenile's behavior has substantially improved by the time that the sanction hearing is heard (it takes a while here to get the sanction hearings on the calendar).

❖ Has a particular sanction worked well for your clients in your opinion?

Stayed time often works well if the juveniles are already motivated to stay out of secure detention.

#### Miscellaneous

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

There is some alphabet soup, but we are small enough that the attorney can just ask if the meaning term isn't obvious.

❖ Who are experts you have used in juvenile cases and would you recommend them?

Dr. Hauer in Oshkosh.