

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.

Jackson County

Submitted by: Paul Frederickson

The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - We receive the notice directly from the Juv Clerk when something has been filed and we appoint ASAP. We are not usually involved in the early screening process.

- ❖ 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?
 - A specific social worker, Jenny Dormandy.

- ❖ 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. The social worker can be very influential. However, the DA can also be swayed regarding a deferred prosecution.

- ❖ 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?
 - Only when there is a current case pending. For instance, if a JIPS has previously been filed or another delinquency has been opened on the case.

- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - Yes and yes. We often see consent decrees or DPAs even after a petition has been filed.

Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
 - Generally, the children appear in person. I cannot recall a juvenile appearing by video.

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

- ❖ Is a petition normally filed by the time of/at the hearing?
 - It depends, often a petition is filed right at the moment of hearing. Generally, petitions are not filed when the TPC is filed.

- ❖ Is there ever sworn testimony taken at custody hearings?
 - Only rarely, generally argument is taken and questions may be asked informally regarding placement at the hearing.

- ❖ 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?
 - It is fairly rare for children in Jackson county to be held in secure custody at all. If the department does not wish the juvenile to be in secure custody, they are almost always released outright. Non secure orders are common.

- ❖ What is the process for “appealing” the initial custody determination?
 - Since our custody hearings are done by the judge, there is no real “appeal” on any subsequent hearings, or a request for a new hearing, the defense can present new facts to the judge or updated placement options which may allow a client to move. Further, we often permit a change of placement to less restrictive settings at the discretion of the social worker without a hearing in cases where getting back on the court’s calendar may take time.

- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - See the previous answer. Sometimes the social worker may have a new plan which would permit movement. If this is discussed in advance, a change of placement may occur without hearing in an effort to move the juvenile out of group home/secure detention. Often it is the defense attorney that makes the request.

- ❖ What is the average length of stay in detention?
 - Rarely are juvenile’s placed in detention. If the plan is for a community placement, that is done relatively quickly.

- ❖ Where is the detention facility for your county?
 - La Crosse Juvenile Detention Center or Eau Claire Juvenile Detention Center. La Crosse is used more often.

- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - Return to home is most common or placement with a relative. There are a number of group home placements which can be found in relatively short order.

- ❖ 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?
 - No formal motion is necessary to discuss placement while the case is pending in Jackson County. Better practice is to advise the DA/Social worker of your intention because they may work with you. But the judge will allow discussion on placement at any hearing.
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - No formal program.

Competency to Stand Trial

- ❖ How is the question of competency raised in your jurisdiction?
 - Generally by defense counsel, sometimes raised by district attorney if there is familiarity with the family.
- ❖ 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?
 - No. Competency must be raised, however, significant detail is not necessary.
- ❖ 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 is generally stipulation, but occasionally one party or the other will request another evaluation.
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
 - Have not seen consistent reevaluations.
- ❖ What competency training is provided in your county?
 - None

Waiver to Adult Court

- ❖ Do the District Attorneys in your county file waiver frequently?
 - No. It is very rare for a waiver into adult court to be filed. Usually only when the juvenile is close to 17 and for serious offenses.
- ❖ Do the judges in your county often waive kids into adult court?

- No. It is very rare.
- ❖ 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?
 - Truly seeking waiver.
- ❖ How often are waivers contested?
 - Not clear, assumption would be that waivers are generally contested because they are generally only brought in serious cases so it would be clearly advantageous to remain in juvenile court.
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
 - On the merit of the petition.
- ❖ What sort of witnesses does the State typically call in support of waiver?
 - Social workers and officers.
- ❖ What sort of witnesses does the defense usually call?
 - Parents or any similar support system.
- ❖ 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, with some opportunity for argument. Generally we have a copy of what the proposal will be before the full dispo report and have a chance to negotiate some of the terms up front.
- ❖ 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, often consent decrees are possible. The social worker generally drafts the consent decree or support staff in the DA's office. It is mixed whether the consent decrees are post plea or pre plea. If the DA believes the case will be complicated or more difficult to prove after waiting on a consent decree, the DA is more likely to require a plea. On misdemeanor charges without significant history, a pre plea consent decree is a reasonable outcome.
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - Yes. Generally, curfew, drug testing, parental rules, attend school/school rules, no violations of the law, sign releases, keep in contact with social

worker, report law enforcement contact to social worker, report any change of address, cooperate with any treatment recommended.

- ❖ Does the State typically agree with the Department's recommendations?
 - Yes, but the state may have some clarifications or additional recommendations.
- ❖ Does your jurisdiction have an intensive supervision program?
 - No.
- ❖ 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?
 - Northwest Passage and Eau Claire Academy are used often.
- ❖ Does your county allow for a dispositional 365 day placement in detention?
 - No, post dispositional detention is rarely if ever used.
- ❖ 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?
 - On the basis of a delinquency, the judge is not especially quick to remove from home. CHIPS/JIPS petitions see a lot of out of home placement or removal and the removal can last a sustained period of time.
- ❖ 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?
 - Use of corrections is often a last resort. Correctional facility placement is rare and usually only after multiple referrals and continued delinquencies in placement. The DA's office does a good job of increasing interventions in placement and generally gives an opportunity for a nonsecure or non correctional placement. The judge rarely, if ever, overrules a placement recommendation and sends a juvenile to a correctional facility.
- ❖ 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?
 - Generally stayed awaiting completion of the order.

Services in your county

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

- We have a seven challenges program for AODA and an alternatives to aggression program for anger management. We have equine therapy and generalized counseling. Counseling services can be difficult to obtain, there is a dearth of providers in the area.
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - No day treatment in Jackson county, but sometimes juveniles will be sent to a neighboring county for 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?
 - No specific treatment for sex offenders.
- ❖ What programs do you have in your county that are gender-specific?
 - Not aware of specific gender focused treatment in Jackson county.

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - Often, but the parties will argue about the severity of the sanction. Most common basis for sanction is failure to attend school, which is often easily verifiable.
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - State will attempt to prove with the social worker, officer or with a representative from the school.
- ❖ What sanctions are most often imposed in your county?
 - Electronic monitoring is the most commonly imposed sanction.
- ❖ Does your county utilize stayed days in detention as a sanction?
 - There have been instances where the defense has argued to use stayed days successfully rather than actually give a corrections/out of home placement sanction at that time. Arguing the threat of the punishment is worth more than the actual punishment.
- ❖ Has a particular sanction worked well for your clients in your opinion?
 - Electronic monitoring seems to work well for juveniles. It doesn't seem to interfere too much with their lives and they usually don't get in further trouble

while on the monitoring. It is an embarrassment to have to be monitored, however, and some are self-conscious about the bracelet itself.

Specific treatment or therapy would probably be more beneficial, but often this is difficult to obtain.

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?
 - Finding experts in the region is often a struggle and we usually have to go to Madison or La Crosse to find them.